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Texas Register

Volume 13, Number 22, March 18, 1988

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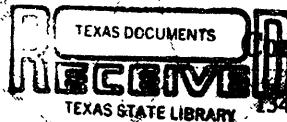
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Texas Register

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Information Available: The 10 sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules 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 explanations 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 word "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: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 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, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule 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 rule 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 the rule (27 indicates that the rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).



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512-463-5561

Jack M. Rains
Secretary of State

Director
Dan Procter

Assistant Director
Dee Wright

Documents Section Supervisor
Cynthia Cooke

Document Editors
Lainie Crease
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Document Filing
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Craig Howell

Production Editor
Jody Allen

Typographers
Ann Franklin
Victoria Parrish

Circulation/Marketing
Richard Kallus
Roberta Knight

TAC Editor
Patty Parris

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TAC Titles Affected—March

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1 TAC §§53.193-53.200—1247

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4 TAC §§18.1-18.38—1063

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7 TAC §12.3—1177

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16 TAC §3.48—1257

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40 TAC §§3.501—1195

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40 TAC §367.1—1195

Emergency Rules

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

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

TITLE 31. NATURAL RESOURCES

Part II. Texas Parks and Wildlife Department

Chapter 55. Law Enforcement

Operation Game Thief Fund

• 31 TAC §§55.111, 55.114, 55.115

The Texas Parks and Wildlife Department is renewing the effectiveness of the emergency adoption of new and amended §§55.111, 55.114, and 5.115, for a 60-day period effective March 24, 1988. The text of new and amended §§55.111, 55.114, and 55.115 was originally published in the November 20, 1987, issue of the *Texas Register* (12 TexReg 4323).

Issued in Austin, Texas on March 11, 1988.

TRD-8802585

Boyd M. Johnson
General Counsel
Parks and Wildlife
Department

Effective date: March 24, 1988

Expiration date: May 23, 1988

For further information, please call: (512)
389-4626



Proposed Sections

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

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

TITLE 1.

ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 255. Finance

1 TAC §§255.1-255.3

The Advisory Commission on State Emergency Communications proposes new §§255.1-255.3, concerning the establishment of a statewide 9-1-1 equalization surcharge. These sections have been filed for emergency action and published in the issue of the February 12, 1988, *Texas Register* (13 TexReg 756). These sections define intrastate long-distance service, and establish the surcharge rate, the effective date of implementation, and applicability.

Jay G. Stanford, chairman, has determined that there will be fiscal implications as a result of enforcing or administering the sections. There will be no effect on the state government for the first five-year period the sections will be in effect. The effect on local government for the first five-year period the sections will be in effect will be that the 9-1-1 surcharge will be assessed at a rate of 2/10 of 1.0% to each customer receiving intrastate long-distance service. The commission has no historical data and is unable to estimate an exact fiscal impact on the public.

The cost of compliance with the sections for small businesses consists of a 9-1-1 surcharge at a rate of 2/10 of 1.0% to each customer receiving intrastate long-distance service in counties having a population of 120,000 or more. The commission has no historical data and is unable to estimate an exact fiscal impact. Small and large businesses will be impacted similarly being assessed a surcharge at a rate of 2/10 of 1.0% to each customer receiving intrastate long-distance service in counties having a population of 120,000 or more.

Jay G. Stanford, chairman, 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 easy and expeditious reporting of police, fire, or medical emergencies by the implementation of the single three-digit 9-1-1 emergency number which allows for faster access and response of emergency vehicles. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be that a 9-1-1 surcharge will be assessed at a rate of 2/10

of 1.0% to each customer receiving intrastate long-distance service. The commission has no historical data and is unable to estimate an exact fiscal impact on the public.

Comments on the proposal may be submitted to Jay G. Stanford, Chairman, Advisory Commission on State Emergency Communications, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

The new sections are proposed under Texas Civil Statutes, Article 1432f, which provide the Advisory Commission on State Emergency Communications with the authority to administer the implementation of statewide 9-1-1 emergency telephone service.

§255.1. Statewide 9-1-1 Equalization Surcharge. An equalization surcharge is hereby established in the amount of 2/10 of 1.0% (0.20%), the amount to be rounded off to the next whole one cent (\$.01) in the case of fractions. This surcharge will be assessed to each customer receiving intrastate long-distance service, except those exempted by Article 1432f. The surcharge shall be applied to the total amount for intrastate long-distance service charged by the customer's long-distance service provider, but such amount shall not include taxes charged by local, state, and federal authorities, nor shall local, state, or federal taxes be applied to this surcharge unless otherwise required by law.

§255.2. Definition of Intrastate Long-Distance Service. Intrastate long-distance service means intrastate interexchange electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other methods now in existence or that may be devised. The storage of data or information for subsequent retrieval or the processing or reception and processing of data or the information intended to change its form or content are not included in intrastate long-distance service.

§255.3. Date and Areas of Implementation. The equalization surcharge shall be effective on July 1, 1988, and shall be charged for intrastate long-distance service provided in all counties having a population of more than 120,000 according to the most recent decennial census.

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 March 2, 1988.

TRD-8802520

Jay Stanford
Chairman
Advisory Commission on
State Emergency
Communications

Earliest possible date of adoption: April 18, 1988

For further information, please call: (512) 463-1812

TITLE 22. EXAMINING BOARDS

Part XXXI. Texas State Board of Examiners of Dietitians

Chapter 711. Dietitians

Licensure

22 TAC §§711.2-711.4

The Texas State Board of Examiners of Dietitians proposes amendments to §§711.2-711.4, the repeal of existing §§711.5-711.13, and new §§711.5-711.15. The amendments update and clarify the existing sections. The new sections will replace the repealed sections and will reflect changes in the organization of the sections to assist licensees in understanding and following the sections. In addition, the formal hearing provisions have been modified to reflect changes made in the Texas Department of Health's formal hearing procedures.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

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

Comments on the proposal may be submitted to Becky Berryhill, Executive Secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7501. Comments on the proposal will be accepted for 30 days after publication of these proposed sections in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4512h, §6, which provide the Texas State Board of Examiners of Dietitians, subject to final approval of the Texas Board of Health, with the authority to adopt rules consistent with the Licensed Dietitian Act relating to Board actions and qualifications of applicants.

§711.2. The Board's Operation.

(a)-(j) (No change.)

(k) Agendas.

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

(2) (No change.)

(l)-(m) (No change.)

(n) Elections.

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

(3) A board member shall not serve more than two consecutive terms in the office of chairman or vice-chairman.

(o) Committees.

(1)-(6)em>(No change.)

(7) The following standing committee shall be appointed by the newly elected chairman each odd-numbered year to serve a term of two years.

(A) (No change.)

(B) The Complaint Committee shall be composed of two board members who are licensed dietitians and one public member of the board. The committee shall process all complaints received by the board and shall recommend to the board action to be taken on complaints in accordance with §711.14 [§711. 12] of this title (relating to Violations, Complaints, and Subsequent Board Actions) and review the applications that the executive secretary determines should not be approved.

(C) The Program Approval Committee shall be composed of three board members who are licensed dietitians. The committee shall review all applications for internship and preplanned professional experience programs received by the board and shall either approve or deny all the applications [or recommend to the board denial of the applications in accordance with §711.5(d) -(h) of this title (relating to Experience Requirements for Examination and Licensure as a Dietitian)].

(D) (No change.)

(p)-(t) (No change.)

(u) Fees.

(1) The board has established reasonable and necessary fees to provide the funds to support the activities listed in paragraph [paragraphs] (2) [and (3)] of this subsection and other activities required by the Act.

(2) Schedule of fees for licensure as a dietitian and a provisional licensed dietitian:

(A)-(G) (No change.)

(H) examination fee—the fee designated by the commission at the time of the examination or reexamination [Returned check fee—\$15;

(I) application processing fee for pre-planned professional experience approval—\$350 [Board prepared licensure examination fee—\$60.];

(J) Fees for upgrading PLD—\$10.

(3) An applicant whose check for the application fee is returned marked insufficient funds, account closed or payment stopped shall be allowed to reinstate the application by remitting to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution. [Schedule of fees for licensure as a provisional dietitian:

[(A) application processing fee—\$30;

[(B) license fee—\$24 (prorated at \$2.00 per month);

[(C) renewal fee—\$24;

[(D) late renewal fee—\$36 (when renewed within 90 days of expiration date);

[(E) license renewal penalty fee \$24 plus all unpaid renewal fees (when license is renewed after 90 days of expiration but less than two years);

[(F) license certificate replacement fee—\$10;

[(G) license identification card replacement fee—\$10;

[(H) returned check fee—\$15.]

(4) An approved applicant

whose check for the license fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the board a money order or check for guaranteed fund within 30 days of the date of receipt of the board's notice. Otherwise, the application and the approval shall be invalid.

(5) A licensee whose check for the renewal fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be invalid.

(6)[(4)] Fees paid to the board by applicants are not refundable.

(7)[(5)] Any remittance submitted to the board in payment of a required fee must be in the form of a personal check, certified check, or money order [except as specified in subsection §711.10(e)(2) and (3) of this title (relating to License Renewals)].

(8)[(6)] The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through rule amendments.

(v) Petition for adoption of a rule.

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

(3) Consideration and disposition of the petition.

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

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

(iii)[(C)] The board may deny parts of the petition and/or institute rule-making procedures on parts of the petition.

(C)[(D)] If the board denies the petition, the executive secretary shall give the petitioner written notice of the board's denial, including the reason(s) for the denial.

(D)[(E)] If the board initiates rule-making procedures in accordance with the APTRA, §5, the version of the rule which the board proposes may differ from the version proposed by the petitioner. §711.3. The Profession of Dietetics.

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

(d) Code of ethics. These rules shall constitute a code of ethics as authorized by the Act, §6(b)(1).

(1) Professional representation and responsibilities.

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

(E) A licensee shall maintain knowledge and skills required for [continuing] professional competence.

(F)-(H) (No change.)

(I) A licensee shall keep his/her board file updated by notifying the executive secretary of changes in preferred mailing address and telephone number.]

(J)(J) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or in competitive bidding.

(J)(K) A licensee shall conform to generally accepted principles and standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the association or commission, and other professional or governmental bodies.

(2) (No change.)

§711.4. Academic Requirements for [Examination and] Licensure.

(a) Purpose. The purpose of this section is to set out the academic requirements for examination and licensure as a licensed dietitian or for licensure as a provisional licensed dietitian.

(b) General.

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

(8) An [A substantial] equivalent major course of study shall be defined as either:

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

(c) Registered Dietitian. Applicants [Those applicants] who are registered by the commission at the time of making application to the board are deemed to meet the academic requirements.

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

Issued in Austin, Texas, on March 10, 1988.

TRD-8802543

Robert A. MacLean
Deputy Commissioner
Texas Department of
Health

Earliest possible date of adoption: April 18, 1988

For further information, please call: (512) 458-7501

◆ ◆ ◆
• 22 TAC §§711.5-711.13

(Editor's note: The text of the following sections

proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Examiners of Dietitians or in the Texas Register office, Room 503, Sam Houston Building, 201, East 14th Street, Austin.)

The repeals are proposed under Texas Civil Statutes, Article 4512h, §6, which provide the Texas State Board of Examiners of dietitians, subject to final approval of the Texas Board of Health, with the authority to adopt rules consistent with the Licensed Dietitian Act relating to Board actions and qualifications of applicants.

§711.5. Experience Requirements for Examination and Licensure as a Dietitian.

§711.6. Supervision of Provisional Licensed Dietitians.

§711.7. Application Procedures.

§711.8. Examinations for Dietitian Licensure.

§711.9. Licensure.

§711.10. License Renewal.

§711.11. Licensure of Persons with Criminal Backgrounds to be Dietitians and Provisional Dietitians.

§711.12. Violations, Complaints, and Subsequent Board Actions.

§711.13. Formal Hearings.

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 March 10, 1988.

TRD-8802545

Robert A. MacLean
Deputy Commissioner
Texas Department of
Health

Earliest possible date of adoption: April 18, 1988

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

◆ ◆ ◆
• 22 TAC §§711.5-711.15

The new sections are proposed under Texas Civil Statutes, Article 4512h, §6, which provide the Texas State Board of Examiners of Dietitians, subject to final approval of the Texas Board of Health, with the authority to adopt rules consistent with the Licensed Dietitian Act relating to board actions and qualifications of applicants.

§711.5. Experience Requirements for Examination.

(a) Purpose. The purpose of this section is to set out the experience requirements to qualify for examination and licensure as a dietitian.

(b) General. Applicants for examination must have satisfactorily completed a preplanned professional experience program or internship in the profession of dietetics approved by the board or the association.

(1) An internship shall:

(A) be either a dietetic internship approved by the board or the association, or a coordinated undergraduate

program in dietetics approved by the association; and

(B) have an endorsement submitted from the director of the program with the application.

(2) A preplanned professional experience program shall:

(A) be completed within five years after commencement of the program, and shall be:

(i) an individualized preplanned professional experience program, beyond the undergraduate level approved by the board or the association;

(ii) an individualized planned work training program at a level of professional responsibility equivalent to that of a licensed dietitian (LD) as set out in §711.3(b) of this title (relating to The Profession of Dietetics) following the completion of a post-baccalaureate degree approved by the board or the association; or

(iii) an individual graduate assistantship in the field of dietetics in conjunction with a post-baccalaureate degree approved by the board or the association; and

(B) have endorsements submitted from one licensed or registered dietitian who supervised the applicant's experience program with the application.

(3) Documentation of the internship or preplanned professional experience program must be provided to the board by completion of the proper documentation form prescribed by the board.

(4) Applicants who are registered by the commission at the time of making application are deemed to meet the experience requirements.

(5) Provisional licensed dietitians shall be deemed to have met the academic requirements for admission into board approved preplanned professional experience and internship programs.

(c) Application and approval or disapproval procedures.

(1) The board shall delegate responsibility for the review and approval or denial of preplanned professional experience programs in dietetics and dietetic internships to the Program Approval Committee. At the request of the committee, the chairman of the board may appoint, on a volunteer basis, consultants recommended by the board from dietetic experience programs to advise this committee.

(2) Approval of each program shall be obtained prior to commencement of the program. Each program may commence upon receipt of notification from the executive secretary that the program has been

approved by the Program Approval Committee.

(3) Sponsor(s) desiring approval of a program, or reapproval of program plans when applicable, shall submit to the executive secretary properly completed application forms provided by the board, which shall include program plans in triplicate, along with a nonrefundable application processing fee.

(4) The Program Approval Committee may request clarification of program plans and/or additional information it deems necessary prior to deciding the approval status of the application.

(A) The Program Approval Committee may recommend changes in program plans.

(B) The Program Approval Committee reserves the right to request dietetic faculty vitae and endorsements.

(5) Sponsor(s) of all approved and provisionally approved programs shall notify the Program Approval Committee of any changes in the dietetic faculty and facilities, agencies, or organizations utilized in the program, and shall request Program Approval Committee approval for major curriculum changes.

(6) All programs which are not approved, or which lose their approval, shall receive a report of deficiencies from the Program Approval Committee and may reapply for approval following correction of the deficiencies previously cited. Documentation of the corrections shall be submitted with the reapplication. Application fees, and site inspection fees, if applicable, shall be submitted in the reapplication process.

(7) If the Program Approval Committee determines that another state licensing agency's criteria for similar programs meets this board's criteria, programs approved by that state licensing agency shall be deemed to be approved.

(8) The Program Approval Committee reserves the right to deny approval to additional programs sponsored by an individual after the fifth program sponsored by that individual, or to an internship after the third year, if more than 50% of the graduates of those programs are unable to pass the competency examination prescribed by the board.

(d) Guidelines specific to preplanned professional experience programs.

(1) The general guidelines are as follows.

(A) This subsection covers guidelines which are specific to preplanned professional experience programs beyond the undergraduate level in the profession of

dietetics as set out in subsection (b)(2)(A)(i) of this section, and which shall be followed in order to obtain prior approval of the Program Approval Committee.

(B) The preplanned professional experience program shall be an individualized planned professional education and experience program, beyond the undergraduate level, and shall be offered for only one student.

(C) Students of the programs shall be referred to as dietetic trainees.

(2) The organization and administration guidelines are as follows.

(A) The sponsor(s) of the program shall be one or more licensed dietitians who shall be employed by the facilities, agencies, or organizations utilized in the program. The sponsor shall be employed either full time, part time, or on a consultant basis. All sponsor(s) shall observe and professionally assess the trainee's performance and competence.

(B) The sponsor, on behalf of the trainee, shall enter into written agreements of affiliation with appropriate accredited or certified and licensed organization(s).

(C) The program shall be planned to extend over a period of not less than 12 months, nor more than two years. In the event that any program extends over its planned time, the sponsor(s) shall submit progress reports to the Program Approval Committee at the planned completion date and annually thereafter until the program is completed. The progress reports shall include the reason(s) for delay and the anticipated date of completion of the program.

(D) Admission requirements shall include academic requirements as set out in §711.4(b)(7) and (8) of this title (relating to Academic Requirements for Licensure).

(E) The written agreement clarifying the terms of the program between the trainee and the sponsors shall include the following:

(i) a statement of which party is responsible for payment of the application processing fee;

(ii) a statement providing for periodic evaluation of the trainee's performance, including criteria for continuation in or dismissal from the program;

(iii) a statement of the sponsor's responsibility for obtaining another sponsor, should the sponsor become unable to fulfill his commitments to the

program for any reason, including a provision that a written evaluation of the trainee's performance shall be completed and submitted to the Program Approval Committee and to the trainee by the sponsor(s) who is terminating the relationship; and

(iv) a statement that recruitment and selection of applicants and participation in all programs shall be made without discrimination based on race, creed, sex, religion, national origin, or age.

(3) The faculty and staff guidelines are as follows.

(A) The sponsor shall possess either:

(i) a master's or Ph.D. degree in a discipline appropriate to the area of program specialization and have had at least three years' fulltime experience or 6,000 clock hours of experience as a licensed or registered dietitian; or

(ii) a baccalaureate degree in a discipline appropriate to the area of program specialization, and have had at least five years full-time experience or 10,000 clock hours of experience as a licensed or registered dietitian.

(B) At least one faculty dietitian, who has responsibility for planning and evaluating the program, shall show evidence of having successfully completed either:

(i) faculty experience in a dietetic experience program;

(ii) college level course work in educational methodology and/or learning theory; or

(iii) continuing education in educational methodology and/or learning theory.

(C) A sponsor may sponsor a maximum of two concurrent programs, provided that the total dietetic faculty of both programs equals a minimum of three licensed or registered dietitians.

(1) The curriculum guidelines are as follows.

(A) The curriculum of each program shall be planned and implemented primarily by the sponsoring dietetic faculty of the program. The trainee may assist in planning the curriculum.

(B) The curriculum offered shall be clearly defined in writing, and shall include statements of:

(i) goals, competencies, and specific objectives for all aspects of the program;

(ii) dietetic learning experiences planned to meet the objectives; and

(iii) methods and procedures planned to evaluate student performance in meeting the objectives.

(C) Dietetic learning experiences and work experiences in all programs shall include opportunities for decision making, development of independent judgment and professionalism, and shall require increasing levels of skill and responsibility.

(D) All programs shall include a variety of instructional methods and opportunities to strengthen the student's communication skills. Planned instruction implemented by the dietetic faculty shall be distributed throughout the program, and may be supplemented by classes offered by colleges and/or medical centers and by dietetic seminars and workshops.

(E) The curriculum shall include a minimum of 900 clock hours of supervised and directed work experience, as set out in §711.9(b)(2) of this title (relating to Provisional Licensed Dietitians), at a level of professional responsibility equivalent to that of a licensed dietitian, as set out in §711. 3(b) of this title (relating to The Profession of Dietetics), plus a minimum of 900 clock hours of planned dietetic learning experiences with stated objectives divided to meet one of the following areas of specialization.

(i) General dietetics programs shall provide at least 40% of the curriculum in foodservice systems management, at least 40% of the curriculum in clinical dietetics, and at least 10% of the curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer a variety of clinical services and a comprehensive range of foodservice systems management functions. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the student.

(ii) Clinical dietetics programs shall provide at least 60% of the curriculum in clinical dietetics, at least 20% of the curriculum in foodservice systems management, and at least 10% of the curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer a variety of clinical services, specializations, and subspecializations. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the student.

(iii) Management dietetics programs shall provide at least 60% of the curriculum in foodservice systems management, at least 20% of the curriculum in clinical dietetics, and at least 10% of the

curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer different types and sizes of foodservice systems including at least one production and service facility that requires managing a complete range of foodservice subsystems. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the student.

(iv) Community nutrition programs shall provide at least 40% of the curriculum in community nutrition, at least 10% of the curriculum divided between the education and consultation areas of dietetics, at least 25% of the curriculum in clinical dietetics, and at least 15% of the curriculum in foodservice systems management. The primary sites for learning experiences shall include federal, state, and locally funded community health agencies. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the student.

(5) The records guidelines are as follows.

(A) A record of each student's activities, program plan, and evaluation instruments, including the number of hours spent fulfilling curriculum plans, shall be kept by each sponsor, shall be preserved for five years, and shall be made available to examining boards and other appropriate agencies if requested.

(B) The sponsor(s) shall issue to each student, upon successful completion of the program, a written statement and/or certificate of accomplishment, and shall notify the executive secretary in writing of the name(s) of the student(s) who have completed the program and of the date the program was completed.

(e) Guidelines specific to individualized planned work training programs.

(1) The general guidelines are as follows.

(A) This subsection covers guidelines which are specific to an individualized planned work training program following a postgraduate degree in the profession of dietetics as set out in subsection (b)(2)(A)(ii) of this section, and which shall be followed in order to obtain prior approval of the Program Approval Committee.

(B) The experience program following a post-baccalaureate degree shall be an individualized planned work training program at a level of professional responsibility equivalent to that of a licensed dietitian, as set out in §711. 3(b) of this title (relating to The Profession of Dietetics), and shall be offered for only one student.

(C) Students of the program shall be referred to as dietetic trainees.

(2) The organization and administration guidelines are as follows.

(A) The sponsor(s) of the program shall be one or more licensed dietitians who shall be employed by the facilities, agencies, or organizations utilized in the program. The sponsor shall be employed either full time, part time, or on a consultant basis. All sponsor(s) shall observe and professionally assess the trainee's performance and competence.

(B) The sponsor, on behalf of the trainee, shall enter into written agreements of affiliation with appropriate accredited or certified and licensed organization(s).

(C) The program shall be planned to extend over a period of six months for full-time work experience (40 clock hours per week) or 12 months for half-time work experience (20 clock hours per week) at a level of professional responsibility equivalent to that of a licensed dietitian, as set out in §711. 3(b) of this title (relating to The Profession of Dietetics). In the event that any program extends over its planned time' the sponsor(s) shall submit progress reports to the Program Approval Committee at the planned completion date and annually thereafter until the program is completed. The progress reports shall include the reason(s) for delay and the anticipated date of completion of the program.

(D) Admission requirements shall include academic requirements as set out in §711.4(b)(7) and (8) of this title (relating to Academic Requirements for Licensure).

(E) The written agreement clarifying the terms of the program between the trainee and the sponsor(s) shall include the following:

(i) a statement of which party is responsible for payment of the application processing fee;

(ii) a statement providing for periodic evaluation of the trainee's performance, including criteria for continuation in or dismissal from the program;

(iii) a statement of the sponsor's responsibility for obtaining another sponsor, should the sponsor(s) become unable to fulfill his or her commitments to the program for any reason, including a provision that a written evaluation of the trainee's performance shall be completed and submitted to the Program Approval Committee and to the trainee by the sponsor(s) who is terminating

the relationship; and

(iv) a statement that recruitment and selection of applicants and participation in all programs shall be made without discrimination based on race, creed, sex, religion, national origin, or age.

(3) The faculty and staff guidelines are as follows.

(A) The sponsor shall possess either:

(i) a master's or Ph.D. degree in a discipline appropriate to the area of program specialization and have had at least three years' full-time experience or 6,000 clock hours of experience as a licensed or registered dietitian; or

(ii) a baccalaureate degree in a discipline appropriate to the area of program specialization, and have had at least five years' full-time experience or 10,000 clock hours of experience as a licensed or registered dietitian.

(B) At least one faculty dietitian, who has responsibility for planning and evaluating the program, shall show evidence of having successfully completed either:

(i) faculty experience in a dietetic experience program;

(ii) college level course work in educational methodology and/or learning theory; or

(iii) continuing education in educational methodology and/or learning theory.

(C) A sponsor may sponsor a maximum of two concurrent programs, provided that the total dietetic faculty of both programs equals a minimum of three licensed or registered dietitians.

(4) The curriculum guidelines are as follows.

(A) The curriculum of each program shall be planned and implemented primarily by the sponsoring dietetic faculty of the program. The trainee may assist in planning the curriculum.

(B) The curriculum offered shall be clearly defined in writing, and shall include statements of:

(i) goals, competencies, and specific objectives for all aspects of the program;

(ii) dietetic learning experiences planned to meet the objectives; and

(iii) methods and procedures planned to evaluate student performance in meeting the objectives.

(C) The program shall include a minimum of 500 clock hours of supervised and directed work experience, as set out in §711.9(b)(2) of this title (relating to Provisional Licensed Dietitians), plus a minimum of 400 clock hours of planned dietetic learning experiences with stated objectives divided to provide either a general dietetics curriculum or a specialized curriculum in clinical dietetics, management dietetics, or community nutrition; however, all programs shall include at least 15% of the curriculum in clinical dietetics and at least 15% of the curriculum in foodservice systems management.

(5) The records guidelines are as follows.

(A) A record of each student's activities, program plan, and evaluation instruments, including the number of hours spent fulfilling curriculum plans, shall be kept by each sponsor, shall be preserved for five years, and shall be made available to examining boards and other appropriate agencies if requested.

(B) The sponsor(s) shall issue to each student, upon successful completion of the program, a written statement and/or certificate of accomplishment, and shall notify the executive secretary in writing of the name(s) of the student(s) who has completed the program and of the date the program was completed.

(f) Guidelines specific to graduate assistantships in the field of dietetics.

(1) The general guidelines are as follows.

(A) This subsection covers guidelines which are specific to graduate assistantships in the field of dietetics as set out in subsection (b)(2)(A) (iii) of this section, and which shall be followed in order to obtain prior approval of the Program Approval Committee.

(B) The graduate assistantship in the field of dietetics shall be an individualized planned professional education and experience program in conjunction with a post-baccalaureate degree, and shall be offered for only one student.

(C) Students of the program shall be referred to as dietetic graduate assistants.

(2) The organization and administration guidelines are as follows.

(A) The sponsor of the program shall be an accredited college or university as set out in §711.4(b)(1) and (2) of this title (relating to Academic Requirements for Licensure), which offers post-baccalaureate degrees with a major course

of study as specified in §711.4(b)(7) and (8) of this title (relating to Academic Requirements for Licensure).

(B) The sponsor, on behalf of the graduate assistant, shall enter into written agreements of affiliation with appropriate accredited or certified and licensed organization(s).

(C) The program shall be planned to extend over a minimum period of one academic year of nine months duration on a half-time basis (20 clock hours per week). In the event that any program extends over its planned time, the sponsor(s) shall submit progress reports to the Program Approval Committee at the planned completion date and annually thereafter until the program is completed. The progress reports shall include the reason(s) for delay and the anticipated date of completion of the program.

(D) Academic requirements for licensing as set out in §711.4(b)(7) and (8) of this title (relating to Academic Requirements for Licensure) may be met prior to, or in conjunction with, the graduate assistantship program. However, all undergraduate leveling courses required by the college or university shall be completed prior to commencement of the dietetic learning experience portion of the dietetic graduate assistantship program.

(E) The written agreement clarifying the terms of the program between the graduate assistant and the sponsor shall include the following:

(i) a statement of which party is responsible for payment of the application processing fee;

(ii) a statement providing for periodic evaluation of the trainee's performance, including criteria for continuation in or dismissal from the program;

(iii) a statement of the sponsor's responsibility for obtaining another sponsor, should the sponsor(s) become unable to fulfill his or her commitments to the program for any reason, including a provision that a written evaluation of the trainee's performance shall be completed and submitted to the Program Approval Committee and to the trainee by the sponsor(s) who is terminating the relationship; and

(iv) a statement that recruitment and selection of applicants and participation in all programs shall be made without discrimination based on race, creed, sex, religion, national origin, or age.

(3) The faculty and staff guidelines are as follows.

(A) The sponsor shall possess either:

(i) a master's or Ph.D. degree in a discipline appropriate to the area of program specialization and have had at least three years' full-time experience or 6,000 clock hours of experience as a licensed or registered dietitian; or

(ii) a baccalaureate degree in a discipline appropriate to the area of program specialization and have had at least five years' full-time experience or 10,000 clock hours of experience as a licensed or registered dietitian.

(B) More than one program may be offered concurrently, provided that the total dietetic faculty of all concurrent programs equals a minimum of one more licensed or registered dietitian than the number of students enrolled in the programs.

(4) The curriculum guidelines are as follows.

(A) The curriculum of each program shall be planned and implemented primarily by the sponsoring dietetic faculty of the program. The graduate assistant may assist in planning the curriculum.

(B) The curriculum offered shall be clearly defined in writing, and shall include statements of:

(i) goals, competencies, and specific objectives for all aspects of the program;

(ii) dietetic learning experiences planned to meet the objectives; and

(iii) methods and procedures planned to evaluate student performance in meeting the objectives.

(C) The curriculum shall include a minimum of 300 clock hours of supervised and directed work experience in teaching or research, as set out in §711.9(b)(2) of this title (relating to Provisional Licensed Dietitians), plus a minimum of 500 clock hours of planned dietetic learning experiences with stated objectives divided to meet one of the following areas of specialization.

(i) Teaching programs shall provide at least 35% of the curriculum in the teaching of college level courses in human nutrition, and nutrition, dietetics, and/or foodservice systems management. The graduate assistant's teaching responsibilities shall be clearly defined, and shall include the name and description of each course to be taught. The remainder of the curriculum shall provide dietetic learning experiences divided among the clinical (at least 10% of the curriculum), foodservice systems management (at least 10% of the

curriculum), community nutrition, and consultation areas of dietetics.

(ii) Research programs shall provide at least 35% of the curriculum in research directly related to human nutrition, food and nutrition, dietetics, or foodservice systems management. The graduate assistant's research activities shall be clearly defined, and shall include a description of the topic to be studied, research methods to be used, and possible outcomes of the research. The remainder of the curriculum shall provide dietetic learning experiences divided among the clinical (at least 10% of the curriculum), foodservice systems management (at least 10% of the curriculum), community nutrition, education, and consultation areas of dietetics.

(5) The records guidelines are as follows.

(A) A record of each student's activities, program plan, and evaluation instruments, including the number of hours spent fulfilling curriculum plans, shall be kept by each sponsor, shall be preserved for five years, and shall be made available to examining boards and other appropriate agencies if requested.

(B) The sponsor(s) shall issue to each student, upon successful completion of the program, a written statement and/or certificate of accomplishment, and shall notify the executive secretary in writing of the name(s) of the student(s) who has completed the program and of the date the program was completed.

(g) Guidelines specific to dietetic internships.

(1) The general guidelines are as follows.

(A) This subsection covers guidelines which are specific to dietetic internships as set out in subsection (b)(1) of this section, and which shall be followed in order to obtain prior approval of the Program Approval Committee.

(B) The dietetic internship shall be an ongoing planned professional education and experience program, beyond the undergraduate level, and shall be offered for one or more students.

(C) Students of the programs shall be referred to as dietetic interns.

(2) The organization and administration guidelines are as follows.

(A) The sponsor(s) of the program shall be an organization, agency, institution, or facility which is accredited or certified and licensed by appropriate agencies.

(B) Sponsor(s) may enter into written agreements of affiliation with other appropriate accredited or certified and licensed organization(s).

(C) The program shall be planned to extend over a period of not less than 12 months, nor more than 18 months.

(D) Admission requirements shall include academic requirements as set out in §711.4(b)(7) and (8) of this title (relating to Academic Requirements for Licensure).

(3) The faculty and staff guidelines are as follows.

(A) The program director shall:

(i) be a licensed dietitian who is employed full-time by the sponsor;

(ii) shows evidence of having successfully completed either faculty experience in a dietetic experience program; college level course work in educational methodology and/or learning theory; or continuing education in educational methodology and/or learning theory; and

(iii) possess either a master's or Ph.D. degree in a discipline appropriate to the area of program specialization and have had at least three years' full-time experience or 6,000 clock hours of experience as a licensed or registered dietitian; or a baccalaureate degree in a discipline appropriate to the area of program specialization, and have had at least five years' full-time experience or 10,000 clock hours of experience as a licensed or registered dietitian.

(B) The program shall have a minimum staff of two full-time licensed or registered dietitians, and at least one more full-time licensed or registered dietitian than the number of interns in the program.

(4) The curriculum guidelines are as follows.

(A) Planned instruction implemented by the dietetic faculty shall be distributed throughout the program, and may be supplemented by classes offered by colleges and/or medical centers and by dietetic seminars and workshops.

(B) The curriculum offered shall be clearly defined in writing, and shall include statements of:

(i) goals, competencies, and specific objectives for all aspects of the program;

(ii) dietetic learning experiences planned to meet the objectives; and

(i) methods and procedures planned to evaluate student performance in meeting the objectives.

(C) The curriculum shall include a minimum of 900 clock hours of supervised and directed work experience, as set out in §711.9(b)(2) of this title (relating to Provisional Licensed Dietitians), at a level of professional responsibility equivalent to that of a licensed dietitian, as set out in §711.3(b) of this title (relating to The Profession of Dietetics), plus a minimum of 900 clock hours of planned dietetic learning experiences with stated objectives divided to meet one of the following areas of specialization.

(i) General dietetics programs shall provide at least 40% of the curriculum in foodservice systems management, at least 40% of the curriculum in clinical dietetics' and at least 10% of the curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer a variety of clinical services and a comprehensive range of foodservice systems management functions. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the student.

(ii) Clinical dietetics programs shall provide at least 60% of the curriculum in clinical dietetics' at least 20% of the curriculum in foodservice systems management, and at least 10% of the curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer a variety of clinical services' specializations, and specializations. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the student.

(iii) Management dietetics programs shall provide at least 60% of the curriculum in foodservice systems management, at least 20% of the curriculum in clinical dietetics, and at least 10% of the curriculum divided among the community, education, and consultation areas of dietetics. The program shall offer different types and sizes of foodservice systems including at least one production and service facility that requires managing a complete range of foodservice subsystems. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the student.

(iv) Community nutrition programs shall provide at least 40% of the curriculum in community nutrition at least 10% of the curriculum divided between the education and consultation areas of dietetics, at least 25% of the curriculum in clinical dietetics, and at least 15% of the curriculum in foodservice systems manage-

ment. The primary sites for learning experiences shall include federal, state, and locally funded community health agencies. The remaining 10% of the curriculum shall be planned to offer areas of specialization and/or career support selected by the student.

(5) The records guidelines are as follows.

(A) A record of each student's activities, program plan, and evaluation instruments, including the number of hours spent fulfilling curriculum plans, shall be kept by each sponsor, shall be preserved for five years' and shall be made available to examining boards and other appropriate agencies if requested.

(B) The sponsor(s) shall issue to each student, upon successful completion of the program, a written statement and/or certificate of accomplishment, and shall notify the executive secretary in writing of the name(s) of the student(s) who has completed the program and of the date the program was completed.

(6) The application and approval procedures are as follows.

(A) As part of the approval process, following review of the application by the Program Approval Committee, the sponsor shall request an inspection of the program site and shall make arrangements for the inspection with the executive secretary.

(i) The site inspection committee shall be appointed by the chairman of the board, and shall be composed of two licensed dietitians. One member of the committee shall be a member of the board and one member shall be a practicing licensed dietitian from within this state who has had experience and/or training in site evaluations of internship programs.

(ii) Prior to the site inspection, the sponsor(s) shall submit to the board a nonrefundable site inspection fee equal to: the travel expenses, including meals and lodging, of the inspection committee members, plus the consultant fee of the nonboard inspection committee member. Site inspection fees shall not exceed \$2,000.

(iii) The board may pay a consultant fee plus travel expenses, including meals and lodging, to the nonboard inspection committee member. The amount of the consultant fee paid will be determined by the board. The compensation for travel expenses shall be at the rate set by the legislature for state employees in the latest General Appropriations Act, for each day that the member engages in the inspection. Consultant fees and travel expenses shall be paid from funds deposited in the Licensed Dietitian Act fund.

(B) Following the report of the inspection committee, the Program Approval Committee may grant approved, provisionally approved, or not approved status to the program.

(i) Every five years approved programs shall submit to reapproval of program plans, shall request site inspection and submit the required fees. To maintain board approval during the five years' the sponsor(s) shall continue to meet the guidelines set out in these rules.

(ii) Provisionally approved programs shall be in substantial compliance with these guidelines, shall receive a report of deficiencies from the Program Approval Committee, and shall have one year to correct the deficiencies cited. Provisionally approved programs shall request site inspection and pay another site inspection fee following correction of deficiencies, if the Program Approval Committee determines that the nature of the deficiencies warrants another site inspection. Provisionally approved programs may admit interns for one year.

(C) Sponsor(s) of approved and provisionally approved programs shall notify the executive secretary in writing of the names and enrollment dates of all interns admitted to the program.

(7) Closing an internship guidelines are as follows.

(A) Sponsor(s) desiring to close a dietetic internship program shall notify the executive secretary and submit to the Program Approval Committee a written plan for terminating the program.

(B) The dietetic internship shall continue to comply with all rules pertaining to dietetic internships and all board-approved program plans for that dietetic internship until the last dietetic intern transfers to another dietetic internship or completes the program.

(C) A dietetic internship which has not enrolled dietetic interns for a period of two years is deemed a closed dietetic internship.

(D) Sponsor(s) desiring to reopen a closed dietetic internship within five years after their last site inspection shall submit to the Program Approval Committee changes in their program plans with an application processing fee. Following the report of the site inspection committee, the Program Approval Committee may grant approved, provisionally approved, or not approved status to the program.

(E) Sponsor(s) desiring to re-

open a closed dietetic internship after five years from the last site inspection shall re-apply for program approval.
§711.6. Examinations for Dietitian Licensure.

(a) Purpose. The section on licensure examination sets out the board's rules governing the administration, content, grading, and other procedures for examination for licensure.

(b) Frequency. The board shall offer licensing examinations at least twice a year or as often as deemed necessary by the board.

(c) Forms of examination. The examination for licensure may be any of the following as prescribed by the board:

(1) a written examination prepared by the board or its designee;

(2) an examination given by the commission or its designee; or

(3) any other form of examination prescribed by the board.

(d) Applications for examination.

(1) The board shall notify an applicant whose application has been approved at least 30 days prior to the next scheduled examination.

(2) An examination registration form for a scheduled board-prepared examination must be completed and returned to the board by the applicant with the required fee (unless otherwise instructed by the board) at least 15 days prior to the date of examination.

(3) A form indicating intent to take an examination given by the commission or its designee must be completed and returned to the board by the applicant at least 60 days prior to the date of examination.

(4) Any applicant who fails to apply for and take the licensure examination within a period of three years after an examination approval notice is mailed to him by the executive secretary may have such approval withdrawn by action of the board.

(e) Locations.

(1) Written examinations administered by the board will be in Austin, unless otherwise announced.

(2) Examinations administered by the commission or its designee will be held in locations to be announced by the commission.

(f) Grading.

(1) Licensure examinations administered by the board shall be graded by the board or its designee.

(2) Written examinations administered by the board shall be identified by number and graded anonymously in order

to insure impartiality.

(3) Examinations administered by the commission shall be graded by the commission or its designee.

(g) Results.

(1) The executive secretary shall notify each examinee of the results of the board-prepared examination within 30 days of the date of the examination.

(2) If the examination is graded or reviewed by a national or state testing service, the board shall notify each examinee of the examination results within 14 days of the date the department receives the results from the testing service.

(3) If examination results will be delayed for more than 90 days after the examination, the department shall notify each applicant of the reason for the delay before the 90th day.

(4) No matter what numerical or other scoring system the board may use in arriving at examination results, the official notice of results to applicants shall be stated in terms of "pass" or "fail."

(h) Failures.

(1) An applicant who fails the examination prescribed by the board may take a subsequent examination after paying the examination fee.

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

(3) An applicant who fails the examination three times must furnish the board an official transcript from an accredited college or university indicating completed course work taken for credit with a passing grade in the area(s) of weakness determined by analysis of the previous examination(s) before the applicant may again apply for examination.

§711.7. Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures for examination and licensure, to establish fitness of an applicant as one of the criteria for approval for licensure as provided for in §6(b)(2) of the Act, and to set forth the criteria by which the board shall determine the fitness of applicants required for approval for licensure.

(b) Fitness of applicants for licensure.

(1) In determining the fitness of an applicant for licensure the board shall consider the following:

(A) the skills and abilities of an applicant to provide adequate dietetic services; and

(B) the ethical behavior of an applicant in relationships with other profes-

sionals and clients.

(2) In determining the fitness of applicants for licensure the board may request and consider any of the following:

(A) evaluations of supervisors or instructors;

(B) statements from persons submitting references for the applicant;

(C) evaluations of employers and/or professional associations;

(D) allegations of clients;

(E) transcripts or findings from official court, hearing, or investigative proceedings; and

(F) any other information which the board considers pertinent to determining the fitness of an applicant.

(3) The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of, or delay of, licensure of the applicant:

(A) lack of the necessary skills and abilities to provide adequate dietetic services;

(B) misrepresentation of professional qualifications or associations;

(C) misrepresentation of dietetic services and the efficacy of dietetic services to clients;

(D) use of misleading advertising or false advertising;

(E) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;

(F) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of dietetic services;

(G) any misrepresentation in application or other materials submitted to the board; and

(H) the violation of any board rule in effect at the time of application which is applicable to an unlicensed person.

(c) General.

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

(2) The board will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form. See fee schedule in §711.2(u) of this title (relating to The Board's Operation).

(3) The board must receive all required application materials at least 60 days prior to the date the applicant wishes to take the examination.

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

(d) Required application materials.

(1) The application form shall contain:

(A) specific information regarding personal data, social security number, birth month and day, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

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

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

(D) a statement that the applicant, if issued a license, shall return the license certificate and license identification card to the board upon the revocation or suspension of the license;

(E) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(F) a statement that the applicant understands that materials submitted in the licensure process become the property of the board and are nonreturnable; and

(G) the signature of the applicant which has been dated and notarized.

(2) The internship or preplanned professional experience program documentation form shall contain:

(A) the applicant's name;

(B) the name and address of the agency, organization, or institution where the program was undertaken (a separate form should be used for each one);

(C) the name and job title of the director or coordinator of each program at the time;

(D) the inclusive dates of the program and the number of clock hours per week;

(E) the type of setting, the type of clients served, and the type of work performed;

(F) the credentials of the director or coordinator of each program; and

(G) the signed statement(s) of endorsements from the person(s) who can formally attest to the applicant's successful completion of experience as set out in §711.5(b)(1) and (2) of this title (relating to Experience Requirements for Examination).

(3) Applicants must submit official transcript(s) of all relevant college work. Transcripts will not be required for those persons who are registered by the commission.

(4) An applicant shall have board reference forms submitted by two allied health professionals who can attest to the applicant's dietetic skills and professional standards of practice. The references shall be persons who are not named elsewhere in the applicant's application and who are not current members of the board.

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

§711.8. Determination of Eligibility.

(a) The board shall make the final determination on the eligibility of all applicants.

(b) The board may delegate approval of applications for licensing to a committee of the board.

(c) The board may delegate approval of applications for licensing to the executive secretary.

(d) All applications approved by a committee of the board or the executive secretary are subject to ratification at the next regular meeting of the board.

(e) The board shall disapprove the application if the person has:

(1) not completed the requirements in §711.4 of this title (relating to Academic Requirements for Licensure);

(2) not completed the require-

ments in §711.5 of this title (relating to Experience Requirements for Examination), if applicable;

(3) failed to pass the examination prescribed by the board as set out in §711.6 of this title (relating to Examinations for Dietitian Licensure), if applicable;

(4) failed to remit any applicable fees required in §711.2(u) of this title (relating to the Board's Operations);

(5) failed or refused to properly complete or submit any application form(s) or endorsements, or deliberately presented false information on the application form, or any other form or document required by the board to verify the applicant's qualifications for licensure;

(6) been in violation of the Act, the Code of Ethics, §711.3(d)(1)(A)-(G) and (I)-(J) of this title (relating to the Profession of Dietetics), or any other applicable provision of this title; or

(7) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §711.14 of this title (relating to Licensing of Persons with Criminal Backgrounds to be Dietitians and Provisional Licensed Dietitians).

(f) If after review the executive secretary determines that the application should not be approved, the executive secretary shall ask the Complaint Committee to review the application. The Complaint Committee shall take either one of the following actions.

(1) If the Complaint Committee concurs that the application should not be approved, the Complaint Committee shall instruct the executive secretary to give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the formal hearing procedures in §711.15 of this title (relating to Formal Hearings). Within 10 days after receipt of the written notice, the applicant shall give written notice to the executive secretary that the applicant either waives the hearing, or wants the hearing. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the executive secretary that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the board may disapprove the application.

(2) If the Complaint Committee determines that the application should be approved, the board may approve the application.

(g) An applicant whose application has been disapproved under subsection (e)(6) and (7) of this section shall be permitted to reapply after a period of not less than one year from the date of the disap-

proval and shall submit with the reapplication, proof satisfactory to the board, of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

§711.9. Provisional Licensed Dietitians.

(a) Supervision. The purpose of this section is to set out the nature and scope of the supervision provided for provisional licensed dietitians.

(1) To meet licensure and license renewal requirements, a provisional licensed dietitian shall be under the supervision and direction of a licensed dietitian.

(2) Supervision and direction shall be defined as the authoritative procedural guidance provided by a licensed dietitian and need not be routinely on site. Written reports of the provisional licensed dietitian's activities shall be provided to the supervising licensed dietitian at least quarterly, and to the board with the annual renewal questionnaire.

(3) The supervising licensed dietitian must sign the application for a provisional license and the application for renewal of the provisional license.

(b) Upgrading a provisional license. The purpose of this section is to set out the procedure to upgrade from provisional licensed dietitian to licensed dietitian.

(1) The provisional licensed dietitian shall submit to the board a properly completed experience documentation form as set out in this section and in §711.5 of this title (relating to Experience Requirements for Examination) with a written request to upgrade the license.

(2) After review of all application materials, the executive secretary shall notify the provisional licensed dietitian in writing of eligibility for examination prescribed by the board. Procedures for examination shall be those set out in §711.6 of this title (relating to Examinations for Dietitian Licensure).

(3) The provisional licensed dietitian who successfully completes the licensing examination shall surrender to the board the license certificate and license I.D. card and submit an amount equal to the license certificate replacement fee.

(4) If the provisional licensed dietitian is not eligible for examination, the executive secretary shall notify the provisional licensed dietitian in writing of the reasons for denial and the additional experience or documentation needed to meet the minimum requirements for examination and licensure as a licensed dietitian. The provisional licensed dietitian is entitled to a formal hearing on the proposed denial as specified in subsection §711.8 (f).

(5) Provisional licensed dietitians who become registered by the commission and submit proof of current registration status with a written request to

upgrade are deemed to meet the experience and examination requirements.

§711.10. Licensing.

(a) Purpose. The purpose of this section is to set out the licensing procedures of the board.

(b) Issuance of licenses.

(1) The executive secretary will send each applicant whose application has been approved and has passed the examination (if applicable) a licensure form to complete and return with the prorated license fee in the form of a personal or certified check or money order.

(2) Upon receiving an applicant's licensure form and fee, the board shall issue the person a license certificate and license identification card containing a license number.

(3) The board shall replace a lost, damaged, or destroyed license certificate or license identification card upon a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or license identification card, or be accompanied by the damaged certificate or card.

(c) Reciprocity.

(1) The board shall waive the examination requirement for an applicant who:

(A) holds at the time of application a valid license or certificate as a dietitian issued by another state whose minimum requirements for licensure are equivalent to or exceed the licensing requirements of the board which are in effect at the time of application and with whom the board has entered into a reciprocity agreement; or

(B) is registered at the time of application by the commission as a registered dietitian.

(2) Reciprocity agreements with licensing bodies of other states shall include a written agreement to provide this board with the following:

(A) information regarding all disciplinary actions relating to each applicant;

(B) a current copy of the body's proposed (if any) and adopted rules governing its operations and application and licensing procedures;

(C) a copy of the legal authority (law, act, code, section, or otherwise) for the licensing program including any proposed and final amendments;

(D) the names, addresses, and phone numbers of the licensing body's chairman and executive administrator; and

(E) any other information deemed necessary by the board, or its legal counsel.

(3) All application materials shall be completed and application and license fees shall be paid by the applicant.

(4) An applicant applying for licensing by reciprocity shall submit a copy of the license or certificate by which the reciprocal licensure is requested and the name and address of the licensing or certifying agency.

(5) The board may contact the issuing agency to verify the applicant's status with that agency at the time of application.

(6) The board may propose to deny approval of an application from an applicant who is either licensed by another state with which this board has a reciprocity agreement, or a registered dietitian, if the executive secretary has determined that the applicant may be:

(A) in violation of that state's act or rules of the licensing body, if applicable;

(B) in violation of the code of ethics adopted by the commission or the association, if applicable;

(C) engaged in, or has previously engaged in, conduct which constitutes a violation of the Act, the Code of Ethics, §711.3(d)(1)(A)-(G) and (I)-(J) of this title (relating to the Profession of Dietetics), or any other applicable provision of this title; or

(D) convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibility of a licensee as set out in §711.13 of this title (relating to Licensing of Persons with Criminal Backgrounds to be Dietitians and Provisional Dietitians).

(7) If after review the executive secretary determines that the application should not be approved, the executive secretary will ask the Complaint Committee to review the application in accordance with §711.8 of this title (relating to Determination of Eligibility).

§711.12. License Renewal.

(a) Purpose. The purpose of this section is to set out the rules governing license renewal.

(b) General.

(1) When issued, a license is valid until the licensee's next birth month except as provided by subsection (c)(2) of this section.

(2) A licensee must renew the license annually.

(3) The renewal date of a license shall be the last day of the licensee's birth month.

(4) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. However, failure to receive notification from the executive secretary prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(5) The board shall not renew the license of the licensee who is in violation of the Act or board rules at the time of application for renewal.

(c) Staggered renewals. The board shall use a staggered system for license renewals.

(1) License fees will be prorated when the licensee's initial renewal date occurs less than 12 months after the original date of licensure.

(2) Licenses issued within three months of a licensee's birth month shall be issued for that period of time plus the next full year.

(d) License renewal requirements.

(1) At least 30 days prior to the expiration date of a person's license, the executive secretary shall send notice to the licensee at the address in the board's records of the expiration date of the license, the amount of the renewal fee due and a license renewal form which the licensee must complete and return to the board with the required renewal fee. The return of the completed renewal form in accordance with the requirements of paragraph (3) of this subsection shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for all licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, category of employment, and misdemeanor and felony convictions. The license renewal form for the provisional licensed dietitian shall include a signed statement by the supervising licensed dietitian indicating receipt of the report forms as required in §711.9(a) of this title (relating to Provisional Licensed Dietitians).

(3) A licensee has renewed the license when the licensee has mailed the renewal form and the required renewal fee to the executive secretary prior to the expiration date of the license. The postmark date shall be considered as the date of mailing.

(4) The board shall issue to a

licensee who has met all requirements for renewal a renewal license identification card and may issue a renewal validation sticker or renewal card to be affixed to, or displayed with the original certificate.

(5) The board shall delay license renewal of a licensee named in formal complaint procedures until resolution of the proceedings.

(e) Late renewal requirements.

(1) The executive secretary, by certified mail, shall inform a person who has not renewed a license after a period of more than 30 days after the expiration of the license of the amount of the fee required for renewal and the date the license expired.

(2) A person whose license has expired for not more than 90 days may renew the license by submitting to the executive secretary: the license renewal form; the required renewal fee; and a penalty fee that is one-half of the renewal fee. The renewal is effective if it is mailed to the executive secretary not more than 90 days after the expiration date of the license. The postmark date shall be considered as the date of mailing.

(3) A person whose license has been expired for more than 90 days but less than two years of the expiration date may renew the license by paying to the board the unpaid license renewal fees, plus a late penalty fee that is equal to the renewal fee. The person must submit with the required license renewal form a letter stating the reasons for the failure to make a timely renewal.

(4) A person whose license has been expired two years or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining a license.

(f) Expiration of license.

(1) A person whose license has expired may not use the title or represent or imply that he has the title of "licensed dietitian" or "provisional licensed dietitian" or use the letters "LD" or "PLD" and may not use any facsimile of those titles in any manner.

(2) A person who fails to renew a license after two years is required to surrender the license certificate and license identification card to the board.
§711.13. Licensing of Persons with Criminal Backgrounds to Be Dietitians and Provisional Dietitians.

(a) Purpose. This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licenses as dietitians or provisional dietitians.

(b) Criminal convictions which di-

rectly relate to the profession of dietetics.

(1) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee.

(2) In considering whether a criminal conviction directly relates to the occupation of a licensed dietitian or provisional licensed dietitian, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for licensure as a dietitian or provisional dietitian. The following felonies and misdemeanors relate to the license of a dietitian or provisional dietitian because these criminal offenses indicate an inability or a tendency to be unable to perform as a licensed dietitian or a provisional licensed dietitian:

(i) the misdemeanor of knowingly or intentionally acting as a licensed dietitian or provisional licensed dietitian without a license under §15 of the Act;

(ii) a misdemeanor and/or a felony offense involving moral turpitude;

(iii) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);

(iv) the misdemeanors and felonies listed in clauses (i)-(iii) of paragraph (2)(B) of this subsection are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Act and these sections;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed dietitian or provisional licensed dietitian. In making this determination, the board will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c §4(c)(1)-(7), the legal authority for the provisions of this section.

(c) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds.

(1) The board's executive secretary will give written notice to the person that the board intends to deny, suspend, or revoke the license after a hearing in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the board's formal hearing procedures, §711.15 of this title (relating to Formal Hearings).

(2) If the board denies, suspends, or revokes a license under these rules after hearing, the executive secretary will give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeal, may file an action in a District Court of Travis County, for review of the evidence presented to the board and its decision; and

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable.

§711.14. Violations, Complaints, and Subsequent Board Actions.

(a) Purpose. The purpose of this section is to set out:

(1) violations and prohibited actions under the Act and the board rules;

(2) procedures for filing complaints alleging violations and prohibited actions under the Act or rules;

(3) the board's investigation of complaints; and

(4) board actions against a person or licensee when violations and prohibited actions have occurred.

(b) Types of violations and prohibited actions.

(1) A person may not knowingly or intentionally represent or imply that he or she has the title of "licensed dietitian" or "provisional licensed dietitian" or use the letters "LD" or "PLD" or any facsimile of those titles in any manner unless the person holds an appropriate license issued under the Act.

(2) A person may not intentionally or knowingly represent or imply that he or she has the title of "registered dietitian" or use the letters "RD" or any facsimile of that title in any manner unless the person is registered as a registered dietitian by the Commission on Dietetic Registration.

(3) A licensee may not violate any of the provisions of the Act or any rules adopted by the board.

(c) Filing of complaints.

(1) Anyone may complain to the board alleging that a person has committed an action prohibited under the Act or that a licensee has violated the Act or a board rule.

(2) A person wishing to complain about a prohibited act or alleged violation against a licensee or other person shall notify the executive secretary. The initial notification of a complaint may be in writing' by telephone, or by personal visit to the executive secretary's office. The mailing address is Texas State Board of Examiners of Dietitians' 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7111.

(3) Upon receipt of a complaint, the executive secretary shall send to the complainant an acknowledgment letter and the board's complaint form, herein adopted by reference which the complainant must complete and return to the executive secretary before further action can be taken. If the complaint is made by a visit to the executive secretary's office, the form may be given to the complainant at that time; however, it must be completed and returned to the executive secretary before further action can be taken. Copies of the complaint form may be obtained from the Texas

Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183.

(4) Anonymous complaints shall be investigated by the executive secretary provided that the complainant provides sufficient information.

(d) Investigation of complaints.

(1) The executive secretary and the complaint committee of the board are responsible for handling complaints.

(2) The executive secretary shall make the initial investigation and report the findings to the Complaint Committee.

(3) If the executive secretary determines that the complaint does not come within the board's jurisdiction, the executive secretary shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such complaints.

(4) The executive secretary, on behalf of the board, shall, at least as frequently as quarterly' notify the parties to the complaint of the status of the complaint until its final disposition.

(e) Complaint Committee actions.

(1) The Complaint Committee shall take one or more of the actions described in this subsection.

(A) The committee may determine that an allegation is groundless and dismiss the complaint.

(B) The committee may determine that a nonlicensed person has committed a prohibited action under subsection (b) of this section. The committee shall consider the seriousness and the effects of the violation and shall initiate one of the following actions.

(i) The committee may attempt to resolve the complaint by requesting the violator to stop the action immediately. If the violator complies, the committee may close the complaint file.

(ii) The committee, with the concurrence of the board chairman, may ask the attorney general, district attorney, or county attorney to take appropriate legal action against the violator. Section 15(c) of the Act makes it a criminal offense of a Class B misdemeanor if a person knowingly or intentionally commits a prohibited action described in subsection (b)(1)-(2) of this section.

(C) The committee may determine that a licensee has violated the Act or a board rule. If this is the licensee's first violation during the annual licensing period and it represents no immediate threat to the health and safety of an individual or the general public and it does not involve misrepresentation of title, the committee shall

attempt to resolve the complaint by requesting the violator to stop the action immediately. If the licensee complies, the committee shall close the complaint file. If the licensee refuses to comply, or the violation represents an immediate threat to the health and safety of an individual or the general public, or if the violation involves misrepresentation of title, or if the violation is a second, subsequent, or repeat violation during the annual licensing period, the committee may:

(i) request, with the concurrence of the board chairman, the attorney general, or district or county attorney to institute a suit to take appropriate legal action; and/or

(ii) institute disciplinary action in accordance with subsection (f) of this section.

(D) At any time during the investigation of a complaint and prior to any court or disciplinary action against a licensee or other person, the committee may hold an informal conference on its own motion or at the request of the complainant or accused person to discuss the investigation and any proposed court or disciplinary action.

(2) Whenever the committee dismisses a complaint or closes a complaint file, the committee will give a summary report of the final action to the board, the complainant, and the accused party.

(f) Disciplinary actions by the Complaint Committee.

(1) If the committee is unable to resolve a complaint against a licensee who has violated the Act or a board rule under subsection (e) of this section, the committee shall reprimand the licensee or initiate action to suspend or revoke the license.

(2) The committee also may initiate action to suspend or revoke a license if the licensee has been convicted of a misdemeanor or felony offense under §711.13 of this title (relating to the Licensing of Persons with Criminal Backgrounds to Be Dietitians and Provisional Dietitians).

(3) A reprimand is a written notice from the committee to the licensee that the licensee has violated the Act or a board rule. The committee shall issue a reprimand when the licensee refuses a committee request to stop committing a first violation, during the annual licensing period, which represents no immediate threat to the health and safety of an individual or the general public and which does not involve misrepresentation of title. The reprimand shall include a second request from the committee to the licensee that the violator stop the action immediately.

(4) The committee initiates license suspension for a definite time period when the licensee refuses to comply with a

reprimand request to stop the violation or when there is a second, subsequent, or repeat violation, during the annual licensing period, which does not immediately threaten the health or safety of an individual or the general public.

(5) The committee initiates a license revocation when there are three or more violations (which may include repeat or different violations) during the annual licensing period, or when any one violation represents an immediate threat to the health or safety of an individual or the general public.

(6) When any one violation involves misrepresentation of title, the committee shall consider the seriousness and effects of the violation and shall initiate either license suspension or revocation.

(7) The Complaint Committee may issue reprimands, but may only initiate or propose action to suspend or revoke a license. Final action to suspend or revoke a license can be taken by the board only after the licensee has had an opportunity for a formal hearing to contest the proposed committee actions.

(g) Formal hearings.

(1) The formal hearing shall be conducted according to the hearing procedures in §711.15 of this title (relating to Formal Hearings) or §711.13 of this title (relating to Licensing of Persons with Criminal Backgrounds to Be Dietitians and Provisional Dietitians), if the latter is applicable.

(2) At any time prior to initiating formal hearing procedures, the Complaint Committee, on its own motion or the motion of the licensee, may request an informal conference with the licensee to discuss the proposed action.

(3) To initiate formal hearing procedures, the executive secretary shall give the licensee written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the licensee shall give written notice to the executive secretary that the licensee either waives the hearing or wants the hearing.

(A) If the licensee fails to respond within 10 days after receipt of the notice of opportunity, or if the licensee notifies the executive secretary that the hearing be waived, the licensee is deemed to have waived the hearing. If the hearing has been waived, the Complaint Committee may recommend to the board that the license be suspended or revoked. The board may take the final action which the board deems appropriate.

(B) If the licensee requests a hearing within 10 days after receiving the notice of opportunity for hearing, the execu-

tive secretary shall request the department's Office of General Counsel to initiate formal hearing procedures.

(4) When a formal hearing is conducted, the board, meeting in quorum and by a majority of those present and voting, will determine the necessary final action after receiving the hearing officer's recommendation. The Complaint Committee members shall not participate in the final action.

(h) Final action by the board.

(1) If the board suspends the license, the suspension remains in effect until the board determines that the reasons for the suspension no longer exist. The board may require an investigation by the executive secretary and a recommendation by the Complaint Committee to assist the board in making its determination.

(2) During the time of suspension, the former license holder shall return the license certificate and license identification card to the board.

(3) Upon showing of good cause by the former license holder, the board may probate the license suspension. Good cause means reasons which are real, substantial, and reasonable and give the board a sound basis upon which to probate suspension.

(4) If a suspension overlaps a license renewal period, the former license holder must comply with the normal renewal procedures in these rules; however, the license will not be renewed until the board determines that the reasons for suspension have been removed.

(5) If the board revokes the license, the former license holder must reapply in order to obtain a new license. The board will not issue a new license until the board determines that the reasons for revocation have been removed. The board may require an investigation by the executive secretary and a recommendation from the Complaint Committee to assist the board in making its decision.

(6) Upon revocation, the former license holder shall return the license certificate and license identification card to the board.
§711.15. Formal Hearings.

(a) Purpose. This section covers the formal hearing procedures and practices that will be used by the board in handling suspensions and revocations of licenses, probating a license suspension, and reprimanding a licensee. The intended effect of these procedures is to implement the contested case provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the relevant sections of the Licensed Dietitian Act, Texas Civil Statutes, Article 4512h, and to make the public aware of these procedures and practices.

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

(1) Act—The Licensed Dietitian Act, Texas Civil Statutes, Article 4512h.

(2) APTRA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252–13a.

(3) Board—The Texas State Board of Examiners of Dietitians.

(4) Contested case—A proceeding in accordance with APTRA and these rules, including, but not restricted to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjunctive hearing.

(5) Formal hearing—A formal hearing in accordance with these rules and includes a contested case as defined in these rules and other required formal hearings.

(6) Hearing examiner—An attorney duly designated and appointed by the Texas commissioner of health as requested and approved by the board who conducts formal hearings under these rules on behalf of the board.

(7) Licensee—Any person licensed by the board.

(8) Party—Any person or government agency, or any subdivision thereof, or officer or employee of a governmental agency named by the hearing examiner as having a justiciable interest in the matter being considered, or any person or governmental agency, or any subdivision thereof, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(9) Person—Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(10) Pleading—Any written allegation filed by a party concerning its claim or position.

(c) General Provisions.

(1) Initiating a formal hearing. The board on its own motion or on petition or application from a person or party may initiate a formal hearing and shall conduct it in accordance with the provisions in this section. In the event of conflict between APTRA, other state statutes and agency rules, and these rules, the APTRA, other state statutes and agency rules will prevail over these rules.

(2) Location. All formal hearings unless otherwise determined by the board shall be held in Austin.

(d) Notice requirements.

(1) General. The hearing examiner shall give notice of the hearing according to the notice requirements of the applicable law or board rules authorizing the hearing. If no such requirements exist, the hearing examiner shall give notice to the parties by personal service or by certified mail return receipt requested. All notices under this subsection must be given not less than 10 days prior to the hearing.

(2) Content of notice.

(A) The notice shall contain:

(i) a statement of time, place, and nature of the hearing;

(ii) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(iii) a reference to the particular section of the statutes and rules involved;

(iv) a short and plain statement of the matters asserted; and

(v) a statement that any party can appear in person or by his or her counsel and be heard.

(B) If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application from a party to the board, a more definite and detailed statement shall be furnished to the party not less than three days prior to the date set for the hearing.

(3) Failure to appear after notice. If a party fails to appear or be represented at a hearing after receiving notice, the hearing examiner may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(4) Change of address. All parties, attorneys, or representatives of parties shall timely notify the hearing examiner of any changes in their mailing addresses.

(e) Parties to the hearing.

(1) Justiciable interest. All parties must have a justiciable interest in the proceedings to be designated as parties. All appearances are subject to a motion to strike upon a showing that the party has no justiciable interest in the proceeding.

(2) Duties and privileges of a party. A party has the privilege to participate fully in any prehearing and hearing, to appeal as provided by law and to perform any and all duties and privileges provided by the APTRA and other applicable laws.

(3) Interested persons. Any person not wishing to be designated as a party but desiring only to appear for the purpose of showing support or opposition or to make any general relevant statement show-

ing support or opposition may appear at the hearing and make or file statements.

(4) Time of designation as a party. The hearing examiner may designate parties at a prehearing conference, at the beginning of a hearing, or prior to the conclusion of a hearing. No person will be admitted as a party later except upon a finding by the hearing examiner, or the board, of good cause and extenuating circumstances.

(5) Different classifications for parties. In their pleadings, parties may classify themselves as applicants, petitioners, respondents, protestants, complainants, etc., but regardless of such classification, the hearing examiner has the authority to determine and designate their true status whenever necessary.

(6) Representation. A party may appear personally or be represented by counsel or other authorized representative, or both.

(7) Consolidation of parties. The hearing examiner may require parties of each class of affected persons to select one person to represent them in the proceedings.

(f) Subpoena requirements.

(1) Issuance of subpoena. On the hearing examiner's own motion or on the written request of any party to the hearing, the hearing examiner shall issue a subpoena to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents at the hearing.

(2) Good Cause. There must be a showing of good cause for the subpoena, i. e., the witnesses or documents must have information that is relevant and material to the hearing.

(3) Quashing of subpoena. A party or witness may seek to quash the subpoena or move for a protective order as provided in Texas Rules of Civil Procedure, Rule 186b.

(4) Witnesses requirements. Witnesses may be subpoenaed from any place in the State of Texas.

(5) Documents. Documents include books, papers, accounts, and similar materials or objects.

(6) Witness reimbursement. Witnesses subpoenaed will be paid per diem and mileage in accordance with those amounts paid to state employees as set out in the current State General Appropriations Bill. The same amounts will be paid by the party at whose request the witness appears. The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by the APTRA, §14.

(g) Depositions. The taking and use of depositions in any contested case proceeding shall be governed by the APTRA, §14.

(h) Prehearing conference.

(1) Purpose. In a contested case, the hearing examiner, on his own motion or the motion of a party, may direct the parties, their attorneys or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(A) the formulation and simplification of issues;

(B) the necessity or desirability of amending the pleadings;

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing;

(E) specifying the number of witnesses;

(F) the mutual exchange of prepared testimony and exhibits;

(G) the designation of parties; and

(H) other matters which may expedite the hearing.

(2) Conduct of conferences. The hearing examiner will conduct the prehearing conference in such manner and with the necessary authority to expedite the conference while reaching a fair, just, and equitable determination of any matters or issues being considered.

(3) Minutes. The hearing examiner will have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(4) Recording orders. Any action taken at the prehearing conference may be reduced to writing, signed by the parties, and made a part of the record.

(i) The hearing procedure.

(1) The hearing examiner's duties. The hearing examiner will preside over and conduct the hearing. On the day and time designated for the hearing, the hearing examiner shall:

(A) convene and call the hearing to order;

(B) state the purpose of and the legal authority for the hearing;

(C) announce that a record of the hearing will be made;

(D) outline the procedure and order of presentation that will be followed;

(E) administer oaths to those who intend to testify; and

(F) take any and all other actions as authorized by applicable law and these rules to provide for a fair, just, and proper hearing.

(2) Order of presentation.

(A) After making the necessary introductory and explanatory remarks on the purpose, etc., of the hearing, the hearing examiner will begin receiving testimony and evidence from the witnesses.

(B) Each party may present evidence and testimony and cross-examine or ask clarifying questions of any witness who presents evidence or testimony.

(C) In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving entitlement to the same; provided, however, that the order of proceeding may be altered or modified by the hearing examiner either upon agreement of the parties or upon his own order when such action will expedite the hearing without prejudice to any party.

(D) When the party first proceeding finishes his case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by other participants to the proceedings.

(E) The hearing examiner may limit the number of witnesses whose testimony will be repetitious, and the hearing examiner may also establish time limits for testimony so as all viewpoints are given a reasonable opportunity to be expressed.

(F) When the parties have concluded their testimony and evidence, the hearing examiner will ask the audience if any interested person desires to make a statement. If so, the interested person will be allowed to make his statement subject to cross-examination and clarifying questions by any party.

(G) After interested persons make statements or if there are no such statements, the hearing examiner, at his discretion, may allow final arguments or take the case under advisement, note the time, and close the hearing. For sufficient cause'

the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(3) Consolidation. The hearing examiner, upon his own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the board shall not be consolidated without consent of all parties to such proceedings, unless the hearing examiner finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(4) Technical expertise. The hearing examiner may be assisted by a technical expert within the department who has not participated in any proceeding in the case, either directly or indirectly, for the purpose of utilizing the special skills or knowledge of the department.

(5) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the hearing examiner and all other persons participating in or observing the hearing. The hearing examiner is authorized to take what ever action he deems necessary and appropriate to maintain the proper level of decorum and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the hearing examiner deems fair and just.

(6) The hearing record. The hearing record will include:

(A) all pleadings, motions, and intermediate rulings;

(B) evidence received or considered;

(C) a statement of matters officially noticed;

(D) questions and offers of proof, objections, and rulings of them;

(E) proposed findings and exceptions;

(F) any decision, opinion, or report by the hearing examiner; and

(G) all staff memoranda or data submitted to or considered by the hearing examiner or members of the board who are involved in making the decision.

(7) Recording the hearing.

(A) The hearing examiner shall keep either a stenographic or magnetic tape record of the hearing proceeding. A court reporter may be present to record the hearing.

(B) In those cases when a magnetic tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to duplicate.

(8) Assessing the cost of a court reporter and the record of the hearing.

(A) In the event a court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter.

(B) The board shall prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.

(C) In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the board may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the board proceedings that is required to be transmitted to the reviewing court.

(9) Rules of evidence. The hearing examiner, at a hearing, a reopened hearing, or a rehearing will apply the rules of evidence under APTRA, §14(a) and also the following rules.

(A) The hearing examiner may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the hearing examiner should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidating by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(B) Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the

form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which are typical and representative, and may, at his discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the hearing examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a hearing examiner's decision to remove only typical or representative documents.

(C) Exhibits shall be as follows.

(i) Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board. The hearing examiner may require that exhibits of a documentary character not exceed 8 1/2 by 14 inches unless they are folded to the required size. Maps and drawings which are offered as exhibits shall be folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(ii) The original of each exhibit offered should be tendered to the hearing examiner or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(iii) In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(iv) Unless specifically directed by the hearing examiner, no exhibit will be permitted to be filed in any proceeding after the conclusions of the hearing except in a reopened hearing or a rehearing.

(D) When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his testimony would be if he were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his prepared testimony shall be subject to a motion to strike either in whole or in part.

(E) When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(F) Official notice by the hearing examiner or the board shall be governed by the APTRA §14(q). Further, official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The hearing examiner shall indicate during the course of a hearing that information of which he will take official notice. When a hearing examiner's findings are based upon official notice as a material fact not appearing in the evidence of record, the hearing examiner shall set forth in his proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show to the contrary through the filing of exceptions to the hearing examiner's proposal for decision.

(10) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(10) Agreements in writing. No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(j) Action after the hearing.

(1) Reopening of hearing for new evidence.

(A) The hearing examiner, on behalf of the board, may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(B) The hearing examiner, on behalf of the board, will reopen a hear-

ing to include such new evidence as part of the record if the hearing examiner, on behalf of the board, deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(C) Notice of any reopened hearing shall be sufficient by notifying all previously designated parties of same, by certified mail, return receipt requested.

(2) Proposal for decision.

(A) If a proposal for decision to the board is necessary under the APTRA, §15, the hearing examiner shall prepare the proposal and provide copies of the same to all parties.

(B) Each party having the right and desire to file exceptions and briefs shall file them with the hearing examiner within the time designated by the hearing examiner.

(C) Parties desiring to do so shall file written replies to these exceptions and briefs within the time designated by the hearing examiner. Failure to reply or except may be construed as agreement with the exceptions and briefs.

(D) All exceptions and replies to them shall be succinctly stated.

(3) Filing. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the hearing examiner; and further, the party filing such instrument shall provide copies of the same to all other parties of record by first class U.S. mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(4) Final orders or decisions.

(A) The final order or decision will be rendered by the board meeting in quorum and by a majority of those present and voting.

(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to a hearing examiner's proposal for decision.

(C) Unless otherwise permitted by statute or by these sections, all final

orders shall be signed by the executive secretary and the chairman of the board; however, interim orders may be issued by the hearing examiner in accordance with his order of appointment.

(D) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(5) Motion for rehearing. A motion for rehearing shall be governed by the APTRA, §16; or other pertinent statute and shall be addressed to the executive secretary of the board and filed with the hearing examiner.

(6) Appeals. All appeals from final board orders or decisions shall be governed by the APTRA, §19 and §20, or other pertinent statute and communications regarding any appeal shall be to the executive secretary of the board.

(k) *Ex parte* consultations. All matters regarding *ex parte* consultations, shall be governed by the provisions of the APTRA, §17.

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 March 10, 1988.

TRD-8802544

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

Earliest possible date of adoption: April 15, 1988

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

◆ ◆ ◆
TITLE 25 HEALTH SERVICES
Part I. Texas Department of Health

Chronically Ill and Disabled Children's Services

• 25 TAC §37.90

The Texas Department of Health proposes an amendment to §37.90, concerning approved providers and facilities. The amendment will expand the criteria and procedures for approving ambulatory surgical care facilities to include specific pediatric guidelines.

Stephen Seale, chief accountant III, has determined that for the first five-year period that the section will be in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the section as proposed.

Mr. Seale also has determined that for the first five years that the section will be in effect the public benefit will be to clarify the procedures for approving ambulatory surgical care facilities. There is no anticipated economic

cost to individuals who are required to comply with section as proposed.

Comments on the proposal may be submitted to J. S. Barkley-Booher, Chief, Bureau of Chronically Ill and Disabled Children's Services, 1100 West 49th Street, Austin, Texas 78756. Public comments will be accepted for 30 days after this proposed section has been published in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4419c, §8, which provides the Texas Board of Health with the authority to adopt rules concerning chronically ill and disabled children's services.

§37.90. *Approved Providers and Facilities.* All approved providers must agree to abide by program rules and regulations, to accept program fees as payment in full, and not to discriminate against patients on the basis of insurance or Medicaid status. The following groups of providers must be processed through an application process to determine their desire to participate with the program's rules as approved by the board and to determine their qualifications in relation to the criteria for participation as decided by the board.

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

(3) Ambulatory surgical care facilities.

(A) Ambulatory surgery services may be utilized by the program as a cost efficient means as long as quality of care is assured. Any hospital approved for program participation whose Joint Committee on Accreditation of Health Care Organizations [Hospitals] accreditation includes hospital-sponsored ambulatory care services may be utilized for ambulatory surgery. However, freestanding facilities, even if governed or affiliated with an approved hospital must apply for program approval. Facilities that apply for approval and that meet the criteria as set forth by the program, may also qualify for participation. The program may contract with a limited number of facilities to assure program cost containment. As a minimum, such criteria must include:

(i) -(xii) (No change.)

(B) (No change.)

(C) Centers must have available all necessary pediatric equipment, including operating room, surgical tools, resuscitation apparatus, pharmaceutical services, cribs, and other supplies that are especially made for children, or or easily adapted for their appropriate use. Due to the higher risk presented by chronically ill children, no child under the age of 18 months shall have surgery at a freestanding ASC. Centers are required to submit copies of state licensure and medicare certification to the program. It is recommended that the program will initially cover the following

surgical procedures:

- (i) arthrodesis;
 - (ii) biopsies;
 - (iii) cataract removal;
 - (iv) clubfoot correction;
 - (v) cyst removal;
 - (vi) esophageal stricture;
 - (vii) excision of sinus;
 - (viii) eye balance correction (strabismus);
 - (ix) gastrostomy tube insertion;
 - (x) hernia repair;
 - (xi) hypospadias correction;
 - (xii) inversion and eversion correction;
 - (xiii) minor foot and hand surgery;
 - (xiv) myringotomy;
 - (xv) scar revision;
 - (xvi) surgical pin removal;
 - (xvii) tendon alterations (muscle tendon length change);
 - (xviii) insertion of venous line for nutrition and chemotherapy;
 - (xix) excision of congenital nevi without skin grafting;
 - (xx) insertion of tissue expander;
 - (xxi) biopsy or excision of rectal polyps;
 - (xxii) breast biopsy;
 - (xxiii) cystoscopy;
 - (xxiv) retrograde pyelogram;
 - (xxv) undescended testicles (surgery for).
- (4)-(7) (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 March 11, 1988.

TRD-8802619 Robert A. MacLean
 Deputy Commissioner for
 Professional Services
 Texas Department of
 Health

Proposed date of adoption: May 21, 1988
 For further information, please call: (512)
 465-2681

Memoranda of Understanding

• 25 TAC §37.191

The Texas Department of Health proposes new § 37.191, concerning a coordinated statewide family planning program. The new section adopts by reference a memorandum of understanding between the department and the Texas Department of Human Services. The department proposes the new section in order to comply with Senate Bill 298, 70th Texas Legislature, 1987, which requires the department, by rule, to adopt the memorandum of understanding. Specifically, the MOU covers each department's role in the provision of family planning; a coordinated method of allocating funds; a means for developing and monitoring and maintaining provider service standards that are consistent between agencies and funding sources to the extent permitted by federal law; and a means for collecting data that is consistent between agencies and funding sources.

Stephen Seale, chief accountant III, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section as proposed.

Mr. Seale has also determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be that there will be better coordination between the Department and the Texas Department of Human Services concerning statewide family planning services. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Tom Tucker, Administrator, Maternal and Child Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. Comments will be accepted for 30 days from the date of publication of the proposed rules.

The new section is proposed under Senate Bill 298, 70th Texas Legislature, 1987, which provides the Texas Board of Health with the authority to adopt, by rule, a memorandum of understanding entered into between the Texas Department of Health and the Texas Department of Human Services concerning a coordinated statewide family planning program in Texas.

§37.191. Memorandum of Understanding Concerning a Coordinated Statewide Family Planning Program.

(a) The Texas Department of Health adopts by reference a memorandum of understanding entered into between the Department and the Texas Department of Human Services concerning a coordinated statewide family planning program in Texas.

(b) Copies of the memorandum of understanding are filed in the Maternal and Child Health Services Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

This agency hereby certifies that the proposal

has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on March 11, 1988.

TRD-8802614 Robert A. Maclean
 Deputy Commissioner for
 Professional Services
 Texas Department of
 Health

Proposed date of adoption: May 21, 1988

For further information, please call: (512) 458-7700.

Chapter 111. Special Health Services

• 25 TAC §111.1

The Texas Department of Health proposes new §111.1, concerning protective services for the elderly. The new section adopts by reference a memorandum of understanding (MOU) between the department and the Texas Department of Human Services (TDHS). The new section is proposed in order to comply with the provisions of the Human Resources Code, Texas Codes Annotated, §48.022, which requires the department, by rule, to adopt the MOU. The MOU describes the responsibilities and procedures of each agency regarding investigations of reports of abuse, exploitation, and neglect occurring in facilities licensed or certified by the department of health.

Stephen Seale, chief accountant III, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section as proposed.

Mr. Seale has also determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be that the responsibilities of the department and TDHS will be clarified with respect to protective services for the elderly. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Juanita Carrell, R.N., Ed.D., Associate Commissioner for Special Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Comments will be accepted for 30 days from the date of publication of the proposed sections.

The new section is proposed under the Human Resources Code, Texas Codes Annotated, §48.022, which requires the Texas Board of Health to adopt, by rule, a memorandum of understanding between the department and the Texas Department of Human Services clarifying each agency's responsibility concerning protective services for the elderly.

§111.1. Memorandum of Understanding Concerning Protective Services for the Elderly.

(a) The Texas Department of Health adopts by reference a memorandum of understanding entered into between the Texas Department of Health and the Texas

Department of Human Services clarifying each agency's responsibility concerning protective services for the elderly. The memorandum covers the responsibilities and procedures of each agency regarding investigations of reports of abuse, exploitation, and neglect occurring in facilities licensed or certified by the Texas Department of Health.

(b) Copies of the memorandum of understanding are filed in the Associateship of Special Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

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

Issued in Austin, Texas, on March 11, 1988.

TRD-8802612

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

Proposed date of adoption: May 21, 1988

For further information, please call: (512) 458-7296.

◆ ◆ ◆
• 25 TAC §111.2

The Texas Department of Health proposes new §111.2, concerning hospitals and long term care facilities. The new section adopts by reference a memorandum of understanding (MOU) between the department, the Texas Department of Human Services (TDHS), and the Texas Department of Mental Health and Mental Retardation (TDMHMR), concerning hospitals and long term care facilities. The new section is proposed in order to comply with the provisions of the Human Resources Code, Texas Codes Annotated, §22.014, which requires the department, by rule, to adopt the MOU. The MOU which covers the responsibilities, procedures, and standards involved in the provision, regulation, and/or funding of services in hospitals and long term care facilities. The MOU does not apply to state hospitals or to any TDMHMR service not funded under Title XIX of the U.S. Social Security Act, Title XIX.

Stephen Seale, chief accountant III, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section as proposed.

Mr. Seale has also determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be that the department, TDHS, and TDMHMR will more closely coordinate their responsibilities, procedures, and standards involved in the provision, regulation, and/or funding of services in hospitals and long term care facilities. There is no anticipated cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Juanita Carrell, R.N., Ed.D., Associate

Commissioner for Special Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Comments will be accepted for 30 days from the date of publication of the proposed sections in the *Texas Register*.

The new section is proposed under the Human Resources Code, Texas Codes Annotated, § 22.014, which requires the Texas Board of Health to adopt, by rule, a memorandum of understanding between the department, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation, concerning the responsibilities, regulation, and/or funding of hospitals and long term care facilities.

§111.2. *Memorandum of Understanding Concerning Hospitals and Long Term Care Facilities.*

(a) The Texas Department of Health adopts by reference a memorandum of understanding entered into by the Texas Department of Health, the Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation concerning the responsibilities, regulation, and/or funding of hospitals and long term care facilities.

(b) Copies of the memorandum of understanding are filed in the Associateship of Special Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

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

Issued in Austin, Texas, on March 11, 1988.

TRD-8802613

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

Proposed date of adoption: May 21, 1988

For further information, please call: (512) 458-7296.

◆ ◆ ◆
Chapter 229. Food and Drug
Production, Processing, and
Distribution of Bottled
Drinking Water

• §§229.81-229.83

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 503, Sam Houston Building, 201, East 14th Street, Austin.)

The Texas Department of Health proposes the repeal of existing §§229. 81 - 229.83, concerning the production, processing, and distribution of bottled drinking water; and new §§229.81-229.87, concerning bottled and vended drinking water. The proposed new sections will replace, update, and clarify the

sections proposed for repeal and will cover purpose, definitions, sampling, water hauling, microbiological control standards, labeling and advertising, processing of vended water, and certificates of competency. The proposed new sections also will supplement existing department rules in §§229.181 - 229.184 (relating to Registration of Manufacturers of Food) and existing federal regulations in 21 Code Federal Regulation Part 103, (relating to Standards of Quality) and Part 129, (relating to Processing and Bottling of Bottled Drinking Water).

Stephen Seale, chief accountant III, has determined that for the first five year period these sections as proposed will be in effect, there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering these sections.

Mr. Seale also has determined that for each year of the first five years these proposed sections will be in effect the public benefit will be better clarification and differentiation among the various types of bottled water, thereby enabling consumers to choose the product best suited to their needs. The public will be assured of having a vended product which meets the same standards for bacteriological quality and content as are required for bottled water. The anticipated economic cost to individuals will be none, since the retail price for bottled or vended water should not increase.

Comments on the proposed sections may be submitted to Dennis E. Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7248. Comments will be accepted for a period of 30 days following publication in the *Texas Register*. In addition, public hearings on the proposed rules will be held as follows: March 22, 1988, beginning 9:30 a.m., in the Community Room of the Mahon Library, 1306 9th Street, in Lubbock, Texas; March 23, 1988, beginning 9 a.m., at the Public Health Region 5 office, 2561 Matlock Road, in Arlington, Texas; March 24, 1988, beginning 9 a.m., in the auditorium of Texas Department of Health, 1100 West 49th Street, in Austin, Texas; March 25th, 1988, beginning at 9 a.m., at the City/County Health Department, in Corpus Christi, Texas.

The repeal is proposed under Texas Civil Statutes, Article 4476-5, §24, which authorizes the Texas Board of Health to adopt rules concerning the production, processing, and distribution of bottled water.

§229.81. *General Provisions.*

§229.82. *Sources of Supply.*

§229.83. *General Requirements for Bottling Plants.*

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 March 8, 1988.

TRD-8802453

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

Proposed date of adoption: May 21, 1988

For further information, please call: (512) 458-7248

The new sections are proposed under Texas Civil Statutes, Article 4476-5, §24, which provide the Texas Board of Health with the authority to adopt rules covering bottled and vended water.

§229.81. General Provisions.

(a) Purpose. These sections establish definitions and standards for the processing and bottling of drinking and vended water. The sections also will supplement existing department rules in §§229.181-229.184 (relating to Registration of Manufacturers of Food) and existing federal regulations in 21 Code of Federal Regulations Part 103 (relating to Standards of Quality) and Part 129 (relating to Processing and Bottling of Bottled Drinking Water).

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

Artesian well water—Water which is forced from below the ground to the surface through a well by natural underground pressure. Artesian water shall meet the requirements of natural water as defined in this section.

Bottled water—Water that is sealed in bottles or other containers and intended for human consumption. Products with or without natural or added carbonations may be prepared with added flavors, extracts, and/or essences derived from a spice or fruit and comprising less than 1.0% by weight of the final product. Said products shall contain no sweeteners or other additives. Bottled water does not include products traditionally produced by nonalcoholic beverage plants.

Department—Texas Department of Health.

Distilled water—Bottled water which has been produced by a process of distillation and meets the definition of purified water in the most recent edition of the United States Pharmacopeia.

Drinking water—Bottled water obtained from an approved source that has at minimum undergone treatment consisting of filtration (activated carbon or particulate) and ozonation or an equivalent disinfection process.

Fluoridated water—Bottled water containing fluoride. The label shall specify whether the fluoride is naturally occurring or added.

Mineral water—Water which meets the requirements of natural water as defined in this section. Mineral water shall also meet the quality standards prescribed in 21 Code of Federal Regulations 103.35 except that mineral water shall be permitted to contain total dissolved solids in excess of the federal standards.

Natural water—Bottled spring, mineral, artesian well, or well water which is not derived from a public system and which is unmodified by blending with water from another source or by mineral addition or deletion, except as it relates to ozonation or equivalent disinfection and filtration.

Purified water—Bottled water produced by distillation, deionization, reverse osmosis, or other suitable processes and meets the definition of purified water in the most recent edition of the United States Pharmacopeia. Water which meets the definition of purified water and is vaporized,

then condensed, may be labeled distilled water. Water which meets the definition of purified, but is not vaporized and condensed may make reference to distilled water uses provided that the type size is no larger than the smallest type appearing on the label and it is not part of the name of the product.

Spring water—Water derived from an underground formation from which water flows naturally to the surface of the earth. Spring water shall meet the requirements of natural water as defined in this section. Vended water means either of the following:

(A) water dispensed from any self-service device which upon insertion of a coin, coins, or token, or upon receipt of payment by other means, dispenses unit servings of water in bulk, without the necessity of refilling the machine between each operation;

(B) any device from which any operator or consumer dispenses unit servings of water in bulk.

Vending machine—Any self-service device which upon insertion of a coin, coins, or token, or upon receipt of payment by other means, dispenses unit servings of water in bulk, without the necessity of refilling the machine between each operation.

Well water—Bottled water from a hole bored, drilled, or otherwise constructed in the ground, which taps the water of an aquifer. Well water shall meet the requirements of natural water as defined in this section.

§229.82. Sampling. Bottled water and vended water must be sampled in accordance with the compliance procedures of Title 21, Code of Federal Regulations Part 129. All required analyses must be performed by an approved laboratory. An approved laboratory is approved by the Texas Department of Health, certified by the United States Environmental Protection Agency (EPA), or certified by the primary enforcement authority in any state which has been granted primacy by EPA or certified (accredited) by a third party organization acceptable to a primacy state.

§229.83. Water Hauling. When water is distributed by tank truck or trailer, in lieu of distribution piping, it must be accomplished in accordance with the requirements of this section.

(1) The water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the department and must be constructed as follows.

(A) The tank truck, or trailer, shall be used for transporting drinking water only, and shall be labeled "Drinking Water". Tanks which have been used previously for any other purpose shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic

or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, the United States Public Health Service, or the National Sanitation Foundation.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is located and faced downward so as to minimize the drawing of contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water. The hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least two samples of water shall be collected and submitted for bacteriological analysis, to a Texas Department of Health laboratory for each month of operation.

(K) A minimum chlorine residual of 0.5 mg/l shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a batch basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled and pur-

chased, and the source of water shall be maintained.

§229.84. Microbiological Control Standards. Bottled water production including transporting, processing, packaging, and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for microbiological contamination of the finished product. These conditions and controls shall include the following.

(1) Bottled water shall be subject to effective germicidal treatment by ozonation, chlorination, exposure to ultraviolet light, or other equivalent disinfection approved by the department.

(2) Bottled water shall not be transported or stored in bulk tanks or processed or bottled through equipment or lines used for any nonfood product.

(3) In order to minimize the potential for microbiological contamination of the finished product, noncarbonated bottled water shall not be transported, stored, processed, or bottled in or through lines or equipment through which has passed milk, fruit juice, or other food products likely to contribute nutrients for microbial growth.

§229.85. Labeling and Advertising.

(a) References to the content of ingredients that are not normal in drinking water shall be prohibited.

(b) Statements as to the quantitative sodium content of bottled water and vended water must comply with Title 21, Code of Federal Regulations Part 101.13.

(c) Claims of medicinal and health-giving properties shall not be placed on labels and references shall not be made to bacterial purity or to laboratory examinations which may have been made by department laboratories.

(d) The label must state the source of all water sold.

(e) Bottled water or vended water to which minerals are added shall be labeled so as to disclose that minerals are added and must list the minerals added.

(f) All labels, labeling, and advertising shall conform to the provisions of these sections within six months after the effective date of these sections.

(g) The label shall provide a statement describing the treatment process. If no treatment process is utilized then a statement to that effect is required.

§229.86. Processing of Vended Water.

(a) Any device from which any operator or consumer dispenses unit servings of water in bulk must comply with Title 21, Code of Federal Regulations, Part 129, Processing and Bottling of Bottled Drinking Water, and Part 103.35, Subpart B, Standards of Quality. The provision pertaining to the cleaning, sanitizing, filling, and capping or sealing of containers shall not apply

to containers furnished by the consumer.

(b) Vending machine requirements are as follows.

(1) Water dispensed from a vending machine must comply with Title 21, Code of Federal Regulations, Part 103.35, Subpart B, Standards of Quality and labeling and advertising requirements of these sections.

(2) Vending machines shall:

(A) be designed and constructed to permit easy cleaning, sanitization, and maintenance of all exterior and interior surfaces and component parts;

(B) have all parts and surfaces which come into contact with the water constructed of approved, corrosion-resistant, and nonabsorbent material capable of withstanding repeated cleaning and sanitizing treatment;

(C) have a recessed or guarded corrosion-resistant dispensing spout;

(D) be designed so all treatment of the vended water by distillation, ion-exchange, filtration, ultraviolet light, reverse osmosis, mineral addition, or any other acceptable process is done in an effective manner;

(E) have an effective system of collection and handling of drip, spillage, and overflow of water;

(F) have a backflow prevention device approved by the department or local authority for all connections with the water supply;

(G) disinfect vended water by ultraviolet light or other method approved by the department prior to delivery into the customer's container;

(H) be equipped with monitoring devices designed to shut down operation of the machine when the disinfection unit fails to function;

(I) be equipped with a self-closing, tightfitting door on the vending compartment;

(J) comply with the American Water Works Association (AWWA) specifications for granular activated carbon if used in the treatment of potable water (AWWA B604-74);

(K) be maintained in a clean and sanitary condition be and free from dirt

and vermin;

(L) be located in an area that can be maintained in clean condition and in a manner that avoids insect and rodent harborage; and

(K) display in a position clearly visible to customers, the following information: the name and address of the operator; the name of the approved public or private water supply the water is obtained from; a statement describing the treatment process; if no treatment process is utilized, then a statement to that effect; and a local or toll free telephone number that may be called for further information, service, or complaints.

(c) Service, sampling, and records should meet the following requirements.

(1) All parts and surfaces of the water vending machine shall be maintained in clean condition by the water vending machine operator. The vending chamber, and vending nozzle shall be cleaned and sanitized each time the machine is serviced; whereas, all surfaces in contact with the vended water shall be maintained as a deposit free, visibly clean system. A record of cleaning and maintenance operations shall be kept by the operator for each water vending machine and be available for inspection upon request.

(2) The vended water from each water vending machine shall be analyzed at least once every month for bacteriological purposes and, if required, other physical, chemical, or microbiological parameters. All records shall be maintained for not less than two years. The analysis shall be performed by a laboratory certified to perform drinking water analyses and a copy of the analysis shall be available for inspection.

(3) Each person desiring to operate a water vending machine shall have a written maintenance program for the routine servicing of water vending machines to include written servicing instruction for the operator; technical manuals for the machine and water treatment appurtenances involved; and regularly scheduled service visits.

§229.87. Certificates of Competency. No firm corporation, partnership, or individual shall offer for sale bottled or vended water unless the production, processing, and treatment is at all times under the supervision of a person or persons holding a valid certificate of competency for bottled water plant operators issued 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 March 8, 1988.

TRD-8802454

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

Proposed date of adoption: May 21, 1988

For further information, please call: (512)
458-7248

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**Part XII. Texas Council
on Alzheimer's Disease
and Related Disorders**
**Chapter 801. Procedures and
Bylaws**

• **25 TAC §§801.1-801.4**

The Texas Council on Alzheimer's Disease and Related Disorders proposes new §§801.2-801.4, concerning procedures and by-laws. The new sections will cover the Council's statutory obligations, the duties and functions of council officers, and council meetings.

J. Thomas Hutton, M.D., chairperson of the council, has determined that for the first five-year period the sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Dr. Hutton also has determined that for each year of the first five years the sections will be in effect the public benefit anticipated as a result of enforcing the new sections will be to inform the general public of the procedures and by-laws of the council. There is no anticipated cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to J. Thomas Hutton, M.D., Texas Tech Health Science Center, Department of Medical and Surgical Neurology, Lubbock, Texas 79430 (806) 743-2719. Comments will be accepted for 30 days after publication of the proposed new sections in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 4477-80, §4 and §9, and Article 6252-13a, §4, which provide the council with the authority to adopt rules concerning its practices and procedures.

§801.1. Statutory Requirements. The council is created under authority of Texas Civil Statutes, Article 4477-80 (House Bill 1066, 70th Texas Legislature, 1987). The statute covers the following areas concerning the council: definitions; creation of the council, initial appointments; terms and compensation; meetings; functions; duties and powers of the Texas Department of Health; gifts and grants; required reports; and application of other laws.

§801.2. Officers and Their Duties.

(a) The members of the council shall elect a chairperson from the council, except that a state agency representative may not serve as chairperson. The chairperson shall serve for two years. The chairperson, in general, shall perform all duties dependent or relating to the office of chair-

person and such other duties as may be prescribed by the council. The chairperson shall appoint such committees and task forces as authorized by the council.

(b) The officers of the council shall be chairperson, vice-chairperson and secretary, and shall serve for one year.

(c) The secretary shall authenticate the minutes of all council meetings and perform such other duties as may be assigned by the chairperson of the council.

(d) A parliamentarian may be appointed to advise the chairperson and the council on parliamentary procedures upon the request of the chair or any member of the council.

§801.3. Meetings.

(a) The council shall meet at least two times in each calendar year at the call of the chairperson. At least one meeting may be designated as an annual meeting. The chairperson may call special meetings.

(b) The council shall follow *Robert's Rules of Order* for the conduct of its meetings.

(c) Notice of meetings shall state the time, place, and agenda to be considered at the meeting.

(d) A majority of the members of the council constitutes a quorum.

(e) Any action taken by the council must be approved by a majority of the members on the following issues: resolutions; financial decisions; and any changes in the by-laws. All other business may be approved by a majority of the quorum.

§801.4. Amendment of By-laws. A majority of the council members may amend or replace the council by-laws.

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 March 11, 1988.

TRD-8802611

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

Proposed date of adoption: May 2, 1988

For further information, please call: (806)
743-2719.

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**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION**

**Part XIV. Texas Board of
Irrigators**

**Chapter 423. Registration of
Irrigators and Installers**

Examinations

• **31 TAC §423.59**

The Texas Board of Irrigators proposes an amendment to §423.59, concerning written requests for examination results by applicants. The Board of Irrigators, at its January 1988 board meeting, ruled that if an applicant who fails the examination requests an analysis of his performance on the examination, he shall do so within 30 days after being notified of his examination results.

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

Ms. Watson 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 more clarity and therefore better understanding by the public. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Larry G. Persky, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted 30 days after publication of this amendment in the *Texas Register*.

The amendment is proposed under the Licensed Irrigators Act, Texas Civil Statutes, Article 8751, §7, which provide the board with the authority to adopt, prescribe, promulgate, and enforce all rules reasonably necessary to effectuate the provisions of the Act.

§423.59. Notification of Examination Results and Performance. Within 30 days after the day on which an applicant completed an examination, the executive secretary on behalf of the board shall send the applicant his examination results by first-class mail. If requested in writing by an applicant who fails the examination, the executive secretary on behalf of the board shall send to the applicant, within 30 days after the day on which the request is received by the board, an analysis of the applicant's performance on the examination. **The applicant must make his written request for his examination analysis within 30 days after the executive secretary has sent the applicant his examination results.**

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 March 9, 1988.

TRD-8802506

Joyce Watson
Executive Secretary
Texas Board of Irrigators

Earliest possible date of adoption: April 18, 1988

For further information, please call: (512)
463-8087

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 41. Utilization Review

Waiver for Utilization Review Procedures

40 TAC §41.101

The Texas Department of Human Services (DHS) proposes the repeal of §41.101, concerning waivers; new §41.101, concerning the Texas Medical Review Program (TMRP); new §41.102, concerning contracting for TMRP services; new §41.103, concerning TMRP review process; new §41.104, concerning TMRP hospital screening criteria; new §41.105, concerning utilization review (UR) plan requirements; new §41.106, concerning attestation statement; new §41.107, concerning acknowledgment of penalty notice; new §41.108, concerning denials and recoupments; new §41.109, concerning DRG changes and adjustments; new §41.110, concerning sanctions under the TMRP; an amendment to §41.201, concerning activities of the health insuring agent; and the repeal of §41.9801, concerning the Texas Admissions and Review Program.

The purpose of the repeals, new sections, and amendment is to update and clarify department rules to more accurately describe current requirements of the Texas Medical Review Program (TMRMP), which is the department's inpatient hospital utilization review program. The policies and requirements reflected in the proposed changes have been in effect, under a waiver approved by the Health Care Financing Administration (HCFA), since September 1, 1988. The proposed changes delete material that is no longer applicable and add material that has until now been addressed only in the waiver. Participating hospitals have been operating under these policies since September 1986.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Packard also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clarification of the department's existing inpatient hospital utilization review program, also known as the TMRP. The proposed rules state the requirements that must be met by participating Medicaid hospitals, the department, and its utilization review contractors. 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 Cathy Rossberg, Administrator, Policy Development Support Division 626, Texas Department of Human Services 222E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The repeal 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.

§41.101. Waiver.

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 March 14, 1988.

TRD-8802623

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: May 1, 1988

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

• 40 TAC §§41.101-41.111

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.

§41.101. Texas Medical Review Program (TMRP).

(a) The Texas Medical Review Program (TMRP) is the inpatient hospital utilization review system used by the Department of Human Services (DHS). DHS conducts the TMRP according to:

(1) applicable federal regulations at 42 CFR 456, Subpart C, which require DHS to operate a utilization review program that controls the utilization of inpatient hospital services and assesses the quality of those services; or

(2) an approved waiver under the Social Security Act §1861(k), as it relates to the use of Title XVIII utilization review procedures for Title XIX patients in acute general hospitals.

(b) The TMRP review directly relates to the method of reimbursement used by the Texas Medical Assistance Program. Effective September 1, 1986, DHS implemented a Texas based diagnostic related group (DRG) prospective payment reimbursement system.

§41.102. Contracting for TMRP Services. Although DHS contracts for the performance of TMRP review activities, DHS maintains final authority over decisions made by contractors. Each contractor is DHS's designee concerning decisions made about review activities and appeal notifications in the contractor's assigned hospitals.

§41.103. TMRP Review Process.

(a) For all Medicaid admissions identified for review, the TMRP review process involves the following major components:

(1) admission review, which is a determination of the medical necessity of the admission;

(2) DRG validation, which is a determination that the critical elements necessary to assign a DRG are present in the medical record. These elements are age, sex, principal diagnosis, principal procedures, and any substantial complications or substantial comorbidities. A substantial complication is a condition, arising during the hospital stay, that prolongs the length of stay by at least one day in approximately 75% of the cases, based on the DRG Grouper software prepared by an HCFA approved contractor for use in the Medicare and Medicaid programs. A substantial comorbidity is a preexisting condition that causes, because of its presence with a specific principal diagnosis, an increase in length of stay by at least one day in approximately 75% of the cases, based on the DRG Grouper software prepared by a HCFA approved contractor for use in the Medicare and Medicaid programs. The DRG validation is also a determination that principal and secondary diagnoses and procedures are in the correct sequence.

(3) quality of care review, which is an assessment of the quality of care to determine whether it meets generally accepted standards of medical and hospital care practices or puts the patient at risk of unnecessary injury, disease, or death. Quality of care review includes the review of discharge screens and generic quality screens.

(b) DHS or its contractor reviews the complete medical record to make decisions concerning the medical necessity of admission, DRG validation, and quality of care.

§41.104. TMRP Hospital Screening Criteria.

(a) DHS uses physician developed and physician approved inpatient hospital screening criteria. The criteria include indications for hospitalization (IH) and Treatment (T) criteria. Nonphysician reviewers use the criteria as guidelines for the initial approval or for the referral of inpatient reviews for medical necessity decisions. If both IH and T criteria are not met, if either the IH or T criteria is not met, or if the nonphysician reviewer has any questions on the initial approval, the nonphysician reviewer refers the case to a physician for a medical necessity determination. Even if the IH and T criteria are met, the physician reviewer may determine that an inpatient admission was not medically necessary and an admission denial is issued.

(b) For the purposes of the TMRP, medical necessity means that the patient has a condition requiring treatment and that the treatment can be safely provided only in the inpatient setting.

§41.105. Utilization Review (UR) Plan Requirements. General acute care hospitals participating in the Texas Medical Assistance Program must have UR plans approved by DHS or its designee. Each hospital must:

approved by DHS or its designee. Each hospital must:

(1) have a Utilization Review Committee (URC) that includes at least two physicians and meets at least monthly;

(2) have a UR process, for which the URC is responsible;

(3) ensure, through the URC, that at least one Medical Care Evaluation (MCE) study is in progress at any given time and that at least one MCE study is completed each year;

(4) ensure that the URC records, in its minutes, the committee's activities and its review of MCE studies;

(5) make the URC minutes available for review by DHS or its designee.

§41.106. Attestation Statement.

(a) DRG validation requires comparison of the attestation statement, signed and dated by the attending physician, to the medical record's documentation of principal and secondary diagnoses, procedures, and complications or comorbidities. This information must be noted on that portion of the medical record containing the diagnostic and procedural information. Hospital staff must ensure that an attestation statement is completed on each Medicaid case before submission of the claim. Hospital staff must also ensure that the following statement immediately precedes the attending physician's signature on the same page as the diagnostic and procedural information: "I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge."

(b) The attestation statement allows physicians to attest to the accuracy of the narrative descriptions, rather than to the accuracy of diagnosis or procedure coding.

(c) Hospital staff must ensure that the attestation statement becomes a permanent part of the hospital medical record for all inpatient Medicaid claims, and that the statement is typed or handwritten and signed and dated by the attending physician with his legal signature. Signature stamps or other facsimiles are not acceptable. If an attending physician determines that a change is necessary in the sequencing of diagnoses or procedures, he must indicate and initial the change. The attestation statement must be dated at the same time that the physician signs it.

§41.107. Acknowledgment of Penalty Notice.

(a) Hospitals must provide and have on file a current, signed acknowledgment from the attending physician that the physician has received the following notice: "Notice to Physician: Medicaid payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient,

as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of federal or state funds may be subject to fine, imprisonment, or civil penalty under applicable federal and state laws."

(b) Hospitals must ensure that each physician's acknowledgment is updated by October 1 of each year and has been completed within the year before submission of the facility's claim. Physicians must sign and date the acknowledgments using only their legal signatures. Initials and facsimiles are not acceptable.

(c) The acknowledgment of penalty notice must be specific to the Medicaid program. Valid Medicare penalty notices are not accepted.

§41.108. Denials and Recoups.

(a) DHS or its contractors may issue one of the following types of denials as a result of the TMRP review process.

(1) Admission denial. This denial is issued when a physician reviewer determines that an admission was not medically necessary.

(2) Technical denial. This denial is issued when a hospital fails to make available for review a complete medical record on the date of an onsite review or, for mail in hospitals, within specified timeframes. A technical denial is also issued when the physician attestation statement is not available for review, is dated after the claim was submitted, or is not properly completed. A properly completed attestation statement must include a narrative description of the diagnoses and procedures, the certification statement, the physician's signature, and the date the physician signed the statement. If the properly completed attestation statement is not available or is not made available during the review, a final technical denial is issued and the payment is permanently recouped. If the complete medical record (other than the properly completed attestation statement) is received by the contractor within 30 days after the preliminary technical denial, a final technical denial is not issued and the case is re-reviewed. If the complete medical record (other than the properly completed attestation statement) is not received by the contractor within the 30 days, a final technical denial is issued and payment is permanently recouped.

(b) Except as otherwise noted in this subsection, when an inpatient admission is not medically necessary and an admission denial is issued, DHS or its contractor recoups all monies paid to the hospital for the admission and no money is payable for any of the services rendered. An exception is made in the event that the hospital originally placed the patient in an observation area on an outpatient basis and the hospital submits a revised claim solely

for medically necessary outpatient services. When a technical denial becomes final, DHS or its contractor recoups all monies paid to the hospital for the admission, and no money is payable for any of the services rendered.

§41.109. DRG Changes and Adjustments. If a hospital fails to substantiate the critical elements of principal and secondary diagnoses or procedures in the medical record, or has not sequenced them correctly, DHS or its contractor changes or deletes those elements. If the changes cause the DRG to be reassigned, DHS or its contractor adjusts the payment to the hospital.
§41.110. Appeals Requirements Under TMRP and Hospital Notification. Hospitals may appeal adverse decisions made by DHS or its contractors under the TMRP. Appeal procedures and requirements are as follows.

(1) Appeals of admission denials or DRG changes.

(A) If a hospital is dissatisfied with a reviewing contractor's original medical necessity decision or DRG change, the hospital may submit to the contractor a written request for appeal. The request must include a copy of the complete medical record and a properly completed physician attestation statement. The hospital must ensure that the contractor receives this request within 180 days of the date on the remittance and status report (RA) documenting the denial of or reduction of payment of the claim(s). After receiving the request the contractor considers the case, renders a decision, and notifies the hospital in writing. The contractor also notifies the hospital that the hospital has the right to appeal to DHS if dissatisfied with the decision.

(B) If, after filing a request for appeal, a hospital is dissatisfied with the contractor's decision on the appeal, the hospital may appeal the contractor's decision to DHS. This appeal must be in writing and received by the DHS Hearings Division no later than 15 days from the date of the hospital receipt of the contractor's written notification about the decision on the first appeal. The appeal to DHS must include the complete medical record, including a properly completed attestation statement and the original, signed, properly completed, and notarized affidavit in the format provided by the DHS contractor, for the hospital to certify the record as a business record. Appeals of medical necessity decisions or DRG changes are sent to the DHS Hearing Division, and are handled as follows.

(i) DHS staff conduct an informal desk review, and a DHS physician renders an appeal decision and notifies the hospital in writing. DHS renders this medical necessity or DRG change decision only if an appeal meets the criteria specified in subparagraph (B) of this paragraph.

(ii) If a hospital is dissatisfied with the decision in the informal desk review, the hospital may request a formal appeal hearing. The formal appeal must be submitted in writing and must be received by the DHS Hearings Division no later than 15 days from the hospital's date of receipt of the informal desk review decision or from the hospital's date of receipt of notification that no new decision will be rendered.

(2) Appeals of technical denials.

(A) A hospital may not appeal a technical denial to the contractor who issued the technical denial.

(B) A hospital may appeal a technical denial to DHS, if the hospital determines that the denial is incorrect or that the contractor failed to provide proper notification of the denial. The hospital must submit to the DHS Hearings Division a written appeal request specifying why the denial is deemed incorrect. The hospital should submit any documentation the hospital considers necessary. Hospital staff must ensure that the appeals of technical denials are received by the DHS Hearings Division no later than 15 days from the hospital's date of receipt of the contractor's final technical denial notice.

(C) If the appeal meets the criteria specified in subparagraph (B) of this paragraph, DHS renders a decision on the contractor's technical denial decision. If DHS determines that the technical denial is correct, the decision of the contractor is upheld by DHS. If DHS determines that the contractor's decision is incorrect, DHS notifies the hospital that the technical denial has been overturned and that the complete medical record has been sent to the contractor for a medical necessity and DRG review decision if this has not yet been done. The contractor then performs a medical necessity and DRG review and notifies the hospital of its decision(s), which can be appealed under the provisions of §41.110(1)(B) of this title (relating to Appeals Requirements under TMRP and Hospital Notification).

(D) If the hospital determines that DHS has rendered an incorrect decision concerning the technical denial appeal, the hospital may request a formal contract appeal as described in paragraph (1)(B)(ii) of this section.

§41.111. Sanctions Under the TMRP. DHS may impose administrative sanctions against hospitals or physicians under the TMRP, as described in §79, Subchapter U of this title (relating to Fraud or Abuse Involving Medical Providers).

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 March 14, 1988.

TRD-8802624 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: May 1, 1988

For further information, please call: (512) 450-3655.

Health Insuring Agent

• 40 TAC §41.201

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

§41.201. Activities of Health Insuring Agent. The health insuring agent must [shall] continue utilization review activities according to [in accordance with] procedures established under the Texas Medical Review Program (TMRP) and under the utilization review provisions of the agent's contract with DHS [and in effect on August 31, 1975]. These [Such] procedures and any revisions to them must [thereto shall] be incorporated in a provider procedures manual [utilization review manuals which shall be] implemented by the health insuring agent. After their development, but before their implementation, this manual and subsequent revisions must [Such manuals, as developed, shall] be promptly transmitted to DHS. [the Texas Department of Human Services and shall be] Implementation is subject to DHS approval [disapproval by the Texas Department of Human Services]. [When developed, the utilization review manuals and revisions shall become a part of the contracts between the health insuring agent and the Texas Department of Human Services.]

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 March 14, 1988.

TRD-8802625 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: May 1, 1988

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

Support Documents

• 40 TAC §41.9801

The repeal 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.

§41.9801. Texas Admissions and Review Program.

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 March 14, 1988.

TRD-8802626 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: May 1, 1988

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

Chapter 43. Utilization Control Health Care Standards

• 40 TAC §43.31

The Texas Department of Human Services (DHS) proposes an amendment to §43.31, concerning ongoing review. The purposes of the amendment are to include appropriate references to Texas Medical Review Program (TMRP) review data and department contractors, and to delete a reference to the medical evaluation section, which no longer exists.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the section.

Mr. Packard has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clarification of the department's existing inpatient hospital utilization review program, also known as the TMRP. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-626, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

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

§43.31. Ongoing Review. An integral part of the ongoing review of the utilization of health care and services under the state medical assistance plans [will be] the development of standards for the care and services provided. These [Those] standards are [will be] primarily derived from recorded patterns of care, geographic and peer comparisons, [and] medical necessity, and TMRP review data. [However,] An additional source for identifying possible additions or revisions to standards is [will be] medical care evaluation (MCE) studies that must be [will be mandatorily] conducted by participating institutions or by the department's contractors or both. Accordingly, while [in the process of] reviewing existing standards of health care, the department or its contractors or both [medical evaluation section will] recommend retention, revision, addition, or [and] deletion of the [those]

standards, with the goal of maintaining patient care of consistently high quality [patient care] and effective and efficient use of services. When exceptions occur that seem to violate [to] professionally recognized standards of health care [occur], these [those] exceptions are [will be] evaluated to determine potentially improper utilization [for the possibility of the need to rectify misutilization practices] or the need to update the standards in keeping with developments in the delivery of health care [and] services.

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 March 14, 1988.

TRD-8802627

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: May 1, 1988

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



Adopted Sections

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

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

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 21. Practice and Procedure

Pleadings

• 16 TAC §21.65

The Public Utility Commission of Texas adopts an amendment to §21.65, without changes to the proposed text published in the December 4, 1987, issue of the *Texas Register* (12 TexReg 4513).

The commission is required to establish the procedures and time deadlines reflected in this section by House Bill 5.

This section requires an applicant for a permit to be notified regarding the completeness of its application within 45 days and establishes an appellate process in the event the requisite notice is not given.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 11, 1988.

TRD-8802629 Phillip A. Holder
Secretary
Public Utility Commission
of Texas

Effective date: April 4, 1988

Proposal publication date: December 4, 1987

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

Prehearing Proceedings

• 16 TAC §21.86

The Public Utility Commission of Texas adopts new §21.86, without changes to the proposed text published in the December 4, 1987, issue of the *Texas Register* (12 TexReg 4514).

The commission is required to establish the appellate process reflected in this section by House Bill 5.

This section specifically enables an applicant for a permit to appeal the failure to rule upon such an application in a timely manner to the commissioners.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and in administering the provisions of this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 11, 1988.

TRD-8802628 Phillip A. Holder
Secretary
Public Utility Commission
of Texas

Effective date: April 4, 1988

Proposal publication date: December 4, 1987

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

Certification

• 16 TAC §23.31

The Public Utility Commission of Texas adopts an amendment to §23.31, without changes to the proposed text published in the December 4, 1987, issue of the *Texas Register* (12 TexReg 4516).

The commission is required to establish the time deadline reflected in this section by House Bill 5.

This section establishes a one-year time frame within which a decision either granting or denying a certificate of convenience and necessity to an certificated entity must be rendered.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 1446c, §6, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and in administering the provisions of this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 11, 1988.

TRW-8802631 Phillip A. Holder
Secretary
Public Utility Commission
of Texas

Effective date: April 4, 1988

Proposal publication date: December 4, 1987

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

• 16 TAC §23.32

The Public Utility Commission of Texas adopts an amendment to §23.32, without changes to the proposed text published in the December 4, 1987, issue of the *Texas Register* (12 TexReg 4516).

The commission is required to establish the time deadlines and appellate procedure reflected in this section by House Bill 5.

This section establishes time limits within which actions on permit applications must be taken and establishes an appellate process in the event the requisite action is not taken.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 11, 1988.

TRD-8802630 Phillip A. Holder
Secretary
Public Utility Commission
of Texas

Effective date: April 4, 1988

Proposal publication date: December 4, 1987

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

Quality of Service

• 16 TAC §23.61

The Public Utility Commission of Texas adopts an amendment to §23.61, with changes to the proposed text published in the December 11, 1987, issue of the *Texas Register* (12 TexReg 4618).

This section contains rules for telephone utilities to submit depreciation changes for approval by this commission.

This amendment represents a general cleanup of the existing section, and brings the section into compliance with recent changes in federal policy.

One comment sought a clarifying change in the title of paragraph 23.61(h)(1). The change is incorporated in the adopted version. The other set of comments sought to keep paragraph 23.61(h)(1) unchanged from the previous version. There were no comments on any of the other proposed changes. GTE Southwest, Inc., and Southwestern Bell Telephone Company commented against the amendment.

The previous version tacitly acknowledged preemption by the Federal Communications Commission (FCC). This preemption was overturned in a decision of the Supreme Court (Louisiana Public Service Commission v Federal Communications Commission, 106 Supreme Court 1890 (1986)).

The amendment is adopted under Texas Civil Statutes, Article 144C, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction

§23.61 Telephone Utilities

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

(h) Depreciation rates. Dominant carriers shall utilize depreciation rates approved by the commission for determination of depreciation expense and provision for accumulated depreciation (also referred to as depreciation reserve). For the purpose of this section, depreciation rates used prior to September 1, 1976, and those in effect on September 1, 1976, shall be deemed appropriate for use unless subsequently modified by the commission.

(1) Depreciation rate changes for telecommunications utilities subject to regulation of interstate depreciation rates by the Federal Communications Commission. Telecommunications utilities subject to interstate regulation by the Federal Communications Commission are also required to file for commission approval of intrastate depreciation rates. Filings should be made in the same format and on the same schedule as those required by the federal regulatory body, with the addition of proposed intrastate accrual changes calculated through use of jurisdictional separations procedures. Said utilities shall have the burden of proof to establish that intrastate depreciation rate changes are reasonable and in the public interest in proceedings before the commission.

(2) Depreciation rate changes for other dominant carriers. Any dominant carrier, except as covered in paragraph (1) of this subsection, requesting a change in depreciation rates must request commission approval and include the following in its request:

(A) for each property account or subaccount wherein a depreciation rate is proposed:

(i) the plant in service and the accumulated depreciation as of the effective date requested for the proposed depreciation rates;

(ii) (No change.)

(iii) detailed justification for the proposed changes;

(B) (No change.)

(C) the change in annual depreciation expense that would result from adoption of the proposed depreciation rates, both as a dollar amount and as a percentage of current total depreciation expense.

(3) Methods for figuring depreciation rates. Depreciation rates must be based on reasonable life and salvage estimates, and must use a straight line method, such as average service life, vintage group, or equal life group. Such methods may incorporate the remaining life technique. The commission specifically reserves for consideration in each case selection of appropriate methods for life and salvage estimates.

(4) Burden of proof. A dominant carrier shall have the burden of proof to show that depreciation or amortization expense is reasonable, necessary, and in the public interest. The dominant carrier shall also be required to show that depreciation rate changes were timely requested in accordance with prudent management practices. The burden of proof shall not be satisfied solely by demonstrating that the depreciation rates or amortization periods utilized were approved. If the carrier fails to meet this burden, the commission may deny as a cost of service that depreciation or amortization expense.

(5) Interim booking. Unless ordered otherwise by the commission or any examiner, a dominant carrier may, at its option, book depreciation and amortization expense on an interim basis based on proposed depreciation and amortization expense on an interim basis based on proposed depreciation rates from the month of filing until interim or final action by an examiner or the commission. Such interim booking must be revised using the finally approved depreciation rates and records must be maintained showing the interim booking and the adjustments, if any, after a final order is entered.

(6) Special amortization. Where all or a substantial portion of a property account or subaccount is retired earlier than anticipated and the reserve for that account is less than the amount to be retired less salvage, or in other instances where an amortization is appropriate, special amortization may be requested.

(A) If the amortization period is two years or less and the annual amount is less than 2.0% of annual revenues, the dominant carrier shall so advise the commission. No commission approval is necessary. However, the commission may review the appropriateness of said amortization during rate cases.

(B) If the amortization period is more than two years or the amount is more than 2.0% of annual revenues, commission approval is required.

(7) New depreciation rates. When a dominant carrier determines a need to establish a new depreciation rate for a new class of property, it may adopt a depreciation rate approved by the commission for another similar dominant carrier for the same property class if the estimated lives and salvage are expected to be similar. The dominant carrier must notify the commission of said action but no commission approval is necessary. The commission may review said rate and make changes upon appropriation motion or in subsequent rate or depreciation proceedings.

(i)-(1) (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 March 10, 1988.

TRD-8802589

Phillip A. Holder
Secretary
Public Utility Commission
of Texas

Effective date: April 1, 1988

Proposal publication date: December 11, 1987

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

TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 291. All Classes of Pharmacy

Nuclear Pharmacy (Class B)

• 22 TAC §§291.51-291.53

The Texas State Board of Pharmacy adopts amendments to §§291.51-291.53. Section 291.51 and §291.53 are adopted with changes to the proposed text published in the September 29, 1987, issue of the *Texas Register* (12 TexReg 3465). The other sections are adopted without changes and will not be republished.

Compliance with these sections further ensures the safety, health, and welfare of the public by clarifying the procedures contained under the personnel and operational stan-

dards of a Class B (nuclear) pharmacy.

These amendments are nonsubstantive clarification changes.

The following comments were received: An increase in costs to hospital and patients would cause hospitals to eliminate nuclear medicine services; cannot find any safety problem or any problems with protection of public health as the service is currently delivered; question whether the stated public benefit of making this change in the sections will outweigh the resulting loss of access to services in rural communities.

The Texas Department of Health, Bureau of Radiation Control, commented for the amendments. Anson General Hospital, Ballinger Memorial Hospital, Childress General Hospital, Graham General Hospital, Harris Methodist Health Services, Johns Community Hospital, St. Edwards Hospital, Cameron, Seymour Hospital, Sheppard Memorial Hospital, Stamford Memorial Hospital, Teague General Hospital, Georgetown Hospital, The Waco Radiological Clinic, Texas Hospital Association, Numed Diagnostic Imaging, Senator Ray Farabee, Colonial Hospital, Society of Nuclear Medicine, Inc., Metroplex Hospital, Rockdale Hospital Authority, Harris Methodist Mexia, West Community Hospital, Lakeland Medical Center, Hill Regional Hospital, Coryell Memorial Hospital, and Radiology Associates, commented against the amendments.

Agency agreed that the objections merited further study; therefore changes are made to the proposal to delete all references to mobile nuclear services.

The amendments are adopted under Texas Civil Statutes, Article 4542a-1, §29, which provide the Texas State Board of Pharmacy with the authority to establish by rule the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy shall meet to qualify for the licensing or relicensing as a pharmacy in each classification.

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

Authorized User—Any individual named on a Texas radioactive material license, issued by the Texas Department of Health, Bureau of Radiation Control.

Nuclear Pharmacy—A pharmacy that has been issued by a Class B pharmacy license by the board, which receives, prepares, possesses, uses, transfers, owns, acquires, or distributes radioactive material (drugs and devices) under authorization of a Texas radioactive material license as provided in Texas Regulations for Control of Radiation, Part 41, Texas Department of Health.

§291.53. Operational Standards.

(a) Licensing requirements

(1) (No change.)

(2) Permits. It is unlawful for a person to provide radioactive drug services unless such provision is performed by a person licensed to act as a qualified pharmacist, as defined by the board, or is a person acting under the direct supervision of a qualified pharmacist acting in accord-

ance with the Act and its rules, and the regulations of the Texas Department of Health, Bureau of Radiation Control.

(3) Exceptions. This section does not apply to:

(A) a licensed practitioner or his or her designated agent for administration to his or her patient, provided no person may receive, possess, use, transfer, own, acquire, or dispose of radioactive drugs except as authorized in a specific or a general license as provided in Texas Regulations for Control of Radiation, Part 41, Texas Department of Health, or the Act;

(B) institutions and/or facilities with nuclear medicine services operated by practitioners and who are licensed by the Texas Department of Health, Bureau of Radiation Control, to prescribe, administer, and dispense radioactive materials (drugs and/or devices).

(4) A nuclear pharmacy may be managed only by a qualified pharmacist acting in the capacity of a pharmacist-in-charge. All supportive personnel performing tests, preparations, formulations, and distributions of radioactive drugs shall be under the direct supervision of a qualified pharmacist. A qualified pharmacist is responsible for all operations of the licensed facility and shall give final approval of all dispensing activities before distribution of the radioactive drug in fulfillment of the medication order.

(b) Environment.

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

(5) Construction. The facility shall be so constructed as to prevent radioactive drugs or materials from escaping into nonrestricted areas either by air exhaustion or liquid or solid waste in excess of quantities permitted in Texas Regulations for Control of Radiation, Part 21, Texas Department of Health.

(c) (No change.)

(d) Library. A nuclear pharmacy shall maintain a reference library which shall include the following:

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

(3) Texas Regulations for Control of Radiation;

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 7, 1988.

TRD-8802555

Fred S. Brinkley
Executive Director
Texas State Board of
Pharmacy

Effective date: April 1, 1988

Proposal publication date: September 29, 1987

For further information, please call: (512) 832-0661

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Clinical Health Services

• 25 TAC §1.91

The Texas Department of Health adopts an amendment to §1.91, with changes to the proposed text published in the January 5, 1988, issue of the *Texas Register* (13 TexReg 96).

The amendment provides an objective standard (the current federal poverty income guidelines) upon which to base the calculation of fees for the provision of clinical health services. In addition, the amendment permits the timely adjustment of its income guidelines as needed to conform to changes in the federal guidelines without further rule changes. The department is authorized to charge fees to persons who receive public health services from the department or local health departments which have contracts with the department. Section 1.91 revises the schedule of fees for clinical health services and permits the commissioner to adjust the income guidelines upon which the fees are based as needed to conform to changes in the federal guidelines without further rule changes.

One individual commented on the clinical health services amendments to request a change in the method by which the adjustment is made in the department's income guidelines. The commentor suggested that it is more appropriate to specify that the commissioner make the adjustment rather than simply the department. The department agrees, and the text has been modified accordingly. Concerning the schedule of fees for clinical health services, the board of health clarified the figures for the percent of poverty income.

The amendment is adopted under Texas Civil Statutes, Article 4414c, §2, which provides the Texas Board of Health with the authority to charge fees to persons who receive public health services from the department.

§1.91. Fees for Clinical Health Services.

(a) (No change.)

(b) Schedule of fees.

(1) The department shall base the calculation of fees upon the current federal poverty income guidelines. The Commissioner of Health shall adjust its income guidelines as needed to conform to changes in the federal guidelines as those changes occur. The current income guideline will be filed with this section in the Office of the Associate Commissioner for Community and Rural Health of the depart-

ment and available for public inspection during office hours. Income guideline adjustments will also be published in the Texas Register not later than 30 days after the date on which they have been adopted by the Commissioner of Health.

(2) The following Schedule of Fees lists the fees covering clinical health services provided at public health clinics. Local health department contractors may use the following schedule or their own schedule. Public health regions will use the following schedule.

**Schedule of Fees for
Clinical Health Services**

<u>1/4 Poverty Income</u>	<u>Family Size</u>	<u>Charge/ Visit</u>
0- 99	1-8	\$ 00.00
100-199	1-8	\$ 4.00
200+	1-8	\$ 15.00

(3) The clinic will determine if a person is able to pay in accordance with the appropriate schedule; however, the clinic will not deny services because of a person's inability to pay.

(4) Patients or clients whose incomes are above the 200%+ poverty level will be referred to the private sector for care unless extenuating circumstances exist. Such circumstances include unusually high medical expenses or the unavailability of specific care needed. Such exceptions may receive care at the public health clinic in accordance with the schedule of fees.

(5) A clinic may not charge a fee which exceeds the costs to the clinic of providing the service.

(6) The clinic shall make a reasonable effort to collect the fees but the clinic may waive collection if the administrative cost of collection will exceed the fee to be collected.

(7) The clinics covered by this section are those operated by public health regions and local health departments.

(8) Fees collected by local health department clinics shall be retained by those departments and be accounted for and expended under the rules relating to program income.

(9) Fees collected by public health region clinics shall be deposited in the state treasury to a special fee fund to be entitled the Texas Department of health services fee fund.

(c) (No Change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 11, 1988.

TRD-8802618

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

Effective date: April 1, 1988

Proposal publication date: January 5, 1988

For further information, please call: (512) 458-7700.

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Chapter 37. Maternal and Child Health Services

Testing Newborn Children for Phenylketonuria, Other Heritable Diseases, and Hypothyroidism

• 25 TAC §§37.62-37.70

The Texas Department of Health adopts now §§37.62-37.70. Sections 37.63 and 37.65-37.68 are adopted with changes to the proposed text published in the January 5, 1988, issue of the *Texas Register* (13 TexReg 98). Sections 37.62, 37.64, 37.66 and 37.68-37.70 are adopted without changes and will not be republished.

In cooperation with the attending physician, and within the limit of the funds, services and facilities available, the new sections will enable the department to provide for the dietary and related needs of children with confirmed positive tests for heritable diseases or hypothyroidism. Also, since the Board of Health is authorized to charge fees to persons who receive public health services from the department, the sections will defray the cost to the taxpayers of the State of Texas of the provision of dietary supplement. The new sections establish as such a service the provision of a dietary supplement for eligible individuals with a confirmed diagnosis of phenylketonuria or homocystinuria at a reduced cost or no cost; set certain eligibility standards; provide for financial participation by the families of eligible children in the form of a sliding fee schedule based upon family income; revise the schedule of fees for dietary supplement based upon the federal poverty income guidelines; permit the commissioner of health to adjust the income guidelines upon which the fees are based as needed to conform to changes in the federal guidelines; and institute a pilot program of limited dental services for certain individuals with a confirmed diagnosis of classic phenylketonuria or the hyperphenylalanine variant to be provided through existing delivery systems of the department's Bureau of Dental and Chronic Disease Prevention.

Comments concerning the proposed sections are as follows. Concerning §37.63, a commenter suggested that the department add a definition concerning the commissioner of health. The department agrees and has added the definition.

Concerning §37.65, the department's Bureau of Dental and Chronic Disease Prevention suggested that it could assist certain individuals who have phenylketonuria (PKU) or the hyperphenylalanine variant, who are on pre-

scribed dietary supplement, and who are under the age of 19 years. The bureau could perform this function by offering a pilot program to provide dental sealants through the Dental Care Prevention and Administration Program's currently existing delivery systems. Because PKU patients require diets with high carbohydrate content and are therefore susceptible to dental caries, the department has accepted this suggestion by adding appropriate provisions to §37.65 concerning a pilot program. The application of pit and fissure sealants will result in no fiscal implications to the department; however, such application will prevent the formation of dental caries in individuals with PKU, thereby obviating the need for more expensive dental treatment.

Concerning §37.67, a commenter requested a change in the method by which the adjustment is made in the department's income guidelines. The commenter suggested that it is more appropriate to specify that the commissioner make the adjustment rather than the department. The department agrees and has modified the text accordingly.

Concerning §37.67, a commenter requested that the federal poverty guidelines be relaxed to reflect disposable income rather than gross income. The commenter expressed the concern that parents might fail to provide the necessary dietary supplement, thereby risking the development of mental retardation in their children at greater cost to the state. While the department is sensitive to the burden which co-payment will place upon many families, the department has not accepted this suggestion because the department believes that the parents and not the taxpayers should be responsible for the cost of the services.

Concerning §37.67, four individuals objected to the payment of the fees for the dietary supplement. The department believes that the parents and not the taxpayers should be responsible for the cost of the services.

Concerning §37.67, the Board of Health clarified the percent of poverty income in the family financial participation scale.

Concerning §37.68, a commenter representing the parents of six phenylketonuric children expressed concern about the problems in securing reimbursement from insurance companies for the expenditures necessary to provide the special dietary supplement. The commenter also believes that the state should continue to take full responsibility for the provision of the dietary supplement. The department does not accept the premise that the state should take full responsibility for the provision of dietary supplement; however, the department does accept the suggestion that sources of third party reimbursement be explored and developed.

The new sections are adopted under Texas Civil Statutes, Articles 4414b, §1.05, which provide the Texas Board of Health with the authority to adopt rules to implement its duties; Article 4414c, §2, which provide the Texas Board of Health with the authority to charge fees to persons who receive public health services from the department; Article 4447e, §1, which provide the Texas Board of Health with the authority to adopt rules relating to phenylketonuria and other heritable diseases; Article 4447e, §2, which provide the

Texas Board of Health with the authority to adopt rules relating to hypothyroidism; and the current General Appropriations Act, Chapter 78, 70th Legislature, Second Called Session, 1987.

§37.63. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Board—The Texas Board of Health.

Bona fide resident—An individual who:

(A) is physically present within the geographic boundaries of the state of Texas; has an intent to remain within the state, either permanently or for an indefinite period; actually maintains an abode (e.g., house, apartment, etc., but not merely a post office box) within this state; and

(B) does not claim residency in any other state or country; is a minor child, residing in Texas, of a bona fide resident; is a legal dependent spouse, residing in Texas, of a bona fide resident; is an adult residing in Texas and his/her legal guardian is a bona fide resident.

Commissioner—The Commissioner of Health.

Department—The Texas Department of Health.

Homocystinuria—An inherited condition, which if not treated, may cause mental retardation, blood clots, vision problems, skeletal abnormalities, and possibly death.

Phenylketonuria or PKU—An inherited condition, which if not treated may cause severe mental retardation.

Program—The Newborn Screening Program of the department.

Program coordinator—The individual who acts as administrator of program.

Services—Those benefits identified by the board in §37.64 of this title (relating to Scope of Services).

§37.65. Eligibility Requirements.

(a) Except as otherwise provided for in these sections, to be eligible to receive program services, an individual must:

(1) have a confirmed diagnosis of a heritable disease or hypothyroidism;

(2) be a bona fide resident of the state;

(3) remain in the state of Texas during the receipt of special services;

(4) have a family income that is within the financial guidelines set by these sections;

(5) if required, tender financial participation payments in a timely manner;

(6) upon request from the program coordinator, provide updated medical, financial, and residency information and/or documentation; and

(7) agree to abide by the requirements in §§37.51-37.71 of this title (relating to Testing Newborn Children for

Phenylketonuria, Other Heritable Diseases, and Hypothyroidism).

(b) The department may undertake a pilot project to provide certain preventative oral health services to eligible individuals through the Dental Care Prevention and Administration Program of the Bureau of Dental and Chronic Disease Prevention.

(1) To be eligible to receive preventative health services under this section, an individual must:

(A) have a confirmed diagnosis of classic phenylketonuria (PKU) or a hyperphenylalanine variant;

(B) be receiving the prescribed dietary supplement for PKU;

(C) be under the age of 19 years; and

(D) be a bona fide resident of the state.

(2) The scope of the services is as follows.

(A) Under this subsection, the department may provide, at no cost to the eligible individual, preventative oral health services, including the application of pit and fissure sealants in the first and second permanent molars and oral health home care instructions.

(B) The department may not provide for the transportation of the eligible individual to the dental treatment site.

(3) The procedure for providing services is as follows.

(A) Authorized preventative oral health services will be provided to eligible individuals through the dental director in each of the department's public health regions by any one or a combination of the following entities:

- (i) public health clinics;
- (ii) mobile clinics and portable units;
- (iii) private providers.

(B) The department will provide each eligible individual with a list of the nearest department of public health regional office.

(C) To receive authorized preventative oral health services, each eligible individual is responsible for:

(i) contacting the nearest department of public health regional office to obtain information about the location of

the nearest dental treatment facility operated by the department;

(ii) obtaining appropriate authorization prior to seeking the authorized preventative oral health services; and

(iii) obtaining appropriate transportation to the established treatment site.

(4) The pilot program will begin on the effective date of these sections or April 1, 1988, whichever is later. The pilot program will end on August 31, 1989.

§37.66. Application Process.

(a) To be considered for program services, a complete application for admission to the program must be filed with the program coordinator by mailing to the following address: Coordinator, Newborn Screening Program, Bureau of Maternal and Child Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(b) The application must be signed by one of the following as appropriate:

(1) the individual seeking services;

(2) the parent(s), managing conservator(s) or guardian of a minor; or

(3) the guardian of an adult under a temporary, limited, or general guardianship.

(c) An application signed with a mark must be attested to before a notary public.

(d) A complete application for program services shall consist of the following:

(1) a properly completed and signed application form;

(2) a statement from the individual's attending physician that the individual has a confirmed diagnosis of a heritable disease or hypothyroidism and an order from the physician authorizing the provision of services;

(3) a social security card (or an allowable substitute) as follows:

(A) a copy of the individual's personal social security card issued by the Social Security Administration;

(B) a copy of a fully executed application for a replacement social security card;

(C) a copy of an application for a social security number, if the individual never had a number issued previously;

(4) a statement from the individual or, if the individual is a minor, from the individual's parent, managing conservator, or guardian that the individual is a bona fide resident of the state and if requested by

the program coordinator, documentation of residency status;

(5) a statement disclosing the individual's gross income on the latest Form 1040 filed with the Internal Revenue Services or, if the individual is a minor, the gross income of the individual's parent(s), managing conservator(s), guardian or other person with the duty to support the individual and if requested by the program coordinator, documentation of income.

(e) An application shall be deemed incomplete for any one of the following reasons:

(1) failure to provide information requested in the application form;

(2) lack of supporting documents, including the statement of medical eligibility and an order from the attending physician;

(3) failure to provide documentary evidence requested by the program coordinator, including documentation to verify residency or financial data; or

(4) lack of, or improper signatures.

(f) An application will be reviewed by the program coordinator and will be:

(1) denied if eligibility requirements are not met;

(2) returned, if incomplete, with the deficiencies noted to the individual or if the individual is a minor, to the individual's parent(s), managing conservator(s), or guardian as is appropriate, for completion and resubmission; or

(3) approved if all criteria are met.

(g) The program coordinator will notify the individual of the eligibility decision in writing within 30 days from the date on which a complete application is received. If the eligibility decision is in favor of the individual, in the notice letter, the program coordinator will specify the amount of financial participation that the individual or if the individual is a minor, the individual's parent(s), managing conservator(s), or guardian will be required to make for program services and provide additional detailed information concerning the services and financial participation procedures.

(h) An individual's date of eligibility will be considered to be the date on which the program coordinator determines that the application is substantially complete.

§37.67. Calculation of Financial Participation Obligation.

(a) The program coordinator shall base the calculation of an individual's financial participation obligation upon the current federal poverty income guidelines. The commissioner shall adjust the income

guidelines as needed to conform to changes in the federal guidelines as those changes occur. The current income guideline will be filed with these sections in the program office and shall be available for public inspection during regular office hours. Income guideline adjustments will also be published in the *Texas Register* not later than 30 days after the date on which they have been adopted by the program coordinator.

(b) The following financial participation scale set out following lists the co-payment obligation for program services.

FAMILY FINANCIAL PARTICIPATION SCALE		
% Poverty Income	Family Size	% Co-Payment
99	1 - 8	00
100 - 149	1 - 8	25
150 - 199	1 - 8	50
200 - 249	1 - 8	75
250+	1 - 8	100

(c) The program coordinator will determine if an individual, or if the individual is a minor, the individual's parent(s), managing conservator(s), or guardian is able to pay in accordance with the schedule for financial participation; however, the program coordinator will not deny services because of an individual's inability to pay.

(d) In cases in which the income is greater than 250% of the federal poverty income guideline, the individual, or if the individual is a minor, the individual's parent(s), managing conservator(s), or guardian will be required to pay the entire cost of program services unless extenuating circumstances exist. Such circumstances include, but are not limited to unusually high medical expenses or the unavailability of specific care needed. Individuals granted such exceptions may receive services in accordance with the financial participation schedule and the program sections.

(e) The program coordinator may not require a financial participation which exceeds the cost to the program of providing the service.

§37.68. Denial of Application; Modification, Suspension, or Termination of Program Services.

(a) An individual applying for or receiving services from the program may have his/her application denied or his/her benefits modified, suspended, or terminated for any of the following reasons.

(1) Services will be denied, modified, suspended, or terminated if:

(A) it is determined that the individual does not have a confirmed diagnosis of a condition for which program services are available;

(B) the individual is not a bona fide resident of the state;

(C) the individual fails or refuses to provide the periodic information regarding residency and financial status when requested by the program coordinator under §37.65 of this title (relating to Eligibility Requirements);

(D) the individual refuses to reimburse the department after being notified of third-party benefits, financial participation obligations, or other sources of payment for program services;

(E) the individual notifies the program in writing that he or she no longer wants to claim program benefits. Such a statement does not free the individual, or persons with legal obligation to support the individual, of any financial participation obligation owing to the program at the time of withdrawal;

(F) the individual dies.

(2) Services may be denied, modified, suspended, or terminated if:

(A) the individual submits an application form or any document required in support of the application or continued participation in the program, which contains a misstatement of fact which is material to the program coordinator's determination that the individual is eligible for program services; or

(B) program funds are curtailed.

(b) Procedure for denial, modification, suspension, or termination do not apply to adjustments made by the program in poverty income guidelines to conform to federal poverty income guidelines or to adjustments in the type and amount of program services available when such adjustments are necessary to conform to budgetary limitations as provided in §37.64 of this title (relating to Scope of Services).

(1) An individual applying for program services will be notified in writing if their application has been denied. The notification will outline the reasons for denial.

(2) An individual receiving program services will be notified if the services are to be modified, suspended, or terminated. Notification will be by certified mail to the most recent address known to the program.

(3) Within 30 days after receiving the previously mentioned notice, the individual or the individual's representative may appeal the program's decision to deny, suspend, modify, or terminate the services to the department and request an administrative hearing before the department. Appeals and requests for hearings must be in writing and sent to the following address by certified mail: coordinator, Newborn

Screening Program, Bureau of Maternal and Child Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3190. Failure to respond will be deemed a waiver of the appeal and of the opportunity for a hearing.

(4) Appeals and administrative hearings will be conducted in accordance with the department's formal hearing sections, §§1.21-1.32 of this title (relating to Formal Hearing 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 March 11, 1988.

TRD-8802615 Robert A. MacLean
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: April 1, 1988

Proposal publication date: January 5, 1988

For further information, please call: (512) 458-7700.

Chronically Ill and Disabled Children's Services

• 25 TAC §37.95, §37.99

The Texas Department of Health adopts an amendment to §37.95 and new §37.99, with changes to the proposed text published in the January 12, 1988, issue of the *Texas Register* (13 TexReg 227).

The department changed the name of the program from Crippled Children's Services Program to Chronically Ill and Disabled Children's Services Program and as a result the undesignated head and the sections are adopted with changes to reflect the program's name change.

The amendment and new section clarify the program rules and provide guidelines and procedures for approval and monitoring of cardiac centers. The sections provide for monitoring of cardiac centers through utilization review and quality assurance inspections through the Chronically Ill and Disabled Children's (CIDC) Services Program.

All the comments voiced concern regarding the leniency provided by the exception to the catchment area criteria for geographic need, which provides consideration for a center if the area has 12,000 live births and is a distance of more than 75 miles from another approved center. The department disagrees with this concern because the geographic need guidelines allow an area to be considered for a center; however, the guidelines for all other aspects for approval must be met by that center.

One commentor expressed concern that the number of surgical cases to be performed at a center is lower than the American Academy of Pediatrics guidelines. The department disagrees with this concern. The academy guidelines were adapted by the department's Cardiovascular Advisory Committee to allow a sufficient number of cardiac centers to meet

the needs of the children in the State of Texas.

The following individuals submitted comments which expressed concerns for the adoption of the sections: John L. Mims, Administrator McAllen Medical Center 301 West Expressway 83 McAllen, Texas 78501; James A. Duff, M.D., Cardio-Thoracic Surgical Associates, P.O. Box 30104, Spohn Tower, 613 Elizabeth, Suite 409, Corpus Christi, Texas 78404; James W. Simpson, M.D., South Texas Pediatric Cardiology Associates, P.O. Box 331240, Corpus Christi, Texas 78404-1240; Joel T. Allison, FACHE Chief Executive Officer, Driscoll Foundation Children's Hospital, P.O. Box 6530, Corpus Christi, Texas 78411. None of the commenters were for or against the adoption of the proposed amendments and new section in their entirety.

The amendment and new section are adopted under Texas Civil Statutes, Article 4419c, §8, which provide the Texas Board of Health with the authority to adopt rules concerning the Chronically Ill and Disabled Children's Services Program.

§37.95. *Development and Improvement of Standards and Services.*

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

(c) Quality assurance.

(1) The program may establish a quality assurance unit to review the delivery of services at all levels, that is, central office, regional and local health departments, and direct service providers. The unit may provide professional support as well as reviewing service delivery components. It should also review consumer satisfaction.

(2) All cardiovascular centers and other providers of cardiovascular outreach services that are funded by or through the state will be subject to utilization review and quality assurance inspections. The department's Chronically Ill and Disabled Children's Services Bureau will perform the utilization review. The bureau's Cardiovascular Advisory Committee will perform the quality assurance inspections.
§37.99. *Guidelines for a Cardiac Center to be Approved Through the Chronically Ill and Disabled Children's Services (CIDC) Program.*

(a) Introduction. To assure that eligible children with cardiac conditions receive quality comprehensive services, the Texas Board of Health has adopted the guidelines in this section for cardiac diagnostic and treatment centers. The guidelines are based on guidelines concerning pediatric cardiology diagnostic and treatment centers, which were developed by the American Academy of Pediatrics section on cardiology which were published in the Academy's publication entitled *Pediatrics*, Volume 62, Number 2, August, 1978. The academy's guidelines have been recognized and accepted by national maternal and child health/crippled children's services (MCH/CC) programs and the Texas Board of Health.

(b) Approval as a CIDC cardiovascular diagnostic and treatment center.

(1) Initial or continuing approval process.

(A) Centers making new application for approval will be reviewed by the department's CIDC Cardiovascular Advisory Committee according to the guidelines in this section, with particular attention paid to quantitative data such as number of live births required in the center's catchment area, number of staff, number of procedures, caseload numbers, number of catheterizations (excluding electrophysiologic studies) that go to surgery, etc. Also, the centers must meet the requirements in the guidelines in this section concerning administration and facilities. The committee will emphasize geographic need in the approval of new centers.

(B) Prior to initial approval, all centers are subject to a site visit in which the cardiac centers and their quality of care are assessed according to the guidelines in this section. If a center is approved, the approval will be for a period of three years, subject to a review of the quality of care at that center based on review of site visit reports and morbidity/mortality data provided by the CIDC Cardiovascular Advisory Committee. Approval periods may be less than three years if specified by the committee and approved by the Texas Board of Health.

(C) At the time of the review, a written invitation shall be sent to the administrator of the center to attend and/or present information required in the review process. Recommendations from the CIDC Cardiovascular Advisory Committee for initial approval, continuing approval, or disapproval shall be sent by the chief, Bureau of Chronically Ill and Disabled Children's Services, to the Texas Board of Health for its consideration.

(2) Calculation of the number of statewide centers. It is desirable that on the average no more than one center per 24,000 live births for the State of Texas be approved at any one time, including those centers with approval based on geographic need as provided in paragraph (3) of this subsection. For the approximately 300,000 live births in Texas in 1985, this means that only 12 centers could be approved until there are 312,000 live births in Texas, when a 13th center could be approved, based on the guidelines in this section.

(3) Catchment area criteria/geographic need.

(A) As a general rule, in order to be approved, a cardiac center should meet the overall criteria set out in these guidelines in this section and provide pedi-

atric cardiology care to a geographic area with at least 30,000 live births per year.

(B) Exception to the catchment area criteria may be made if a center meets a geographic need. Geographic need for a cardiovascular center shall be defined as having greater than 12,000 live births in the proposed catchment area and being approximately 75 miles or more from another approved center.

(c) Pediatric cardiology diagnostic and treatment team.

(1) Pediatric cardiology staff. A CIDC approved center should have a minimum of two CIDC approved pediatric cardiologists. This means being board certified in pediatrics and pediatric cardiology. The suggested ratio for a pediatric cardiologist is 1/50-75 cardiac catheterizations or 1/1,000 patient visits per year.

(2) Pediatric cardiac surgical staff. A CIDC approved center should have at least two CIDC approved cardiac surgeons who are board certified in thoracic surgery. One surgeon should have experience and a major interest in and the primary responsibility for the surgery of congenital heart disease. The cardiac surgeon should be able to direct a surgical team in the performance of all current cardiac surgical procedures applicable to the age group cared for, although special procedures in limited volume may be the province of a single member of the team.

(3) Other pediatric staff. A CIDC approved cardiac center has available CIDC approved physicians in the following specializations for consultation: pediatric hematology; nephrology; neurology; neonatology; pulmonary; endocrinology; pediatric surgery; pediatric intensivist care; urology; radiology (should be board certified, but CIDC approval is not required); anesthesiology (should be board certified, but CIDC approval is not required); and pathology (should be board certified, but CIDC approval is not required).

(4) Nursing staff. A CIDC approved cardiac center has nurses who have been specially trained in the management of specific age groups with heart disease. They include surgical, intensive care, and unit floor nurses. Frequent reassignment of nurses outside their area of special training is discouraged. Basic nursing skills must include evaluation of cardiac output, blood pressure, pulse volume, pulse rate and rhythm, interpretation of ECG's and other monitoring devices, and management under direct physician supervision of preoperative and postoperative complications associated with heart diseases. A continuing inservice education program for nurses assigned to the cardiac center is required.

(5) Social work. A CIDC approved cardiac center should have available a master's level social worker for referrals

for family social assessments and for coordination of community resources.

(d) Administration/facilities.

(1) Administration. A hospital with a CIDC approved cardiac center must have trustees, an administration system, and a medical board. Each must have an understanding of the requirements for a high quality program. There should be assurance that necessary materials and professional resources are available and that excellence of performance can be maintained.

(2) Professional staff and support system. The cardiac center, directed by a CIDC approved pediatric cardiologist, shall assure that there is adequate in-hospital professional staff coverage at all times, that the hospital support systems and services are sufficiently integrated to manage medical and surgical emergencies, and that a physician member of the team familiar with the patient is available on site until the patient is stable.

(A) Inpatient services. Comprehensive specialized services for pediatric patients with heart disease must be provided in a children's hospital or in a pediatric cardiology department of a category C hospital designated in accordance with the national hospital categorization guidelines of the Joint Commission on the Accreditation of Hospitals. These hospitals should be capable of providing comprehensive diagnostic and therapeutic services of optimal quality, including cardiac surgery for children with all types of cardiovascular disease.

(B) Ambulatory services. There should be readily accessible pediatric cardiology ambulatory services available which are supervised by a pediatric cardiologist, and emergency service should be available on 24-hour call.

(C) Cardiac catheterization laboratory. The cardiac catheterization laboratory staff should be headed by a CIDC approved pediatric cardiologist. In addition to the cardiologist present at a catheterization, there should be a full time registered nurse with special training in cardiovascular techniques or in the intensive care of pediatric patients. Other staff should include two or more additional personnel which may include nurses, anesthesiologists, technicians, or individuals specially trained in operating monitoring and radiologic equipment. The catheterization equipment should meet the following requirements.

(i) A multi-channel recording apparatus with a continuous display and recording of intracardiac pressure, ECG's, and other selected physiologic variables should be available.

(ii) Equipment available to measure oxygen consumption and to de-

termine the cardiac output in patients of all ages, and densitometers and other equipment to detect shunts using indicator dilution or hydrogen electrode techniques should be available.

(iii) A hemoglobin-oxygen saturation analyzing technique, and equipment for laboratories that is periodically checked for accuracy, should be available. In addition, measurement of blood gases should be immediately available. The results of oxygen determinations should be immediately available while the catheter is in place. Laboratories in which infants are studied should be equipped with units requiring small samples of blood for analysis.

(iv) Radiologic equipment should include image intensification, x-ray apparatus capable of video and cine recording. Bi-plane imaging, either cine or serial large frame technique, is essential. Equipment that permits rapid injection of controlled amounts of radio opaque contrast materials should be made available.

(D) Resuscitation equipment. Patient support devices should include resuscitation equipment and supplies available at all times for immediate use in the laboratory. The equipment should be periodically checked for reliable performance and should include the following: a defibrillator; laryngoscopes and endotracheal tubes appropriate for all ages; an oxygen source; equipment for oxygen administration; an assisted respiratory ventilation; a suction device; emergency drugs; facilities for insertion of a transvenous pacemaker; a body temperature monitoring device; and a warming device for infants.

(E) Noninvasive procedures/equipment. An approved center must have available electrocardiography and echocardiography procedures used under the direction of the pediatric cardiologists. High quality two-dimensional and M-mode echo equipment, preferably with a doppler, should be available and in regular use. A technician capable of recording diagnostic quality studies on children and infants including newborn babies as part of the cardiac team is desirable.

(F) Operating room and surgical facilities. The cardiovascular operating room should be a part of the general surgical suite. The administration of the cardiac surgery operating rooms is assigned to a specialty nurse supervisor. Specific recommendations regarding equipment are outlined in the report of the Intersociety Commission for Heart Disease Resources, published in *Circulation*, Volume 52, November, 1975.

(G) Records management. An approved center must maintain a medical records systems permitting prompt re-

trieval of information. Medical records must be legible, accurately documented in a timely manner, and accessible to the site review team.

(H) Responsibility to the CIDC program. An approved center agrees to abide by the CIDC requirements in this section which includes, but are not limited to, utilizing all third party resources available to patients prior to requesting payment; accepting program payment as payment in full; submitting program required documentation; submitting an annual report due 30 days after the end of the state fiscal year (August 31).

(I) Rights of patients. An approved cardiac center is responsible for assuring that all members of the diagnostic and treatment team recognize the rights of eligible patients. The responsible physician is expected to inform parents or guardians or adult patients of the complete information concerning diagnosis, treatment and prognosis. He or she should provide opportunities for parents or guardians or adult patients to participate in discussion involving the patient's care and provide a written follow up plan for parents or guardians or adult patients and referring physicians. When appropriate, a referral to a CIDC approved physician in the child's home community should be made for the follow up care and emergencies.

(e) Caseloads. Although there may be a decline in the number of catheterizations being performed, generally, minimum caseloads are essential to stimulate and maintain quality of care. Without these minimum caseloads it is believed that the team that is responsible for the delivery of cardiac care to infants and children will not maintain their technical skills. CIDC approved cardiac centers should perform a minimum of 100-150 cardiac catheterizations per year when catheterizing only infants and children, or 350 cardiac catheterizations per year when serving both adults and pediatric patients, with at least 100 catheterizations performed on pediatric patients. The ratio of invasive studies to total surgical procedures will be considered in the overall assessment of the statistics, excluding electrophysiological studies. The center should perform at least 100 operations per year on pediatric patients, with at least 30% using extra-corporeal circulation.

(f) Continuing approval.

(1) The guidelines in this section for approval of a center for the cardiac care of children are intended to ensure that a very high quality of care is delivered. It is expected that a center meet a majority of the criteria set out in the guidelines in this section before making application for approval. The final decision by the Board of Health shall be made upon recommendation by CIDC Cardiovascular Advisory Committee members.

tee after it has carefully reviewed the documentation submitted and has been convinced that the applying center is capable of meeting these standards. Once the center has been approved, its ongoing approval will only depend on its demonstrated ability to continue to maintain the high standards expected. This ability will be verified by periodic site visits by a team made up of approved CIDC physicians, who may or may not be CIDC Cardiovascular Advisory Committee members.

(2) Continuation of centers (already approved) will be based on a qualitative and quantitative assessment. Quality will be assessed by annual reports, if possible, and on-site visits will be evaluated on the basis of the CIDC Cardiovascular Advisory Committee's expertise. The quality of care and services will be determined according to competency of personnel; adequacy of the facility; quality of diagnostic/therapeutic measures; and documentation of results of short and long term follow-up, patients outcomes, and mortality statistics for the previous year.

(3) The center will be required to generate documentation that it's program meets the statistical requirements in the guidelines in this section. This information must be available for review by the onsite review team.

(4) The CIDC Cardiovascular Advisory Committee will make site visits every three years to approved cardiac centers or more often if so specified.

(5) If a center is found to be deficient or have problems in certain areas, the committee will make a recommendation, which shall include the status of the center until corrective action is taken; the recommended corrective action; the time frame for corrective action to occur; and the re-evaluation process.

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 March 11, 1988.

TRD-8802616

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

Effective date: April 1, 1988

Proposal publication date: January 12, 1988

For further information, please call: (512) 467-2681.

Maternal and Infant Health Improvement Program

• §37.244

The Texas Department of Health adopts new §37.244, without changes to the proposed test published in the January 12, 1988 issue of the *Texas Register*, (13 TexReg 228). The

new section adopts by reference a memorandum of understanding (MOU) between the Texas Department of Health and the Texas Department of Human Services. Since the MOU requires the two agencies to coordinate their maternal and infant health services, eligible women and infants will be better served by the two agencies. The MOU covers each agency's role in providing maternal and infant health services, the coordination of services provided by each agency to low income pregnant women or children, and ways to maximize federal matching funds. There were no comments regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4447y, §18, which require the Texas Board of Health to adopt a rule covering a memorandum of understanding between the Texas Department of Health and the Texas Department of Human Services relating to maternal and infant health services.

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 March 8, 1988.

TRD-8802428

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

Effective date: March 29, 1988

Proposal publication date: January 12, 1988

For further information, please call: (512) 458-7261

Chapter 157. Emergency Medical Care

Emergency Medical Services

• §157.77, §157.82

The Texas Department of Health adopts an amendment to §157.77 and new §157.82, with changes to the proposed text published in the October 2, 1987, issue of the *Texas Register* (12 TexReg 3523). In addition, the department withdrew the proposed amendment to §157.63, which was published with the proposed amendments to §157.77 and new §157.82. The withdrawal of §157.63 became effective February 1, 1988, and was published in the February 9, 1988, issue of the *Texas Register* (13 TexReg 704).

The purpose of the amendment to §157.77 is to provide guidelines concerning emergency medical services (EMS) training program and course approval for the use of the automatic external defibrillator (AED); curricula for the AED; and training program and course approval for the use of the manual defibrillator; and curricula for the manual defibrillator.

The amendment to §157.77 establishes the minimum standards for providing a training course for the use of an AED; minimum course curricula standards for the use of an AED; minimum standards for providing a training course for the use of the manual defibrillator at the specially skilled emergency medical technician (SS-EMT) level; and minimum course curricula standards for the use of the manual defibrillator at the SS-EMT level. There are no national standards for the AED curricula. The new U. S. Department of

Transportation (DOT) emergency medical technician-intermediate curricula contains objectives concerning the manual defibrillator; the department is adopting by reference this curricula. In addition, the amendments to §157.77 include a grandfather provision that would allow a medical director to delegate use of an AED to certain certified firefighters who have completed an AED training course. This provision will be effective until January 1, 1989, and will allow a transition period for fire departments within an EMS system to have their personnel EMS certified.

The purpose of new §157.82 is to provide EMS certification requirements for firefighters. The new section establishes minimum requirements for EMS personnel certification of firefighters for the emergency care level of certification and establishes the application procedures and test requirements. As regards these sections, the Texas EMS Advisory Council recognizes that the AED and similar life support devices constitute the practice of medicine and, as such, should be used in the state of Texas by physician prescription or direction. The Texas EMS Advisory Council also recommends that the AED be used only by trained individuals as identified by the EMS rule making authority of the Texas Board of Health.

The summary of comments and the agency's responses, including reasons for agreement or disagreement are as follows. Concerning §157.63, one commentator questioned the necessity of this amendment in that §157.82 addresses certification requirements for firefighters. The department agrees with the comment and has withdrawn from consideration for permanent adoption the amendment to existing §157.63.

Concerning §157.77, the following comments were received. Several commenters said that the emergency medical technician basic (EMT-B) should be the minimum level of EMS personnel to use the AED. The department disagrees with the comment in that the safety and reliability of the AED's use by individuals trained in its use has been demonstrated in numerous national studies. Several commenters objected to the section as proposed in that the section did not stress the requirement for medical supervision of persons using the AED. The department agrees with the comment and has incorporated the recommendation in §157.77(d)(1) and (2) and (f).

Several commenters objected to the section as proposed as the section did not specify training or curricula requirements for the AED and did not specify training or curricula requirements of the manual defibrillator at the specially skilled-emergency medical technician level. The department agrees and has incorporated the comments in §157.77(b), (d), and (f).

One commentator said that the medical director should be responsible for insuring that personnel can properly use the AED, maintain a quality assurance program, and be medically responsible or the use of the AED. The department agrees in that existing §157.79 of this title (relating to Medical Direction/ Supervision of Prehospital Care) requires this, and has added language to §157.77(f), which cross-references §157.79.

Several commenters said that the AED

should only be used by emergency care attendant (ECA) first responders who are part of an EMS system that provides advanced life support. The department agrees with the comment and incorporates the recommendation in §157.77(f).

Concerning §157.82, the following comments were received. Several commenters objected to allowing firefighters and peace officers to take the ECA certification examinations without taking the ECA course. The department disagrees with the comment regarding firefighters for the following reasons. Paid firefighters are certified by a state agency and volunteer firefighters are certified by a state association. In order to obtain certain levels of certification, firefighters have taken courses that are equivalent to the department's ECA course. Therefore, it is not necessary for these firefighters to duplicate course requirements for ECA certification. The department agrees with the comment regarding peace officers in that these individuals have not had training equivalent to the department's ECA course. The language in §157.82 has been modified to cover the firefighters who qualify for certification under this section and to delete the peace officer's eligibility for certification under the section.

Several commenters said the sections excluded certain firefighters who were not employed by state or local government but who serve in the role of first responders. The department agrees with the comment and has clarified this in §157.82 (b).

The following groups or associations were not against the sections in their entirety but did object to portions of the sections and/or had concerns, questions, and recommendations about specific parts of the sections. These organizations were Texas Emergency Medical Services Advisory Council and its ad hoc committees, Texas Association of EMS Physicians, Texas Chapter American College of Emergency Physicians, Texas Ambulance Association, Golden Crescent Council of Governments EMS Committee, Texas City Fire Department, El Paso EMS Department, University of Texas Health Science Center at San Antonio, Texas Tech University Health Science Center at El Paso, Goliad EMS, and College of the Mainland. Commenters against the rules were Harlingen Community Care Foundation and the Texas Society of EMS Educators. In addition, department staff recommended several changes to clarify the language of the sections. These changes have been incorporated into the rules.

The amendments and new section are adopted under the Emergency Medical Services Act, Texas Civil Statutes, Article 4447c, §§3.02, 3.03 and 3.04 which provides the Texas Board of Health with the authority to adopt rules covering certification of EMS personnel.

§157.77. EMS Training Program and Course Approval.

(a) (No change).

(b) National curricula standards.

(1) The department adopts by reference the following national curricula:

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

(C) the current U. S. Department of Transportation (DOT) emergency medical technician-intermediate;

(D) the current U. S. Department of Transportation (DOT) national training course emergency medical technician-paramedic.

(2) Copies of the national curricula adopted by reference may be reviewed during normal working hours in the Texas Department of Health, Bureau of Emergency Management offices, 1100 West 49th Street, Austin, Texas 78756.

(3) (No change.)

(c) (No change.)

(d) Course curricula.

(1) ECA training course.

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

(C) The automatic external defibrillator curricula described in subsection (f) of this section shall be an optional skill. This curricula may only be taught with the approval of a medical director of an EMS system in accordance with subsection (f) of this section. An automatic external defibrillator may be used only under medical direction and supervision in accordance with §157.79 of this title (relating to Medical Direction/Supervision of Prehospital Care).

(2) B-EMT training course.

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

(E) The automatic external defibrillator curricula in subsection (f) of this section shall be an optional skill. This curricula may only be taught with the approval of a medical director of an EMS system in accordance with subsection (f) of this section. An automatic external defibrillator may be used only under medical direction and supervision in accordance with §157.79 of this title (relating to Medical Direction/ Supervision of Prehospital Care).

(3) SS-EMT training course.

(A) Through August 31, 1988, the minimum curriculum shall be from the DOT national training course emergency medical technician-paramedic, as adopted by reference in subsection (b)(1)(D) of this section containing the following units: the emergency medical technician; human systems and patient assessment; shock and fluid therapy; and respiratory system. After September 1, 1988, the minimum curriculum shall be the DOT emergency medical technician-intermediate, as adopted by reference in subsection (b)(1)(C) of this section including those objectives pertaining to endotra-

cheal intubation but excluding the section on defibrillation. Those objectives pertaining to the use of the manual defibrillator shall be an optional skill. The optional skill may be included or excluded at the discretion of the course medical director and may be utilized only under medical/supervision.

(B)-(E) (No change.)

(F) The automatic external defibrillator described curricula in subsection (f) of this section shall be an optional skill. This curricula may only be taught with the approval of a medical director of an EMS system in accordance with subsection (f) of this section. An automatic external defibrillator may be used only under medical direction and supervision in accordance with §157.79 of this title (relating to Medical Direction/ Supervision of Prehospital Care).

(4) P-EMT training course.

(A) The minimum curriculum for the P-EMT training course shall be the DOT national training course emergency medical technician-paramedic, as adopted by reference in subsection (b)(1)(D) of this section, except however, those objectives pertaining to the use of rotating tourniquets shall be included as an optional skill and the optional skills may be included or excluded at the discretion of the course medical director.

(B)-(E) (No change.)

(F) The automatic external defibrillator curricula described in subsection (f) of this section may be taught in addition to the manual defibrillator objectives.

(5) P-EMT completion training course.

(A)-(E) (No change.)

(F) The automatic external defibrillator curricula described in subsection (f) of this section may be taught in addition to the manual defibrillator objectives.

(e) (No change.)

(f) Automatic External Defibrillator Training Course.

(1) For the purposes of this section, an automatic external defibrillator (AED) shall include only those automatic defibrillators that are rendered not capable of manual override.

(2) A medical director of an EMS system that provides advanced life support may delegate the use of an AED to certified EMS personnel who successfully complete the AED training course. The medical director shall meet all the requirements of §157.79 of this title (relating to

Medical Direction/ Supervision of Prehospital Care).

(3) The minimum required curriculum for an AED training course shall be the following:

(A) Introduction (30 minutes). The student shall be provided with an overview of the development of prehospital emergency care and the automatic defibrillator program. Cardiac arrest statistics shall be discussed considering other defibrillator programs. Ethical and legal responsibilities shall be discussed. The automatic recording monitor defibrillator concept is introduced.

(B) Defibrillator components and operation (30 minutes to 1 hour). The student shall learn the operation of the automatic recording monitor/defibrillator chosen by the service program. This lesson includes electrode placement, monitoring, and full operating protocol.

(C) Mini code (two hours). The student shall demonstrate steps in using the automatic recording monitor/defibrillator in the classroom setting. The student must follow the appropriate procedures while performing airway control, chest compression, and defibrillator operation. It is vitally important that the student recognize if the patient is pulseless, then CPR shall be performed.

(D) Summary (30 minutes). An oral review of the procedures taught shall be conducted with directed questions and answers. This includes procedures to be followed in troubleshooting the defibrillator, and what steps to take in the event of defibrillator failure or repeated unsuccessful countershocks. No more than three countershocks shall be permitted in the field, per episode of ventricular fibrillation.

(E) Written and skills evaluation. Based on a written and skills evaluation, the medical director shall determine whether the student is proficient in the use of the AED.

(4) A medical director of an EMS system that provides advanced life support shall notify the department in writing, on a form provided by the department, of intent to teach an AED training course and provide to the department the following information:

(A) the name of the EMS system;

(B) the name and social security number of each potential student;

(C) name, address, telephone number, and medical license number of the medical director;

(D) the medical director's protocols for automatic defibrillation; and

(E) the medical director's plan for continuing education.

(5) The medical director shall provide the department with the names and social security numbers of the students who have completed the training course and have been determined to be proficient in the use of an AED.

(6) Until January 1, 1989, a medical director of an EMS system that provides advanced life support may delegate the use of an AED to persons who are not certified EMS personnel if the following conditions are met:

(A) the person is currently certified by the Texas Commission on Fire Protection Personnel Standards and Education under 37 TAC §233.31 (relating to Certificates) or the person is currently certified as an advanced volunteer firefighter by the Texas Volunteer Firefighter Certification Board;

(B) the firefighter has successfully completed an AED training course that meets the curricula required by this subsection; and

(C) the medical director provides the department with the name and social security number of each firefighter who is proficient in the use of an AED.

(7) Nothing in this subsection shall be construed to limit the ability of a physician to prescribe the use of an AED to a patient or other persons to provide for patient care.
§157.82. Emergency Medical Services Personnel Certification for Firefighters.

(a) Purpose. The purpose of this section is to establish the requirements for emergency medical services (EMS) personnel certification of a firefighter for the emergency care attendant (ECA) level of certification. Many firefighters are in a job position that requires them to serve in the role of a first responder in an EMS system. These firefighters have completed training courses that are equivalent to the department's ECA course. This section will allow firefighters to obtain EMS certification in addition to firefighter certification.

(b) Personnel covered. Firefighters may qualify for this section if the firefighter holds:

(1) a basic firefighter certificate issued by the Texas Commission on Fire Protection Personnel Standards and Education; or

(2) an advanced certificate issued by the Texas Volunteer Firefighter Certification Board.

(c) Certification requirements. The firefighter shall:

(1) submit to the department an application for examination and a non-refundable application fee of \$12.50;

(2) send a copy of a basic firefighter certificate issued by the Texas Commission on Fire Protection Personnel Standards and Education or an advanced certificate issued by the Texas Volunteer Firefighter Certification Board;

(3) achieve a passing grade on all department skills examinations for the ECA level of certification; and

(4) achieve a passing grade of 70 on the department's written examination for the ECA level of certification.

(d) Certification period. After verification by the department of the information submitted by the applicant, the applicant who meets the requirements in subsection (c) of this section shall be certified for four years commencing on the date of issuance of a certificate and wallet-size card signed by department officials. A certificate is not transferable. The wallet-size card shall be carried by all EMS personnel while on duty.

(e) Examination failure. An applicant under this section who fails either the department skills or written examination may retest on each examination one time provided that all retests are completed no later than 90 days of the initial examination date.

(f) Recertification requirements. The applicant who receives EMS personnel certification shall comply with the requirements of §157.64 of this title (relating to Recertification) and §157.76 of this title (relating to Continuing Education) to recertify.

(g) Other requirements. The following sections of this title shall be applicable to this section: §157.21 (relating to Criteria for Decertification, Emergency Suspension, and Probation of Certificate) and §157.22 (relating to Procedure for Decertification and Suspension of Certificate).

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 March 8, 1988.

TRD-8802429 Robert A. MacLean
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: March 29, 1988

Proposal publication date: October 2, 1987

For further information, please call: (512) 465-2601

◆ ◆ ◆
Chapter 169. Veterinary Public Health
Rabies Control and Eradication

◆ **25 TAC §§169.22-169.25, 169.27, 169.29-169.31, 169.33**

The Texas Department of Health adopts amendments to §§169.22-169.25, 169.27, 169.29-169.31, and 169.33 without changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4732).

The sections are amended to comply with amendments made to Texas Civil Statutes, Article 4477-6a, during the last legislative session (House Bill 852, 70th Legislature, effective August 31, 1987), relating to the quarantine and testing of animals.

The amendments clarify and update the requirements concerning rabies control and eradication and provide the public with information on high and low risk animals, rabies testing of certain animals which cannot be quarantined, appropriate quarantine and testing procedures for animals, and elimination of the requirement for interstate health certificates for dogs and cats.

No comments were received concerning adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4477-6a, §2.01, which provide the Texas Board of Health with the authority to adopt rules for the control and eradication of rabies.

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 March 8, 1988.

TRD-8802427 Robert A. MacLean
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: March 29, 1988

Proposal publication date: December 18, 1987

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

◆ ◆ ◆
Chapter 289. Occupational Health and Radiation Control

Texas Regulations for Control of Radiation

◆ **25 TAC §§289.121, 289.123, 289.124**

The Texas Department of Health adopts amendments to §§289.121, 289.123, and 289.124 with changes to the proposed text published in the January 8, 1988, issue of the *Texas Register* (13 TexReg 239).

The amendments provide applicants for radioactive materials licenses an estimate of the time period the agency requires to reach a decision on the issuance of a license, and achieve agency compliance with Texas Civil Statutes, Article 6252-13b.1, §3. The amendments also establish an appeal process for resolution of any dispute arising from a violation of the established time periods without good cause. An additional feature requires

verification of payment of franchise tax prior to issuance of a license, which enables agency compliance with the Texas Business Corporation Act, Article 2.45.

Section 289.121 adopts Part 41 of the *Texas Regulations for Control of Radiation* (TRCR) by reference and is entitled "Licensing of Radioactive Material." Section 289.123 adopts Part 43 of the same regulations by reference and is entitled "Licensing of Uranium Recovery Facilities." Section 289.124 adopts Part 44 of the same regulations by reference and is entitled "Licensing of Radioactive Waste Processing and Storage Facilities." The three parts affected are all directly concerned with issuance of licenses for radioactive material.

The following sections are added to the parts of the regulations affected: section 41.24(h), (i), and (j) is added to Part 41; section 43.24(j), (k), and (l) is added to Part 43; and section 44.10(i), (j), and (k) is added to Part 44. In each part, the added sections describe the processing times for license applications for the types of licenses covered under each part, the appeal processes, and the provisions to require corporations to submit proof of payment of state taxes before a license can be issued. In addition, section 43.24(a) is revised by the deletion of the second paragraph which currently specifies a time period.

Summary of comments and the agency's responses, including reasons for agreement or disagreement are as follows. One written comment was received which addressed two concerns about the amendments. The first concern was disagreement with the philosophy of the law requiring state permits to be withheld if taxes owed the state are delinquent. The agency has no control or authority over legislative intent and is attempting to comply with the law. The second comment also addressed the wording and intent taken directly from the legislation which describes the reasons why response times may not be met. The commentor disagreed with the statutes and not the section itself. No change is made to the amendments a result of the comments; however, the agency itself made minor editorial and grammatical changes for clarification purposes. One organization, the Texas Nuclear Corporation, commented on the amendments. The corporation did not indicate that it was for or against the amendments in their entirety, but did express some concerns.

The amendments are adopted under Texas Civil Statutes, Article 4590f, §4(d) (3), which provide the Texas Department of Health with the authority to adopt rules which provide for licensing and registration relating to control and transport of sources of radiation within the State of Texas; and Article 6252-13b.1, §3 (House Bill 5, 70th Legislature, 1987), which require state agencies to adopt rules concerning time periods for processing permits.

§289.121. *Licensing of Radioactive Material.*

(a) The Texas Department of Health adopts by reference Part 41, Licensing of Radioactive Material, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in April 1988.

(b) (No change.)

§289.123. Licensing of Uranium Recovery Facilities.

(a) The Texas Department of Health adopts by reference Part 43, Licensing of Uranium Recovery Facilities, of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in April 1988.

(b) (No change.)

§289.124. Licensing of Waste Processing and Storage Facilities.

(a) The Texas Department of Health adopts by reference Part 44, Licensing of Waste Processing and Storage Facilities, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in April 1988.

(b) (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 March 11, 1988.

TRD-8802817

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

Effective date: April 30, 1988

Proposal publication date: January 8, 1988

For further information, please call: (512) 835-7000.

◆ ◆ ◆
Chapter 295. Environmental Health

Asbestos Exposure Abatement in Public Buildings

• 25 TAC §295.21

The Texas Department of Health adopts new §295.21 with changes to the proposed text published in the December 15, 1987, issue of the *Texas Register* (12 TexReg 4676). The Texas Board of Health is authorized under the provisions of Article 4414c, §2, to collect fees for public health services, including the performance of environmental health services. In addition, Governor Clements, Jr., in his letter of November 18, 1987, to the commissioner of health, designated the department as the state agency to review asbestos management plans.

New §295.21 will permit the State of Texas to comply with federal EPA regulations concerning asbestos services, to assist public and private schools to comply with EPA regulations, and to provide professional services at least at cost in the establishment of a program of inspection and management of asbestos containing materials in the state.

Generally, new §295.21 will cover fees for the analysis of materials and airborne samples for the presence of concentration of asbestos and the review and approval of asbestos management plans. Specifically, the new section will cover general provisions, definitions, fees for asbestos analysis, and fees for plans review.

The department received several comments during the public comment period. Generally, the principal concern of commenters involved the basis for assessing fees for asbestos management plans.

Concerning §295.21(b), a commenter suggested that the terms, "asbestos", "polarized-light microscopy", and "phase-contrast microscopy", be included in the definitions. The department agrees and has added these definitions. Concerning §295.21(d), a commenter suggested that the words "and specifications" be deleted because management plans are a compilation of facts and assessments resulting from asbestos inspections and should not specify the conduct of asbestos abatement in public works. Such specification could be a possible violation of Texas Civil Statutes, Article 3271a, §19, relating to engineering practices. The department agrees to the deletion as the words are inappropriate and misleading in this context. Concerning §295.21(d)(1), a commenter suggested that the per-building fee basis for the review and approval of asbestos management plans will result in excessive charges to school administrations with a variety of buildings on different campuses. The department has reviewed the figures submitted and agrees that the use of this original basis for the collection of fees can result in the collection of substantially more money than necessary to perform the review. Consequently, the department has substituted a per-square-foot basis, assessing a fee based on total square footage reviewed, but to be offset by a specified minimum charge that reflects the amount of time necessary to review the smallest facilities. Concerning §295.21(d)(1), a commenter suggested that the proper fee basis for management plans should be solely a per-square-foot basis for the total footage reviewed. The department disagrees because this basis does not take into account the essential steps that must be accomplished for reviewing even the smallest of facilities. In keeping with the requirement that the amount of fees collected be related to actual expenses, the department has modified the paragraph to require a minimum fee of \$75.

Concerning §295.21(d)(2), a commenter suggested that the paragraph does not mention the submission of partly completed asbestos management plans, as permitted under federal rules. The department acknowledges this lack and has appropriately modified (d)(2), thereby requiring the re-numbering of the following paragraphs. The department has made other editorial changes throughout the section for purposes of clarification. Those commenting on the section are as follows: Austin Independent School District; Clean Environments Inc.; Delta O Environmental Services; Environmental Research Institute; Texas Department of Health; University of Texas Health Center at Tyler. All commenters were in favor of the adoption of the section, although comments concerning subsection (d), resulted in several changes.

The new section is adopted under Texas Civil Statutes, Article 4414c, §2, which provide the board with the authority, by rule, to charge fees to persons who receive public health services from the Texas Department of Health, which includes environmental and consumer health services.

§295.21. Fees For Asbestos Services.

(a) General Provisions.

(1) Purpose. The purpose of this section is to provide a means of reimbursement for services performed, so as to acquire or maintain certification status, supplies, equipment, personnel, and assistance necessary relative to state and federal regulations of asbestos, reflecting a greatly increased demand for these services.

(2) Scope. This section covers fees for the analysis of materials and airborne samples for the presence or concentration of asbestos, and the review and approval of asbestos management plans, as submitted.

(3) Statutory authority. The Texas Board of Health is granted authority under Texas Civil Statutes, Article 4414c, §2, to charge fees to persons who receive public health services from the department, which includes environmental and consumer health services.

(4) Waiver. The commissioner of health of the State of Texas may waive any of the fee requirements in this section if the commissioner determines that a public emergency requires such action.

(5) Review. The Board of Health shall review and approve all changes of the amounts of fees assessed, or any additions to fees for the services set forth in this section.

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

Asbestos—Fibrous mineral forms (chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite).

Board—The Texas Board of Health.

Department—The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Phase-contrast microscopy—A method of analysis of airborne particulate matter to determine the concentration of fibers, expressed as the number of fibers per cubic centimeter of air.

Polarized-light microscopy—A method of detecting the presence of asbestos fibers in materials, employing dispersion staining, by noting fiber color change upon rotation of the polarization filters.

(c) Fees for asbestos analysis.

(1) The department may charge a reasonable fee for analyzing bulk samples of materials to determine possible asbestos content, or the concentration of asbestos fibers in airborne samples. The fee for analysis of bulk samples by polarized-light microscopy for the presence of asbestos shall be \$12 per sample. The fee for fiber-count analysis of samples of airborne particulates by phase-contrast microscopy shall be \$16 per sample.

(2) The department may accept samples for analysis from all agencies of state or local governments, physicians, federal agencies, public or private schools, institutions of higher learning, churches or synagogues, and registered nonprofit organizations. The department shall not accept requests for such services from commercial or industrial establishments, or from individuals.

(3) The department may refuse to accept samples submitted for analysis that are not correctly prepared, packaged, or identified according to department requirements. The department shall refuse to accept samples submitted without proper provision for payment. The department is not required to accept samples in lots of excessive size. The department may assign priorities at its discretion to samples submitted under the provisions of this section.

(4) Collected fees for analysis services shall be apportioned equally between the subdivisions of the department which perform the analytical and the administrative procedures for asbestos samples.

(5) The department may, at its discretion, waive fees for samples submitted for analysis as a result of investigations initiated by the department, the Texas Air Control Board, and local health departments.

(d) Fees for plans review.

(1) The department may collect a reasonable fee for the review and approval of plans affecting the control and abatement of asbestos or asbestos-containing materials. The fee determined for the review process for each asbestos plan, or partial plan, submitted under the provisions of this subsection shall be the greater of \$75 or 1/10 of a cent (\$.0001) per square foot of the total building area under review.

(2) Parts of an entire asbestos plan may be submitted separately for facilities in separate locations. Each partial submission shall be subject to the fees set forth in paragraph (1) of this subsection (relating to fees for the review and approval of plans).

(3) The department may refuse or return asbestos plans that are found to be incomplete or not correctly prepared. The department may, at its election, hold documents pending notification to the sender of the required corrections or completions by mail. If the department has not received the required corrections or completions, or any necessary explanation thereof, within 30 days of the date of mailing the letter of requirements to the sender, the department may return or discard the plans or specifications.

(4) The review process shall be completed within 90 days of the date of acceptance by the department of an asbestos

plan in an essentially complete and correct form.

(5) The department shall refuse to accept or review plans submitted without proper provisions for payment. Fees for plans accepted by the department for the review process are not refundable.

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 March 8, 1988.

TRD-8802452

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

Effective date: April 15, 1988

Proposal publication date: December 15, 1987

For further information, please call: (512) 458-7254

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**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION**

**Part IX. Texas Water
Commission**

**Chapter 331. Underground
Injection Control**

**Subchapter F. Standards for
Class III Well Production
Area Development**

• 31 TAC §331.107 •

The Texas Water Commission adopts an amendment to §331.107, without changes to the proposed text published in the January 1, 1988, issue of the *Texas Register* (13 TexReg 45).

The amendment ensures that restoration of aquifers affected by in situ mining operations is achieved in a timely manner and ensures that water quality in the aquifer being restored has stabilized prior to a determination that restoration has been achieved. The amendment also requires the commission to consider certain factors before amending a permit to extend the time for completing restoration.

The amendment requires restoration to begin within 30 days from the date mining is completed in a particular production area. The amendment does not preclude initiation of restoration in a portion of a production area; the amendment is intended to prevent delays in restoration only.

The amendment requires the commission to consider certain factors before amending a permit to extend the time to complete restoration. The factors include efforts made to complete restoration, technology for achieving restoration, costs, water use, the need to use the affected aquifer, and complaints.

The amendment clarifies the sampling procedures to produce stable, reliable results for

determining achievement of restoration. The amendment also shortens the time period for the executive director to confirm achievement of restoration. Additionally, the amendment allows for a longer period of sampling after restoration efforts cease to ensure that the water is in equilibrium with the formation.

The amendment alters the procedure for requesting restoration table amendments. The amendment requires that three consecutive sample sets be submitted with the request, and allows stabilization sampling sets be submitted with the request, and allows stabilization sampling to begin within 60 days of ceasing restoration activities.

The amendment improves the manner in which restoration is begun and confirmed.

Comments were received from T. H. Ritner, manager, Westinghouse Electric Corporation, and Robert Wilson, attorney for IEC. The comments from Mr. Ritner pertained to §331.107(b), suggesting that the section be changed to read "Restoration efforts shall begin as soon as possible but not later than 30 days after mining is completed in a particular production area and in its immediate adjacent production areas." Mr. Ritner also wanted the 60-day time period in §331.107(f) deleted. Mr. Wilson commented on §331.107(b), stating the section was unnecessary and that restoration should not be required to commence within 60 days of cessation of mining.

Both Mr. Ritner's and Mr. Wilson's comments regarding §331.107(b) are addressed by the fact that section allows variances for good cause shown. Where conditions exist which mitigate in favor of a delay in restoration efforts beyond the 60-day period, a variance could be granted. There is presently no regulation requiring timely initiation of restoration efforts, and the commission is of the opinion that such a rule is needed to prevent unnecessary delays in beginning restoration.

Mr. Ritner's comments regarding §331.107(f) appear to be based on a misunderstanding of the requirements of the proposed amendments. Mr. Ritner apparently believed that §331.107(f) would add 60 days to the time period required by §331.107(e). Since the sections are to be read separately and will be interpreted separately by the agency, the commission is not changing the section as a result of Mr. Ritner's comment.

The amendment is adopted under the Texas Water Code, §§5.103, 5.105, and 27.019, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties under the Water Code and laws of Texas and to establish and approve all general policy of the commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 9, 1988.

TRD-8802507

William G. Newchurch
Director
Texas Water Commission

Effective date: March 30, 1988

Proposal publication date: February 1, 1988

For further information, please call: (512) 463-8069

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.319

The Comptroller of Public Accounts adopts an amendment to §3.319 with changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4767).

This section, which was filed in emergency form in October 1987 and in proposed form in December 1987 is now being adopted. The amendment allows a contract signed prior to July 21, 1987, to qualify for a prior contract exemption even if there are provisions which allow either party to the contract to cancel the contract with a set number of days' written notice. The former section provided that such a contract could not qualify for a prior contract exemption. Unless some other provision of the section disallows the prior contract exemption, a contract with a cancellation clause will qualify as a prior contract if signed prior to July 21, 1987. The amendment also allows the prior contract exemption to be transferred under certain circumstances. Subsection (c)(4) is amended to clarify its intent to pertain only to the tax rate increases.

Comments were received from industry groups during the comment period and resulted in various changes in the proposed amendment. These changes were made for clarification of the section's intent.

A comment was received from a representative of the Texas Mid-Continent Oil and Gas Association regarding the amendment's requirement that a contract have a beginning and ending date. Mid-Continent's position was that a contract's provisions by the parties to the contract and enforceability under accepted contract principles should be the criteria for the beginning and ending dates. The comptroller declined to accept this position.

Comments were received from the law firm of Strauburger and Price of Dallas. Their first comments related to the different language in the tax bill regarding prior contracts for the tax increase and the addition of services to the tax base. It was their position that these two provisions should be treated differently since the language was different. It is the comptroller's position that subsection (c)(4) of the section applies only to the tax rate increase and not to base broadening. A note to this effect was added to the amendment.

The comptroller agrees that subsection (b) applies to two-party contracts as well as the traditional three party contracts. This section was changed to make this position clear.

The law firm also requested the deletion of subsections (c)(2), (3), and (5). The comptroller declined to accept this request. Historically, the comptroller has always viewed an extended or renewed contract as a new contract as of the date of the extension or renewal. The comptroller saw no reason for a

change in policy because of the addition of more services to the tax base in 1987. This position is consistent with treatment of newly taxed services in 1984.

Subsections (3) and (5) deal with those agreements between parties to provide services and/or tangible personal property as when-if needed. It is the comptroller's position that agreements of this nature do not meet the definition of the term "contract" found in subsection (a)(2). Since the prior contract exemption was traditionally added to keep the seller from paying a tax which the seller could not pass on to his customers, general agreements of this nature do not prevent the seller from passing on any sales tax obligations which the seller may incur.

A contract with a termination clause will not lose the prior contract exemption unless the contract also fails to have a beginning and ending date, or the terms are renewed or extended, or the contract states that services or taxable items will be supplied as needed or on request.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.319. Prior Contracts.

(a) (No change.)

(b) Exemptions. Taxable items purchased or rented for use in or sold pursuant to the performance of prior contracts or bids are exempted from the amount of the increase in tax or change in the tax base.

(c) Exception. A cancellation clause in a contract will not cause the loss of a prior contract exemption. However, a contract may not qualify for a prior contract exemption in the following situations.

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

(4) Any contract whose terms state the customer will be liable for any tax rate increases or for the applicable tax rate will not qualify for the prior contract exemption, even though the contract was in effect prior to the tax rate change. Such phrases are intended to transfer the burden of the tax increase from the seller to the customer and violate the statutory qualifications for exemption. Note: this paragraph applies only to tax rate increases and not to new services added to the tax base.

(5) With the exception of service contracts which contain a fixed price which must be paid whether or not the service is performed, and specify the work to be performed by type and quantity, contracts which state that services or taxable items will be supplied as needed or upon request will not qualify as prior contracts.

(6) A bid submitted prior to changes in the tax rate or base and a contract signed pursuant to that bid after the change, will qualify for the prior contract exemption if the terms of the contract are substantially similar to the original bid.

(7) With the exception of contracts which may be substantially changed or modified, a contract which is transferred by either party will retain its prior contract exemption so long as the transferee is bound by the original terms of the contract.

(d) (No change.)

(e) Prior contracts/limitations. This section applies only when the statute enacting the change in the tax rate or tax base provides for prior contract exemptions. The effective date and statute of limitations date on prior contracts will also be governed by the enacting statute.

(f)-(g) (No change.)

Prior Contract Exemption Certificate

This certificate is issued to _____ and is intended to be applicable to the following taxes (check appropriate square)

State City MTA County

Taxpayer's Name _____ Identification Number _____

Project Identification, where appropriate. Date of Execution of Contract/Bid _____

Description of Taxable Item Purchased _____

I hereby claim an exemption from the payment of the sales and use tax indicated at the beginning of the form on the basis that I have complied or shall comply with the provisions of the appropriate tax code, relating to written contracts or bids executed prior to the effective date of the tax or a tax rate change.

I will be liable for payment of the sales and use tax if I use the taxable item in some other manner or for some other purpose than the reason stated above and shall pay the tax based on the price paid for the taxable item.

Taxpayer's Name: _____

Taxpayer's Address: _____

Signature of Authorized Agent: _____

Date Issued: _____

Printed Name of Authorized Agent: _____

Telephone Number: _____

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 March 11, 1988.

TRD-8802620

Bob Bullock
Comptroller of Public
Account

Effective date: April 1, 1988

Proposal publication date: December 18, 1987

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

Subchapter O. State Sales and Use Tax

• 34 TAC §3.344

The Comptroller of Public Accounts adopts an amendment to §3.344 with changes to the proposed text published in the November 20, 1987, issue of the *Texas Register* (12 TexReg 4344).

The amendment was necessary because of changes made to the Tax Code by the 70th Legislature, 1987. Long-distance telecommunication was redefined, and many other services formerly subject to gross receipts tax are now subject to sales tax.

No comments were received regarding adoption of the amendment.

Language was added to subsection (b)(8) to clarify the comptroller's position on the installation of wiring for telephone systems and equipment. Minor wording changes were made to subsection (h) by comptroller personnel for clarity.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.344. Telecommunications Services.

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

(1) Basic local exchange telephone service—The provision by a telephone company of each access line and each dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network. Services will be considered to be basic whether the customer has access to a private line or a party line or whether the customer has limited or unlimited access. It does not include long-distance telecommunication service.

(2) Long-distance telecommunication—A service which both originates from and is billed to a telephone number or billing or service address within Texas.

(3) Private line—A telephone circuit dedicated for use between specific lo-

cations.

(4) Seller—Any person selling telecommunications services including, but not limited to, a hotel, motel, owner or lessor of an office, residential building, or development that contracts and pays for telecommunications services for resale to guests or tenants.

(5)-(6) (No change.)

(7) Telephone company—A person who owns or operates a telephone line or telephone in this state and charges for its use.

(b) Services taxable. Sales tax is due on a charge for the following:

(1) basic local exchange service;

(2) enhanced services (metro service, extended area service, multiline hunting, PBX trunk, etc.);

(3) auxiliary services (call waiting, call forwarding, etc.);

(4) long-distance telecommunications services which are both originated from, and billed to, a telephone number or billing or service address within Texas; therefore, if a call originates in Texas and is billed to a Texas service address, the charge is taxable even if the invoice, statement, or other demand for payment is sent to an address in another state;

(5) paging and mobile telephone services;

(6) telegraph services which are both originated from, and billed to, a person within Texas;

(7) a taxable service paid for by the insertion of coins or tokens into a coin-operated telephone;

(8) sale, lease, or rental charges for telecommunication equipment including separately stated installation charges. Separately stated charges for labor to install wiring will not be taxable if the wiring is installed in new structures or residences in such a manner as to become a part of the realty. Separately stated charges for labor to install wiring in existing nonresidential real property are taxable. See §3.291 and §3.357 of this title (relating to Contractors; Real Property Repair and Remodeling) for additional information. If charges for wiring and equipment are not separated, the total charge will be treated as a sale and installation of tangible personal property;

(9) installation of telecommunications services (service connection fee); and

(10) private line services, including charges for related equipment. Taxable receipts include the channel termination charge imposed at each channel termination point within this state, the total channel mileage charges imposed between channel termination points or relay points within this state, and an apportionment of

the interoffice channel mileage charge that crosses the state border. An apportionment on the basis of the ratio of the miles between the last channel termination point in Texas and the state border to the total miles between that channel termination point and the next channel termination point in the route will be accepted. Other methods may be used if first approved in writing by the comptroller.

(c) Services not taxable. Sales tax is not due on charges for:

(1) long-distance telecommunications services, which are not both originated from, and billed to, a telephone number or billing or service address within Texas. Records must clearly distinguish between taxable and exempt long-distance services;

(2) broadcasts by commercial radio or television stations licensed or regulated by the FCC. See §3.313 of this title (relating to Cable Television Service) for the tax status of cable television service;

(3) telecommunications services purchased for resale;

(4) telegraph services which are not both originated from, and billed to, a person within Texas.

(d) Charges separately stated. Charges for items listed in subsection (b) of this section must be separately stated from those charges listed in subsection (c) of this section.

(e) Resale of tangible personal property. Tangible personal property transferred by the provider of the taxable service to the care, custody and control of the customer will be considered to be resold, and may be purchased tax free by the provider of the taxable service. Sales tax must be collected by the provider of the taxable service from the customer on the charge for such items. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(f) Resale of a service. Sales tax is not due on the charge by one telephone company to another for providing access to a local exchange network. Sales tax must be collected from the final consumer on the total charge for the service including the charge for access. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(g) (No change.)

(h) Local tax. City, county, Metropolitan Transit Authority (MTA), and city transit department (CTD) tax on telecommunications services is allocated to the location from which the call originates. If the point of origin cannot be determined, the local tax is allocated to the address to which the call is billed. Local tax could not have been imposed on telecommunications services prior to October 1, 1987. See §3.372 and §3.422 of this title (relating to Requirements for Adopting or Abolishing City Tax;

Requirements for Adopting or Abolishing MTA Tax) for information on how a city, county, or authority may impose local tax on telecommunications services after October 1, 1987. (Note: The local sales tax exemptions on interstate long-distance telecommunications services may not be repealed.)

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 March 11, 1988.

TRD-8802822

Bob Bullock
Comptroller of Public
Accounts

Effective date: April 1, 1988

Proposal publication date: November 20, 1987

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

◆ ◆ ◆
• 34 TAC §3.356

The Comptroller of Public Accounts adopts new §3.356 with changes to the proposed text published in the December 18, 1987, issue of the *Texas Register* (12 TexReg 4775).

During the last special session of the legislature, certain services performed on real property were added to the Tax Code, Chapter 151, as activities upon which sales tax must be collected. Since the change in the Tax Code became effective on October 1, 1987, an emergency section was filed October 1st. After meetings with industry groups, a permanent new section is being adopted.

A comment was received on the proposed section from Huit-Zollars Inc., consulting engineers in Dallas, regarding the section's statement in subsection (a)(8) that surveying services performed by engineers were also taxable. It was the commenter's contention that engineers could not legally perform these services defined as taxable surveying services in the section. Although the comptroller has received information to the contrary, this statement has been deleted from the section. It is the comptroller's position that any person performing taxable services is already covered by subsection (b) of the section regardless of his or her professional title, so the statement in subsection (a) (8) was redundant. Personnel from the comptroller's office met with representatives from the Building Owners and Managers Association and other persons interested in building management. Pursuant to those meetings, subsection (1) was added to the section to clarify the sales tax responsibilities of building managers. In all the other service sections, the comptroller had added a statement that insignificant amounts of taxable services in an otherwise nontaxable service contract would not change a nontaxable service into a taxable service. Five percent was the amount agreed upon as insignificant. This language was also added to subsection (1).

The comptroller made other minor wording changes in the section for clarity.

The new section is adopted under the Tax

Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.356. *Real Property Service.*

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

(1) Building or grounds cleaning, janitorial, or custodial services- The activities of keeping the premises of a building clean, orderly, and functional, including performing minor adjustments, maintenance, or repairs. Examples include, but are not limited to, window washing; floor, wall, and ceiling cleaning; collection of waste on the premises, whether from inside a building or on the grounds; chimney or duct cleaning; lighting maintenance, such as bulb and fuse replacement; the cleaning, disinfecting, and restocking of restrooms or lounge areas; and pool cleaning and maintenance. The term does not include activities such as painting, wallpapering, or performing significant repairs, nor domestic services such as babysitting, or the services of a maid and cook employed to provide those services for the benefit of a private household.

(2) Employee—A person providing services for another for consideration where the employer has the right to control and direct the employee in the material details of how the work is to be performed, both under the contract of employment and in fact.

(3) Employer—In determining which of several persons is the employer of an individual, factors which will be considered include:

(A) who exercises direct control over the details of how the work is performed by the employee;

(B) who pays the employee's salary;

(C) who withholds applicable federal taxes from the employee's salary;

(D) who provides employment-related benefits such as health insurance, eligibility to participate in a retirement plan, sick leave, vacation, etc., to the employee; and

(E) who has the right to terminate the employment of the individual employee.

(4) Garbage—Waste, refuse, sludge from waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material,

including solid, liquid, semisolid, or contained gaseous material, resulting from residential, industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities. The term does not include any of the following:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26;

(B) waste materials which result from activities associated with the exploration, development, or production of oil, gas/or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101;

(C) any waste which requires specific licensing under Texas Civil Statutes, Article 4590f, and the rules adopted by the Texas Board of Health under that law, which for the purposes of this section shall be referred to as radioactive waste; or

(D) hazardous waste, as identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency or by other appropriate federal or state agency.

(5) Landscaping—The activity of arranging and modifying areas of land and natural scenery for aesthetic effect, considering the use to which the land is to be put. The term includes adding, removing, or arranging natural forms, features, and plantings, including vegetation, and other features to fulfill aesthetic or functional requirements. It includes the application of soil, soil additives, and amendments to prepare or maintain the planting area. Some examples are garden planting or maintenance, cemetery upkeep, lawn care, arborist services, ornamental bush or shrub planting, tree planting, tree surgery, pruning, or spraying, and lawn sodding. The term does not include the addition of sprinkler systems, retaining walls, ponds, pools, or fences, or other construction activities or services provided by landscape designers or landscape architects such as consultation, research, preparation of general or specific design or detail plans, studies, specifications, or supervision, or any other professional services or functions within the definition of the practice of engineering or architecture. Landscaping services performed by landscape designers or landscape architects are taxable.

(6) Lawn maintenance—Mowing, trimming, fertilizing, watering) and any other treatment or service which may be performed on private or commercial yards or lawns. It also includes maintenance of

trees and plants whether inside or outside a building. The term does not include clearing land for buildings or power line rights-of-way or maintenance on land formally dedicated to or belonging to a governmental entity.

(7) Structural pest control services—Activities performed for the purpose of identifying, preventing, controlling, or eliminating, by use of chemical or mechanical means, infestation of any of the following:

(A) insects, spiders, mites, ticks, ants, bees, and other related pests, wood infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures or their contents;

(B) pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street. The term includes related activities, such as inspection and evaluation concerning the nature and extent of an infestation, reports, or performance of services to control pest and insect infestation.

(8) Surveying of real property—Activities performed to determine or confirm the boundaries of real property, or to determine or confirm the location of structures or other improvements in relation to the boundaries of the property by the use of relevant elements of law, research, measurement, analysis, computation, mapping and land description. Examples include, but are not limited to, boundary recovery, residential surveying, lot surveying, title surveying, as-built title surveying, and right-of-way surveying.

(b) Responsibilities of persons providing real property services. Persons performing real property services must obtain a tax permit and collect and remit sales tax on all charges for real property services.

(c) Resale certificates.

(1) Persons providing real property services may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property is transferred to the client. For example, a taxpayer purchases garbage dumpsters to leave on the customer's premises as a part of the garbage collection service. Taxpayer may purchase the dumpsters tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the dumpster and for the services.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if

the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property which will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will only be exempt to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(d) Exemption certificates. Persons providing real property services may accept an exemption certificate in lieu of tax when performing a service for an exempt entity. See §3.322 of this title (relating to Exempt Organizations).

(e) Landscaping and lawn maintenance provided by persons under 18 years old. Charges for performance of landscaping or yard maintenance (subsection (a) (1) and (2) of this section) are exempt if performed by a self-employed person under 18 years of age whose total receipts from providing landscaping or yard maintenance are \$1,000 or less during the preceding calendar quarter or the same calendar quarter of the preceding year.

(f) Landfill charges connected with garbage collection services. Persons providing garbage collection services may not separate in the bill to their customers the charge for garbage collection from the charge for use of the landfill for the purpose of reducing the amount upon which tax must be collected. The charge paid by the service provider for access to the landfill is a necessary expense in providing the garbage collection service and is not excludable from the fee for garbage collection.

(g) Garbage removal facilities. When a city, county or any other entity provides a facility where garbage may be left which will, at another time, be moved to a landfill by the entity providing the location, the fee charged to persons depositing garbage into such a facility is considered to be a charge for garbage collection and is taxable.

(h) Unrelated services. A service will be considered as unrelated if:

(1) it is not a real property service, nor a service taxable under another provision of the Tax Code, Chapter 151;

(2) it is of a type which is commonly provided on a stand-alone basis;

(3) the performance of the unrelated service is distinct and identifiable. Examples of an unrelated service which may be excluded from the tax base include consultation, training, expedited filing charges, and maintenance charges;

(4) where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The presumption may be overcome by the service provider at the time the transaction occurs by separately stating to the customer a reasonable charge for the taxable services. The service provider's books must support the apportionment between exempt and nonexempt activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for exempt services is unreasonable when the overall transaction is reviewed considering the cost of providing the service or a comparable charge made in the industry for each service, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services; and

(5) charges for services or expenses directly related to and incurred while providing the taxable service are taxable and may not be separated for the purpose of excluding these charges from the tax base. Examples would be charges for meals, telephone calls, hotel rooms, or airplane tickets.

(i) Governmental entities. When garbage collection services are provided by a governmental entity without a specific charge being assessed, such as when this service is provided as a basic part of services funded by the tax or fee structure of the governmental entity, sales tax is not due.

(j) Local taxes. Local sales and use taxes (city, county, MTA, and CTD) apply to services in the same way as they apply to tangible personal property. Generally, service providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. However, MTA and CTD sales taxes do not apply to services provided outside the boundaries of the transit area. If the place of business is outside such a jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is required to collect it. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §§3.374, 3.375, 3.424, and 3.425 of this title (relating to Imposition of the Sales Tax; Collection by Retailer; Bracket System Formula; Determining City Tax; Administration and Use Tax; Collection by Retailer, Imposition of Sales Tax; Administration of Use Tax; Imposition and Collection).

(k) Use tax. If a seller of a service is not doing business in Texas or a specific local taxing jurisdiction and is not required to collect Texas tax, it is the Texas customer's responsibility to report and pay the use tax directly to this office.

(l) Property management companies.

(1) Property management companies whose employees provide taxable services as part of their overall management and operation of an apartment complex, office building, or other real property for the owner need not collect tax on those services if their value is insignificant.

(2) Such services will be considered insignificant in any billing period in which their value is less than 5.0% of the amount charged by the management company for services. The amount charged by the management company for services is to be determined by deducting from the management company's total charge any mortgage payments made by the management company for the property owner and any amounts paid to persons other than employees of the management company for goods and services.

(3) If the value of the services exceeds the 5.0% limit, the entire amount charged by the management company will be considered taxable unless charges for taxable services are separately itemized and taxed.

(4) Purchases of taxable goods and services from persons other than employees of the management company may be handled in either of the following ways:

(A) the management company may issue a resale certificate to the supplier and collect tax from the property owner on the itemized charge for the goods or service; or

(B) the management company may pay tax to the supplier and collect from the property owner an amount equal to the total of the amount paid by the management company for the goods or services and the tax paid.

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 March 11, 1988.

TRD-8802621 Bob Bullock
Comptroller of Public
Account

Effective date: April 1, 1988

Proposal publication date: December 18, 1987

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Hazardous Materials Incidents

• 37 TAC §3.101, §3.102

The Texas Department of Public Safety adopts new §3.101 and §3.102. Section 3.102 is adopted with changes to the proposed text published in the January 1, 1988, issue of the *Texas Register* (13 TexReg 48). Section 3.101 is adopted without changes and will not be republished.

The adoption of these sections will provide assurance that hazardous materials transportation emergencies are properly coordinated on site and reported as required by statute to provide for a standardized data base.

Section 3.101 promulgates on-site coordination responsibility to the Texas Department of Public Safety and designates the initial on-site department commissioned law enforcement officers as the on-site coordinator. The responsibilities of the on-site coordinator are enumerated in subsection (c). The section also provides officers of the department authority to make emergency rules when normal operating procedures prove inadequate. Section 3.102 promulgates reporting of releases of hazardous materials by carrier and is adopted with changes by adding subsections (c) and (d). Releases of reportable quantities of hazardous materials on public roads or railroads shall be reported in writing within 10 days to the Motor Carrier Safety Section. The written report shall contain the information as specified in subsection (a) and does not negate the necessity to submit other reports as required by other local, state, and federal agencies. Reporting is further clarified in subsection (c). In response to comments received, subsection (d) is added which explains the meaning of hazardous material and reportable quantity as they relate to hazardous materials incidents.

Written comments against the new sections were received from six groups and associations. A request for public hearing was received from the State Fireman's and Fire Marshal's Association of Texas and Fire PAC and a public hearing was held on February 18, 1988. The Chief of the DPS Division of Emergency Management commented for the sections by testifying that on-site coordination of all emergencies is already vested in the director of the Department of Public Safety and district highway patrol captains as promulgated in the Texas Disaster Act and accompanying governor's executive order. On-site coordination by a department commissioned law enforcement officer is an extension of this requirement and the role outside of law enforcement activity is to coordinate actions of other state agencies that have statutory responsibility in dealing with incidents involving hazardous materials. The primary role of the on-site coordinator is to ensure that each state agency and local government response personnel are performing in a coop-

erative manner so their actions are not detrimental to one another. The key issue is that the on-site coordinator is to act as a coordinator of actions and not one of dictating actions to those having statutory responsibility.

Comments submitted by the State Fireman's and Fire Marshal's Association of Texas and Fire PAC suggested that a command post be set up with several designated agency representatives and a carrier representative. All representatives stationed in the command post will have veto power over any suggestions or operations involving the accident.

Comments submitted by Atchison, Topeka, and Sante Fe Railway Company related to identification of the DPS commissioned law enforcement officer as on-site coordinator and whether DOT F 5800.1 reporting form could be used in making written reports as required by this section.

Comments submitted by the Livingston Volunteer Fire Department and Scenic Loop Volunteer Fire Department, Inc. was with regards to hazardous material training when responding to these incidents or accidents. Also, an alternate response plan was suggested wherein counties would assume this role, and DPS would only respond when no county response team was in place.

Comments submitted by the Texas LP-Gas Association were related to what constitutes a reportable quantity, hazardous materials definition, reporting format, and rules adopted by the Texas Railroad Commission.

The staff reviewing comments of these sections believes there is a misunderstanding of the on-site coordination function. The department does not intend to usurp the authority of any duly constituted entity and the department will perform the on-site coordination function in a cooperative manner giving due deference to the expertise of responding agencies.

The new section is adopted under Texas Civil Statutes, Article 4413(1), §6b and §6c, which provide the Director of the Department of Public Safety with the authority to adopt rules relating to the reporting of all transportation incidents involving releases of reportable quantities of hazardous materials and on-site coordination of all hazardous materials transportation emergencies.

§3.102 Reporting of Releases of Hazardous Materials by Carriers.

(a) Carriers involved in transportation incidents involving releases of reportable quantities of hazardous materials on public roads or railroads shall, within 10 days, report in writing to the Texas Department of Public Safety, Motor Carrier Safety Section, Box 4087, Austin, Texas 78773-0001, the circumstances of the incident to include:

- (1) date and time;
- (2) exact location;
- (3) carrier-including the address;
- (4) driver, conductor, or responsible party;
- (5) owner of material;
- (6) origin of material;

- (7) destination of material;
- (8) description/type material information:
 - (A) manifest number;
 - (B) proper shipping name;
 - (C) hazardous material number (UN or NA);
 - (D) hazard class;
 - (E) placard or label;
 - (F) total quantity; and
 - (G) estimated quantity spilled;
- (9) type of accident or incident (leak, explosion, collision, fire, etc.);
- (10) investigative/response agency (policy department, fire department, etc.);
- (11) type of vehicle (complete description: tank, float, van, etc.);
- (12) registration of vehicle if applicable;

- (13) disposition of material;
- (14) summary of the incident;
- (15) injuries or fatalities involved;
- (16) other pertinent information; and
- (17) name and signature of person reporting.

(b) This requirement does not negate the necessity to submit other reports as required by other local, state, and federal agencies.

(c) Written reports required by local, state, or federal agencies that contain all information as required in subsection (a) of this section will be acceptable in reporting of releases of hazardous materials by carriers to the Texas Department of Public Safety.

(d) The following explanation of terms, as used in the sections under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Hazardous material means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated as found in 49 Code of Federal Regulations, Chapter 1, Part 171.8.

(2) Reportable quantity means any accidental release of hazardous material during transportation.

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 March 10, 1988.

TRD-8902633

Leo E. Gossett
Director
Texas Department of
Public Safety

Effective date: April 4, 1988

Proposal publication date: January 1, 1988

For further information, please call: (512) 465-2000



State Board of Insurance Exempt-Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of insurance has considered a filing by the Insurance Services Office, Inc., proposing a revision for farm employers liability and farm employees medical payments insurance to become effective May 1, 1988.

The purpose of this revision is to extend the employers liability exception to apply when farm employers liability and farm employees medical payments insurance is written in conjunction with commercial general liability coverage under Rule 38. CGL Farm Liability, Division Four of the Commercial Lines Manual.

The board has approved this filing to become effective May 1, 1988, in accordance with the

following rule of application. These changes are applicable to all policies effective on or after May 1, 1988. No policy effective prior to May 1, 1988, shall be endorsed or cancelled and rewritten to take advantage of or to avoid the application of these changes except at the request of the insured and using the cancellation procedures applying on the date of such request.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on Nicholas Murphy 1988.

TRD-8802591

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: May 1, 1988

For further information, please call: (512) 463-6327



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*.

Texas Department of Agriculture

Thursday, March 24, 1988, 1 p.m. The Texas Department of Agriculture will meet in the District Office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will hold administrative hearing to review alleged violation of Texas Agriculture Code §103.001 by Albert Ivy doing business as Evergreen Farms as petitioned by Robert and Eliborio Perez.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: March 10, 1988, 2:40 p.m.

TRD-8802530

Texas Antiquities Committee

Friday, March 25, 1988, 9:30 a.m. The Texas Antiquities Committee will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the committee will approve minutes of previous TAC meeting of January 22, 1988; hear presentation of citations for distinguished service to Dr. William C. Griggs and Mr. Larry Soward; consider designations of state archeological landmarks in Travis and Williamson Counties; approve submissions for attorney general's opinion pertaining to EPISD v. TAC; discuss public comments and adoption of chapter 41, TAC, rules of practice and procedure; consider staff fieldwork; consider contract, joint research projects and in-house projects, shipwreck bill update, protective/prosecution problems regarding enforcement of the Antiquities Code of Texas; and hear staff report. The committee will also meet in executive session to discuss anticipated or pending litigation.

Contact: William G. Reeder, P.O. Box 12276, Austin, Texas 78711, (512) 463-6098.

Filed: March 10, 1988, 2:32 p.m.

TRD-8802527

Texas Commission on the Arts

Tuesday, March 22, 1988, 9 a.m. The Media Public Hearing of the Texas Commission on the Arts will be held in Diverse Works, 214 Travis Street, Houston. According to the agenda, the commission will take recommendations from a discipline perspective on modifications to the existing state arts plan. Any interested parties may attend and will be given five minutes to present their concerns to the commission. While the purpose is primarily to take testimony on media modifications, anyone may comment on any portion of the state arts plan. Copies of the state arts plan are available through the commission offices and will be available at the public hearing.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 14, 1988, 12:45 p.m.

TRD-8802640

Battleship Texas Advisory Board

Saturday, March 19, 1988, 10 a.m. The Battleship Texas Advisory Board will meet on board the Battleship Texas, 3527 Battleground Road, La Porte. According to the agenda, the board will approve minutes of the previous meeting; hear reports regarding restoration progress, fundraising and brochure approval, official state calendar project, San Jacinto Day and Wortham Foundation, and fundraising by Texas school children; and consider appointment of subcommittees.

Contact: Robert D. Miller, 3400 Texas Commerce Tower, Houston, Texas 77002, (713) 226-1186.

Filed: March 11, 1988, 10:31 a.m.

TRD-8802557

Texas Commission for the Blind

Thursday, March 24, 1988, 4 p.m. The Lubbock District Office of the Texas Commission for the Blind will meet in the Oak Tree Village Center, 3706-B 20th Street, Lubbock. According to the agenda summary, the district will hear comments on the state plan for vocational rehabilitation services in Texas during 1988. Such public meetings are called for in a requirement contained in the Rehabilitation Act Amendments of 1986, which stipulates state agencies must hold public meetings throughout the state to allow comment on the plan. A local ophthalmologist, glaucoma specialist, Zuhair Shihab, MD, will lead a discussion on "Eye Diseases" and Dr. Bill Chapman, a representative for Visual Tech, will give a demonstration on technology for the visually impaired. Persons who are unable to attend may send comments to the Public Information Office of the Texas Cosmetology Commission for the Blind, 4800 North Lamar Boulevard, Suite 320, Austin, Texas 78756. For information on additional dates for public forums, call (in Texas) 1-800-252-5204. Outside of Texas, call (512) 459-2612.

Contact: Carl Moss, Lubbock (806) 799-7999 or Betty Huffman, Austin, (512) 459-2611.

Filed: March 11, 1988, 2:12 p.m.

TRD-8802582

Texas Department of Corrections

Monday, March 14, 1988, 9 a.m. The Texas Department of Corrections submitted an emergency revised agenda for a meeting held in the John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda summary, the department considered purchase of land (closed), jail overcrowding, internal audit, and MOU with UTMB. The emergency status was necessary because information became available too late for earlier posting.

Contact: James A. Lynaugh, P.O. Box 99, Huntsville, Texas 77342, (409) 294-2101.

Filed: March 11, 1988, 11:02 a.m.

TRD-8802560

Texas State Board of Dental Examiners

Wednesday-Saturday, March 23-26, 1988, 8 a.m. The Texas State Board of Dental Examiners will meet in Sandalwood A and B Meeting Rooms, Hyatt Regency Hotel, 1200 Louisiana Street, Houston. According to the agenda summary, the board will discuss examination criteria for dentists and hygienists, permanent registration numbers by Dental Laboratory Certification Council, requests for exceptions to direct supervision of dental hygiene exam, and pharmacology courses at Texas dental schools; and appearance by Gail Bailey of Lamar University.

Contact: William S. Nail, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754, (512) 834-6021.

Filed: March 11, 1988, 8:48 a.m.

TRD-8802554

Texas Education Agency

Tuesday, March 22, 1988, 8:30 a.m. The Education Consolidation and Improvement Act, Chapter 2, Advisory Committee of the Texas Education Agency will meet in Room 1-109, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will make final recommendations to the State Board of Education regarding enrichment projects for the 1988-1989 school year.

Contact: Rosalind Eathorne, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9269.

Filed: March 14, 1988, 3:49 p.m.

TRD-8802666

Employees Retirement System of Texas

Tuesday, March 22, 1988, 9 a.m. The Board of Trustees of the Employees Retirement System of Texas will meet in the ERS Building, 18th and Brazos Streets, Austin. According to the agenda summary, the board will approve minutes of the previous meeting; consider investment advisor recommendations and act on investment of system's funds, additions to approved banker/dealer list, extending investment consultant's contract; rates, coverages, and administration of Uniform Group Insurance Program for fiscal year 1988-1989; hear presentation concerning Texas health plans,

health maintenance organization applications for fiscal year 1988-1989, fees for participation in flexible benefits program, selection of firm to provide data processing consultative services, issuance of request for proposal for management audit consultative services, and retirement appeal; hear status report on state auditor's management letters and executive director's report. The board will also meet in executive session.

Contact: James T. Herod, 18th and Brazos Streets, Austin, Texas, (512) 476-6431.

Filed: March 10, 1988, 3:14 p.m.

TRD-8802542

Health and Human Services Coordinating Council

Thursday, March 17, 1988, noon. The Immigration Committee and Health and Human Services Coordinating Council met in emergency session in the Seventh Floor Conference Room, Sam Houston Building, Austin. According to the agenda, the committee introduced to the state legislative impact assistance grants, state plan/application, and new business. The emergency status was necessary because the agenda was finalized.

Contact: Patricia O. Thomas, 311-A East 14th Street, Austin, Texas, (512) 463-2195.

Filed: March 11, 1988, 2:54 p.m.

TRD-8802586

Texas Higher Education Coordinating Board

Thursday, March 31, 1988, 9 a.m. The Administrative Council of the Texas Higher Education Coordinating Board will meet in Boardroom 225, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the council will discuss proposed amendments to \$25.33 concerning basic coverage standards (inpatient/outpatient psychiatric and drug abuse coverage).

Contact: James McWhorter, P.O. Box 12788, Austin, Texas 78711, (512) 462-6420.

Filed: March 11, 1988, 8:50 a.m.

TRD-8802553

Texas Hospital Equipment Financing Council

Friday, March 18, 1988, 10 a.m. The Texas Hospital Equipment Financing Council will meet in Room G-B, John H. Reagan Building, 15th and Congress Avenue, Austin. According to the agenda, the council will consider and discuss proposal to convert the council's series 1985A Bonds to

a fixed interest rate and to extend the period of the equipment loan fund and other matters related thereto, attorney's fees, administrative fees and other fees incurred in connection with the council's series 1985A bonds, potential liability and other matters related thereto including insurance, additional bond financings and possible legislation to be presented to the 71st legislature, future meetings of the council, and other business.

Contact: Charles W. Bailey, P.O. Box 15587, Austin, Texas 78761, (512) 465-1000

Filed: March 10, 1988, 2:02 p.m.

TRD-8802526

State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Dates, times, rooms, and agendas follow.

Tuesday, March 22, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 9834-Whether disciplinary action should be taken against Leonard Eugene Keen, Tyler, who holds a Group I, legal reserve life insurance agent's license; Group II, health and accident agent's license; and a local recording agent's license issued by the board.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:39 p.m.

TRD-8802533

Tuesday, March 22, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9810-Brazos Security Life Insurance Company request for relief from the Commissioner of Insurance from a decision and order of his chief examiner.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:40 p.m.

TRD-8802532

Tuesday, March 22, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 9838-Whether disciplinary action should be taken against Gene Raymond Holified, Beaumont, who holds a Group I, legal reserve life insurance agent's license, and a Group II, health and accident insurance agent's license issued by the board.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:39 p.m.

TRD-8802534

Tuesday, March 22, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9841-Application for amendment to the articles of incorporation of Beacon National Life Insurance Company, Wichita Falls, in regards to director liability.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:39 p.m.

TRD-8802535

Tuesday, March 22, 1988, 2 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9842-Application for amendment to the articles of incorporation of First Preferred Insurance Company, Wichita Falls, in regards to director liability.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:39 p.m.

TRD-8802536

Tuesday, March 22, 1988, 2 p.m. The board will meet in Room 414, to consider filing by American Excess Insurance Association, an unincorporated association of major insurance carriers, of a general liability policy with maximum limits of \$75,000,000, in excess of a minimum retention of \$25,000,000 on a claims made basis.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 11, 1988, 3:57 p.m.

TRD-8802594

Tuesday, March 22, 1988, 2:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9843-Application for amendment to the articles of incorporation of Petrolia Insurance Company, Wichita Falls, in regards to director liability.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:38 p.m.

TRD-8802537

Wednesday, March 23, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9839-Whether disciplinary action should be taken against Jack Alan Prine, Kemp, who holds a Group II, health and accident insurance agent's license.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:38 p.m.

TRD-8802538

Wednesday, March 23, 1988, 9 a.m. The

Commissioner's Hearing Section will meet in Room 353, to consider Docket 9836-Application of Jimmy Ross Viola, Bryan, for a Group I, legal reserve life insurance agent's license.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:38 p.m.

TRD-8802539

Friday, March 25, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9849-Proposed change of control of Texas Health Network, Inc., doing business as Partners National Health Plans, Houston, a health maintenance organization.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:38 p.m.

TRD-8802540

Monday, March 28, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9845-Application for amendment to the articles of incorporation of Title Resources Company, Plano, reducing the authorized capital.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 10, 1988, 2:40 p.m.

TRD-8802531

Wednesday, March 30, 1988, 9 a.m. The board will meet in Room 414, to consider staff recommendations regarding the content of the report to the Legislature required by Insurance Code §a, Article 1.25.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 11, 1988, 3:57 p.m.

TRD-8802593

Thursday, March 31, 1988, 9 a.m. The board will meet in Room 414, to consider staff recommendations regarding the content of the report to the legislature required by Insurance Code, §(a), Article 1.25.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: March 11, 1988, 3:58 p.m.

TRD-8802592

Texas Commission on Jail Standards

Wednesday, March 23, 1988, 9 a.m. The Texas Commission on Jail Standards will meet in Room 100, Employees Retirement System Building, 18th and Brazos Streets,

Austin. According to the agenda, the commission will approve minutes of the previous meeting of January 20, 1988; hear the director's report; consider old business; hear staff report concerning Baylor County, Eastland County, Nacogdoches County, Nueces County, Tarrant County, Williamson County, and Young County; consider new business concerning Grimes County and Maverick County; consider TCLEOSE discussion on weapons for jails; consider application for variance(s) for Andrews County, Cameron County, and Young County. The commission will also meet in executive session.

Contact: Robert O. Viterna, 611 South Congress Avenue, Suite 200, Austin, Texas 78704, (512) 463-5505.

Filed: March 11, 1988, 8:59 a.m.

TRD-8802549

Texas Motor Vehicle Commission

Wednesday, March 23, 1988, 9 a.m. The Texas Motor Vehicle Commission will meet in Suite 302, 815 Brazos Street, Austin. According to the agenda, the commission will adopt minutes of the February 18, 1988, commission meeting; consider proposals for decision and orders, license and other cases; proposals for decision, Lemon Law cases; agreed orders for approval and entry; orders of dismissal; discuss agency policies and procedures relating to proposals for decision in cases for decision by commission; and review agency budget and financial condition.

Contact: Russell Harding, 815 Brazos Street, Suite 301, Austin, Texas 78701, (512) 476-3587.

Filed: March 11, 1988, 4:48 p.m.

TRD-8802610

Board of Nurse Examiners

Tuesday-Thursday, March 29-31, 1988, 8 a.m., daily. The Board of Nurse Examiners will meet in Room 2B-152, Texas Tech Health Sciences Center, Sixth and Joliet, Lubbock. According to the agenda summary, the board will consider possible action on disciplinary hearings and other action as recommended to the executive secretary in relation to hearings, three reinstatement requests, and four rule changes; consider education matters such as survey visit reports, annual report summaries, faculty petitions, a request for an extended campus from Amarillo College, and a public hearing scheduled for 9 a.m. on March 31, 1988, for an extended campus request from the University of Texas at Galveston; consider various issues of approving and recognizing advanced nurse practitioners; and receive committee reports and hold an open forum

from 8 to 9 a.m. on March 31, 1988.

Contact: Louise Sanders, 1300 East Anderson Lane, Suite C-225, Austin, Texas 78752, (512) 835-4880.

Filed: March 11, 1988, 8:51 a.m.

TRD-8802551

Board of Pardons and Paroles

Monday-Friday, March 21-25, 1988, 1:30 p.m. daily, except 11 a.m. on Friday. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: March 11, 1988, 10:53 a.m.

TRD-8802559

Tuesday, March 22, 1988, 1:30 p.m. The Board of Pardons and Paroles will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including: full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentences; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: March 11, 1988, 10:54 p.m.

TRD-8802558

Texas Peanut Producers Board

Wednesday, March 23, 1988, 9 a.m. The Texas Peanut Producers Board of the Texas Department of Agriculture will meet in Room 440, Soil and Crop Building, Texas A&M University, College Station. According to the agenda, the board will adopt budget for fiscal year 1988-1989; discuss referendum election; review activities; and consider other business.

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2853.

Filed: March 10, 1988, 1:31 p.m.

TRD-8802525

Texas State Board of Public Accountancy

Tuesday, March 22, 1988, 9 a.m. A panel hearing for the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda the panel will hear complaint 83-12-25L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: March 11, 1988, 8:59 a.m.

TRD-8802550

Wednesday, March 23, 1988, 9 a.m. A panel hearing for the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin, Texas 78752-3892. According to the agenda, the panel will hear complaints 86-10-15L, 87-02-01L, and 87-02-05L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

Filed: March 11, 1988, 8:58 a.m.

TRD-8802551

Friday, March 25, 1988, 9 a.m. The Exam Informal Conferences of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the board will discuss case numbers 03-88-01X and 03-88-02X.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: March 14, 1988, 10:36 a.m.

TRD-8802634

Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Friday, March 11, 1988, 5:45 p.m. The Hearings Division met in emergency session to discuss tax, deferral, and other revenue issues affecting rates to be set in Dockets 7195/6755-Application of Gulf States Utilities Company for authority to change rates; inquiry of the commission into the prudence and efficiency of the planning and management of the construction of the River Ben Nuclear Generating Station. The emergency status was necessary because of statutory deadlines.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 11, 1988, 3:10 p.m.

TRD-8802587

Monday, March 21, 1988, 9 a.m. The Hearings Division will consider Docket

7460 and 7172-Application of El Paso Electric Company for authority to change rates and application of El Paso Electric Company for review of the sale and leaseback of Palo Verde Nuclear Generating Station Unit 2.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 10, 1988, 2:59 p.m.

TRD-8802541

Thursday, March 31, 1988, 10 a.m. The Hearings Division will consider Docket 8013-Application of Eastern New Mexico Rural Telephone Cooperative, Inc. to detariff CPE and inside wiring.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 14, 1988, 3:13 p.m.

TRD-8802655

State Purchasing and General Services Commission

Thursday, March 24, 1988, 9 a.m. The State Purchasing and General Services Commission will meet in Room 1-111, 1701 North Congress Avenue, Austin. According to the agenda, the commission will consider proposed amendments to §115.32 and adoption of new §115.40, proposed amendment to §113.6(b), monthly 3.09 report (January and February), automatic call distribution (ACD) procurement, upgrade the SP&GSC Centralized Capitol Complex Telephone System (CCCTS), renaming the Central Services Building, status of Texas Public Finance Authority projects, and set date and time of next meeting.

Contact: John R. Neel, 111 East 17th Street, Austin, Texas 78711, (512) 463-3446.

Filed: March 14, 1988, 10:38 a.m.

TRD-8802635

Railroad Commission of Texas

Monday, March 14, 1988, 9 a.m. The Oil and Gas Division of the Railroad Commission submitted an emergency revised agenda to a meeting held in Room 12-126, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the division considered formation of a Blue Ribbon Advisory Committee to consider existing natural gas production, probation, and ratable take rules of the Railroad Commission and recommend necessary changes, if any. The emergency status was necessary because of the immediate

need to identify and propose remedies to any waste and correlative rights problems and to eliminate confusion concerning existing rules constitutes a reasonably unforeseen situation requiring immediate action by the commission.

Contact: Bob Biard, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6766.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802584

Monday, March 21, 1988, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The Administrative Services Division will consider and act on the division director's report on division administration, budget, procedure, and personnel matters, including but not limited to discussion, and/or action on the following: management study, oil and gas general counsel, oil field investigator personnel and their operations, the creation and designation of an executive director with related positions and matters, and personnel matters relating to the office of general counsel and special counsel.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7527.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802567

The Automatic Data Processing Division will consider and act on the division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802562

The Flight Division will consider and act on the division director's report on division administration, budget, procedures and personnel matters.

Contact: Ken Fossler, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6787.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802569

The Gas Utilities Division will consider various matters within the regulatory jurisdiction of the Railroad Commission of Texas. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: Shelley A. Dreiling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7009.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802573

The Office of General Counsel will consider and act on the general counsel's report on division administration, budget, procedures, and personnel matters; including but not limited to discussion and/or action on the following: Hufo Oils, et al v. Railroad Commission C-5937 in the Supreme Court of Texas, Walker Operating, et al v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698 et al in relation of Oil and Gas Docket 10-87,017; FERC Orders 500, 500 A-C, and related litigation in the D.C., Fifth, Third, and Seventh Circuits.

Contact: Gail Watkins, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802574

The Office of Information Services will consider and act on the Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78704, (512) 463-6710.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802564

The Investigative Division will consider and act on the division director's report on division administration, investigation, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6828.

Filed: March 11, 1988, 11:47 p.m.

TRD-8802565

LP-Gas Division will consider and act on division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6931.

Filed: March 11, 1988, 2:40 p.m.

TRD-88002575

The Oil and Gas Division will consider application of Mitchell Energy Corporation for consideration of exception to statewide rule 37 and 38 for the Arizona Burns Lease, well #3, Boonsville (Bend Congl., gas) field, in Wise County.

Contact: Barbara Epstein P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6922.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802590

The Oil and Gas Division will consider various matters within the regulatory juris-

dition of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time of date.

Contact: Tim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7325.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802571

The Oil and Gas Division will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802566

The Personnel Division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802570

The Office of Research and Statistical Analysis will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802563

The Office of Special Counsel will consider and act on division director's report relating to state and federal legislation, budget, administrative and personnel matters, and proposed and pending litigation, including but not limited to Railroad Commission of Texas v. HydPro, Inc., cause 423,809.

Contact: Walter E. Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802568

The Surface Mining Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future

time of date.

Contact: Jerry Hill, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6900.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802572

The Transportation Division submitted a revised agenda to consider proposed amendment to 16 TAC §5.294 to include the City of Red Oak to the Dallas Commercial Zone.

Contact: C. Tom Clowe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802588

The Transportation Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: C. Tom Clowe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: March 11, 1988, 2:40 p.m.

TRD-8802561

Texas Real Estate Commission

Monday, March 21, 1988, 9:30 a.m. The Texas Real Estate Commission will meet in the Office Conference Room, TREC Headquarters, 1101 Camino La Costa, Austin. According to the agenda, the commission will discuss minutes of the February 22, 1988, meeting; consider complaint files 88-128, 129-132, and 88-159, 160; appearance of Texas Apartment Association; discuss 22 TAC §535.162, concerning disclosure of agency in residential real estate transactions; consider proposed new 22 TAC §535.163, concerning mandatory disclosure of agency by licensees in commercial real estate transactions; consider proposed new 22 TAC §§531.10-531.17, concerning minimum standards for real estate appraisals by licensees; hear staff reports for the month of January, 1988; education matters; consider motions for rehearing and/or probation; and discuss entry of orders in contested cases. The commission also will meet in executive session.

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: March 11, 1988, 4:29 p.m.

TRD-8802609

Texas Savings and Loan Department

The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. Dates, times, and agendas follow.

Tuesday, March 22, 1988, 9 a.m. The department will accumulate a record of evidence in regard to the application of Columbia Savings Association, Webster, Harris County, to relocate the home office from 17250 Highway 3, Webster to 18001 Upper Bay Road, Nassau Bay, Harris County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Nancy O. Ricketts, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: March 10, 1988, 10:48 a.m.

TRD-8802523

Thursday, March 24, 1988, 9 a.m. The department will accumulate a record of evidence in regard to the application of MeritBanc Savings Association, Silsbee, Hardin County, for a branch office to be located at 645 North Fifth Street, Silsbee, Hardin County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Nancy O. Ricketts, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: March 10, 1988, 10:48 a.m.

TRD-8802521

Thursday, March 24, 1988, 9 a.m. The department will accumulate a record of evidence in regard to the application of MeritBanc Savings Association, Silsbee, Hardin County, to relocate the home office from 645 North Fifth Street, Silsbee, Hardin County, to 2223 West Loop South, Houston, Hardin County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Nancy O. Ricketts, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: March 10, 1988, 10:48 a.m.

TRD-8802522

Texas State Soil and Water Conservation Board

Wednesday, March 16, 1988, 8 a.m. The Texas State Soil and Water Conservation Board submitted an emergency revised agenda for a meeting held in the Conference Room, 311 North Fifth Street, Temple. According to the agenda, the board considered the Farmland Protection Policy Act referrals. The emergency status was necessary because immediate action is required at

this scheduled board meeting.

Contact: Harvey Davis, P.O. Box 658, Temple, Texas, (817) 773-2250.

Filed: March 14, 1988, 10:35 a.m.

TRD-8802639

Structural Pest Control Board

The Structural Pest Control Board will meet in Suite 250, Building C, 1300 East Anderson Lane, Austin. Dates, times, and agendas follow.

Tuesday, March 29, 1988, 1 p.m. The board will approve minutes of the previous meeting; consider final adoption of proposal to require all commercial pest control companies performing in the lawn and ornamental and weed categories to become licensed by SPCB and proposed rule changes for license expiration; discuss the use of audio visual training; and consider new license application forms. The board will also meet in executive session.

Contact: David A. Ivie, 1300 East Anderson Lane, Building C, Suite 250, Austin, Texas 78758, (512) 835-4066.

Filed: March 14, 1988, 10:38 a.m.

TRD-8802636

Wednesday, March 30, 1988, 8:30 a.m. The board will hear the executive director's report; consider Antonio E. Suarez doing business as Di-Tone inspection service to appear before the board at the board's request, set board meeting dates, and miscellaneous and unfinished business.

Contact: David A. Ivie, 1300 East Anderson Lane, Building C, Suite 250, Austin, Texas 78758, (512) 835-4066.

Filed: March 14, 1988, 10:38 a.m.

TRD-8802637

Texas Sunset Advisory Commission

Thursday, March 24, 1988, 10 a.m. The Texas Sunset Advisory Commission will meet in the Senate Chamber, State Capitol Building, Austin. According to the agenda, the commission will approve minutes of the previous meeting; discuss and adopt commission rules, public hearing schedule and dates of hearings; hear presentations of staff reports and public testimony on Poultry Improvement Board, Governor's Commission for Physical Fitness, Natural Fibers and Food Protein Commission, Texas Guaranteed Student Loan Corporation, and Texas Surplus Property Agency; and consider other business.

Contact: Jeri Kramer, 105 West 15th Street, Room 305, Austin, Texas, (512) 463-1300.

Texas Surplus Property Agency

Wednesday, March 23, 1988, 3 p.m. The Governing Board of the Texas Surplus Property Agency, will meet in Emergency Operations Center, Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin. According to the agenda, the board will approve minutes of the previous meeting; consider the Fort Worth construction project; hear the Sunset Advisory Commission report and the executive director's report.

Contact: Marvin J. Titzman, P.O. Box 8120, San Antonio, Texas 78208, (512) 661-2381.

Filed: March 14, 1988, 10:36 a.m.

Texas State Technical Institute

The Board of Regents of the Texas State Technical Institute will meet in the TSTI-System Administration Building, Waco. Dates, times, rooms, and agendas follow.

Sunday, March 20, 1988, 10 a.m. The board submitted a revised agenda to consider appeal of Preston Wood.

Contact: Theodore A. Talbot, 3801 Campus Drive, Waco, Texas 76705, (817) 799-3611, ext. 3900.

Filed: March 15, 1988, 9:15 a.m.

Sunday, March 20, 1988, 1 p.m. The board will consider complete committee agenda for Sunday, March 20, 1988.

Contact: Theodore A. Talbot, 3801 Campus Drive, Waco, Texas 76705, (817) 799-3611, ext. 3900.

Filed: March 10, 1988, 2:42 p.m.

Monday, March 21, 1988, 9 a.m. The board submitted a revised agenda to consider appeal of Preston Wood.

Contact: Theodore A. Talbot, 3801 Campus Drive, Waco, Texas 76705, (817) 799-3611, ext. 3900.

Filed: March 15, 1988, 9:15 a.m.

Monday, March 21, 1988, 9 a.m. The board will consider items on proposed minute orders.

Contact: Theodore A. Talbot, 3801 Campus Drive, Waco, Texas 76705, (817) 799-3611, ext. 3900.

Texas Tech University

Thursday, March 24, 1988, 1 p.m. The Texas Tech University Health Sciences Center will meet in Room 2B152, Administration Building, Texas Tech University, Lubbock. Agendas follow.

The Committee of the Whole of Board of Regents will meet in executive session to discuss pending and contemplated litigation and settlement offers; discussions regarding purchase, exchange, lease or value of real property, negotiated contracts for prospective gifts or donations; discussions involving appointments, employment, evaluation, reassignment, duties, discipline or dismissal of officer or employee or hear complaints or charges against officer or employee unless a public hearing is requested.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

The Development Committee of the Board of Regents will approve minutes of January 29, 1988; consider appointment of members to Board of Directors of Texas Tech Medical Foundation; hear reports; and consider overview on development plans.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

The Finance and Administration Committee of the Board of Regents will approve minutes of January 28, 1988; consider budget adjustments, energy agreement with Lubbock Power and Light and City of Lubbock, fees assessed and charged enrolled and prospective students beginning with 1988-1989 academic year, ratify delegation of authority and commission of peace officer, and lease of land to Lubbock General Hospital for helicopter landing pad; and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

The Academic, Clinical, and Student Affairs Committee of the Board of Regents will approve minutes of January 28, 1988; consider conferral of honorary degree, granting of academic tenure, change in academic rank, ratify faculty development leave and conferral of degrees on May 28, 1988; hear reports; consider AHEC update, LCME site visit update, briefing on visits by the Special Committee on Post-secondary Medical, Dental, and Allied Health Education and the Medical Advisory

Committee; consider findings of facts regarding the appointment of an employee to another position of honor, trust, or profit.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

Friday, March 25, 1988, 8:15 a.m. The Board of Regents of Texas Tech University will meet in the Board Suite, Administration Building, Texas Tech University, Lubbock. Agendas follow.

The Committee of the Whole will meet in executive session to discuss pending and contemplated litigation and settlement offers; discuss purchase, exchange, lease or value of real property, negotiated contracts for prospective gifts or donations; discuss appointment, employment, evaluation, reassignment, duties, discipline or dismissal of officer or employee or hear complaints or charges against officer or employee unless a public hearing is requested.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

The Development Committee will approve minutes of January 29, 1988; hear reports; and consider overview on development plans.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

The Campus and Building Committee will approve minutes of January 28, 1988; consider amend construction contract for mechanical engineering renovation; award construction contracts for bid package #5 of campus secondary electrical service renovation, renovate biology heating system, Jones Stadium turf replacement, Jones Stadium Athletic Office expansion phase 1, expansion of commuter parking lot and access road; proceed with documents and receipt of bids to construct new traffic and parking building; dispose of agricultural engineering implement building and delete from inventory; consider campus development plan for five year development plan for university and submission to Texas Higher Education Coordinating Board, name intercollegiate baseball field, and ratify acceptance dates; and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

The Finance and Administration Committee will approve January 28, 1988; consider budget adjustments, increase in law school tuition, fees assessed and charged and en-

rolled and prospective students beginning fall 1988, energy agreement with Lubbock Power and Light and City of Lubbock, award contract for printing *University Daily*, award contracts to *Avalanche-Journal* and *Dallas Morning News* to place coin-operated newspaper vending machines on campus, ratify delegation of authority and commission of peace officer; and hear reports.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

TRD-8802679

The Academic and Student Affairs Committee will approve minutes of January 29, 1988; revise board of regents policy 08.01 governing undergraduate admission standards, finding of facts regarding the appointment of an employee to another position of honor, trust, or profit; consider granting of academic tenure, changes in academic rank, nominees for honorary degrees, designation of horn professor, granting of emeritus status, ratify leaves of absence, faculty development leaves, and conferral of degrees for May 1988, commencement; and reports and student affairs report.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

TRD-8802680

10 a.m. The board will hear reports and act on minutes, academic, clinical, and student affairs; consider finance and administration, development, and research.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

TRD-8802686

10:40 a.m. The board will hear reports and act on minutes, academic and student affairs, finance and administration, campus and building, development, and research.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: March 15, 1988, 9:04 a.m.

TRD-8802685

Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, rooms, and agendas follow.

Tuesday, March 15, 1988, 10 a.m. The commission submitted an emergency revised agenda for a meeting held in Room 118, to consider application by Travis County WCID 20 for approval to use \$100,000 in surplus fund, \$6,000, 000 bond

issue, approved November 7, 1985. The emergency status was necessary due to the necessity to relocate a water line in the referenced district by the Texas Highway Department within 30 days, the applicant has requested that this matter be considered as soon as possible.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 14, 4:11 p.m.

TRD-8802665

Tuesday, March 22, 1988, 10 a.m. The commission will meet in Room 118, to consider authorizing the executive director to enter into a contract for consulting services to assist the commission in the development of a four-year plan to upgrade the information processing capability of the agency.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 11, 1988, 4:15 p.m.

TRD-8802596

Tuesday, March 22, 1988, 10 a.m. The commission will meet in Room 118, to consider water district applications for use of surplus funds, release from escrow, extension of approval of projects and bonds, change order, water quality proposed permits, amendments and renewals, minor amendments, amendment to commission order concerning Cominco American, Inc., authorization to commence construction of waste disposal facilities, temporary permit application, water use applications, amendments to certificates of adjudication, forfeiture and abandonment of permits, and adoption of county commissioners court rules.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 11, 1988, 4:12 p.m.

TRD-8802597

Tuesday, March 22, 1988, 10 a.m. The commission will meet in Room 118, to consider notice of hearing on TA-5888 of City of Temple for a permit to divert and use 56 acre-feet of water for a three year period from Lake Polk on Bird Creek, tributary Leon River, tributary Little River, tributary Brazos River, Brazos River Basin for irrigation purposes (golf course irrigation) in Bell County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 11, 1988, 4:11 p.m.

TRD-8802602

Tuesday, March 22, 1988, noon. The Water Well Drillers Board will meet in Room 262, Tarrant County Convention Center, Fort Worth. According to the agenda, the

board will approve minutes of the January 7, 1988, meeting; consider certification of applicants for registration; applications for driller-trainee registration and whether to set the following complaints for formal public hearing before the board or for other appropriate legal action: R.L. Bird, Eddie Calicutt, Gary Chandler, Jim Derrick, Cecil Ellis, Delmar Dee Grant, Pat Horn, Donald Hurlburt, Billy Husband, Ed Jarzombek, Jerry Jasek, Eldon Lyda, Morris and Tom Robinson, Gary and Larry Scott, Marvin Taylor, Jessie Temple, Noel Mike Walker, Bud Walton, Larry Wells, and Town of Highland Park; and consider staff reports.

Contact: Larry Persky, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: March 14, 1988, 5 p.m.

TRD-8802660

Tuesday, March 22, 1988, 2 p.m. The commission will meet in Room 118, to consider motion for rehearing by Chemical Waste Management, Inc. regarding petition of the executive director in the matter of South Texas Solvents State Superfund registry site (Nueces County).

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 11, 1988, 4:15 p.m.

TRD-8802595

Tuesday, March 22, 1988, 2 p.m. The commission will meet in Room 118, to consider application by Williamson-Travis Counties Municipal Utility District #1 for amendment to Permit 2747-01 to authorize an increase in the amount of treated domestic wastewater effluent discharged from 250,000 gallons per day to 450,000 gpd and to change the location of the discharge point in Williamson County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 11, 1988, 4:11 p.m.

TRD-8802600

Wednesday, March 23, 1988, 2 p.m. The commission will meet in Room 118, to consider application by Red Lick Independent School District for proposed permit 13392-01 to authorize discharge of treated domestic effluent at a volume not to exceed an average flow of 13,000 gallons per day from a package sewage treatment plant to serve an existing school in Bowie County; and application by El Paso County Water Authority for renewal of Permit 10795-01 which authorizes the discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 500,000 gallons per day from the Horizon City Sewage Treatment Plant in El Paso County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 11, 1988, 4:11 p.m.

TRD-8802601

Tuesday, March 29, 1988, 2 p.m. The commission will meet in Room 118, to consider preliminary enforcement report and petition for order requiring certain actions of Timbercrest Village Utility Company and Continental Savings Association (Permit 12366-01); order assessing administrative penalties and requiring certain actions of Dainippon Inks and Chemical Company (SWR 30650); Lithcote Company (SWR 32632); and consideration of report of substantial noncompliance and proposed order concerning Jet Research Center, Inc. (Permit 12186).

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 11, 1988, 4:12 p.m.

TRD-8802598

Wednesday, March 30, 1988, 2 p.m. The commission will meet in Room 118, to consider report of substantial noncompliance and petition for order finding substantial noncompliance and finding no further action is necessary concerning City of Palestine (Permit 10244-01); Soltex Polymer Corporation (Permit 00544); and request for removal of renewal emergency order 86-5E by James Stefan doing business as Hidden Oaks Mobile Home Park.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 11, 1988, 4:12 p.m.

TRD-8802599

Monday, April 1, 1988, 10 a.m. The Office of Hearings Examiner will meet in Room 512, to consider Docket 7451-R-Rate increase of Montague Water Systems.

Contact: Ann MacMurray, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 11, 1988, 4:10 p.m.

TRD-8802603

Monday, April 4, 1988, 2 p.m. The commission will meet in Room 123, to consider the executive director's report on agency administration, policy, budget, procedures, and personnel matters.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 14, 1988, 4:12 p.m.

TRD-8802663

Tuesday, April 5, 1988, 10 a.m. The Office of Hearings Examiner will meet in Room 1-106, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the office will consider Docket 7319-S-Application for transferred of a water certificate of con-

venience and necessity from Double Diamond, Inc. to South Franklin Water Supply Corporation.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 11, 1988, 11:38 a.m.

TRD-8802576

Wednesday, April 13, 1988, 10 a.m. The commission will meet in Room 118, to consider petition for creation of Twinwood Municipal Utility District #1, containing 890.53 acres of land.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 14, 1988, 4:13 p.m.

TRD-8802661

Monday, April 18, 1988, 10 a.m. The Office of Hearings Examiner will meet in Room 1149A, to consider Docket 7385-G-Rate increase of Texas Landing Utilities Inc.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 11, 1988, 4:10 p.m.

TRD-8802604

Monday, April 18, 1988, 2 p.m. The commission will meet in Room 123, to consider the executive director's report on agency administration, policy, budget procedures, and personnel matters.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 14, 1988, 4:11 p.m.

TRD-8802664

Tuesday, April 19, 1988, 10 a.m. The commission will meet in Room 118; to consider application by Texas Utilities Mining Co. (TUMCO) for approval of preliminary plans to construct a haul road embankment across Blundell Creek at TUMCO's Monticello-Winfield South H-Area Mine, in Titus County. The project will be located eight miles west-southwest from the City of Mount Pleasant and will consist of constructing a compacted fill haul road embankment and the installation of seven 108-inch diameter corrugated metal pipes to convey flows of Blundell Creek under the haul road.

Contact: Claire Patterson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 14, 1988, 4:13 p.m.

TRD-8802662

Regional Meetings

Meetings Filed March 10, 1988

The Bexar Appraisal District, Appraisal Review Board, met at 535 South Main, San Antonio, on March 17, 21-24, 1988, at 8:30 a.m. The Board of Directors will also meet at the same location on March 21, 1988, at 5:15 p.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Edwards Underground Water District, Board of Directors, met at 1615 North St. Mary's San Antonio, on March 17, 1988, at 1 p.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's San Antonio, Texas, (512) 222-2204.

The North Texas Municipal Water District, Board of Directors, will meet at 505 East Brown Street, Wylie, on March 24, 1988, at 4 p.m. Information may be obtained from Carl W. Riehn, Wylie, Texas, (214) 442-5405.

TRD-8802524

Meetings Filed March 11, 1988

The Atascosa County Appraisal District, Board of Directors, met at 1010 Zanderson Avenue, Jourdanon, on March 17, 1988, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson Avenue, Jourdanon, Texas 78026, (512) 769-2730.

The Austin-Travis County, MHMR Center, Operation and Planning Committee, will meet in Room 107, 611 South Congress Avenue, Austin, on March 18, 1988, at 7:30 a.m. Information may be obtained from Sharon Taylor, 611 South Congress Avenue, Austin, Texas, (512) 447-4141.

The Bastrop County Appraisal District, Board of Directors, met at 1200 Cedar Street, Bastrop, on March 17, 1988, at 7:30 p.m. Information may be obtained from Lorraine Perry, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925.

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on March 25, 1988, at 9 a.m. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Comal Appraisal District, Board of Directors, will meet at 430 West Mill Street, New Braunfels, on March 21, 1988, at 6:30 p.m. and 7:30 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Dallas Area Rapid Transit, Mobility Impaired Committee, Minority Affairs

Committee, met at 601 Pacific Avenue, Dallas, on March 15, 1988, at 2 p.m. and 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Central Appraisal District, Appraisal Review Board, will meet in Suite 500, 1420 West Mockingbird Lane, Dallas, on March 25, 1988, at 10 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

The Hays County Appraisal District, Board of Directors, met at 632 A East Hopkins, Municipal Building, San Marcos, on March 16, 1988, at 8:30 a.m. Information may be obtained from Lynnell Sedlar, 16321 A East Hopkins, San Marcos, Texas 78666.

The Henderson County Appraisal District, Appraisal Review Board, will meet at 1751 Enterprise, Athens, on March 24, 1988, at 9:30 a.m. Information may be obtained from Helen Marchbanks, 1751 Enterprise, Athens, Texas, (214) 675-9296.

The Houston-Galveston Area Council, Projects Review Committee, met in Board of Directors Conference Room, Fourth Floor, 3555 Timmons, Houston, on March 15, 1988, at 9 a.m. The Natural Resources Advisory Committee met at the same location on March 17, 1988, at 3 p.m. Information may be obtained from Jack Steele or Carl Masterson, 3555 Timmons, Houston, Texas 77027, (512) 627-3200.

The Lower Colorado River Authority, Planning and Public Policy and Audit and Budget Committees, met at 3700 Lake Austin Boulevard, Austin, on March 15, 1988, at 10 a.m. The Board of Directors will meet at the same location on March 22, 1988, at 1 p.m. Information may be obtained from Thomas G. Mason, 3700 Lake Austin Boulevard, Austin, Texas.

The San Patricio County Appraisal District, Appraisal Review Board, will meet at the Courthouse Annex, Sinton, on March 23, 1988, at 1:30 p.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

TRD-8812548

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Meetings Filed March 14,
1988

The Central Texas Council of Governments, Criminal Justice Advisory Committee, will meet at 302 East Central, Belton, on March 23, 1988, at 2 p.m. Information may be obtained from Lidell Bishop, P.O. Box 729, Belton, Texas 76513, (817) 939-1801.

The Deep East Texas Regional MHMR Services, Board of Trustees, will meet in the Ward R. Burke Community Room, Ad-

ministration Facility, 4101 South Medford Drive, Lufkin, on March 22, 1988, at 4 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901.

The East Texas Council of Governments, Board of Directors, met at Rains Elementary School Cafeteria, Emory, on March 17, 1988, at 7:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Emory, Texas, (214) 984-8641.

The Education Service Center, Region II, Board of Directors, will meet in the Administrative Conference Room, 209 North Water, Corpus Christi, on April 12, 1988, at 6:30 p.m. Information may be obtained from Gerald V. Cook, 209 North Water, Corpus Christi, Texas 78401, (512) 883-9288.

The Education Service Center, Region VI, Board of Directors, met at the Hilltop Lakes, Normangee, on March 17 and 29, 1988, at 9:30 a.m. and 1 p.m., respectively. Information may be obtained from M.W. Schlotter, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

The Education Service Center, Region XIII, Board of Directors, will meet in Room 205, 5701 Springdale Road, Austin, on March 21, 1988, 12:30 p.m. Information may be obtained from Joe Parks, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300.

The Guadalupe-Blanco River Authority, Industrial Development Corporation and Board of Directors, met at 933 East Court Street, Seguin, on March 17, 1988, at 9:30 a.m. and 10 a.m., respectively. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822.

The Hays County Appraisal District, Appraisal Review Board, met at 632 A East Hopkins, San Marcos, on March 16, 1988, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400.

The Nortex Regional Planning Commission, General Membership Committee, will meet in the Bounty Room, Trade Winds Motor Hotel, 1212 Broad Street, Wichita Falls, on March 24, 1988, at noon. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas, (817) 322-5281.

The North Texas State Planning Region Consortium of Nortex Regional Planning Commission, will meet in the Bounty Room, Trade Winds Motor Hotel, 1212 Broad Street, Wichita Falls, on March 24, 1988, at 1 p.m. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

The Northeast Texas Municipal Water District, Board of Directors, will meet at Highway 250 South, Hughes Springs, on

March 21, 1988, at 10 a.m. Information may be obtained from J.W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538.

The Upper Leon River Municipal Water District, Board of Directors, will meet in the General Office of the Filter Plant, Proctor Lake, Comanche County, on March 24, 1988, at 6:30 p.m. Information may be obtained from Garry W. Godfrey, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258.

TRD-8802634

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Meetings Filed March 15,
1988

The Central Texas Council of Governments, Executive Committee, will meet at 302 East Central, Belton, on March 24, 1988, at noon. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801.

The Middle Rio Grande Development Council, Middle Rio Grande Rural Rail Transportation District, met in the Commissioner's Room, Zavala County Courthouse, Crystal City, on March 17, 1988, at 3 p.m. Information may be obtained from Greg Davenport, 209 North Getty, Uvalde, Texas 78801, (512) 278-2527.

TRD-8802675

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

State Banking Board

Notice of Hearings

The hearing officer of the State Banking Board will conduct a hearing on Thursday, April 28, 1988, at 9 a.m., 2601 North Lamar Boulevard, Austin, on the change of domicile application for First State Bank, Temple.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, on the change of domicile application for First State Bank, Temple.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on March 9, 1988.

TRD-8802503 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: March 9, 1988

For further information, please call (512) 479-1200.



The hearing officer of the State Banking Board will conduct a hearing on Thursday, May 5, 1988, at 9 a.m., 2601 North Lamar Boulevard, Austin, on the change of domicile application for Southwest Guaranty Trust Company located in Houston.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on March 10, 1988.

TRD-8802583 William F. Aldridge
Director
Texas Department of Banking

Filed: March 11, 1988

For further information, please call (512) 479-1200.



Texas Department of Commerce

Texas Community Development Program 1988 Final Statement-Summary

Purpose/Activities/Applicants. The purpose of the Texas Community Development Program (TCDP) is the development of viable communities by providing decent housing, a suitable living environment, and expanding economic opportunities principally for persons of low and moderate income. All proposed activities under the program must either principally benefit persons of low and

moderate income; aid in the elimination of slums or blight; or meet other community development needs of particular urgency.

Eligible applicants for the TCDP are units of general local government not participating or designated as eligible to participate in the entitlement portion of the federal Community Development Block Grant Program.

Allocation System. Assistance under the TCDP is currently available in five funding categories: the community development project fund; the Texas capital fund; the planning/capacity building fund; the emergency/urgent need fund; and the interim financing fund. Specific information on each fund is as follows.

Community Development Fund. Will be available annually for public facilities and housing assistance, with regional allocations to each of the 24 state planning regions. All applications under this fund must be for projects as defined in the CDF application guide. Funds will be available through an annual competition, in which scoring will be shared between TDOC and regional review committees.

Texas Capital Fund. Will be available six times per year for economic development funding on a competitive basis to consider projects which create or retain permanent employment opportunities, primarily for low and moderate income persons. Grant requests for direct loans to private businesses and for infrastructure improvements to assist a private development will be eligible under this fund.

Planning/Capacity Building Fund. Will be available once a year through a statewide competitive process for local governments to develop strategies and build or improve local capacity or prepare other needed planning elements.

Emergency/Urgent Need Fund. Will be available as needed for eligible activities which relieve emergency situations where either the governor has made a state disaster declaration or has requested a federal disaster declaration; or which address urgent needs that have resulted in either death, illness, injury, or the presence of contamination within the affected applicant's jurisdiction, as certified by the appropriate state agency. The distribution of these funds will be coordinated with other state agencies. Urgent need fund applications cannot represent the resubmittal of substantially the same project not funded under the community development fund.

Interim Financing Fund. TDOC is again including a mechanism to allow for interim financing under the 1988 program. Existing allocations from all statewide competitions, the emergency/urgent need fund, and possibly from participating regions under the community development fund will be available to award short-term grants to localities. These grants would then be used for interim financing loans for economic development projects that are necessary or appropriate and that also meet the CDBG national objective of benefit to low and moderate income persons through job creation/retention. The funds will only be awarded during the period of the program year when no

funds are being obligated. Funds for interim financing will only be available with the agreement of applicant localities that they will not retain such funds for local reuse to fund the same type of activity described in their interim financing applications, and that TDOC will recapture such funds at the state level for use in the regular statewide/regional competitions. The availability of funds for subsequent use will depend on the return of these funds from the initial user. As such, TDOC will require an irrevocable letter of credit or similar mechanism from each participating business' private financial institution. This will minimize the possibility of loss or delay of funds being available for the statewide competitions (i.e. the planning/capacity building fund and the Texas capital fund), the regional community development allocation from a participating region, or for the emergency/urgent need fund.

Amount of Funds Available Statewide. According to the United States Department of Housing and Urban Development, the 1988 allocation for the state is \$48,506,000. This amount reflects a 4.2 reduction triggered by the Balanced Budget and Deficit Control Act of 1985 and the fact that Hidalgo County has received entitlement designation.

Review Process. Each of the state's 24 regional review committees (RRCs) shall consist of 12 members appointed by the governor for two-year staggered terms. Each RRC shall review and score all applications within its region for community development projects, and may comment on applications submitted under the Texas capital fund and the planning/capacity building fund. In addition, a state community development review committee composed of 12 members, also appointed by the governor for two-years terms, will oversee the Texas Community Development Program.

Performance Requirements/Project Selection Criteria. A locality must meet the following requirements in order to submit an application, under any fund, to the TCDP: demonstrate the ability to administer the proposed project; demonstrate the financial management capacity to operate and maintain any improvements resulting from the project; levy a local sales or property tax; demonstrate satisfactory performance on prior TCDP contracts, and resolve any and all outstanding compliance and audit findings.

All projects under the community development, Texas capital, and planning/capacity building/Funds will be evaluated and rated in accordance with a numerical point system based on the following major criteria groups: community/economic distress factors of the applicant; project design; and other considerations. The final assignment of points for an application will be the total of points received in the three criteria groups. All funds will use benefit to low/moderate income persons as a threshold factor but not as a basis for point awards.

A complete copy of the proposed final statement is available upon request. Please write or call Julie Hartley, TCDP/Finance Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, (512) 320-0110.

Issued in Austin, Texas, on March 14, 1988.

TRD-8802832 J. W. Lauderback
Executive Director
Texas Department of Commerce

Filed: March 14, 1988

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



Weekly Report on the 1988 Allocation of the State Ceiling on Certain Private Activity Bonds

The Tax Reform Act of 1986 (the "Tax Act") imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1988 is \$834,100,000.

State legislation, Senate Bill 1382, Chapter 1092, Acts of the 70th Legislature, (the Act), established the allocation process for the State of Texas. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

Pursuant to the Act, the aggregate amount for qualified mortgage bond subceiling is \$278,033,300 with \$185,355,500 available to the local housing authorities and \$92,677,800 available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$208,525,000 and the amount for all other state-voted issues is \$208,525,000 and the amount for all other bonds requiring an allocation is \$347,541,700.

Generally, the state ceiling is allocated on a first-come, first-served basis, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a weekly report of the allocation activity for the period, February 29, 1988 - March 4, 1988.

Weekly report on the 1988 allocation of the state ceiling on certain private activity bonds as pursuant to Senate Bill 1382.

Total amount of state ceiling remaining unreserved for the \$278,033,300 subceiling for qualified mortgage bonds under the Act as of February 19, 1988: \$190,185,425

Total amount of state ceiling remaining unreserved for the \$208,525,000 subceiling for state-voted issues under the Act as of February 19, 1988: \$208, 525,000

Total amount of state ceiling remaining unreserved for the \$347,541,700 subceiling for all other bonds under the Act as of February 19, 1988: None

Total amount of the \$834,100,000 state ceiling remaining unreserved as of February 19, 1988: \$398,710,425.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from February 29, 1988 - March 4, 1988: None.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from February 29, 1988 - March 4, 1988: Listed is the issuer, user, description, and amount; Harris County, Houston Sports Association, Governmental Bond with Private Portion Use, \$52,000,000.

Issued in Austin, Texas, on March 8, 1988.

TRD-8802547 J.W. Lauderback
Executive Director
Texas Department of Commerce

Filed: March 10, 1988

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



Texas Department of Health
Licensing Actions for Radioactive
Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state. INSERT SLICK leave 11/2 pages

NEW LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Beaumont	Medivision of Beaumont	L04149	Beaumont	0	02/08/88

AMENDMENTS TO EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Abilene	Radiology Associates	L00339	Abilene	50	02/10/88
Arlington	Metroplex Hematology Oncology Assoc.	L03211	Arlington	25	02/12/88
Atlanta	Atlanta Memorial Hospital	L02815	Atlanta	3	02/17/88
Austin	St. David's Community Hospital	L01086	Austin	18	02/16/88
Beaumont	Beaumont Medical Surgical Hospital	L02102	Beaumont	23	02/05/88
Bedford	Northeast Community Hospital	L03455	Bedford	6	02/18/88
Brownsville	Brownsville Medical Center	L01526	Brownsville	17	02/16/88
Caldwell	Burleson County Hospital	L03260	Caldwell	5	02/08/88
Childress	Childress General Hospital	L02784	Childress	12	02/18/88
Conroe	Medical Center Hospital	L02421	Conroe	9	02/18/88
Dallas	Princeton Packaging, Inc.	L00803	Dallas	16	02/10/88
Dallas	Damon Clinical Laboratories	L02164	Irving	6	02/05/88
Dallas	North Dallas Diagnostic Center	L03125	Dallas	18	02/16/88
Dallas	National Health Laboratories, Inc.	L01716	Dallas	11	02/12/88
El Paso	Sierra Medical Center	L02365	El Paso	16	02/23/88
Floresville	Wilson Memorial Hospital	L03471	Floresville	1	02/10/88
Fort Worth	Radiology Associates	L03953	Fort Worth	2	02/19/88
Houston	Positron Corporation	L03806	Houston	6	02/05/88
Houston	The U.T. Health Science Center at Houston	L02774	Houston	11	02/12/88
Houston	Sam Houston Memorial Hospital	L01878	Houston	20	02/16/88
Houston	HCA Medical Center Hospital	L02073	Houston	15	02/12/88
Houston	Rice University	L00311	Houston	26	02/23/88
Houston	The Institute for Rehabilitation and Research	L04000	Houston	1	02/10/88
Longview	Texas Eastman Company	L00301	Longview	57	02/04/88
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	21	02/16/88
Odessa	Qualitex Industrial X-Ray, Inc.	L04079	Odessa	1	02/25/88

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Seminole	Seminole Memorial Hospital	L03118	Seminole	8	02/16/88
Throughout Texas	ERM - Southwest, Inc.	L02936	Houston	8	02/05/88
Throughout Texas	Comprobe Incorporated	L01667	Fort Worth	17	02/05/88
Throughout Texas	Texas West Wireline	L03992	Midland	2	02/04/88

Throughout Texas	Tru-Tec	L03913	La Porte	12	02/04/88
Throughout Texas	Maxim Engineers	L02653	Dallas	12	02/05/88
Throughout Texas	B & R Inspection and Equipment Company, Inc.	L02564	Midland	8	02/10/88
Throughout Texas	Professional Service Industries, Inc.	L03055	Longview	8	02/12/88
Throughout Texas	AnAid, Inc.	L03171	Dickinson	7	02/12/88
Throughout Texas	Gulf Coast Testing & Inspection Co.	L02378	Houston	16	02/18/88
Throughout Texas	Daniel Industries, Inc.	L03077	Houston	4	02/18/88
Throughout Texas	Bonded Inspections, Inc.	L00693	Garland	33	02/11/88
Throughout Texas	Brazos Valley Inspection Services, Inc.	L02859	Bryan	20	02/16/88
Throughout Texas	Testmasters, Inc.	L03651	Houston	4	02/16/88
Throughout Texas	Non-Destructive Inspection Corporation	L02712	Lake Jackson	9	02/16/88
Throughout Texas	G & G X-Ray, Inc.	L03326	Corpus Christi	12	02/19/88
Waco	Texas State Technical Institute	L01926	Waco	20	02/16/88

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Denton	AMI Denton Regional Medical Center	L02764	Denton	13	01/12/88
Evadale	Temple-Eastex, Inc.	L01095	Silsbee	28	02/05/88
Kaufman	Presbyterian Hospital of Kaufman	L03337	Kaufman	5	02/12/88
Lubbock	Saint Mary of the Plains Hospital	L01547	Lubbock	32	02/12/88

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Hubbard	Hubbard Hospital	L03562	Hubbard	2	02/05/88
San Antonio	Bexar County Medical Examiner's Office	L02454	San Antonio	4	02/08/88
South Houston	SIOR-TECH WELL SURVEYS	L03655	South Houston	1	02/10/88
Victoria	Craig P. Bade, M.D.	L03270	Victoria	1	02/19/88

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th

Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on March 9, 1988.

TRD-8802519 Robert A. MacLean
Deputy Commissioner
Texas Department of Health

Filed: March 10

For further information, please call (512) 835-7000.

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 a name change by Aristar Life Insurance Company, a foreign life insurance company. The home office is in Sherman Oaks, California. The proposed new name is GW Life Insurance Company.

2. Application for admission to do business in Texas of Medlife Insurance Company (Assumed Name in the State of Texas) for Medical Life Insurance Company, a foreign life insurance company. The home office is in Cuyahoga, Ohio.

3. Application for a name change by Commercial Risk Universities Insurance Company, a foreign casualty company. The home office is in Omaha, Nebraska. The proposed new name is Transamerica Reinsurance Company.

4. Application for a name change by Consolidated Savings Life Insurance Company, a domestic life insurance company. The home office is in Dallas. The proposed new name is U.S. Liberty Life Insurance Company.

5. Application for a name change by TDA Life and Health Insurance Company, a domestic life insurance company. The home office is in Houston. The proposed new name is Professional Benefits Insurance Company.

6. Application for admission to do business in Texas of Concept Administrators Inc., a foreign third party administrator. The home office is in Sacramento, California.

7. Application for incorporation of the Trust Fund Management Group, Inc., a domestic third party administrator. The home office is in Houston.

8. Application for admission to do business in Texas of Associated Health Plans, Inc. of LA, a foreign

third party administrator. The home office is in Metairie, Louisiana.

9. Application for a name change by Union Casualty Company, a foreign life insurance company. The home office is in Omaha, Nebraska. The proposed new name is Legacy Life Insurance Company.

Issued in Austin, Texas, on March 9, 1988.

TRD-8802581

Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: March 11, 1988

For further information, please call (512) 463-6327.

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Correction of Error

A company licensing notification submitted by the State Board of Insurance contained errors as published by the office of the Texas Register in the February 26, 1988 issue of the *Texas Register* (13 TexReg 1046).

Item 2 of the notification was erroneously published and should be considered withdrawn from notification.

The first sentence of Item 6 should read: "Application for the incorporation of Dan Reynolds Employee Benefits Corporation, a domestic third party administrator."

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**Texas State Board of Pharmacy
Correction of Error**

The Texas State Board of Pharmacy submitted an adopted

section which contained an error as published by the office of the Texas Register in the February 26, 1988, issue of the *Texas Register* (13 TexReg 1824).

In §283.4, subsection (b) should read: "

(b) Hours requirement.

(1) The board requires 1,500 hours of internship for licensure. These hours may be obtained through one or more of the following methods:

(A) in a Texas College of pharmacy college-based, board-approved structured internship program, as specified in subsection (c) of this section:

(B) in a board-approved extended-internship program as specified in subsection (d) of this section; and/or

(C) through internship hours approved and certified to the board by another state board of pharmacy.

(2) An applicant who has completed less than 500 hours of internship at the time of application shall:

(A) complete the remainder of the 1,500 hour internship in a board-approved extended-internship program; and

(B) have the preceptor certify that the applicant has met the competencies listed in subsection (a) of this section.

(3) Pharmacist-interns participating in an internship may be credited no more than 50 hours per week of internship experience."

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Veterans Land Board
Invitation for Bids

The Veterans Land Board invites prospective contractors to submit proposals to act as the disbursing and receiving agent for the Texas Veterans Housing Assistance Program and the Texas Veterans Home Improvement Programs.

Proposal Specifications. The services contracted for will include, but are not limited to, receiving and disbursing loan proceeds, receiving and remitting mortgage payments, acting as loan file custodian, and submitting reports to the board and the program administrator.

A disbursing and receiving agent will be selected by approximately May 15, 1988.

Contact. To request an application packet, call or write State of Texas, Veterans Land Board, Larry R. Letscher, Assistant Land Commissioner for Fiscal Management, 1700 North Congress Avenue, Room 735, Austin, Texas 78701-1496, (512) 463-5025.

Closing Date. All proposals must be received by 5 p.m. on April 22, 1988, and sent to the address specified previously.

Evaluation Criteria. Proposals will be evaluated on the basis of the size of the firm and qualifications of personnel that will be devoted to the programs, the firm's experience in other disbursing and receiving functions, the suitability of the work plan, the timetable of the transfer and implementation process, and the firm's float requirements.

The agent's compensation will be based on float instead of direct fees.

Proposals must be submitted according to the instructions and requirements set out in the application packet. The packet includes more detailed information about evaluation criteria, scope of work, terms and conditions, guidelines, and responsibilities of the agent.

Issued in Austin, Texas, on March 15, 1988.

TRD-8802556 Garry Mauro
Chairman
Veterans Land Board

Filed: March 11, 1988

For further information, please call (512) 463-5009.

◆ ◆ ◆
Texas Water Commission
Enforcement Order

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 Miami on March 10, 1988, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Kenneth Ramirez, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on March 10, 1988.

TRD-8802605 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: March 11, 1988

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 Capitol Metal Finishing, Inc. on March 9, 1988, assessing \$28,000 in administrative penalties, \$18,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Patricia Barnhard, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on March 10, 1988.

TRD-8802606 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: March 11, 1988

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 Hamilton on March 10, 1988, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Chong, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on March 10, 1988.

TRD-8802607 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: March 11, 1988

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 Electro Plate Circuitry, Inc. on March 10, 1988, assessing \$2,000 in 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 March 10, 1988.

TRD-8802608 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: March 11, 1988

For further information, please call (512) 463-8069.



Texas Water Development Board Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the board:

City of Malakoff, P.O. Drawer Q, Malakoff, Texas 75148, received February 18, 1988, financial assistance in the amount of \$310,000 from the water supply account of the water development fund;

Trinity River Authority (City of Dalworthington Gardens), P.O. Box 60, Arlington, Texas 76010, received February 18, 1988, financial assistance in the amount of \$1,670,000 from the water supply account of the Texas water development fund;

Texas Tech University, Lubbock, Texas 79409-2101, received January 7, 1988, request for research grant in an amount not to exceed \$23,740 from the research and planning fund;

San Patricio Municipal Water District, P.O. Drawer S, Ingleside, Texas 78369, received December 15, 1987, request for regional water supply and wastewater planning grant in an amount not to exceed \$62,500;

Sabine River Authority of Texas, P.O. Box 579, Orange,

Texas 77630, and Orange County Navigation and Port District and Industrial Development Corporation, Orange, received December 15, 1987, request for regional water supply and wastewater planning grant in an amount not to exceed \$15,000;

Travis County Water Control and Improvement District Number 17, 3900 Eck Lane, Austin, Texas 78734, received December 15, 1987, request for regional water supply and wastewater planning grant in an amount not to exceed \$27,500;

High Plains Underground Water Conservation District Number 1, 2930 Avenue Q, Lubbock, Texas 79409, received February 29, 1988, request for grant in the amount of \$21,617.02 from the agricultural soil and water conservation trust fund. Additional information concerning this matter may be obtained from M. Reginald Arnold II, Executive Administrator, P.O. Box 13231, Austin, Texas 78711.

Issued in Austin, Texas, on March 9, 1988.

TRD-8802502 M. Reginald Arnold II
Executive Administrator
Texas Water Development Board

Filed: March 9, 1988

For further information, please call (512) 463-7850.

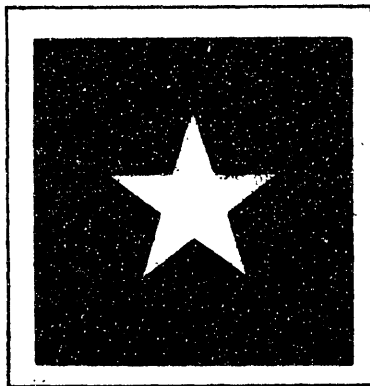


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