Texas Register

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Texas Register

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

Governor–appointments, executive orders, and proclamations

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

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

Proposed Sections–sections proposed for adoption

Withdrawn Sections–sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings–notices of open meetings

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

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

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

In order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "13 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 13 TexReg 3."

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code;*

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

Texas Register Publications

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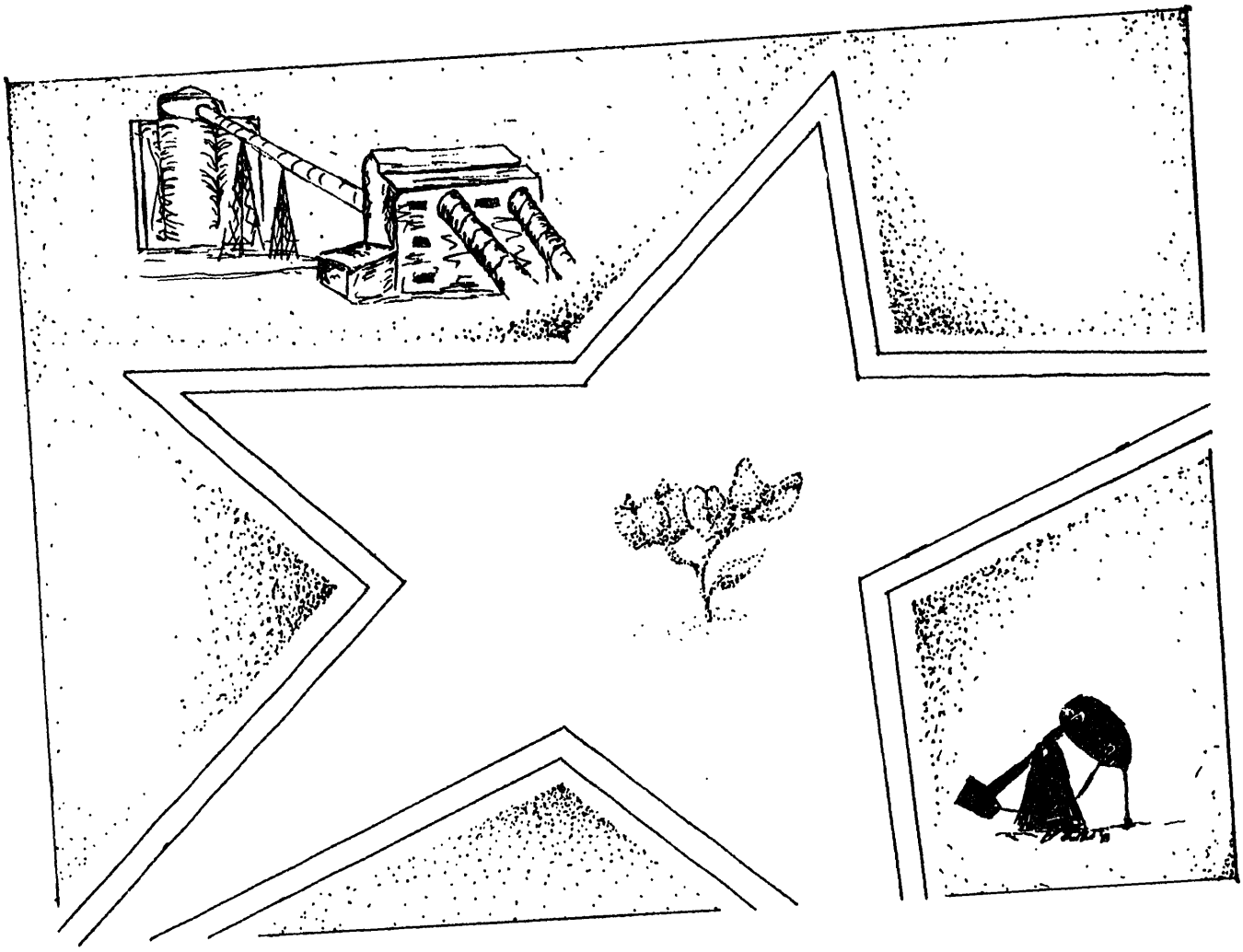
Open Meetings

In Additions



Name: Edward Burke

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TAC Titles Affected

TAC Titles Affected–December

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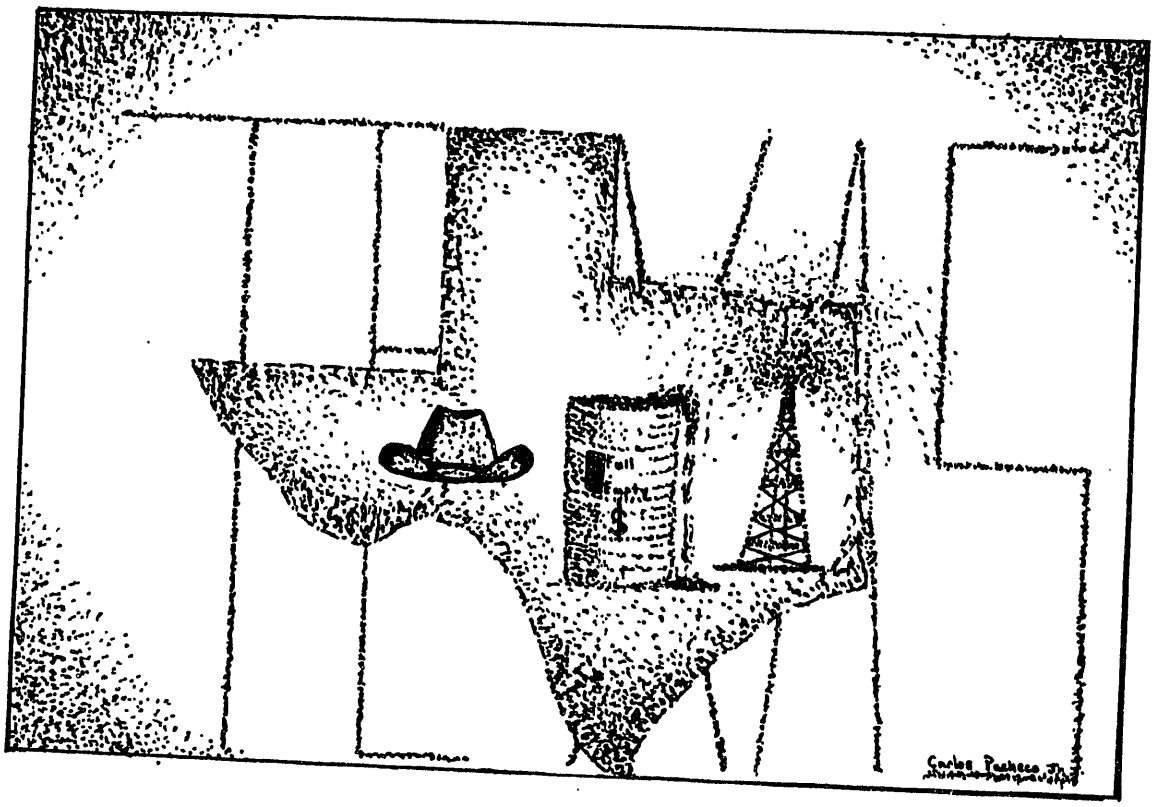

Name: Carlos Pacheco Jr.

Grade: 11

School: Del Rio High, San Felipe Del Rio

The Governor

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

Appointments Made December 12, 1988

To be a member of the **Texas A&M University System Board of Regents** for a term to expire February 1, 1989: Billy W. Clayton, P.O. Box 38, Springlake, Texas 79082. Mr. Clayton will be replacing Joseph H. Reynolds of Houston who resigned.

To be a judge of the **251st Judicial District Court, Potter and Randall Counties** until the next general election and until his successor shall be duly elected and qualified, effective January 1, 1989: Patrick A. Pirtle, 6304 Watford, Amarillo, Texas 79101. Justice Pirtle will be replacing Judge Naomi Harney of Amarillo who retired.

To be a judge of the **93rd Judicial District Court, Hidalgo County** for a term to expire December 31, 1988: Robert F. Barnes, 500 Wichita, #71, McAllen, Texas 75803. Judge Barnes will be filling the unexpired term of Judge John F. Dominguez of Edinburg who resigned.

Issued in Austin, Texas on December 14, 1988.

TRD-8800220

William P. Clements, Jr.
Governor of Texas

Name: Armando Mascorro Jr.

Grade: 12

School: Del Rio High, San Felipe Del Rio

Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes, Article 4399, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Requests for Opinions

JM-988 (RQ-1560). Request from Kent A. Caperton, Chairman, Committee on Jurisprudence, Texas State Senate, Austin, concerning whether the power of eminent domain attaches to a limited partnership with a corporate general partner where the partnership owns and operates a refined petroleum products pipeline.

Summary of Opinion. A limited partnership with a corporate general partner that owns and operates a refined petroleum products pipeline is confered the power of eminent domain pursuant to the Texas Corporation Act, subsection B(3)(b), Article 2.01, but only if each partner, whether limited or general, is itself a corporation. TRD-8812673

♦ ♦ ♦

JM-989 (RQ-1494). Request form Bob Bullock, Comptroller of Public Accounts, Austin, concerning whether the comptroller may pay the salary of a visiting judge who has been improperly appointed.

Summary of Opinion. The Comptroller of Public Accounts may lawfully pay the salary of a visiting judge (active or retired pursuant to the Government Code, §75.001) assigned under the color of authority to a court existing under the laws of this state for services rendered while sitting on the court to which he or she has served pursuant to such assignment. In the event either party to a civil case files an objection to the assignment, the judge is disqualified under the Government Code, §74.053(b), and is not entitled to compensation for any services that may be rendered following disqualification. TRD-8812671

♦ ♦ ♦

JM-990 (RQ-1525). Request from Jo King McCrorey, Executive Director, State Board of Barber Examiners, Austin, concerning whether a cosmetologist is authorized to trim beards and mustaches.

Summary of Opinion. A licensed cosmetologist has no statutory authority to shave and trim beards. TRD-8812672

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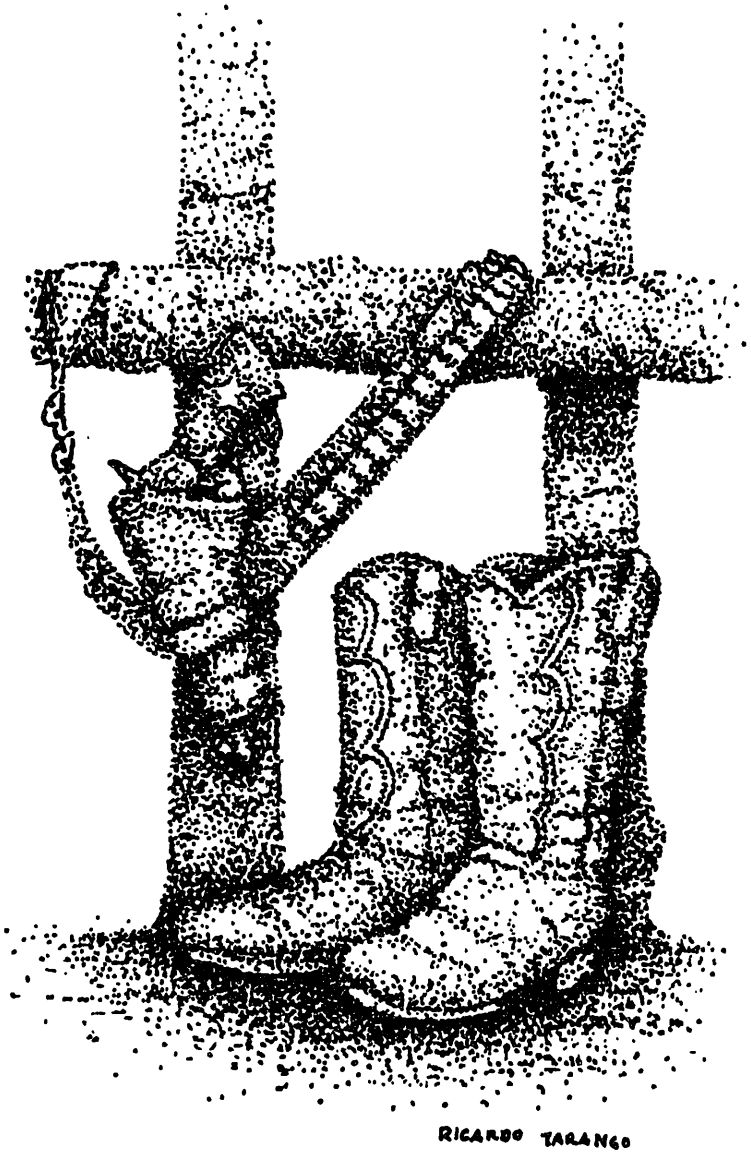

Name: Ricardo Tarango

Grade: 12

School: Del Rio High, San Felipe Del Rio

Emergency Sections

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

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

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 27. State Fire Marshal

Subchapter A. Fire Extinguisher Rules

• 28 TAC §27.14

The State Board of Insurance is renewing the effectiveness of the emergency adoption of amended §27.14, for a 60-day period effective February 20, 1989. The text of amended §27.14 was originally published in the December 2, 1988, issue of the *Texas Register* (13 TexReg 5949).

Issued in Austin, Texas on December 12, 1988.

TRD-8812645 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 22, 1988

Expiration date: February 20, 1989

For further information, please call: (512) 463-6327

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Subchapter B. Sales, Installation, Maintenance, and Servicing of, Fire Detection and Fire Alarm Devices and Systems

• 28 TAC §27.209

The State Board of Insurance is renewing the effectiveness of the emergency adoption of amended §27.209, for a 60-day period effective December 22, 1988. The text of amended §27.209 was originally published in the December 2, 1988, issue of the *Texas Register* (13 TexReg 5949).

Issued in Austin, Texas on December 12, 1988.

TRD-8812646 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 22, 1988

Expiration date: February 20, 1989

For further information, please call: (512) 463-6327

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TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 21. Right of Way Division

Control of Outdoor Advertising Signs

• 43 TAC §21.160

The State Department of Highways and Public Transportation adopts on an emergency basis new §21.160, concerning relocation of outdoor advertising signs. This new section incorporates revised sign spacing, location, and size criteria which will provide greater flexibility to relocate certain off-premise signs within the highway taking to the remainder or abutting property. The present criteria for sign spacing, location, and size provide that signs may not exceed 672 square feet in area nor be erected closer than 1500, 750, or 300 feet apart. They also require at least two adjacent recognized commercial or industrial activities in an area defined as an unzoned commercial or industrial area. Under the new section an existing sign displaced by a state highway system right-of-way project may be relocated on the remaining or abutting property adjacent to the new right-of-way line as therein provided, with maximum permitted area being 1,200 square feet and minimum permitted spacing being 500, 300, or 100 feet apart. For the purposes of those relocated signs, an unzoned commercial or industrial area is based on at least one or more recognized commercial or industrial activities. In no event shall the size of the sign face of the relocated sign exceed the size of the existing sign.

The new section is adopted on an emergency basis in order to avoid needless and excessive expenditure of highway funds and to expedite highway improvements urgently needed to protect the safety and welfare of the traveling public.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 6666 and 4477-9a, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and to promulgate rules for control of outdoor advertising.

§21.160. Relocation.

(a) Purpose. This section provides for the relocation of certain signs along the interstate highway system and the federal-aid primary highway system within the State of Texas that would otherwise be precluded under this undesignated head concerning to control of outdoor advertising signs. All requirements under this undesignated head, concerning control of outdoor advertising signs, are to be complied with to the extent that they are not in conflict with the provisions of this section.

(b) Unzoned commercial or industrial area. For the purposes of implementing this section an unzoned commercial or industrial area shall mean an area along the highway right of way which has not been zoned under authority of law, which is not predominantly used for residential purposes, and which is within 800 feet, measured along the edge of the highway right-of-way, of, and on the same side of the highway as, the principal part of one or more recognized commercial or industrial activities within 200 feet of the highway right-of-way. The area to be considered, based upon the qualifying activities, shall be:

(1) composed of a total of 1,600 feet (800 feet on each side) plus the actual or projected frontage of the commercial or industrial activities, measured along the highway right of way by a depth of 660 feet;

(2) located on the same side of the highway as the principal part of the qualifying activities; and

(3) considered to be predominantly residential if, taken as a whole, more than 50% of the area is being used for residential purposes. (Roads and streets with residential property on both sides shall be considered as being used for residential purposes. Other roads and streets will be considered nonresidential.)

(c) Permit. Where a sign within the proposed highway right of way is to be acquired for an interstate or federal-aid primary highway project and cannot be relocated under the requirements of this undesignated head concerning the control of outdoor advertising signs to an adjacent site on the same side of the highway, the district engineer of the department within whose jurisdiction the sign is located may issue a permit under the conditions as set forth in subsections (d) and (f) of this section.

(d) Requirements.

(1) A new sign permit application shall be submitted but will not require

payment of a permit fee.

(2) Sign relocation shall be in accordance with all local codes, ordinances, and applicable laws.

(3) The district engineer shall initially determine that such permit is necessary to avoid excessive project costs and/or a delay in the completion of the project.

(4) The existing sign to be relocated must be an off-premise sign legally erected and maintained.

(5) The sign must be situated after its relocation according to the following priority:

(A) upon the remainder of the same tract or parcel of land upon which it was situated before its relocation, if any; or

(B) if there is no remainder or if the remainder is not of sufficient size or suitable configuration for the relocation of the sign, then upon the property abutting the highway at the original sign location or upon the property abutting the insufficient remainder, if available.

(6) The sign is to be placed in the same relative position as to line of sight and not to exceed 3,000 feet to either side of the perpendicular placement as the original sign was situated in relation to the highway.

(7) Except as provided in paragraph (10) of this subsection, the relocated sign may not be:

(A) located as to be likely to cause a driver to be unduly distracted in any way or so as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic, whether the intersection be of two or more highways or the intersection of a highway with a railroad;

(B) located within 500 feet of any public park, public forest, public playground, or scenic area designated as such by the department or other governmental agency having and exercising such authority, which is adjacent to the highway;

(C) located adjacent to or within 500 feet of interchanges, intersections at grade and rest areas along interstate and freeway federal-aid primary highways outside incorporated municipalities or which will tend to obscure or otherwise interfere with the driver's view of approaching, merging, or intersecting traffic; (Where there are ramps between the main traveled way of interstate and freeway federal-aid primary highways and adjacent frontage roads, no new signs may be erected outside incorporated municipalities in areas adjacent to said ramps, their acceleration and deceleration lanes and within 500 feet thereof. Such distances shall be measured along the highway from the nearest point of beginning or ending of pavement widening at the exit from, or entrance to, the main traveled way.)

(D) erected along the interstate and freeway federal-aid primary highway systems closer than 500 feet apart on the same side of the highway;

(E) erected along the nonfreeway federal-aid primary highway system located outside of incorporated cities, towns, or villages closer than 300 feet apart on the same side of the highway;

(F) erected along the nonfreeway federal-aid primary highway system in incorporated cities, towns, and villages closer than 100 feet apart on the same side of the highway; and

(G) erected within five feet of any highway right of way line.

(8) The size of the relocated sign must conform to the following provisions.

(A) The maximum area for any one sign shall be 1,200 square feet, with a maximum height of 25 feet and a maximum length of 60 feet, inclusive of border and trim, but excluding the base, apron, supports, and other structural members.

(B) The maximum size limitations shall apply to each side of a sign structure or structures visible to approaching traffic.

(C) The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire sign.

(D) Signs may be placed back-to-back, side-by-side, stacked, or in "V" type construction with not more than two displays to each facing and such sign structure or structures shall be considered one sign.

(E) A sign which exceeds 350 square feet in area may not be stacked or placed side-by-side.

(F) In no event shall the size of the sign face or lighting, if any, of the relocated sign exceed the size or lighting, if any, of the existing sign.

(9) The sign replacement site is to be approved by the district engineer of the department or his designated representative prior to the removal of the existing sign.

(10) The spacing requirements as provided in paragraph (7) of this subsection do not apply to:

(A) signs separated by buildings, natural surroundings, or other obstructions which cause only one sign located within the specified spacing to be visible at any one time; and

(B) on-premise or directional or official signs, as cited in the Texas Litter Abatement Act, Texas Civil Statutes, Article 4477-9a, §4.03(b)(1), nor shall measurements be made from such signs.

(e) Cessation of activities. When a commercial or industrial activity ceases and a sign other than an exempt sign is no longer located within 800 feet of at least one recognized commercial or industrial activity located on the same side of the highway, the sign must be removed not later than five years following cessation of the operation of such commercial or industrial activity.

(f) Waiver of damages.

(1) If the relocation is under subsection (d)(5)(A) of this section, the person or persons who own the tract or parcel of land upon which the sign was situated must enter into a written agreement with the acquiring agency waiving and releasing any claim for damages against the acquiring agency and the state for the temporary or permanent taking of the real property that is based in any manner upon the relocation of the sign to accommodate the highway improvement project. This provision shall not be construed to preclude the payment of compensation to the real property owner for the acquisition of the real property or any other interest therein, but the use of the tract as an off-premise sign site shall not be considered in the determination of the compensation paid therefor.

(2) If the relocation is under subsection (d)(5)(A) or (B) of this section, the sign owner must enter into a written agreement with the acquiring agency waiving and releasing any claim for damages against the acquiring agency and the state for any temporary or permanent taking of the sign in consideration of the payment by the acquiring agency of a mutually agreed specified amount of money calculated to cover the cost to the sign owner of the relocation of the sign.

Issued in Austin, Texas, on December 12, 1988.

TRD-8812659 Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public Transportation

Effective date: December 12, 1988

Expiration date: April 11, 1989

For further information, please call: (512) 463-8630

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Chapter 25. Maintenance and Operations Division

Oversize and/or Overweight Permits for Certain Oil Well Related Vehicles

• 43 TAC §25.91

The State Department of Highways and Public Transportation adopts on an emergency basis an amendment to §25.91, concerning permits for certain oil well related vehicles. This section is being amended to postpone the mandatory enforcement date for the reduction of axle weights for all oil well servicing, clean-out, and drilling rigs from 30,000 pounds per axle to not more than 25,000 pounds per axle. Paragraph (10) of §25.91 is amended to reflect that the mandatory enforcement date is changed from January 1, 1989 to January 1, 1990.

The amended section is adopted on an emergency basis in order to minimize the adverse effects on the depressed status of the petroleum industry, which has an immediate and direct effect on the economy of Texas and the welfare of its citizens.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6666 and 6701d-16, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and to promulgate rules for the issuance of oversize and overweight permits for the movement of oil well servicing, clean-out, and drilling vehicles.

§25.91. Permits for Certain Oil Well Related Vehicles. Oversize and/or overweight permits may be issued to permit movement of oil well servicing, oil well clean-out, and/or oil well drilling machinery and equipment in compliance with the following.

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

(10) The maximum weight for any single axle or any axle within an axle group shall not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less; however, after **January 1, 1990** [January 1, 1989], the maximum axle weight shall be reduced to 25,000 pounds or 850 pounds per inch of tire width, whichever is less. No permits will be issued after **January 1, 1990** [January 1, 1989], if any axle weight exceeds 25,000 pounds for 850 pounds per inch of tire width, whichever is less.

(11)-(20) (No change.)

Issued in Austin, Texas, on December 9, 1988.

TRD-8812624 Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public Transportation

Effective date: December 12, 1988

Expiration date: April 11, 1989

For further information, please call: (512) 463-8630

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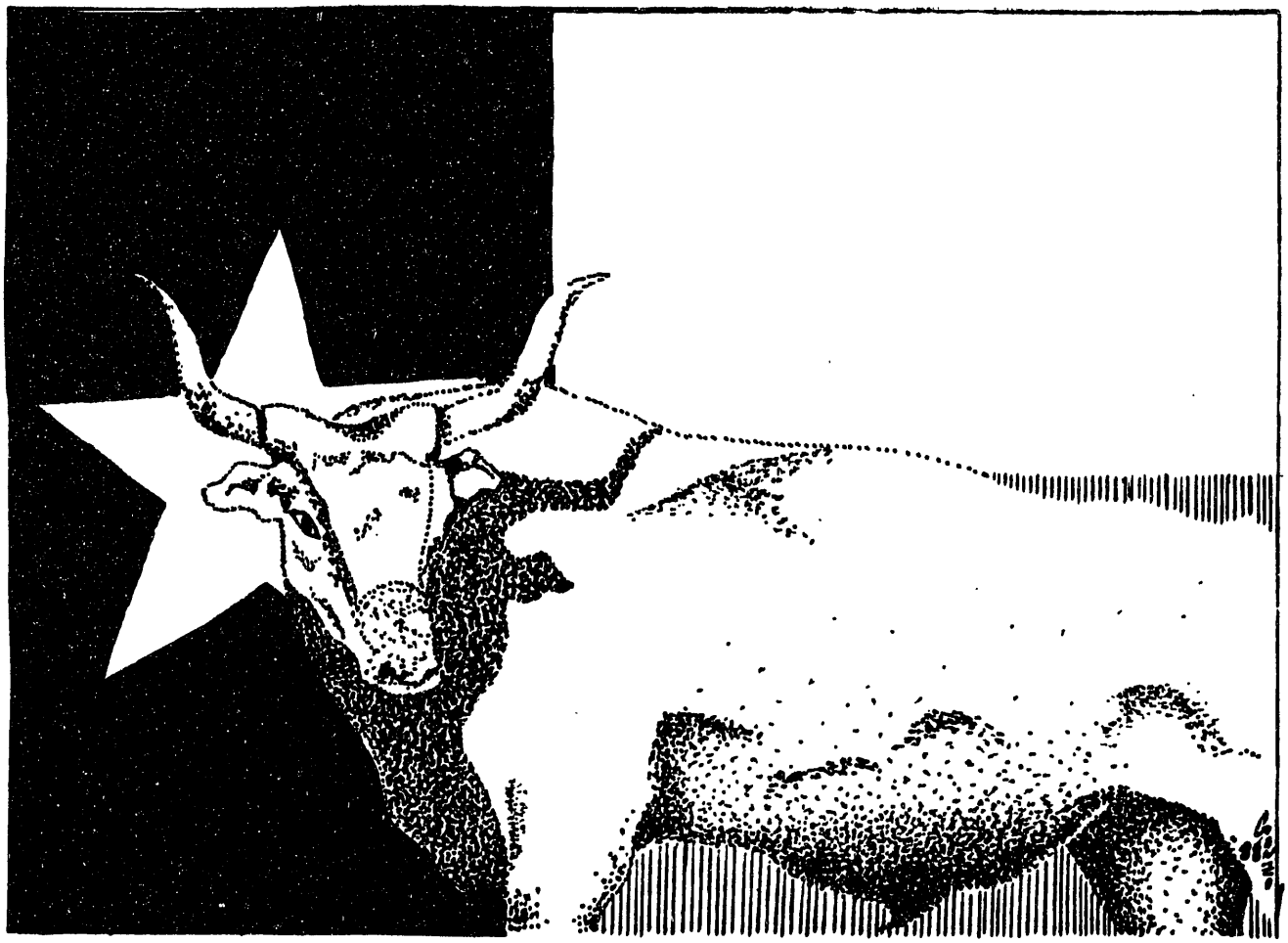

Name: Gonzalo Gomez

Grade: 12

School: Del Rio High, San Felipe Del Rio

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 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter M. Motor Bus Companies

• 16 TAC §5.249

The Railroad Commission of Texas proposes an amendment to §5.249, concerning operations solely within certain cities and their suburbs. The amendment would extend the area which is defined as suburbs of both Dallas and Fort Worth. The amendment will define all of Dallas and Tarrant Counties as suburbs of both cities.

Nim K. Graves, assistant director for planning and administration, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ronald D. Stutes, hearings examiner, 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 is added consistency in treating areas which are not within the commission's jurisdiction under the Texas Motor Bus Act, and reduced confusion about the extent of the commission's jurisdiction. 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 Ronald D. Stutes, Hearings Examiner, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711.

The amendment is proposed under the Texas Motor Bus Act, Texas Civil Statutes, Article 911a, which excludes from the commission's jurisdiction operations of buses wholly within a city and its suburbs.

§5.249. Operations Wholly Within Certain Cities and their Suburbs.

(a) For the purposes of interpreting the phrase "wholly within the limits of any incorporated town or city, and the suburbs thereof, whether separately incorporated or otherwise," in §5.248(a)(1)(A) of this title (relating to Motor Bus Certificates, Rates, and Regulations):

(1) the following are suburbs of Dallas:

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

(C) all of each incorporated city or town that has any part of its territory within Tarrant County; and

(D) all unincorporated areas lying within Tarrant County; and

(E) Plano;

[(C) Dallas/Fort Worth International Airport;

[(D) Plano, Arlington, Hurst, Euless, Bedford, Keller, Colleyville, Southlake, North Richland Hills, Mansfield, Dalworthington Gardens, and Pantego;]

(2) the following are suburbs of Forth worth:

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

(C) all of each incorporated city or town that has any part of its territory within Dallas County; and

(D) all unincorporated areas lying within Dallas County;

[(C) Dallas/Fort Worth International Airport, Duncanville, Irving, Cedar Hill, DeSoto, and Coppell;]

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

(b) (No change.)

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

Issued in Austin, Texas, on December 12, 1988.

TRD-8812706 Robert F. Biard
Staff Attorney Legal Division
Railroad Commission of Texas

Earliest possible date of adoption: January 20, 1989

For further information, please call: (512) 463-7187

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Chapter 11. Surface Mining and Reclamation Division

Subchapter D. Coal Mining

• 16 TAC §11.221

The Railroad Commission of Texas proposes an amendment to §11.221, concerning various sections of the "Coal Mining Regulations," herein adopted by reference. The proposed amendment will make the enumerated sections of the Texas program no less effective than the Federal program of CSM concerning Underground Mining (.179, .194, .195, .531), fish and Wildlife (.133, .144), Sedimentation Ponds (.344), Stream Channel Diversions (.341, .342), Revegetation (.395), Maps and Plans (.142). Individual Civil Penalties (New Part 846). Release of Performance Bond (.312), Definitions (.008 - "affected area", coal processing plant", .101 - "cumulative impact area"; .300 - "self-bond"), and financial interests of state employees. The amendment occurs, not in the section itself, but in the adopted by reference material, which may be obtained from Charles Evans, Hearings Examiner, Legal Division-Surface Mining, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6843.

Ron Reeves, assistant director, Legal Division-Surface Mining, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Reeves 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 improved procedures and increased efficiency in administering the state program regulations; and the decreased potential for having to resort to the use of state funds for surface coal mining reclamation purposes. 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 Charles E. Evans, Hearings Examiner, Legal Division-Surface Mining, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6843.

The amendment is proposed under Texas Civil Statutes, Article 5920-11, §6, which provide the Railroad Commission of Texas with the authority to promulgate rules pertaining to surface coal mining and reclamation operations.

§11.221. State Program Regulations.

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

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

Issued in Austin, Texas, on December 17, 1988.

TRD-8812655 Cue D. Boykin
Director Legal Division
Railroad Commission of Texas

Earliest possible date of adoption: January 20, 1989

For further information, please call: (512) 463-7187

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter B. Determining Residence Status

• 19 TAC §21.28

The Texas Higher Education Coordinating Board proposes an amendment to §21.28, concerning tuition reciprocity with bordering states. This amendment is being made to broaden the eligibility of students who are citizens of Mexico to pay the same tuition as do Texas residents. Students receiving instruction in a county bordering Mexico will be eligible to qualify as opposed to those who are enrolled in an institution whose home campus is located in a border county.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Adams also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the citizens of Mexico will have broader opportunity for education in Texas. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Education Code, §61.072, which provides the Coordinating Board with the authority to adopt rules regarding tuition reciprocity with bordering states.

§21 28. Tuition Reciprocity with Bordering States.

(a) (No change.)

(b) Citizens of Mexico. A citizen of Mexico, who **registers for instruction offered by a general academic institution in a county bordering Mexico, is eligible to pay tuition equal to that charged Texas residents, provided the student demonstrates a financial need after the resources of the student and the student's family have been considered.** [is admitted to the United States for the purpose of attending an institution of higher education and who demonstrates a financial need after the resources of the student and the student's family are considered, is eligible to pay tuition equal to that charged Texas residents when enrolling at the University of Texas at El Paso, Pan American University, Pan American University at Brownsville, Laredo State University, and Sul Ross State University.]

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 December 9, 1988.

TRD-8812617 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1989

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

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Subchapter G. Texas Public Educational Grants Program

• 19 TAC §§21.171-21.180

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21. 171-21.180, concerning the Texas Public Educational Grants Program. These sections are being repealed so the entire subchapter can be rewritten. The sections change results from a federal statute change which requires the state to directly appropriate matching funds for the State Student Incentive Grants Program. The sections will regulate state appropriated funds and excuse participating public institutions of higher education from contributing matching funds.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Adams also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the state remains eligible to participate in the federal State Student Incentive Grants Program. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The repeals are proposed under the Texas Education Code, Chapter 56, Subchapter C, which provides the Coordinating Board with the authority to adopt rules regarding the Texas Public Educational Grants Program.

§21.171. Purpose.

§21.172. Delegation of Powers and Duties.

§21.173. Definitions.

§21.174. Review of Guidelines.

§21.175. Transfer of Funds to Coordinating Board.

§21.176. Matching Grants.

§21.177. Eligible Students.

§21.178. Certification and Disbursement Procedures.

§21.179. Advisory Committees.

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 December 9, 1988

TRD-8812620 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1989

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

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• 19 TAC §§21.171-21.179

The Texas Higher Education Coordinating Board proposes new §§21.171-21. 179, concerning Texas public grant programs. The sections change results from a federal statute change which requires the state to directly appropriate matching funds for the State Student Incentive Grants Program. The sections will regulate state appropriated funds and excuse participating public institutions of higher education from contributing matching funds.

Mack Adams, assistant commissioner for student services, 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. Adams 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 that the state remains eligible to participate in the federal State Student Incentive Grants Program. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The new sections are proposed under the Texas Education Code, Chapter 56, Subchapter C, which provides the Coordinating Board with the authority to adopt rules regarding the Texas Public Grants Program.

§21.171. Purpose. In order to provide programs to supply need-based grants of money to students attending public institutions of higher education in Texas, the Texas Higher Education Coordinating Board is authorized by the Texas Education Code, §§56.036-56.039, of the Texas Tax Code, §151. 423, and the Appropriations Bill to accept and administer funds trusteed to the Coordinating Board by the legislature and funds transferred to the board by individuals and institutions for making grants in accordance with provisions of the statutes.

§21.172. Delegation of Powers and Duties. The board delegates to the commissioner of higher education the powers, duties, and functions authorized by the references cited in §21.171 of this title (relating to Purpose) and as provided in this subchapter.

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

Alien–A person who is neither a citizen, a national, nor a permanent resident of the United States, for the purposes of this program.

Appropriations Bill–The most recent appropriations bill as passed by the Texas Legislature and signed by the governor.

Board–The Texas Higher Education Coordinating Board.

Certified funds–Those funds for which applications have been received and processed by the board.

Commissioner–The commissioner of higher education, the chief executive officer of the board.

Cost of education–The expenses incurred by a student in attending college. Includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

Education Act–Texas Education Code, §§56.036-56.039.

Encumbered funds–Those funds for which applications have been received and institutional matching funds have been deposited with the board.

Financial need–A condition which exists when a student's financial resources are not sufficient to meet the cost of education at the institution.

Half-time student–A person who has been formally admitted to the institution and is enrolled or expected to be enrolled for six or more semester or quarter credit hours, or for 12 or more clock hours; or who is enrolled or expected to be enrolled for an equivalent workload for a longer or shorter term.

Institution–A public institution of higher education as defined in the Texas Education Code, §61.003.

Tax Act–Texas Tax Code, §153.423.

§21.174. Advisory Committees. The board may appoint such advisory committees from outside its membership as it deems necessary to assist it in achieving the purposes of the Appropriations Bill, Education Act, and the Tax Act.

§21.175. Sources of Funding. Texas public grant programs are funded through several different mechanisms which tie back to their legislative authorization.

(1) The Public Student Incentive Grant (PSIG) Program is funded equally from federal revenues out of the State Student Incentive Grant Program and from direct state appropriations.

(2) The Education Act states that at the end of a fiscal year, if the total amount of unencumbered Texas Public Educational Grant funds that has been set aside by an institution, together with the total amount of unencumbered funds transferred by that institution to the board exceeds 150% of the amount of funds set aside by that institution in that fiscal year, the institution shall transfer the excess amount to the board. The Refund Texas Public Educational Grant Program (Refund TPEG) is funded from funds forwarded to the board in compliance with this provision and from institutional funds placed on deposit with the board.

(3) The Tax Reimbursement Grants Program is funded equally from sales tax reimbursements donated to the state for such purposes under the Tax Act and institutional funds placed on deposit with the board.

(4) Other public or private funds which may become available for making grants to students.

§21.176. Eligible Institutions.

(a) The board shall approve for purposes of making grants through the Texas public grant programs all publicly-supported institutions of higher education in Texas. An institution must be approved by April 1 in order for qualified students to receive grants through an allocation in the following year. Each approved institution must enter an agreement with the board, terms of which shall be prescribed by the commissioner.

(b) Institutions participating in the grant program shall designate a Texas public grants program officer to serve as agent for the board. The Texas public grants program officer shall certify all grants, program transactions, and activities with respect to the Texas public grant programs and shall be responsible for all records and reports reflecting transactions with respect to the Appropriations Bill, Education Act, and/or Tax Act.

(c) If a question arises in regard to disbursement of funds for purposes for which such funds are legally unavailable, the affected institution shall be given notice and opportunity for hearing. Following such notice and opportunity for hearing, if the commissioner determines that funds have been improperly disbursed and if such diversions have not been restored, no further disbursements of grants shall be permitted to students at that institution until there is no longer any failure of compliance.

(d) No person shall, on the grounds of race, color, creed, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any provisions of these programs. All transactions with respect to the Education and Tax Acts shall be in compliance with the Civil Rights Act of 1964, Title VI.

(e) If the institution is placed on public probation by the Southern Association of Colleges and Schools, students applying for grants shall provide evidence of knowledge of the school's accreditation status as a condition to receiving the grant.

§21.177. Eligible Students. To be eligible for an award through one of the Texas public grant programs, a person must:

(1) be enrolled in an approved institution for at least half of a full course load;

(2) not be in default on a loan made, insured, or guaranteed under the Perkins loan, Hinson-Hazlewood college student loan, SLS, or Stafford student loan programs;

(3) show financial need in accordance with board requirements;

(4) have proof of eligibility on file at the institution;

(5) have complied with other requirements adopted by the board;

(6) affirm eligibility for the grant at the time of disbursement by signing

the student affirmation form;

(7) be maintaining satisfactory progress in his or her course of study;

(8) not owe a refund on a grant received under any federal or state grant programs;

(9) attest to selective service registration (if appropriate);

(10) sign a statement that grant funds will only be used to meet cost associated with pursuing a higher education; and

(11) if receiving a state student incentive grant, must be a United States citizen, or permanent resident or in another status specified as acceptable for Federal Title IV Aid funds.

§21.178. Certification and Disbursement Procedures.

(a) Processing funds. Upon receipt of a student's application information and certification by the Texas public grants program officer of the amount of grant for which the student is eligible, the commissioner or another designated member of the staff shall certify to the state comptroller the necessary information to have the grant disbursed. The amount of grant going to an individual shall not exceed that individual's documented financial need. The total amount of grants to be disbursed through the programs shall not exceed the amount trusteed or transferred to the board for this use, plus whatever matching funds have been designated for awarding to students at the approved institution. The proper amount of the grant shall be paid to the enrolled student through the approved institution acting as an agent of the board. In no event shall a grant paid through this program exceed the sum of $2,500 on behalf of any student during any one federal fiscal year. The Texas public grants program officer shall assign a batch number to each group of applications submitted to the board for approval and processing and also shall assign an application priority number to each application in each batch, giving first priority to those applicants showing the highest amount of financial need. In processing applications, the board shall cause awards to be made, insofar as funds permit, based upon application priority number within each batch number, starting with the lowest number in each processing cycle.

(b) Disbursement of funds. When the volume of funds available is sufficient to provide a significant amount of money to all institutions, funds will be allocated among students at the various colleges. This will occur every year for the Public State Student Incentive Grant Program, where funding is through federal and state appropriations. For the tax reimbursement and refund TPEG programs, where funding is provided through donations from individuals and/or transfers from institutions, allocations may be based on a first come/first served basis. In the case of allocations, the commissioner shall establish a preliminary fund reservation of any available grant funds which each Texas public educational grants program officer may certify to eligible students. Each preliminary funds reservation shall be based upon the number of students, excluding aliens, enrolled on at least a half-time basis, who received need based-financial assistance administered by the approved institution in the preceding fiscal year. Should any Texas public grants program officer not certify grants totaling the amount of the preliminary funds reservation by December 1, then any uncertified funds shall be reallocated to meet the needs of eligible students at other approved institutions. Reallocation of unencumbered and uncertified funds for matching Texas public grants shall occur March 15, and other dates to be determined by the commissioner until all available matching funds have been awarded.

(c) Refunds. In no case shall grant money be refunded to a withdrawing student but shall be returned to the board for deposit in the state treasury accounts from which originally drawn. Refunds are to be identified with student name, social security number, and disbursement date, and be returned to the board promptly. All refund accounts should be cleared by the end of the state fiscal year in which the award was made.

(d) Cancellations. In those cases in which a state grant check is not promptly received by a student or deposited (at the student's request) into the student's account, the check should be voided and returned to the board. No checks should be held by the institution for more than 90 days or beyond the end of the state fiscal year in which the check was issued, whichever is a shorter period of time.

§21.179. Student Affirmation Form. A student affirmation form, which lists student eligibility requirements, is to be signed by the student to verify receipt of each disbursement of grant funds. By signing the form the student affirms his or her own eligibility for the award being received at that time. Institutions are to keep proof of disbursement affirmation in student files. A copy of the signed affirmation form is to be sent promptly to the board. In no case should a disbursement remain unaffirmed beyond the end of the fiscal year in which it was generated.

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 December 9, 1988

TRD-8812616 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1989

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

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Subchapter J. The Physician Student Loan Repayment Program

• 19 TAC §§21.251-21.263

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21. 251-21.263, concerning the Physician Student Loan Repayment Program. These sections are being repealed so that the subchapter can be completely re-written so the new sections incorporate the use of federal grant funds as benefits for physicians qualifying under the program. They also raise the benefit for an eligible physician from $6,000 to $9,000 per year and allow undergraduate student loans to be included in program eligibility. Qualifying physicians will receive more benefits and the program should enlist more participants.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Adams also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the program should be better fulfilled. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

the repeals are proposed under the Texas Education Code, Chapter 61, Subchapter J, which provides the Coordinating Board with the authority to adopt rules regarding the Physician Student Loan Repayment Program.

§21.251. Purpose

§21.252. Administration

§21.253. Delegation of Powers and Duties

§21.254. Definitions

§21.255. Eligible Institution of Medical Education

§21.256. Eligible Lender

§21.257. Eligible Physician

§21.258. Eligible Student Loan

§21.259. Qualifications for Student Loan Repayment

§21.260. Priorities of Application Acceptance

§21.261. Prior Conditional Approval

§21.262. Repayment of Student Loans

§21.263. Dissemination of Information

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 December 9, 1988.

TRD-8812618 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1989

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

• 19 TAC §§21.251-21.265

The Texas Higher Education Coordinating Board proposes new §§21.251-21. 265, concerning the Physician Student Loan Repayment Program. The new sections incorporate the use of federal grant funds as benefits for physicians qualifying under the program. They also raise the benefit for an eligible physician from $6,000 to $9,000 per year and allow undergraduate student loans to be included in program eligibility. Qualifying physicians will receive more benefits and the program should enlist more participants.

Mack Adams, assistant commissioner for student services, 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. Adams 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 that the program should be better fulfilled. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The new sections are proposed under the Texas Education Code, Chapter 61, Subchapter J, which provides the Coordinating Board with the authority to adopt rules regarding the Physician Student Loan Repayment Program.

§21.251. Purpose. The purpose of the Physician Student Loan Repayment Program is to encourage qualified physicians to practice medicine in designated areas of the state or for specified state agencies. The purpose of the state-funded part of the program is to encourage qualified physicians to practice medicine in medically underserved economically depressed or rural areas of Texas, or for the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Corrections, or the Texas Youth Commission. The purpose of the federally funded part is to encourage qualified physicians to practice in areas of highest nced in Texas.

§21.252. Administration. The Texas Higher Education Coordinating Board, or its successor or successors, shall administer the Physician Student Loan Repayment Program.

§21.253. Delegation of Powers and Duties. The board delegates to the commissioner of higher education the powers, duties, and functions authorized by the Texas Education Code, Chapter 61, Subchapter J.

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

Board–The Texas Higher Education Coordinating Board.

Commissioner–The commissioner of higher education, the chief executive officer of the board.

Health manpower shortage area–An area of the state designated by the Office of Data Analysis and Management of the United States Department of Health and Human Services as having a shortage of primary health care physicians.

Medically underserved economically depressed or rural areas–Health manpower shortage areas of primary care in Texas as designated by the Office of Data Analysis and Management of the United States Department of Health and Human Services or recommended for such designation by the Texas Department of Health.

Pro rata–A proportionate basis upon which payment amounts will be scaled, depending upon the share of a full work year for state employees.

§21.255. Area of Highest Need. An area of highest need shall be any one of the following:

(1) hospitals in health manpower shortage areas that qualify for disproportionate share Medicaid reimbursements on the basis of large amounts of indigent care provided;

(2) community health centers in Texas which are located in health manpower shortage areas;

(3) health manpower shortage areas of Texas which utilize physicians trained in the Texas Family Practice Residency Training Program;

(4) Health manpower shortage areas of Texas having Degree of Shortage of one as reported by the Office of Data Analysis and Management, Bureau of Health Professions, United States Department of Human Services;

(5) counties designated as being in need of medical services under provisions of the Texas Maternal and Infant Health Improvement Act; and

(6) health manpower shortage areas of Texas having the greatest percentage of their population at or below the poverty level and that are not adequately covered by any other state or federal program for the provision of medical services.

§21.256. Eligible Lender. The board shall retain the right of determining eligibility of lenders to which payments may be made. An eligible lender shall, in general, make loans to individuals for purposes of attending institutions of higher education and shall not be any private individual. An eligible lender may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, governmental agency, pension fund, private foundation, or insurance company, provided the loan conforms to the definition of an eligible student loan in §21.258 of this title (relating to Eligible Student Loans.)

§21.257. Eligible Physician. An eligible physician is one who:

(1) is licensed to practice medicine in Texas by the Texas State Board of Medical Examiners and against whom no professional disciplinary actions have been taken; and

(2) has satisfactorily completed a postgraduate program approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association in an appropriate field of medicine.

§21.258. Eligible Student Loan. A student loan eligible for repayment is one that:

(1) has obtained through an eligible lender in the State of Texas for purposes of attending an institution of higher education; or

(2) is not a loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;

(3) is not a loan from a program with an existing service obligation.

§21.259. State-funded Physician Student Loan Repayment Program. The State-funded Physician Student Loan Repayment Program is limited to repayments on student loans on behalf of physicians who practice in medically underserved economically depressed or rural areas of Texas or for one of the following state agencies:

(1) the Texas Department of Health;

(2) the Texas Department of Mental Health and Mental Retardation;

(3 the Texas Department of Corrections; and

(4) the Texas Youth Commission.

§21.260. Expanded Physician Student Loan Repayment Program. The Expanded Physician Student Loan Repayment Program is limited to federally funded repayments on student loans on behalf of physicians. Payments in the expanded program are matched with an equivalent amount of state funds. This program is limited to physicians providing services in areas of family practice, osteopathic general practice, or obstetrics/gynecology.

§21.261. Qualifications for Student Loan Repayment. The commissioner may authorize, or cause to be authorized, repayment of student loans made to an eligible physician who shows evidence of a strong service commitment and who:

(1) in the state-funded program:

(A) has submitted the appropriate application to the board;

(B) has not applied for nor is receiving repayment for service through another student loan repayment program;

(C) has completed at least one year of medical practice:

(i) in private practice in a medically underserved economically depressed or rural area of the state; or

(ii) for one of the four state agencies indicated in §21.259 of this title (relating to State-funded Physician Student Loan Repayment Program).

(2) in the expanded program:

(A) accepts a certain proportion of patients eligible for Medicaid based upon the Medicaid profile of the county in which the physician's practice is located;

(B) has submitted the appropriate application to the board;

(C) has not applied for nor is receiving repayments for service through another student loan repayment program; and

(D) has completed at least one year of private medical practice in an area of highest need.

§21.262. Priorities of Application Acceptance. Acceptance of applicants will depend on the availability of funds and will be based on a set of priorities as indicated below.

(1) Renewal applicants in the state-funded and expanded programs will be given priority treatment over first-time applicants.

(2) For applicants working in medically underserved economically depressed areas or rural areas, priority will be given in the state-funded program to persons trained in psychiatry and the primary care specialties as defined by the board.

§21.263. Prior Conditional Approval. Prior conditional approval of applications for repayment of loans may be granted by the board. Such approval may occur no earlier than the beginning of the applicant's final year of postgraduate training or the beginning of the applicant's year of service in one of the approved areas defined in §21.261 of this title (relating to Qualifications for Student Loan Repayment). Repayments are dependent upon confirmation of completion of graduate or professional education and/or employment in one of the approved areas. Repayments are dependent also upon availability of funds. The board may reserve funds for applicants who have received prior conditional approval.

§21.264. Repayment of Student Loans. Eligible student loans of qualified physicians shall be repaid under the following conditions.

(1) A total annual payment to one or more eligible lenders shall not exceed the applicant's unpaid principal loan balance from all sources or $9,000 in the state-funded program or $18,000 in the expanded program, whichever is less.

(2) Repayment shall be made at the end of each year of eligible service.

(3) Student loan repayment may be renewed annually upon successful completion of the application process, but for no more than a total of five years.

(4) The annual repayment shall be made copayable to the eligible physician and to any eligible lender(s) to be applied only to the outstanding principal balance of the loan, including capitalized interest.

(5) The annual repayment may be made on a pro rata basis for verified part-time service.

(6) In the case of a practice with one of the four state agencies specified in §21.259 of this title (relating to State-funded Physician Student Loan Repayment Program), an applicant must have practiced medicine on at least a part-time basis and have received a favorable recommendation from the chief executive officer of the state agency.

§21.265. Dissemination of Information. The board shall publish and disseminate information about the Physician Student Loan Repayment program to health-related institutions of higher education, the appropriate state agencies and professional associations.

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 December 9, 1988.

TRD-8812618 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: January 27, 1989

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

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TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Registration

• 22 TAC §131.131, §131.132

The Texas State Board of Registration for Professional Engineers proposes amendments to §131.131 and §131.132, concerning registration approval and issuing of certificates of registration. The amendments to §131.131 and §131.132 will make the sections compatible with Texas Civil Statutes, Article 3271a, §15(a) and (b); speed up the issuance of certificates of registration; remove from the general process of professional registration the requirement for a newly approved registrant to procure an engineer's seal and to submit to the board an imprint of the seal before a certificate is issued, failure to comply being grounds for withdrawal by the board of its approval for registration; and will make the seal acquisition and imprint procedure a separate requirement of the registrant subsequent to registration, subject to disciplinary action with due process as required by law.

H. Edwin Crow, acting executive director, 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. Crow also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the additional protection to registrants by a notice and hearing before any board action amounting to a revocation of registration not intended by Texas Civil Statutes, Article 3271a. 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 H. Edwin Crow, Acting Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendments are proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.131. General. The process of registration as a professional engineer will be initiated upon approval of the application for registration by the board. The fee which accompanied the application is applied toward the required registration fee. Subsequent to application approval, the **new registrant** [applicant] will be assigned a serial number[. These numbers will be] issued consecutively in the order in which the applications are approved. The **registrant** [applicant] will be advised of his serial number in a notification of approval sent by the executive director, and [he may begin practicing engineering immediately. The applicant will be] instructed to obtain a seal, as required by law, of the type specified in §131.138 of this title (relating to Engineers' Seals). As soon as the seal (rubber stamp, embossing, or both) is obtained, an imprint of imprints must be made on a form provided by the board and the form returned to the board office for its files. Any **registrant** [applicant] who fails to provide an acceptable seal impression within a period of six months after notice is mailed to him by the executive director that he .has been approved for registration shall **be considered in violation of §131.140 of this title (relating to Registrant's Responsibility to the Board). Such violation will subject the registrant to administrative sanctions as provided in §131.137 of this title (relating to Disciplinary Actions)** [have such approval withdrawn by action of the board].

§131.132. Issuance of Certificates of Registration. **With the assignment of a serial number, the board shall issue a certificate of registration,** [As soon as possible after the board has received an imprint of the applicant's seal or seals, the board shall complete the registration process by issuing a certificate of registration,] signed by the chairman [of the board] and the secretary of the board, bearing the seal of the board and also bearing the full name and serial number of the registrant.

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 December 13, 1988.

TRD-8812680 H.Edwin Crow
Acting Executive Director
Texas State Board of
Registraton for
Professional Engineers

Proposed date of adoption: January 26, 1989

For further information, please call: (512) 440-7723

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• 22 TAC §131.141

The Texas State Board of Registration for Professional Engineers proposes new §131.141, concerning retaliation against references. The new section makes acts of retaliation by a registrant against references who provide pertinent information to the board to be considered as misconduct, subject to disciplinary action by the board.

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

Mr. Crow also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the confidence that frank and candid information can be submitted to the board for a better evaluation of an applicant's suitability for professional registration. 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 Edwin Crow, Acting Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The new section is proposed under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.141. Retaliation Against References. Due to the vital importance of the board to receive pertinent information about the suitability of an applicant from the references required during the evaluation process under the provisions of the Act, §12 and §13, any documented instance of retaliation by a registrant against a reference pertaining to an application for registration, reregistration, or reinstatement of a certificate of registration shall be considered as misconduct, subject to disciplinary actions as provided by the Act, §22.

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 December 13, 1988.

TRD-8812745 H. Edwin Crow
Acting Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: January 26, 1989

For further information, please call: (512) 440-7723

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Part XXXII. State Committee of Examiners for Speech-Language Pathologists and Audiologists

Chapter 741. Speech-Language Pathologists and Audiologists

Subchapter C. The Practice of Speech-Language Pathology and Audiology

The State Committee of Examiners for Speech-Language Pathology and Audiology proposes amendments to §§741.41, 741.61, 741.81, 741.143, 741.162, 741.163, 741.193, 741.195, and 741.197, concerning speech-language pathologists and audiologists. The sections cover code of ethics (Subchapter C. The Practice of Speech-Language Pathology and Audiology); purpose (Subchapter D. Academic Requirements for Examination and Licensure for Speech-Language Pathologists); purpose (Subchapter E. Academic Requirements for Examination and Licensure for Audiologists); issuance of license (Subchapter H. Licensing); general, and requirements for continuing professional education (Subchapter I. License Renewal); complaint procedures, violations by non-licensed individuals, and licensing of individuals with criminal backgrounds to be speech-language pathologist, audiologists, licensed associates in audiology, and licensed associates in speech-language pathology (Subchapter K. Denial, Suspension, or Revocation of Licensure).

The amendments will clarify record keeping (§741.41); clarify clinical experience and intern requirements (§741.61 and §741.81); make §741.61 and §741.81 parallel; clarify committee responsibility for lost correspondence (§741.143 and §741.162), include wording that corresponds to wording in the Act (§741.162 and §741.195); reorganize and expand continuing education requirements to include a three-year roll-over option (§741.163); clarify complaint procedures (§741.193); and will clarify rules covering licensure of individuals with criminal backgrounds (§741.197).

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

Mr. Seale also has determined that for each year of the first five years the sections as

proposed are in effect the public benefit anticipated as a result of enforcing or administering the sections will be to update and clarify the procedures and policies concerning the licensing and regulation of speech-language pathologists and audiologists. 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 Mrs. June Robertson, Executive Secretary, State Committee of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183. Comments will be accepted for 30 days from the date of publication of these proposals in the *Texas Register*.

• 22 TAC §741.41

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act.

§741.41. Code of Ethics. This section in this subchapter establishes the standards of professional and ethical conduct required of a speech-language pathologist, an audiologist, a licensed associate in speech-language pathology, and a licensed associate in audiology, and constitutes a code of ethics as authorized by the Act, §17(a)(3). It is the responsibility of all licensed speech-language pathologists, audiologists, licensed associates in speech-language pathology, and licensed associates in audiology to uphold the highest standards of integrity and ethical principles.

(1) Licensees shall hold paramount the welfare of individuals served professionally.

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

(E) Licensees shall maintain adequate **and accurate** records of professional services rendered [, and shall provide appropriate access of records to those individuals served professionally].

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

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

(4) Licensees shall honor the standards of the profession and shall uphold these standards in their professional interactions [with colleagues and members of allied professions].

(5) (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 December 13, 1988.

TRD-8812689 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: March 5, 1989.

For further information, please call: (512) 458-7502

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Subchapter D. Academic Requirements for Examination and Licensure for Speech-Language Pathologists

• 22 TAC §741.61

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act.

§741.61. Purpose. The purpose of this **section** [subchapter] is to delineate the academic requirements for examination and licensure **of** [for] speech-language pathologists [beginning August 31, 1984].

(1) (No change.)

(2) To be eligible for licensing as a speech-language pathologist, an applicant must submit official transcripts showing successful completion of at least 30 semester hours in courses [which are] acceptable toward a graduate degree by the college or university in which they were taken. At least 21 graduate hours must be within the professional area of speech-language pathology and at least six graduate hours in audiology. Three semester hours in audiology must be in habilitative/rehabilitative procedures with speech and language problems associated with hearing impairment, and three semester hours must be in the study of the pathologies of the auditory system and assessment of auditory disorders.

(3) (No change.)

(4) Transcripts shall be reviewed as follows:

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

(D) The committee shall not accept an undergraduate level course taken by an applicant **to meet** [as meeting] academic **requirements** [requirement] for licensure at the graduate level, unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the college or university from which the graduate degree was granted.

(E)-(G) (No change.)

(5) To be eligible for licensing as a speech-language pathologist, an applicant must have completed a minimum of 300 clock hours of supervised clinical experience with individuals who present a variety of communication disorders. **Clinical experience may include clinical practicum. Clinical practicum may be considered to be the supervised, direct experience during academic training which includes evaluation and management of individuals with speech, language, and/or hearing problems.** This experience must have been obtained within a training institution, or in one of its cooperating programs, under the supervision of an individual holding a valid license to practice speech-language pathology, and/or its equivalent [, provided during the first year of this Act, the supervision may be under a person who would have met the qualifications under this Act]. While pursuing this course of study, the applicant shall be designated as a trainee in speech-language pathology.

(6) To be eligible for licensing as a speech-language pathologist, an applicant must have obtained the equivalent of nine months of full-time, 40 hours weekly, supervised professional experience in which bona fide clinical work has been accomplished in speech-language pathology. This work must have been completed **after the academic and clinical experience requirements are met and** under the supervision of an individual who holds a master's degree in speech-language pathology and a valid license to practice speech-language pathology in the State of Texas [(provided during the first year of the Act the supervision may be under a person who would have met the qualifications under this Act), and/] or the American Speech-Language-Hearing Association Certificate of Clinical Competence in Speech-Language Pathology [and/] or its equivalent. The professional employment experience must be completed within a maximum period of 36 consecutive months once initiated. While pursuing this professional employment experience, the applicant shall be designated as an intern in speech-language pathology. Prior to the beginning of an intern's required, supervised professional experience, **the intern dorm** [an intern questionnaire] must be filed with the executive secretary[,] in the office of the [State] Committee [of Examiners for Speech-Language Pathology and Audiology]. This document is to be **completed and** signed by the licensed supervising professional [, and include the professional's address, license number, area of licensure, telephone number, and place of employment]. **The Committee shall not consider an individual an intern until the intern form is approved.** The office must be notified of any change in the supervisory arrangement, and a new **form** [questionnaire] must be filed. **Until licensed, the intern must continue to be supervised.**

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 December 13, 1988.

TRD-8812690 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: March 5, 1989.

For further information, please call: (512) 458-7502

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Subchapter E. Academic Requirements for Examination and Licensure for Audiologists

• 22 TAC §741.81

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act.

§741.81. Purpose. The purpose of this section is to delineate the academic requirements for examination and licensure **of audiologists** [as an audiologist beginning November 30, 1983].

(1) An applicant must have earned at least a master's degree with a major in audiology from an accredited or approved college or university. These [academic] requirements should be consistent with the academic requirements of the American Speech-Language-Hearing Association for the Certificate of Clinical Competence in Audiology.

(2) To be eligible for licensing as an audiologist, an applicant must submit official transcripts showing successful completion of at least 30 semester hours in courses [that are] acceptable toward a graduate degree by the college or university in which they **were** [are] taken. At least 21 graduate hours **must** [shall] be within the professional area of audiology and at least six graduate hours in speech-language pathology. The six semester hours of professional education required in speech-language pathology should include three hours in the area of speech pathology and three hours in the area of language pathology and should be related to evaluation procedures and management of speech and language problems that are not associated with hearing impairment.

(3) The undergraduate and graduate preparation required in audiology should be in the broad, but not necessarily exclusive, categories of study as follows:

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

(C) information pertaining to related **areas** [fields] that augment the work of clinical practitioners of audiology, (i.e., theories of learning and behavior, information pertaining to related professions that also deal with individuals who have communication disorders, and information from these professions about the sensory, physical, emotional, social, and/or intellectual status of a child or an adult). No more than three semester hours in any of the following areas may be accepted:

(i) in statistics, beyond the introductory level course;

(ii) academic study of the administrative organization of speech-language pathology and audiology programs;

(iii) courses that provide an overview of research;

(iv) or academic credit for a thesis or dissertation.

(4) Transcripts shall be reviewed as follows:

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

(D) The Committee shall not accept **an** undergraduate level **course** [courses] taken by an applicant **to meet** [as meeting any] academic **requirements for licensure at the graduate level,** [requirement] unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the college or university from which the graduate degree was granted.

(E)-(G) (No change.)

(5) To be eligible for licensing as an audiologist, an applicant must have completed a minimum of 300 clock hours of supervised clinical experience with individuals who present a variety of communication disorders. **Clinical experience may include clinical practicum. Clinical practicum may be considered to be the supervised, direct experience during academic training which includes evaluation and management of individuals with speech, language, and/or hearing problems.** This experience must have been obtained within a training institution, or in one of its cooperating programs, under the supervision of an individual holding a valid license to practice audiology and/or its equivalent [, provided during the first year of this Act, the supervision may be under a person who would have met the qualifications under this Act]. While pursuing this course of study, the applicant shall be designated as a trainee in audiology.

(6) To be eligible for licensing as an audiologist, an applicant must have obtained the equivalent of nine months of full-time, 40 hours weekly, supervised professional experience in which bona fide clinical work has been accomplished in audiology. This work must have been completed after the academic and clinical experience requirements are met and under the supervision of an individual who holds a master's degree in audiology and a valid license to practice audiology in the state of Texas [(provided during the first year of this Act the supervision may be under a person who would have met the qualifications under this Act), and/] or the American Speech-Language-Hearing Association Certificate of Clinical Competence in Audiology [and/] or its equivalent. The professional employment experience must be completed within a maximum period of 36 consecutive months once initiated. While pursuing this professional employment experience, the applicant shall be designated as an intern in audiology. Prior to the beginning of an intern's required, supervised professional experience, **the intern form** [an intern questionnaire] must be filed with the executive secretary [,] in the office of the [State] committee [of Examiners for Speech-Language Pathology and Audiology]. This document is to be **completed and** signed by the licensed supervising professional [, and include the professional's address, license number, area of licensure, telephone number, and place of employment]. **The committee shall not consider an individual an intern until the intern form is approved.** The office must be notified of any change in the supervisory arrangement, and a new **form** [questionnaire] must be filed. **Until licensed, the intern must continue to be supervised.**

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 December 13, 1988.

TRD-8812691 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: March 5, 1989.

For further information, please call: (512) 458-7502

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Subchapter H. Licensing

• 22 TAC §741.143

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act.

§741.143. Issuance of License.

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

(f) The committee is not responsible for lost, misdirected, or undelivered correspondence, including forms and fees, if sent to the address last reported to the committee.

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

Issued in Austin, Texas, on December 13, 1988.

TRD-8812692 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: March 5, 1989.

For further information, please call: (512) 458-7502

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Subchapter I. License Renewal

• 22 TAC §741.162, §741.163

The amendments are proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act.

§741.162. General.

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

(d) The licensee is required to provide current addresses and telephone numbers, employment information, and other information on the license renewal form. **The committee is not responsible for lost, misdirected, or undelivered renewal forms and fees if sent to the address last reported to the committee.**

(e) (No change.)

(f) Inactive status is defined as the two-year period of time between date of expiration of license and deletion of licensee's record. An inactive licensee may not practice **or represent himself or herself as a speech- language pathologist or audiologist.**

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

(g)-(i) (No change.)

§741.163. Requirements for Continuing Professional Education. Continuing professional education requirements must be met for renewal of license.

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

(4) **Ten clock hours (one CEU) in the area in which the individual is licensed will be required for yearly renewal; provided, however, 15 clock hours (1.5 CEU's) will be required for holders of dual licenses, at least six of which must be concentrated in each discipline.** [The committee will provide a list of approved continuing education sponsors which will be revised and updated periodically. Any continuing education activity must be provided by an approved sponsor.]

(5) **Earned continuing education hours exceeding the minimum requirements in a previous renewal period shall first be applied to the continuing education requirements for the current renewal period. A maximum of 20 additional clock hours may be accured during a license period to be applied to the next two consecutive renewal periods; provided, however, a maximum of 30 additional clock hours may be accrued for dual licenses during a license period to be applied to the next two consecutive renewal periods. This paragraph shall be effective one year after the date of final adoption.** [Ten clock hours/year (one CEU) will be required for yearly renewal. Fifteen clock hours (1. 5 CEU's) will be required for holders of dual licenses, at least six of which must be concentrated in each discipline.]

(6) If a licensed speech-language pathologist/audiologist successfully completes coursework from an accredited college or university in basic/professional/related areas, that coursework may be accepted for continuing education credit for state license renewal if the licensee submits an original transcript of that work and **completes a statement** [states] that this was a continuing education experience. Ten continuing education hours or one continuing education unit equals one semester of coursework.

(7) The taking and passing of the licensure examination in speech-language pathology or audiology, as referenced in Subchapter G of this chapter (relating to Licensure Examinations), **within the renewal period,** will meet the continuing education requirement for license renewal for **three consecutive years** [that year].

(8) (No change.)

(9) A continuing education experience occurring during the renewal month for licensure will be counted as continuing education hours earned for current license renewal or the subsequent year's renewal. [Evidence of the acquisition of these and all other hours shall be submitted to the committee together with the license renewal form and fee.]

(10) **The committee will provide a list of approved continuing education sponsors which will be revised and updated periodically. Approved sponsors will be designated by the committee. Any continuing education activity must be provided by an approved sponsor.** [Each approved continuing education sponsor will designate a specific individual whose signature will be accepted as verification of a valid continuing education experience. Unauthorized signatures will not be accepted.]

(11) Each approved continuing education sponsor will designate a specific individual whose signature will be accepted as verification of a valid continuing education experience. Unauthorized signatures will not be accepted.

(12) Evidence of the acquisition of continuing education credit shall be submitted to the committee together with the license renewal form and fee at the time of renewal.

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

Issued in Austin, Texas, on December 13, 1988.

TRD-8812693 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: March 5, 1989.

For further information, please call: (512) 458-7502

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Subchapter K. Denial, Suspension, or Revocation of Licensure

• 22 TAC §§741.193, 741.195, 741.197

The amendments are proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act.

§741.193. Complaint Procedures.

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

(c) A subcommittee of the committee will work with the executive secretary in reviewing and/or resolving complaints. Should a complaint be resolved **by action of the subcommittee** [as evidenced by signed written statement of agreement], the file will be closed and the committee shall be so informed.

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

§741.195. Violations by Non-Licensed Individuals.

(a) Beginning on September 1, 1984, an individual may not practice **or represent himself or herself** as a speech-language pathologist, an audiologist, a licensed associate in audiology or a licensed associate in speech-language pathology in

this state unless licensed in accordance with the provisions of the Act or these rules.

(b) (No change.)

§741.197. Licensing of Individuals with Criminal Backgrounds to be Speech-Language Pathologists, Audiologists, Licensed Associates in Audiology, and Licensed Associates in Speech-Language Pathology.

(a) This subsection is designed to establish guidelines and criteria on the eligibility of individuals with criminal backgrounds to obtain licenses as speech-language pathologists, audiologists, licensed associates in audiology, and licensed associates in speech-language pathology.

(1) The committee shall have the authority to obtain from the Texas Department of Public Safety or from a local law enforcement agency the record of any conviction of any person applying for or holding a license from the Committee.

(2) [(1)] The committee [subcommittee] may suspend or revoke an existing license, disqualify an individual from receiving a license, or deny to an individual the opportunity to be examined for a license because of an individual's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a speech-language pathologist, audiologist, licensed associate in audiology or licensed associate in speech-language pathology.

(3) [(2)] In considering whether a criminal conviction directly relates to the profession of a speech-language pathologist, audiologist, licensed associate in audiology and licensed associate in speech-language pathology, the committee [subcommittee] shall consider:

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

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed speech-language pathologist, audiologist, licensed associate in audiology, and licensed associate in speech-language pathology. In making this determination, the **committee shall consider the following evidence:** [subcommittee will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §(c)(1) -(7).]

(i) **the extent and nature of the person's past criminal activity;**

(ii) **the age of the person at the time of the commission of the crime;**

(iii) **the amount of time that has elapsed since the person's last criminal activity;**

(iv) **the conduct and work activity of the person prior to and following the criminal activity;**

(v) **evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;**

(vi) **other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person; and**

(vii) **it shall be the responsibility of the applicant to the extent possible to secure and provide to the committee the recommendations of the prosecution, law enforcement, and correctional authorities; the applicant shall also furnish proof in such form as may be required by the committee that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.**

(b) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be subject to review and revocation.

(c)[(b)] Procedures for revoking, suspending, or denying a license to individuals with criminal backgrounds.

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

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

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

Issued in Austin, Texas, on December 13, 1988.

TRD-8812694 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: March 5, 1989.

For further information, please call: (512) 458-7502

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Memoranda of Understanding

• 25 TAC §37.192

The Texas Department of Health proposes new §37.192, concerning a memorandum of understanding (MOU) covering community interagency staffing of services for multiproblem children and youth. New §37.192 adopts by reference the MOU. The MOU provides for the implementation of a system of community resource coordination groups to ensure the coordination of services for multiproblem children and youth among the following state agencies: the Texas Department of Health, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, the Texas Commission for the Blind, the Texas Education Agency, the Texas Juvenile Probation Commission, the Texas Rehabilitation Commission, and the Texas Youth Commission.

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

Mr. Seale also has determined that for each year of the first five years that the section is in effect the public benefit anticipated as a result of enforcing or administering the sections as proposed will be that there will be better coordination of services among state agencies for multi-problem children and youth. 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 Clift Price, Associate Commissioner for Personal Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days following the date of publication of this proposed section in the *Texas Register.*

The new section is proposed under the Texas Codes Annotated, Human Resources Code, §41.0011, which provides the Texas Board of Health with the authority to adopt by rule a memorandum of understanding concerning services for multiproblem children and youth; and Texas Civil Statutes, Article 4414b, §1.05, which provide the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§37.192. Memorandum of Understanding on Multiproblem Children and Youth.

(a) The Texas Department of Health adopts by reference a memorandum of understanding (MOU) concerning community interagency staffing of services for

multiproblem children and youth. The MOU is entered into between the Texas Department of Health, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, the Texas Education Agency, the Texas Commission for the Blind, the Texas Juvenile Probation Commission, the Texas Rehabilitation Commission, and the Texas Youth Commission.

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

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

Issued in Austin, Texas, on December 13, 1988.

TRD-8812700 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Earliest possible date of adoption: January 20, 1989.

For further information, please call: (512) 458-7321

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Chapter 325. Solid Waste Management

Subchapter O. Guidelines for Regional and Local Solid Waste Management Plans

• 25 TAC §325.568

The Texas Department of Health proposes an amendment to §325.568, concerning approved state, regional, and local solid waste management plans. The amendment covers the expiration of the effective period for the state solid waste management plan and the approval and adoption by reference of the regional solid waste management plan of the Alamo Area Council of Governments titled "Solid Waste Management in the AACOG Region, 1985 - 2000." The plan approval process is being implemented as provided for in the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Texas Civil Statutes, Article 4477-7c, §7(a)-(c) and §11, which requires the department to adopt approved plans by rule. Once regional/local plans are approved, public and private solid waste management activities and state regulatory activities must conform to the adopted plan for the period of the plan's effectiveness and within the geographical area covered by the plan.

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

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated will be: the improved management of solid waste in the 12 counties of the Alamo Area Council of Governments planning region; reduction of the potential for environmental pollution; conservation of land, water, and material resources; reduction of health risks; and encouragement of interagency coordination among local governments. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposed amendment may be submitted in writing to Hector Mendieta, Chief, Division of Solid Waste Management, 1100 West 49th Street, Austin, Texas 78756-3199. Comments will be accepted for 30 days from the date of publication of this proposed amendment in the *Texas Register*. Also, comments will be accepted at a public hearing to be conducted at 10 a.m., January 10, 1989, Room 420, 118 Broadway, San Antonio. Questions may be referred to Mr. Mendieta or Mr. Glendon Eppler by phone, at (512) 458-7271. The plan may be reviewed at offices of: (a) the Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Room 601- A, Austin, (512) 458-7271; and (b) the Alamo Area Council of Governments, 118 Broadway, Suite 400, San Antonio, (512) 225-5201.

The amendment is proposed under Texas Civil Statutes, Article 4477-7, §4(a), which authorize the department to develop a state solid waste plan, and §3(a) and §4(c), which authorize the department to adopt rules for management of municipal solid waste; Texas Civil Statutes, Article 4477-7c, §7(a)-(e) and §11, which authorize the department to consider and approve regional and local solid waste management plans; and Texas Civil Statutes, Article 4414(b), §1.05, which provide the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Deparment of Health, and the commissioner of health.

§325.568. Approved State, Regional, and Local Solid Waste Management Plans.

(a) (No change.)

(b) State plan. **The effective period of the Solid Waste Management Plan for Texas, 1980-1986, Volume I, "Municipal Solid Waste," expired on December 31, 1986. The department no longer recognizes the previously adopted plan as the state plan for solid waste over which it has jurisdiction.** [The department adopts by reference the "Solid Waste Management Plan for Texas, 1980-1986, Volume I, "Municipal Solid Waste," as the state plan for solid waste over which the department has jurisdiction. The plan was approved by the board of health on January 31, 1981, and the effective period is from that date until December 31, 1986. Because jurisdiction over municipal hazardous waste has been changed since plan approval, provisions in the plan which are related to hazardous waste are no longer applicable. Department, regional, and local activities shall conform to those provisions which remain applicable in the adopted state plan. Copies of the state plan are available for public inspection during regular working hours at the Texas Department of Health (TDH) Bureau of Solid Waste Management, 1100 West 49th Street, Austin, Texas.]

(c) Regional plans.

(1) Plans approved. **The department has approved and adopted by reference the following described regional solid waste management plans. Each plan's effectiveness applies only for the geographical area described in the plan and for the period specified in the applicable subparagraph which follows:**

(A) The department has approved and hereby adopts by reference the "Action Guide for Solid Waste Management in the H-GAC Region, 1985-2000," which was developed by the Houston-Galveston Area Council and adopted by the council's board of directors on June 18, 1985. The effective period of department approval is from January 15, 1986, to December 31, 2000. Copies of **the** [this] document are available for public inspection during regular working hours at the TDH Bureau of Solid Waste Management, 1100 West 49th Street, Austin; TDH **Region 4 office, 10500 Forum Place, Suite 200, Houston;** [Region 11 office, 1110 Avenue G, Rosenberg;] and offices of the Houston-Galveston Area Council, 3555 Timmons Lane (Keplinger Building), Houston.

(B) The department has approved and hereby adopts by reference the regional plan titled "Solid Waste Management in the AACOG Region, 1985-2000", which was developed by the Alamo Area Council of Governments and adopted by the council's executive committee on April 22, 1987. The effective period of department approval is from March 15, 1989, to December 31, 2000. Copies of the document are available for public inspection during regular working hours at the TDH Bureau of Solid Management, 1100 West 49th Street, Austin; and offices of the Alamo Area Council of Governments, 118 Broadway (Three Americas Building), Suite 400, San Antonio.

(2)-(4) (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 December 13, 1988.

TRD-8812696 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: April 16, 1989.

For further information, please call: (512) 458-7271

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 10. Exploration and Development of State Minerals Other than Oil and Gas

• 31 TAC §§10.1-10.9

The General Land Office proposes new Chapter 10, §§10.1-10.9 concerning prospect permits and mineral leases, mineral development on Relinquishment Act land, sealed bid leases, sulphur unit agreements, conduct of exploration and mining operations, lease obligations, and mineral patents. The new sections are proposed to achieve uniformity between the administrative rules and amendments to the Texas Natural Resources Code. The new sections are also proposed to conform to changes in General Land Office procedures and to insure economically and environmentally sound mineral development on Permanent School Fund and other state lands.

Jim Phillips, general counsel, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Phillips also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the sections as proposed will be increased governmental and administrative efficiency due to uniformity between the applicable statutes and the administrative rules and procedures. There is no anticipated increased economic costs to individuals who are required to comply with the new sections.

Comments on the proposal may be submitted to Jim Phillips, General Counsel, General Land Office, Legal Services, Stephen F. Austin Building, Room 630, 1700 North Congress Avenue, Austin, Texas 78701.

The new sections are proposed under the Texas Natural Resources Code, §31. 051, which provides the Commissioner of the General Land Office with the authority to execute and perform all acts relating to public land and to make and enforce rules which are consistent with the law, and under §32.062 which authorizes the School Land Board to make and enforce rules consistent with the law.

§10.1. Definitions. Exploration and Development Guide.

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

(1) Commissioner-The commissioner of the General Land Office.

(2) GLO-The General Land Office.

(3) Land trade lands-Lands, the surface of which have been sold or traded with mineral rights and leasing rights retained by the state.

(4) Person-Any individual, partnership, corporation, association, or other legal entity.

(5) PSF-The Permanent School Fund.

(6) PUF-The Public University Fund.

(7) Relinquishment-Act lands Any public free school or asylum lands, whether surveyed or unsurveyed, sold with a mineral classification or reservation between September 1, 1895, and August 21, 1931 and any other lands made subject to the terms of the Relinquishment Act by action of the School Land Board.

(8) Relinquishment-Act leases Leases issued under the Texas Natural Resources Code, Chapter 53, Subchapter C and §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands).

(9) RRC-The Texas Railroad Commission.

(10) SLB-The School Land Board.

(11) TDC-The Texas Department of Corrections.

(12) TPWD-The Texas Parks and Wildlife Department.

(b) Exploration and development guide. For exploration and development for oil and gas, see Chapter 9 of this title (relating to Exploration and Development). Minerals other than oil and gas underlying state lands are explored and leased in the following ways, depending upon the type of mineral and the type of land.

(1) PSF lands, upland.

(A) Coal, Lignite, Sulphur, Salt, and Potash: Leased by sealed bid by the SLB. See the Texas Natural Resources Code, Chapter 53, Subchapter E and I; §10. 4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid).

(B) All other minerals, and shell, sand, and gravel: explored and mined under prospect permits and leases issued by the GLO. See the Texas Natural Resources Code, Chapter 53, Subchapter B; §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).

(2) PSF lands, submerged, and state-owned riverbeds and channels.

(A) Coal, Lignite, Sulphur, Salt, and Potash: Subject to exploration under §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid). Leased by sealed bid by the SLB. See the Texas Natural Resources Code, Chapter 53, Subchapter E; §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid).

(B) Marl, Shell, Sand, Gravel, and Mudshell: mined under permit issued by the TPWD. See the Texas Parks and Wildlife Code, Chapter 86.

(C) All other minerals: subject to exploration under §10.2 of this title (relating to Prospect Permits on State Lands). Mined under leases issued by the GLO. See the Texas Natural Resources Code, Chapter 53, Subchapter B; §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).

(3) Relinquishment Act lands. All minerals: leased by surface owner as agent for the state. See the Texas Natural Resources Code, Chapter 53, Subchapter C; §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands).

(4) Land trade lands.

(A) Coal, Lignite, Sulphur, Salt, and Potash: Leased by sealed bid by the SLB. See the Texas Natural Resources Code, Chapter 53, Subchapter E; §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid).

(B) All other minerals: explored and mined under prospect permits and/or leases issued by the GLO. See the Texas Natural Resources Code, Chapter 53, Subchapter B; §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases of Properties Subject to Prospect).

(5) State agency lands (except TPWD and TDC lands). All minerals: leased by sealed bid by the SLB. See the Texas Natural Resources Code, Chapter 32, Subchapters D and E; Chapter 153, of this title (relating to Exploration and Development).

(6) TDC and TPWD lands. All minerals: leased by sealed bid by the appropriate board for lease. See the Texas Natural Resources Code, Chapter 34; §§201.5-201.8 of this title (relating to Land for Lease; Excluded Land; Lease Sale, and Nominations of Tracts for Lease).

(7) PUF lands. All minerals: lease or otherwise develop as decided by the board of regents. See the Texas Education Code, §66.44.

§10.2. Prospect Permits on State Lands.

(a) Minerals subject to prospecting on state lands. See §10.1 of this title (relating to Definitions; Exploration and Development Guide) to determine which lands and minerals are subject to prospect permit procedures. Generally, minerals other than coal, lignite, sulphur, salt and potash, on PSF fee lands and land trade lands are subject to prospecting under this section.

(b) Application requirements and procedures.

(1) Any person, firm, or corporation desiring to apply for a prospect permit shall make written application upon the form prescribed and furnished by the GLO. The application to prospect shall include:

(A) a description of the tract of land which identifies it by the section number, part of section or survey to be prospected, township number, and/or certificate number, if applicable, survey name, number of acres to be prospected, and county or counties in which the land lies; and

(B) the name, address, phone number, and taxpayer I.D. number of the applicant. If the applicant is a corporation, the corporate name, address, phone number, taxpayer I.D. number, the name of the officer authorized to execute applications for permits and leases, and written evidence confirming that it is not delinquent in paying its franchise taxes.

(2) The application to prospect shall be for an area not in excess of 640 acres with a 10% tolerance for tracts, sections, and surveys that contain more than 640 acres.

(3) The application to prospect may be for a part of a section if the part is described by field notes of record in the GLO or if the part can accurately be described as a part of the section such as the NE/4.

(4) The application to prospect shall be accompanied by the filing fee prescribed by §1.91 of this title (relating to Fees) and, except as otherwise provided in §10.5(g)(7) of this title (relating to Mining Leases on Relinquishment Act Lands), the first year's rental payment of $.50 per acre.

(5) Within 10 days of receipt of an application for permit on lands where TPWD owns, leases, or to some degree controls the surface estate, the GLO shall notify the executive director of the TPWD that an application for permit has been received.

(6) Permits or immediate leases issued under §10.3(b)(1) of this title (relating to Mining Leases on Properties Subject to Prospect) will be issued on the basis of the order in which applications to prospect are received. An application will be determined to be received at the date and time receipt is acknowledged by the receiver of the GLO.

(7) If an application to prospect is received for a tract of land encumbered by a previously received application or by a valid prospect permit, the application will be rejected and the applicant will be notified and all monies tendered will be refunded.

(8) An applicant may request that the application to prospect be withdrawn. If the request is received prior to processing of the prospect permit, all monies tendered will be refunded.

(9) An applicant may be requested to supplement the application with information in order for the Land Office to determine whether prospecting will be conducted in good faith and in an orderly and environmentally responsible manner.

(c) Prospect permit issuance and requirements.

(1) After the application requirements have been satisfied, a prospect permit will be issued on a form prescribed and furnished by the GLO.

(2) The prospect permit will be for a term of one year from the date of application and, except as otherwise provided in §10.5(g)(7) of this title (relating to Mining Leases on Relinquishment Act Lands), will require an advance annual rental payment of $.50 per acre.

(3) On the same day that a permit is issued under this section on land whose surface is owned, leased, or to some degree controlled by TPWD, the GLO will notify TPWD of the issuance of the permit. The permit issued on such land will state that TPWD owns, leases, or to some degree controls the surface of the lands. Such permit will also state the name of the TPWD park or area manager responsible for the surface of such land.

(4) On land trade lands, the GLO will notify the surface owner that a permit has been issued only if the surface owner requests such notice in writing by furnishing the GLO with a current mailing address and a legal description of each tract on which he desires such notice.

(d) Prospect permit renewal.

(1) Permittee may request a renewal of a permit by tendering the appropriate rental payment and filing fee before the expiration date of the current permit. Prospect permit renewals, if granted, will be issued on a form prescribed and furnished by the GLO and shall extend the term of the permit for one year from the expiration date.

(2) Subject to the discretion of the commissioner, a prospect permit may be renewed up to and including four times, allowing the holder to retain the permit for five consecutive years from the date of issuance of the original prospect permit. At the time a permittee requests renewal of a permit, a determination of whether the permittee has exhibited good faith in prospecting and whether the permittee has complied with all GLO rules and regulations will be considered in the decision to grant or deny a renewal.

(3) If the holder of a prospect permit allows the permit to expire without filing for renewal, a new application must be submitted. Priority of completing applications are governed by subsection (b)(7) of this section.

(e) Assignments and releases. Prospect permits may be assigned or released in accordance with §10.8 of this title (relating to Assignments, Releases, Reports, Inspections, Forfeitures, and Reinstatements). The assignment or release must be filed with the GLO and must be accompanied by the filing fee prescribed by §1.91 of this title (relating to Fees).

(f) Reports and inspections.

(1) Permittee must comply with all requirements of §10.7 of this title (relating to Conduct of Exploration and Mining Operations) and §10.8 of this title (relating to Assignments, Releases, Reports, Inspections, Forfeitures, and Reinstatements).

(2) All prospecting operations shall be subject at any time to inspection by the commissioner or an authorized representative. Information or data pertaining to prospecting operations shall be furnished to the commissioner or an authorized representative upon request.

§10.3. Mining Leases on Properties subject to Prospect.

(a) Lands and minerals subject to lease. Those tracts of land and those minerals subject to prospect permit are subject to lease under this section. See §10.1 of this title (relating to Definitions; Exploration and Development Guide).

(b) Lease application requirements and procedures.

(1) In an application for prospect permit on a state tract, an applicant may indicate that a specific mineral is located on the state tract and request an immediate issuance of a lease on that tract. A lease may be issued to the applicant in lieu of a prospect permit if the commissioner of the GLO determines that such a mineral is located on the state tract and if applicant's application for prospect permit was received first under §10.2(b)(7) of this title (relating to Prospect Permits on State Fee Lands).

(2) At any time during the effective period of a prospect permit, the permittee may submit an application to lease the area covered by the prospect permit or a designated portion thereof.

(3) Application to lease shall include:

(A) an identification of the applicant's prospect permit;

(B) the date of issuance of the prospect permit;

(C) a description of the tract of land which identifies it by section number, township number, and/or certificate number, if applicable, survey name, number of acres contained in the section, and county or counties in which the land lies;

(D) the name, address, phone number, and taxpayer I.D. number of a noncorporate applicant;

(E) the corporate name, phone number, taxpayer I.D. number, address, the name of the officer authorized to execute permits and leases, and written evidence confirming that a corporate applicant is not delinquent in paying its franchise taxes;

(F) designation of the mineral or minerals proposed to be mined;

(G) statement of the applicant's proposed lease terms; and

(H) field notes prepared by the county surveyor or a licensed state land surveyor describing the area to be leased, if such area is less than that covered by the prospect permit and cannot be accurately described as a part of the section, such as NE/4.

(4) The TPWD may review the leasing of lands whose surface is owned, leased, or to some degree controlled by TPWD but whose minerals are subject to lease under this section. Within 10 days of receipt of an application to lease on such lands, the GLO shall notify the executive director of TPWD.

(5) The application to lease shall be accompanied by a filing fee prescribed by §1.91 of this title (relating to Fees) and the proposed lease payment which shall not be less than $2.00 per acre.

(6) In order to fully evaluate the application to lease, GLO staff may request that an applicant submit additional information, including information about the proposed mining operation.

(7) Each application to lease shall be subject to the approval of the commissioner and will be evaluated by the staff in order to determine whether the lease is in the best interest of the state by considering the following:

(A) whether the proposed lease terms and conditions are in conformity with the Texas Natural Resources Code, §§53.015-53.030, 53.155, and this section;

(B) whether the proposed lease terms are comparable to the best leases in the area;

(C) whether the proposed lease terms are compatible with other valuable uses of the leased premises; and

(D) whether the lease terms adequately compensate the PSF for the loss of other valuable uses of the leased premises.

(8) If the commissioner rejects an application to lease, the applicant will be notified and will be advised of the specific reasons for the denial. Applicant may contest being denied a lease by following the hearing procedures set out in Chapter 4 of this title (relating to General Rules of Practice and Procedure).

(c) Issuance of mining lease.

(1) Leases will be upon a form prescribed and furnished by the GLO and will include those provisions the commissioner considers necessary for the protection of the interests of the state.

(2) Upon approval of an application to lease, a lease will be prepared with the appropriate terms and conditions, signed by the commissioner, affixed with the seal of the GLO, and delivered to the lessee.

(3) On the same day that a lease is issued under this section on land whose surface is owned, leased, or to some degree controlled by TPWD, the GLO shall notify TPWD of the issuance of the lease. Such lease shall state that TPWD owns, leases, or to some degree controls the surface of such land and shall list the name of the TPWD park or area manager responsible for the surface of such land.

(4) On land trade lands, the GLO will notify the surface owner that a lease has been issued only if the surface owner requests such notice in writing by furnishing the GLO with a current mailing address and a legal description of each tract on which he desires such notice.

(5) Leases shall be recorded in each county in which the state's property is located. After recordation, lessee shall obtain a certified copy of the recorded lease from the county clerk. Lessee shall send such certified copies to the GLO within 90 days of the date of recordation.

(d) Minimum terms and conditions.

(1) The mining lease may be for a primary or fixed term of up to 20 years and may be for a secondary term lasting as long thereafter as the minerals covered thereby are produced in paying quantities.

(2) The first lease payment shall be not less than $2.00 per acre.

(3) The annual rental payments thereafter during the primary term shall be not less than $1.00 per acre, which shall be payable unless production in paying quantities is being obtained and appropriate royalty paid.

(4) The royalty shall be not less than one-sixteenth of the value of the minerals produced under said lease.

(5) The lease may provide for both an advance royalty provision and a shut-in royalty. The shut-in royalty provision shall allow the lease to be maintained in one year increments for a total of five consecutive years.

(6) Upland leases must include a provision requiring the payment of damages for the use of the surface in prospecting for, exploring, developing, or producing the leased minerals. The amount of damages for use of the surface will be determined through negotiations with GLO staff, approved by the commissioner, and incorporated in each lease form.

(7) Lessee shall conduct all mining operations in compliance with state and federal laws and §10.7 of this title (relating to Conduct of Exploration and Mining Operations).

(e) Assignments, releases, reports, inspections, forfeiture and reinstatement. Leases issued under this section are subject to all general provisions covered in §10.8 of this title (relating to Assignments, Releases, Reports, Inspections, Forfeitures, and Reinstatements).

§10.4. Exploration and Mining Leases for Minerals Subject to Sealed Bid.

(a) Lands and minerals subject to lease. Generally, coal, lignite, sulphur, salt, and potash on PSF lands and all minerals on state agency lands are subject to lease by sealed bid. See §10.1 of this title (relating to Definitions; Exploration and Development Guide) for lands and minerals which are subject to lease under these sealed bid procedures.

(b) Exploration for certain minerals. Exploration for coal, lignite, sulphur, salt, and potash on PSF lands may be conducted under geophysical and geochemical permits issued by the GLO. Applications must be submitted on forms prescribed by the GLO.

(c) Nomination, advertising, and award of tracts.

(1) Nominations, setting of terms and conditions, evaluation of sealed bids, advertising and awards are administered by the SLB under Chapter 53 of this title (relating to Exploration and Development).

(2) On land trade lands, the GLO will notify the surface owner that a lease has been issued only if the surface owner requests such notice in writing by furnishing the GLO with a current mailing address and a legal description of each tract on which he desires such notice.

(3) TPWD may review the leasing of lands whose minerals are subject to lease under this section but whose surface is owned, leased, or to some degree controlled by TPWD. If such lands are nominated for lease, the GLO shall notify the executive director of TPWD of such nomination. On the same day as a lease is issued on such lands, the TPWD will be notified of the issuance of the lease. Such lease will state that TPWD owns, leases, or to some degree controls the surface and will identify the TPWD park or area manager who is responsible for the surface of the land.

(d) Minimum terms and conditions.

(1) Terms and conditions of leases will be set by the SLB for each lease sale and will be included in the notice for bids.

(2) The royalty reserved to the state shall be not less than one-eighth of the gross production of sulphur and one-sixteenth of the gross production of coal, lignite, salt, or potash.

(3) Upland leases issued under this rule must include a provision requiring the payment of damages for the use of the surface in prospecting for, exploring, developing, or producing the leased minerals. The amount of damages for use of the surface will be determined by negotiation with GLO staff, approved by the commissioner, and incorporated in each lease form.

(4) Lessee shall conduct all mining operations and reporting requirements in compliance with state and federal laws and §10.7 of this title (relating to Conduct of Exploration and Mining Operations).

(5) State agency leases (except TPWD and TDC leases) may not be for a primary term exceeding five years.

(e) Assignments, releases, reports, inspections, forfeitures, and reinstatements. Leases issued under this section are subject to all general provisions covered in §10.8 of this title (relating to Assignments, Releases, Reports, Inspections, Forfeitures, and Reinstatements).

§10.5. Mining Leases on Relinquishment Act Lands.

(a) Lands and minerals subject to lease.

(1) Any survey or portion of a survey of Relinquishment Act land is subject to lease under this section.

(2) All minerals are subject to lease by the surface owner as agent for the state. For purposes of this section, minerals include all substances commonly classified as minerals even though they may be extracted by methods which destroy the surface. Minerals other than oil and gas may be leased together or separately. Oil and gas must be leased under the terms of Chapter 9 of this title (relating to Exploration and Development).

(b) Authority and duties of agent.

(1) Prohibition against self-dealing. A surface owner may not self-lease, either directly or indirectly. A surface owner may not acquire by assignment a lease executed by the surface owner. A surface owner will be considered to have engaged in self dealing if the surface owner leases to the following persons or entities or if the lease executed by the surface owner is assigned to the following persons or entities:

(A) a nominee;

(B) any corporation or subsidiary in which the surface owner is a principal stockholder, or an employee of such a corporation or subsidiary;

(C) a partnership in which the surface owner is a partner, or an employee of such a partnership;

(D) if the surface owner is a corporation or a partnership, a principal stockholder of the corporation or a partner of the partnership, or any employee of the corporation or partnership;

(E) a fiduciary representing the surface owner, including, but not limited to, a guardian, trustee, executor, administrator, receiver, or conservator; or

(F) a family member or to anyone related to the surface owner by marriage, blood, or adoption.

(2) Fiduciary duty of agent. A surface owner is the state's agent and owes the state a fiduciary duty and a duty of utmost good faith. A surface owner must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the surface owner. In addition to these specific duties, the surface owner owes the state all the common-law duties of a holder of executive rights.

(3) Consequences of a breach of the surface owner's fiduciary duty or a violation of the prohibition against self-dealing. When a surface owner breaches any duties or obligations owed to the state by law, any suit relating to such breach shall be filed in a district court in Travis County. Such a suit may seek removal of the owner of the soil's agency rights in addition to any other remedies authorized by statute or by common-law.

(4) Penalty assessment for breach of the surface owner's fiduciary duty. A penalty of 10% shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. The imposition of this penalty will not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10% penalty imposed by this subsection.

(c) Lease negotiation procedure.

(1) The surface owner is authorized to act as the state's leasing agent with any person, firm, or corporation desiring to develop the permanent school fund's minerals.

(2) The lease shall be negotiated by the surface owner and the prospective lessee on a form prepared and furnished by the GLO, which will incorporate the terms and conditions prescribed by the School Land Board.

(3) The proposed lease shall be submitted to the GLO for approval prior to recording the lease in the county records.

(d) Approval and filing of lease.

(1) The commissioner may reject or refuse for filing any lease deemed not in the best interest of the state.

(2) Upon rejection of a proposed lease by the commissioner, the prospective lessee will be given written notice which will specify the reasons for the rejection and any changes, deletions, or additions which would render the lease acceptable. The prospective lessee may request reconsideration or appeal a rejection of a lease under the hearings procedures set out in Chapter 4 of this title (relating to General Rules of Practice and Procedure).

(3) Upon receipt of approval of the lease, the prospective lessee shall finalize the lease and have the lease recorded in the county or counties in which the land lies and shall file a certified copy of the lease with the GLO. Leases are not effective until approved and filed in the GLO.

(4) The state's share of the approved bonus payment and the filing fee prescribed by §1.91 of this title (relating to Fees) shall be submitted along with the certified copy of the lease. Any lease is void unless it recites the actual consideration paid or promised for the lease.

(5) A surface owner, as the state's agent, owes the state a fiduciary

duty. See subsection (b) of this section. This fiduciary responsibility must be of paramount concern when a surface owner enters lease negotiations.

(e) Lease terms and conditions.

(1) The primary term of the mining lease shall be for no more than 20 years and as long thereafter as the minerals covered thereby are produced in paying quantities.

(2) Lessee shall pay bonus, rentals, royalties, and other lease considerations as follows.

(A) On leases filed before September 1, 1987, lessee shall pay to the state 60% of all bonuses, rentals, and royalties and other considerations agreed upon. Lessee shall pay to the surface owner 40% of all consideration agreed upon.

(B) On leases filed on or after September 1, 1987, lessee shall pay to the state 80% of all consideration agreed upon. Lessee shall pay to the surface owner 20% of all bonuses, rentals, and royalties.

(3) In the event of production, the state must receive not less than one-sixteenth of the value of production. The actual royalty is governed by the lease negotiated by the surface owner.

(4) All royalties and other payments accruing to the state shall be paid to the state through the commissioner at Austin, and shall be deposited to the PSF.

(f) Reports, assignments, releases, inspection, forfeitures, and reinstatements. Leases issued under this section will be governed by all general provisions found in §10.7 of this title (relating to Conduct of Exploration and Mining Operations) and §10.8 of this title (relating to Assignments, Releases, Reports, Inspections, Forfeitures, and Reinstatements). However, a lease issued under this section cannot be assigned to the surface owner who executed the lease. See subsection (b)(1) of this section.

(g) Waiver of agency rights.

(1) The surface owner may waive the surface owner's right to act as the state's agent for leasing all the state's minerals except oil and gas. Such a waiver must cover all the state's minerals except oil and gas and must be on the GLO waiver form. The waiver must be filed for record in each county where any portion of the land is situated. Before such waiver can be effective, a certified copy of each recorded waiver must be filed in the GLO along with a title opinion showing that he is a surface owner of the relevant land.

(2) If agency rights are waived under this subsection, the minerals will be subject to prospect permit and lease under §10.2 of this title (relating to Prospect Permits on State Lands) and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect).

(3) A surface owner who waives agency rights under this subsection, or an assignee, heir, or anyone else succeeding to all or part of the surface owner's interest in the tract will not be the state's agent and will not receive compensation under a prospect permit or lease for as long as a prospect permit or lease issued under §10.2 of this title (relating to Prospect Permits on State Lands) or §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect) remains in effect.

(4) Upon expiration, termination or forfeiture of a lease or permit, the agency rights of the surface owner shall be ipso facto reinstated.

(5) If the surface owner conveys the surface owner's interest in the tract after waiving agency rights, but before any prospect permit or lease has been issued, the succeeding surface owner will be entitled to act as the state's agent for leasing the state's minerals.

(6) A waiver executed under this subsection may be revoked if there is no prospect permit or lease in effect at the time the waiver is revoked and if, while the waiver was in effect, the surface owner did not act in a manner that compromises the surface owner's ability to resume all duties and responsibilities as the state's agent. Such revocation must be in writing and filed for record in each county in which any portion of the land is located. A certified copy of the recorded revocation instrument must be filed in the GLO before it is effective.

(7) The fee for a prospect permit issued under this subsection will be set by the commissioner. This fee will be based on the fair market value of the bonus and annual rental customarily paid for leasing similar minerals in the area, prorated for the one year term of the permit. The terms of a lease subsequently issued under this subsection will be negotiated. These terms will be based on the quantity and quality of the minerals located pursuant to the permit.

(8) In exceptional circumstances, the commissioner may allow the waiver of agency rights under this subsection as to less than all the state's minerals except oil and gas. For the commissioner to allow a more limited waiver of agency rights will require a showing that such a limited waiver is in the best interest of the state.

§10.6. Sulphur Unit Agreements.

(a) Application for sulphur production agreement. A proposed sulphur unit agreement shall set out:

(1) the total acreage in the unit, the number of state acres in the unit, and number of privately owned acres in the unit;

(2) a listing of the leases included within the proposed unit and recording information for such leases in the public records;

(3) a plat outlining the entire unit and showing in red the state acreage included in the unit;

(4) how production is to be allocated to each lease; and

(5) for each state lease, the state's royalty interest and any costs or deductions allowed against that interest.

(b) Approval of unit agreement.

(1) Any sulphur unit agreement which proposes to commit royalty interests in PSF lands or state agency lands shall be submitted to the GLO pooling committee for examination, investigation, and presentation to the SLB or the appropriate board for lease.

(2) Upon determination by the SLB that the unit agreement applied for is in the best interests of the state, the unitization will be approved.

(3) Any unit agreement which covers lands leased for sulphur under §10. 5 of this title, (relating to Mining Leases on Relinquishment Act Lands) shall be executed by the surface owner before consideration by the SLB. Any such unit agreement must be approved by the SLB under this section before it is effective.

(4) Any sulphur unit agreement which proposes to commit royalty interests in state lands or areas other than PSF lands must be approved by the appropriate board for lease and must be found to be in the best interests of the state.

(c) Provisions of unit agreement. A sulphur unit agreement may contain the following provisions:

(1) that operations incident to the drilling of a well upon any portion of the unit shall be deemed for all purposes to be the conduct of such operations upon each tract in the unit;

(2) that the production allocated by the agreement to each tract included in a unit shall, when produced, be deemed for all purposes to have been produced from such tract;

(3) that the state's royalty interest shall be paid only on that portion of the production from the unit which is allocated to the tract in accordance with the agreement;

(4) that each lease included in the unit shall remain in effect so long as the agreement remains in effect, and that upon termination of the agreement each lease shall thereafter continue in effect under its own terms and provisions;

(5) such other terms, conditions,

and provisions as may be deemed to be in the best interest of the state.

(d) Rule of construction. No term, condition, or provision of an approved unit agreement shall be read to burden an interest of the state with any cost, liability, or be read to otherwise adversely impact upon the state's interest unless such burden or adverse impact was expressly raised before and approved by the SLB or appropriate board for lease.

§10.7. Conduct of Exploration and Mining Operations.

(a) Structure of this section and definitions.

(1) This section is divided into seven major subsections. Subsection (a) is explanatory. Subsection (b) deals with regulation of reconnaissance activities. The remaining subsections all govern operations on the premises. Subsection (c) explains what a plan of operations must contain. No operations can commence on any premises until the GLO approves the plan of operation; therefore, the approval process for the plan is set out in subsection (d). Subsection (e) contains standard rules which govern all operations and which supplement any restrictions on operations found in a GLO approved plan of operations. Subsection (f) tells a lessee or permittee what steps need to be taken when mining operations terminate and the lessee or permittee wishes to abandon the premises. Finally, there are special regulations governing operations on premises which are owned, leased, or to some degree controlled by TPWD. The special regulations are found in subsection (g).

(2) The following words and terms, when used in this section, shall have the following meanings, unless the content clearly indicate otherwise.

(A) Lease–A mining lease issued or approved by the commissioner or SLB under Chapter 53, Subchapters B, C, or E, the Texas Natural Resources Code and §10.3 of this title (relating to Mining Leases on Properties Subject to Prospect), §10.4 of this title (relating to Exploration and Mining Leases for Minerals Subject to Sealed Bid), or §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands).

(B) Lessee–The initial holder of a valid lease or a successor, assignee, devisee, or heir who acquires any right of the initial holder.

(C) Operations–Any activities associated with mineral exploration or development that require disturbing or destroying the surface or subsurface of the leased or permitted areas. Operations shall include drilling test holes or core holes; excavating test pits; moving heavy machinery over the leased or permitted area; sinking shafts; and extracting, storing, processing, and shipping minerals. Operations shall not include reconnaissance activities.

(D) Operator–A permittee or lessee or any employee, agent, servant, contractor, or sub-contractor of either a permittee or lessee.

(E) Permit–A prospect permit issued by the commissioner under §10.2 of this title (relating to Prospect Permits on State Fee Lands).

(F) Permittee–The initial holder of a valid prospect permit or a successor, assignee, devisee, or heir who acquires any right of a permittee.

(G) Premises–Any state property subject to a lease or to a permit.

(H) Reconnaissance activities–Include hand sampling, geologic mapping, surveying, and other activities which do not significantly impact the surface and which are necessary to gather data to formulate the plan of operations.

(b) Regulation of reconnaissance activities.

(1) After a permit or lease has been granted for exploration and development of the premises, an operator can begin reconnaissance activities.

(2) In conducting reconnaissance activities, an operator shall comply with the following rules.

(A) All operations shall be conducted so as to minimize adverse environmental impacts on surface resources.

(B) All garbage, refuse, or waste shall be removed from lands under permit or lease.

(C) No vegetation or topsoil shall be disturbed, cleared, or removed without prior written approval of the GLO.

(D) Operator shall comply with the National Historical Preservation Act of 1966, 16 United States Code §470 (1985 and Supp. 1988), and the Antiquities Code of Texas, Title 9, Chapter 191, Texas Natural Resources Code, where applicable.

(E) Operator shall comply with the United States Endangered Species Act of 1973, 16 United States Code §1531-1543 (1985 and Supp. 1988) and Chapters 67, 68, and 88 of the Texas Parks and Wildlife Code which relate to endangered plants or wildlife and protected non-game.

(F) During all reconnaissance activities the operator shall operate and maintain equipment and premises in a safe, neat, and prudent manner.

(3) Permits or leases, especially leases issued under §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands), may contain additional rules and restrictions on reconnaissance activities. In leases issued under §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands), surface owners may demand notice before an operator can enter the premises.

(4) In conducting reconnaissance activities on premises whose surface is owned, leased, or to some degree controlled by TPWD, operator shall comply with these additional rules.

(A) Operator is subject to all TPWD rules in effect for the park or wildlife management area where the premises are located to the extent that such rules are not inconsistent with rules found in this section or with the reasonable development of PSF minerals.

(B) Operator cannot carry either firearms or archery equipment on TPWD lands.

(C) Permittee or lessee shall be liable for any taking of fish, wildlife, plants, or archeological resources by any operator.

(D) There shall be no vehicular travel off existing roads during wet weather.

(E) No reconnaissance activities shall be commenced without notifying the park superintendent or area manager 48 hours in advance of entering TPWD lands.

(F) Permittee or lessee shall keep the number of operators allowed on TPWD lands at a minimum.

(c) Content and explanation of plan of operations.

(1) Before an operator may commence operations on any premises, the permittee or lessee of those premises must submit a plan of operations to the GLO. No operations may commence until a plan of operations has been approved by the GLO. Operations must be conducted in accordance with an approved plan of operations and with the standard regulations following in subsection (e) of this section.

(2) The plan of operations must include the following:

(A) the name and legal mailing address of the permittee or lessee and of any operators who will be on the premises;

(B) a 7 1/2 minute USGS topographic map or sketch showing:

(i) information sufficient to locate the proposed areas of operations on the ground;

(ii) existing and/or proposed roads or access routes to be used in connection with the operations; and

(iii) the approximate location and size of any other areas where surface resources or improvements might be disturbed;

(C) information sufficient to describe or identify:

(i) the precise nature and extent of all proposed operations including all prospecting/exploration activities and all extracting/mining/processing activities;

(ii) the type, design, and location of existing and proposed roads or access routes;

(iii) transportation equipment and other heavy equipment to be used on the premises;

(iv) the period during which each proposed activity will take place; and

(v) measures to be taken to protect and preserve the environment.

(D) listing of all natural (historic and prehistoric) resources, archeological resources, and biological resources (including vegetation, fish, and animal life, especially endangered plants and wildlife) found on the premises;

(E) a statement of whether operations are planned on steep slopes that may be subject to erosion and whether any of the drilling muds and fluids proposed to be used are oil-based or are toxic to fish or wildlife;

(F) a specification of what erosion control and reclamation efforts will be undertaken to minimize the surface damage caused by each proposed prospecting/exploration activity and each proposed extracting/mining/processing activity if the reclamation efforts on the premises are not regulated by the RRC under 16 TAC §11.1 (relating to Adoption by Reference) or 16 TAC §11.221 (relating to State Program Regulations);

(G) any specification of erosion control and reclamation efforts that shall include:

(i) a list of how each proposed activity is expected to impact the surface, vegetation, topsoil, wildlife habitats, and the flow of run-off water;

(ii) specific plans to control erosion, landslides, drainage, and water run-off; and

(iii) specific plans to remove toxic materials, rehabilitate fisheries, wildlife habitats, and vegetation.

(H) additional provisions which follow in subsection (g) of this section if the TPWD owns, leases, or to some degree controls the surface; and

(I) a specification of the proposed manner of commingling and a comparison of the quality of ore produced from the premises to the quality of the privately-owned ore if the permittee or lessee proposes to commingle minerals produced from the premises with privately-owned minerals or with minerals from other state premises.

(3) If the full range of prospecting/exploration activities is not yet determined or if the extracting/mining/processing activities cannot be determined for inclusion in the plan, the permittee or lessee shall submit an initial plan of operations covering reasonably foreseeable activities. Whenever the permittee or lessee wishes to undertake activities beyond the scope of the initial plan of operations, a supplemental plan must be filed with the GLO. Whenever the permittee or lessee wishes to change any activity found in an approved plan, an amended plan must be filed with the GLO. An amended or supplemental plan of operation shall have the same requirements and be subject to the same approval process as the initial plan.

(4) The GLO may amend a plan of operations to adjust for changed environmental or surface conditions.

(5) The filing of a plan of operations or a supplemental or amended plan will fulfill a lease or permit requirement to file a mining plan, but does not fulfill those reporting obligations found in §10.8 of this title (relating to Assignments, Releases, Reports, Inspections, Forfeitures, and Reinstatements).

(6) Failure to submit a plan before conducting operations, to submit a supplemental or amended plan before conducting additional or different operations, or to conduct operations on the premises in compliance with the approved plan of operations or these rules shall subject the permit or lease to forfeiture.

(d) Requirements for approval of plan of operations.

(1) Many of the activities covered in the plan of operations may be regulated or restricted by various state and federal governmental bodies. For example, development of coal, lignite, uranium, or uranium ore is also regulated by the RRC. See 16 TAC §11.1 (relating to Adoption by Reference) and 16 TAC §11.221 (relating to State Program Regulations). Similarly, subsurface excavations which may affect water are also regulated by the Texas Water Commission. Nothing in the plan of operations will be construed to contradict any state or federal statute, regulation, or rule, including any regulation or rule contained in this section.

(2) The proposed plan of operation shall be submitted to the GLO, which shall promptly acknowledge receipt thereof to the permittee or lessee. GLO staff will analyze the proposal, inspect the premises, if necessary, consider the general economics of the operations along with other factors, and determine the reasonableness of the requirements for surface resource protection and of the plans to develop the state's minerals. In order to evaluate the plan, the GLO staff may require additional information from the lessee or permittee. Within 90 days after the GLO receives both a plan and any requested additional information, the GLO shall:

(A) notify permittee or lessee that the plan of operations has been approved; or

(B) notify the permittee or lessee of the necessary additions and/or changes to the plan which are required for approval.

(3) Typical changes or additions required by the GLO prior to approving a plan include the following.

(A) Sites and roadways may be adjusted and realigned to avoid significant disturbance of biological, archeological, or aesthetic features.

(B) Method of disposing of vegetation which must be cleared and for disposing of topsoil may be changed.

(C) Proposed drilling muds and fluids may be changed to require use of those muds and fluids that are not toxic to fish or wildlife.

(D) Permittee or lessee may be required to take action to mitigate any unavoidable impacts to fish and wildlife resources and habitat caused by operations.

(E) Slope stabilization by mechanical means may be required during operations.

(F) Eight foot chain link se-

curity fencing to protect the public from hazardous sites or conditions may be required.

(G) Full restoration, including spreading of topsoil stock pile, of all areas disturbed during permitted activity to pre-operation elevations, contours, and substrata may be required.

(H) Steep slopes which are subject to damaging erosion may need to be modified to facilitate revegetation and prevent erosion.

(I) Replanting of disturbed native vegetation may be required.

(J) Seeding and mulching plans may be modified so that different materials are used or applied at different rates or times.

(4) The GLO may require a permittee or lessee to furnish a bond as a condition to approval of a plan of operations. The performance bond shall be in an amount to be determined by and forfeitable to the GLO as a guarantee for the strict performance of the conditions contained in the plan of operations and the strict compliance with the regulations found in subsection (e). In determining the amount of the bond, consideration shall be given to the estimated cost of restoring the land to the condition it would have been in had the plan of operations or the regulations been strictly followed.

(e) Regulation of operations.

(1) Permittee, lessee, or any other operator shall conduct all operations within the limitations and regulations found in this subsection (e) or in the approved plan of operations. Additionally, the permit or the lease may contain additional rules and restrictions on operations. In particular, leases issued under §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands) may contain additional provisions to protect the surface owners who act as the state's leasing agent.

(2) All operations shall be conducted so as to minimize adverse environmental impact on surface resources.

(3) Operator shall comply with applicable federal and state air quality standards and emission permit requirements.

(4) Operator shall comply with applicable federal and state water quality standards and waste water discharge permit requirements and federal permitting requirements applicable to disturbance of wetlands, watercourses, and flood plains. Operator shall also comply with all Texas Water Commission regulations of subsurface excavations which may affect water. Operator shall in its construction activities, to the greatest extent possible, avoid disturbance within natural water courses and their immediate flood plains. Operator shall use only so much of underground water as may be reasonably necessary subject to the rights of the surface owner. If water bearing strata or underground aquifers are encountered during drilling activities, shaft construction, or subsurface excavation, measures shall be taken by the operator to prevent pollution of such underground water sources. Operator shall comply with all applicable Texas Water Commission and RRC rules for the protection of usable quality water within the premises.

(5) Operator shall comply with applicable federal and state standards for the disposal and treatment of all solid wastes. All garbage, refuse, or waste, shall either be removed from lands under permit or lease or disposed of, or treated so as to minimize, so far as practicable, its impact on the environment and surface resources. All waste rock, deleterious materials or substances, and other waste produced by operations shall be deployed, arranged, disposed of, or treated in accordance with federal and state requirements and so as to minimize adverse impact upon the environment and surface resources. Operator shall, at all times, keep lands under permit or lease, access roads, and prospect sites free of trash and litter generated by operations. No vegetation or topsoil shall be pushed, windrowed, or abandoned except in preparation for disposal by means approved by the GLO in the plan of operations. Operator shall keep muds, cuttings, and all other fluids, including all contaminants and saline fluids, in tanks or containers for removal from the site. All drilling muds and fluids shall be water based and non-toxic to fish and wildlife; provided, however, that other drilling muds and fluids may be used if, in the plan of operations, the GLO determines that there is no prudent or feasible alternative. Soil-damaging petroleum and other chemicals shall be hauled from the state lands and disposed of lawfully. Dumping of any such materials on state lands is prohibited.

(6) Operator shall, to the extent practicable, harmonize operations with scenic values through such measures as the design and location of operating facilities, including roads and other means of access, screening of operations by native vegetation, if possible, and construction of structures and improvements which blend with the landscape.

(7) Operator shall comply with the National Historical preservation Act of 1966, 16 United States Code §470 (1985 and Supp. 1988), and the Antiquities Code of Texas, Title 9, Chapter 191, Texas Natural Resources Code, where applicable.

(8) Operator shall comply with the United States Endangered Species Act of 1973, 16 United States Code §1531 and §1543 (1985 and Supp. 1988), and Chapter 67, 68, and 88 of the Texas Parks and Wildlife Code, which relate to endangered plants or wildlife and protected non-game.

(9) Preservation of existing vegetation shall be maximized at all times.

(10) In addition to compliance with water quality and solid waste disposal standards required by this section, operator shall take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.

(11) Operator shall, if possible, use existing roadways for access to and over and across the premises. Operator must justify construction of new roads by demonstrating that there is no feasible and prudent alternative. Operator shall construct and maintain all roads so as to assure adequate drainage and to minimize or, where practicable, eliminate damage to soil, water, and other resource values. Roads utilized shall be left in as good a condition as they were prior to use by operator.

(12) During all operations the operator shall maintain structures, equipment, and other facilities in a safe, neat, and workmanlike manner. Hazardous sites or conditions resulting from operations shall be fenced, marked by signs, or otherwise identified to protect the public in accordance with all state and federal laws and regulations.

(13) Operator shall comply with all applicable state and federal fire laws and regulations and shall take all reasonable measures necessary to prevent and suppress fires in the area of operations.

(14) Unless the RRC regulates reclamation efforts or unless written notification from the GLO under subsection (f)(2) of this section a states otherwise, permittee or lessee shall reclaim the surface disturbed in operations within six months of the expiration of the permit or lease.

(f) Completion of operations and abandonment of premises.

(1) This subsection shall apply to all operations except those involving coal, lignite, uranium, or uranium ore operations which are regulated by the RRC.

(2) Within two weeks after all operations and all reclamation activities addressed in the plan of operations have been completed, permittee or lessee shall send the GLO the following information:

(A) date when operations ceased;

(B) date when reclamation activities ceased;

(C) problems encountered during reclamation activities;

(D) success of reclamation

efforts in improving the surface condition;

(E) any additional reclamation activities that permittee or lessee believes are necessary to restore or improve the surface, vegetation, topsoil, or wildlife habitat;

(F) date on which any proposed additional reclamation activities, if any, shall begin and end; and

(G) date on which the premises shall be ready for initial GLO inspection.

(3) Upon initial inspection, the GLO may determine that more reclamation activities are necessary. The GLO will notify permittee or lessee of what additional reclamation activities are necessary and when such activities must be completed.

(4) Upon completion of additional reclamation activities, permittee or lessee shall submit:

(A) date when additional reclamation activities ceased;

(B) problems encountered during such activities;

(C) success of such activities in improving the surface condition; and

(D) date upon which premises shall be ready for another GLO inspection.

(5) The procedures found in subsection (f)(3) and (4) of this section shall be repeated until the GLO is satisfied with the condition of the premises.

(6) Within one year after the date of a satisfactory GLO inspection, the GLO will reinspect the premises. Permittee or lessee shall remedy any problems discovered on the premises if such problems were directly or indirectly caused by oporator's operations or reclamation activities. If the property remains in satisfactory condition, the GLO will return or release any bond required under the plan of operations.

(g) Operations on TPWD lands.

(1) Operators on premises whose surface is owned, leased, or to some degree controlled by TPWD are subject to the additional regulations found in this subsection. Permittees and lessees on such premises must expressly include the following regulations in their plan of operations.

(A) Operator is subject to all TPWD rules in effect for the park or wildlife management area on which operations are conducted to the extent that the park or management area rules are not inconsistent with rules or regulations found in this section or with the reasonable development of PSF minerals.

(B) No firearms or archery equipment shall be permitted at any time on TPWD lands by any operator. Permittee or lessee shall be liable for any taking of fish, wildlife, plants, or archeological resources by any operator.

(C) Unless an approved plan of operations provides otherwise, no materials required for construction of roads shall be taken or borrowed from TPWD lands. There shall be no vehicular travel off existing roads during wet weather. Where travel is permitted by drilling buggies and water wagons, such vehicles shall use high flotation tires.

(D) The following rules apply unless otherwise requested by TPWD and approved by the GLO in a plan of operations.

(i) Roads no longer needed for operations shall be closed to normal vehicular traffic.

(ii) Bridges and culverts shall be removed.

(iii) Cross-drains, dips, or water bars shall be constructed.

(iv) The road surface shall be shaped to as near a natural contour as practicable and be stabilized.

(E) If a diversion between all drilling sites, pads and all upslope areas is required in an approved plan of operations, the diversion shall be constructed with a flared outlet stabilized by rock or other grade stabilization structures as necessary to prevent erosion. Drilling sites should be sloped with a minimum grade 0.3-0.5% to drain into such diversions so the run-off does not flow over the fill area. Sediment shall be cleaned out of diversion and properly disposed of periodically. A temporary straw bale barrier containing no noxious weed shall be constructed along the base of the drill site where it follows a natural water course. A temporary bale barrier shall be established immediately after the drill site is constructed to prevent erosion while side slopes are being stabilized. The bale barrier must be maintained, sediment removed and bales replaced. Sedimentation on areas adjacent to the drill site shall be minimized. Topsoil to a maximum feasible depth not to exceed 12 inches to 18 inches shall be stockpiled on the upslope edge of each drill pad and separated from upslope run-off by a diversion, or with other erosion control as necessary.

(F) Unless an approved plan of operation states otherwise, no explosives shall be used within 750 feet of any building, utilities, or water well or within 1,000 feet of any water retention structures. All proposed use of explosives shall be specifically described in an approved plan of operations.

(G) Unless otherwise specified in an approved plan of operations, and to an extent not subject to RRC regulations or this section, restoration of the disturbed area to approximate original contours and revegetation with appropriate native vegetation shall be required to optimize wildlife habitat value.

(H) No operations shall be commenced without notification of the park superintendent or area manager 48 hours in advance of entering TPWD premises. Permittee or lessee shall allow only those operators that are necessary for operations to access the TPWD premises.

(I) Operator shall permanently stake limits of proposed access roads on the ground a minimum of 30 days prior to and throughout actual operations or other activities. Each access road is subject to review and approval by the GLO. The area disturbed during construction activity shall be strictly minimized. Access roads shall not exceed 30 feet in width and operator shall use existing roads whenever possible.

(2) As soon as the GLO receives a plan of operations which covers TPWD lands and which supplies all the data required in subsection (c) of this section, the GLO shall mail a copy of the plan of operations to the TPWD for review and comment.

(3) TPWD must submit its comments, if any, to the GLO within 30 days of TPWD's receipt of a plan of operations.

(4) Plan of operations on TPWD land may not be approved until at least 30 days after the TPWD receives the plan of operations. When the GLO approves a plan of operations on TPWD land, GLO will send TPWD a copy of the approved plan on the day the plan is approved.

§10.8. Assignments, Releases, Reports, Inspections, Forfeitures, and Reinstatements.

(a) Assignments and releases.

(1) After obtaining written approval of the commissioner, a lease or permit issued under Chapter 10 of this title (relating to Exploration and Development of State Minerals other than Oil and Gas) may be assigned in quantities of not less than 40 acres. If, however, less than 40 acres remain of the tract originally leased, then the entire remaining acreage may be assigned. Assignments shall be recorded in each county in which the state tract is located. State agency leases are not subject to

these restrictions and may be assigned at any time.

(2) After recordation, lessee or permittee shall obtain a certified copy from the county clerk of each recorded assignment covering the state lease or permit. Lessee or permittee shall send such certified copies to the GLO within 90 days of the date of recordation, accompanied by the filing fee prescribed in §1.91 of this title (relating to Fees).

(3) An assignment is not effective until a certified copy of such assignment has been filed by the GLO. An assignment shall not have the effect of releasing the assignor from any liability incurred or claim previously accrued in favor of the state.

(4) The lessee or permittee may release the lease or permit back to the state at any time. To release a lease or permit, a lessee or permittee must record the release in each county where the state tract is located and mail a certified copy of each recorded release to the GLO accompanied by the filing fee prescribed in §1.91 of this title (relating to Fees).

(5) A release is not effective until a certified copy of the release is filed by the GLO. A release shall not have the effect of releasing lessee or permittee from any liability incurred or claim previously accrued in favor of the state.

(b) Reports and payment of royalties.

(1) A log, sample analysis, or other information obtained from each test drilled on the area covered by the lease or permit shall be filed with the GLO upon request. Lessee or permittee shall furnish annually on the anniversary date of the lease or permit a map or plat showing all activities on the state lease or permit. In addition, an evaluation map or plat shall be filed in the GLO within 90 days after any drilling program shall have been completed or abandoned, and the correctness of such map shall be sworn to by lessee or permittee or his representative. The map or plat shall show geologic formations penetrated, the depth, thickness, grade, and mineral character of all ore bodies, the water bearing strata, the elevation and location of all test holes, and other pertinent information.

(2) Unless the lease or permit provides otherwise, on or before the last day of the month after the month when production started, the lessee or permittee shall file a production and royalty report showing production and royalty for the calendar month when production started. Subsequently, a production and royalty report shall be filed each month for production from the preceding calendar month. Such report shall be on a form prescribed and furnished by the GLO and shall show:

(A) the type and amount of each mineral produced and marketed during the preceding month;

(B) the purchaser for each type of mineral; and

(C) the selling price of each mineral as shown by copies of smelter, mint, mill, or refinery, returns, sale receipts, invoices, or other sale documents attached thereto.

(c) Inspections.

(1) The books, accounts, records, contracts, and other documents pertaining to production, transportation, sale, and marketing of minerals leased shall at all times be subject to inspection and examination by the commissioner, or his authorized representative, and copies of such records shall be furnished to the commissioner upon request.

(2) All mining, milling, and processing operations shall be subject at any time to inspection by the commissioner or his authorized representative and copies of records or other documents pertaining to these operations shall be furnished to the commissioner upon request.

(d) Forfeiture and reinstatement.

(1) If the owner of a lease or permit shall fail or refuse to make payment of any sum due, or if the owner or his authorized agent should knowingly make any false return or false report concerning the lease or permit, or if the owner or his agent should refuse the commissioner or his authorized representative access to the records or other data pertaining to operations under the lease or permit, or if any of the material terms of the lease or permit should be violated, the lease or permit shall be subject to forfeiture by the commissioner.

(2) A lease or permit shall be considered forfeited when it has been endorsed "forfeited" and the endorsement signed by the commissioner.

(3) Upon forfeiture, the commissioner will give written notice to the lessee or permittee stating the date of forfeiture and the reasons for the forfeiture. The notice of forfeiture will be sufficient if mailed to the last known address of the lessee or assignee shown of record in the GLO.

(4) A forfeiture may be set aside and all rights under a lease or permit may be reinstated before the rights of another party intervene, upon satisfactory evidence to the commissioner of future compliance with the provisions of the law, of the lease or permit, and of any rules adopted relative to the lease or permit, and any conditions placed upon the reinstatement. Lessee or permittee shall offer the evidence required for reinstatement within 30 days after the date the notice of forfeiture was mailed and after such 30 days shall have no future right of reinstatement. If a lease or permit issued under §10.5 of this title (relating to Mining Leases on Relinquishment Act Lands) is not reinstated within the 30 day period, the surface owner is entitled to lease the minerals. For hearings procedures, see Chapter 4 of this title (relating to General Rules of Practice and Procedure).

§10.9. Mineral Awards and Patents.

(a) General. Anyone who was issued a mineral award prior to March 15, 1967, under former Texas Civil Statutes, Articles 5388-5403, may patent the mineral award upon proper compliance with the statutory requirements and the rules promulgated by the GLO.

(b) Lands and minerals subject to patent.

(1) All valuable mineral bearing deposits, placers, veins, lodes, and rock carrying metallic or nonmetallic substances of value except oil, natural gas, coal, and lignite, shall be subject to patenting.

(2) Only those lands which are presently encumbered by a mineral award are subject to patenting.

(c) Maintaining a mineral award; annual assessment work.

(1) The owner of an award shall have the exclusive right to the possession and use of the minerals within the area of the claim so long as he continues to do or causes to be done the annual assessment work for each claim.

(2) The annual assessment work shall consist of an excavation in the form of a shaft or tunnel or an open cut to the extent of 10 feet in depth or length and at least four feet by five feet for the other dimensions. In the event the mineral sought is usually and customarily produced from drilling holes by means of machinery, except such minerals as oil, natural gas, coal, or lignite, then the drilling of a hole to such depth or length in lieu of the digging of a shaft or tunnel or open cut shall constitute the annual assessment work required.

(3) During the month of January, the owner of a mineral award shall file an annual assessment affidavit on a form prescribed and furnished by the GLO. The affidavit shall be signed and notarized and shall describe the assessment work which was completed during the previous year. If the assessment work accomplished is deemed insufficient or if the form is improperly completed, the owner of the mineral award will be notified.

(4) The annual assessment work for a contiguous group of mineral awards may be done on one mineral award.

(d) Rental payments.

(1) The owner of a mineral award shall pay annually $.50 per acre. This

annual rental payment shall be due during the month of January of each year succeeding the year the mineral award was issued.

(2) Annual rental payments will be applied to the purchase price of the mineral patent.

(e) Royalty payments.

(1) In addition to rental payments, the owner of a mineral award shall pay a royalty of 6 1/4% of the value of the production of the minerals upon such award as shown by the net smelter, mill, mint, or refinery returns or of the gross sums arising from the sale of the ore or products from the award and received by the owner.

(2) Royalty payments arising from the sale of ores, minerals, or other products shall be due quarterly in January, April, July, and October for the quarters preceding.

(3) Royalty payments shall be accompanied by a production and royalty report filed on a form prescribed and furnished by the GLO.

(f) Inspection.

(1) The books, accounts, records, and contracts pertaining to production, transportation, sale, and marketing of minerals awarded will at all times be subject to inspection and examination by the commissioner, or his authorized representative, and copies of such records shall be furnished to the commissioner upon request.

(2) All mining, milling, and processing operations shall be subject at any time to inspection by the commissioner or his authorized representative and copies of records pertaining to these operations shall be furnished to the commissioner upon request.

(g) Forfeiture of mineral award.

(1) If the owner of a mineral award shall fail or refuse to make payment of any sum within 30 days after it becomes due, or if the owner or his authorized agent should knowingly make any false return or false report concerning production, mining, or development, or if the owner should fail or refuse the proper authority access to the records pertaining to the operations, or if the owner or authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to submit to the GLO all correct reports required by statute, the rights acquired under the award shall be subject to forfeiture by the commissioner.

(2) Upon forfeiture of a mineral award, notice shall be mailed to the person, firm, or corporation shown by the records of the GLO to be the owner of the mineral award.

(3) Upon satisfactory evidence of future compliance with the law and with the GLO rules and regulations, the forfeiture may be set aside and all rights thereto reinstated.

(4) If a mineral award is forfeited and not reinstated, the land covered by the mineral award is not subject to being claimed or patented.

(h) Patenting a mineral award.

(1) At any time after five years from the date of a mineral award, the owner of the award may pay the balance due on the purchase price of the award and request a patent thereto.

(2) The owner of the mineral award shall make written request that the award be patented. The request shall be accompanied by three separate remittances: the balance of the purchase price, a patenting fee and a recording fee. The appropriate patenting and recording fees are found in §1.91 of this title (relating to Fees).

(3) The purchase price of the mineral patent shall be §10 per acre, and the annual payments of $.50 per acre on the mineral award shall be applied to the purchase price.

(i) Mineral patent requirements.

(1) After the issuance of a mineral patent, no further assessment work will be required.

(2) The royalty due the state on a mineral patent shall be perpetual and shall be 61/4% of the value of the production of the minerals as shown by the net smelter, mill, mint, or refinery returns or of the gross sum, arising from the sale of the ore or products from the mineral patent and received by the owner.

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 December 12, 1988

TRD-8812648 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: January 20, 1989

For further information, please call: (512) 463-5009

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Chapter 13. Land Resources

Prospecting and Mining State-Owned Minerals

• 31 TAC §§13.31-13.36

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

The General Land Office proposes the repeal of §§13.31-13.36, concerning prospecting and mining state-owned lands. The General Land Office proposes the repeal of these sections in order to further its policy of reorganizing administrative rules into a more accessible and logical structure. The subject matter of this section is to be contained in new Chapter 10 of this title (relating to Exploration and Development of State-Owned Minerals).

Jim Phillips, general counsel, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Phillips also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased governmental and administrative efficiency due to restructuring of the rule system. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jim Phillips, General Land Office, Legal Services, Room 630, 1700 North Congress Avenue, Austin, Texas 78701.

The repeal of these sections is proposed under the Natural Resources Code, §13.051, which provides the commissioner with the authority to make and enforce rules consistent with the law.

§13.31. Prospect Permits.

§13.32. Mining Leases Under Texas Civil Statutes, Article 5421c-7.

§13.33. Mining Leases Under Texas Civil Statutes, Article 5421c-8.

§13.34. Mining Leases Under Texas Civil Statutes, Article 5421c-10.

§13.35. Sulphur Production Agreements.

§13.36. Mineral Awards and Patents.

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 December 12, 1988.

TRD-8812650 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: January 20, 1989

For further information, please call: (512) 463-5009

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Part IV. School Land Board

Chapter 155. Land Resources

Reclamation Standards for Surface Mining Conducted to Recover State-Owned Minerals

- **31 TAC §§155.31-155.35**

(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 School Land Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The School Land Board proposes the repeal of §§155.31-155.35, concerning reclamation standards for surface mining conducted to recover state-owned minerals. The School Land Board proposes the repeal of these sections in order to further its policy of reorganizating administrative rules into a more accessible and logical structure. The subject matter of this section is to be contained in new Chapter 10 of this title (relating to Exploration and Development of State-Owned Minerals).

Jim Phillips, general counsel has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Phillips also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be increased governmental and administrative efficiency due to restructuring of the rule system. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Jim Phillips, General Land Office, Legal Services, Room 630, 1700 North Congress Avenue, Austin, Texas 78701.

The repeal of these sections is proposed under the Natural Resources Code, §32.062, which provides the School Land Board with the authority to make and enforce rules consistent with the law.

§155.31. Purpose.

§155.32. Scope.

§155.33. Definitions.

§155.34. Reclamation Plan.

§155.35. Performance Bond.

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 December 12, 1988.

TRD-8812649 Garry Mauro
Chairman
School Land Board

Earliest possible date of adoption: January 20, 1989

For further information, please call: (512) 463-5009

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 72. Memoranda of Understanding with Other State Agencies

- **40 TAC §72.801**

The Texas Department of Human Services (DHS) proposes new §72.801, concerning continuity of care for elderly inmates, in its Memoranda of Understanding with Other State Agencies chapter. Legislation passed by the 70th Legislature, 1987, requires the department to adopt by rule a memorandum of understanding with the following state agencies: the Texas Department on Aging (TDoA), the Texas Department of Corrections (TDC), and the Texas Bureau of Pardons and Paroles (BPP). The purpose of this memorandum is to clarify responsibilities of each agency and to establish a continuity of care program for elderly inmates (age 60 and older) released from TDC.

Stephen Svadlenak, 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. Svadlenak also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that elderly inmates released from prison will be assured a continuum of care. 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, Adminis- trator, Policy Development Support Division-757, Texas Department of Human Services 222-E, P.O. 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The section 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

§72.801. Continuity of Care for Elderly Inmates.

(a) Responsibilities for coordination.

(1) The Texas Department of Corrections (TDC) makes available to the Texas Bureau of Pardons and Paroles (BPP) appropriate social and medical history information for each elderly client released from TDC. This information is submitted in a timely manner and includes information necessary to establish a care plan after release.

(2) BPP agrees to accept referrals from TDC and develop individual assessment and care plans for each elderly client referred. District parole officers (DPOs) serve as case managers for clients and refer the inmate to the appropriate state agency or local social service agency for follow-up service. Clients capable of self-referral are given resource information for areas to which they are being released, including agency names and telephone numbers. BPP routinely contacts referral agencies to assure that services are provided to referred clients.

(3) The Texas Department on Aging (TDoA) agrees to accept referrals from BPP and provide services to elderly clients through its network of area agencies on aging. Clients are given access to nutrition and supportive and in-home services on an equal basis with all other elderly recipients, 60 and older. Active coordination is maintained between area agency on aging staff and DPO staff, including special training activities, coordinated by TDoA and BPP and involving DPO, area agency staff, and Texas Department of Human Services (TDHS) representatives.

(4) The Texas Department of Human Services (TDHS) accepts referrals from TDC, BPP, or TDoA for elderly clients needing nursing home care or Title XIX/XX community-based services, determines eligibility for community care for the aged and disabled (CCAD) applicants, makes appropriate referrals to CCAD provider agencies to initiate purchased services for eligible individuals, is responsible for pre-admission requests for nursing home care, assists with coordination of placement activities when an out-of-town referral for CCAD services or nursing home care is received, and monitors CCAD services provided to eligible individuals and reassesses their eligibility as specified by the department's policy.

(b) Termination of memorandum. If federal or state laws or other requirements are amended or judicially interpreted to render continued fulfillment of this agreement substantially unreasonable or impossible, or if the parties are unable to agree upon any amendment that would be needed to enable the substantial continuation of services contemplated herein, then, and in that event, the parties shall be discharged from any further obligation created under the terms of this agreement, except for the equitable settlement of the respective accrued interests

or obligations incurred up to the date of termination.

(c) Amendments. TDoA, TDC, BPP, and TDHS agree to review and, if necessary, update or change this memorandum of understanding before the close of each state fiscal year.

(d) Effective date. For the faithful performance of this agreement, this agreement is executed to be effective January 1, 1988.

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 December 12, 1988.

TRD-8812656 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Proposed date of adoption: February 15, 1989.

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

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Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 141. General Provisions

Minutes and Recordings

• 40 TAC §141.23

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §141.23, concerning minutes and recordings. The amendment brings the commission into compliance with the Texas Open Meetings Act amendments (1987) allowing electronic recording of meetings by the public.

Larry Goodman, deputy director of operations, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Goodman 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 greater access to and recovery of content of meetings of the commission, and a basis for more accurate reporting and distribution of public information. 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 Patricia Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, Austin, Texas, 78701-1214.

The amendment is proposed under §1.12 and §1.13, Article 5561c-2, Texas Civil Statutes, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the function of the commission, and mandating that the commission make information of public interest available to the general public.

§141.23. Minutes and Recordings. At all open meetings **written minutes are taken and the meeting is recorded electronically** [the executive director, or his designee, take written minutes]. In addition, **any person in attendance may make visual or auditory electronic recordings of open meetings, subject to availability of space and technical limitations, by prearrangement with the executive director at least 24 hours in advance of the meeting. The chair shall certify the agenda of each executive session or direct that such session be recorded electronically as required by law** [all open meetings are electronically recorded unless technological problems preclude such recording. All electronic or written minutes are open records. The board approves the written minutes at its next meeting].

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

Issued in Austin, Texas, on December 9, 1988.

TRD-8812687 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuses

Earliest possible date of adoption: January 20, 1989

For further information, please call: (512) 463-5510

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TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 21. Right of Way Division

Control of Outdoor Advertising Signs

• 43 TAC §21.160

(Editor's Note: The State Department of Highways and Public Transportation proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The State Department of Highways and Public Transportation proposes new §21.160, concerning relocation of outdoor advertising signs. This new section incorporates revised sign spacing, location, and size criteria which will provide greater flexibility to relocate certain off-premise signs within the highway taking to the remainder or abutting property. The present criteria for sign spacing, location, and size provide that signs may not exceed 672 square feet in area nor be erected closer than 1500, 750, or 300 feet apart. They also require at least two adjacent recognized commercial or industrial activities in an area defined as an unzoned commercial or industrial area. Under the new section an existing sign displaced by a state highway system right-of-way project may be relocated on the remaining or abutting property adjacent to the new right-of-way line as therein provided, with maximum permitted area being 1,200 square feet and minimum permitted spacing being 500, 300, or 100 feet apart. For the purposes of those relocated signs, an unzoned commercial or industrial area is based on at least one or more recognized commercial or industrial activities. In no event shall the size of the sign face of the relocated sign exceed the size of the existing sign.

Gary Bernethy, right of way engineer, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated reduction in cost of $10 million for 1989, $10 million for 1990, $7 million for 1991, $6 million for 1992, and $4 million for 1993. The effect on local government for the first five-year period the section will be in effect will be an estimated reduction in cost of $2 million for 1989, $2 million for 1990, $1.4 million for 1991, $1 million for 1992, and $800,000 for 1993. There will be no effect on small businesses to comply with the section.

Mr. Bernethy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be reduction of state expenditures for highway right-of-way acquisition, expedition in the construction of highway projects and continuance of the outdoor advertising sign business in adjacent areas.

Comments on the proposal may be submitted to Gary Bernethy, P.E., State Department of Highways and Public Transportation, Right of Way Division, P.O. Box 5075, Austin, Texas 78763-5075.

The new section is proposed under Texas Civil Statutes, Article 6666 and 4477-9a, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and to promulgate rules for control of outdoor advertising.

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 December 12, 1988.

TRD-8812660 Diane L. Northam
Administrative Procedures Technician
Staet Department of Highways and Public Transportation

Earliest possible date of adoption: January 20, 1989

For further information, please call: (512) 463-8630

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Chapter 25. Maintenance and Operations Division

Oversize and/or Overweight Permits for Certain Oil Well Related Vehicles

• **43 TAC §25.91**

(Editor's Note: The State Department of Highways and Public Transportation proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The State Department of Highways and Public Transportation proposes an amendment to §25.91, concerning permits for certain oil well related vehicles. This section is being amended to postpone the mandatory enforcement date for the reduction of axle weighs for all oil well servicing, clean-out, and drilling rigs from 30,000 pounds per axle to not more than 25,000 pounds per axle. Paragraph (10) of §25.91 is amended to reflect that the mandatory enforcement date is changed from January 1, 1989, to January 1, 1990.

Bob G. Hodge, chief engineer, maintenance and operations division, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Hodge also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an immediate and direct aid to the economy of Texas and to the welfare of its citizens by not requiring the oil industry to expend funds modifying oil well servicing vehicles to meet the lower weight limits that would have been required on January 1, 1989, thus allowing these funds to be used for oil exploration and production.

Comments on the proposal may be submitted to Bob G. Hodge, P.E., Chief Engineer, Maintenance and Operations Division, State Department of Highways and Public Transportation, 11th and Brazos Streets, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Articles 6666 and 6701dd-16, which provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the State Department of Highways and Public Transportation, and to promulgate rules for the issuance of oversize and overweight permits for the movement of oil well servicing, clean-out and drilling vehicles.

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 December 9, 1988.

TRD-8812623

Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public Transportation

Earliest possible date of adoption: January 20, 1989

For further information, please call: (512) 463-8630

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Adopted Sections

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

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

TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 115. Dealers and Salesmen

• 7 TAC §115.3

Editors note: Section 115.3 was accidently withdrawn in the December 9, 1988, issue of the Texas Register (13 TexReg 6073).

The State Securities Board adopts an amendment to §115.3, without changes to the proposed text as published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4939).

The course of study offered by the International Board of Standards and Practices for Certified Financial Planners, Incorporated is rigorous enough such that certification by that entity justifies an automatic waiver of the requirement to take the general securities portion of the examination ordinarily required of applicants seeking registration as investment advisers.

The amendment provides an automatic partial waiver of the examination requirements of the Securities Act, §13.D, for applicants seeking registration as investment advisers who are certified by the International Board of Standards and Practices for Certified Financial Planners, Incorporated to be certified financial planners.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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 December 2, 1988.

TRD-8812320 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date. December 23, 1988

Proposal publication date: October 7, 1988

For further information, please call (512) 474-2233

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter L. Insurance Carrier

• 16 TAC §5.184

The Railroad Commission of Texas adopts an amendment to §5.184, without changes to the proposed text as published in the September 27, 1988, issue of the *Texas Register* (13 TexReg 4735).

The amendment allows the commission to accept proof of insurance issued by surplus lines insurance companies on the State Board of Insurance eligible list as proof of insurance coverage for motor carriers. The amendment will relieve substantial burdens of insurance costs on motor carriers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 911b, §13, which authorize the commission to accept insurance filings from surplus lines companies.

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 December 12, 1988.

TRD-8812704 James E. Nugent
Chairman
Railroad Commission of Texas

Effective date: January 3, 1989

Proposal publication date: September 27, 1988

For further information, please call: (512) 463-7187

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Subchapter M. Motor Bus Companies

• 16 TAC §5.249

The Railroad Commission of Texas adopts an amendment to §5.249, without changes to the proposed text as published in the September 27, 1988, issue of the *Texas Register* (13 TexReg 4735).

The amendment provides for the addition of certain cities lying between Dallas and Fort Worth to the suburbs of Dallas and Fort Worth. By adding these cities to the area defined as suburbs of Dallas and Fort Worth, motor bus transportation wholly within that area is exempted from commission regulation.

One comment was received, from North Texas Lines, Incorporated, a certificated bus carrier in the Dallas-Fort Worth area. North Texas Lines, Incorporated urges the expansion of the area defined as Dallas and its suburbs, and Fort Worth and its suburbs, to include all of Dallas and Tarrant Counties.

The commission disagrees with these comments. Such a broad expansion raises different issues and questions than those presented in this matter. The commission believes that such issues are best addressed in a separate proceeding.

The amendment is adopted under Texas Civil Statutes, Article 911a, which exclude from the commission's jurisdiction operations of buses wholly within a city and its suburbs.

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 December 12, 1988.

TRD-8812705 James E. Nugent
Chairman
Railroad Commission of Texas

Effective date: January 3, 1989

Proposal publication date: September 27, 1988

For further information, please call: (512) 463-7187

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TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 163. Licensure

• 22 TAC §163.7

The Texas State Board of Medical Examiners adopts an amendment to §163.7, without changes to the proposed text as published in the October 18, 1988, issue of the *Texas Register* (13 TexReg 5241).

The amendment was necessary to clarify eligibility for the distinguished professor permit and the status for salaried position, professorial status, and full-time employment. In addition, the section reflects the recent name

change from the University of Texas System Cancer Center to the University of Texas M.D. Anderson Cancer Center.

It is expected that the amendment will clarify qualifications for the distinguished professor permit.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement 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 December 13, 1988

TRD-8812679 G.V. Brindley, Jr., M.D.
Executive Director
Texas State Board of Medical Examiners

Effective date: January 3, 1989

Proposal publication date: October 18, 1988

For further information, please call: (512) 452-1078

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Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

Subchapter K. Counseling Specialties

• 22 TAC §681.224, §681.228

The Texas State Board of Examiners of Professional Counselors, with the approval of the Texas Board of Health, adopts amendments to §681.224 and §681.228. Section 681.224 is adopted with changes to the proposed text as published in the July 19, 1988, issue of the *Texas Register*(13 TexReg 3563). Section 681.228 is adopted without changes and will not be republished. The amendments establish the first specialty designation, which is rehabilitation counseling, for licensed professional counselors. Specifically, the amendment to §681.224 adds a new subsection (b) which establishes the rehabilitation counseling specialty designation. The amendment to §681.224 also adds a subsection (a) titled "General requirements" to identify the existing general requirements for a licensed counselor to apply for any specialty designation. The amendment to §681.228 adds a new subsection (b) which establishes the specific requirements for a licensed counselor to renew the rehabilitation counseling specialty designation.

Two comments in support of the amendments were received. One of the two commenters was supportive in particular of the provision in §681.224 (b) whereby the state adopted the national certification by the Commission on Rehabilitation Counselor Certification as the basis for the specialty designation. As a result of comments received, two sentences were added to §681.224 for clarification.

One states that rehabilitation counseling is approved as a specialty designation. The second is a statement clarifying that, for this specialty, the documentation described in subsection (a)(4) of this section is not acceptable in lieu of the letter required by subsection (a)(3) of this section. The Texas Rehabilitation Commission and the Texas Association for Counseling and Development commented in favor of the amendments. The commentors supported the adoption of the amendments but made recommendations for change.

The amendments are adopted under Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors, with the approval of the Texas Board of Health, with the authority to adopt rules that are necessary to administer the Licensed Professional Counselor Act, and §13 of the Act, which authorizes licensed professional counselor specialties.

§681.224. Applications for Specialty Designation.

(a) General requirements. Licensed counselors may apply for specialty designations approved by the board through the process stated in §681.223 of this title (relating to Determination of Counseling Specialties) by submitting the following:

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

(b) Requirements for specific specialty designations. Rehabilitation counseling is approved as a specialty designation. For rehabilitation counseling, the provisions of this subsection also apply. The licensee must submit a copy of a current certified rehabilitation counselor certificate issued to the licensee by the Commission on Rehabilitation Counselor Certification. The licensee must request the commission to send directly to the board the letter required by subsection (a)(3) of this section. The documentation described in subsection (a)(4) of this section shall not be accepted in lieu of the letter required by subsection (a)(3) of this section. The specialty examination required by §681.226(b) of this title (relating to Specialty Examination) shall be that taken to obtain certification by the commission. No additional examination shall be required for licensing in the rehabilitation counseling speciality. The requirements of subsection (a)(5) of this section regarding the rehabilitation counseling supervisor shall not apply to this specialty. This exemption is based on the requirement of the commission that the supervisor be a certified rehabilitation counselor.

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 December 13, 1988.

TRD-8812697 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 3, 1989.

Proposal publication date: July 19, 1988.

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Testing Newborn Children for Phenylketonuia, Other Heritable Diseases, and Hypothyroidism

The Texas Department of Health adopts the repeal of existing §§37.5l-37.70 and new §§37.51-37.69, without changes to the proposed text as published in the October 14, 1988 issue, of the *Texas Register* (13 TexReg 5105). The proposed text contained some errors which were corrected in a notice published in the In Addition section of the November 11, 1988, issue of the *Texas Register* (13 TexReg 5696). The department adopted the repeal and new sections on an emergency basis, effective October 5, 1988, in the same issue of the Texas Register.

The new sections replace the repealed sections and establish that the Newborn Screening Program (NBS) will be part of the Chronically Ill and Disabled Children's Services Bureau (CIDC). Patients who have phenylketonuria (PKU) and who meet CIDC financial eligibility guidelines will receive the supplement at no charge. Families ineligible for CIDC services will be referred to the NBS program services for determination of payment obligation on the NBS income schedule. All children who are diagnosed with one of the disorders for which the department screens, if eligible by CIDC criteria, will be eligible for other CIDC services. The new sections clarify specimen collection times and the second screen is to be done on all newborns. Analysis of the blood specimens for the required screening tests will be performed by the department, which is responsible for identifying and implimenting current procedures in analysis of specimens. Specialist may be identified throughout the state to whom information, concerning high risk newborns can be given to assist with diagnostic workup and case management. The sections authorize task forces and advisory committees to give technical assistance to the program.

Concerning §37.64, several PKU families objected to the payment of fees for the dietary supplement. 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 is under legislative mandate to charge fees for certain public health services.

Concerning §37.68, the 26 individuals who attended the public hearing expressed concern about problems in securing reimbursement from insurance companies for the cost of the dietary supplement. The individuals want the department to file insurance claims. The department's response is that the department's current statutory authority is subrogation to the individual's right of recovery from insurance.

Concerning §37.61, commenters at the hearing expressed concern that dietary supplement for PKU may not be covered for those individuals over 18 years of age. The department's response is that the new sections allow provision of dietary supplement to individuals who are otherwise eligible.

Concerning §37.56, a commenter asked if the department could pay for collection of the mandated second screen. The department's response is that it does not have funds to cover the collection. The department will continue to furnish screening forms and envelopes.

• 25 TAC §§37.51-37.70

The repeals are adopted under Texas Civil Statutes, Article 4414c, §2, which provide the Texas Board of Health (board) with the authority to charge fees by rule to persons who receive public health services from the department; Article 4418f-1,§(a), which provides the department with the authority to provide funds by grant to contract to qualified entities for the purchase of services, equipment, and supplies to be used to promote and maintain public health; Article 4418g-2, §4, which provides the board with the authority to adopt rules to provide oral health services to eligible individuals; Article 4419c, §3, which provides the board with the authority to adopt rules covering the provision of services to chronically ill and disabled children; Article 4447e, §1, which provides the department with the authority to develop a program to combat mental retardation in children suffering from phenylketonuria and other heritable disease; Article 4447e-1, §2, which provides the board with the authority to adopt rules to establish a program to detect hypothyrodism in newborn infants; and Article 4414b, §1.05, which provides the board with the authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on December 13, 1988.

TRD-8812701 Robert A MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: February 2, 1989.

Proposal publication date: October 14, 1988

For further information, please call: (512) 458-7321

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Newborn Screening Program

• 25 TAC §§37.51-37.69

The new sections are adopted under Texas Civil Statutes, Article 4414c, §2, which provide the Texas Board of Health (Board) with the authority to charge fees by rule, to persons who receive public health services from the department; Article 4418f-1,§(a), which provides the department with the authority to provide funds by grant contract to qualified entities for the purchase of services, equipment, and supplies to be used to promote and maintain public health; Article 4418g-2, §4, which provides the board with the authority to adopt rules to provide oral health services to eligible individuals; Article 4419c, §3, which provides the board with the authority to adopt rules covering the provision of services to chronically ill and disabled children; Article 4447e, §1, which provides the department with the authority to develop a program to combat mental retardation in children suffering from phenylketonuria and other heritable disease; Article 4447e-1, §2, which provides the board with the authority to adopt rules to establish a program to detect hypothyrodism in newborn infants; and Article 4414b, §1.05, which provides the board with the authority to adopt rules to implement every duty imposed on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on December 13, 1988.

TRD-8812702 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: February 2, 1989.

Proposal publication date: October 14, 1988.

For further information, please call: (512) 458-7321

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Chronically Ill and Disabled Children's Services

• 25 TAC §37.93

The Texas Department of Health adopts an amendment to §37.93, without changes to the proposed text as published in the August 5, 1988 issue of the Texas Register (13 TexReg 3802). The amendment, which was also adopted on an emergency basis by the department, was published in the same issue of the Texas Register (13 TexReg 3802), and was followed by a renewal of effectiveness, published in the November 15, 1988, issue of the Texas Register (13 TexReg 5717), which extended the effective date of the emergency amendment.

The amendment is necessary in order for the program to consider valid claims for services filed during the year The amendment allows the Chronically Ill and Disabled Children Program to reimburse providers for services rendered but not paid when all requirements were met except the filing deadline. The amendment authorizes the commissioner of health to waive the filing deadline for payment of services upon his determination that good cause and exceptional circumstances have been shown.

No comments were received regarding adoption of the amendment.

The amendment is 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; and Article 4414b, §1.05, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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 December 13, 1988.

TRD-8812695 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: January 25, 1989.

Proposal publication date: August 5, 1988.

For further information, please call: (512) 458-7355

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Chapter 289. Occupational Health and Radiation Control

• 25 TAC §289.143

The Texas Department of Health adopts an amendment to §289.143 without changes to the proposed text as published in the October 11, 1988 issue of the Texas Register (13 TexReg 5053). The amendment was also adopted on an emergency basis by the department, effective October 4, 1988, and was published in the same issue of the *Texas Register*(13 TexReg 5031).

Since the enactment of the Texas Asbestos Act, the United States Environmental Protection Agency (EPA), and the United States Occupational Safety and Health Administration have adopted identical standards for conducting operations, maintenance, or repair activities that must deal with small quantities of asbestos-containing materials. The amendment enables building managers to take advantage of such standards by specifying less stringent conditions for compliance with the Texas Asbestos Act when restricted to the EPA and OSHA standards. The licenses will be restricted to small scale, short duration asbestos related activities and should be of particular assistance to school districts

Concerning §289 143(e)(6), a commenter said that the term "friable asbestos" was not used to describe the asbestos-containing materials that may be removed or encapsulated

under the small-scale, short-duration activities established in the proposed amendment. The department acknowledges that the term is not used in this instance. The Texas Asbestos Act uses the term "asbestos" and does not exlude non-friable asbestos materials from the provisions of the Act. Therefore, non-friable asbestos is not excluded from any provision in §§289.141-289.157 of this title (relating to Asbestos Exposure Abatement in Public Buildings).

The Southwest Texas State University, and the Texas School Services Foundation commented on the proposed amendment. The commenters supported the amendment but had some recommended changes.

The amendment is adopted under Texas Civil Statutes, Article 4477-3a, §11, which provide the Texas Board of Health with the authority to adopt rules concerning the licensing of persons who engage in the removal or encapsulation of asbestos in public buildings; and Article 4414b, §1.05, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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 December 13, 1988.

TRD-8812699 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: February 1, 1989.

Proposal publication date: October 11, 1988.

For further information, please call: (512) 458-7255

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Chapter 295. Environmental Health

Hazard Communication

- **25 TAC §§295.1, 295.3, 295.5, 295.6, 295.9**

The Texas Department of Health adopts amendments to §§295.1, 295.3, 295. 5, 295.6, and 295.9. Sections 295.5, 295.6, and 295.9 are adopted with changes to the proposed text as published in the October 11, 1988, issue of the *Texas Register* (13 TexReg 5053). Sections 295.1 and 295.3 are adopted without changes and will not be republished.

The amendments accomplish three objectives: a reduction in paperwork for many employers by adopting a Texas Tier Two form that satisfies the chemical reporting requirements of both state and federal law; an increase in the fee for workplace chemical lists from $25 to $50 per list to support the department's increased activities; and minor wording changes that clarify reporting requirements.

A hearing on the rules was held in Austin, on November 4, 1988. Two persons made comments against proposed §295.6 as written, and expressed other concerns. In addition, written comments on §295.6 and §295.9 were received from three others.

Concerning §295.6, all commenters were concerned that it would be difficult to comply with a uniform deadline of March 1, 1989, even though that is an existing federal deadline for most private industry. The reason for the objection was that the general federal threshold of 10,000 pounds would be relatively easy to meet, but that assembling the detailed data for the state 500-pound threshold would be more difficult, even though most of the data must already be collected for state reporting. The department agrees in part and has revised §295.6 to offer more options for industries that heretofore reported twice a year under state and federal law. Employers that are able can report on one form by March 1, 1989, thereby reducing their paperwork burden and paying only one fee. Others may file a 10,000-pound report by March 1, 1989, and a 500-pound report by June 30, 1989 (manufacturing), or December 31, 1989 (applicable non-manufacturing). A fee is required for each separate submission. The uniform annual March 1 deadline for all employers will be implemented in 1990 to allow more time for adjusting to the new requirements.

Concerning §295.9, most commenters had no objection to raising the basic fee to $50, the limit set in the statute. The department was able to demonstrate that it cannot recover its costs with the $25 fee.

Two commenters suggested that the department raise the 25-chemical limit in §295.9, for consolidating separate lists under one fee for the oil and gas industry. A corollary to the latter was a concern that the sections could prohibit the "generic reports" developed by the American Petroleum Institute, and the Independent Petroleum Association of America, and tentatively approved by the United States Environmental Protection Agency. The department does not agree with these commenters. The 25-chemical limit was set by the 70th Legislature in its General Appropriations Act, Rider Number 25, 11-24, and may not be raised or lowered by the department. In addition, over 80% of the forms received by the department list fewer than 25 chemicals, and this limitation has been a major factor in the department's revenue shortfall.

Finally, there is no prohibition in the Act or rules against consolidated reporting of generic chemical lists, so long as a fee is paid for each facility list containing 25 or more items and each list accurately reflects those chemicals normally used or stored at each facility. Each facility must be indentified on a separate form with a separate list. The department welcomes the use of accurate generic reports, especially since they may reduce the need for addenda to the annual reports. If such state requirements are more stringent than those promulgated by the U.S. Environmental Protection Agency, such are allowed under the Superfund Amendments and Reauthorization Act, Title III, §321, which states that it does not preempt any state or local law.

The following made comments against adoption of the amended §295.6: the Texas Chemical Council, the Texas Eastman Company, the Texas Utilities Services, Incorporated, the Mitchell Energy Corporation, and the Texas Independent Producers and Royalty Owners Association. The latter two commenters also opposed adoption of amended §295.9.

The amendments are proposed under the Hazard Communication Act, Texas Civil Statutes, Article 5182b, §12 and §19, which provide the Texas Board of Health with the authority to adopt rules to carry out the purposes of the Act and to authorize the collection of fees for chemical lists required by the Act or for other community right-to-know purposes within the jurisdiction of the Texas Department of Health; and Article 4414b, §1.05, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§295.1. Purpose and Scope.

(a) (No change.)

(b) In order to avoid confusion among employers and the public, the Board shall implement the Hazard Communication Act, Texas Civil Statutes, Article 5182b, compatibly with the Hazard Communication Standard (OSHA Standard) of the United States Department of Labor, Occupational Safety and Health Administration, 29 Code of Federal Regulations 1910.1200, and the federal Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, Public Law 99-499, and related regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations.

§295.3. Responsibility for Implementation of Program. The commissioner's responsibilities under the Act are carried out through the Hazard Communication Branch, Division of Occupational Safety and Health, Texas Department of Health. Compliance documents and routine inquiries regarding this Act shall be addressed, until further notice by the commissioner, to: Hazard Communication Branch, Division of Occupational Safety and Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

§295.5. Posting of Workplace Notice.

(a) State and local tax-supported employers covered by the Act must keep posted a workplace notice specified in this section. The wording of the required workplace notice may be changed by the Commissioner of Health as needed. The wording of the workplace notice is as follows:

NOTICE TO EMPLOYEES

THE TEXAS HAZARD COMMUNICATION ACT OF 1985, TEXAS CIVIL STATUTES, ARTICLE 5182b, REQUIRES STATE AND LOCAL AGENCY EMPLOYERS TO

provide employees, local fire departments, the Texas Department of Health, and other interested persons with specific information on the hazards of chemicals in use. As required by law, your employer must provide you with certain information and training, starting January 1, 1986. A brief summary of the law follows.

1. Employers must develop a list of hazardous chemicals used or stored in the workplace, each in excess of 55 gallons or 500 pounds. Smaller quantities may be reported. This list shall be updated by the employer as necessary, but at least annually. The list must be sent to the Texas Department of Health at least annually, to be made available to the general public on request.
2. Employees who may be exposed to hazardous chemicals shall be informed of the exposure by the employer and shall have ready access to the workplace chemical list and to the most current material safety data sheets, which detail physical and health hazards and other pertinent information. The list must state which chemicals are present in each work area.
3. Employees shall receive training by the employer on the hazards of the chemicals and on measures they can take to protect themselves from those hazards, and shall be provided with appropriate personal protective equipment. This training shall be provided at least annually and must be reported by the employer to the Texas Department of Health within 30 days of completion.
4. Employees shall not be required to work with hazardous chemicals from unlabeled containers, except portable containers for immediate use, the contents of which are known to the user.
5. Employers must provide the names and telephone numbers of knowledgeable company representatives to the local fire department, as well as other information if the fire department requests it.
6. The following chemicals are exempted from coverage by this act: articles that do not normally release hazardous chemicals, food, cosmetics, pesticides for use (but not pesticide formulation), hazardous waste, and some other materials. Most of these are covered by other acts. Private employers are exempt from some provisions of the State law since they are covered under similar rules adopted by the Federal Occupational Safety and Health Administration (OSHA).
7. Employees may file complaints with the Texas Department of Health, and may not be discharged or discriminated against in any manner for the exercise of any rights provided by this act. Employees and citizens may make written requests to the Texas Department of Health to require listing of small quantities of certain highly hazardous chemicals.

EMPLOYERS MAY BE SUBJECT TO ADMINISTRATIVE PENALTIES AND CIVIL OR CRIMINAL FINES RANGING FROM $500 to $25,000 FOR VIOLATIONS OF THIS ACT. Further information may be obtained from:

Hazard Communication Branch
Division of Occupational Safety and Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756 phone: (512) 458-7410

(b) (No change.)

§295.6. Compliance Deadlines.

(a) Manufacturing and nonmanufacturing employers covered by the Act or specified parts of the Act, or SARA, Title III, must send to the Hazard Communication Branch annually an up-to-date workplace chemical list for each of their workplaces in Texas having reportable amounts of chemicals, as specified in the Act, §2, Declaration of Purpose; §6, Workplace Chemical List; and §295.9 of this title (relating to Fees for Workplace Chemical Lists). These lists shall be maintained in a public file operated by the Hazard Communication Branch.

(b) During 1989, complete workplace chemical lists must be sent to the department, to be postmarked no later than as follows.

(1) March 1, 1989, for the 1988 report, if the employer wishes to report only once using the state threshold (55 gallons or 500 pounds) and the federal threshold (10,000 pounds for OSHA hazardous chemicals and 500 pounds or the Threshold Planning Quantity, whichever is less, for the SARA Extremely Hazardous Substances).

(2) In the alternative, if the employer wishes to send separate state and federal reports, the federal deadline is March 1, 1989 and the state report must be postmarked no later than as follows:

(A) June 30, 1989, for manufacturers (Standard Industrial Classification Codes 20-39).

(B) December 31, 1989, for nonmanufacturers (Standard Industrial Classification Codes 46-49, 51, 75, 76, 80, 82, 84, state and local governments).

(c) After December 31, 1989, all annual workplace chemical lists must be postmarked no later than March 1 of the following year.

(d) When reportable amounts of new chemicals are acquired during the year following the deadline, an addendum to the complete workplace chemical list or a new complete list must also be sent to the department and must be kept by the employer for 30 years like the annual list.

§295.9. Fees for Workplace Chemical Lists.

(a) The department shall charge a separate fee for each complete workplace chemical list or other chemical list that is required to be submitted by manufacturing and nonmanufacturing employers to the department. For the purpose of minimizing fees, consolidated filings may be made under the following conditions.

(1) (No change.)

(2) If an employer has one or more workplaces or facilities, each with fewer than 25 hazardous chemicals, those multiple workplaces may be consolidated in one submission, either with one workplace having 25 or more items or with any number of workplaces, each having fewer than 25 items on the workplace chemical list. A separate cover sheet and list must be included for each workplace. If the workplace chemical list contains 25 or more items before consolidation, it may not be consolidated with other such workplaces.

(b) Each list or consolidated filing must be accompanied by a fee, except as provided in subsection (h) of this section, and must be received before the deadline given in §295.6 of this title (relating to Compliance Deadlines). Multiple submissions requiring more than one fee from one employer may be included in the same package, provided that each submission is clearly separated from the other, there is a cover sheet and list for each headquarters or multiple workplace, and the total fee payment is included. Cash payments are not acceptable. Fees must be paid by check or money order to the Texas Department of Health and must be addressed to: Hazard Communication Branch, Division of Occupational Safety and Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(c) Workplaces subject to the Texas Hazard Communication Act and the federal Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, §311, Public Law 99-499, or other community right-to-know laws, must submit an annual workplace chemical list that adheres to the most stringent reporting requirements of any of the applicable laws and associated rules. After December 31, 1988, facilities that have not reported under SARA, Title III, §311, and which should report, must submit the Texas Tier Two Form, which shall replace the Texas Workplace Chemical List Form. Certain parts of the Texas Tier Two Form shall be sufficient for the annual list submitted by state and local tax-supported agencies under the Hazard Communication Act.

(d) Every facility and workplace covered by §312 of SARA, Title III, or the Hazard Communication Act, must annually submit to the department a Texas Tier Two Form, which must be accompanied by a fee for each form.

(e) Effective January 1, 1989, the department will charge $50 for each chemical list, properly consolidated filing, or Tier Two Form that is submitted. If a workplace or facility has no reportable chemicals under any of the applicable state or federal requirements, no fee need be filed for that workplace. The department shall not charge a fee for any interim addendum to the list that is submitted in compliance with §295.6(c) of this title (relating to Compliance Deadlines), provided that the employer clearly marks the addendum as such. No receipt will be provided for payment of the fee, but a cancelled check may be considered adequate proof of payment. The department may check its records for verification of payment at the request of any person.

(f) The chemical lists must be typed or mechanically produced on a form by the employer, using the most current format published by the department, which shall generally consist of the following:

(1) the Texas Tier Two form, which shall generally follow the federal Tier Two form (OMB No. 2050-0072), and which may revised by the department at any time to reflect changes to the federal form; or

(2) the most current federal Tier Two form, provided that a cover sheet is attached giving all additional information that is required on the department's Texas Tier Two Form under the heading State Information.

(g)-(k) (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 December 13, 1988.

TRD-8812698

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

Effective date: January 3, 1989.

Proposal publication date: October 11, 1988.

For further information, please call: (512) 458-7410

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TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter N. Nonforfeiture Standards for Individual Life Insurance in Employer Pension Plans

- **28 TAC §3.1303**

The State Board of Insurance adopts an amendment to §3.1303, without changes to the proposed te as published in the July 22, 1988, issue of the *Texas Register* (13 TexReg 3630).

Section 3.1303 concerns nonforfeiture stan-

dards for individual life insurance in employer pension plans The amendment is necessary to permit insurers to continue after January 1, 1989, to offer life insurance policies based on gender-blended mortality tables

The amendment deletes from §3 1303(a) the limiting date beyond which the use of gender-blended mortality tables would not be permitted without the amendment

No comments were received regarding adoption of the amendment

The amendment is adopted under the Insurance Code, Article 3 44a, §8(e)(6), which provides for approval by the State Board of Insurance of ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, for use in determining minimum nonforfeiture standards, and under the Insurance Code, Article 21.21, §4(7)(a) and §13, which authorizes the board to promulgate reasonable rules and regulations as are necessary to prevent unfair discrimination in life insurance, including rules to effect uniformity with the adopted procedures of the National Association of Insurance Commissioners.

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 December 13, 1988.

TRD-8812684 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date January 3, 1989

Proposal publication date July 22, 1988

For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

Chapter 211. Administrative Division

Substantive Rules

- **37 TAC §§211.1, 211.3, 211.7, 211.9, 211.80, 211.81, 211. 83, 211.99, 211.101, 211,104**

The Texas Commission on Law Enforcement Officer Standards and Education adopts amendments to §§211.1, 211.3, 211.7, 211.9, 211 80, 211.81, 211.83, 211. 99, 211.101 and 211.104. Section 211.104 is adopted with changes to the proposed text as published in the August 19, 1988 issue of the *Texas Register* (13 TexReg 4117). Sections 211.1, 211.9, 211 80, 211.81, 211.83, 211.99, and 211.101 were also adopted with changes to the proposed text as published in the October 14, 1988, issue of the *Texas Register* (13 TexReg 5186) Section 211.3 and §211.7 are adopted without changes and will not be republished

Section 211 1 had to be updated and revised to provide specially defined terms applicable throughout all commission rules. Section 211.3 is necessary to provide for how and when documents are filed with the commission. Section 211 7 provides the executive director with the power to provide for a hearing location other than Austin. Section 211.9 received minor amendments to clarify the application of the Administrative Procedure and Texas Register Act to commission action. Section 211.80 had to be amended to add armed public security officer licenses to its coverage; to clarify some of the minimum standards for licensing, such as education, psychological evaluation military discharge, and the time periods for criminal conviction; and to add the drug-free declaration; and a general rule for construing criminal convictions that occur outside the Penal Code or the state. Section 211.81 had to be amended to clarify and update the reporting responsibilities of both agencies and chief administrators and to provide a procedure for an administrator to request a change of commission records. Section 211.83 was amended to make it parallel to the amendments to §211.80. Section 211.99 was substantially amended to change the procedure for an agency to request a provisional license and to prove their need. The amendment to §211.101 was necessary to provide a rule of construction for single voluntary surrenders and to clarify the manner of transmission and reinstatement. Section 211.104 was amended to extend its coverage to rifles and fully automatic weapons, to clarify the term "duty ammunition," the time period over which a demonstration may be made, and the effect of amendments on demonstrations in progress at the time of the amendment.

Section 211.1 provides an updated listing of specially defined terms that are applicable throughout all commission rules The new list deletes many old unnecessary terms and adds new terms. Section 211.3 provides that documents are filed with the commission only when actually received by the executive director or the hearing examiner. Section 211.7 provides that, in the discretion of the executive director, hearings may be set for a location other than Austin. Section 211.9 clarifies that all contested cases or hearing are to be covered by the Administrative Procedure and Texas Register Act Section 211.80 adds the armed public security officer license to its coverage and clarifies and updates some of the minimum standards for licensing, such as education, psychological evaluation, military discharge, and the time periods for criminal conviction. The amendments add the drug-free declaration and the general rule for construing criminal convictions that occur outside the Penal Code or the state. Subsection (a)(13) is changed to add to the reference to registered professional the terms "licensed psychologist" and "psychiatrist" and to change its effective date to February 1, 1989. Section 211 81 clarifies and updates the reporting responsibilities of both agencies and chief administrators. The amendments specify which documents or reports must be attached to a license application or a report of appointment after a 180-day break in appointment; provide a procedure for an administrator to request a change of commission records; and provide for a waiver under certain circumstances of the new requirement of completed fingerprint cards prior to licensing. Subsection (f) is changed to clarify that no documents have to be attached to the actual application form if the information has already been received by the commission from another source and the effective date is changed to February 1, 1989. Subsection (j) is changed to require a report from an agency or chief administrator that knows a license holder no longer meets the minimum standards for retention of license, has been arrested; charged or indicted for certain offenses, or has resigned during a criminal investigation. Section 211.83 is now parallel to the new language in 211.80. The new amendments clarify and lists the military discharges that will result in a revocation of license and requires the license holder to continue to meet the citizenship, education, training, and testing standards. Also, a license holder must not surrender his license or be declared to be in unsatisfactory psychological or emotional health. Section 211.99 is substantially amended to change the procedure that an agency must follow to request a provisional license. To prove their need, the agency must first request approval from the executive director for issuance of a provisional and a hearing will be held only in the case of denial. There is a minor change in the effective date language at the end of the section. Section 211.101 is amended to allow single voluntary surrenders to be construed as a surrender of all licenses, to allow such surrenders to be transmitted to the commission by a third party, and to allow for notice before reinstatement. Section 211.104 is amended to extend the coverage of the requirement of annual demonstration of weapons proficiency to rifles and fully automatic weapons. The amendments clarify the terms "duty ammunition" and "firearm" as that which is permitted or required to be carried on or off duty or that which is carried in an official capacity, respectively. short courses and that amendments only affect demonstrations that begin after the effective date of the amendment.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Government Code, §§415.010, 415.012, 4 15.055, and 415.060, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415; to set minimum standards for licensing; to establish reporting standards and procedures from agencies and their chief administrative officers; and to adopt rules to allow provisional licenses to be issued in cases of manpower shortage.

The amendments are also proposed under Texas Civil Statutes, Article 6252-13a, 4(a)(1), which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules of practice and procedure before the commission and under Chapter 1062, 70th Legislature, 1987, as it amends Texas Civil Statutes, Article 4413(29aa), by adding new subsections (c)(7) and (d)(7), which provide the commission with the authority to adopt rules that define weapons proficiency.

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

Accredited college or university–An institution of higher education that is accredited by its state education department and by either the Southern Association of Colleges and Schools or a similar regional association.

Agency–A law enforcement unit or other entity, whether public or private, authorized by law to appoint at least one license holder governed by the Government Code, Chapter 415, or its predecessor statutes.

Appointed–Elected or commissioned by an agency as a peace officer or reserve or otherwise selected or assigned to a position governed by the Government Code, Chapter 415, without regard to pay or employment status.

Armed public security officer–A person appointed under the provisions of Chapter 758, 70th Legislature, 1987.

Chief administrator–The head of an agency, such as a sheriff, constable, chief of police, marshal, director of public safety, etc.

Commission–The Texas Commission on Law Enforcement Officer Standards and Education.

Commissioned–Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

Commissioners–The nine commission members appointed by the governor and, where appropriate, the five ex-officio members.

Convicted–Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense;

(C) the cause has been made the subject of an expunction order; or

(D) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

Executive director–The executive director of the commission.

Firearms proficiency–Receiving a passing score on a course of fire that meets or exceeds the minimum standards for annual firearms proficiency.

Hearing examiner–A person appointed by the executive director to conduct administrative hearings for the commission.

Jailer–A person appointed as a jailer or guard of county jail under the provisions of the Local Government Code, §85.005, whose job title may be county jailer, county detention officer, county correction officer, county correctional officer, or some similar title but the term does not mean a city, state, federal, or private jailer.

Law enforcement agency–An organization or entity, whether public or private, authorized by law to appoint at least one peace officer.

License holder–Any person who holds a current, valid license of any type issued by the commission, whether or not under current appointment.

Officer–A peace officer or reserve.

Peace Officer–A person elected, employed, or appointed as a peace officer under the Code of Criminal Procedure, Article 2.12, under the Education Code, §51.212 or §51.214, or under other law.

Placed on probation–Has received an unadjudicated or deferred adjudication probation for a criminal offense.

Reserve–A person appointed as a reserve law enforcement officer under the provisions of the Local Government Code, §§85 004 (reserve deputy sheriff), 86.012 (reserve deputy constable), or 341.012 (municipal police reserve).

Telecommunicator–A dispatcher or other communications specialist appointed under or governed by the provisions of Chapter 147, 70th Legislature, 1987.

§ 211.9. Contested Cases and Hearings. Contested cases and hearings will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

§211.80. Minimum Standards for Licensing.

(a) An applicant for a peace officer, a reserve, an armed public security officer, or a jailer license must:

(1) be a citizen of the United States of America;

(2) meet the minimum standard for entry level age found in §211.97 of this title (relating to Minimum Entry Level Age Requirement);

(3) be fingerprinted and be subjected to a search of local, state, and national records and fingerprint files to disclose any criminal record;

(4) not be on probation for any criminal offense above the grade of Class C misdemeanor;

(5) not have been convicted of a Class A misdemeanor offense within the last 12 months;

(6) not have been convicted of a Class B misdemeanor within the last six months;

(7) not have been convicted of the offense of driving while intoxicated or driving under the influence of drugs within the last 24 months;

(8) not have ever been convicted at any time of a felony offense;

(9) be of good moral character;

(10) be subjected to a thorough, comprehensive background investigation by the appointing authority;

(11 meet one of the following minimum educational requirements:

(A) be a high school graduate;

(B have passed a general educational development (GED) test indicating high school graduation level; or

(C) have 12 semester hours credit from an accredited college or university;

(12) be examined by a licensed physician and be declared in writing within the past 180 days both:

(A) to be physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) to show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test;

(13) be examined by a licensed psychologist, psychiatrist, or a registered professional and be declared in writing within the past 180 days by that professional to be in satisfactory psychological and emotional health appropriate to the type of license sought and appointment to be made;

(14) be interviewed personally prior to appointment by representatives of the appointing authority;

(15) not have been discharged from any military service under less than honorable conditions including, specifically:

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(D) any other characterization of service indicating bad character;

(16) not have had a commission license denied by final order or revoked;

(17) meet the minimum training standards required by the rules of this

agency for each license sought;

(18) pass the commission licensing examination required by the rules of this agency for each license sought;

(19) not have a voluntary surrender of license currently in effect;

(20) not violate any commission rule or the Government Code, Chapter 415.

(b) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept appointment as an officer or jailer.

(c) For purposes of this section, the commission will construe any probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) However, a classification of an offense as a felony will never be changed or downgraded because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) The effective date of this section is February 1, 1989.

§211.81. Agency and Chief Administrator Reporting Responsibilities.

(a) An agency that desires to appoint a person who does not hold a commission license to a position requiring such license must file an application for that license with the commission.

(b) The application must be filed with the commission and approved with a license date before the person is appointed or commissioned.

(c) The application must be completed, signed, and filed with the commission by the agency's chief administrator or, if that person designates another, by a license holder.

(d) Each agency that files an application for licensing or reports initial appointment must keep on file at its headquarters for inspection by the commission and must forward, upon request to the commission, the documentation necessary to show each officer or jailer appointed by that agency met the minimum standards for licensing.

(e) An agency which submits an application for an individual shall, through its chief administrator, report any failure to appoint in the reported capacity to the commission within 30 days of the reported date of appointment.

(f) Unless already received by the commission from another source, a copy of the original written reports or documentary evidence obtained by the agency to support licensing must be attached to each application and forwarded to the commission, including specifically:

(1) one completed FBI fingerprint card which has been classified and processed through the FBI;

(2) one completed DPS fingerprint card which has been classified and processed through DPS;

(3) a criminal history by name and date of birth from both TCIC and NCIC;

(4) proof of the final disposition of each arrest, probation, conviction, or any other criminal history that may exist;

(5) a current declaration by a physician that the applicant is both physically sound and drug free;

(6) a current declaration by an appropriate professional that the applicant is in satisfactory psychological and emotional health;

(7) a military discharge or other documentation showing the character of service, if the applicant was ever in the military;

(8) a high school diploma, GED, college transcript, or other documentation necessary to show the applicant meets the education standard; and

(9) any training or any other documentation required by the commission for that particular application.

(g) Each agency must require an applicant to furnish any social security number (SSN) assigned to the applicant to be included on the application. The applicant should be advised that the disclosure of the SSN is required under the Government Code, §415.012, to provide the commission with an identifiable number for licensing. All names and all SSN's assigned to that person must be disclosed.

(h) An agency that appoints an individual who already holds a valid license appropriate to that position must, through its chief administrator, notify the commission of the appointment within 30 days of the actual date of appointment. This notification must be made on a commission form that reports appointment. This form must be completed and signed as required of a license application and, if the appointment is made after a 180 day break in appointment, it must have attached to it:

(1) a criminal history by name and date of birth from both TCIC and NCIC run within the past 30 days;

(2) a current declaration of psychological and emotional health;

(3) a current declaration of lack of any dependency or illegal drug use; and

(4) two completed fingerprint cards as required for initial licensing.

(i) The chief administrator must not intentionally or knowingly appoint a person who fails to comply with the minimum standards for the appropriate license or who does not hold a required license.

(j) An agency, through its chief administrator, must notify the executive director when it or its chief administrator knows that a person under appointment with that agency has been arrested, charged, or indicted for any criminal offense above the level of Class C misdemeanor or for any Class C misdemeanor offense involving the duties and responsibilities of office or has failed to comply with the minimum standards for retention of license. An agency, through its chief administrator, must notify the commission in writing within 30 days on a commission form that reports termination, when a person under appointment with that agency:

(1) is terminated from appointment for any reason;

(2) is temporarily suspended from appointment for more than 30 days;

(3) is placed on active duty military leave for more than 30 days; or

(4) has resigned from that agency during a pending, active criminal investigation by any agency against that person.

(k) A chief administrator is responsible for making any reports or submitting any documents required of that agency by the commission.

(l) Except in the case of a commission error, a chief administrator who wishes to report a change to any information within commission files about a license holder (such as date of appointment or officer type) must do so in a signed, written request to the commission on a commission form, if available, containing:

(1) the license holder's name and SSN;

(2) the requested change; and

(3) the reason for the change including, specifically, an explanation for the original incorrect or erroneous report.

(m) The commission may, in the discretion of the executive director and under specific conditions, temporarily waive the requirements of a completed FBI or DPS fingerprint card, or both:

(1) if a reasonable good faith effort to comply has been made by the agency;

(2) if a complete criminal history is provided by name and DOB; and

(3) if the agency forwards to the commission a sworn, notarized statement by the applicant of his complete criminal his-

tory or that he has never been arrested, charged, convicted, or placed on probation for a criminal offense.

(n) The effective date of this section is February 1, 1989.

§211.83. Minimum Standards for Retention of License.

(a) To retain a license issued by the commission, a license holder must not:

(1) be convicted of any driving while intoxicated or driving under the influence of drugs offense;

(2) be placed on probation for any criminal offense above the grade of Class C misdemeanor;

(3) be convicted of a Class A or B misdemeanor offense;

(4) be convicted of a felony offense;

(5) be discharged from any military service under less than honorable conditions including, specifically:

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(d) any other characterization for service indicating bad character;

(6) make, submit, cause to be submitted, or file a false or untruthful report to the commission or to an agency or chief administrator, if the report is required by the commission;

(7) violate a commission rule;

(8) violate any provision of the Government Code, Chapter 415;

(9) fail to maintain United States citizenship;

(10) fail to maintain credit for a high school diploma, a GED, or the 12 hours of college credit necessary to meet the minimum educational standard;

(11) fail to maintain credit for meeting the original training or testing standard;

(12) voluntarily surrender any license unless that surrender is expressly limited; or

(13) be declared to be in unsatisfactory psychological or emotional health appropriate to the type of license or appointment held.

(b) The license holder should not be convicted of or placed on probation for any criminal offense of any grade that is related to the duties and responsibilities of office.

(c) For purposes of this section, the commission will construe any probation or conviction for a criminal offense in the same manner as the minimum standard for licensing.

(d) A license holder must meet the minimum standards for licensing at the time of issuance of license. A fact, which would have supported license denial at that time, will support cancellation, suspension, or revocation under this section, whether discovered before or after issuance.

(e) The effective date of this section is February 1, 1989.

§211.99. Provisional Peace Officer or Reserve License.

(a) The commission shall issue to an agency a provisional license for a person seeking appointment by that agency as a peace officer or as a reserve if that person:

(1) meets all other minimum standards for the license sought, but is not eligible for a permanent peace officer or conditional reserve license because of lack of training or testing; and

(2) is approved by the executive director under this section; or

(3) is the subject of a favorable order signed by the commissioners.

(b) A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor by the agency to another applicant.

(c) An agency desiring to appoint a person pursuant to the issuance of a provisional license must, before appointment, request in writing for the executive director to approve such issuance. The request shall be attached to a completed license application and should state the existence of the factors found in subsection (e) of this section and be signed and dated by the chief administrator. If denied, the agency may petition the commission for such license.

(d) The commission shall set the petition for a hearing at an agreed date and location except that the agency shall have the waivable right to at least 20 days notice of such hearing.

(e) At such hearing, the agency shall substantiate that it has a manpower shortage and must prove, specifically:

(1) that the agency has been operating at a manpower shortage rate of more than 25% of authorized strength for more than 45 days;

(2) that the agency has made sufficient effort to fill each vacancy within the shortage with an otherwise qualified, licensed peace officer or reserve including, specifically, consideration of any license holder list that is maintained by the commission;

(3) the nature of the shortage, and its relationship to the overall efficient operation of the agency;

(4) the extent to which the shortage hinders the ability and capacity of the agency to perform its duties and discharge its responsibilities; and

(5) the availability of the next basic training course for the license sought that will be offered in the agency's council of government area.

(f) Any order under this section shall be made in writing by the commissioners and may include reasonable terms and conditions placed on the activities of the holder. A provisional license may be canceled or suspended for violation of any such term or condition.

(g) Unless there is an order, the effective and expiration dates of a provisional license shall be those set by the executive director at the time of approval. If there is an order, the commissioners will, in that order, set:

(1) The effective date, which will not, in any event, be earlier than the date the order is signed; and

(2) The expiration date.

(h) The effective date of this section is April 28, 1987.

§211.101. Voluntary Surrender of License.

(a) A license holder may desire to voluntarily surrender a license:

(1) as part of an employee termination agreement;

(2) as part of a plea bargain to a criminal charge;

(3) as part of an agreed settlement to commission action; or

(4) for any other reason.

(b) A license may be surrendered either permanently or for a stated term.

(c) Effective dates.

(1) The beginning date for any surrender shall be the date stated in the request or, if none, the date it was received by the commission.

(2) A term surrender shall have its ending date stated in the request.

(3) Any request without a stated ending date shall be construed as a permanent surrender.

(4) A permanent surrender shall have no ending date.

(d) A license holder may voluntarily surrender any license by sending, or causing to be sent, a signed, written request to the executive director, who may accept

or reject the request. The executive director may liberally construe the intent of any request and may, specifically, construe the surrender of any single commission license to be a surrender of all other licenses held unless the request expressly states otherwise. The surrender should include a summary of the reason for the surrender.

(e) If accepted, the holder is no longer licensed under either type of surrender:

(1) effective on the beginning date of the surrender; and

(2) until such person applies for and meets the requirements of a new license.

(f) In case of such reapplication, the executive director:

(1) shall deny the new license based upon any failure to meet the current minimum standards for licensing;

(2) may deny a new license of the same or any other type based solely upon a voluntary surrender:

(A) if permanent; or

(B) if for a term that has not yet expired;

(3) may approve the reissue and may give notice to any agency or individual named in the original surrender and then may impose any previously agreed conditions (such as suspensions, probated terms of suspension, etc.).

(9) The executive director shall inform the commission of any of the following that have occurred since the last meeting:

(1) any surrender that was accepted; and

(2) any reapplication that was granted or denied.

(h) The effective date of this section is February 1, 1987.

§211.104. Minimum Standards for Annual Firearms Proficiency.

(a) For purposes of this section, the term "firearms" shall mean any kind of handgun, shotgun, rifle, or fully automatic weapon that is carried by the individual officer in an official capacity on or off duty, and shall not include any other firearm weapon or any baton, tear gas, restraining or non-lethal stunning device, animal, or other nonfirearm weapon. The term "kind" means caliber or gauge and action type. The term "duty ammunition" means only that ammunition required or permitted by the agency to be carried on duty.

(b) This section does not prevent an agency from establishing weapons proficiency standards that exceed the minimum standards of the commission.

(c) The minimum standards for any annual proficiency course of fire shall be:

(1) use of any target capable of being scored;

(2) a minimum passing score of 70% of the total possible score;

(3) for handguns, a minimum of 50 rounds, including at least five rounds of duty ammunition, fired at ranges from point-blank to at least 15 yards with at least 20 rounds at or beyond seven yards, including at least one timed reloading;

(4) for shotguns, a minimum of five rounds of duty ammunition fired at a range of at least 15 yards;

(5) for rifles, a minimum of 20 rounds of duty ammunition fired at a range of at least 100 yards, however an agency may, in its discretion, allow a range of less than 100 yards but not less than 50 yards if the minimum passing score is raised to 90%;

(6) for fully automatic weapons, a minimum of 30 rounds of duty ammunition fired at ranges from seven to at least 10 yards, including at least one timed reload, with at least 25 rounds fired in full automatic, short bursts of two or three rounds and at least five rounds fired semi-automatic, if possible with the weapon;

(7) demonstration of proficiency in the care and cleaning of the weapon used; and

(8) in external inspection by the control officer or a range officer, firearms instructor, or gunsmith designated by that control officer to determine the safety and functioning of the weapon.

(d) Any standard contained in this section may, upon agency request, be waived by the executive director or, if denied and upon petition, may be the subject of an administrative hearing held to determine waiver based upon proof by the agency that its proposal meets or exceeds the commission's standards. Specifically, the annual proficiency course of fire may consist of different short courses that may be fired on one or more days as long as they cumulatively meet or exceed the standards found in this section.

(e) Each agency or entity that employs three or more peace officers shall:

(1) appoint a firearms proficiency control officer who must meet only those qualifications set by that agency;

(2) require each peace officer that it employs to demonstrate firearms proficiency to that control officer at least once each calendar year; and

(3) maintain records of this proficiency which shall not be forwarded to the commission.

(f) The first calendar year to demonstrate firearms proficiency shall be 1988. An amendment to this section only affects an annual proficiency course of fire that begins after the effective date of the amendment.

(g) The effective date of this section is January 5, 1988.

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 December 12, 1988.

TRD-8812711 David M. Boatright
General Counsel
Texas Commission on Law Enforcement Officer Standards and Education

Effective date: February 1, 1989

Proposal publication date: October 14, 1988

For further information, please call: (512) 834-9222

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• 37 TAC §§211.2, 211.4-211.6, 211.8, 211.10-211.14, 211. 75, 211.76, 211.78, 211.79, 211.84, 211.85, 211.96 211.98

The Texas Commission on Law Enforcement Officer Standards and Education adopts the repeal of §211.78 and §211.79 without changes to the proposed text as published in the August 19, 1988, issue of *Texas Register* (13 TexReg 4116), and also adopts the repeal of §§211.2, 211.4-211.6, 211.8, 211. 10-211.14, 211.76, 211.84, 211.85, 211.96, and 211.98 without changes to the proposed text as published in the October 14, 1988, issue of the *Texas Register* (13 TexReg 5191). The effective date of all repeals will be changed from January 1, 1989, to February 1, 1989.

All sections must be repealed because they have been either superseded or replaced by the Administrative Procedure and Texas Register Act or have been completely rewritten.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Government Code, §§415.010 (10), 415.012, 415.031, 415.32, 415.34, 415.052, 415.057, and 415.062 which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to set mental standards for licensing; to require submission of certain reports from agencies; to approve or revoke approval of schools or academies that train license holders; to license qualified instructors; to establish and maintain curriculum requirements for in-service and advanced courses, to recognize and prepare voluntary continuing education programs, to adopt rules for reactivation of a peace officer license after a break in appointment; to license a person only after a declaration of satisfactory psychological and emotional health; and to issue certificates that recognize professional achievement or proficiency. The repeals are also adopted under

Texas Civil Statutes, Article 6252-13a, which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to establish rules of procedure and other matters.

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

Issued in Austin, Texas, on December 12, 1988.

TRD-8812712 David M. Boatright
General Counsel
Texas Commission on Law Enforcement Officer Standards and Education

Effective date: February 1, 1989

Proposal publication date: October 14, 1988

For further information, please call: (512) 834-9222

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• 37 TAC §§211.15-211.26, 211.65, 211.66, 211.68, 211.71, 211.78, 211.79, 211.85, 211.88, 211.89, 211.96, 211.98, 211.100, 211.107

The Texas Commission on Law Enforcement Officer Standards and Education adopts new §§211.71, 211.78, 211.79, and 211.100 with changes to the proposed text as published in the August 19, 1988 issue of the *Texas Register* (13 TexReg 4117) and §§211.15-211.26, 211.65, 211.66, 211.68, 211.85, 211.88, 211.89, 211.96, 211.98, and 211.107 with changes to the proposed text as published in the October 14, 1988, issue of the *Texas Register* (13 TexReg 5191).

Section 211.71 is necessary to govern all correspondence courses conducted or approved by the commission. Section 211.78 will replace old §211.78 and will contain the minimum training standards for jailers. Section 211.79 replaces old §211.79, which described intermediate and advanced training courses and which controlled in-service training credit that an individual license holder could get from the commission. Section 211.100 is a new section requiring each law enforcement agency to provide in-service training in the recognition of cases involving child abuse and neglect to each of its peace officers and reserves and to provide at least 40 hours of in-service training to each of its peace officers every 24 months.

Section 211.15 informs each license holder of certain rights before license action is taken by the commission. Section 211.16 is necessary to describe various notice requirements and to require a license holder to receive notice at one of three locations. Section 211.17 is necessary to describe appeals and to allocate certain costs of those appeals. Section 211.18 is necessary to implement a law requiring the commission to maintain certain lists of license holders who are not under current appointment as a peace officer. Section 211.19 is necessary to describe the public information about rules and policies that will be maintained by the commission. Section 211.20 is necessary to describe the petition procedures to be followed to propose the adoption of a rule. Section 211.21 regulates the form of fees or payments. Section 211.22 governs the fee for issuance of certain documents. Section 211.23 clarifies the dates of licensing, certification, and acknowledgment. Section 211.24 is necessary to describe the date of appointment that will be used in commission records. Section 211.25 clarifies the routine meeting dates and procedures used by the commission. Section 211.26 describes the procedure for handling undercover records. Section 211.65 replaces and updates old §211.75 to comply with the new statutory provisions for academy licensing. Section 211.66 replaces and updates that part of old §211.75 dealing with agreement training. Section 211.68 replaces and updates old §211.76 to comply with the new statutory provisions for instructor licenses. Section 211.85 is necessary to replace and update old §211.85 providing for the qualifications for certain proficiency certificates. Section 211.88 is necessary to describe when certain facts must be reported to the commission. Section 211.89 describes the various grounds for denial of a license. Section 211.96 is necessary to replace and update old §211.96 governing the reactivation of a peace officer license. Section 211.98 replaces and upgrades old §211.98 which provided for a declaration of psychological and emotional health. Section 211.107 is necessary to govern such psychological reevaluation after a break in service.

The effective date of each section is changed from January 1, 1989, to February 1, 1989, to avoid the substantial additional costs of publishing the rules of the commission with the earlier date. Section 211.71 will govern all correspondence courses that are conducted or approved by the commission. After repeal of old §211.78, the new §211.78 will describe the subjects and topics for the basic county corrections course, which is the new, updated training course for jailers. After repeal of the old §211.79, the new §211.79 will describe and control in-service training credit to be received by an individual license holder from the commission. In §211.79(a)(2), the term "reactivation" is changed to reflect the current name of that course: supplementary training. Section 211.100 requires each law enforcement agency to provide in-service training in the recognition of cases involving child abuse and neglect to each of its peace officers and reserves and to provide at least 40 hours of inservice training to each of its peace officers every 24 months. In this section, an agency provides training if it requires, pays all costs, and provides direct or compensatory time off for attendance.

Section 211.15 describes the notice and hearing rights possessed by a license holder before the commission proposes to take certain license actions and describes automatic expiration or deactivation with a right to petition. Section 211.16 describes various notice requirements and requires a license holder to receive notice at one of three locations. Section 211.17 describes appeals and allocates certain costs of appeal. Section 211.18 provides for certain lists of license holders who are not under current appointment as a peace officer. Section 211.19 describes the public information about rules and policies that will be maintained by the commission. Section 211.20 describes the procedures to be followed to petition for adoption of a rule and describes how rule proposals will be presented or modified. Section 211.21 regulates the form of fees or payments, requiring a money order, cashier's check, or agency check. Section 211.22 provides for a fee to reissue certain documents and dispenses with this fee if the document has never been issued. Section 211.23 clarifies the dates of licensing, certification, and acknowledgment as either the date of receipt or acceptance by the commission, whichever is later. Section 211.24 describes the date of appointment that will be used in commission records as the date shown in the records of any appointing agency. Section 211.25 provides for routine meeting dates as the second Wednesday of each quarter and provides for the procedures to be used by the commission during such meetings. Section 211.26 provides for temporarily removing undercover officer's records from routinely accessed files. Section 211.65 replaces and updates old §211.75, which provided for school certification. The new section provides for the issuance of three types of academy licenses: agency, college and regional academies. The term "governed" was replaced by the term "coordinated" in subsection (b)(8)(B). The requirement that training coordinators hold an instructor license was added to subsection (h). Section 211.66 replaces and updates that part of old §211.75 dealing with agreement training. The new section provides for who, how, and how long such agreements are for. Section 211.68 replaces and updates old §211.76, which provided for instructor certificates. The new section provides for instructor licenses. Section 211.85 replaces and updates old §211.85 providing for who may be issued and the qualifications for certain proficiency certificates. The course titles in subsection (g)(2)(D) were slightly changed to reflect their current titles. Section 211.88 describes the reporting responsibilities of individual license holders. A new subsection (c) was added to require a report of any arrest, charge, or indictment for certain criminal offense. Section 211.89 describes the various grounds for denial of a license by the commission. Section 211.96 replaces and updates old §211.96 governing the reactivation of a peace officer license. The new section clarifies how old temporary licenses will be treated and requires passing the current peace officer exam rather than the reactivation exam. Section 211.98 replaces and upgrades old §211.98 providing for a declaration of psychological and emotional health. The new section will require the declaration to follow certain standards, such as a background survey, two objective personality tests, and a professional interview. It will also provide for negative declarations, withdrawn declarations, limited reevaluations, and restricted exceptional circumstances that allow an agency to avoid the use of a licensed psychologist or psychiatrist. There were several other minor changes and a new last sentence was added to the end of subsection (o) to allow an exceptional circumstance for an exempt psychologist who is employed and used exclusively by an agency. Section 211.107 is a new section governing such psychological reevaluations after a break in service greater than 180 days. The new evaluation will be the same required for initial license applicants.

No comments were received regarding adoption of the new section.

The new sections are adopted under the

Government Code, §§415.010(10), 415. 031, 415.032, and 415.034, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to establish minimum training programs for county jailers; to establish and maintain training programs, generally; to establish minimum curriculum for courses and programs; to establish minimum curriculum requirements for in-service and advanced courses; to recognize and prepare voluntary continuing education programs; to require agencies to provide continuing in-house instruction for their peace officers and reserves in the recognition of cases involving child abuse or neglect; and to require agencies to provide a training program not to exceed 40 hours during 24 months to their peace officers.

The new sections are also adopted under the Government Code, §§415.008, 415. 010(1), 415.010(10), 415.012, 415.031, 415.051(b)(2), 415.052, 415.057, 415.060, 415.061, 415.062, and 415.064 which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to set meeting dates; to receive biennial public comment on training and standards; to adopt rules on internal management and control; to adopt rules for the administration of the Government Code, Chapter 415; to set minimum standards for licensing; to require reports from agencies and academies about appointment and other matters; to license schools operated by or for the state or a political subdivision; to approve training after establishment of an advisory board; to license instructors; to require a new psychological declaration after a 180-day break in appointment; to issue licenses to persons after proper application and other requirements; to adopt rules establishing active and inactive lists of peace officers who leave employment; to adopt rules to reactivate a peace officer license; to adopt rules to set the standards and measures used for psychological declarations and to use other qualified professional for such declaration in exceptional circumstances; to set procedural rules for hearings and other matters; to provide for appeal of certain matters; to use the employment records of an agency for the purpose of proficiency certification and as the date of peace officer appointment.

The new sections are also adopted under Texas Civil Statutes, Article 6252-17, §3(a), and Article 6252-13a, §§4(a), 5f, 5g, 5h, 11, 13, 18c, and 19f which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to exempt from open records disclosure certain records of undercover officers; to index and made available to the public certain rules, memoranda, policies, procedures, and final orders; to hold informal conferences and appoint advisory committees when contemplating rule making; to give notice to certain individuals, agencies, and the legislature; to adopt rules governing petitions to adopt rules; to provide for notice and hearings for certain commission actions; and adopt rules to tax costs of transcription or appellate record.

§211.15. License Action.

(a) A person whose license the commission proposes to deny, cancel, suspend, or revoke is entitled to preliminary notice from and to a hearing before the commission. License expiration or deactivation is automatic. However, the commission may set a hearing upon petition by the holder of an expired or deactivated license for the commission to prove expiration or deactivation.

(b) An action by the commission to deny, cancel, suspend, or revoke one license will, if so plead, also operate against any other commission license or certificate held by the same person.

(c) The effective date of this section is February 1, 1989.

§211.16. Notice.

(a) At least 30 days before considering final adoption, the commission will give notice of each proposed rule change:

(1) to the lieutenant governor and the speaker of the house; and

(2) to each law enforcement agency.

(b) Before the effective date of each proposed section, the commission will mail notice of final adoption to each law enforcement agency.

(c) When individual notice is required, the holder of a license, certificate, or acknowledgment from the commission must receive notice of any action or matter before the commission at:

(1) the address of the agency shown in commission records to have the holder under current or last appointment;

(2) the address shown on the Texas driver's license record of the holder; or

(3) any other address requested by the holder in a written request to the executive director.

(d) The effective date of this section is February 1, 1989.

§211.17. Appeal.

(a) A person dissatisfied with a final decision of the commission may appeal the decision by filing a petition with a Travis County district court not later than the 30th day after the date of the final decision.

(b) All or part of the proceedings of a contested case will be transcribed upon the written request of a party with cost to that party, unless the executive director provides otherwise.

(c) Any party who appeals a final decision must pay all preparation costs for the original or certified copy of the record of any proceeding to be submitted to the court.

(d) The effective date of this section is February 1, 1989.

§211.18. License Holder Lists.

(a) The commission will establish lists of all prospective, current, or recently deactivated peace officer license holders within each county who are not reported as under current peace officer appointment. The active list will include current, valid license holders. The inactive list will include both recently deactivated license holders and persons who are unlicensed but recently trained and tested to be peace officers.

(b) The active list will include, in alphabetical order by the last name, every peace officer license holder who was last reported as terminated by an agency within that county within two years from the date of the list.

(c) The inactive list will include every peace officer license holder whose license has been deactivated for less than two years and also those persons who are unlicensed, but who have met the peace officer training and testing standards within two years of the list. The county for these persons will be the county of their academy.

(d) A chief administrator may request a copy of either list from the commission for employment or recruitment purposes.

(e) The active list must, and the inactive list may be considered before any decision to issue a provisional license.

(f) The effective date of this section is February 1, 1989.

§211.19. Public Information.

(a) All commission rules are published in the *Texas Register* as they are proposed and adopted.

(b) The commission will index, maintain, and make available for public inspection at the Austin headquarters a copy of:

(1) the current rules;

(2) all interpretive memoranda, policies, and procedures; and

(3) all final orders, decisions, and opinions of the commission.

(c) The effective date of this section is February 1, 1989.

§211.20. Contemplated Rule Making.

(a) Concerning contemplated rule making, the commission may:

(1) use informal conferences and consultations to obtain the advice of interested persons; or

(2) appoint any advisory committee of experts, interested persons, or the public.

(b) An interested person may petition the commission to propose the adop-

tion of a section. If the petition is in writing, the executive director must, within 60 days of submission, either place the petition on the agenda for the next regular meeting or deny the petition in writing. A denial will be reported at the next meeting. The commission staff or its attorney may modify the language or format of the petition before it is submitted as a proposed section.

(c) The effective date of this section is February 1, 1989.

§211.21. Fees and Payment.

(a) Any fee or payment made to the commission by a person, agency, or other entity will be accepted only in the form of a money order, cashier's check, or agency check. Cash or personal check may be refused.

(b) The effective date of this section is February 1, 1989.

§211.22. Issuance of Duplicate or Documents.

(a) If an original license, certificate, acknowledgment, or other document was previously issued by the commission, a duplicate of that document may, if the document is current and valid, be issued after:

(1) a request is made in person or in writing;

(2) a check of commission records verifies original issuance and continuing validity; and

(3) payment of a $5.00 fee.

(b) If all requirements for issuance of a document were met at one time, the commission may issue the document, without requiring the payment of a fee, regardless of:

(1) the current reported appointment status of the individual; or

(2) the reason it was not previously issued.

(c) The effective date of this section is February 1, 1989.

§211.23. Date of Licensing, Certification, or Acknowledgment.

(a) If an application is required, the date of licensing, certification, or acknowledgment will be either the receipt date or the acceptance date of the application, whichever is later.

(1) The receipt date is the day the completed application is received by the commission and will be used if the commission has already received proof before that date that the applicant has met the required standards.

(2) The acceptance date is the day proof of all required standards is received and accepted by the commission and will be used:

(A) if the commission has already received the completed application; or

(B) if no application is required.

(b) The commission may set a licensing, certification, or acknowledgment date or may issue any document before the date of appointment, but will never do so before the date of receipt or acceptance, whichever is later.

(c) A person is licensed, certified, or acknowledged by the commission on the date of such act by the commission whether or not:

(1) any physical document has been or ever is issued; or

(2) the person has such physical document in his possession.

(d) Any such document may expire or be cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated. Mere possession of the physical document does not necessarily mean that the person:

(1) currently holds, has ever held, or has any of the powers of the office indicated on the document; or

(2) still holds a current, valid license, certificate, or acknowledgment.

(e) The effective date of this section is February 1, 1989.

§211.24. Date of Appointment.

(a) To determine experience for purposes of law enforcement proficiency certification, the commission must use the date of appointment that appears in the records of any appointing agency, whether licensed or not.

(b) A person is licensed only if that person still holds a license that has not expired or been cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated.

(c) If a proper report of appointment is received for appointment as a peace officer, the commission must accept the date of appointment reported to the commission by the agency.

(d) If a proper report of appointment is received for some appointment other than as a peace officer, the commission may accept such a report.

(e) The effective date of this section is February 1, 1989.

§211.25. Meeting Dates and Procedures.

(a) The commission will comply with the open meetings law and may hold quarterly meetings throughout each calendar year, normally scheduled in Austin at 10 a.m. on the second Wednesday of each March, June, September, and December, unless:

(1) the date, time, and location is altered by vote of the commissioners; or

(2) more frequent meetings are called by the chairman on the chairman's own motion or upon the written request of five voting commissioners.

(b) At least once every two years, a regular or special meeting will receive public comment on training and standards for officers and jailers.

(c) Each meeting will be conducted by the chairman or, in the absence of the chairman, by the vice-chairman, the secretary, the most senior commissioner, or another commissioner selected by vote, in that order.

(d) The effective date of this section is February 1, 1989.

§211.26. Undercover Records.

(a) The commission and its records are governed by the Open Records Act. However, to protect the security of an undercover operation and its law enforcement participants, the commission may, upon request to the commission's custodian of records, temporarily remove from its routinely accessed files the records of an individual license holder.

(b) Such request may be informally accepted, but should be in writing from the chief administrator including the name, social security number, agency, and approximate dates of the undercover operation, without including any other details of that operation.

(c) Such request should not be for more than 12 months and may be renewed.

(d) While a record is in an undercover status, the commission will respond in the negative to any request on the license or appointment status of that license holder.

(e) The effective date of this section is February 1, 1989..

§211.65. Academy Licensing.

(a) The commission may issue an academy license to an academy that is operated by or for the state or any political subdivision of the state for the specific purpose of training officers or jailers.

(b) To be issued an academy license, an academy must pass an inspection of its facilities and instructional materials and must submit for commission approval:

(1) a completed, written application on a commission form that is signed by the chief administrator or head of the orga-

nization exercising administrative control over the academy;

(2) a resolution of support from the governing body of the sponsoring organization;

(3) the formal name of the academy which must not misrepresent the status of the academy or be confusing to law enforcement or to the public;

(4) a proposed startup and operational budget and a proposed course schedule to show that training will be conducted on a continuing basis;

(5) evidence that an advisory board has already been appointed as provided by law and rule including a list of board members and a brief recitation of their current titles and qualifications;

(6) any advisory board minutes necessary to show the decisions which have been made by that board in all areas required by the commission;

(7) the name and social security number of the proposed training coordinator and any course coordinators or instructors who will be available to the academy, including any license documentation that may be requested by the commission; and

(8) evidence that the academy will be, based on the characteristics of the sponsoring organization, at least one of the following:

(A) an agency academy, conducted by a law enforcement agency that has at least 50 full-time peace officers under current appointment;

(B) a college academy, conducted by an institution coordinated by the Texas Higher Education Coordinating Board; or

(C) a regional academy, conducted or sponsored by a regional planning or council of governments (COG) board.

(c) The commission will only issue one regional academy license within each COG area at any one time.

(d) To be or remain a regional academy, that particular academy must substantially meet the training needs of all current or prospective license holders who reside in that region and do not attend an agency or college academy.

(e) A licensed academy must be inspected by the commission before licensing and may, after licensing, be inspected at any time. The commission may appoint an inspection team composed of persons with experience in the field of law enforcement education or others and at least one member of the commission staff.

(f) To pass an inspection, an academy must have, or have access to, and must maintain:

(1) a reasonably comfortable classroom and/or testing facility that is:

(A) sufficiently air conditioned and heated;

(B) well lit; and

(C) free of noise or other unreasonable distractions;

(2) a reasonably safe firearms range capable of meeting the firearms instruction requirements of the basic peace officer course; and

(3) sufficient instructors and instructional material, devices, and equipment necessary to conduct effective training.

(g) All academy licenses must be formally approved by the commissioners upon recommendation of the staff and after the applicant has had an opportunity to be heard.

(h) A training coordinator must hold a valid instructor license and must be paid and assigned on a full-time basis. However, the commission may, in the discretion of the executive director, waive any part of this requirement in an unusual case if the training coordinator is able to discharge all responsibilities set by commission rules.

(i) The training coordinator of an academy must:

(1) prepare, maintain, and make timely submission of any required report or other record;

(2) receive all commission notice on behalf of the academy and forward each notice to the person who appointed him or maintains his appointment; and

(3) be responsible for the administration and conduct of each course, including specifically:

(A) appointing and supervising qualified course coordinators and instructors;

(B) maintaining course schedules;

(C) securing and maintaining any facility necessary to meet the inspection standards of this section;

(D) enforcing any admission, attendance, retention, or other standard set by the advisory board;

(E) distributing learning objectives and insuring that all learning objectives are taught, that all training is effective, and that no required instruction periods are consumed by matters that are frivolous or unrelated to the scheduled training;

(F) controlling the discipline and demeanor of each student or instructor during class;

(G) proctoring or supervising all examinations to insure fair, honest results;

(H) making a final report of training to the commission within 30 days after completion of each course; and

(I) making any report or providing information as required by the advisory board.

(j) A licensed academy must report to the commission:

(1) any change in training or course coordinators or instructors;

(2) any substantial failure to meet the inspection standards; or

(3) any rule violation by it or by its training or course coordinator, instructor, or advisory board.

(k) The commission may cancel an academy license if it was issued in error or based on false or incorrect information.

(l) The commission may suspend an academy license, or issue a written reprimand to the sponsoring agency, if:

(1) it fails to comply with a commission rule or law;

(2) it demonstrates inadequate supervision or instruction;

(3) it is ineffective due to inadequate facilities or it fails an inspection;

(4) it fails to maintain the appointment of a qualified training coordinator for more than 30 days;

(5) its name status changes;

(6) its training coordinator makes a false report to the commission or fails to comply with any commission rule; or

(7) it has an inactive advisory board that has failed to:

(A) meet with a quorum at least once during a calendar year;

(B) maintain a quorum of appointed members; or

(C) review or update training needs or curricula.

(m) The commission may revoke an academy license if:

(1) it no longer offers courses on a continuing basis, fails to offer training for more than six months, or offers training insufficient for its region or any sponsoring organization;

(2) one of its administrators intentionally or knowingly violates a commission rule; or

(3) it has received more than two suspensions or reprimands within a four-year period.

(n) A licensed academy must distribute to every student in an approved course a copy of the learning objectives for that course before it is taught. These learning objectives may also be divided by and then distributed before each major unit is taught. However, they must be either provided or approved by the commission or, if not, must be kept on file for at least five years.

(o) The commission will approve each course taught by an academy and will award any basic or in-service training credit as provided by commission rules for any such course unless:

(1) the course is not taught as provided by the advisory board;

(2) the training is not related to a commission license; or

(3) the advisory board, the academy, the training coordinator, the course coordinator, or the instructor substantially failed to discharge any responsibility required by rule.

(p) The effective date of this section is February 1, 1989.

§211.66. Agreement Training.

(a) The commission may, in the discretion of the executive director, enter into an agreement with an agency, academy, school, individual, or other entity to conduct training for license holders. Such training may be basic, in-service, or any other training or course approved by the commission.

(b) Any such agreement is limited to those terms expressly included in the agreement or incorporated by reference and must be dated and:

(1) in writing on a commission form;

(2) signed by a commission staff member;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training or course coordinator responsible for the administration of that training.

(c) An agreement may approve a specific course and the number of times it will be offered. However, each agreement must expire on the last day of the calendar year of its signing unless expressly continued or modified by its terms or by a completed addendum. An agreement may incorporate by reference a law, rule, or any other document. However, any waiver, exception, or deletion must be express.

(d) The commission may suspend an agreement, until compliance, for any violation of its terms or of any commission rule or law. Any party may terminate it upon written notice to all other parties, received by either the executive director, the coordinator, or any other named person or office.

(e) The agreeing agency or other entity must:

(1) appoint and maintain an advisory board as required by law and rule;

(2) follow the current requirements set by its advisory board;

(3) select a training facility that meets all academy inspection requirements;

(4) select any instructional material, equipment, or resources necessary for the course;

(5) forward for approval, upon commission request, at least one copy of the learning objectives of each course covered by the agreement;

(6) appoint and maintain the appointment of a qualified course coordinator;

(7) insure the course coordinator discharges any responsibilities required by law, rule, or agreement;

(8) select and monitor the performance of qualified instructors;

(9) admit any license holder subject to any reasonable limitations or preferences required by the advisory board;

(10) insure effective training and distribute learning objectives to each student before the course is taught;

(11) teach or insure that each course is taught in accordance with the instructor guide and/or learning objectives provided or approved by the commission;

(12) keep records of all agreement training for at least five years; and

(13) proctor any required examination and insure fair, honest results.

(f) Unless expressly waived by the agreement:

(1) an advisory board for agreement training must discharge the responsibilities of such boards as required by law or rule; and

(2) a course coordinator must discharge the same responsibilities as an academy training coordinator and must hold a valid instructor license.

(g) By entering into any such agreement, the commission pre-approves specific training which will be fully credited by the commission to each student as basic or in-service training or to the agency as in-service training provided by that agency, unless:

(1) the training was not conducted in compliance with the agreement; or

(2) the advisory board, course coordinator, or instructor substantially failed to discharge any responsibility required by rule.

(h) The effective date of this section is February 1, 1989.

§211.68. Instructor License.

(a) An applicant for an instructor license shall:

(1) meet each of the following peace officer licensing standards:

(A) citizenship;

(B) age;

(C) criminal conviction or probation;

(D) good moral character; and

(E) background investigation;

(2) be or be within 30 days of appointment as a training coordinator, a course coordinator, or a regularly used instructor for either an agreement training school or a licensed academy;

(3) have substantial experience in teaching or in the special field or subject area to be taught;

(4) have successfully completed an instructor training course or its equivalent, as determined by the executive director;

(5) have submitted a completed, signed application which has been approved by the commission; and

(6) not have a commission license that has been revoked or is currently under suspension or voluntary surrender.

(b) In this section the term "substantial experience" means:

(1) five years as a peace officer or jailer;

(2) two years in a specialty of law enforcement or detention;

(3) a bachelor's degree and two years of teaching experience; or

(4) a post-graduate degree.

(c) The commission may require documentation of any instructor training or experience by certificates, diplomas, transcripts, letters of verification, or other supporting documents to be submitted upon commission request.

(d) An instructor license may be revoked, suspended, cancelled, surrendered, or reinstated on the same basis as a peace officer license.

(e) Such license may also be suspended if the holder loses any professional license, certificate, permit, or other document required in the instructor's special field or area.

(f) The effective date of this section is February 1, 1989.

§211.71. Independent Study.

(a) An independent study course may be conducted either by the commission or with the approval of the commission.

(b) An independent study course is a self-paced study program, which shall:

(1) include any correspondence, taped, or other similar nonclassroom study course; and

(2) be taught in conformity with, and meet, the current lesson guide or learning objectives provided by, or approved by, the commission.

(c) An independent study course and its classroom equivalent shall, upon completion, be awarded the same credit.

(d) Each course will have one or more sponsors assigned, who shall be responsible both for the conduct of the course and for proctoring any examination during the course.

(e) To receive credit for an independent study course, the student must complete each required unit, be tested, and receive a passing grade on any examination required by the lesson guide or learning objectives.

(f) The effective date of this section is February 1, 1989.

§211.78. Minimum Training Standards for Jailers.

(a) The minimum training standards for permanent licensing as a jailer on and after February 1, 1989 shall be either:

(1) completion of the basic county corrections course;

(2) completion of the basic county corrections independent study course;

(3) completion of any required supplementary or remedial training; or

(4) credit for sufficient previous training which is equivalent to that basic county corrections course.

(b) The commission may, through its executive director, review documentation of previous training submitted by a potential license applicant or an appointing agency and may then either:

(1) accept that training as equivalent to any training required under the current commission standards; or

(2) require supplementary or remedial training necessary to equate the previous training to those current standards.

(c) The basic county corrections course shall cover the subjects and be taught in accordance with the current learning objectives provided by the commission.

(d) The basic county corrections course subjects, with included topics, shall be:

(1) course activities–introduction; classroom notetaking, review, and testing; and history and philosophy;

(2) admissions and releases–admissions; documents, conditions, and liabilities; search of inmates; booking procedures; inventory of inmate's property; identification procedures; orientation of new inmates; issuing clothing, needed. supplies, and showering; and, inmate release procedures;

(3) special issues–medical screening record; inmate medical services; classification; and special inmates;

(4) supervising inmates–human relations; communications; handling uncooperative and violent inmates; use of force; investigations; and report writing;

(5) security–facility security; conducting headcounts; cell and tank searches; disturbances, emergencies, and fire procedures; physical control techniques; and transport of inmates;

(6) inmate activities–serving meals; inmate visitation and processing of visitors; inmate mail, packages and messages; maintenance of inmate money accounts; inmate rehabilitation and other activities; and inmate rights and staff liability.

(e) An agency may, in its discretion, add any other training subjects to the basic county corrections course. This optional training may include firearms, emergency medical care, or any other training.

(f) For purposes of this section, the terms "jailer or guard of a county jail", "county jailer", "jailer", "county detention officer", "county corrections officer", and "county correctional officer", are synonymous.

(g) The effective date of this section is February 1, 1989.

§211.79. In-service Training Credit for License Holders.

(a) An in-service training course is any course that is approved as such by the commission and is:

(1) preparatory training in excess of the minimum basic course requirements;

(2) any supplementary training course;

(3) not included in any basic course mandated by the commission; or

(4) if an out-of-state course, not part of a basic course as approved by the state or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training (POST) agency.

(b) Before approval, the commission may, in the discretion of the executive director, require submission of documentation to support such approval. Approval may be sought from the commission by a school, academy, or agency, or by an individual license holder. The commission may approve full or partial credit for any portion of the training that is reasonably related to the license held. The commission may, in the discretion of the executive director, refuse credit for:

(1) a course completed more than two years before the date the request for such approval was received by the commission;

(2) a course which does not contain a final examination or other skills test, if appropriate;

(3) annual firearms proficiency;

(4) an out-of-state course which is not approved by the appropriate POST;

(5) training of inadequate length;

(6) any training not reasonably related to the license held; or

(7) any preparation and presentation time by an instructor.

(c) Unless expressly waived by the commission, an approved in-service course shall be reported to the commission by a school, academy, or agency on forms provided by the commission and shall include only those who have completed the course and passed the exam or test.

(d) The effective date of this section is February 1, 1989.

§211.85. Proficiency Certificates.

(a) A permanent peace officer license holder who is reported to the commission as currently appointed as a peace officer may, if qualified, be issued one of the following proficiency certificates:

(1) basic peace officer;

(2) intermediate peace officer;

(3) advanced peace officer;

(4) crime prevention inspector; or

(5) investigative hypnotist.

(b) A permanent peace officer license holder who is reported to the commission as currently appointed as a reserve may, if qualified, be issued one of the following proficiency certificates:

(1) basic peace officer;

(2) intermediate peace officer; or

(3) advanced peace officer.

(c) A permanent reserve license holder who is reported to the commission as currently appointed as a reserve may, if qualified, be issued an intermediate reserve proficiency certificate.

(d) A permanent jailer license holder who is reported to the commission as currently appointed as a jailer may be issued a basic jailer proficiency certificate.

(e) Any person, if qualified, may be issued a homeowners insurance inspector certificate.

(f) To qualify for a basic peace officer certificate, the applicant must hold a permanent peace officer license.

(g) To qualify for an intermediate peace officer certificate, the applicant:

(1) must have one of the following combinations of points and peace officer experience:

(A) 20 points and eight years experience;

(B) 40 points and six years experience;

(C) 60 points or an associate's degree and four years experience; or

(D) 120 points or a bachelor's degree and two years experience; and

(2) if the basic peace officer certificate was issued or qualified for on or after January 1, 1987, must also complete an intermediate proficiency course which must:

(A) be approved by the commission;

(B) be taught in conformity with the instructor guides provided by the commission;

(C) require passing a final examination; and

(D) consist of the following subjects, each credited with three points upon successful completion: child abuse prevention and investigation, crime scene investigation, use of force, and arrest, search, and seizure.

(h) To qualify for an advanced peace officer certificate, the applicant must have already qualified for an intermediate peace officer certificate and have either:

(1) 40 points and 12 years experience;

(2) 60 points or an associate's degree and nine years experience;

(3) 120 points or a bachelor's degree and six years experience; or

(4) a post-graduate degree and four years experience.

(i) To qualify for an intermediate reserve certificate, the applicant must:

(1) have passed the reserve licensing exam; and

(2) either have completed the 70-hour or the 145-hour basic and the 131-hour intermediate reserve courses; or

(3) have completed the seven college transfer curriculum courses and either Law Enforcement #1 or both the Texas peace officer skills and laws courses.

(j) There is no advanced reserve certificate to be awarded and no basic reserve certificate will be issued on or after January 1, 1989.

(k) To qualify for a crime prevention inspector or a homeowners insurance inspector certificate, the applicant must meet the requirements found in §211. 106 of this title (relating to Crime Prevention and Homeowners Insurance Inspector Certificates and Inspection Standards).

(l) To qualify for an investigative hypnotist certificate, the applicant must meet the requirements found in §211.103 of this title (relating to Investigative Hypnosis by a Peace Officer).

(m) To qualify for the issuance of a certificate, the commission may require submission of an application by an individual or agency on a completed commission form, including any documentation requested.

(n) A license holder must return any cancelled certificate to the commission. The commission may cancel any certificate if the recipient was not qualified for its issue and it was issued:

(1) by mistake of the commission or an agency; or

(2) based on false or incorrect information provided by the agency or applicant.

(o) In this section, the term "experience" means the actual number of months served in the appropriate capacity in law enforcement, the term "points" means training or education law enforcement, the term "points" means training or education points, and the term "post-graduate degree" means eithera master's degree, a doctoral degree, or other similar degree above the level of a bachelor's degree.

(1) In this section, the term "experience" means the actual number of months served in the appropriate capacity in law enforcement, the term "points" means training or education points, and the term "post-graduate degree" means either a master's degree, a doctoral degree, or other similar degree above the level of a bachelor's degree.

(1) Law enforcement experience only includes each complete month served as a licensed and appointed peace officer, reserve, or jailer and while reported as such to the commission by an agency. Credit may, in the discretion of the executive director, be awarded for any experience from an out-of-state agency or at an in-state agency which has not sought licensing of its officers.

(A) Experience accrued under a temporary, provisional, or conditional license will be credited as if the holder possessed a permanent license.

(B) A commissioned peace officer who is reported as a full-time peace officer will earn credit for one month of peace officer experience for each month of peace officer service.

(C) A commissioned peace officer who is not full-time will earn credit for one month of peace officer experience for each month of peace officer service.

(D) A commissioned reserve will earn credit for one month of peace officer experience for each month of reserve service.

(E) A jailer who is reported to the commission as appointed as a jailer will earn credit for one month of jailer experience for each month of jailer service.

(2) One training point equals 20 hours of law enforcement training completed in a program conducted or approved by the commission for each type of license.

(3) One education point equals one semester credit hour from an accredited college or university.

(4) An undergraduate or post-graduate degree must be issued by an accredited college or university.

(p) The effective date of this section is February 1, 1989.

§211.88. Reporting Responsibilities Individuals.

(a) If the commission requires that an application or other form be signed by an applicant, that person is responsible for:

(1) reviewing the entire document and any attachments; and

(2) signing it only after such review to attest to the accuracy and truthfulness of all information on and attached to the document.

(b) When a person who holds a commission license or certificate no longer meets the minimum standards for retention or never met the standards for issuance of any such license or certificate, that person must report to the commission in writing within 30 days:

(1) the fact that the license holder does not meet the retention or issuance standards; and

(2) the address to which notice of any commission action will be mailed.

(c) When a person who holds a commission license or certificate is arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor or for any Class C misdemeanor involving the duties and responsibilities of office, that person must report such fact to the commission in writing within 30 days, including the name of the arresting agency and the style, court, and cause number of the charge or indictment, if any.

(d) A license holder must report any name changed by marriage or other reason to the commission within 30 days.

(e) The effective date of this section is February 1, 1989.

§211.89. Denial.

(a) The commission may deny an application for any license, certificate, or acknowledgment and may refuse issuance or refuse to accept a report of appointment if:

(1) the applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) the applicant has not affixed any required signature;

(3) the required forms are incomplete;

(4) the required documentation is incomplete, illegible, or is not attached;

(5) the application is not submitted or signed by a chief administrator, a designate who is a license holder, or some other person with authority to appoint the applicant to the position reported;

(6) the application is not submitted by the appointing agency or entity;

(7) the agency reports the applicant in a capacity that does not require the license sought;

(8) the agency fails to provide documentation, if requested, of the agency's creation or authority to appoint persons in the capacity of the license sought or the agency is without such authority; or

(9) the application contains a false assertion by any person.

(b) Upon any such denial or refusal, the applicant or agency may request a hearing at which the commission must prove sufficient facts to support its action. After such hearing, the commission may issue a final order of denial.

(c) The effective date of this section is February 1, 1989.

§211.96. Reactivation of a Peace Officer License.

(a) The commission will place a peace officer license in an inactive status when the holder has not been reported to the commission as appointed as either a peace officer or reserve for more than two years after:

(1) the last report of termination;

(2) the date of licensing, if never appointed; or

(3) the date of last reactivation.

(b) The holder of an inactive license is unlicensed for purposes of the Government Code, Chapter 415.

(c) In this section, the term "peace officer license" includes any permanent peace officer qualification certificate with an effective date before September 1, 1981.

(d) A temporary license may not be reactivated if it expired without the holder meeting each training or testing standard in effect at that time. However, if before expiration the holder met all such standards in effect at that time, the commission will construe any such temporary license to be a permanent license that must be reactivated.

(e) The commission will reactivate a peace officer license for an applicant who has:

(1) previously held an otherwise valid license or qualification certificate to be a peace officer; and

(2) passed the current peace officer licensing examination.

(f) The exam may only be challenged once for reactivation. If challenged and passed, the license will be immediately reactivated whether or not the commission has received any appointment report from an agency. If failed, the applicant may not be retested until successful completion of either the supplementary peace officer training course or the entire basic peace officer course.

(g) If failed three times after first qualifying by training, the applicant may not be retested until successful completion of the entire current minimum training standards for a peace officer.

(h) The effective date of this section is February 1, 1989.

§211.98. Psychological Examination of an Initial License Applicant.

(a) An initial license applicant must undergo a psychological examination except as provided by subsection (v) of this section. This examination must be administered by a professional who:

(1) has been registered by the commission to do so; or

(2) is a licensed psychologist or psychiatrist.

(b) The commission will register any professional who agrees to comply with commission rules and who is either a licensed psychologist or a psychiatrist. The commission may, in exceptional circumstances, register an exempt psychologist or a qualified physician.

(c) An examination will consist of at least:

(1) a background survey;

(2) two objective personality tests; and

(3) a professional interview.

(d) The background survey will be one or more documents that are completed by the examinee and that elicit information about significant life events and patterns of behavior relevant to the examination and consistent with the histories to be covered in the professional interview. The survey documents must be kept on file indefinitely by the professional as part of the record of the examination. If there is substantial compliance with this subsection, all or part of the survey may be an employment application or other information provided by the requesting agency.

(e) One of the two required objective personality tests must identify patterns of abnormal behavior. The other must assess relevant dimensions of normal behavior. Additional tests may be used.

(f) The professional interview must be conducted in person by the professional. Generally, professional discretion will control the length and content of the interview except that it must be adequate for a comprehensive review of any critical issue raised by the background survey, the personality tests, or any other source, including a review of at least the following histories:

(1) mental health treatment;

(2) family, educational, employment, military, financial, litigation, and

criminal; and

(3) substance abuse and medical.

(g) At the conclusion of the initial examination or any supplementary examination, the professional must interpret the survey, tests, and interview to make a determination of and a written declaration of the psychological and emotional health of the examinee. The declaration must state whether the professional has concluded, on its effective date, that the examinee is or is not in satisfactory psychological and emotional health to be licensed and appointed in each capacity indicated by the requesting agency. All declarations must be made on completed forms provided by the commission.

(h) Before the examination, the professional must obtain a waiver of confidentiality signed by the examinee that approves the release of the declaration to the commission, to the requesting agency, or to another professional and that approves the release of any supporting notes, tests, or other documents to another professional conducting an examination under this section.

(i) A positive declaration form will be provided by the professional directly to the chief administrator of the requesting agency for submission with a license application or report of appointment. A negative declaration form will also be provided by the professional directly to the chief administrator of the requesting agency for submission to the commission within 10 working days of its effective date. The professional must, in either case, retain indefinitely the waiver and a copy of each declaration either of which must be made available for inspection by or provided to the commission upon request. If the commission has appointed the professional to administer the examination, the declaration and a copy of the waiver will be submitted directly to the commission.

(j) The commission may deny or refuse to issue a license if there is no declaration, if the required declaration is no longer current or has been withdrawn or invalidated, or if the declaration or examination was not made in compliance with this section. A declaration is no longer current after more than 180 days from its effective date. The effective date is the date the declaration was signed. If a license is issued based upon a current declaration, that initial declaration does not have to be updated or reissued and a license holder does not have to undergo another examination unless otherwise required by law or rule. This section only applies to an initial applicant for any license and shall not be construed to require a re-examination or a new declaration to retain an existing license or after a break in service. Nor shall this section be construed to require a professional or an agency to report to the commission a positive or negative declaration with regard to an existing license.

(k) An agency must select the professional to administer a particular examination on its behalf. The professional may refuse any such request without penalty from the commission. The agency, the examinee, or another may pay all or part of the cost of examination. An agency may choose to adopt a previous declaration made for appointment by another agency if that declaration is current and has not been withdrawn or otherwise invalidated. As part of an examination, a professional may request and, upon request, the commission will reveal to that professional the name of any other professional shown by commission records to have previously made a negative declaration on that particular examinee.

(l) If ordered to do so by the commission, an initial license applicant or the holder of a recently issued license must submit to another examination by a professional appointed by the commission. The commission may order another examination if, before licensing or within 180 days after licensing, there is a conflict between two current declarations or if at any time it has cause to believe that:

(1) the examinee, the agency, or the professional has failed to follow commission rules relating to the examination or declaration; or

(2) the examinee, the agency, or the professional has submitted a false or incorrect report relating to the examination or declaration.

(m) The commission will develop and distribute to a professional, upon request, a psychological examination packet containing suggested guidelines for the efficient administration of the examination. The guidelines may be followed or not. However, the rules governing the examination must be followed unless a waiver is sought and received from the commission, acting through its executive director, prior to the effective date of the declaration. The commission may appoint and seek the advice of a peer review committee of other professionals to guide its decision to grant or deny the waiver based on whether the variance meets or exceeds the standards established by the commission.

(n) By signing the declaration, the professional attests to familiarity with the guidelines and further attests that state law, commission rules, and professional standards have been followed. The commission will maintain a list of registered professionals by county of practice or availability.

(o) An agency claiming any one of the following exceptional circumstances may informally request approval from the executive director for the commission to register and allow use of a professional who is neither a licensed psychologist nor psychiatrist. The request should be in writing, should assert the existence of the relevant facts and conditions, and should be signed and dated by the holder of a commission license who is responsible for the truth of these assertions. If the services of a professional are not available to the agency within reasonable proximity, the agency must provide the name, location, and qualifications of one or more exempt psychologists or qualified physicians whose services are available to the agency. The commission may appoint and seek the advice of a peer review committee of other professionals to guide its decision to accept or reject the qualifications of a prospective registered professional, based on whether that professional has the necessary training and experience. Even if the services of a professional are available to the agency, the commission may still register another professional to conduct examinations, but only for that agency, under the following exceptional circumstances: the prospective registered professional is an exempt psychologist who:

(1) is available to that agency;

(2) is a full-time employee of that agency;

(3) has the necessary training and experience; and

(4) has applied for licensing and continues to comply with all requirements for licensing as a psychologist.

(p) If denied, the agency may formally petition the commission to allow the request. The commission shall set the petition for a hearing at an agreed date and location, except that the agency has the waivable right to at least 20 days notice of such hearing. After reviewing the hearing examiner's proposal for decision, the executive director may approve or deny the request and, if denied, will set the matter for final decision by the commissioners at their next quarterly meeting. The commissioners may approve or deny the request by final order after the agency has had an opportunity to be heard. An informal or formal approval order will name the professional to be registered and used and require the agency to inform the commission when and if the services of another professional become available to the agency within reasonable proximity.

(q) A professional may withdraw a declaration within 180 days of its effective date if it was based on false, misleading, or incorrect information or if new information is received which substantially alters the initial declaration. A professional may withdraw a declaration by sending written notice of the reason to the agency and to the commission. An agency must notify the commission of a withdrawn declaration in writing within 10 days of its receipt from the professional.

(r) The commission may invalidate a declaration at any time:

(1) upon the request of the declaring professional;

(2) because of a rule or law violation by the examinee, the agency, or the professional related to the examination or declaration; or

(3) because the professional was not a licensed psychologist or psychiatrist or was not registered from the beginning date of the examination to the effective date of the declaration.

(s) The commission may revoke, suspend, probate such suspension, or reprimand a registered professional who:

(1) makes a false report to the commission or to a requesting agency;

(2) violates a commission rule or a provision of the Government Code, Chapter 415;

(3) loses a professional license or exemption necessary for initial registration; or

(4) is no longer required by exceptional circumstances to be registered.

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

(1) Satisfactory psycological and emotional health–Relative to a particular license and appointment capacity:

(A) the absence of any mental, emotional, intellectual, or behavioral disorder that would substantially impair the functioning or suitability of the examinee including, specifically, the absence of any significant mental disorder as defined in the current *Diagnostic and Statistical Manual* (DSM) of the American Psychiatric Association; and

(B) the presence of mental, emotional, intellectual, and behavioral suitability for appointment by the requesting agency.

(2) Available to the agency–The professional in question is willing to accept or has agreed to accept a particular request from that agency to administer an examination and make a declaration.

(3) Professional–A person who has the necessary training and experience, including a licensed psychologist, a psychiatrist, or a registered professional.

(4) Registered professional–Any professional registered under commission rules to conduct an examination.

(5) Exempt psychologist–A person who has the necessary training and experience, but who is exempt from licensing as a psychologist in Texas because of governmental or academic employment.

(6) Qualified physician–A physician who is licensed by the Texas State Board of Medical Examiners and has the necessary training and experience.

(7) Necessary training and experience–The training and experience necessary to adequately administer and interpret the psychological examination as provided by this section.

(8) Reasonable proximity–Within:

(A) any county where the agency has jurisdiction; or

(B) a 100-mile radius of the headquarters of the agency.

(u) The standard to be used to determine and declare satisfactory psychological health has two components, disorders and suitability for appointment. The first component, disorders, is the same standards for all licenses. The second component. suitability for appointment by the requesting agency, involves the following three separate appointment categories:

(1) peace officer and reserve;

(2) jailer; and

(3) armed public security officer.

(v) The holder of a current license in any category, who applies for an initial issuance of a license in the same category, will not be required to provide a new declaration for the new license. If the application is for a new license in a different category and if the new declaration will be made by the same professional, the new declaration may be based upon a supplementary examination that incorporates the results of the initial examination but covers any additional issue raised by the new appointment.

(w) The effective date of this section is February 1, 1989. However, the commission may, in the discretion of the executive director, waive any provision of this section for good cause shown until December 31, 1989. On and after January 1, 1990, all declarations must be made in full compliance with this section.

§211.100. In-service Training Requirements for Agencies that Appoint Peace Officers or Reserves.

(a) Any agency which appoints a peace officer or reserve shall provide to each peace officer or reserve an in-service training course which includes some instruction in the recognition of cases involving abuse or neglect of children as required by law.

(b) Any agency which appoints a peace officer shall provide to each peace officer at least the in-service training program required by this section. The program shall consist of one or more in-service courses that total at least 40 hours during each 24-month period. The first 24-month period shall commence for each peace officer on that officer's date of appointment or on the effective date of this section, whichever is later.

(c) An agency may voluntarily require of or provide to any peace officer or other person employed or appointed by that agency any additional training that exceeds this required peace officer in-service program.

(d) An agency provides a program or course, for purposes of this section if:

(1) the agency orders or requires attendance and successful completion as a condition of continued employment or appointment and the agency pays all the cost of attendance and provides direct or compensatory time off for attendance; or

(2) the agency requires attendance and successful completion as a condition of continued commissioning and the agency has issued the commission as provided by law to a peace officer who is appointed by another entity.

(e) The in-service training program shall consist of one or more separate courses, each of which shall have a final examination or skills test, as appropriate, which must be passed before course completion credit will be awarded. Any such course shall be reasonably related to the current or prospective duties of each peace officer who attends and at least one such course provided by each agency should include some instruction in recent changes in criminal or civil law.

(f) Unless otherwise provided by law, rule, or agreement, an agency or advisory board responsible for any in-service course shall, within its discretion:

(1) govern the conduct of that course;

(2) control the length, the number of times taught, and the specific content of any course; and

(3) assign any or all officers to attend any particular course.

(g) The effective date of this section is February 1, 1989.

§211.107. Psychological Re-examination of a License Holder After Break in Service.

(a) After a break in service of more than 180 calendar days, a license holder must undergo another psychological examination and receive a new declaration of satisfactory psychological and emotional health except as provided by subsection (e) of this section.

(b) The re-examination and the new declaration will be same examination and declaration that are required for initial licensing.

(c) The term "break in service" means the period of time that begins on the day after the license holder was reported terminated from a particular position governed by the Government Code, Chapter 415, and ending on the date before the date of reappointment to a position in the same category.

(d) For purposes of this section, the categories of appointment are the same as for initial licensing and the three categories are:

(1) peace officer and reserve;

(2) jailer; and

(3) armed public security officer.

(e) Appointment in one capacity within any category counts as service in any other capacity with the same category for the purpose of avoiding a break in service under this section and, therefore, no reexamination or new declaration is required if the person:

(1) holds a current, valid license required for both capacities;

(2) has complied fully with all psychological examination provisions required for the first capacity; and

(3) seeks appointment to the second capacity while appointed to or within 180 days of termination from the first capacity.

(f) The effective date of this section is February 1, 1989.

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 December 12, 1988.

TRD-8812713 David M. Boatright
General Counsel
Texas Commission on Law Enforcement Officer Standards and Education

Effective date: February 1, 1989

Proposal publication date: October 14, 1988

For further information, please call: (512) 834-9222

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 16. ICF/SNF

Support Documents

• 40 TAC §16.9801

The Texas Department of Human Services (DHS) adopts an amendment to §16. 9801 with changes to the proposed text as published in the November 4, 1988, issue of the *Texas Register*(13 TexReg 5539).

The amendment is justified to provide for more appropriate reimbursement of providers' fixed costs, thereby reducing the need for providers to shift patient care funds to cover administrative or facility costs.

The amendment redefines the cost centers used to determine reimbursement rates, eliminates the truncation of administration costs prior to calculation of reimbursement rates, permits the occupancy adjustment of facility and administration costs to be based on the average occupancy rate when it is lower than 85%, and moderates restrictions on allowable costs and the useful life of fixed capital assets. The provisions that redefine cost centers and end the truncation of administration costs have already been adopted on an emergency basis, effective September 15, 1988, for 120 days and published in the September 27, 1988, issue of the *Texas Register*(13 TexReg 4729).

During the public comment period, the department received two written comments on the proposed amendment from the Texas Health Care Association. A summary of the comments and the department's responses follows.

The commenter stated that the proposed amendment should include a revision of the method by which the department determines worker's compensation and unemployment insurance costs in order to ensure the use of up-to-date statistics from the State Board of Insurance and the Texas Employment Commission. The department agrees that it is important to use up-to-date information, but believes that doing so does not require a revision of agency rules. It is presently the department's practice to use the most recent statistics available from the State Board of Insurance and the Texas Employment Commission.

The commenter requested that cash management expenses be specifically included as part of the department's redefinition of certain allowable costs. The department agrees with this comment and has revised the amendment to include cash management expenses as allowable costs.

The commenter also questioned the proposed 30-day deadline for furnishing documentation requested during an audit. The commenter suggested that a disallowance of expenditures for failure to meet the deadline might entail denial of a facility's appeal rights. The commenter also stated that 30 days is too short a time period in some cases. The department believes that 30 days is enough time for a provider to furnish documentation requested during an audit. However, the department will not disallow disputed costs before the close of the audit. Accordingly, the department has revised the amendment to clarify its policy. If requested documentation is not presented within 30 days or during the course of the audit, whichever is longer, the audit is closed and DHS will automatically disallow the costs in question.

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

§16.9801. Reimbursement Methodology for Intermediate Care Facilities and Skilled Nursing Facilities.

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

(d) List of allowable costs. The following list of allowable costs is not comprehensive, but serves as a general guide and clarifies certain key expense areas. The absence of a particular costs does not necessarily mean that it is not an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in subsection (c)(1) of this section.

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

(5) Management fees paid to related parties, cash management expenses, and other home office overhead expenses. Cash management expenses, other home office overhead expenses, and management fees paid to a related organization must be clearly derived from the actual cost of materials, supplies, or services provided directly to an individual SNF or ICF. A facility that is owned, operated, or controlled by another individual(s) or organization(s) may report the allowable portion of costs for materials, supplies, and services provided directly to that facility. The allowable portion of such costs to a given facility is limited to those expenses that can be directly attributed to the individual establishment.

(A) (No change.)

(B) In organizations with multiple levels of management, costs incurred at levels above the individual SNF or ICF in Texas are allowable only if the costs were incurred in the purchase of materials, supplies, or services directly used by the facility staff in the conduct of normal operations relating to patient care. In addition, the facility must furnish adequate documentation to demonstrate that the costs adhere to the following criteria:

(i) Of the functions that Medicare and Medicaid both cover, only those required for participation in Medicaid in Texas and not reimbursed from non-Medicaid sources are allowable.

(ii) The expense does not duplicate other expenses.

(iii) The expense is not incurred for personal or other activities not specifically related to the provision of nursing home care.

(iv) The expense does not exceed the amount that a prudent business operator seeking to contain costs would incur.

(C) Adequate documentation consists of all materials necessary to dem-

onstrate the relationship of personnel, supplies, and services to the provision of patient care. These materials may include, but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by TDHS auditors to perform required tests of allowability. During the course of an audit, the facility must furnish any reasonable documentation requested by TDHS auditors within 30 calendar days of the request. If the provider does not present the requested material within 30 days or during the course of the audit, whichever is longer, the audit is closed, and TDHS automatically disallows the costs in question.

(D) Expenses for private aircraft are allowable only if:

(i) all criteria in subparagraphs (B) and (C) of this paragraph are satisfied;

(ii) flight logs are maintained, including dates, mileage, passenger lists, and destinations, to demonstrate that trips are related to patient care in Texas; and

(iii) the provider furnishes documentation demonstrating that the expenses for travel via private aircraft are not greater than those for commercial alternatives.

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

(8) Buildings, equipment, and capital expenses. It is generally expected that buildings, equipment, and capital are used by a SNF or ICF solely in the course of normal operations in the provision of patient care, and not for personal business. Whenever this is not the case, the portion of the costs relating directly to the provision of SNF or ICF patient care may be allowed on a pro rata basis, if the proportion of use for patient care is documented.

(A) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased, or rented SNF or ICF property that are valued at more than $500 at the time of purchase must be depreciated or amortized, using the straight-line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows.

(i) Buildings: 30 years, with a minimum salvage value of 10%. Since rates are uniform by class of service, all buildings are uniformly depreciated on a 30-year-life basis, regardless of the actual date of construction or purchase. In other words, allowable depreciation is calculated by deducting 10% from the allowable historical basis of the asset and dividing the remainder by 30. Exceptions to this rule are permissible when providers choose a useful-life basis in excess of 30 years.

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

(B)-(F) (No change.)

(9)-(12) (No change.)

(e) List of unallowable costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in subsection (c)(1) of this section.

(1)-(22) (No change.)

(23) Motor vehicles that are not generally suited or are not commonly used to transport patients or facility supplies. This includes motor homes and recreational vehicles; sports and luxury automobiles; motorcycles; and heavy trucks, tractors, and equipment used in farming, ranching, and construction; and other activities unrelated to the provision of long-term care.

(24)-(32) (No change.)

(f) Cost finding methodology.

(1) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(A) (No change.)

(B) If there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported, TDHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following.

(i)-(iii) (No change.)

(iv) Occupancy adjustments. TDHS adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(I) 85%; or

(II) the overall average occupancy rate for contracted beds in facilities included in the rate base during the cost reporting periods included in the base.

(v) (No change.)

(C) Effective July 1, 1988, the department no longer truncates the adjusted administration cost array at the 85th percentile to compensate for extraordinary rates of increase which tend to skew the distribution toward the high end. Effective July 1, 1988, the department no longer bases the final rate determination process on this truncated array.

(2) Cost determination by cost centers. Effective July 1, 1988, TDHS combines adjusted expenses from the rate base into two cost centers.

(A) (No change.)

(B) All-other cost center. Effective July 1, 1988, this composite cost center combines:

(i) dietary costs, consisting of food, food service, and dietary consultant expenses;

(ii) facility costs, consisting of expenses to operate and maintain buildings, equipment, and capital necessary to provide patient care; and

(iii) administration costs, consisting of administrative salaries, supplies, and interest on working capital loans.

(g) Rate setting methodology.

(1) (No change.)

(2) Rate determination process. The Texas Board of Human Services determines reimbursement rates for each class of service. TDHS staff submit recommendations for each class of service to the Texas Board of Human Services. Recommended rates are determined in the following manner.

(A) (No change.)

(B) Effective July 1, 1988, a cost component for the all-other cost center is calculated at the median point in the array of adjusted per diem costs for all contracted SNFs and ICFs included in the rate base.

(C) (No change.)

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

(6) Rates effective January 1, 1989. Effective January 1, 1989, rates are determined on the following bases.

(A) The rate component for the patient care cost center is unchanged from that in effect on December 31, 1988.

(B) The rate component for the all-other cost center is determined in the manner provided in paragraph (2)(B) and (C) this subsection, based on fiscal year 1987 cost report data adjusted as specified in subsection (f) of this section.

(h) (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 December 13, 1988.

TRD-8812678 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 3, 1989.

Proposal publication date: November 4, 1988.

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

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Chapter 27. Intermediate Care Facility for Mentally Retarded

Subchapter UUUU. Support Documents

• 40 TAC §27.9801

The Texas Department of Human Services (DHS) adopts an amendment to §27. 9801, with changes to the proposed text as published in the November 4, 1988, issue of the *Texas Register*(13 TexReg 5541).

The amendment is justified to provide for more appropriate reimbursement of providers, thereby promoting the availability and quality of patient care.

The amendment redefines the cost centers used to determine reimbursement rates for community-based providers; establishes a new experimental class of providers who operate facilities with six beds or less; permits the occupancy adjustment of facility and administration costs to be based on the average occupancy rate when it is lower than 85%; and moderates restrictions on allowable costs and the useful life of fixed capital assets. The provisions that redefine cost centers and establish a new class of providers have already been adopted on an emergency basis, effective September 15, 1988, for 120 days and published in the September 27, 1988, issue of the *Texas Register*(13 TexReg 4729).

The department received six written comments on the proposed amendment during the public comment period. The commenters included Advocacy Incorporated, Bethphage Community Services, Life Management Center, Texas Association of Private ICF-MR Providers, and Texas Health Care Association. A summary of the comments and the department's responses follows.

One commenter stated that the proposed amendment should include a revision of the method by which the department determines worker's compensation and unemployment insurance costs in order to ensure the use of up-to-date statistics from the State Board of Insurance and the Texas Employment Commission. The department agrees that it is important to use up-to-date information, but believes that doing so does not require a revision of agency rules. It is presently the department's practice to use the most recent statistics available from the State Board of Insurance and the Texas Employment Commission.

Four commenters complained that the proposed rates for the experimental class of small facility providers fall below their currently budgeted expenses for Level V and Level VI clients. The department recognizes that some providers' expenditures may exceed the proposed rates. However, in initially setting rates for this experimental class of providers, the department must rely on a working model of reasonable expenses based on data from Medicaid cost reports, sample surveys, consultation with service providers, and other sources, until an adequate data base is available to derive rates for both levels of care directly from Medicaid cost report data.

In other words, the department believes that the proposed rates represent the reimbursement needs of efficient providers as fairly as available information permits. When more Medicaid cost report data have been accumulated for this class of providers, the department will review its rates.

Two commenters stated that the proposed experimental rates are unresponsive to the increased costs that providers will experience in complying with new federally mandated standards and with federal legislation scheduled to take effect next year.

To ensure that its reimbursement methodology remains as fair as possible, the department is actively engaged in analyzing the future effects of federal legislative and regulatory requirements. However, the department cannot base its current reimbursement methodology on future regulatory demands. Therefore, the department is not changing the proposed amendment in response to this comment.

One commenter wrote that the experimental class of small facility providers should include facilities serving Level I clients. The department disagrees with this comment because the existing Level I rate is already substantially supportive of small facility costs.

Two commenters discussed the working model used in determining the proposed experimental rates for small facility providers. They stated that the model inadequately addresses the need for and costs of occupational, physical, and speech and hearing therapies, psychologists, social workers, the depreciation of buildings, vans, and furniture, staffing, administration, the dietary cost center, salaries, the facility cost center allowance, and the lack of allowance for some types of expenditure.

The department carefully considered these issues in determining the proposed rates. The rates are based on reasonable costs associated with current spending patterns. The rates will be updated when an adequate number of cost reports reflecting ongoing small facility operations is available. Until that time, rates for the experimental class of six-bed-or-less providers will be revised proportionately with rate revisions calculated for the ICF-MR community-based provider industry as a whole.

Three commenters recommended that unearned income from grants and donations should not offset reimbursements when the unearned income is used for operations or resident care. One commenter also suggested revisions to the department's policies regarding fraud referrals and certain existing limits on facility and administration costs. Another commenter recommended an addition regarding services, devices, and equipment that are excluded from the general Title XIX program. And another commenter recommended an adjustment to the supplemental or heavy care rate.

The department will take all of these recommendations under advisement in its future policy considerations. However, because none of these recommendations address the actual content of the proposed amendment, the department is not specifically responding to them here.

Two commenters addressed the proposed occupancy rate adjustment. One stated that the proposed policy may disproportionately affect small facilities experiencing normal vacancies due to hospitalizations, extended therapeutic visits, transfers, and start-up periods. The other argued that the occupancy rate adjustment should be eliminated from the ICF-MR methodology because the program has generally maintained a high rate of occupancy.

The department is committed in principle to the occupancy rate adjustment as an incentive for cost-effective operations. The department cannot finally determine whether the adjustment will disproportionately affect small facilities until more Medicaid cost report data have been accumulated. The information currently available, however, suggests that the adjustment is fair and flexible as proposed.

One commenter requested that cash management expenses be specifically included as part of the department's redefinition of certain allowable costs. The department agrees with this comment and has revised the amendment to include cash management expenses as allowable costs.

The same commenter also questioned the proposed 30-day deadline for furnishing documentation requested during an audit. The commenter suggested that a disallowance of expenditures for failure to meet the deadline might entail denial of a facility's appeal rights. The commenter also stated that 30 days is too short a time period in some cases.

The department believes that 30 days is enough time for a provider to furnish documentation requested during an audit. However, the department will not disallow disputed costs before the close of the audit. Accordingly, the department has revised the amendment to clarify its policy. If requested documentation is not presented within 30 days or during the course of the audit, whichever is longer, the audit is closed and DHS will automatically disallow the costs in question.

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

§27.9801. Reimbursement Methodology for Intermediate Care Facilities for the Mentally Retarded.

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

(d) List of allowable costs. The following list of allowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is not an allowable cost. Except where specific exceptions are noted, the allowability of all costs is

subject to the general principles specified in subsection (c)(1) of this section.

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

(5) Management fees paid to related parties, cash management expenses, and other home office overhead expenses. Cash management expenses, other home office overhead expenses, and management fees paid to a related organization must be clearly derived from the actual cost of materials, supplies, or services provided directly to an individual ICF-MR. A facility that is owned, operated, or controlled by another individual(s) or organization(s) may report the allowable portion of costs for materials, supplies, and services provided directly to that facility. The allowable portion of such costs to a given facility is limited to those expenses that can be directly attributed to the individual establishment.

(A) (No change.)

(B) In organizations with multiple levels of management, costs incurred at levels above the individual ICF-MR in Texas are allowable only if the costs were incurred in the purchase of materials, supplies, or services directly used by the facility staff in the conduct of normal operations relating to patient care. In addition, the facility must furnish adequate documentation to demonstrate that the cost adhere to the following criteria.

(i) Of the functions that Medicare and Medicaid both cover, only those required for participation in Medicaid in Texas and not reimbursed from non-Medicaid sources are allowable.

(ii) The expense does not duplicate other expenses.

(iii) The expense is not incurred for personal or other activities not specifically related to the provision of nursing home care.

(iv) The expense does exceed the amount that a prudent business operator seeking to contain costs would incur.

(C) Adequate documentation consists of all materials necessary to demonstrate the relationship of personnel, supplies, and services to the provision of patient care. These materials may include, but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by TDHS auditors to perform required tests of allowability. During the course of an audit, the facility must furnish any reasonable documentation requested by TDHS auditors within 30 calendar days of the request. If the provider does not present the requested material within 30 days or during the course of the audit, whichever is longer, the audit is closed and DHS automatically disallows the costs in question.

(D) Expenses for private aircraft are allowable only if:

(i) all criteria in subparagraph (B) and (C) of this paragraph are satisfied;

(ii) flight logs are maintained, including dates, mileage, passenger lists, and destinations, to demonstrate that trips are related to patient care in Texas; and

(iii) the provider furnishes documentation demonstrating that the expenses for travel via private aircraft are not greater than those for commercial alternatives.

(6)-(8) (No change.)

(9) Buildings, equipment, and capital expenses. It is generally expected that buildings, equipment, and capital are used by an ICF-MR solely in the course of normal operations in the provision of resident care, and not for personal business. Whenever this is not the case, the portion of the costs relating directly to the provision of ICF-MR resident care may be allowed on a pro rata basis, if the proportion of use for resident care is documented.

(A) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased, or rented ICF-MR property that are valued at more than $500 at the time of purchase must be depreciated or amortized, using the straight-line method. The minimum usable lives to be assigned to common classes of depreciable property are as follows.

(i) Buildings: 30 years, with a minimum salvage value of 10%. Since rates are uniform by class of service, all buildings are uniformly depreciated on a 30-year-life basis, regardless of the actual date of construction or purchase. In other words, allowable depreciation is calculated by deducting 10% from the allowable historical basis of the asset and dividing the remainder by 30. Exceptions to this rule are permissable when providers choose a useful-life basis in excess of 30 years.

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

(B)-(F) (No change.)

(10)-(13) (No change.)

(e) List of unallowable costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles specified in subsection (c)(1) of this section.

(1)-(24) (No change.)

(25) Motor vehicles that are not generally suited or are not commonly used to transport residents or facility supplies. This includes motor homes and recreational vehicles; sports and luxury automobiles; motorcycles; heavy trucks, tractors, and equipment used in farming, ranching, and construction; and other activities unrelated to the provision of resident care.

(26)-(34) (No change.)

(f) Cost finding methodology.

(1) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(A) (No change.)

(B) If there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported, TDHS may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following.

(i)-(iv) (No change.)

(v) Occupancy adjustments. TDHS adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(I) 85%; or

(II) the overall average occupancy rate for contracted beds in facilities included in the rate base during the cost reporting periods included in the base.

(vi) (No change.)

(2) (No change.)

(3) Cost determination by cost centers for community-based providers. Effective July 1, 1988, TDHS combines adjusted expenses from the rate base into the following cost centers for community-based providers.

(A) (No change.)

(B) All other cost center. Effective July 1, 1988, this composite cost center combines:

(i) dietary costs, consisting of food, food service, and dietary consultant expenses;

(ii) facility costs, consisting of expenses to operate and maintain buildings, equipment, and capital necessary to provide patient care; and

(iii) administration costs, consisting of administrative salaries, supplies, and interest on working capital loans.

(4) Cost determination by cost centers for State Schools. Effective July 1, 1988, TDHS combines adjusted expenses from the rate base into the following cost centers for State Schools.

(A) Resident care cost center. The resident care cost center includes all direct care expenses: nursing care; and consultant, social service, activity, training, laundry, and housekeeping expenses.

(B) Dietary care cost center. The dietary care cost center includes food, food service, and dietary consultant expenses.

(C) Facility cost center. The facility cost center includes expenses to operate and maintain the buildings, equipment, and capital necessary to provide resident care.

(D) Administration cost center. The administration cost center includes administrative salaries, supplies, and interest on working capital loans.

(E) Comprehensive medical cost center. The comprehensive medical cost center includes medical expenses for services provided directly to state school residents. Since these services are not provided directly to community-based residents by ICF-MR providers, reimbursement for this cost center is limited to those state schools providing comprehensive medical care.

(g) Rate setting methodology.

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

(4) Experimental class. TDHS may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Board of Human Services and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(A)-(M) (No change.)

(N) Small-facility rates. TDHS defines community-based ICFs-MR certified for Level V or VI and having no more than six Medicaid-contracted beds as an experimental class.

(i) Effective September 1, 1988, facilities in the small-facility class receive per diem rates of $71.11 and $80.41 for ICF-MR V and ICF-MR VI clients, respectively. These rates are based on projected budgets for the operation of six-bed facilities at each level of care. Each budget is based on adequate staff to comply with Medicaid program standards and reasonable costs for employee compensation, contracted services, capital equipment, and supplies, as reflected in data from Medicaid cost reports, sample surveys, consultation with service providers, and other sources.

(ii) Small-facility rates are revised each time the community-based rates paid to larger facilities are adjusted. Revisions to these rates reflect proportionate changes in community-based rates paid to larger facilities for corresponding levels of care. Cost reports from this experimental class of small-facility providers are not included in the rate base for community-based providers. Adjustments to small-facility rates are made in this manner until an adequate data base is available to permit deriving rates for both levels of care directly from Medicaid cost report data.

(5)-(6) (No change.)

(h) (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 December 13, 1988.

TRD-8812677 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Effective date: January 3, 1989.

Proposal publication date: November 4, 1988.

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

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Chapter 29. Purchased Health Services

Subchapter G. Hospital Services

The Texas Department of Human Services (DHS) adopts amendments to §§29. 606, 29.609, 29.1112, and 29.1125, without changes to the proposed text as published in the October 21, 1988, issue of the *Texas Register*(13 TexReg 5314). The department previously adopted these amendments on an emergency basis to be effective November 1, 1988, and these adoptions also appeared in the October 21, 1988, issue of the Texas Register (13 TexReg 53,01,).

The amendments provide more equitable reimbursement to children's hospitals and certain other facilities that serve high-intensity cases.

The amendments specify that children's hospitals will be reimbursed for covered inpatient hospital services under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248. The amendments also deem children's hospitals that do not otherwise qualify for disproportionate share payments to be disproportionate share hospitals; increase the $50,000 annual expenditure limit on inpatient hospital services to $200,000; and specify that additional lump-sum payments will be made to certain hospitals within Texas that serve a large percentage of Title XIX-eligible children less than four years old at the time of their admission and who have long lengths of stay.

During the public comment period, the department received 240 written comments, including comments from the Texas Hospital Association and the Children's Hospital Association of Texas. All but four of the commenters clearly favored the proposal, including both associations.

Many of the comments received from the four commenters who expressed concerns and recommendations were related to the premise of the sections rather than to the sections themselves. Other comments from these four sources, such as comments regarding the department's prospective payment system methodology and disproportionate share methodology, were beyond the scope of the current proposal; therefore, comments related to the premise of the rules and those comments otherwise beyond the scope of the proposal are not being addressed in this preamble. The comments are essentially the same as those presented to the Board of Human Services at its September 15, 1988, meeting prior to the board's approval to adopt the rules on an emergency basis and to propose the rules for public comment.

The following is a summary of the comments specifically related to the proposal and the department's response to each comment.

Commenters stated that §29.606 is unclear concerning whether children's hospitals will share in payments because the hospitals are in a penalty situation.

The department did not include a reference to penalty payments in its description of reimbursement to children's hospitals because the department's understanding is that penalty payments are no longer allowable under TEFRA principles of reimbursement.

One commenter suggested that the department apply a 10% budgetary reduction factor to the reimbursement for children's hospitals.

The department disagrees with this suggestion because children's hospitals will be reimbursed under TEFRA principles of cost reimbursement.

Commenters state that it appears that the 30-day inpatient hospital limit no longer applies because children's hospitals may also qualify for the additional payments described in §29.606(q).

The 30-day limit remains in effect. The purpose of §29.606(q) is to provide additional lump-sum payments to hospitals that serve a large percentage of Title XIX eligible children less than four years old at the time of their admission and who have long lengths of stay.

One commenter stated that disproportionate share funds pertain only to hospitals subject

to a prospective payment system of reimbursement; and, therefore, children's hospitals should not receive a share of these funds.

The department disagrees with this comment. The Social Security Act, Section 1902(a)(13)(A), requires states, in establishing their payment rates, to take into account the situation of hospitals which serve a disproportionate number of low-income patients. This provision is not limited to payment rates under a prospective payment system.

One commenter suggested that the department change the denominator of the formula in §29.606(q)(1) to number of stays for children less than four years old. The commenter felt that this change would more adequately reflect those hospitals in need of assistance and would not penalize hospitals which treat a large number of Medicaid patients four years old and older.

The number of Title XIX stays in the denominator of the department's formula identifies individual hospitals that serve a large percentage of Title XIX-eligible children less than four years old as compared to each hospital's total Title XIX stays. The suggested revision to the formula would not necessarily identify such hospitals.

• 40 TAC §29.606, §29.609

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

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

Issued in Austin, Texas, on December 14, 1988.

TRD-8812708 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 4, 1989.

Proposal publication date: October 21, 1988.

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

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Subchapter L. General Administration

• 40 TAC §29.1112, §29.1125

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

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

Issued in Austin, Texas, on December 14, 1988.

TRD-8812709 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 4, 1989.

Proposal publication date: October 21, 1988.

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

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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 adopted a filing by the Insurance Services Office, Inc. (ISO) of a revised policy and cracked glass endorsement for commercial glass insurance.

In accordance with the provisions of the Texas Insurance Code, Article 5.97, a text of the proposed filing has been filed in the Office of the Chief Clerk of the State Board of Insurance since October 20, 1988. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

ISO proposed these revisions to clarify the terms and coverages of the Texas Glass Coverage Form, CP 00 16. Revisions were made to Section C, Limits of Insurance; Section E, Duties in the Event of Loss and Loss Payment; and Section F, General Conditions. In addition, the coverage for newly acquired glass (Section A), has been reduced from 60 to 30 days.

The Broken or Cracked Glass Exclusion Form, CP 10 52, has been revised to permit a verbal description of the glass which is to be excluded from coverage.

This filing becomes effective March 1, 1989, under the following rule of application:

These changes are applicable to all policies effective on or after March 1, 1989. No policy effective prior to March 1, 1989 shall be endorsed or cancelled and rewritten to take advantage of or to avoid the application of these changes except at the request of the insured and using the cancellation procedures applying on the date of such request.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

TRD-8812683 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective Date: December 13, 1988

For further information, please call (512) 463-6327

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The State Board of Insurance has adopted a filing by the Insurance Services Office, Inc. (ISO) of a revised policy and cracked glass endorsement for commercial glass insurance.

In accordance with the provisions of the Texas Insurance Code, Article 5.97, a text of the proposed filing has been filed in the Office of the Chief Clerk of the State Board of Insurance since October 20, 1988. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The board has adopted changes in the procedure used to rate insulated glass. Insulated glass will be categorized as Class B and Class C glass, and the rate based on the square footage and thickness of the glass. Additional rule changes adopted include: editorial revisions to Section C; Ineligible Property and Section G; Directory of Glass to ensure consistent treatment of glass which cannot be written under the commercial glass insurance program; correction of an error regarding the classification of plate glass; and withdrawal of Section H, Illustrations, to facilitate use of the rules with electronic printing technology.

The board also adopted changes to the base rate table, Section H. The table has been revised to achieve a uniform distribution of rate increases, throughout the table. The sizes in the revised table are listed in intervals of five square feet and the corresponding rates have been increased. The rate increase has been offset by replacing the interpolation rule with the requirement that sizes not listed in the table, be rated at the next smaller size.

The revisions were proposed to simplify the rating of glass insurance. There is no overall rate level change resulting from the proposed revisions.

This filing will become effective March 1, 1989, under the following rule of application:

These changes are applicable to all policies effective on or after March 1, 1989. No policy effective prior to March 1, 1989, shall be endorsed or cancelled and rewritten to take advantage of or to avoid the application of these changes except at the request of the insured and using the cancellation procedures applying on the date of such request.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

TRD-8812682 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 13, 1988

For further information, please call (512) 463-6327

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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

Wednesday, December 21, 1988, 9 a.m. The Texas Agricultural Finance Authority Board for the Texas Department of Agriculture will meet in emergency session in the Ninth Floor Conference Room, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will approve minutes of the last board meeting; review and act upon draft legislation; consider and act upon financial survey; consider and act upon conservation reserve enhancement program; consider other business; and meet in executive session. The emergency status is necessary due to scheduling conflicts of board members.

Contact: Brian Muller, P.O. Box 12847, Austin, Texas 78711, (512) 463-7624.

Filed: December 14, 1988, 9:50 a.m.

TRD-8812716

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Texas Commission on Alcohol and Drug Abuse

Thursday, December 15, 1988, 1:30 p.m. The Board of Commissioners for the Texas Commission on Alcohol and Drug Abuse met for an emergency agenda revision in Room 104, John H. Reagan Building, Austin. According to the agenda summary, the board adopted proposed rule 141.81, "Continuity of Care of Inmates". The emergency status was necessary to avoid automatic withdrawal of proposed rule.

Contact: Becky Davis or Larry Goodman, (512) 463-5510.

Filed: December 13, 1988, 4:30 p.m.

TRD-8812688

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Texas Housing Agency

Thursday, December 22, 1988, 7:15 a.m. The Ad Hoc Tax Credit Committee of the Texas Housing Agency will meet in Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will approve minutes of the November 16, 1988, meeting; consider changes to Low Income Tax Credit Program rules, 1988 allocation request chart, applications for the 1988 Low Income Tax Credit Program, 1989 allocation request chart, and applications for the 1989 Low Income Tax Credit Program.

Contact: Timothy R. Kenny, P.O. Box 13941, Austin, Texas 78704, (512) 474-2974.

Filed: December 14, 1988, 2:41 p.m.

TRD-8812730

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Texas Department of Human Services

Thursday, December 22, 1988, 1 p.m. The Board of Human Services for the Texas Department of Human Services will meet in the Public Hearing Room, First Floor, East Tower, 701 West 51st Street, Austin. According to the agenda summary, the board will award a contract pursuant to the department's September 6, 1988, request for proposal for bids for insurance and administration of the Texas Medicaid Purchased Health Services Program.

Contact: Bill Woods, P.O. Box 2960, Mail Code 205-W, Austin, Texas 78769, (512) 450-3047.

Filed: December 13, 1988, 4:19 p.m.

TRD-8812686

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Industrial Accident Board

Friday, December 16, 1988, 1 p.m. The Industrial Accident Board met in Room 107, First Floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board approved minutes of the board meeting; discussed and adopted board rule 28 TAC §42.105, including effective date of rule pertaining to physical medicine; discussed and considered advisory committee reports on hospital fee guidelines (board rule 28 TAC §42.110); reviewed board files (this portion closed pursuant to workers' compensation statute); and reviewed and discussed board activities.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, First Floor, Austin, Texas 78704, (512) 448-7960.

Filed: December 13, 1988, 12:12 p.m.

TRD-8812674

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State Preservation Board

Wednesday, December 14, 1988, 9:30 a.m. The Permanent Advisory Committee for the State Preservation Board met in emergency session for an agenda revision in Room 103, John H. Reagan Building, Austin. According to the agenda, the committee approved minutes; discussed old or unfinished business, including the status of emergency repair items, collections policy and manual, bookstore, capital fire marshal, and grounds status report; and considered new business, including listing of change requests, grounds policy, a/e selection-G.L.O.B., a/e selection-capitol, and 89-90-91 budget. The emergency status was necessary due to the addition of the grounds status report, removal of introduction of guests and visitors (none to introduce), and removal of communications (none to present).

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: December 13, 1988, 12:16 p.m.

TRD-8812676

Friday, December 16, 1988, 9:30 a.m. The State Preservation Board met for an emergency agenda revision in Room 220, Lt. Governor's Committee Room, State Capitol, Austin. According to the agenda summary, the board approved minutes; considered old and unfinished business, including the status of emergency repair items, collections policy and manual, bookstore, capital fire marshal, and grounds status report; and considered new business, including listing of change requests, grounds policy, a/e selection-G.L.O.B., a/e selection-capitol,

and 89-90-91 budget. The emergency status was necessary due to the addition of grounds status report, removal of introduction of guests and visitors (none to introduce), and removal of communications (none to present).

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: December 13, 1988, 12:16 p.m.

TRD-8812675

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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, December 23, 1988, 9 a.m. The Hearings Division will consider Docket 8480-Petition of Sharen Schranz, et al., for relief from electric utility rates set by the City of Austin.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 14, 1988, 1:29 p.m.

TRD-8812729

Wednesday, December 28, 1988, 10 a.m. The Hearings Division will consider Docket 8437-Petition of Tri-County Electric Cooperative, Inc., to decrease residential rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 13, 1988, 3:09 p.m.

TRD-8812685

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State Purchasing and General Services Commission

Thursday, December 15, 1988, 9:15 a.m. The Commission for the State Purchasing and General Services Commission met in emergency session in Room 2401, East Tower, Hyatt Regency DFW Airport, International Parkway, Dallas. According to the agenda, the commission met in executive session to discuss the status of the potential purchase of real property pursuant to the provisions of Texas Civil Statutes, Article 601b, §5.34. The emergency status was necessary in order for the commission to take action essential for presentation to a meeting of the legislative budget board scheduled for December 16, 1988.

Contact: John R. Neel, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: December 14, 1988, 8:12 a.m.

TRD-8812707

Structural Pest Control Board

Tuesday, January 3, 1989, 9 a.m. The Structural Pest Control Board will meet in Suite 201, 9101 Burnet Road, Austin. According to the agenda summary, the board will approve minutes of the November 14, 1988, meeting; evaluate the investigation and reports concerning Mrs. Elizabeth M.T. Q'Nan de Iglesias at 9 a.m.; appearance by Harold W. Morse at 10:30 a.m.; consider request for rehearing from Bobby R. Bishop at 1 p.m.; appoint continuing education committee; hear executive director's report; discuss miscellaneous business; elect officers for 1989; and meet in executive session.

Contact: David A. Ivie, 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: December 14, 1988, 4:12 p.m.

TRD-8812743

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Texas Water Commission

Thursday, December 15, 1988, 9 a.m. The Texas Water Commission met in emergency session in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission considered emergency order requiring H. Adair Smalley, doing business as M&S Water Company, doing business as PI Utilities, Inc., to provide continuous and adequate service in Jasper County. The emergency session was necessary as discontinuance of water service to customers was imminent because of utility's failure to act, and this emergency is necessary to protect the public health, safety, and welfare.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: December 14, 1988, 4:04 p.m.

TRD-8812742

Monday, February 27, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider application for extension of time by Muenster Water District to commence construction of a dam and reservoir authorized by certificate of adjudication 08-2323 from November 17, 1988 to November 17, 1990 and to extend the date required for completion of construction of the dam and reservoir from November 17, 1989 to November 17, 1991. The certificate of adjudication authorizes the construction and maintenance of a dam creating a 4,700 acre-foot capacity reservoir on Brushy Creek, tributary of Elm Fork trinity River, tributary of the Trinity River in Cook County, approximately 15 miles west of Gainesville, and the diversion and use of not to exceed 500 acre-feet of water per annum from the reservoir for municipal purposes.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 14, 1988, 4:04 p.m.

TRD-8812734

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Regional Meetings

Meeting Filed December 13, 1988

The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees, met in the Mustang Room, Lubbock Plaza, Lubbock, on December 16, 1988, at 11:30 a.m. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

TRD-8812670

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Meetings Filed December 14, 1988

The Central Texas Council of Governments, Executive committee, met in the Special Events Room, Bell County Expo Center, Belton, on December 15, 1988, at 11 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1803.

The Central Texas Mental Health and Mental Retardation Center, Board of Trustees, met at 408 Mulberry Drive, Brownwood, on December 19, 1988, at 5 p.m. Information may be obtained from Danny Armstrong, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, ext. 102.

The Education Service Center, Region XIV, Board of Directors, met at 1850 State Highway 351, Abilene, on December 15, 1988, at 5:30 p.m. Information may be obtained from Taressa Huey, P.O. Box 70-A, Abilene, Texas 79601.

The Harris County Appraisal District, will meet on the Eighth Floor, 2800 North Loop West, Houston, on December 21, 1988, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291.

The Hays County Appraisal District, Appraisal Review Board, will meet in the Municipal Building, 632 A East Hopkins, San Marcos, on December 21, 1988, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400.

The Lamar County Appraisal District, Board of Directors, will meet at 1523

Lamar Avenue, Paris, on December 20, 1988, at 5 p.m. Information may be obtained from Betty Hanna, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785-7822.

The Leon County Central Appraisal District, Board of Directors, met in the District Office, Centerville, on December 19, 1988, at 7 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (214) 536-2254.

The Limestone County Appraisal District, Board of Directors will meet in the Appraisal District, Limestone County Courthouse, Groesbeck, on December 21, 1988, at 5 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The South Texas Development Council, Board of Trustees and Board of Directors, will meet in the Commissioner's Courtroom, Courthouse Annex, Zapata, on December 22, 1988, at 10:30 a.m. and 11 a.m., respectively. Information may be obtained from Robert Mendiola or Julie Saldana, P.O. Box 2187, Laredo, Texas 78044, (512) 722-3995.

TRD-8812703

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Meetings Filed December 15, 1988

The Houston-Galveston Area Council, Projects Review Committee and Board of Directors, will meet in the Fourth Floor Board of Directors Conference Room, 3555 Timmons, Houston, on December 20, 1988, at 9 a.m. and 10 a.m., respectively. Information may be obtained from Rowena Ballas and Sallie Sosa, P. O. Box 22777, Houston, Texas 77207, (713) 627-3200 or 993-4596.

The Jack County Appraisal District, Board of Directors, will meet in the Los Creek Office Building, 216-D South Main, Jacksboro, on December 20, 1988, at 5 p.m. Information may be obtained from Linda Williams, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

TRD-8812746

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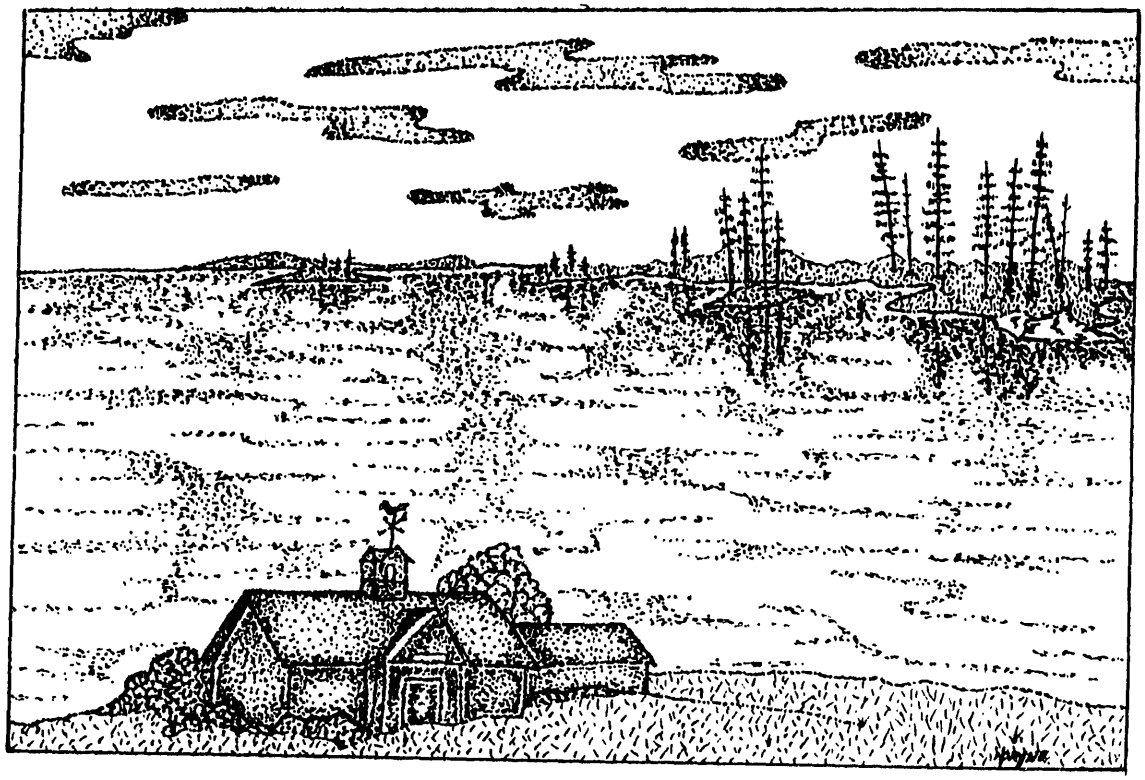

Name: Noe Payne

Grade: 11

School: Del Rio High, San Felipe Del Rio

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board

Notice of Contested Case Hearing

An examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider whether or not Emergency Order Number 88-01, issued by the executive director of the TACB on November 23, 1988, pursuant to TACB §116. 3 should be affirmed, modified, or set aside. Emergency Order Number 88-01, authorized a change in service in Hydrocarbon Storage Tank 2158 and construction of Isostripper Reboiler Heater Number H-1 at Hydrofluoric Alkylation Unit Number 443 at Chevron U.S.A., Inc., at the end of West Seventh Street in Port Arthur, Jefferson County.

Time and place of hearing. The examiner has set the hearing to begin at 1:30 p.m. on January 6, 1989, at the TACB Central Office, Room 332, 6330 Highway 290 East, Austin.

What the applicant must prove. This hearing is a contested case hearing under the Administrative Procedure and Texas Register Act, §13, Texas Civil Statutes, Article 6252-13a. It is generally conducted like a trial in district court. Chevron U.S.A., Inc., must demonstrate, by a preponderance of the evidence, that the proposed change of service and construction with associated emissions will meet the requirements of the Texas Clean Air Act, §3. 27, Texas Civil Statutes (the TCAA), Article 4477-5, and TACB §116.13.

Deadline for requesting to be a party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the applicant and the TACB staff. Any person who may be affected by emissions from the proposed change of service and construction who wants to be made a party must send a specific written request for party status to hearings examiner, Bill Ehret, and make sure that this request is actually received at the TACB Central Office, 6330 Highway 290 East, Austin, Texas 78723, by 5 p.m. on December 19, 1988. The examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status.

Public Attendance and Testimony. Members of the general public may attend the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, at (512) 451-5711, extension 350, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the TACB Legal Division at (512) 451-5711, extension 350, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Information about the order and TACB rules. Information about the order and copies of the TACB's rules and regulations are available at the TACB Regional Office located at 4605-B Concord Road, Beaumont, Texas 77703, the TACB Central Office located at 6330 Highway 290 East, Austin, Texas 78723, and at the Office of the Port Arthur, City Secretary, located at 444 Fourth Street, Port Arthur, Texas 77640.

Legal Authority. This hearing is called and will be conducted under the authority of the Act, §§3.15-3.17, and 3.272, and TACB Procedural Rules 103.11(5), 103.31 and 103.41 and TACB §116.13(c).

Issued in Austin, Texas on December 8, 1988.

TRD-8812661 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: December 12, 1988

For further information, please call (512) 463-4511, ext. 354

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State Banking Board

Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing on January 17, 1989, at 9 a.m. at 2601 North Lamar, Austin, on the charter application for Liberty Bank, North Richland Hills. Application is a conversion application from Liberty National Bank, North Richland Hills, to a state-chartered bank.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on December 12, 1988

TRD-8812681 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: December 13, 1988

For further information, please call (512) 479-1200

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Comptroller of Public Accounts

Request for Information

Pursuant to Texas Civil Statutes, Article 601b, §3.06, the Comptroller of Public Accounts of the State of Texas requests information on the following software.

Description of software. The comptroller is looking for information on Name Search software. This software will be used to locate a taxpayer number using a name or portion of a name.

Person to be contacted. Specifications are contained in the request for information (RFI), a copy of which may be obtained after the publication of this notice, from the Data

Processing Division of the Comptroller of Public Accounts, Room 309, LBJ Building, 111 East 17th Street, Austin, Texas 78774, between the hours of 8 a.m. and 5 p.m., Monday-Friday. The person to contact is Mary Cheryl Dorwart, manager, Data Processing Administration, (512) 463-3909.

Closing date. Information proposals must be in writing and received in the office mentioned above no later than 5 p.m., January 6, 1989.

Evaluation procedure. Vendors offering viable software will be contacted as per the request for information. This is an information request only. No award will be made. If viable software is located, the comptroller anticipates purchasing such software through standard State of Texas purchasing procedures.

Issued in Austin, Texas on December 9, 1988.

TRD-8812621 Bob Bullock
Comptroller of Public Accounts

Filed: December 12, 1988

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

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Texas Department of Health

Correction of Errors

The Texas Department of Health submitted an adopted amendment which contained errors as published in the November 25, 1988, issue of the *Texas Register* (13 TexReg 5915).

In the preamble to §133.21, the third paragraph should read: "Specifically, the amendment to Chapter 11 adds a new definition to §11-1.1, concerning definitions; changes the definition in §11-1.1.6; adds a new §11-1.2.3, concerning the content of hospital transfer policies; adds a provision to §11-2.2.2.1, concerning physician response time in patient evaluation; adds two new subsections to §11-2.4, concerning patients who require emergency services; and adds one new subsection to §11-2.10, concerning the memorandum of transfer.

The department also submitted an adopted section which contained an error as submitted by the department in the June 17, 1988, issue of the *Texas Register* (13 TexReg 3037).

In §143.11, subparagraph (c)(2)(B) should read: "(B) is approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations such as the American Society of Radiologic Technologists, the ARCRT, American Healthcare Radiology Administrators, the American Society of Podiatric Assistant, the Society of Nuclear Medicine, the Chiropractic Council on Education, the Texas Society for Radiologic Technologists, the American Podiatric Medical Association, the American Dental Hygiene Association, the American Medical Association (Category I Continuing Medical Education only), the American Osteopathic Association (Category I Continuing Medical Education only), or the American Dental Association."

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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.

NEW LICENSES ISSUED:

Location	Name	License#	City	ment #	Action
Throughout Texas	Soil Analytical Services Inc.	L04242	College Station	0	11/09/88
Throughout Texas	Duval and Associates Consulting and Construction Co.	L04234	Garland	0	11/09/88
Throughout Texas	Dick Heine, Inc.	L04235	Tyler	0	11/09/88
Throughout Texas	Zone Perforators, Inc.	L04226	Odessa	0	11/21/88

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	ment #	Action
Amarillo	Northwest Texas Hospital	L02054	Amarillo	26	11/10/88
Corpus Christi	National Medical Enterprises Hospital, Inc.	L03827	Corpus Christi	4	11/18/88
El Paso	R. E. Thomason General Hospital	L00502	El Paso	35	11/18/88
Galveston	Saint Mary's Hospital	L00138	Galveston	30	11/21/88
Houston	The U.T. Health Science Center at Houston	L02774	Houston	12	11/14/88
Houston	University of Houston - Clear Lake	L02108	Houston	8	11/14/88
Houston	St. Luke's Episcopal-Texas Children's Hospitals	L00581	Houston	34	11/10/88
Houston	Browning-Ferris Laboratories	L02154	Houston	8	11/17/88
Houston	Park Plaza Hospital	L02071	Houston	19	11/22/88
Jacksonville	Nan Travis Memorial Hospital	L00169	Jacksonville	17	11/22/88
La Porte	E.I. duPont de Nemours & Company	L00314	La Porte	52	11/15/88
Livingston	Trinity River Authority	L03215	Livingston	4	11/16/88

Lubbock	Crisp Vineyards	L04207	Lubbock	1	11/21/88
Mesquite	Charter Suburban Hospital	L02428	Mesquite	15	11/16/88
Odessa	X-Cel NDE, Inc.	L03548	Odessa	10	11/08/88
Orange	Inland-Orange, Inc.	L01029	Orange	32	11/11/88
Plano	Cardiovascular Imaging Center, Inc.	L03704	Plano	4	11/10/88
San Antonio	Baptist Memorial Hospital	L00469	San Antonio	20	11/22/88
Throughout Texas	Wedge Wireline Inc.	L00315	Arlington	66	11/09/88
Throughout Texas	Exxon Chemical Americas	L01135	Baytown	42	11/10/88
Throughout Texas	Houston Department of Health and Human Services	L00149	Houston	37	11/09/88
Throughout Texas	G & G X-Ray, Inc.	L03326	Corpus Christi	15	11/17/88
Throughout Texas	Brazos Valley Inspection Services, Inc.	L02859	Bryan	23	11/17/88

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Throughout Texas	IT Corporation	L03837	Knoxville, TN	2	11/15/88
Throughout Texas	BP Chemicals America, Inc.	L04124	Port Lavaca	1	11/14/88
Throughout Texas	TU Electric - Generating Division	L03975	Dallas	2	11/14/88
Throughout Texas	The Western Company of North America	L01323	Fort Worth	43	11/17/88

Throughout Texas	Guardian NDT Services, Inc.	L04099	Corpus Christi	4	11/18/88
Throughout Texas	D-Arrow Inspection, Inc.	L03818	Houston	16	11/17/88
Throughout Texas	Alpha Testing, Inc.	L03411	Dallas	8	11/16/88
Throughout Texas	Western Atlas International, Inc.	L00446	Houston	90	11/21/88
Throughout Texas	Professional Service Industries, Inc.	L00931	Lombard, Illinois	69	11/21/88
Throughout Texas	Trinity Testing and Inspection Co.	L03628	Victoria	2	11/21/88
Throughout Texas	Gearhart Industries, Inc.	L00442	Fort Worth	66	11/18/88
Throughout Texas	Ultrasonic Specialists, Inc.	L01774	Houston	39	11/22/88
Throughout Texas	The University of Texas at Austin	L00485	Austin	45	11/21/88
Whitney	Lake Whitney Memorial Hospital	L03348	Whitney	4	11/14/88

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	ment #	Action
Abilene	McMurry College	L00030	Abilene	10	11/22/88
Austin	Austin Diagnostic Clinic	L00868	Austin	34	11/17/88
Houston	Ferromet Resources, Inc.	L03509	Houston	4	11/09/88
Houston	University of Texas	L02972	Houston	3	11/18/88
Pasadena	Humana Hospital Southmore	L03501	Pasadena	4	11/22/88
Sweetwater	Domtar Gypsum	L01144	Sweetwater	13	11/21/88
Throughout Texas	Chemical Waste Management, Inc.	L02907	Port Arthur	7	11/15/88
Throughout Texas	Phoenix Wireline Services	L03513	Seguin	4	11/15/88
Throughout Texas	Baker, Shiflett and Associates	L02906	Fort Worth	8	11/21/88
Throughout Texas	City of Arlington	L02899	Arlington	3	11/22/88

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	ment #	Action
Amarillo	M. Fred Johnson, M.D.	L01332	Amarillo	10	11/23/88
Marble Falls	Construction Support Services	L03276	Marble Falls	5	11/09/88
Woden	J. A. Hereford Industries, Inc.	L02885	Woden	3	11/09/88

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 a 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 December 8, 1988

TRD-8812615 Robert A. MacLean, M.D.
Deputy Commissioner, Professional Services
Texas Department of Health

Filed: December 12, 1988

For further information, please call (512) 835-7000.

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Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Order of revocation issued October 19, 1988, to Twin Park Clinic, 105 East Laurel, off Main, San Antonio, Texas 78212, holder of Radioactive Material License Number L00367.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m.-5 p.m. (except holidays).

Issued in Austin, Texas on December 8, 1988.

TRD-8812614 Robert A. MacLean, M.D.
Deputy Commissioner, Professional Services
Texas Department of Health

Filed: December 12, 1988

For further information, please call (512) 835-7000

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State Securities Board

Correction of Error

The State Securities Board submitted proposed amendments which contained errors as published in the December 9, 1988, issue of the *Texas Register* (13 TexReg 6055).

In §107.2 the definition of "Telephone or telegram" should read: "For purposes of the Securities Act, §7.C(2)(c), includes any means of electronic transmission such as, but not limited to telephone, telegraph, graphic scanning, modem or facsimile; provided however, that the office of the State Securities Board has the necessary equipment to accept such a transmission. "

In §141.5 the first sentence to paragraph (a)(3) should read: "If the program has been formed for the primary purpose of financing equipment to be ultimately used by the sponsor [or its affiliates] in its business, the sponsor [or its affiliates] shall have the right to purchase the equipment at the time of sale at fair market value as determined in a commercially reasonable manner."

The first sentence in subparagraph (g)(1)(A) should read: "All expenses of the program shall be billed directly to and paid by the program. The sponsor [or its affiliates] may be reimbursed for the actual cost of goods and materials used for or by the program and obtained from entities unaffiliated with the sponsor."

The second to last sentence in paragraph (g)(3) should read: "The [, which] contract may only be modified by vote of a majority of the then outstanding program interests."

The last sentence of paragraph (h)(1) should read: "Furthermore, the prospectus and program charter documents shall contain language prohibiting such rebates and giveups as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with affiliates.

In §141.6 the last sentence in paragraph (b)(4) should read: "The agreement should [also] provide for a successor sponsor where the only sponsor of the program is an individual."

The last sentence of paragraph (f)(3) should read: **"In addition, the agreement shall not permit the assignees to contract away the fiduciary duty owed to the assignees by the assignor's management under the common law of agency."**

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