

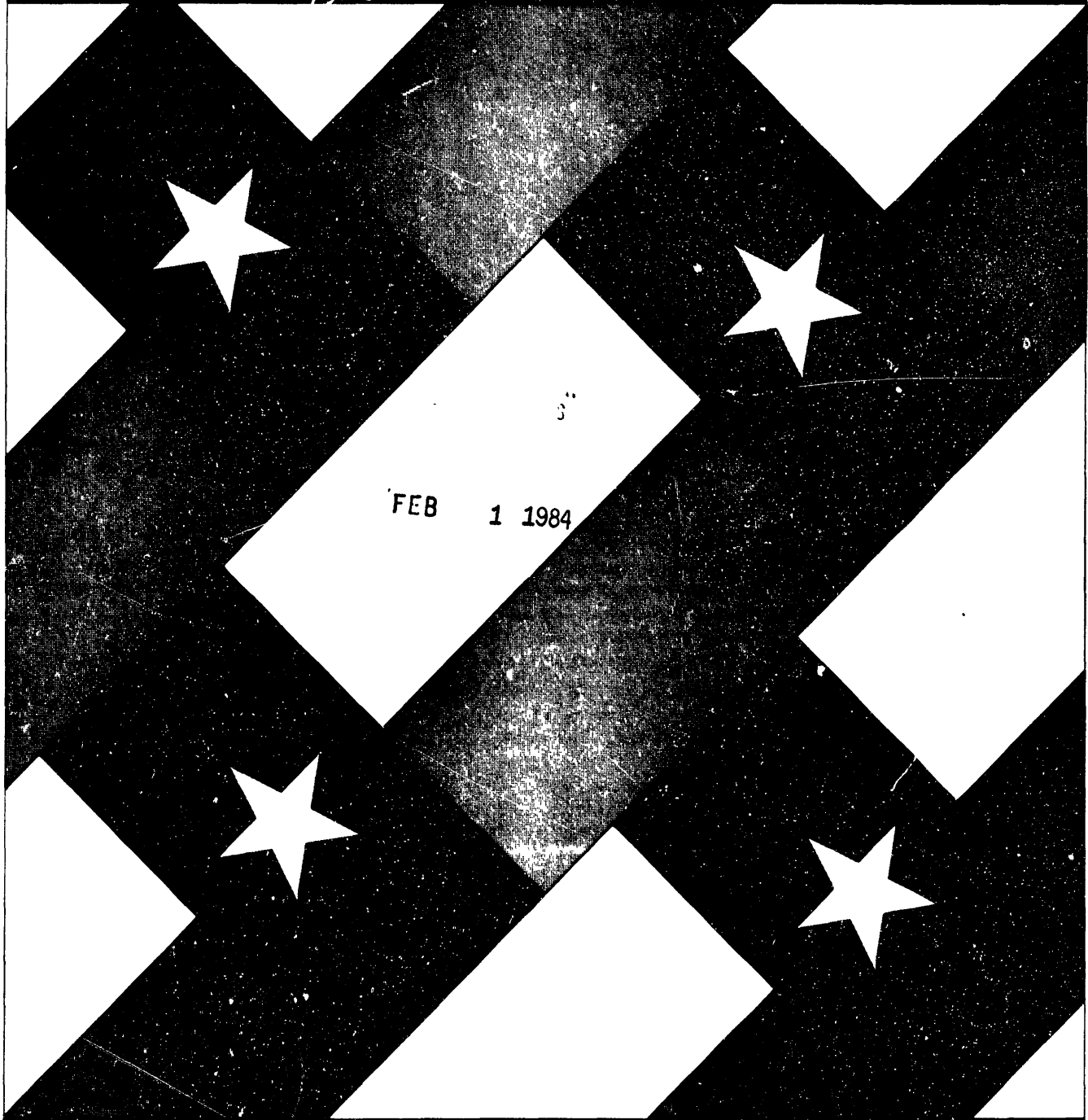
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Texas Register

Volume 9, Number 8, January 31, 1984

Pages 531 - 596



Highlights

The Public Utility Commission adopts on an emergency basis a new section concerning substantive rules

Effective date - January 24

page 537

The Texas State Board of Examiners of Dietitians

adopts on an emergency basis new sections concerning licensure

Effective date - January 24

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The Texas Youth Commission proposes new sections concerning security. Earliest possible date of adoption - March 2

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**Office of
the Secretary
of State**

How To Use the Texas Register

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice a week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1984 with the exception of January 28, July 10, November 27, and December 28, by the Office of the Secretary of State, 201 East 14th Street, P O Box 13824, Austin, Texas 78711-3824, (512) 475-7886

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

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- In Addition—miscellaneous information required to be published by statute or provided as a public service

Specific explanations on the contents of each section can be found on the beginning page of the section. The division also publishes monthly, 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 "9 Tex-Reg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 9 Tex-Reg 3."

How To Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code* (explained below), rule number, or TRD number.

Texas Administrative Code

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

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

1 indicates the title under which the agency appears in the *Texas Administrative Code* (a listing of all the titles appears below).

TAC stands for the *Texas Administrative Code*.

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

Latest Texas Code Reporter
(Master Transmittal Sheet) No. 10, December 1982

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Secretary of State

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The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Register* publishes executive orders issued by the Governor of Texas. Appointments made and proclamations issued by the governor 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) 475-3021

Appointment Made August 31

Texas Juvenile Probation Commission

To be chairman for a term to expire August 31, 1985, pursuant to the Human Resources Code, §75.024(a) and (b):

Jerry Shackelford
309 Potter County Courthouse
Amarillo, Texas 79101

Issued in Austin, Texas, on August 31, 1983.

TRD-840919 Mark White
Governor of Texas



Appointments Made January 18

Economic Development Commission

To be chairman for a term to expire February 15, 1989:

Dan Petty
2001 Bryan Tower
Dallas, Texas 75201

Mr. Petty is replacing Ray Clymer of Wichita Falls, whose term expired.

Issued in Austin, Texas, on January 18, 1984

TRD-840920 Mark White
Governor of Texas

Municipal Retirement System

To the Board of Trustees for a term to expire January 31, 1985:

Charles Edward Wilson
1933 Madera
Waco, Texas 76705

Mr. Wilson is replacing John S. Stiff of Amarillo, who resigned.

Issued in Austin, Texas, on January 18, 1984.

TRD-840921 Mark White
Governor of Texas

Texas Housing Agency

For a term to expire January 31, 1989:

Fred E. Rizk
7903 Woodway
Houston, Texas 77063

Mr. Rizk is replacing Ricks Wilson of San Antonio, whose term expired.

Issued in Austin, Texas, on January 18, 1984.

TRD-840923 Mark White
Governor of Texas

Texas State Board of Public Accountancy

To represent the public for a term to expire January 31, 1989:

Barbara Shimaitis
914 Montview Drive
Katy, Texas 77450

Ms. Shimaitis is replacing James Pendergast, Jr., of San Marcos, whose term expired.

For terms to expire January 31, 1989:

James F. Dunn, Jr.
5215 Indigo Street
Houston, Texas 77096

Mr. Dunn is replacing Oscar E. Reeder of Fort Worth, whose term expired.

Walter D. Davis
16522 Quail Dale
Missouri City, Texas 77459

Mr. Davis is replacing Brooks Wilson of Amarillo, whose term expired.

To represent the public for a term to expire January 31, 1985:

Joel P. Kay
5131 Queensloch
Houston, Texas 77096

Mr. Kay is replacing Eleazar Lucio of Austin, who was not confirmed by the senate.

Issued in Austin, Texas, on January 18, 1984.

TRD-840927, Mark White
840930, Governor of Texas
840922,
840931

Appointments Made January 19

Texas Housing Agency

For a term to expire January 31, 1989:

Melva Washington Becnel
3437 Binz
Houston, Texas 77004

Ms. Becnel is replacing C. W. Hetherly, Jr., of Austin,
whose term expired.

Issued in Austin, Texas, on January 19, 1984.

TRD-840932 Mark White
Governor of Texas

Municipal Retirement System

To the Board of Trustees for a term to expire January
31, 1989:

Ernest M. Briones
425 Southern
Corpus Christi, Texas 78408

Mr. Briones is being reappointed.

Issued in Austin, Texas, on January 19, 1984.

TRD-840933 Mark White
Governor of Texas

Emergency Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule 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.

An agency must submit written reasons, published in the *Register*, for emergency action on a rule. The submission must also include a statement of the legal authority under which the emergency action is promulgated and the text of the emergency adoption. Following each published emergency document is certification information containing the effective and expiration dates of the action and a telephone number from which further information may be obtained.

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

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture Chapter 17. Marketing Division TAP Promotional Emblem

TAC §§17.51-17.56

The Texas Department of Agriculture adopts on an emergency basis amendments to §§17.51-17.56, concerning the Texas Agricultural Product (TAP) promotional emblem, to include an emblem to be known as the "Taste of Texas." These amendments are simultaneously proposed for permanent adoption in this issue of the *Register*.

By this submission, the rules governing the use of the TAP emblem also will apply to the use of the "Taste of Texas" emblem.

The amendments are adopted on an emergency basis under the Texas Agriculture Code, §12.002, so that the "Taste of Texas" emblem may be used immediately in the marketing of Texas agricultural products.

(Editor's note. The "Taste of Texas" emblem referred to in the following rules is published at the end of the Emergency Rules section of this issue of the Texas Register.)

§17.51. *Definitions.* The following words and terms, when used in these sections [this subchapter], shall have the following meanings, unless the context clearly indicates otherwise:

Taste of Texas emblem—A flag-shaped emblem bearing the words "Taste of Texas" so colored as to closely model the flag of the State of Texas.

§17.52. *Application for Permission to Use the TAP or Taste of Texas Promotional Emblem.*

(a) No person shall use, employ, adopt, or utilize the TAP or Taste of Texas promotional emblem in the selling, advertising, marketing, packaging, or other com-

mercial handling of food and fiber products, unless prior application has been made to the commissioner for permission to make such use, employment, adoption, or utilization, and approval has been granted.

(b) Applications submitted under this section shall be made in writing on a form prescribed by the commissioner and shall contain:

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

(5) a statement of the primary source of supply of the product and the commodity or commodities from which it is made, stated in a manner which explains how the applicant intends to employ the TAP or Taste of Texas promotional emblem only on products produced in Texas;

(6)-(10) (No change.)

(11) a statement of how the TAP or Taste of Texas promotional emblem is to be employed, including a sample of the proposed usage; and

(12) (No change.)

(c) A separate application shall be submitted for each product and/or brand name for which permission to use the TAP or Taste of Texas promotional emblem is sought.

(d) (No change.)

§17.53. *Action on Application.*

(a) The director, Marketing Division, Texas Department of Agriculture, within 15 days of receipt of an application for permission to use the TAP or Taste of Texas promotional emblem, shall make an initial determination of whether such permission shall be granted or denied, and forthwith notify the applicant in writing of his decision setting forth in detail the reasons for such grant or denial.

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

§17.54. *Use of the TAP or Taste of Texas Promotional Emblem.* An application for permission to use the TAP or Taste of Texas promotional emblem may be denied if:

(1) application is not made pursuant to §17.52 of this title (relating to Application for Permission to Use the TAP or Taste of Texas Promotional Emblem);

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

(4) the applicant has abused the TAP or Taste of Texas promotional emblem prior to the date of application; or

(5) (No change.)

§17.55. Registration of Those Entitled to Use the TAP or Taste of Texas Promotional Emblem. The director, Marketing Division, Texas Department of Agriculture, shall enroll in a register the names of all applicants granted permission under these sections [this subchapter] to use the TAP or Taste of Texas promotional emblem in the selling, advertising, marketing, packaging, or other commercial handling of food and fiber products. The register shall be available for public inspection during normal business hours in offices of the Texas Department of Agriculture in Austin, Texas.

§17.56. Termination of Permission to Use the TAP or Taste of Texas Promotional Emblem.

(a) Permission granted by the commissioner for the use of the TAP or Taste of Texas promotional emblem may be revoked at any time if the use for which such permission was granted is abused.

(b) A person abuses the TAP or Taste of Texas promotional emblem if:

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

(c) Proceedings for the revocation of permission to use the TAP or Taste of Texas promotional emblem shall be conducted in the manner provided for contested cases by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and Chapter 1 of this title (relating to General Practice and Procedure) [the Rules of Practice and Procedure, Texas Department of Agriculture, Texas Administrative Code, Title 4, Agriculture Part 1, Chapter 1].

(d) A proceeding for revocation of permission to use the TAP or Taste of Texas promotional emblem shall not preclude the commissioner from pursuing, where applicable, the penal and injunctive remedies provided in the Act, §2 and §3.

Issued in Austin, Texas, on January 23, 1984.

TRD-840940 Patrick D. Redman
Agency Liaison
Texas Department of Agriculture

Effective date: January 24, 1984

Expiration date: May 23, 1984

For further information, please call (512) 475-8886.

**TITLE 16. ECONOMIC
REGULATION
Part II. Public Utility Commission of
Texas
Chapter 23. Substantive Rules
Rates**

16 TAC §23.23

The Public Utility Commission of Texas adopts on an emergency basis new §23.23, concerning rate design.

The commissioners have determined that this action is necessary to prevent imminent peril to the public welfare.

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

§23.23 Rate Design.

(a) General. In fixing the rates of a public utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its capital investment used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.

(b) Electric.

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

(2) The provisions of this paragraph apply to all investor-owned generating electric utilities. Beginning with the September 1983 billing period of each utility, respectively, no automatic fuel adjustment clause shall be allowed. Any revision of a utility's billings to its customers to allow for the recovery of additional fuel costs may be made only upon public hearing and order of the commission. No later than August 15, 1983, each utility covered by this section shall file with the commission all information necessary to determine an interim fixed fuel factor, effective with its September 1983 billing period. On September 1, 1983, each utility shall file an application for an interim fixed fuel factor. After notice and hearing, the commission shall set such an interim factor. The interim fuel factor shall remain fixed until the utility's next general rate case or commission-ordered reconciliation, whichever occurs first. The monthly interim fuel factor shall be determined by dividing the actual, unadjusted fuel costs by actual, unadjusted sales for the 12-month period ending June 30, 1983.

(A) All fuel costs shall be reviewed and may be redetermined at the time of the utility's general rate case. All allowed fuel costs, including, if approved, a reconciliation of over- or under-recovery of fuel costs, shall be recovered through the energy portion of the utility's base rates.

(B) In determining allowable fuel costs, the commission may consider the cost of fuel for the utility's own generation, the cost of economy energy, hydroelectric energy, purchased power, cogeneration, wheeling, and other costs associated with generated or purchased power as approved by the commission. In making such determination, the commission shall consider revenues from these or other activities, including off-system sales, to assure that the ratepayers receive an appropriate portion of benefits associated with such revenues.

(C) When approved by the commission, a utility's base rates may be designed to:

(i) include seasonal differentiation of fuel costs, and

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

(D) For all third-party, nonaffiliated fuel contracts, the utility shall have the burden of demonstrating in each general rate case that its contract negotiations have produced the lowest reasonable cost of fuel to ratepayers. To the extent that the utility does not meet its burden of proof, the commission shall disallow the portion of fuel costs that it finds to be unreasonable.

(E) For all fuels acquired from or provided by affiliates of a generating utility, the utility shall have the burden of demonstrating in each general rate case that all fuel and fuel-related affiliate expenses are reasonable and necessary, and that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items

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

(ii) Within 12 months of the implementation of this subsection and thereafter, as determined by the commission, the commission shall perform a full operational investigation of all affiliate fuel suppliers and fuel supply services. The commission may use the results of such investigations during a succeeding general rate case, fuel cost reconciliation proceedings, emergency request proceedings, and elsewhere as it deems appropriate.

(iii) The affiliated companies shall establish, maintain, and provide for commission audit all books and records related to the cost of fuel. These records shall explicitly identify all salaries, contract expenses, or other expenses paid or received among any affiliated companies, their employees, or contract employees

(F) If an electric utility can demonstrate in an emergency request that fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have substantially changed the cost of fuel included in its base rates, the commission shall issue an interim order on such emergency request within 30 days. Such request shall state the nature of the emergency circumstances. If within 120 days after implementation, after a full investigation of the emergency condition, the interim factor is found by the commission to have been excessive, the utility shall refund, with interest at the utility's composite cost of capital during the period the rates were in effect, all excessive collections. Such interest shall be calculated on the cumulative monthly over-recovery balance. If after full investigation the commission determines that no emergency condition existed, a penalty of up to 10% of such collections may be imposed. Any over- or under-recovery of fuel costs existing at the time of the emergency request shall be subject to reconciliation as provided for in subparagraph (I) of this paragraph.

(G) In the event of an unanticipated material decrease in fuel costs or unanticipated material increase in revenues from the sales of economy energy, wheeling, or other sources, such as off-system sales, the utility shall file, under the emergency provision of subparagraph (F) of this paragraph, a request to decrease the fuel portion of its base rates. The commission shall modify the base rates to assure that ratepayers receive an appropriate portion of such savings or revenues.

(H) Each utility shall maintain up-to-date monthly and cumulative records of fuel costs, fuel revenues, and the difference between them, and it shall report this information to the commission on a monthly basis.

(I) No less than 12 months after implementing a change in its base rates, a utility shall request reconciliation of any over-recovery of fuel cost revenues and may request an opportunity to reconcile any under-recovery of such fuel costs. Under-recovery reconciliation shall be granted only for that portion of fuel costs increased by condition or events beyond the control of the utility, and upon demonstration of proof by the utility that such conditions or events could not have been predicted or foreseen at the time the rates were established. Interest to be paid by the utility or to the utility on such over- or under-recovery of fuel costs shall be at the utility's composite cost of capital during the period the rates were in effect. Such interest shall be calculated on the cumulative monthly over-under-recovery balance.

(i) The utility shall have the burden of showing in public hearing that it has operated plant and generated electricity efficiently and that it has maintained effective cost controls. Such burden of proof shall extend to affiliates in the case of affiliate fuel suppliers.

(ii) A utility may not request a fuel cost reconciliation if it has been granted a fuel cost reconciliation within the preceding 12 months. This subsection shall not preclude the reconciling of fuel costs and revenues or the redetermination of allowed fuel costs in the general rate case as approved by the commission, and it shall not preclude the filing of an emergency request as provided in subparagraphs (F) and (G) of this paragraph.

(J) If, upon audit or other finding, the commission determines that fuel cost revenue collections are excessive, it may initiate a fuel cost reconciliation hearing.

(K) Utilities covered by this section shall provide, in a format specified by the commission, monthly reports containing all information required by the commission to monitor and evaluate fuel-related activities, including economy energy transactions, wheeling, off-system sales, or other similar transactions.

(3) The provisions of this paragraph apply to all investor-owned electric distribution utilities, river authorities, and all cooperative-owned electric utilities. Beginning with the September 1983 billing period of each utility, respectively, an electric utility which purchases electricity at wholesale pursuant to rate schedules approved, promulgated, or accepted by a federal or state authority and/or purchases from qualifying facilities pursuant to a long-term contract may be allowed to include within its tariff a purchased power cost recovery factor (PCRF) clause which authorizes the utility to charge or credit its customers for the cost of power and energy purchased to the extent that such cost varies from the amount

of purchased power cost utilized to fix the base rates of the utility. Purchased electricity cost includes all amounts chargeable for electricity under the wholesale tariffs pursuant to which the electricity is purchased. The terms and conditions of such clause shall be approved by an order of the commission.

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

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

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

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

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

(D) The utility shall maintain up-to-date monthly records of the costs to be recovered through the PCRFB. Such records shall show at each month end the total estimated PCRFB cost for that month, the actual PCRFB cost on a cumulative basis, and the total dollar amount of revenues resulting from the PCRFB portion of customer rates. These records and the calculation of the PCRFB shall be reported to the commission on a most-current-month basis.

(E) Investor-owned electric distribution utilities, river authorities, and cooperative-owned electric utilities which own generating facilities must demonstrate in the general rate case that they have made the lowest reasonable cost fuel purchases, generated electricity efficiently, and maintained adequate cost controls. All findings in the rate case concerning fuel purchases, generation efficiency, and cost controls shall be summarized fairly in plain language and reported within 60 days to the regular wholesale and retail customers who buy the power and energy. Beginning September 1, 1983, no automatic adjustment shall be allowed for the cost of fuel consumed by such generating utilities. Any revision of such a utility's billings to allow for the recovery of such fuel costs in excess of the cost of such fuel approved by the commission shall be made only upon public hearing and order of the commission. No later than September 9, 1983, each utility covered by this section shall file with the commission all information necessary to determine an interim fixed fuel factor effective with its September 1983 billing period. The interim fuel factor shall remain fixed until changed by order of the commission. In the case of utilities which own generation facilities, the monthly interim fuel factor shall be determined by dividing actual unadjusted fuel costs incurred by such utility in its own generation facilities by actual net generation from its own generation facilities for the 12-month period ending June 30, 1983, and

subtracting the amount, if any, of the per kilowatt-hour fuel cost of such generation included in the utility's existing energy rate. In the case of utilities which do not have 12 months of normal operational history at that time, such utilities shall file with the commission a requested factor together with all supporting information. The commission shall, after opportunity for a public hearing, enter its order approving an interim factor. The interim factor shall remain in effect until further order of the commission in a general rate proceeding, a reconciliation proceeding, or in an emergency proceeding.

(i) In the case of utilities which own generation facilities, the cost of fuel consumed by such utilities in the operation of generation facilities owned by the utility shall be recovered through a fixed per kilowatt-hour charge multiplied times the kilowatt-hour sales generated by the utility and divided by the total kilowatt-hour sales by the utility. All such fuel costs shall be reviewed at the time of the utility's general rate case. All allowed fuel costs, including a reconciliation of over-recovery or under-recovery, shall be recovered through the fixed per kilowatt-hour charge.

(ii) In determining allowable fuel costs, the commission may consider the cost of fuel for the utility's own generation, the cost of economy energy, hydroelectric energy, purchased power, cogeneration, wheeling, and other costs associated with generated power as approved by the commission. In making such determination, the commission shall consider revenues and costs from these or other activities, including off-system sales, to assure that the ratepayers receive an appropriate portion of benefits associated with such revenues.

(iii) When approved by the commission, a utility's rates may be designed to include seasonal differentiation of fuel costs, and account for system losses and for differences in line losses corresponding to voltage level of service.

(iv) If the electric utility can demonstrate in an emergency request that fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have substantially changed the cost of fuel previously fixed by commission order, the commission shall issue an interim order on such emergency request within five days. Such order shall be effective for the period of the unforeseen circumstances. The request shall state the nature of the emergency and the magnitude of change in fuel costs resulting from the emergency circumstances. If within 120 days after implementation, after a full investigation of the emergency condition, the interim factor is found by the commission to have been excessive, the utility shall refund all excessive collections. Any over- or under-recovery of fuel costs existing at the time of the emergency request or resulting from the emergency relief shall be subject to reconciliation as provided in clause (viii) of this subparagraph.

(v) In the event of an unanticipated material decrease in fuel costs or unanticipated material increase in revenues from the sales of economy energy, wheeling, or other sources, such as off-system sales, the utility shall file, under the emergency provision of clause (iv) of this subparagraph, a request to decrease the fuel charge. The commission shall modify the charge to assure that rate-

payers receive an appropriate portion of such savings or revenues.

(vi) Each utility shall maintain up-to-date monthly and cumulative records of fuel costs of its generation, fuel revenues by reason of fuel used in generation facilities owned by the utility, and the difference between them, and it shall report this information to the commission on a monthly basis.

(vii) Such a utility may request reconciliation of any over-recovery or under-recovery of fuel cost revenues annually. The utility shall have the burden of showing in public hearing that it has operated plant and generated electricity efficiently and that it has maintained effective cost controls.

(viii) If, upon audit or other findings, the commission determines that fuel cost revenue collections are excessive, it may initiate a fuel cost reconciliation hearing.

(ix) Utilities covered by this section shall provide, in a format specified by the commission, monthly reports containing all information required by the commission to monitor and evaluate fuel-related activities, including economy energy transactions, wheeling, off-system sales, or other similar transactions.

(c) Water and sewer. In order to promote conservation, water and sewer utilities shall not apply declining-block rate structures or any other rate design which may offer discounts or reduced rates for increased usage.

Issued in Austin, Texas, on January 18, 1984.

TRD-840968 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Effective date: January 24, 1984

Expiration date: May 23, 1984

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

Service

16 TAC §23.35

(Editor's note: The text of the following rule repealed on an emergency basis will not be published. The rule may be examined in the offices of the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Public Utility Commission of Texas adopts on an emergency basis the repeal of §23.35, concerning applicant deposit. The commission has determined this action is necessary to avoid imminent peril to the welfare of the public due to the threat of disconnection from basic utility service.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably re-

quired in the exercise of its powers and jurisdiction and in administering the provisions of this Act.

§23.35. Applicant Deposit.

Issued in Austin, Texas, on January 18, 1984.

TRD-840969 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

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Customer Service and Protection

16 TAC §23.43

The Public Utility Commission of Texas adopts on an emergency basis new §23.43, concerning applicant and customer deposit. The commission has determined that this action is necessary to avoid imminent peril to the welfare of the public due to the threat of disconnection from basic utility service.

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

§23.43. Applicant and Customer Deposit.

(a) Establishment of credit for permanent residential applicants.

(1) Each utility may require a residential applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with rules for prompt payment of bills. Credit history shall be applied equally for a reasonable period of time to a spouse or former spouse who shared the service. Credit history maintained by one must be applied equally to the other without modification and without additional qualifications not required of the other.

(2) For purposes of this section, applicant is to be defined as a person who applied for service for the first time or reapplies at a new or existing location after discontinuance of service. Customer is defined as someone who is currently receiving service.

(3) Subject to these rules, a residential applicant shall not be required to pay a deposit:

(A) if the residential applicant has been a customer of any utility for the same kind of service within the last two years and is not delinquent in payment of any such utility service account, and during the last 12 consecutive months of service did not have more than one occasion in which a bill for such utility service was paid after becoming delinquent and never had service disconnected for nonpayment;

(B) if the residential applicant demonstrates a satisfactory credit rating by appropriate means, including, but not limited to, the production of generally acceptable credit cards, letters of credit reference, the names of credit references which may be quickly and inexpensively contacted by the utility, or ownership of substantial equity; or

(C) if the residential applicant furnishes in writing a satisfactory guarantee to secure payment of bills for the service required;

(i) unless otherwise agreed to by the guarantor, the guarantee shall be for the amount of deposit the utility would normally seek on the applicant's account. The amount of guarantee shall be clearly indicated on any documents or letters of guarantee signed by the guarantor;

(ii) when the customer has paid bills for service for 12 consecutive residential billings without having service disconnected for nonpayment of bills and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of current bills, the utility shall void and return any documents or letters of guarantee placed with the utility to the guarantor.

(4) An initial deposit may not be required from residential customers unless the customer has more than one occasion during the last 12 consecutive months of service in which a bill for utility service was paid after becoming delinquent or if the customer's service was disconnected for nonpayment. A deposit required pursuant to this section shall not exceed an amount equivalent to one-sixth of annual billings. The customer may furnish in writing a satisfactory guarantee to secure payment of bills in lieu of a cash deposit.

(5) At the time a deposit is required, every electric and telephone utility shall provide applicants for and customers of commercial, industrial, or residential service written information about deposits separate from the information on deposits required in §23.41(a)(5) of this title (relating to Customer Relations). This information shall contain:

- (A) the circumstances under which a utility may require a deposit or an additional deposit,
- (B) how a deposit is calculated,
- (C) the amount of interest paid on a deposit and how this interest is calculated,
- (D) the time frame and requirement for return of the deposit to the customer.

(b) Commercial and industrial service. In the case of commercial or industrial service, if the credit of an applicant for service has not been established satisfactorily to the utility, the applicant may be required to make a deposit.

(c) Amount of deposit and interest for permanent residential, commercial, and industrial service and exemption from deposit.

(1) The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings. If actual billings of a residential customer are at least twice the amount of the estimated billings after two billing periods, a new deposit may be required to be made within seven days. If such additional deposit is not made, the utility may disconnect service under the standard disconnection procedure.

(2) All applicants for permanent residential service who are 65 years of age or older will be considered as having established credit if such applicant does not have an outstanding account balance with the utility or another utility for the same utility service which accrued within

the last two years. No cash deposit shall be required of such applicant under these conditions.

(3) Each utility which requires deposits to be made by its customers shall pay a minimum interest on such deposits at an annual rate at least equal to 6.0%. If refund of deposit is made within 30 days of receipt of deposit, no interest payment is required. If the utility retains the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(A) Payment of the interest to the customer shall be annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(B) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(4) Determining amount of deposit. In determining the amount of any deposit permitted by these rules, no revenue from estimated telephone directory advertising may be used.

(d) Deposits for temporary or seasonal service and for weekend residences. The utility may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service, provided such policy is applied in a uniform and nondiscriminatory manner. The utility may require a deposit for weekend residences sufficient to reasonably protect it against the assumed risk, provided such policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (h) of this section.

(e) Complaint by applicant or customer. Each utility shall direct its personnel engaged in initial contact with an applicant or customer for service, seeking to establish or reestablish credit under the provisions of these sections, to inform the customer, if dissatisfaction is expressed with the utility's decision, of the customer's right to file a complaint with the commission thereon.

(f) Reestablishment of credit. Every applicant who previously has been a customer of the utility and whose service has been discontinued for nonpayment of bills or meter tampering or bypassing of meter shall be required before service is rendered to pay all amounts due the utility or execute a deferred payment agreement, if offered, and reestablish credit as provided in subsection (a) of this section.

(1) In cases of meter tampering or bypassing of meter, electric energy or water consumed, but not metered, may be estimated by the utility based on amounts used under similar conditions during preceding years. Where no previous usage history exists or is considered unreliable due to meter tampering or bypassing of meter, consumption may be estimated on the basis of usage levels of similar customers and under similar conditions.

(2) A utility may charge for all labor, material, and equipment necessary to repair or replace all equipment damaged due to meter tampering or bypassing of meter.

(g) Records of deposits.

(1) The utility shall keep records to show:

- (A) the name and address of each depositor;
- (B) the amount and date of the deposit; and
- (C) each transaction concerning the deposit.

(2) The utility shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish claim if the receipt is lost.

(3) A record of each unclaimed deposit must be maintained for at least four years, during which time the utility shall make a reasonable effort to return the deposit.

(h) Refund of deposit.

(1) If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one premise to another within the service area of the utility shall not be deemed a disconnection within the meaning of these sections, and no additional deposit may be demanded unless permitted by these sections.

(2) When the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive commercial or industrial billings without having service disconnected for nonpayment of bill and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of the current bills, the utility shall promptly and automatically refund the deposit plus accrued interest to the customer in the form of cash or credit to a customer's bill, or void the guarantee. If the customer does not meet these refund criteria, the deposit and interest may be retained in accordance with subsection (c) of this section.

(i) Upon sale or transfer of utility or company. Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the commission under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon.

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**TITLE 22. EXAMINING BOARDS
Part XXXI. Texas State Board of
Examiners of Dietitians
Chapter 711. Dietitians
Licensure**

22 TAC §5711.1-711.11, 711.13

The Texas State Board of Examiners of Dietitians, with the approval of the Texas Board of Health, adopts on an emergency basis new §5711.1-711.11 and

711.13, concerning the licensure and regulation of dietitians. These rules will implement the requirements of the new Texas Licensed Dietitian Act, Texas Civil Statutes, Article 4512h (Senate Bill 671, 68th Legislature, 1983, effective on September 1, 1983). Section 711.12 is reserved for procedures on violations and complaints which will be proposed at a later date.

Article 4512h, §6, authorizes the Texas State Board of Examiners of Dietitians to adopt rules to implement the new law, subject to final approval of the Texas Board of Health. Since a quorum of the board was not available until November 1983, and since applications for licenses are now being received, it is necessary that these rules be adopted on an emergency basis.

These rules are adopted under authority of the Administrative Procedure and Texas Register Act, Article 6252-13a, §5(d), which authorizes state agencies to adopt emergency rules, and the Licensed Dietitian Act, Texas Civil Statutes, Article 4512h, §6, which authorizes the Texas State Board of Examiners of Dietitians, subject to approval of the Texas Board of Health to implement Article 4512h, to adopt rules.

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

Act—the Licensed Dietitian Act, Texas Civil Statutes, Article 4512h

Association—The American Dietetic Association is the national professional association which accredits educational and preprofessional training programs in dietetics

Board—the Texas State Board of Examiners of Dietitians.

Board of Health—the Texas Board of Health.

Commission—The Commission on Dietetic Registration is the agency which evaluates credentials, administers proficiency examinations, and issues certificates of registration to qualifying dietitians, and is a member of the National Commission on Health Certifying Agencies.

Department—the Texas Department of Health.

Dietitian—a person licensed under the Act.

Dietetics—the professional discipline of applying and integrating scientific principles of nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle. The term includes, without limitation, the development, management, and provision of nutritional services.

Licensed dietitian (L.D.)—a person licensed under the Act.

Licensee—a person who holds a current license as a dietitian or provisional licensed dietitian issued by the Texas State Board of Examiners of Dietitians under the Act.

Provisional licensed dietitian (P.L.D.)—a person provisionally licensed under the Act.

Registered dietitian (R.D.)—a person who is currently registered as a registered dietitian by the commission.

§711.2. The Board's Operation.

(a) Purpose. This section shall set out the organization and administration and other general procedures and policies governing the operation of the board.

(b) Officers.

(1) Chairman.

(A) The chairman shall preside at all board meetings at which he or she is in attendance, and perform all duties prescribed by law or board rules.

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

(2) Vice-chairman.

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

(B) In case the office of chairman becomes vacant, the vice-chairman will serve until a successor is elected.

(c) Meetings.

(1) The board shall hold at least two regular meetings and additional meetings as necessary during each year ending on August 31, at such designated date, place, and time as may be determined by the chairman.

(2) Special meetings may be called by the chairman at such times, dates, and places as become necessary for the transaction of board business.

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

(d) Quorum. A quorum of the board necessary to conduct official business is five members.

(e) Transaction of official business.

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

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

(3) Board action shall require a majority vote of those members present and voting.

(f) Policy against discrimination. The board shall make decisions in the discharge of its statutory authority without discrimination based on any person's race, creed, sex, religion, national origin, geographical distribution, age, physical condition, or economic status.

(g) Impartiality. Any board member who is unable to be impartial in any proceeding before the board, such as that pertaining to an applicant's eligibility for licensure or a complaint against or a violation by a licensee, shall so declare this to the board and shall not participate in any board proceedings involving that individual.

(h) Attendance.

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

(2) The board may report to the governor and the Texas Sunset Advisory Commission the attendance records of members.

(i) Reimbursement for expenses.

(1) A board member is entitled to a per diem payment at the rate set by the legislature for state employees

in the latest General Appropriations Act passed by the Texas Legislature.

(2) A board member is entitled to compensation for transportation expenses as provided by the latest General Appropriations Act passed by the Texas Legislature.

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

(4) Requests for out-of-state travel for board activities must be approved by the management and administration of the Texas Department of Health on appropriate forms.

(5) Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show a benefit to the state.

(j) Rules of order. *Roberts Rules of Order Revised* shall be the basis of parliamentary decisions except where otherwise provided by these board rules.

(k) Agendas.

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

(2) The official agenda of a meeting shall be filed with the Texas secretary of state in accordance with the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(l) Minutes.

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

(2) After approval by the board, the minutes of any board meeting are official only when affixed with the original signatures of the chairman and the executive secretary.

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

(m) Official records.

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

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

(3) Official records may not be taken from board offices; however, persons may obtain photocopies of files upon written request and by paying the cost per page set by the State Purchasing and General Services Commission. Payment shall be made prior to release of the records and may be made by personal check.

(n) Elections.

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

(2) A vacancy which occurs in the offices of chairman and vice-chairman may be filled by a majority vote of those members present and voting at the next board meeting.

(o) Committees.

(1) The board or the chairman, with the approval of the board, may establish committees deemed necessary to assist the board in carrying out its duties and responsibilities.

(2) The chairman may appoint the members of the board to serve on committees and may designate the committee chairman.

(3) The chairman of the board may appoint non-board members to serve as committee members on a consultant or voluntary basis, subject to board approval.

(4) Committee chairmen shall make regular reports to the board in interim written reports and/or at regular meetings, as needed.

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

(6) Committees shall meet when called by the chairman of the committee or when so directed by the board.

(p) Executive secretary.

(1) The executive secretary of the board shall be an employee of the department, designated by the Texas Commissioner of Health as the administrator of board licensing activities and shall serve at the direction of the board.

(2) The executive secretary shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board.

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

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

(5) The executive secretary shall attend all meetings of the board as a nonvoting participant.

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

(7) The executive secretary shall prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of the Act.

(8) The executive secretary shall have the responsibility of assembling and evaluating materials submitted by applicants for licensure. Determinations made by the executive secretary are subject to the approval of the board, which shall make the final decisions on the eligibility of all applicants.

(q) Official seal. The official seal of the board shall consist of two circles with the words "Texas State Board of Examiners of Dietitians" circularly arranged about the inner edge of the outermost circle, and in the center of the innermost circle there shall be a five-pointed star, surrounded by the live oak and olive branches common to official state seals.

(r) License certificates.

(1) The board shall prepare and provide to each licensee a license certificate and license identification card which contain the licensee's name, license number and date of licensure.

(2) Official license certificates shall be signed by the chairman and vice-chairman and be affixed with the seal of the board. Official license identification cards shall bear the signatures of the chairman and the executive secretary.

(3) Any license certificate and license identification card issued by the board remain the property of the board and must be surrendered to the board on demand.

(4) The license certificate must be displayed in an appropriate and public manner as follows:

(A) the license certificate shall be displayed in the primary office or place of employment of the licensee; or

(B) in the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current board issued license identification card.

(5) Neither the licensee nor anyone else shall display a license certificate or carry a license identification card which has been photocopied or otherwise reproduced.

(6) Neither the licensee nor anyone else shall make any alteration on a license certificate or license identification card issued by the board.

(s) Registry.

(1) Each year the executive secretary, on behalf of the Board of Health, shall publish a registry of current licensees.

(2) The registry shall include, but not be limited to, the name, preferred mailing address, and telephone numbers of current licensees.

(3) An original copy of the registry will be available for inspection by licensees and members of the public in the office of the executive secretary. Upon receipt of a written request and payment of a fee, the executive secretary shall furnish at cost a copy to a licensee or member of the public. The cost of a copy of the registry or any portion thereof shall be in accordance with the cost guidelines of the State Purchasing and General Services Commission.

(t) Consumer information. The executive secretary, on behalf of the Board of Health, and with the approval of the board, shall publish information of consumer interest which describes the regulatory functions of the board, board procedures to handle and resolve consumer complaints, and the profession of dietetics. Distribution of consumer information shall follow the department's guidelines for distribution of literature and forms.

(u) Fees.

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

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

(A) Application processing fee—\$30;

(B) License fee—\$48 (prorated at \$4.00 per month);

(C) Renewal fee—\$48;

(D) Late renewal fee—\$72 (when renewed within 90 days of expiration date);

(E) License renewal penalty fee—\$48 plus all unpaid renewal fees (when license is renewed after 90 days of expiration, but less than two years);

(F) License certificate replacement fee—\$10;

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

(H) Returned check fee—\$15;

(I) Board prepared licensure examination fee—\$60.

(3) Schedule of fees for licensure as a provisional dietitian:

(A) Application processing fee—\$30;

(B) License fee—\$42 (prorated at \$3.50 per month);

(C) Renewal fee—\$42;

(D) Late renewal fee—\$63 (when renewed within 90 days of expiration date);

(E) License renewal penalty fee—\$42 plus all unpaid renewal fees (when license is renewed after 90 days of expiration but less than two years);

(F) License certificate replacement fee—\$10;

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

(H) Returned check fee—\$15.

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

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

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

§711.3. *The Profession of Dietetics*

(a) Purpose. The rules on the profession of dietetics shall be to establish the standards of professional and ethical conduct required of a licensee.

(b) Dietetics. The term includes, without limitation, the development, management, and provision of nutritional services, as follows:

(1) planning, developing, controlling, and evaluating food service systems;

(2) coordinating and integrating clinical and administrative aspects of dietetics to provide quality nutritional care;

(3) establishing and maintaining standards of food production, service, sanitation, safety, and security;

(4) planning, conducting, and evaluating educational programs relating to nutritional care;

(5) developing menu patterns and evaluating them for nutritional adequacy;

(6) planning layout designs and determining equipment requirements for food service facilities;

(7) developing specifications for the procurement of food and food service equipment and supplies;

(8) developing and implementing plans of nutritional care for individuals, based on assessment of nutritional needs;

(9) counseling individuals, families, and groups in nutritional principles, dietary plans, and food selection and economics;

(10) communicating appropriate diet history and nutritional care data through written record systems;

(11) participating with physicians and allied health personnel as the provider of nutritional care;

(12) planning, conducting, or participating in, and interpreting, evaluating, and utilizing pertinent current research related to nutritional care;

(13) providing consultation and nutritional care to community groups and identifying and evaluating needs to establish priorities for community nutrition programs;

(14) publishing and evaluating technical and lay food and nutrition publications for all age, socioeconomic, and ethnic groups; and

(15) planning, conducting, and evaluating dietary studies and participating in nutritional and epidemiologic studies with a nutritional component.

(c) Provider of nutritional services. A person licensed by the board is designated as a health care provider of nutritional services.

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

(1) Professional representation and responsibilities.

(A) A licensee shall not misrepresent any professional qualifications or credentials.

(B) A licensee shall not make any false or misleading claims about the efficacy of any services or methods of treatment.

(C) A licensee shall not permit the use of his/her name for the purpose of certifying that dietetic services have been rendered unless he/she has provided or supervised the provision of those services.

(D) A licensee shall not promote or endorse products in a manner that is false or misleading.

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

(F) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of nutritional services.

(G) A licensee shall comply with the provisions of the Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, and the Texas Dangerous Drug Act, Texas Civil Statutes, Article 4476-14, and any rules of the Board of Health or the Texas State Board of Pharmacy implementing those statutes.

(H) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of board rules to the board's executive secretary.

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

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

(2) Professional relationships with clients.

(A) A licensee shall make known to a prospective client the important aspects of the professional relationship, including fees and arrangement for payment

which might affect the client's decision to enter into the relationship.

(B) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of clients for professional services.

(C) A licensee shall disclose to clients any interest in commercial enterprises which the licensee promotes for the purpose of personal gain or profit.

(D) A licensee shall take reasonable action to inform a client's physician and any appropriate allied health care provider in cases where a client's nutritional status indicates a change in medical status.

(E) A licensee shall provide nutritional services without discrimination based on race, creed, sex, religion, national origin, or age.

(F) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of client communication and/or records.

§711.4. Academic Requirements for Examination and Licensure.

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

(b) General.

(1) The board shall accept as meeting licensure requirements baccalaureate and post-baccalaureate degrees received from American colleges or universities which held accreditation, at the time the degree was conferred, from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

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

(3) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

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

(5) In evaluating transcripts, the board shall consider a quarter hour of academic credit as $\frac{2}{3}$ of a semester hour.

(6) In the event that an academic deficiency is present, an applicant may have one year in which to complete the additional course work acceptable to the board before the applicant will be required to pay additional application fees.

(7) Persons applying for licensure must possess a baccalaureate or post-baccalaureate degree, including a minimum of 24 semester hours from the fields of human nutrition, food and nutrition, dietetics, or food systems management, or an equivalent major course of study as may be approved by the board.

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

(A) a baccalaureate or post-baccalaureate degree, including a minimum of 30 semester hours specifi-

cally designed to train a person to apply and integrate scientific principles of human nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle. Of these 30 semester hours, a minimum of 18 semester hours must be from human nutrition, food and nutritive dietetics, or food systems management; or

(B) a baccalaureate or post-baccalaureate degree, including a major course of study meeting the minimum academic requirements to qualify for examination by the commission.

(c) Initial licensing period.

(1) Applicants may satisfy the academic requirements following a baccalaureate or post-baccalaureate degree as set out in subsection (b)(7) and (8) of this section.

(2) Those applicants who are registered by the commission on the effective date of the Act, or who become so registered before September 1, 1984, are deemed to meet the academic requirements.

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

(a) Purpose. The purpose of this section is to set out the experience requirements to qualify for the licensing examination under the Act.

(b) Experience requirements for licensure as a dietitian effective on September 1, 1984.

(1) Effective September 1, 1984, applicants for examination must have satisfactorily completed a preplanned professional experience program or internship in the profession of dietetics.

(2) A preplanned professional experience program shall:

(A) receive prior approval from the board or be approved by the association. Applicants for a board-approved preplanned professional experience program must be provisionally licensed under the Act; and

(B) have endorsements submitted from two licensed dietitians or registered dietitians who supervised the applicant's academic or work experience; and

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

(i) a preplanned professional experience program as approved by the board on an individual basis following the completion of a baccalaureate or post-baccalaureate degree with a major course of study as specified in the academic requirements of these sections; or

(ii) six months of full-time or 12 months of half-time successful experience in the profession of dietetics following the completion of a post-baccalaureate degree with a major course of study as specified in the academic requirements of these rules; or

(iii) one academic year on a half-time basis of a graduate assistantship in the field of dietetics, as defined in §711.3 of this title (relating to The Profession of Dietetics), in conjunction with a post-baccalaureate degree with a major course of study as specified in §711.4 of this title (relating to Academic Requirements for Examination and Licensure).

(3) An internship shall:

(A) be defined as either a dietetic internship accredited by the association, or a coordinated

undergraduate program in dietetics accredited by the association; and

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

(4) Documentation of the internship or preplanned professional experience program must be provided to the board by completing the proper documentation form prescribed by the board and returning such to the board.

(c) Experience requirements for licensure as a dietitian before September 1, 1984. Persons making application before September 1, 1984, must have either:

(1) satisfactorily completed a preplanned professional experience program or internship in the profession of dietetics, as set out in subsection (b) of this section, except for (2)(C)(i), which for the purposes of the initial licensing period shall be defined as six or more months of preplanned professional experience programs as approved by the board on an individual basis following completion of a baccalaureate or post-baccalaureate degree with a major course of study as specified in the academic requirements of these rules, or

(2) been professionally employed with or without compensation in the field of dietetics for not less than three of the 10 years beginning September 1, 1973, through August 31, 1983, and documented by submitting to the board the properly completed forms. Three years shall be defined as not less than a total of 36 months in the 10-year period in which the applicant has been employed a minimum of eight hours per month in the provision of dietetic services, as set out in §711.3(b) of this title (relating to The Profession of Dietetics).

(3) Persons who are registered by the commission on the effective date of the Act or who become so registered before September 1, 1984, are deemed to meet the experience requirements.

§711.6. Supervision of Provisional Licensed Dietitians.

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

(b) General.

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

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

(3) The supervising licensed dietitian must sign the application for a provisional license and the application for renewal of the provisional license on and after September 1, 1984.

(4) Applications for licensure as a provisional licensed dietitian received on or before August 31, 1984, must be signed by a supervising licensed dietitian, or by a dietitian who qualifies for licensure as a licensed dietitian by the board.

§711.7. Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures for examination and licensure.

(b) General.

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

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

(3) The board must receive all required application materials at least 45 days prior to the date the applicant wishes to take the examination.

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

(5) The board will consider a person who files a completed application form and fee postmarked on or before August 31, 1984, as meeting the deadline for licensure without examination and may complete the processing of the person's materials after that date. A person wishing to meet requirements for licensure without examination must have completed all academic and experience requirements by August 31, 1984.

(c) Required application materials.

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

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

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

(C) a statement by which the applicant holds the board and its agents free from any damage or claim for damage by reason of any action taken in connection with the application, examination, or any other aspect of relicensing;

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

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

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

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

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

(2) Internship or preplanned professional experience program documentation form. The board-approved form shall contain:

(A) the applicant's name;

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

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

(D) the inclusive dates of the program;

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

(F) effective September 1, 1984, the form must also include:

(i) the credentials of the director or coordinator of each program at the time, and

(ii) the signed statements of endorsements from the program directors or coordinators who can formally attest to the applicant's successful completion of experience.

(3) Employment documentation report form for the initial licensing period (expires August 31, 1984). The board-approved employment documentation form for submitting documentation of employment in the field of dietetics for three of the 10 years beginning September 1, 1973, through August 31, 1983, shall contain:

(A) the name of the applicant;

(B) the name and address of the agency or institution where the experience was gained (a separate form should be used for each one);

(C) the number of hours worked each month and the inclusive dates of employment;

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

(E) the applicant's job title during employment; and

(F) a signed statement of employment verification from the agency(ies) or institution(s) where the experience was gained.

(4) Transcripts. All applicants must submit official transcript(s) of all relevant college work. For the initial licensing period only, transcripts will not be required for those persons who are registered by the commission.

(5) Other documents. *Vitæ*, resumes, and other documentation of the applicant's credentials may be submitted.

(6) Disapproved applications. A person whose application for licensure has been disapproved may request in writing an informal conference with the board to review its decision on the basis of the materials contained in the application.

§711.8. *Examinations for Dietitian Licensure.*

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

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

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

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

(2) an examination given by the commission; or

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

(d) Applications for examination.

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

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

(3) A form indicating intent to take an examination given by the commission must be completed and returned to the board by the applicant at least 15 days prior to the date of examination.

(e) Locations.

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

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

(f) Grading.

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

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

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

(g) Results.

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

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

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

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

(h) Failures.

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

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

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

§711.9. Licensing.

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

(b) Issuance of licenses.

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

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

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

(c) Reciprocity. The board shall waive the examination requirement for an applicant who:

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

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

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

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

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

§711.10. License Renewal.

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

(b) General.

(1) A licensee must renew the license annually.

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

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

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

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

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

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

(d) License renewal.

(1) At least 30 days prior to the expiration date of a person's license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due and a license renewal form which the licensee must complete and return to the board with the required fee. The timely return of the completed renewal form shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for all licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and category of employment. The license renewal form for the provisional licensed dietitian must include a signed statement by the supervising licensed dietitian indicating receipt of the required report forms.

(3) The board shall not consider a license to be renewed until it receives both the completed license renewal form and the renewal fee.

(4) The board shall issue to a licensee who has met all requirements for renewal a renewal license identification card and may issue a renewal validation sticker to be affixed to the original certificate.

(e) Late renewal.

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

(2) A person whose license has expired for not more than 90 days may renew the license by paying to the department the required renewal fee and a penalty fee that is one half of the renewal fee in the form of a certified check or money order (as specified in §711.2(u) of this title (relating to The Board's Operation)).

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

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

(f) Surrender of license certificate. A person who fails to renew a license after two years is required to surrender the license certificate and license identification card to the board.

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

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

(b) Criminal convictions which directly relate to the profession of dietetics.

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

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

(A) the nature and seriousness of the crime;

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

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

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

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

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

(II) offenses against property (Title 7);

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

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

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

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

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

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

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

(1) The board's executive secretary will give written notice to the person that the board intends to deny, suspend, or revoke the license after hearing in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the board's formal hearing procedures, §711.13 of this title (relating to Formal Hearings).

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

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court

of Travis County, Texas, for review of the evidence presented to the board and its decision; and

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

§711.13. Formal Hearings.

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

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

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

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

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

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

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

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

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

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

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

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

(c) General.

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

other state statutes and agency rules will prevail over these rules.

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

(d) Notice.

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

(2) The notice shall contain:

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

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

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

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

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

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

(e) Parties to the hearing.

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

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

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

(4) Time of designation as a party. The hearing examiner shall designate parties prior to final closing of the hearing, and no person will be admitted as a party later except upon a finding by the hearing examiner of good cause and extenuating circumstances and that the hearing in progress will not be unreasonably delayed.

(5) Different classifications for parties. In their pleadings, parties may classify themselves as applicants, petitioners, respondents, protestants, complainants, etc.,

but regardless of such classification, the hearing examiner has the authority to determine and designate their true status whenever necessary.

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

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

(f) Subpoenas.

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

(2) There must be a show of good cause for the subpoena, i.e., the witnesses or documents must have information that is relevant and material to the hearing and the subpoena should not result in undue harassment, imposition, inconvenience, or expense to a party to the hearing.

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

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

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

(6) The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by the APTRA, §14.

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

(h) Prehearing conferences.

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

(A) the formulation and simplification of issues;

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

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing;

(E) specifying the number of witnesses;

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

(G) the designation of parties; and,

(H) other matters which may expedite the hearing.

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

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

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

(i) The hearing procedure.

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

- (A) convene and call the hearing to order;
- (B) state the purpose of and the legal authority for the hearing;
- (C) announce that a record of the hearing will be made;
- (D) outline the procedure and order of presentation that will be followed;
- (E) administer oaths to those who intend to testify; and
- (F) take any and all other actions as authorized by applicable law and these rules to provide for a fair, just, and proper hearing.

(2) Order of presentation.

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

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

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

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

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

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

(G) After interested persons make statements or if there are no such statements, the hearing examiner, at his discretion, may allow final arguments or take the case under advisement, note the time, and close the hearing. For sufficient cause, the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(3) Consolidation. The hearing examiner, upon his own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the board shall not be consolidated without con-

sent of all parties to such proceedings, unless the hearing examiner finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

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

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

- (A) all pleadings, motions, and intermediate rulings;
- (B) evidence received or considered;
- (C) a statement of matters officially noticed;
- (D) questions and offers of proof, objections, and rulings of them;
- (E) proposed findings and exceptions;
- (F) any decision, opinion, or report by the hearing examiner;
- (G) all staff memoranda or data submitted to or considered by the hearing examiner or members of the board who are involved in making the decision.

(6) Recording the hearing.

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

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

(7) Assessing the cost of a transcript.

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

(B) In accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §13(g), proceedings, or any part of them, shall be transcribed on written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.

(C) In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a written transcript of the hearing proceeding, or any part thereof, the board may:

(i) require the appealing party to file with the board the original and one copy of such written transcript; or

(ii) acquire such written transcript directly from the court reporter or other person preparing the same and thereafter assess the cost of the original and

one copy of such transcript against the appealing party as reimbursement for the cost of same.

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

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

(B) Documentary evidence. Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which are typical and representative, and may, at his discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the hearing examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a hearing examiner's decision to remove only typical or representative documents.

(C) Exhibits.

(i) Form. Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

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

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

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

(D) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit,

upon the witness being sworn and identifying the same as a true and accurate record of what his testimony would be if he were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his prepared testimony shall be subject to a motion to strike either in whole or in part.

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

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

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

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

(j) Action after the hearing.

(1) Reopening of hearing for new evidence.

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

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

(C) Notice and procedural requirements will be the same as for the original hearing.

(2) Proposal for decision.

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

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

(C) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same, and with the time designated by the hearing examiner.

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

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

(4) Final orders or decisions.

(A) The final order or decision will be rendered by the board.

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

(C) Unless otherwise permitted by statute or by these sections, all final orders shall be signed by the executive secretary and the chairman of the board; however, interim orders may be issued by the hearing examiner in accordance with his order of appointment.

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

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

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

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

Issued in Austin, Texas, on January 24, 1984.

TRD-841025 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: January 24, 1984
Expiration date: May 25, 1984
For further information, please call (512) 458-7531.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XII. Texas Advisory Board of Occupational Therapy Chapter 361. General Rules

40 TAC §§361.1-361.17

The Texas Advisory Board of Occupational Therapy (TABOT) adopts on an emergency basis new §§361.1-361.17, concerning the board's duties in administering the Occupational Therapy Title Act. These emergency rules are adopted in view of the public welfare need that necessary matters be timely handled by the board pending the adoption of regular rules.

In particular, two situations make the publication of emergency rules necessary at this time. First, the Occupational Therapy Title Act was effective September 1, 1983, and contains a "grandfather clause" (§21) authorizing present occupational therapy practitioners to be licensed without examination upon submission of the application form prescribed by the board before March 1, 1984. Second, the next examination for occupational therapists will be administered by the American Occupational Therapy Association in January 1984. To provide the necessary administrative procedures for these situations as well as general administrative matters, the board adopts temporary rules pending adoption of regular rules.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 8851, §5(e), which provide the Texas Advisory Board of Occupational Therapy with the authority to propose rules consistent with this Act to carry out its duties in administering this Act.

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

Act—Texas Civil Statutes, Article 8851, §§1-31; called Occupational Therapy Title Act.

Applicant—A person who applies for a license to the Texas Advisory Board of Occupational Therapy.

Board—The Texas Advisory Board of Occupational Therapy.

Executive director—Executive director of the board.

License—An occupational therapist registered (OTR) license or certified occupational therapy assistant (COTA) license.

Recognized educational institution—An educational institution offering a course of study in occupational therapy that has been accredited or approved by an agency recognized by the U.S. Department of Education and/or the Council on Postsecondary Accreditation.

§361.2. *Board Meetings.*

(a) The board holds meetings at such times and places as the board designates.

(b) The chairman of the board may call regular or special meetings of the board and shall call such meetings on the written request of any other three members.

(c) The chairman gives written notification of the time, place, and purposes of any regular or special

meeting to be mailed to each member of the board by the executive director at least seven days before the time of the meeting. All decisions by a standing or special committee are subject to final approval by the board.

(d) Unless otherwise determined in advance by the board, all meetings are held in Austin.

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

(f) Except upon invitation of the board or the chairman of the board, no person may appear before the board or any committee thereof unless he shall file with the executive director to the board a written request for such appearance at least four days before the date of such appearance and unless the chairman of the board, or a majority of the board, approves the request. Insofar as possible, any person who appears before the board pursuant to the four-day notice provision or without notice pursuant to the provisions of this subsection will provide a written statement of the substance of such person's presentation to the board, and, insofar as possible, such written statement will be delivered to the executive director to the board in sufficient time for copies to be distributed to the board prior to the meeting.

(g) A quorum of the board consists of four members.

(h) *Robert's Rules of Order*, newly revised, are the basis of parliamentary decisions except as otherwise provided by board policies.

(i) The official minutes of board meetings are kept in the office of the executive director and are available to any person desiring to examine them.

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

§361.3. Policy on Handicapped Applicants.

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

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

§361.4. License Certificate.

(a) The board prepares and provides to each occupational therapist and occupational therapy assistant licensed under this Act a license certificate which contains the licensee's name, the license number, and the effective date.

(b) Official licenses are signed by the chairman and affixed with the official seal of the board. The official seal of the board consists of a circle with the words "Texas Advisory Board of Occupational Therapy" circularly arranged about the inner edge with a five-pointed star in the center of the circle surrounded by the live oak and olive branch configuration common to the state seal.

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

(d) Upon application, the board will replace a lost, damaged, or destroyed license certificate upon payment

of the replacement cost and evidence satisfactory to the board of such loss, damage, or destruction.

(e) Upon application and payment of processing costs, the board will provide a duplicate license certificate for a second place of practice.

§361.5. Registry. The executive director maintains a register containing the names of all occupational therapists and occupational therapy assistants licensed under this Act which is open to public inspection.

§361.6. Application of Rules.

(a) These rules apply to the regulation and practice of occupational therapy as provided in the Act for occupational therapists and occupational therapy assistants.

(b) The Act, §29, provides that any person who knowingly or intentionally violates a provision of the Act commits a Class A misdemeanor.

(c) These rules do not apply to a licensee of another state agency performing health care services within the scope of the applicable licensing act.

(d) The licensure provisions of these rules do not apply to:

(1) aides or orderlies assisting licensees under this Act;

(2) any person pursuing a course of study leading to a degree or certificate in occupational therapy in an accredited or approved educational program if such activities and services constitute a part of a supervised course of study, if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(3) any person fulfilling the supervised field work experience requirements of §361.9 of this title (relating to Requirements for Licensing), if such activities and services constitute a part of the experience necessary to meet the requirement of that section;

(4) an occupational therapist doing special projects in patient care while working toward an advanced degree from an accredited college or university;

(5) an occupational therapist or occupational therapy assistant licensed by another state or who meets the requirements for certification as an occupational therapist registered or a certified occupational therapy assistant established by the American Occupational Therapy Association who does not live in the state but who comes into the state to provide or attend educational activities or to assist in a case of medical emergency or to engage in special occupational therapy projects. The duration of this exemption shall be no more than four consecutive months; or

(6) any qualified and properly trained person or persons acting under a physician's supervision pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d), subdivision (l).

§361.7. Types of Licenses.

(a) The board issues two types of licenses: a regular license and a temporary license.

(b) The board issues a temporary license to:

(1) an applicant who has applied for a license on the form prescribed by the board, paid the prescribed fees, and meets all qualifications for a license except taking the written examination prescribed by the board for licensure. A temporary license expires on a date determined

by the board, which will allow the board to consider examination results of the next administered examination and process the regular license as appropriate. After the applicant passes the prescribed examination, a regular license is issued effective the date of expiration of the temporary license;

(2) a person who has applied for endorsement of his/her license as provided in §361.8 of this title (relating to Application for License). The temporary license issued expires on the effective date of a regular license subsequently issued by the board;

(3) a person who has failed the written examination or who fails to appear or complete the examination when the board, in its discretion, finds circumstances that indicate that a temporary license should be issued for a period of time set by the board.

(c) The board issues a regular license to:

(1) an applicant who files a written application for licensure in the form provided by the board, meets all qualifications for licensure to include successfully passing the prescribed examination, and has paid the prescribed license fees;

(2) an applicant who held a certification as an OTR or COTA by the American Occupational Therapy Association on September 1, 1983, and submits before March 1, 1984, an application in the form prescribed by the board, pays the prescribed license fees, and meets all qualifications for licensure except the written examination. Such applicants are required to take a written examination;

(3) an applicant who is licensed or otherwise registered as an OTR or COTA by another state, the District of Columbia, or a commonwealth or territory of the United States whose requirements for licensing or registration were at the date of licensing or registration substantially equal to the requirements prescribed by the Act. The board will issue a temporary license on payment of endorsement license fee and evidence satisfactory to the board of current out-of-state license, and will issue a regular license on approval of the application and payment of regular license fee;

(4) a foreign-trained applicant who has furnished proof of good moral character and completion of education and supervised field work requirements substantially equal to those required of other applicants, has paid the prescribed fees, and has passed the written examination.

§361.8. Application for License.

(a) Request for application for all licenses will be made in writing to the executive director of the Texas Advisory Board of Occupational Therapy, 118 East Riverside Drive, Austin, Texas 78704. In the request for application, the applicant will state which of the following classifications is applicable.

(b) Upon receipt of a request for application, the executive director will forward to the applicant the appropriate application forms or provide the necessary information. Applicants for licenses are considered by the board in the following classifications:

(1) those present practitioners who held certification as an OTR or COTA by the American Occupational Therapy Association on September 1, 1983. On submission of the prescribed application approved by the board and payment of prescribed fees on or before March 1,

1984, applicants in this category will be granted a regular license without examination;

(2) applicants who held a certification as either an OTR or COTA by the American Occupational Therapy Association after September 1, 1983, but prior to the date of application for a license. These applicants, upon approval by the board, will be issued a temporary license which expires on a date determined by the board, which will allow the board to consider examination results from the next administered examination and process the regular license as appropriate;

(3) An applicant who applies for endorsement of his or her license and is licensed or otherwise registered as an OTR or COTA by another state, District of Columbia, or a commonwealth or territory of the United States whose requirements for licensing or registration were at the date of licensing or registration substantially equal to the requirements prescribed by the Act as determined and approved by the board. The applicant will be issued a temporary license based upon the applicant's current out-of-state license and the payment of the prescribed endorsement license fee. The applicant will be issued a regular license without examination upon approval by the board of a properly submitted application form prescribed by the board and payment of the prescribed fees.

(4) A foreign-trained applicant for licensure who satisfies the requirements of §361.9 of this title (relating to Requirements for Licensing), to include evidence of substantially equal educational and supervised field work requirements.

§361.9. Requirements for Licensing.

(a) Unless excepted by these rules, an applicant for a license under these rules shall file a written application on the form prescribed by the board showing to the satisfaction of the board that the following requirements are met:

(1) evidence of good moral character;
(2) pay prescribed fees;
(3) pass required written examination;
(4) for license as an occupational therapist, satisfactory evidence of having successfully obtained one of the following:

(A) a baccalaureate degree in occupational therapy from a recognized educational institution;

(B) a postgraduate degree in occupational therapy from a recognized educational institution;

(C) a certificate from a recognized educational institution evidencing successful completion of required undergraduate occupational therapy course work awarded to persons with a baccalaureate degree which is not in occupational therapy;

(5) for license as an occupational therapist, a minimum of six months supervised field work arranged by the recognized educational institution where the applicant met the academic requirements;

(6) for license as an occupational therapy assistant, satisfactory evidence of having successfully obtained one of the following:

(A) an associate degree in occupational therapy from a recognized educational institution;

(B) an occupational therapy assistant certificate from a recognized education institution;

(7) for license as an occupational therapy assistant, evidence of having successfully completed a minimum of two months' supervised field work arranged by the recognized educational institution where the applicant met the academic requirements.

(b) As an exception to the requirements of subsection (a)(4) of this section, certain occupational therapy assistants may be licensed as an occupational therapist if he or she has:

- (1) practiced as an occupational therapy assistant for four years prior to application;
- (2) completed a minimum of six months of supervised field experience before January 1, 1983;
- (3) passed the examination for occupational therapists; and
- (4) paid prescribed fees.

§361.10. License and Other Fees. The following fees are prescribed by the board and are required to be paid before a license is issued. The application fee will be submitted with the application in the form of a check and/or money order and is nonrefundable.

Application Fees	OTR	COTA
Regular license	\$10	\$10
Temporary license pending:		
Passage of examination	\$10	\$10
Endorsement inquiry	\$15	\$15
Foreign credentials inquiry	\$15	\$15
Regular License Fees		
Practitioners certified as of September 1, 1983	\$9/month from 3-1-84 to end of month preceding the month of first birthday in 1985	\$6/month from 3-1-84 to end of month preceding the month of first birthday in 1985
Prorated to birthday	\$9/month from acceptance of application to end of month preceding the month of first birthday in 1985	\$6/month from acceptance of application to end of month preceding the month of first birthday in 1985
Regular Annual License Fee	\$100/year	\$75/year
Temporary License Fee Pending:		
Passage of examination	\$9/month from application acceptance for three months after month in which exam is taken	\$6/month from application acceptance for three months after month in which exam is taken

Endorsement inquiry	\$9/month from application acceptance for next three months	\$6/month from application acceptance for next three months
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Foreign credentials inquiry	\$9/month from application acceptance for next three months	\$6/month from application acceptance for next three months
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Renewal of License

Fees		
On time	\$100/year	\$75/year
Late	\$100/year plus \$9/month for each month delinquent	\$75/year plus \$6/month for each month delinquent

§361.11. License Renewal.

(a) The renewal of an unexpired license is issued on submission of an application form prescribed by the board and payment of a renewal fee before the expiration date of the license.

(b) The renewal of a license that has expired for less than three years from the date of application for renewal, may be renewed by submitting an application on a form prescribed by the board and payment of the prescribed late renewal fee.

(c) A license that has expired for more than three consecutive years may be reinstated only by complying with the requirements for issuing an original license.

(d) The effective renewal date of a license that has expired for 60 days or less will be the date following the expiration date of the prior license. The effective date of other expired licenses will be the date issued by the board.

(e) Unless otherwise provided in these sections, a license expires on the licensee's birthday, except for licenses which would have expired before January 1, 1985, in which case the license does not expire until the licensee's first birthday after January 1, 1985.

§361.12. Use of Titles.

(a) Only a licensed occupational therapist may use the title "Occupational Therapist Registered" and the initials "O.T.R."

(b) Only a licensed Occupational Therapy Assistant may use the title "Certified Occupational Therapy Assistant" and the initials "C.O.T.A."

§361.13. Display of License Certificate.

(a) Each licensed occupational therapist and occupational therapy assistant shall display the license certificate and the renewal certificate issued by the board in a prominent place in the principal location of practice.

(b) An occupational therapist and occupational therapy assistant shall not make any alteration on a license certificate issued by the board.

(c) An applicant shall not display a reproduction of a license certificate except a duplicate license issued by the board.

§361.14. Application Approval and Examinations.

(a) The board shall approve applicants for licenses at least once a year. Applicants may be required to appear in person at the discretion of the board.

(1) The board approves an examination for occupational therapists and occupational therapy assistants and sets the standards for acceptable performance.

(2) The board will announce the times and places of the examination of applicants for licensure and gives reasonable public notification.

(3) The board will accept the examination process currently administered by the American Occupational Therapy Association. Each applicant for examination is responsible for fulfilling the requirements to take this examination and for authorizing the release of the examination results to the board.

(b) Examinations are in writing and will test the occupational therapist's and occupational therapy assistant's knowledge of the basic and clinical sciences relating to occupational therapy and occupational therapy techniques and methods.

(c) Other subjects may be tested as the board requires in order to determine the applicant's fitness to practice.

(d) Applicants for licensure may obtain their examination scores and may review their papers on written application to the executive director.

(e) Examination failure.

(1) In the event an applicant fails the examination, he or she may take it again upon payment of fees.

(2) The applicant who fails the examination a second time may take it the third time after lapse of a specific period of time determined by the board, not to exceed one year.

(3) Testing of an applicant after the third failure is decided by the board on an individual basis

§361.15. Denial, Suspension, or Revocation of a License.

(a) After hearing or waiver of hearing, the board may deny, suspend, or revoke a license or otherwise discipline an applicant or licensee if the applicant or licensee has:

(1) used drugs or intoxicating liquors to an extent that affects his or her professional competence to include the use of a drug or intoxicating liquor, whether or not controlled, to an extent or in manner that is dangerous to the licensee, any other person, or the public, or to an extent that such use impairs the licensee's ability to practice occupational therapy in a safe and responsible manner;

(2) been convicted of a crime other than minor offenses defined as "minor misdemeanors," "violations," or "offenses," in any court if the acts for which he or she was convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant;

(3) obtained or attempted to obtain a license by fraud or deception to include using fraud or deception

in completing examination requirements for licensure;

(4) been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant;

(5) been adjudicated mentally incompetent by a court of competent jurisdiction;

(6) practiced occupational therapy in a manner detrimental to the public health and welfare to include:

(A) impersonating another person holding an occupational therapy license or allowing another person to use his or her license;

(B) using occupational therapy techniques or modalities for entertainment or other purposes not consistent with the development of occupational therapy as a profession, as a science, or as a means for promoting the public health and welfare;

(C) failing to report or otherwise concealing information related to violations of the Act, or rules and regulations pursuant to the Act which could therefore result in harm to the public health and welfare or damage to the reputation of the profession;

(D) intentionally making or filing a false or misleading report, or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such a report;

(E) intentionally harassing, abusing, or intimidating a patient either physically or verbally;

(F) appearing to refer or referring a patient to a third person for the purpose of receiving a fee or other consideration from the third person;

(G) intentionally divulging, without patient consent, information gained within the context of the patient-professional relationship;

(H) failing to obtain informed consent prior to engaging in scientific research involving patients, or otherwise violating ethical principles of research as defined by Principle 9, "Research with Human Participants," in the *Ethical Principles for Psychologists* published by the American Psychological Association, or other occupational therapy standards;

(7) advertised in a manner that in any way tends to deceive or defraud the public to include advertising in a manner that is deceptive, fraudulent, or that violates community standards of morality or propriety; or

(8) had his or her license to practice occupational therapy revoked or suspended, or had other disciplinary action taken against him or her, or had his or her application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.

(b) If the board proposes to deny, suspend, or revoke a license of an applicant or licensee, or take other disciplinary action, the board shall notify the applicant or licensee in writing by registered or certified mail:

(1) of the reason for the proposed suspension, revocation, denial, or disqualification;

(2) that he or she may request an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, or, on submission of documentary evidence, appeal and request that the board reconsider its decision without a hearing; and

(3) that the appeal must be received by the executive director not later than 90 days from the date of the board's notice. If the appeal is not so received, the applicant or licensee will be considered as waiving a hearing and not contesting the proposed action.

(c) If the applicant or licensee does not request an administrative hearing, the board will determine the matter and take appropriate action.

(d) If the board determines that a license is denied or revoked and administrative appeal rights have been exhausted, the individual concerned may not request reconsideration or reinstatement before the 180th day after the effective date of the denial or revocation. Any such request will be made in the manner and form required by the board and the matter determined by the board.

(e) The license of any person who has not renewed within 90 days of the expiration date is automatically revoked unless the board takes contrary action at any time.

§361.16. Administrative Hearing Procedures.

(a) Purpose. These rules cover the formal hearing procedures and practices that will be used by the board in handling denials, suspensions, and revocations of licensure and other contested cases and implement the contested case provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the relevant sections of the Occupational Therapy Title Act

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

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

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

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

(4) Licensee—Any person licensed by the board

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

(6) Person—Any natural person, partnership, corporation, association, governmental subdivision, or public or private organization

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

(c) General.

(1) Initiating a formal hearing The board on its own motion or on petition or application from a person or party may initiate a formal hearing and shall conduct it in accordance with the provisions of the APTRA, other state statutes, and board rules applying to the hearing.

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

(d) Notice.

(1) The hearing examiner shall give notice of the hearing according to the notice requirements of the applicable law or board rules authorizing the hearing. If no such requirements exist, the hearing examiner shall give notice to the parties by personal service or by registered or certified mail, return receipt requested. All notices under this subsection must be given not less than 10 days prior to the hearing, and all notices shall, as required by the APTRA, be filed with the Office of the Secretary of State and published in the *Texas Register*.

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

(e) Parties to the hearing.

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

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

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

(4) Time of designation as a party. The hearing examiner shall designate parties prior to final closing of the hearing, and no person will be admitted as a party later except upon a finding by the hearing examiner of good cause and extenuating circumstances and that the hearing in progress will not be unreasonably delayed.

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

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

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

(f) Subpoenas.

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

(2) There has to be a show of good cause for the subpoena, i.e., the witnesses or documents must have information that is relevant and material to the hearing, and the subpoena should not result in undue harassment, imposition, inconvenience, or expense to a party to the hearing.

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

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

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

(6) The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by the APTRA, §14.

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

(h) Prehearing conferences.

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

(A) the formulation and simplification of issues;

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

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing;

(E) specifying the number of witnesses;

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

(G) designation of parties; and

(H) other matters which may expedite the hearing.

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

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

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

(i) The hearing procedure.

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

(A) convene and call the hearing to order;

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

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

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

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

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

(2) Order of presentation.

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

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

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

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

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

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

(G) After interested persons make statements, or if there are no such statements, the hearing examiner, at his discretion, may allow final arguments to take the case under advisement, note the time, and close the hearing. For sufficient cause, the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

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

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

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

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

- (B) evidence received or considered;
- (C) a statement of matters officially noticed;
- (D) questions and offers of proof, objections, and rulings of them;
- (E) proposed findings and exceptions;
- (F) any decision, opinion, or report by the hearing examiner;
- (G) all staff memoranda or data submitted to or considered by the hearing examiner or members of the agency who are involved in making the decision.

(6) Recording the hearing. The hearing examiner will keep either a stenographic, magnetic tape, or other appropriate verbatim record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter. Any party desiring a written transcript of the proceeding shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the APTRA, §13(g). In those cases when a magnetic tape recording of the formal hearing is made, the agency shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the agency necessitating the forwarding of the record to a court of law, the agency may assess the cost of the transcript to the appealing party.

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

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

(B) Documentary evidence. Documentary evidence should be presented in its original form, but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which is typical and representative, and may, at his discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the hearing examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a hearing examiner's decision to remove only typical or representative documents.

(C) Exhibits.

(i) Form. Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

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

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

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

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

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

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

(j) Action after the hearing.

(1) Reopening of hearing for new evidence.

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

(B) The board will reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(C) Notice and procedural requirements will be the same as for the original hearing.

(2) Proposal for decision.

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

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

(C) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same, and within the time designated by the hearing officer.

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

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

(4) Final orders or decisions.

(A) The final order or decision will be rendered by the board.

(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and con-

clusions required by law, either in the body of the order or by reference to an examiner's proposal for decision.

(C) Unless otherwise permitted by statute or by these rules, all final orders shall be signed by the executive director and the chairman of the board; however, interim orders may be issued by the hearing examiner in accordance with his order of appointment.

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

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

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

§361.17. Complaint Procedures.

(a) Except as to those hearings covered by §361.16 of this title (relating to Administrative Hearing Procedures), any person wishing to file a complaint as to any matter covered by these rules may do so in writing to the executive director.

(b) The executive director will take appropriate action to investigate the complaint, make a determination of fact, and notify the board.

(c) The board may, in its discretion, call a meeting to hear or determine the matter. If the matter requires immediate action in the opinion of the executive director and on notification the board does not call a meeting to determine the matter, it will be determined by the executive director. If the board meets, the matter may be determined by it or referred back to the executive director for determination.

Issued in Austin, Texas, on January 18, 1984

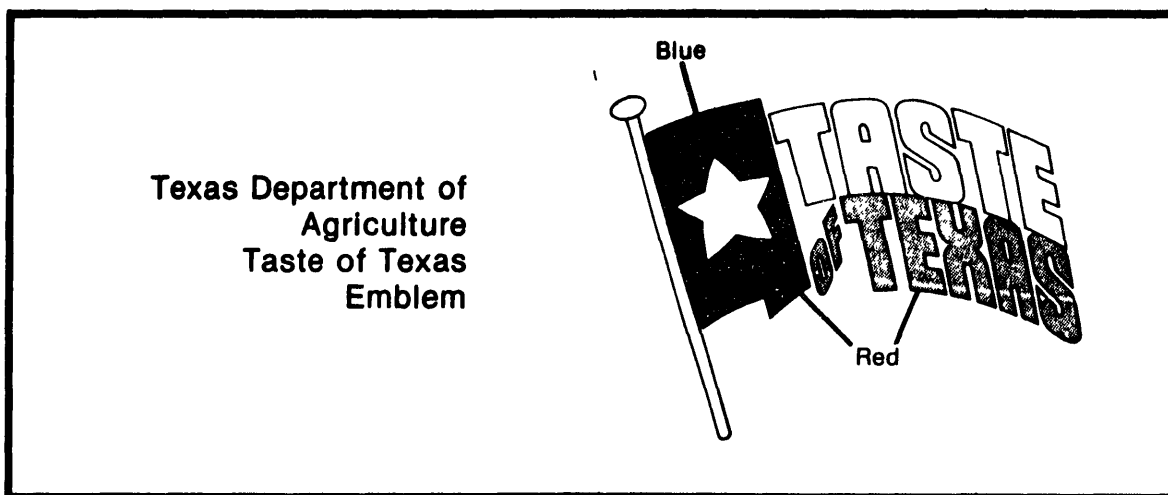
TRD-840935

Vernon H. Newman
General Counsel
Texas Rehabilitation Commission

Effective date: January 23, 1984

Expiration date: May 22, 1984

For further information, please call (512) 445-8126.



Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. A public hearing on the proposal may also be granted if such a procedure is requested by a governmental subdivision or agency, or by an association consisting of at least 25 members.

The proposal, as published in the *Register*, must include a brief explanation of the proposed action; a fiscal statement indicating effect on state or local government; a statement explaining anticipated public benefits and possible economic costs to individuals required to comply with the rule; a request for public comments; a statement of statutory authority under which the proposed rule is to be adopted (and the agency's interpretation of the statutory authority); the text of the proposed action; and a certification statement. The certification information, which includes legal authority, the proposed date of adoption or the earliest possible date that the agency may file notice to adopt the proposal, and a telephone number to call for further information, follows each submission.

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

Proposed Rules

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture Chapter 17. Marketing Division TAP Promotional Emblem

4 TAC §§ 17.51-17.56

(Editor's note: The Texas Department of Agriculture proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section of this issue.)

The Texas Department of Agriculture proposes amendments to §§ 17.51-17.56, concerning the TAP promotional emblem. The amendments are adopted on an emergency basis in this issue of the *Register*.

The Texas Department of Agriculture has applied for trademark registration of a logo to be known as the "Taste of Texas" emblem. This emblem will be used in marketing Texas agricultural products. By this submission, the rules governing the use of the "Texas Agricultural Product" (TAP) emblem also will apply to the use of the "Taste of Texas" emblem.

Section 17.51 has been amended to include the definition of the Taste of Texas emblem. Sections 17.52-17.56 have been amended to include the term "Taste of Texas" after the term TAP in each and every instance where TAP has been used. These changes have been made so that the application procedures and registration requirements used for the TAP promotional emblem also will apply to the Taste of Texas emblem.

Dennis Schafer, fiscal director, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules as proposed.

Paulette Schwartz, domestic marketing assistant director, has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is an increase in sales of Texas agricultural products. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Paulette Schwartz, Assistant Director for Domestic Marketing, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The amendments are proposed under the Texas Agriculture Code, § 12.002, which provides the Texas Department of Agriculture with the authority to regulate the use of the term "Taste of Texas" and any symbol connected with that term for use in marketing Texas agricultural products.

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

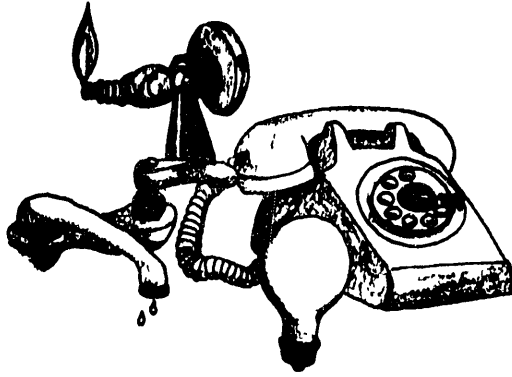
Issued in Austin, Texas, on January 23, 1984.

TRD-840941 Patrick D. Redman
Agency Liaison
Texas Department of Agriculture

Earliest possible date of adoption.

March 2, 1984

For further information, please call (512) 475-6686.



**TITLE 16. ECONOMIC
REGULATION
Part II. Public Utility Commission of
Texas
Chapter 23. Substantive Rules
Customer Service and Protection
16 TAC §23.43**

(Editor's note: The Public Utility Commission of Texas proposes for permanent adoption the new rule it adopts on an emergency basis in this issue. The text of the rule is published in the Emergency Rules section of this issue.)

The Public Utility Commission of Texas proposes new §23.43, concerning applicant deposit. Changes to this rule are necessary because of revisions to the Public Utility Regulatory Act as amended and reenacted by the 68th Legislature, 1983. Rewording and reorganization for the sake of clarity and conciseness also have been proposed.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Ms. Ryan also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is to better inform electric and telephone utility customers as to when a deposit or additional deposit will be required, how it is calculated, the amount of interest paid on deposits, and the time frame and requirements for the return of deposits. The proposal also will increase the period of time residential customers have before additional deposits can be required by the utility. There is an anticipated economic cost to individuals who are required to comply with the rule as proposed, since the rule will increase uncollectibles and carrying costs for utilities which must comply. No figures are available at present to determine actual costs, but it is anticipated that these costs will be substantial.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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

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

Issued in Austin, Texas, on January 18, 1984.

TRD-840971 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Earliest possible date of adoption:
March 2, 1984

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

**TITLE 22. EXAMINING BOARDS
Part XXXI. Texas State Board of
Examiners of Dietitians
Chapter 711. Dietitians
Licensure**

22 TAC §§711.1-711.11, 711.13

(Editor's note. The Texas State Board of Examiners of Dietitians proposes for permanent adoption the new rules it adopts on an emergency basis in this issue. The text of the rules is published in the Emergency Rules section of this issue.)

The Texas State Board of Examiners of Dietitians proposes new §§711.1-711.11 and 711.13, concerning the licensure and regulation of dietitians. These rules are simultaneously adopted on an emergency basis in this issue. These rules will include the general procedures governing the operation of the Texas State Board of Examiners of Dietitians, fee schedule, a code of ethics, academic and experience requirements for examination and licensure, examination procedures, supervision requirements for provisional licensed dietitians, application, licensing and renewal procedures, procedures for licensing persons with criminal backgrounds, and procedures for conducting formal hearings.

Stephen Seale, chief accountant III, has determined that for the first five-year period the rules will be in effect there will be fiscal implications as a result of enforcing or administering the rules.

The effect on state government will be an estimated additional cost of \$76,000 in 1984, and \$85,000

each year for 1985-1988. There is an anticipated increase in revenue of \$77,500 in 1984, and \$85,000 each year for 1985-1988. There is no anticipated effect on local government or small businesses.

Mr. Seale has also determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is insurance that the licensing and regulation of dietitians will identify competent practitioners, and guarantee to the public seeking dietetic services that those persons licensed have met the academic and preprofessional training requirements to provide nutritional services.

The anticipated economic cost to individuals who are required to comply with the rule as proposed is an application fee of \$30, a licensure fee (prorated) of \$48, and an examination fee of \$60.

Comments on the proposal may be submitted to Donna S. Hardin, Executive Secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7531. Comments will be received for 30 days from the date of publication of the proposed rules. A public hearing has been scheduled at 1:30 p.m. on February 27, 1984, in the auditorium, Texas Department of Health, 1100 West 49th Street, Austin, Texas.

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

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

Issued in Austin, Texas, on January 24, 1984.

TRD-841026 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption
April 14, 1984

For further information, please call (512) 458-7531

TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 37. Maternal and Child
Health Services
Epilepsy Program

25 TAC §§37.211-37.224

The Texas Department of Health proposes new §§37.211-37.224, concerning the provisions of diag-

nostic, treatment, and support services to eligible persons who have epilepsy.

Stephen Seale, chief accountant III, has determined that there will be fiscal implications as a result of enforcing or administering the rules. The anticipated effect on state government for the first five-year period the rules will be in effect will be an additional cost of \$294,000 each year from 1984-1988. There is no anticipated effect on local government or small businesses.

Mr. Seale also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is comprehensive diagnostic treatment and support services to persons with epilepsy who are in need of assistance.

The anticipated economic cost to individuals who are required to comply with the rules as proposed will be from \$0 to \$3,000, if they desire to engage an attorney to appeal a decision made under these rules.

Comments on the proposal may be submitted to Punam Myer, M.D., Chief, Bureau of Crippled Children's Services, 1100 West 49th Street, Austin, Texas 78756. Comments will be received for 30 days after publication of these rules in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 4477-50, §3, which provide the Texas Board of Health with the authority to adopt rules to define the medical and financial standards for eligibility and scope of an epilepsy program.

§37.211. Introduction and Program Description.

(a) In 1981, the 67th Texas Legislature passed Chapter 435 (Texas Civil Statutes, Article 4477-50) which authorizes the Texas Department of Health to establish an Epilepsy Program with the approval of the Texas Board of Health. The statute permits funds to be expended by the department to provide diagnostic, treatment, and support services to eligible persons who have epilepsy.

(b) The commissioner of health has designated the Texas Department of Health's Crippled Children's Services to administer the Epilepsy Program. Epilepsy program benefits are furnished through nonprofit service providers under contract with the department to medically and financially eligible bona fide residents of the State of Texas. Persons desiring admission to the Epilepsy Program must apply through service providers under contract with the department.

§37.212. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

Board—Texas Board of Health
Bureau—Office of the Administrator, Bureau of Crippled Children's Services, Texas Department of Health

Commissioner—The commissioner of health.
Department—Texas Department of Health.

Epilepsy—A variable symptom complex characterized by recurrent paroxysmal attacks of unconsciousness or impaired consciousness, usually with a suc-

cession of chronic or tonic muscular spasms or other abnormal behavior.

Program—The Epilepsy Program administered by the Bureau of Crippled Children's Services, Texas Department of Health.

§37.213. Scope of Services. The Epilepsy Program is established to provide for the medical and nonmedical needs of an eligible person consistent with present knowledge about epilepsy and its treatment. This includes diagnosis and treatment of the medical condition, the management of continuity of care, and integration of the personal, social, and vocational support services into the treatment plan.

§37.214. Eligibility Requirements.

(a) A person is considered to be eligible to receive program services if he/she meets all of the following requirements:

- (1) makes application through a nonprofit service provider under contract with the department;
- (2) has a medical diagnosis of epilepsy or is suspected of having epilepsy;
- (3) is a bona fide resident of Texas and is actually present in the state;
- (4) meets the financial guidelines as approved by the Board of Health;
- (5) does not qualify for services from another public or private agency or organization, including the department's Crippled Children's Program;
- (6) continues premium payments on individual or group insurance, prepaid medical plan, and health insurance plans under the Social Security Act, Title XVIII, as amended, where such plans provide benefits for the care and treatment of persons who have epilepsy and the person's eligibility for benefits under the plans was effective prior to program eligibility, or provide a statement on the application form outlining the reason(s) why such insurance cannot be maintained.

(b) To maintain or regain eligibility for program benefits, in addition to the requirements listed in subsection (a) of this section, a person must:

- (1) maintain Texas residency and, upon request, furnish documentation of residency;
- (2) notify the provider within 15 days of changes in permanent home address, income, or insurance coverage;
- (3) receive services from providers under contract to the department.

§37.215. Applications and Eligibility Date

(a) A person who wishes to receive services must submit a complete application form to the provider. The application must contain at a minimum the following information relating to the person to whom the services are to be rendered:

- (1) name;
- (2) permanent address;
- (3) date of birth;
- (4) county of residence;
- (5) Social Security number;
- (6) Crippled Children's number;
- (7) race;
- (8) sex;
- (9) insurance coverage;

- (10) other third-party resources;
- (11) family income data;
- (12) medical history and data; and
- (13) documentation to confirm bona fide Texas residency.

(b) An application is deemed deficient and may not be accepted by the provider if the application fails to contain each item of information listed in subsection (a) of this section.

(c) If an application is deficient, eligibility may not be determined thereon. The date on which a person's eligibility will be determined will be the date upon which a properly completed application is received by the provider.

§37.216. Residency. A bona fide resident means a person who:

- (1) is physically present within the geographic boundaries of the State of Texas;
- (2) has an intent to remain within the state either permanently or for an indefinite period; and
- (3) actually maintains an abode (i.e., house, apartment, etc., but not merely a post office box) within this state; and
- (4) does not claim residency in any other state or country; or
- (5) is a minor child residing in Texas and his/her parent(s) or managing conservator or the guardian of the child's person is a bona fide resident; or
- (6) is a person residing in Texas who is the legal dependent spouse of a bona fide resident; or
- (7) is an adult residing in Texas and his/her legal guardian is a bona fide resident.

§37.217. Financial Eligibility Criteria.

(a) Means test. To be eligible for free services from the program, a person's family income may not exceed the "poverty income amount" established in the "Poverty Income Guidelines" schedule attached to these rules. A person whose family income exceeds the "poverty income amount" may be eligible for program services if the person agrees to pay a percentage of the cost of furnishing the services. In such instances, the provider shall charge the percentage of the cost of providing services based upon the percentage by which the person's family income exceeds the "poverty income amount" established by the "Poverty Income Guidelines."

(b) Other benefits

(1) A recipient is not eligible to receive services provided by this program to the extent that the recipient or any person or persons who have a legal obligation to provide support for the recipient are eligible for some other benefit which would pay for the service or part of the service provided by this program.

(2) A recipient or the person or persons who have a legal obligation to support the recipient must inform the provider at the time of application, or at any time during eligibility and the receipt of services of any other benefit to which the recipient or the person or persons who have an obligation to support the recipient may be entitled.

(3) As used in these rules, "other benefits" means a benefit to which a person is entitled other than a benefit from the Epilepsy Program for the payment of

the costs of services, including, but not limited to, benefits available under:

- (A) an insurance policy, group health plan, or prepaid medical plan;
- (B) the Social Security Act, Title XVIII and Title XIX, as amended;
- (C) Veterans Administration;
- (D) Civilian Health and Medical Program of the Uniformed Services;
- (E) worker's compensation or other compulsory employers' insurance program;
- (F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city, a county, a joint city-county hospital, a county hospital authority, or a hospital district; or
- (G) benefits available from a cause of action for medical expenses to a person receiving services from the program or a settlement or judgment based upon such cause of action, if the expenses are related to the need for services provided through the program.

(c) The recipient or the person or persons who have a legal obligation to support the recipient who has received services that are covered by some other benefit shall reimburse the department to the extent of cost of the services provided when the other benefit is received.

§37.218. Provision of Services. Program services shall be furnished by providers under contract with the department. The contract between the department and the provider shall contain at a minimum:

- (1) a statement of the services to be provided, including the minimum number to be served and the scope of services;
- (2) program goals and objectives and a plan for implementation;
- (3) eligibility criteria for persons to be served, at a minimum to include the requirements of this rule title;
- (4) standards to assure quality of services;
- (5) fiscal requirements on accounting for funds and for recovering funds as required by Texas law and department policies;
- (6) a description of the method of program evaluation, including required reports and statistics; and
- (7) a method for the termination of the contract.

§37.219. Public Awareness and Educational Services. Contract services under this article may be extended to include activities such as patient and community educational programs.

§37.220. Modification, Suspension, and Termination of Program Benefits.

(a) **Criteria.** A person who has been determined by the provider of services to be eligible for program services and who is receiving services may have his/her eligibility for services modified, suspended, or terminated if:

- (1) the person submits an application form or a document required in support of the application which contains a misstatement of fact which is material to the provider's determination that the person is eligible for program benefits;

- (2) the person is not a bona fide resident of the state;

- (3) the person does not have epilepsy or voluntarily declines services; or

- (4) the person fails or refuses to inform the provider or the department if a change in income status, residency status, or insurance coverage occurs.

(b) **Procedure.** A person who is receiving program benefits may be put on notice by the service provider by means of certified mail sent to the most recent address known to the provider, that the person's benefits may be modified, suspended, or terminated. The notice shall contain the provider's reasons for its intended action. The recipient may contest the provider's decision by initiating the following procedure within 10 working days after the recipient's receipt of the notice letter.

(1) The recipient must request a review of the decision by the local Epilepsy Program staff. At this review, the program staff must notify the recipient in writing of whom the recipient should contact in the department's central office in Austin, Texas, if the recipient is not satisfied with the results of the local review. Failure to request a review will be deemed a waiver of the opportunity to respond to the provider and the opportunity for any further redress from the provider or the department.

(2) An administrative review will be conducted by the Office of the Crippled Children's Services Bureau if requested by the aggrieved person. If the person is not satisfied with the outcome of the administrative review, the person may request an appeal.

(c) The appeal procedure, at a minimum, will include the following.

(1) Within 30 days after receiving the bureau's decision, the person's representative must send written notice to the department requesting a hearing.

(2) The department will set a date and time at the Texas Department of Health central office in Austin, or at a location more convenient to the appellant, for an administrative hearing before the department.

(3) The administrative hearing will be conducted under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§1.21-1.32 of this title (relating to Formal Hearing Procedures). A copy of the hearing rules will be provided to the recipient's representative.

(4) In the event of a decision adverse to the person's interest, the person may appeal to the District Court of Travis County.

§37.221. Selection of Service Providers. An organization may apply to become a provider of epilepsy services by submitting to the department a request to participate in the Epilepsy Program. The request must be accompanied by documentation which is acceptable to the department and which is sufficient to demonstrate that the organization:

- (1) is a nonprofit organization;
- (2) can provide the range of medical, nonmedical, and support activities deemed necessary by the department to effectively serve eligible persons in the catchment area;
- (3) has entered into a contract with the department to participate in the department's Epilepsy Services

Program and agrees to cooperate with the department in accordance with Texas Civil Statutes, Article 4477-50, and the rules of the Texas Board of Health.

§37.222. Modification, Suspension, or Termination of Provider Participation.

(a) Criteria. An organization which is providing program services under a contract with the department may have its privilege of participation modified, suspended, or terminated if:

(1) the organization is not a nonprofit organization;

(2) the organization fails or refuses to enter into a contract with the department to participate in the Epilepsy Program;

(3) the contract between the provider and the department is terminated for any reason;

(4) the organization submits false or misleading information to the department and the information is material to the department's:

(A) decision to contract with the provider for services;

(B) determination that the organization is in compliance with the provisions of Texas Civil Statutes, Article 4477-50, and the program rules; and

(C) determination that the organization is in compliance with the terms of the contract between the department and the organization;

(5) the organization fails to reimburse the department when overpayments have been made.

(b) Procedure. An organization which is participating as a service provider may be put on notice by the department by means of certified mail sent to the chief executive officer of the organization that the organization's participation may be modified, suspended, or terminated. The notice shall contain the department's reasons for its intended action. The provider may contest the department's action by initiating the following procedure within 10 working days after the the provider's receipt of the department's notice letter.

(1) The provider must respond to, or question the department's reason(s) in a written response to the department by certified mail at the following address: Epilepsy Services Program, C/O Bureau of Crippled Children's Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Failure to respond will be deemed a waiver of the opportunity to respond and the opportunity for a hearing.

(2) Upon receipt of the facility's written response, the program will affirm or reverse its proposed action, in writing, to the chief executive officer of the provider, giving the reason(s) for the decision.

(3) A provider aggrieved by the department's decision is entitled to appeal to the Texas Department of Health. The appeal procedure is the same as that set forth in §37.220 of this title (relating to Modification, Suspension, or Termination of Program Benefits).

§37.223. Confidentiality of Information.

(a) All information required by these rules to be submitted to the provider or the department may be verified at the discretion of the department and without notice to the applicant or recipient of benefits of the pro-

gram, or to the providers of program services. This information is confidential to the extent authorized by law.

(b) Information may be disclosed in summary, statistical, or other forms which do not identify particular individuals.

§37.224. Nondiscrimination Statement. The department operates in compliance with the Civil Rights Act of 1964, Title VI, (Public Law 88-352), and the Code of Federal Regulations, Title 45, Part 80, so that no person will be excluded from participation in, be denied benefits, or otherwise subjected to discrimination on the grounds of race, color, or national origin, sex, creed, handicap or age.

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 January 23, 1984.

TRD-840951 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption:
March 10, 1984

For further information, please call (512) 458-7241.

TITLE 28. INSURANCE

Part I. State Board of Insurance

(Editor's note: Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register numbers. However, the rules will be published under the agency's correct TAC title and part.)

Life, Health, and Accident Insurance Standard Valuation Law

059.03.28.021, .022

The State Board of Insurance proposes new rules 059.03.28.021 and .022, concerning requirements for valuation standards to apply to all life insurance contracts, annuity contracts, or annuity riders attached to a contract, with the following characteristics: there is at least one duration determined from the date of issue, at which the contract contains more than one specific amount which might be the cash surrender value at such duration; the contract contains a provision for a surrender charge if the contract is surrendered and a provision pursuant to which the insurer is required to waive the surrender charge under certain conditions specified in the contract; the maximum amount payable as the guaranteed cash surrender value, specified in the contract, would be paid when the surrender charge must be waived; and a smaller

amount would be payable when the insurance company is not obligated to waive the surrender charge. These types of contracts typically provide for the accumulation of policyholder funds over a specific term, bearing rates of interest comparable to interest rates available for investment opportunities. The board is of the opinion that these are valid insurance products; however, insurers marketing these products must observe certain prudent financial requirements, specifically that the company assumes that it will pay the maximum amount for reserving purposes because it may be obliged to pay that amount under the terms of the contract.

Ted Becker, staff actuary (life), and A. W. Pogue, Policy Approval Division manager, have determined that for the first five-year period the rules will be in effect there will be insignificant fiscal implications for state or local government as a result of enforcing or administering the rules. No increase in staff is anticipated as a result of the rules. There will be a small increase in office supplies and postage, depending upon how board personnel notify the industry of these new rules. There is no anticipated economic cost of compliance for small businesses except for a possible increase in reserve liability. There is no anticipated difference in cost of compliance between large and small businesses on a \$100-of-sales basis.

Mr. Becker and Mr. Pogue also have determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is increased protection of the insurance-buying public's accrued vested earning in the insurance products affected by this rule. The anticipated economic cost to individuals who are required to comply with the rules as proposed is a possible increase in reserve liability.

Comments on the proposal may be submitted to Ted Becker, Staff Actuary (Life), State Board of Insurance, 11:10 San Jacinto Street, Austin, Texas 78786.

These new rules are proposed under the Insurance Code, Article 3.28, §11, which provides the State Board of Insurance with the authority to promulgate and enforce reasonable rules to ensure that reserve calculations are computed by a method which is consistent with the principles of the Standard Valuation Law for the contracts within the scope of these rules.

.021. Scope. These rules apply to all life insurance contracts, annuity contracts, or annuity riders attached to a contract with the following characteristics: there is at least one duration determined from the date of issue, at which the contract contains more than one specific amount which might be the cash surrender value at such duration; the contract contains a provision for a surrender charge if the contract is surrendered, and a provision pursuant to which the insurer is required to waive the surrender charge under certain conditions as specified in the contract; the maximum amount payable as the guaranteed cash surrender value, specified in the contract, would be paid when the surrender charge must be waived; and a lesser amount would be payable when the insurance company is not obligated to waive the surrender charge. These

types of contracts typically provide for the accumulation of policyholder funds over a specific term, bearing rates of interest comparable to interest rates available for investment opportunities. These rules do not apply to a life insurance or annuity contracts, or an annuity rider attached to a contract, merely because a larger amount would be payable as a death benefit than the amount which would have been payable as a guaranteed cash surrender value, had surrender occurred on that same date.

.022. Minimum Valuation Standards for Certain Plans. Reserves for life contracts, annuity contracts, or an annuity rider attached to a contract, within the scope of these rules, shall be computed on the assumption that the cash surrender value at every duration is the maximum guaranteed amount specified under the contract terms. No reduction whatsoever will be permitted for surrender charges which may be waived under provisions of the contract. The maximum guaranteed amount of the cash surrender value at any date after the date of issue of the contract shall take proper account of any amounts which have been credited to the contract. For example, the maximum guaranteed amount of the cash surrender value would include any excess interest that has been credited to the contract.

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 January 18, 1984.

TRD-840934 James W Norman
Chief Clerk
State Board of Insurance

Earliest possible date of adoption.

March 2, 1984

For further information, please call (512) 475-2950.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission Chapter 89. Institutional Services for Children Committed for Delinquent Behavior Security

37 TAC §§89.540, 89.545, 89.555, 89.560,
89.565, 89.570, 89.575, 89.585, 89.600,
89.605, 89.610

The Texas Youth Commission (TYC) proposes new §§89.540, 89.545, 89.555, 89.560, 89.565, 89.570, 89.575, 89.585, 89.600, 89.605, and 89.610, concerning security policies and procedures in TYC institutions. The rules provide details on how students are admitted to security units, how long they stay, and the program they receive during the stay.

Jerry Day, director of institutions, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Day also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be increased staff efficiency, an ensured due process for students in security, and greater staff accountability through the use of these rules as a management tool. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Martha K. McCann, Manuals System Coordinator, P.O. Box 9999, Austin, Texas 78766.

The new sections are proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the confinement of a delinquent child committed to the agency under conditions it believes best designed for the child's welfare and the interests of the public.

§89.540. Staff.

(a) Policy. A dormitory director or dormitory director substitute is on duty to handle security referrals 24 hours per day. There is an "on call" schedule for after office hours, weekend, and holiday coverage posted in the security unit. Appropriate youth activities supervisor coverage is maintained.

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

(1) Dormitory director—The student's caseworker.

(2) Dormitory director substitute.

(A) Another dormitory director on duty.

(B) Any child care professional administrator designated by the superintendent that:

(i) works directly with the treatment program; and

(ii) has professional child care credentials superior to that of a dormitory director.

(c) Procedure.

(1) Provide the director of security a dormitory director-on call schedule. (Person responsible: youth program supervisor.)

(2) Inform security staff of location and phone numbers at all times while "on call." (Person responsible: scheduled dormitory director.)

(3) Schedule a minimum of two youth activities supervisor employees per shift. (Person responsible: director of security or youth activities supervisor (YAS) IV.)

(4) Notify supervising staff if increased coverage is required. (Person responsible: security dormitory staff.)

(5) Increase coverage appropriate to population increase. (Person responsible: director of security or YAS IV.)

(6) Schedule male and female staff coverage when male and female students are in security. (Person responsible: director of security/YAS IV.)

§89.545. Referral.

(a) Policy. The staff of Texas Youth Commission institutions refer students to security in compliance with the agency's child care standards, 90.42.100 (§81.39 of this title (relating to Security Program)). Students may be referred only after alternative measures have failed or are not appropriate under the circumstances.

(b) References. See §89.555 of this title (relating to Admission to Security) for criteria for security admissions.

(c) Procedure.

(1) Referring.

(A) When you decide a student must be referred to security, call the security dormitory or gatehouse to transport the student. (Person responsible: referring staff member.)

(B) If the student requests to go to security, talk with him about alternatives but refer him to security if necessary. (Person responsible: referring staff member.)

(C) Fill out an Incident Report (CCS-021). (Person responsible: referring staff member.)

(i) Record the behavior that led to security referral;

(ii) Record any counseling or alternatives you offered;

(iii) If no alternatives are offered, state why not;

(iv) Ask student and two witnesses to fill out the Special Incident Report (if appropriate).

(D) If the report is ready, send it to security when staff pick up the student. If it is not ready within 30 minutes, call the dormitory director or dormitory director substitute to extend the time to 50 minutes. (Person responsible: referring staff member.)

(E) Approve/disapprove extension. Inform security by phone if approved. (Person responsible: dormitory director or dormitory director substitute.)

(F) Document extension in the student's security file. (Person responsible: security dormitory staff.)

(2) Taking the student to security.

(A) Tell outside security where to pick up the student and if student is being aggressive. (Person responsible: security dormitory or gatehouse staff.)

(B) Take the student to security. Request more staff to help you if necessary. (Person responsible: outside security staff.)

(C) Use restraints only if necessary to prevent injury to the student or others or to prevent escape. Read and follow GOPP 90.50.060, "Use of Restraints." (Person responsible: outside security staff.)

(D) Call the student's dormitory director or dormitory director substitute. Tell him about the referral and the time the student arrived at security. (Person responsible: security dormitory staff.)

(E) Write in the security daily log the time you called the dormitory director and any other important information needed. (Person responsible: security dormitory staff.)

(F) Assign student to designated supervised area to await dormitory director. (Person responsible: security dormitory staff.)

(G) Send the student back by outside security staff to his regular program if you do not receive the incident report within 30 minutes (or 50 minutes if extension is approved) of the student's arrival. Send the student back if dormitory director or dormitory director substitute does not make admission decision within 50 minutes unless extension is approved (See paragraph (3)(B) of this subsection). Document reason for return in security log. (Person responsible: security dormitory staff.)

(3) Admitting the student.

(A) Go to the security dormitory and decide to admit or release student within 50 minutes of the student's arrival in security if possible. (Person responsible: dormitory director or dormitory director substitute.)

(B) Request verbal decision from superintendent or administrator on duty for extending the time limit of a decision to admit or release a student if necessary. (Person responsible: dormitory director or dormitory director substitute.)

(C) Approve or deny request. (Person responsible: superintendent or administrator on duty.)

(D) If approved, document the time approval was given, length of approved extension and person approving in student's security file. (Person responsible: dormitory director or dormitory director substitute.)

(E) Read the incident reports and talk with the student about what happened. (Person responsible: dormitory director or dormitory director substitute.)

(F) Contact the referring staff member or witnesses if you need more information from them. (Person responsible: dormitory director or dormitory director substitute.)

(G) If you decide the student does not need to stay in security, document such on the Incident Report and in the security log and make arrangements for appropriate personnel to integrate student back into his group. (Person responsible: dormitory director or dormitory director substitute.)

(H) If you decide the student should stay in security, make sure the student meets the criteria for admission. See 50.89.555 (§89.555 of this title (relating to Admission to Security)). (Person responsible: dormitory director or dormitory director substitute.)

§89.555. Admission to Security.

(a) Policy. A student may be admitted to security when he is a serious and continuing escape risk, when he is a serious and immediate physical danger to himself or others, or to restrain behavior that creates substantial disruption of the routine of the facility, or upon the student's request.

(b) Criteria. Admission to security is appropriate under the following conditions:

(1) The student is a serious and continuing escape risk.

(A) The student escapes or is obviously in the act of escaping; or

(B) The student is preparing for an escape attempt. If it is unclear that an attempted escape is occurring, use the following guidelines:

(i) the student has tried to escape at least once before;

(ii) staff or peers have seen the student planning an escape; or

(iii) the student has contraband that shows he may be planning an escape.

(2) The student is a serious and immediate danger.

(A) The student is physically assaultive or destructive;

(B) The student attempts to use a weapon against others; or

(C) Staff cannot protect the student or others except by referring student to security.

(3) The student substantially disrupts the program. (See related policy in the Institutions Manual, 50.89.550.)

(A) The student continues to require attention that takes staff time away from other students;

(B) The student's behavior prevents a group activity from continuing as it is designed; and

(C) Staff has offered repeated alternatives which have not solved the problem.

(4) The student requests to go to security. Admission is appropriate after dormitory director counsels with student and offers alternative solutions to the problem.

(c) Procedure.

(1) Read the incident report and statement by witnesses. Discuss the incident with the student. (Person responsible: dormitory director or dormitory director substitute.)

(2) Decide whether or not to admit student to security. (Person responsible: dormitory director or dormitory director substitute.)

(A) If you decide not to admit, record this on the Incident Report (CCS-021) and send it to the data coordinator.

(B) If you decide to admit the student, fill out the Security Detention Report (CCS-022). Make sure the behavior goals and treatment plan are directly related to the behavior for which student was admitted. The behavior goals are to include measurements for determining when the student's behavior has stabilized sufficiently for release. Inform student of his right to grieve or appeal this decision.

(3) Review the security rules with student. Have the student sign that you reviewed them. (Person responsible: security dormitory staff.)

(4) Take the student's personal items. Record them on the personal items inventory and place inventory in student's security folder. (Person responsible: security dormitory staff.)

(5) Place the personal items in a paper bag with student's name on it and staple the bag. Put it in a locked storage unit. (Person responsible: security dormitory staff.)

(6) Search and shower student before placing student in rooms or area designated for security residents. (Person responsible: security dormitory staff.)

(7) Wash student's clothing if dirty and issue pajamas until clothing is returned. (Person responsible: security dormitory staff/dormitory staff.)

(8) Issue other clothing needed in security. (See related policy, Clothing in Security, Institutions Manual

50.89.625.) (Person responsible: security dormitory staff.)

(9) Issue appropriate bedding. (Person responsible: security dormitory staff.)

(10) Record student's cooperative behavior or uncooperative behavior in Student Behavior Record once each shift. (Person responsible: security dormitory staff.)

(11) Forward original Security/Detention Form (CSS-022) and Incident Report (CCS-021) to data coordinator for computer entry. Keep a copy for student's security folder. (Person responsible: security dormitory staff.)

§89.560. Release From Security.

(a) Policy. A student is released from security when he complies with his security behavior goals and treatment plans which are completed at the time of his admission.

(b) Criteria.

(1) There are no minimum and maximum time periods for designated behaviors and offenses for students to complete in order to be released from security.

(2) The student's demonstration of stable, responsible, cooperative behavior in the security dormitory, which has been defined in the goals and plans, is the basis for determining he is ready to be returned to his regular program.

(3) The admitting staff member may specify in the student's behavior goals that a period of time less than 24 hours is appropriate for evaluating if the student has sufficiently stabilized his behavior. In most cases a few continuous hours of responsible behavior reflect that the student is sufficiently in control to resume his regular program.

(4) Any student demonstrating responsible behavior for 24 hours will be considered as having stabilized and cannot be retained longer solely on the basis of the offense for which he was admitted.

(5) If the student's present security behavior and verbal comments or his documented behavioral history following previous similar incidents suggest the offending behavior will probably recur upon dismissal from security, his release may be extended 24 hours as a result of a due process hearing (see §89.565 of this title (relating to Extended Security Confinement)).

(c) Procedure.

(1) Ensure the student has met goals and conditions as shown on Security/Detention Admission Form CCS-022. (Person responsible: dormitory director, dormitory director substitute, or security dormitory staff.)

(2) Review student Behavior Record and talk to security staff to determine if student has been cooperative. (Person responsible: dormitory director, dormitory director substitute, or security dormitory staff.)

(3) If paragraphs (1) and (2) of this subsection are not evaluated positively, follow procedures for Extended Security Confinement, 50.89.565 (§89.565 of this title (relating to Extended Security Confinement)). (Person responsible: dormitory director, dormitory director substitute.)

(4) If paragraphs (1) and (2) of this subsection are evaluated positively, continue with steps outlined in paragraphs (5)-(7) of this subsection. (Person responsible: as designated.)

(5) Sign Security/Detention Form CCS-022 showing date and time of release. (Person responsible: dormitory director, dormitory director substitute, or security dormitory staff.)

(6) Inspect student's room. (Person responsible: security dormitory staff.)

(7) Instruct student to clean room, repair any minor damage, fold bedding, check and sign for all personal items being returned. (Person responsible: security dormitory staff.)

(8) Call the outside security staff to pick the student up and escort him back to the regular program. (Person responsible: security dormitory staff.)

(9) Escort student back to regular program within 10 minutes of release. (Person responsible: security dormitory staff.)

§89.565. Extended Security Confinement.

(a) Policy. Students may be held in security longer than 24 hours if their behavior while in security would meet the Criteria for Admission to Security (§89.555 of this title (relating to Admission to Security)) or if student's documented verbal comments and/or documented behavioral history indicates that he will probably continue the offending behavior immediately upon release. Due process is afforded the student before security confinement is extended past 24 hours. The superintendent or acting superintendent can extend the 24 hour deadline if justification is sufficient and only under emergency situations.

(b) Procedure.

(1) Preparation for due process hearing. If the dormitory director believes that a student should stay in security past 24 hours and no emergency situation exists, take the following steps:

(A) Make a written request by memo to extend the student's stay in security past 24 hours to the person designated by the superintendent as the due process administrator. (Person responsible: dormitory director, director of security.)

(B) Inform the student of the request and arrange for a due process hearing. (Person responsible: dormitory director.)

(C) Inform the student of his right to request assistance from staff in presenting his case. (Person responsible: dormitory director.)

(D) Inform the student and his staff assistant of his right to be present at the hearing and the specific misconduct which will be alleged at the hearing and which will be considered in the decision to extend confinement. (Person responsible: dormitory director.) Include:

(i) the admitting offense; and

(ii) the acts of misconduct or verbal comments which occurred in security; or

(iii) the acts of misconduct which immediately followed previous security placements.

(E) Ask the student, his staff assistant, and dormitory director if there are any witnesses that they would like written statements from concerning the allegations.

(F) Notify appropriate security staff members of the hearing and obtain written statements from witnesses. (Person responsible: dormitory director.)

(2) Due process hearing procedures.

(A) Inform the student and his staff assistant of the reason for the due process hearing and inform them of the specific allegations of misconduct under consideration. (Person responsible: superintendent's designee.)

(B) Ask the student whether each allegation is true or not true; if not true, hear evidence presented by the dormitory director, security staff, director of security, and the student. (Person responsible: superintendent's designee.)

(C) Provide the student and his staff assistant the opportunity to explain the student's conduct and to show that an extended stay is not necessary whether or not the acts of alleged misconduct are contested. (Person responsible: superintendent's designee.) Note: A student may be detained in security pending any continuances in the hearing for the purpose of obtaining witness testimony. The student and his staff assistant may review all witness statements and may confront and question a witness if such request is reasonable. However, such a confrontation or review of a written statement by a student will not be allowed if it would present a substantial security risk or a threat to witness safety or would prevent receiving information from the same or similar source in the future.

(D) Make a decision regarding continued confinement based solely on the evidence presented at the hearing. Document decision on Form 50.89.565A. (Person responsible: superintendent's designee.)

(E) Inform the student by written memo of the findings and reasons for the decision and tell him of his right to appeal an adverse decision at any point. Place copy of the decision in student's security file. (Person responsible: superintendent's designee.)

(F) If appealed, immediately send a copy of the decision to the superintendent. (Person responsible: superintendent's designee.)

(G) Decide the appeal and notify the student of the decision within 24 hours. Document decision on Form 50.89.565A. Send a copy of the decision to the student's security file and the student. (Person responsible: superintendent.)

(H) Note: Whenever a student asks to appeal an adverse decision to the superintendent on security placement, the appeal process and superintendent's decision must be made before the completion of the 24 hour extension. This will entail completing all procedures in sufficient time to allow an appeal process

(3) Extending hearing deadline. If the dormitory director believes that an emergency situation exists that justifies extending the hearing deadline:

(A) request extension in writing from the superintendent or acting superintendent, with justification of extending 24 hour deadline if an emergency situation arises. (Person responsible: dormitory director.)

(B) approve or disapprove, request for extension in writing. If approved, give a time as to when the hearing must be held. (Person responsible: superintendent/acting superintendent.)

(C) file request and response in student's security file. (Person responsible: security dormitory staff.)

(D) arrange for a hearing by the time the superintendent or acting superintendent has directed using the procedures outlined in paragraph (3) of this section. (Person responsible: dormitory director.)

(4) Holding past the hearing. If the dormitory director believes that a student should remain in security 24 hours or more past the due process hearing, take the following steps:

(A) Make a request to the director of security to confine a student in security 24 hours after the due process hearing using Form 50.89.565B. (Person responsible: dormitory director.)

(B) Review the request with the dormitory director. (Person responsible: director of security.)

(i) If the decision is to continue confinement, send a memo requesting superintendent or acting superintendent approval.

(ii) File superintendent response in student security file daily.

(iii) If the decision is not to continue confinement, release the student.

(C) Repeat steps outlined in subparagraphs (A) and (B) of this paragraph each 24 hours thereafter until the end of the fifth day or 120 hours.

(D) Contact the director of institutions by telephone for approval of continuing to confine a student past the fifth day or 120 hours. (Person responsible: superintendent.)

(E) Complete continued Security Confinement Form. Indicate approval or disapproval. If disapproval, release the student. (Person responsible: director of institutions.)

(F) Repeat steps outlined in subparagraphs (D) and (E) of this paragraph each 24 hours until the end of the seventh day or 168 hours. (Person responsible: superintendent/director of institutions.)

(G) Send Request for Approval for Extended Security Confinement Form 50.89.565C with endorsement to the executive director for approval to continue confinement past the seventh day or 168 hours. (Person responsible: director of institutions.)

(H) Decide whether to approve or disapprove continued confinement and notify the director of institutions, and return the form. (Person responsible: executive director.)

(I) Notify the superintendent of decision. (Person responsible: director of institutions.)

(J) Repeat steps outlined in subparagraphs (G) and (I) of this paragraph each 24 hours until the student is released. (Person responsible: director of institutions.)

§89.570. *Isolation.*

(a) Policy. A student in the security dormitory may be placed in a locked room for isolation only if he is out of control and is a serious and immediate physical danger to himself or others and less restrictive methods of restraint have failed. Isolation is a serious and extreme measure which shall be kept to a minimum and shall never be used for restriction. Three hours is the maximum isolation period allowed unless the student is joined by a staff member. If this is necessary, the student's dormitory director, youth activity supervisor IV, or group leader or an appropriate substitute will stay with him until he is

released. A stay in isolation beyond 24 hours requires a hearing as outlined in §89.565 of this title (relating to Extended Security Confinement).

(b) Criteria.

(1) Placing in isolation.

(A) Decide if student needs to be placed in isolation and if so place him. (Person responsible: security dormitory staff.)

(B) Obtain approval immediately from superintendent or acting superintendent for placement. Document approval on security/detention Form CCS-022, Comments section. (Person responsible: security dormitory staff.)

(C) Contact student's dormitory director or dormitory director substitute immediately to report placement. (Person responsible: security dormitory staff.)

(D) Personally watch the student until dormitory director or dormitory director substitute arrives and assumes responsibility. (Person responsible: security dormitory staff.)

(E) Decide no longer than 15 minutes after the student is placed if he needs to remain in isolation. (Person responsible: dormitory director, dormitory director substitute.)

(F) Decide no longer than 15 minutes after the student is placed if someone needs to be with the student at all times during isolation. Document decision and justification on student's security admission report CCS-022, comments section. (Person responsible: dormitory director, dormitory director substitute.)

(G) Visually monitor every five minutes if the decision is to not have someone with the student at all times. Record in security daily log. (Person responsible: security dormitory staff.)

(2) Holding in isolation.

(A) Remain in calling distance with key to locked room (Person responsible: security dormitory staff.)

(B) Release student immediately when he no longer is a serious danger to himself or others. (Person responsible: dormitory director, dormitory director substitute.)

(C) Get psychological and medical services when needed. (Person responsible: dormitory director, dormitory director substitute.)

(D) Document on CCS-022 security detention form, the date, time of isolation, and the date and time of release. (Person responsible: dormitory director, dormitory director substitute.)

(3) After three hours.

(A) If the student must stay in isolation after three hours, stay in the room with the student until he is released. (Person responsible: dormitory director, student's youth activities supervisor IV, or student's group leader, or appropriate substitute.)

(B) If student remains in isolation past 24 hours, a hearing as outlined in §89.565 of this title (relating to Extended Security Confinement), must be held. (Person responsible: superintendent's designee.)

(C) Repeat subparagraph (B) of this paragraph every 24 hours. (Person responsible: superintendent's designee.)

(D) Visit with student at least once each day while he is in isolation. Give daily approval of stay in isolation and document approval on CCS-023, detention log. (Person responsible: superintendent or acting superintendent.)

(E) Visit with student at least once each day and document contact on CCS-023, detention log. (Person responsible: medical/psychiatric caseworker, dormitory director, designated nurse.)

(F) Document name, date, and time any other person visits student in isolation on CCS-023, detention log. (Person responsible: security dormitory staff.)

§89.575. *Student Supervision.*

(a) Policy. Students will be closely supervised during their stay in security.

(b) Procedure.

(1) Visually check each student every 15 minutes. (Person responsible: security dormitory staff.)

(2) Document each check on the security daily log. (Person responsible: security dormitory staff.)

§89.585. *Locked Doors.*

(a) Policy. The security dormitory will be locked at all times. Students' rooms in security will be locked during sleeping hours of 9:30 p.m.-6:30 a.m.

(b) Procedure. Visually check each locked room occupied by a student each 15 minutes. (Person responsible: security dormitory staff.)

§89.600. *Visitation.*

(a) Policy. Students confined in security may receive visitors limited to parents, legal guardians, and attorneys. Visiting hours are 9 a.m.-5 p.m. for parents and legal guardians. The superintendent or his designee may permit additional hours of visitation.

(b) Procedure.

(1) Permit visits in the security dormitory by parents, legal guardians between 9 a.m. and 5 p.m. (Person responsible: security dormitory staff.)

(2) Permit visits from other people or at other times if you think it is appropriate. Attorneys are permitted to visit their clients at any time. (Person responsible: superintendent or designee.)

(3) Ensure visits are not disruptive to the security routine. (Person responsible: security dormitory staff.)

(4) If a visit is causing a disturbance, call the student's dormitory director and the director of security for permission to have the visitors leave. (Person responsible: security dormitory staff.)

(5) Search the student after the visit to ensure no contraband enters the security building. (Person responsible: security dormitory staff.)

(6) Ensure that any money received by the student during the visit is properly receipted. Provide a copy of receipt for the student. (Person responsible: security dormitory staff.)

(7) Take money and receipts to business office for deposit to the student's trust fund. (Person responsible: security dormitory YAS IV.)

§89.605. *Education*

(a) Policy. Students in security receive four hours of academic instruction Monday-Friday, excluding

holidays. During school days, the one hour of large muscle exercises will be counted as one of the four hours.

(b) Procedure.

(1) Notify students to attend class. Tell them it is mandatory. If a student does not attend all or part of the school hours, document the hours missed and reason for missing hours on the student's CCS-022 and attendance record. (Person responsible: security dormitory staff, designated academic instructor.)

(2) Provide instruction according to student's educational level and, to the extent possible, consistent with instruction he would have received in his regular class. (Person responsible: designated academic instructor.)

(3) Document instruction offered in student's academic file. (Person responsible: designated academic instructor.)

(4) Document misbehavior leading to dismissal from class in the student behavior record. (Person responsible: designated academic instructor.)

§89.610. Physical Exercise.

(a) Policy. Students in security receive one hour of large muscle exercise daily.

(b) Procedure.

(1) Write the daily schedule so that it includes one hour of large muscle exercise daily. During school days the exercise period is in lieu of physical education class. (Person responsible: director of security.)

(2) Conduct exercise class as scheduled. (Person responsible: security dormitory staff.)

(3) Post any restriction notice received from the nurse and note it in the CCS-022 report for any student who has a medical reason for not participating in exercise. (Person responsible: security dormitory staff.)

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 January 23, 1984.

TRD-840897 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption:
March 2, 1984

For further information, please call (512) 452-8111.

Chapter 93. Volunteer Services

The following proposals submitted by the Texas Youth Commission will be serialized beginning in the February 7, 1984, issue of the *Texas Register*. The earliest possible date of adoption for the documents is March 2, 1984.

Administration

§§93.1-93.4, 93.10-93.12
(new)

Volunteer Management

§§93.21, 93.23, 93.25, 93.35, 93.45, 93.49
(new)
§§93.61, 93.65, 93.69
(new)

Donations

§§93.71, 93.75, 93.79, 93.85, 93.89, 93.91,
93.95, 93.97
(new)

Volunteer Reports

§§93.101, 93.110, 93.115
(new)

Withdrawn Rules

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is generally effective immediately upon filing.

If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office. Notice of the withdrawal will appear in the next regularly scheduled issue of the *Register*. The effective date of the automatic withdrawal will appear immediately following the published notice.

No further action may be taken on a proposal which has been automatically withdrawn. However, this does not preclude a new proposal of an identical or similar rule following normal rulemaking procedures

TITLE 16. ECONOMIC REGULATION Part II. Public Utility Commission of Texas Chapter 23. Substantive Rules Rates

16 TAC §23.23

The Public Utility Commission of Texas has withdrawn emergency amendments to §23.23, concerning rates. The text of the amended section as originally adopted on an emergency basis appeared in the September 9, 1983, issue of the *Texas Register* (8 TexReg 3540).

Issued in Austin, Texas, on January 23, 1984

TRD-840972 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Filed: January 24, 1984
For further information, please call (512) 458-0100.

Customer Service and Protection

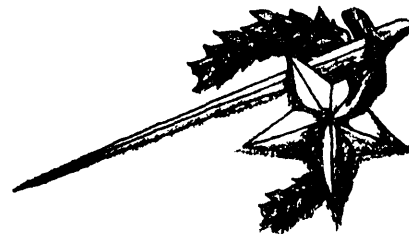
16 TAC §23.43

The Public Utility Commission of Texas has withdrawn proposed new §23.43, concerning customer service and protection. The text of the new section as proposed appeared in the October 21, 1983, issue of the *Texas Register* (8 TexReg 4334).

Issued in Austin, Texas, on January 23, 1984.

TRD-840973 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Filed: January 24, 1984
For further information, please call (512) 458-0100.



An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule 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.

The document, as published in the *Register*, must indicate whether the rule is adopted with or without changes to the proposal. The notice must also include paragraphs which: explain the legal justification for the rule, how the rule will function, contain comments received on the proposal, list parties submitting comments for and against the rule; explain why the agency disagreed with suggested changes, and contain the agency's interpretation of the statute under which the rule was adopted.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. The text of the rule, as appropriate, will be published only if final action is taken with alterations to the proposal. The certification information, following the submission, contains the effective date of the final action, the proposal's publication date, and a telephone number to call for further information.

Adopted Rules

TITLE 25. HEALTH SERVICES Part I. Texas Department of Health Chapter 37. Maternal and Child Health Services

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

25 TAC §37.61

The Texas Department of Health adopts new §37.61, without changes to the proposed text published in the October 7, 1983, issue of the *Texas Register* (8 TexReg 3973).

On July 16, 1983, the Texas Board of Health adopted amendments to §§37.52, 37.54-37.56, 37.58, and 37.59 and the repeal of §37.57, concerning the testing of newborn children for phenylketonuria, other heritable diseases, and hypothyroidism. The amendments, among other changes, added a required screening test for sickling hemoglobinopathies to the screening tests already required by law: PKU, galactosemia, and congenital hypothyroidism. The effective date of these amendments was to be October 1, 1983, as published in the August 12, 1983, issue of the *Texas Register* (8 TexReg 3165).

The rules of the Newborn Screening Program require that all blood specimens taken from newborn infants and all follow-up specimens be tested in the laboratory of the Texas Department of Health. Due to delays in the receipt of the equipment which is necessary to perform the testing procedures for sickling hemoglobinopathies, the department's laboratory was unable to

begin processing specimens for this condition on October 1, 1983. It was estimated that the necessary equipment would be in place, and that processing of specimens could be started no later than November 1, 1983.

There is no other laboratory in the state which is currently approved by the Newborn Screening Program for processing such specimens. For this reason, the effective date of the amendments which require the screening of all newborns for sickling hemoglobinopathies had to be postponed until November 1, 1983. The planned effective date of October 1, 1983, had been widely circulated through publication of the adopted changes in the July 26, 1983, issue of the *Texas Register* (8 TexReg 2807). Therefore, the department adopted §37.61 on an emergency basis in the October 7, 1983, issue of the *Texas Register* (8 TexReg 3946) to preclude reliance by hospitals, physicians, and the general public on the department's laboratory for newborn screening purposes during the period between October 1, 1983, and November 1, 1983.

The department, in the same issue of the *Register*, simultaneously proposed §37.61 for permanent adoption.

Section 37.61 makes November 1, 1983, the effective date for adopted amendments to §§3.52, 37.54-37.56, 37.58, and 37.59 and the repeal of §37.57.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4447e, §1, and Article 4447e-1, §2,

which provide the Texas Board of Health with the authority to adopt rules concerning phenylketonuria, other heritable diseases, and congenital hypothyroidism.

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 January 23, 1984.

TRD-840950 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 13, 1984
Proposal publication date: October 7, 1983
For further information, please call (512) 475-7700.



TITLE 28. INSURANCE

Part I. State Board of Insurance

(Editor's note. Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register numbers. However, the rules will be published under the agency's correct TAC title and part.)

General Provisions

Miscellaneous II

A notice appeared in the January 27, 1984, issue of the *Texas Register* indicating that the following adoption would be serialized in this issue. Effective date for the document is February 10, 1984.

059.21.49.006

The State Board of Insurance adopts amendments to subsections (a) and (c) of Rule 059.21.49.006, without changes to the proposed text published in the December 9, 1983, issue of the *Texas Register* (8 TexReg 5100).

Rule 059.21.49.006 is the plan of operation of the Texas Catastrophe Property Insurance Association

(association). Although the board proposed amendments to subsection (a)-(e) and (g)-(h) of the rule in the cited issue of the *Texas Register*, it has determined to adopt amendments to subsections (a) and (c) separately.

The amendments to subsections (a) and (c) accomplish three purposes. First, certain minor errors in the rule as presently on file with the *Texas Register* are corrected; there are other changes of a non-substantive nature. Second, a change to the plan of operation prior to 1976 was added to the rule as subsection (g) when the rule was filed with the *Texas Register* in 1976. Some of this material is incorporated into subsections (a) and (c) and simultaneously deleted from subsection (g). Third, amendments are incorporated into the plan of operation which were heretofore adopted in Board Orders 42525 and 33123, dated February 4, 1983, and December 30, 1977, respectively. These changes deal with the method of allocating participation in assessments made by the association.

It also has been necessary to reformat the rule by relettering and renumbering it to conform to the current *Texas Register* format

Emergency action was taken respecting certain amendments to subsections (a) and (c) of this rule and became effective on September 2, 1983. These amendments were published in the September 13, 1983, issue of the *Texas Register* (8 TexReg 3604). Those amendments are incorporated into these rule amendments.

All of these amendments are either of a nonsubstantive editorial nature or conform the rule to board order changes to the plan of operation. Accordingly, no board practice or requirement is expected to be changed by these amendments. These amendments are necessary to correct clerical errors, to bring the rule into conformity with *Texas Register* formatting requirements, to incorporate subsection (g) into the main body of the rule, and to generally bring subsections (a) and (c) into compliance with current board practices. These amendments will help to accomplish those purposes.

No comments were received regarding adoption of the amendments.

These amendments are adopted under the Insurance Code, Article 21.49, §5, which provides the State Board of Insurance with the authority to approve the plan of operation of the association.

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 January 20, 1984

TRD-840829 James W. Norman
Chief Clerk
State Board of Insurance

Effective date: February 10, 1984
Proposal publication date: December 9, 1983
For further information, please call (512) 475-2950.

**TITLE 31. NATURAL RESOURCES
AND CONSERVATION
Part IV. School Land Board
Chapter 151. General Rules of
Practice and Procedure**

31 TAC §151.5

The School Land Board adopts new § 151.5, without changes to the proposed text published in the December 20, 1983, issue of the *Texas Register* (8 TexReg 5340)

The new section provides for an increase in the fees charged for the appraisal of excess acreage and vacancies which are sold by the board. The increase will make the charge for the appraisals cover the costs of performing the service, thereby placing the costs of the service on the users of the service. Applicants for purchase of excess acreage will pay the appraisal fee with their applications.

No comments were received regarding adoption of the new section.

The new section is adopted under the Natural Resources Code, §32.104, which requires the School Land Board to establish an appraisal fee for appraising excess acreage and unsurveyed public school land for the purpose of setting a price at which such lands are to be sold

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 January 24, 1984.

TRD-840943 Garry Mauro
 Chairman
 School Land Board

Effective date February 14, 1984
Proposal publication date December 20, 1983
For further information, please call (512) 475-5661.

**TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public
Accounts
Chapter 3. Tax Administration**

A notice appeared in the January 27, 1984, issue of the *Texas Register* indicating that the following adoptions would be serialized in this issue. Effective date for the documents is February 13, 1984.

**Subchapter D. Minerals Tax Division—
Occupation Tax On Sulphur Producers**

34 TAC §3.42

The Comptroller of Public Accounts adopts new §3.42, without changes to the proposed text pub-

lished in the November 25, 1983, issue of the *Texas Register* (8 TexReg 4901). The new section will alleviate a condition created by an amendment to the Texas Tax Code, §203.101. This section, read in conjunction with the Texas Tax Code, §203.052, requires sulphur producers to file the return and pay the tax due for a calendar quarter the day after the close of the quarter. Under the authority of the Texas Tax Code, §111.051, the comptroller may set the due date for a report or payment by rule. This new section moves the due date of these reports and payments from the first day of the month to the last day of the month following the end of a calendar quarter so producers will have an adequate amount of time to completely and accurately prepare these reports.

No comments were received regarding adoption of the new section

This new section is adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the enforcement and administration of the Code.

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 January 23, 1984

TRD-840842 Bob Bullock
 Comptroller of Public Accounts

Effective date February 13, 1984
Proposal publication date November 25, 1983
For further information, please call (512) 475-3341.

**Subchapter F. Motor Vehicle Sales and
Use Tax Division**

34 TAC §3.61

The Comptroller of Public Accounts adopts an amendment to §3.61, without changes to the proposed text published in the November 4, 1983, issue of the *Texas Register* (8 TexReg 4543). This amendment is adopted to reflect the change in the Texas Tax Code enacted in Senate Bill 582, 68th Legislature, 1983, effective May 20, 1983, and will authorize a credit for motor vehicle taxes paid to another state when use tax is imposed on a motor vehicle which was originally purchased tax-free in Texas, but was later returned, operated, and used within the state

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the enforcement and administration of the Code.

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 January 23, 1984.

TRD-840843 Bob Bullock
Comptroller of Public Accounts

Effective date February 13, 1984
Proposal publication date: November 4, 1983
For further information, please call (512) 475-1935.

34 TAC §3.90

The Comptroller of Public Accounts adopts the repeal of §3.90, without changes to the proposal published in the November 8, 1983, issue of the *Texas Register* (8 TexReg 4650).

This section is repealed so that a substantially revised section on the same subject may be adopted. The new section will reflect changes in the Motor Vehicle Sales Tax made by the legislature during the 1983 session.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the enforcement and administration of the Code.

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 January 23, 1984

TRD-840844 Bob Bullock
Comptroller of Public Accounts

Effective date: February 13, 1984
Proposal publication date November 8, 1983
For further information, please call (512) 475-1935.

The Comptroller of Public Accounts adopts new §3.90, without changes to the proposed text published in the November 8, 1983, issue of the *Texas Register* (8 TexReg 4650).

This section reflects the change in the Texas Tax Code enacted in Senate Bill 582, 68th Legislature, 1983, effective May 20, 1983. The change will impose a use tax on the operator of any motor vehicle that was originally purchased in Texas but not assessed tax because the vehicle was to be used exclusively outside of the state, when the same vehicle is later returned and used within the state. The tax rate is 4.0% of the total consideration originally paid for the motor vehicle, less any tax previously paid to another state.

No comments were received regarding adoption of the new section.

The new section is adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the enforcement and administration of the Code.

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 January 23, 1984.

TRD-840845 Bob Bullock
Comptroller of Public Accounts

Effective date: February 13, 1984
Proposal publication date: November 8, 1983
For further information, please call (512) 475-1935.

34 TAC §3.92

The Comptroller of Public Accounts adopts new §3.92, without changes to the proposed text published in the November 4, 1983, issue of the *Texas Register* (8 TexReg 4543). The Texas Tax Code, §152.045, requires that tax on gross rental receipts be reported and paid as limited sales, excise, and use tax reported and paid by retailers under the Texas Tax Code, Chapter 151, and determined to include the direct payment procedure authorized in that chapter by Attorney General Opinion M-913. The comptroller's office is implementing this procedure for gross rental receipts tax through this section. The procedure and requirements parallel those used for limited sales tax direct payment permit holders. Persons having annual motor vehicle rentals in excess of \$800,000 may apply for a permit allowing them to accrue and pay the tax on these rentals directly to the comptroller.

No comments were received regarding adoption of the new section.

This new section is adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the enforcement and administration of the Code.

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 January 23, 1984.

TRD-840846 Bob Bullock
Comptroller of Public Accounts

Effective date: February 13, 1984
Proposal publication date: November 4, 1983
For further information, please call (512) 475-1935.

**Subchapter I. Miscellaneous Tax
Division—Miscellaneous Occupation
Tax**

34 TAC §3.141

The Comptroller of Public Accounts adopts the repeal of §3.141, without changes to the proposal published in the November 8, 1983, issue of the *Texas Register* (8 TexReg 4651).

The miscellaneous occupation taxes were repealed by House Bill 1122, 68th Legislature, 1983, effective August 29, 1983. For that reason, this section also is being repealed.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the enforcement and administration of the Code.

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 January 23, 1984.

TRD-840847 Bob Bullock
 Comptroller of Public Accounts

Effective date: February 13, 1984

Proposal publication date: November 8, 1983
For further information, please call (512) 475-1932.

34 TAC §3.142

The Comptroller of Public Accounts adopts the repeal of §3.142, without changes to the proposal published in the November 8, 1983, issue of the *Texas Register* (8 TexReg 4652). The miscellaneous occupation taxes were repealed by House Bill 1122, 68th Legislature, 1983, effective August 29, 1983. For that reason, this section also is being repealed.

This repeal is adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the enforcement and administration of the Code.

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 January 23, 1984.

TRD-840848 Bob Bullock
 Comptroller of Public Accounts

Effective date: February 13, 1984

Proposal publication date: November 8, 1983
For further information, please call (512) 475-1932.

**Subchapter O. Sales Tax Division—State
Taxes**

34 TAC §3.288

The Comptroller of Public Accounts adopts amendments to §3.288, without changes to the proposed text published in the December 6, 1983, issue of the *Texas Register* (8 TexReg 5022).

The amendments are necessary because of changes made by the legislature in direct payment permit holder qualifications and reporting deadlines. The minimum in annual purchases necessary to become a direct payment permit holder was increased from \$200,000 to \$800,000. Direct payment returns are now due to be filed monthly and must be postmarked on or before the 20th day of the following month to be considered timely.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the sales tax.

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 January 23, 1984.

TRD-840849 Bob Bullock
 Comptroller of Public Accounts

Effective date: February 13, 1984

Proposal publication date: December 6, 1983
For further information, please call (512) 475-3825.

34 TAC §3.339

The Comptroller of Public Accounts adopts amendments to §3.339, with changes in the proposed text published in the November 4, 1983, issue of the *Texas Register* (8 TexReg 4546).

The amendments are necessary because of changes and additions to the Texas Tax Code made by the legislature. The amendments state that the comptroller has four years from the date the tax becomes due and payable in which to assess a liability. The former rule tied the statute of limitations to a quarterly reporting period even though some persons reported on other bases. The amendments also provide for an extension of the statute of limitations through agreements between the comptroller and the taxpayer.

The change in the language of the adopted rule is in subsection (c). As proposed, the comptroller had three years from the date a deficiency or jeopardy became due and payable to file suit. As now written, the comptroller has three years from the date a deficiency determination becomes due and payable or three years from the date the jeopardy becomes final to file suit. These dates may not be the same.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the sales tax

§3.339. Statute of Limitations.

(a) Assessments.

(1) The comptroller has four years from the date the tax becomes due and payable in which to assess the liability. For the statute of limitations regarding refunds, see §3.325 of this title (relating to Refunds and Payments under Protest). Before the expiration of the statute of limitations, the comptroller and a taxpayer may agree in writing to an extension. The agreement must comply with the provisions of the Texas Tax Code, §111.203.

(2) An extension applies only to the periods specifically mentioned in the agreement. Any assessment or refund request pertaining to periods for which limitations have been extended must be made prior to the expiration date of the agreement. Following expiration of the agreement, the statute of limitations applies to subsequent assessments and refund requests as if no extension had been authorized.

(3) In cases of fraud, or if sales tax returns have not been filed, the statute of limitations does not apply and the comptroller may assess and collect taxes, penalties, and interest at any time. The statute of limitations does not apply when information contained in the report of a taxpayer contains a gross error and the amount of tax due and payable after correction of the error is 25% or more greater than the amount initially reported.

(4) The statute of limitations does not apply to any period for which a taxpayer has filed a timely claim for a sales tax refund. If, while investigating the merits of the refund claim, the comptroller determines that additional tax is due, an assessment may be made for that period until a final decision is made on the claim for refund.

(b) Successor liability. In the case of successor liability, the comptroller has four years in which to issue a notice of deficiency or jeopardy determination to the purchaser of the business or stock of goods. The four-year period in which the comptroller may assess begins to run for the purchaser from the date of the sale to the purchaser or from the date a determination issued to the seller becomes final, whichever event occurs later.

(c) Suit for collection. The comptroller has three years from the date that the deficiency determination becomes due and payable, the jeopardy determination becomes final, or after the last recording of a lien, in which to file suit for collection of the taxes, penalties, and interest. If a redetermination hearing is requested, the determination will not become final until a redetermination decision is issued and becomes final.

(d) Notice of delinquency. The comptroller has three years from the date that the deficiency determination becomes due and payable, the jeopardy determination becomes final, the last recording of a lien, or the redetermination decision becomes final to give notice of delinquency to all persons who have in their possession

or under their control any credits or other personal property belonging to the delinquent, or who owe any debts to the delinquent.

(e) Seizure. The comptroller has three years from the date that the deficiency determination becomes due and payable, the jeopardy determination becomes final, or the redetermination decision becomes final to seize any property of the delinquent and sell the property, or a sufficient part of it, at public auction to pay the taxes, penalties, and interest due.

(f) (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 January 23, 1984.

TRD-840850 Bob Bullock
Comptroller of Public Accounts

Effective date: February 13, 1984

Proposal publication date: November 4, 1983

For further information, please call (512) 475-3825.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission Chapter 81. General Provisions

37 TAC §81.301

The Texas Youth Commission adopts new §81.301, without changes to the proposed text published in the December 23, 1983, issue of the *Texas Register* (8 TexReg 5400).

The agency is required to state which of its vehicles are not inscribed with the agency name. The agency name will not appear on vehicles specifically exempted from this requirement as stated in the new rule.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6707-1, which provide the Texas Youth Commission with the authority to make rules exempting its vehicles from inscription of the agency name.

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 January 23, 1984.

TRD-840896 Ron Jackson
Executive Director
Texas Youth Commission

Effective date: February 14, 1984

Proposal publication date: December 23, 1983

For further information, please call (512) 452-8111.

**TITLE 40. SOCIAL SERVICES AND
ASSISTANCE**

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

**Chapter 27. Intermediate Care
Facility for Mentally Retarded
Subchapter S. Utilization Review and
Reevaluation**

40 TAC §27.1803

The Texas Department of Human Resources adopts an amendment to §27.1803, without changes to the proposed text published in the October 14, 1983, issue of the *Texas Register* (8 TexReg 4175).

The amendment is necessary to comply with changes in federal regulations. Section 27.1803 is amended to specify that the attending physician must recertify the resident's continued need for care within six months after initial admission and at least every 12 months thereafter.

One comment was received from the Association for Retarded Citizens, Texas. The association supports the amendment and believes that it is necessary and appropriate to the needs of residents.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public 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 January 24, 1984

TRD-840938 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: February 14, 1984
Proposal publication date: October 14, 1983
For further information, please call (512) 441-3355,
ext. 2037.

**Chapter 29. Purchased Health
Services**

Subchapter F. Physician Services

40 TAC §29.502

The Texas Department of Human Resources adopts an amendment to §29.502, without changes to the proposed text published in the November 25, 1983, issue of the *Texas Register* (8 TexReg 4911).

The amendment defines terminology in the rule text. Providers of physician services covered under the Texas Medicaid Program are reimbursed by the Texas Department of Human Resources' health insuring agent.

The amendment clarifies the term "personal supervision" with respect to physician services provided under the Texas Medicaid Program. This clarification ensures that the agency rule relating to physician services is consistent with the description of services provided in the *Texas Medicaid Provider Procedures Manual*.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department 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 January 24, 1984.

TRD-840939 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: February 14, 1984
Proposal publication date: November 25, 1983
For further information, please call (512) 441-3355,
ext. 2037.

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. Although some notices may be received too late for publication before the meeting is held, all those filed are published in the *Register*. Notices concerning state agencies, colleges, and universities must contain the date, time, and location of the meeting, and an agenda or agenda summary. Published notices concerning county agencies include only the date, time, and location of the meeting. These notices are published alphabetically under the heading "Regional Agencies" according to the date on which they are filed.

Any of the governmental entities named above must have notice of an emergency meeting, or 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. However, notices of emergency additions or revisions to a regional agency's agenda will not be published since the original agenda for the agency was not published.

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. These notices may contain more detailed agendas than space allows to be published in the *Register*.

Select Committee on Public Education

Saturday, January 28, 1984, 10 a.m. The Subcommittee on Legislative Action of the Select Committee on Public Education submitted an emergency revised agenda for an organizational meeting held in Room 100-E, John H. Reagan Building, 105 West 15th Street, Austin. The emergency status was necessary because the original posting for this meeting incorrectly stated the time as 2 p.m., when the meeting time was at 10 a.m.

Contact: Sally Haenelt, State Archives Building, Room 413, Austin, Texas 78711, (512) 475-2020.

Filed: January 24, 1984, 4:25 p.m.
TRD-840965

Sunday, January 29, 1984, 2 p.m. The Subcommittee on Educating the Child of the Select Committee on Public Education submitted an emergency revised agenda for a meeting held in Room 346, State Capitol, Austin. According to the revised agenda, the meeting time was changed. The meeting was originally posted for 1 p.m. The emergency status was necessary so that committee members would be able to attend the meeting.

Contact: Sally Williams, 7171 Forest Lane, Dallas, Texas 75230, (214) 661-6526.

Filed: January 24, 1984, 4:25 p.m.
TRD-840966

Sunday, January 29, 1984, 2 p.m. The Subcommittee on Educating the Child of the Select Committee on Public Education submitted an emergency revised agenda for a meeting held in Room 310, State Capitol, Austin. According to the agenda, the subcommittee continued discussion on bilingual and vocational education. The emergency revision concerned a change of location for the meeting, which was originally scheduled to be held in Room 346, State Capitol. The emergency status was necessary because it was determined that Room 346 was not large enough for the meeting.

Contact: Sally Williams, 7171 Forest Lane, Dallas, Texas 75230, (214) 661-6526.

Filed: January 25, 1984, 4:21 p.m.
TRD-841022

Monday, January 30, 1984, 9 a.m. The Subcommittee on Educating the Child of the Select Committee on Public Education submitted an emergency revised agenda for a meeting held in Room 100-E, John H. Rea-

gan Building, 105 West 15th Street, Austin. Items on the agenda included presentations on student testing, award of diplomas, selection of textbooks, core curriculum, extracurricular activities, and electives. The emergency revision concerned a change of location for the meeting, which was originally scheduled to be held in Room 346, State Capitol. The emergency status was necessary because it was determined that Room 346 was not large enough for the meeting.

Contact: Sally Williams, 7171 Forest Lane, Dallas, Texas 75230, (214) 661-6526.

Filed: January 25, 1984, 4:21 p.m.
TRD-841023

Saturday, February 4, 1984, 9:30 a.m. The Subcommittee on the Teaching Profession of the Select Committee on Public Education will meet in Room 309, State Capitol, Austin. According to the agenda, the subcommittee will conduct a work session concerning career ladders for members of the teaching profession.

Contact: Margaret LaMontagne, John H. Reagan Building, 105 West 15th Street, Austin, Texas 78701, (512) 475-3506.

Filed: January 25, 1984, 4:22 p.m.
TRD-841024

Texas Education Agency

Thursday and Friday, February 9 and 10, 1984, 8:30 a.m., daily. The Continuing Advisory Committee for Special Education of the Texas Education Agency (TEA), will meet in the Capitol Room, Hilton Inn, 6000 Middle Fiskville Road, Austin. According to the agenda summary, on Thursday the committee will consider organization of the TEA and special education; the history and activities of former advisory committees; rules clarification, questions, and answers; monitoring document; House Bill 246 and special education curriculum; discussion and recommendations concerning curriculum; complaints management system—due process and status of mediation; and hear a status report on projects and a report on the Select Committee on Public Education. On Friday the committee will discuss funding; consider regional day school programs for the deaf, certification concerning an update on autism projects and efforts around the state, the assessment manual and TEA forms, and parents' rights and surrogate parents booklets; hear a report on educationally disadvantaged and learning disadvantaged task forces; consider the state plan; and elect officers.

Contact: Joye A Scheffler, 201 East 11th Street, Austin, Texas 78701, (512) 834-4409

Filed: January 25, 1984, 4:22 p.m.
TRD-841021

Texas Employment Commission

Thursday, February 2, 1984, 9 a.m. The Texas Employers' Commission (TEC) will meet in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. According to the agenda summary, the commission will consider prior meeting notes and internal procedures of commission appeals; consider and act on higher level appeals in unemployment compensation cases on Dockets 5A, 5B, and 5C; and set a date for the next meeting.

Contact: Courtenay Browning, TEC Building, Room 608, 15th Street and Congress Avenue, Austin, Texas, (512) 397-4415.

Filed: January 25, 1984, 3:50 p.m.
TRD-841008

Office of the Governor

Committees of the State Job Training Coordinating Council of the Office of the Governor and the full council will meet at the

Marriott Hotel, 6121 IH 35 North at U.S. Highway 290 East, Austin. Days, times, committees, and agendas follow.

Thursday, February 2, 1984, 10:30 a.m. The Worker Adjustment Committee will explain committee procedures; hear public comments; hold a briefing on the governor's action on Title III recommendations, worker assistance request for proposals, a Title III evaluation, and the SWAT team; review proposals for demonstration projects; and discuss the secretary's discretionary funds/border initiatives.

Thursday, February 2, 1984, 1:30 p.m. The Planning Committee will conduct briefings on Texas Education Agency/state coordination funds, planning guidelines for substate allocations to SDAs, veteran's Title IV-C application for funds, and employment generating service funds; hear public comments; and discuss the labor market information plan, Wagner-Peyson planning, and the technical assistance and training plan.

Thursday, February 2, 1984, 4:30 p.m. The Private Sector Committee will conduct a public comment period; hear a report on the survey of private sector involvement; consider training/marketing approaches; and youth/older workers programs concerning private sector involvement.

Contact: Bob McPherson, P.O. Box 12428, Austin, Texas 78701, (512) 475-6156.

Filed: January 25, 1984, 4:29 p.m.
TRD-841010-841012

Friday, February 3, 1984, 8:30 a.m. The State Job Training Coordinating Council will approve the minutes; hear state council briefings concerning the Emergency Veterans Job Program and substate resource allocations and estimates; revise bylaws; discuss the Older Workers Task Force and state associations of private industry councils and administrative entities; consider agency coordination; hear public comments; and hear a briefing by MET, Inc., executive director, Frank Acosta and reports from the Private Sector Committee, the Worker Adjustment Committee concerning new demonstration projects, the Planning Committee concerning the LMI plan, Wagner-Peyser Planning, and technical assistance training, and the Youth Committee concerning summer youth planning and programs.

Contact: Bob McPherson, P.O. Box 12428, Austin, Texas 78701, (512) 475-6156.

Filed: January 25, 1984, 4:01 p.m.
TRD-841009

Friday, February 3, 1984, 10 a.m. The Subcommittee on Employee Benefits of the Governor's Task Force on State Employee Health Insurance Quality and Cost Containment of the Office of the Governor will meet in Room 206 and Room 207, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda, the subcommittee will review the task force charge; hear a presentation on the insurance contract procurement process; discuss Blue Cross/Blue Shield data; review a survey on other states' insurance programs; and discuss types of benefits, cost containment programs, and future meeting agendas.

Contact: Evelyn Ireland, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4285.

Filed: January 25, 1984, 2:29 p.m.
TRD-841003

Texas Health Facilities Commission

Thursday, February 2, 1984, 1:30 p.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will consider the following applications.

Certificate of Need

- Port Arthur Day Surgery Center, Inc.,
Port Arthur
AS83-0415-346
- Nacogdoches Medical Center,
Nacogdoches
AH83-0815-113
- Clear Lake Dialysis Clinic, Webster
AS83-0630-666

Amendments of Certificate of Need Order

- St Joseph Hospital, Houston
AH78-1109-005A(121483)
- Sun Towers Hospital, a wholly-owned subsidiary of Hospital Corporation of America, El Paso
AH82-0331-028A(121483)

Notices of Intent to Acquire Existing Health Care Facilities

- Lantis Enterprises, Kearney, Nebraska
AN83-1214-429
- DAKTEX Associates, an Illinois general partnership, Chicago, Illinois
AN83-1227-465
- Republic Health Corporation, Dallas
AH83-1216-431
AH83-1219-451
AH83-1219-453
- Nu-Med Hospitals, Inc., a newly formed subsidiary of Nu-Med, Inc., Encino, California
AH83-1216-432

Texas Register

Medical 21 Corporation, Dallas
AS83-1212-100

HEI Silsbee, Inc., a Texas corporation
and wholly-owned subsidiary of HEI
Corporation, Houston
AH83-1227-468

Med West Healthcare Management
Corporation, a South Dakota
corporation, Omaha, Nebraska
AN83-1205-416

Contact: Judith A Monaco, P.O. Box
50049, Austin, Texas 78763, (512) 475-6940.

Filed: January 25, 1984, 9:18 a.m.
TRD-840980

University of Houston System

Monday, January 30, 1984. Committees of the Board of Regents of the University of Houston System met in Room 510, Enterprise Bank Building, 4600 Gulf Freeway, Houston. Times, committees, and agendas follow.

8:30 a.m. The University Relations Committee discussed the KUHT quarterly report, gift acceptance reports, gifts of property and equipment, and the fiscal year 1983 gift income report.

9 a.m. The Investment Committee discussed a summary report of a newly established endowment

9:30 a.m. The Audit Committee discussed 1982 audited financial statements, the 1982 fiscal year state auditor's management letter and administration's response, an audit plan through fiscal year 1984, and the appointment of an external auditor for the audit of federal financial aid programs for fiscal year 1983.

11 a.m. The Budget and Finance Committee discussed a bank resolution, the purchase of a VAX computing system for research in physics and computerized videotape editing equipment for KUHT production use, unaudited financial statements for fiscal year 1983, and guidelines for fiscal year 1985 operating budget development.

Contact: Patricia A. Bailey, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: January 25, 1984, 10:27 a.m.
TRD-840994-840997

Monday, February 6, 1984. Committees of the Board of Regents and the full board of the University of Houston System will meet in the boardroom, Room 220, Ezekiel Cullen, University of Houston, University

Park campus, Houston. Times, committees, and agendas follow.

9 a.m. The Facilities, Planning, and Building Committee will discuss and/or approve the University of Houston University Park and the University of Houston system. The committee will also meet in executive session.

10:30 a.m. The Campuses, Faculty, and Academic Affairs Committee will discuss and/or approve personnel recommendations, dual employment requests, the commissioning of peace officers, a resolution updating security clearance, and grants and contracts monthly reports.

1:30 p.m. The Board of Regents will discuss and/or approve reports from the University Relations Committee, the Investment Committee, the Audit Committee, the Budget and Finance Committee, the Facilities, Planning, and Building Committee, and the Campuses, Faculty, and Academic Affairs Committee; resolutions; and the president's report. The board also will meet in executive session.

Contact: Patricia A. Bailey, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: January 25, 1984, 10:27 a.m.
TRD-840998-841000

State Board of Insurance

Monday, March 5, 1984, 9 a.m. The State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the board will conduct a public hearing to consider the appeal of Leisure Services, Inc., from the decision of the Texas Catastrophe Property Insurance Association.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950

Filed: January 24, 1984, 11:05 a.m.
TRD-840944

State Preservation Board

Thursday, February 2, 1984, 2 p.m. The State Preservation Board will meet in a rescheduled session in Room 200, State Capitol, Austin. According to the agenda, the board will conduct an organizational meeting and discuss the placing of an ad for the position of Capitol architect and curator and other administrative procedural matters. The meeting is rescheduled from January 27, 1984, as published at 9 TexReg 422.

Contact: Karen Johnson, Room G-3, State Capitol, Austin, Texas 78711, (512) 475-0510.

Filed: January 25, 1984, 4:05 p.m.
TRD-841013

Texas State Board of Examiners of Professional Counselors

Saturday, February 4, 1984, 9 a.m. The Texas State Board of Examiners of Professional Counselors will meet in the auditorium, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the board will approve the November 5, 1983, minutes; hear the executive secretary's report; consider areas for specialty designation, matters relating to the development of licensure examination, licensure applications and procedures, including reviews of disapproved files, continuing education requirements for renewal of licensure, complaints against licensees, and other matters relating to the licensure and regulation of professional counselors; and set the next meeting date.

Contact: Daniel L. Boone, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: January 24, 1984, 1:59 p.m.
TRD-840958

Texas State Board of Public Accountancy

Thursday-Saturday, January 26-28, 1984, 8:30 a.m., daily. The Texas State Board of Public Accountancy met in emergency session in Suite 340, 1033 La Posada Drive, Austin. According to the agenda summary, the board conducted hearings and committee meetings, considered final approval of amendments to substantive rules, and conducted other board business. The emergency status was necessary because the submission form, Docket 840565, dated January 16, 1984, 2:31 p.m., carried an incorrect address for the board.

Contact: Bob E. Bradley, 1033 La Posada Drive, Suite 340, Austin, Texas 78752, (512) 451-0241.

Filed: January 24, 1984, 1:49 p.m.
TRD-840957

Public Utility Commission of Texas

The Hearings Division of the Public Utility Commission of Texas will meet in Suite

450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Friday, February 3, 1984, 8:30 a.m. A prehearing conference in Docket 5572—application of Dallas Power and Light Company from rate-making ordinances of the City of Dallas, *et al.*

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 24, 1984, 1:58 p.m.
TRD-840954

Tuesday, February 7, 1984, 10 a.m. A rescheduled prehearing in Docket 5542—petition of Diamond Shamrock Chemical Company for an investigation into certain practices of Houston Lighting and Power Company. The prehearing was originally scheduled for January 31, 1984, at 10 a.m., as published at 9 TexReg 382.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 25, 1984, 10:15 a.m.
TRD-840992

Monday, February 13, 1984, 2 p.m. A hearing on the merits in Docket 5488—application of Northwest Water Systems, Inc., for a rate/tariff increase.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 24, 1984, 11:05 a.m.
TRD-840945

Wednesday, February 15, 1984, 3 p.m. A prehearing conference in Docket 5474—application of B&P Water Supply Corporation for a certificate of convenience and necessity within Johnson County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 24, 1984, 1:58 p.m.
TRD-840955

Wednesday, February 22, 1984, 10:30 a.m. A hearing on the merits in Docket 5247—application of Able Springs Water Supply Corporation to amend its certificate of convenience and necessity within Hunt, Kaufman, and Van Zandt Counties.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 24, 1984, 1:58 p.m.
TRD-840956

Tuesday, March 27, 1984, 10 a.m. A hearing in Docket 5279—application of Water Services, Inc., and Docket 5561—application of Water Services Two, Inc., for a rate/tariff change.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 26, 1984, 9:51 a.m.
TRD-841034

Texas Southern University

Friday, February 3, 1984. Committees of Texas Southern University will meet in Room 117, Hannah Hall, Texas Southern University, 3100 Cleburne Avenue, Houston. Committees, times, and agendas follow.

9 a.m. The Building and Grounds Committee will consider the approval of payments for construction contracts; the approval/ratification of building contracts and change orders; land improvements and sale of improvements; project management proposals and central plant expansion and renovation; and reports of on-going projects.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 26, 1984, 9:56 a.m.
TRD-841033

9:45 a.m. The Finance Committee will consider monthly financial reports, approve short-term investments and payments of real estate purchases, and hear status reports.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 26, 1984, 9:56 a.m.
TRD-841032

10:30 a.m. The Student Affairs Committee will receive reports from the administration on student organizations and activities and hear dormitory renovation progress reports, and status reports.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 26, 1984, 9:56 a.m.
TRD-841031

11:15 a.m. The Personnel and Academic Affairs Committee will consider enrollment and curricula data from the administration; introduce new personnel; review a small

class report, cancellation of appointments, and changes in the status of personnel; and approve the appointment of personnel, foreign travel, the returning of persons on leave, and educational gifts and grants.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 26, 1984, 9:56 a.m.
TRD-841030

Noon. The Development Committee will consider reports from the administration on university fund raising and consider real property status reports.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 26, 1984, 9:56 a.m.
TRD-841029

Friday, February 3, 1984, 1:30 p.m. The Board of Regents of Texas Southern University will meet in Room 203, Sterling Student Life Center, Texas Southern University, 3100 Cleburne Avenue, Houston. According to the agenda, the board will consider reports from the president and the following standing committees: Finance, Building and Grounds, Personnel and Academic Affairs, Development, and Student Affairs. The board will also meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 26, 1984, 9:56 a.m.
TRD-841028

Stephen F. Austin State University

Monday and Tuesday, January 30 and 31, 1984, 1:30 p.m. and 9 a.m., respectively. The Board of Regents of Stephen F. Austin State University made additions to agendas of meetings held in Room 307, Austin Building, Stephen F. Austin State University campus, Nacogdoches. The additions concerned relocation of the Department of Communication to the academic and student affairs item on both agendas.

Contact: William R. Johnson, Box 6078, Nacogdoches, Texas 75962, (409) 569-2201.

Filed: January 24, 1984, 1:58 p.m.
TRD-840959, 840960

State Securities Board

Friday, February 3, 1984, 9 a.m. The State Securities Board will meet at 1800 San Jacinto Street, Austin. According to the agenda summary, the board will conduct a public hearing regarding amendments to a §139 exemption to or among underwriters and for certain oil and gas exchange offers, §113.4 less restrictive interpretation of §9.B., §113.4 alternative to §9.B. escrow, and a definition of "inequitable practice in the sale of securities" used in §14 A.(2); discuss "fair, just, and equitable" and "full disclosure" in securities regulation and board minutes; review securities registration rules vis-a-vis current practice and legislature's amendments to the Act; consider published amendments to §139 exemption for sales to or among underwriters and for certain oil and gas exchange offers, §105 rules of practice in view of legislature's amendment to §24, §107.2 definition of "business days" in regard to filing Form 133.29, §113.3 formulation by commissioner of particular §9.B. escrow provisions, §113.4 less restrictive interpretation of §9 B., §117 and Form 133.31 to reflect registration guidelines for mortgage pools, §131.4 to include National Futures Association in exchanges of confidential information, Form 133.25 to eliminate references to licenses, and §139 new exemption for certain employee plans; discuss proposed amendments to §113.4 alternative to a §9 B. escrow, §105.3 time limit for filing a complaint pursuant to §24.B., §107.2 to redefine "security holders" and "purchasers of securities" in view of §139.11 proposed exemption for certain employee plans, §109.4 to redefine an "employee's restricted stock option" in view of §139.11 proposed exemption for certain employee plans, §109 exemption for securities issued by farmers' cooperative associations, §113.9 to clarify that the rule is a §5.T. exemption and no requirement exists that issuer be continuously registered as a dealer; and an update of agency operations, including reports from division directors and the commissioner.

Contact: Richard D. Latham, 1800 San Jacinto Street, Austin, Texas, (512) 474-2233.

Filed: January 25, 1984, 2:30 p.m.
TRD-841004

University of Texas System

Wednesday, January 25, 1984, 7 p.m. The Board of Regents of the University of Texas System met in emergency session in the Re-

gents' Meeting Room, ninth floor, Ashbel Smith Hall, 201 West Seventh Street, Austin. According to the agenda, the board met in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(f), to consider proposed amendments to the lease agreement for commercial vineyards on west Texas lands. The emergency status was necessary because of information received by the board on January 23 and 24, 1984, that necessitated emergency consideration of this item.

Contact: Arthur H. Dilly, P.O. Box N, Austin, Texas 78712, (512) 471-1265.

Filed: January 25, 1984, 1:22 p.m.
TRD-841002

Wednesday, February 1, 1984, 1 p.m. The Board of Regents of the Land and Investment Committee of the University of Texas System will meet in the Regents' Conference Room, ninth floor, Ashbel Smith Hall, 201 West Seventh Street, Austin. According to the agenda, the committee will meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(g), to consider personnel matters related to the employment of investment counselors for the University of Texas System.

Contact: Arthur H. Dilly, P.O. Box N, Austin, Texas 78712, (512) 471-1265.

Filed: January 24, 1984, 1:13 p.m.
TRD-840949

Texas Water Commission

Thursday, January 26, 1984, 12:30 p.m. The Texas Water Commission met in emergency session in Room 124A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission considered a request by the City of Corpus Christi for an emergency order to discharge a total of approximately 23 million gallons of filter backwash water to the Nueces River, Nueces River Basin, from its potable water treatment plant sludge lagoons located immediately south of the Nueces River, approximately 4,500 feet east of U.S. Highway 77 and approximately 3,000 feet north of IH 37 in Nueces County. The emergency status was necessary to repair breaks in the dikes of the settling lagoons.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: January 26, 1984, 9:40 a.m.
TRD-841027

The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, rooms, and agendas follow.

Thursday, February 9, 1984, 10 a.m. In Room 124A, application of Liberty Waste Disposal Company for the transfer of Permit SW-39039 from Liberty Waste Disposal Company to Cecos International, Inc.

Wednesday, February 15, 1984, 2 p.m. In Room 118, application of the City of the City of Wichita Falls and Wichita County Water Improvement District 2 for an amendment to Permit 504, as amended, to authorize the diversion of 5,850 acre-feet of water per annum from Lake Diversion located on the Wichita River, tributary of the Red River, Red River Basin, in Baylor and Archer Counties into Lake Wichita, located on Holliday Creek, tributary of the Wichita River, for recreational purposes.

Tuesday, February 21, 1984, 2 p.m. In Room 118, application of the City of Melissa for proposed water quality Permit 12649-01.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: January 24, 1984, 1:48 p.m.
TRD-840961-840963

West Texas State University

Thursday, February 2, 1984, 3 p.m. The Advisory Athletic Committee of the Board of Regents of West Texas State University will meet in Room 211, Virgil Henson Physical Activities Center, West Texas State University, Canyon. According to the agenda, the committee will discuss and review the athletic program and formulate recommendations to the full board. The committee will also meet in executive session to consider personnel matters as authorized by Texas Civil Statutes, Article 6252-17, §2g.

Contact: Texas Smith, WT Box 997, Canyon, Texas 79016, (806) 656-3962.

Filed: January 25, 1984, 11:33 a.m.
TRD-841001

Regional Agencies

Meeting Filed January 24

The Texas Municipal League, Property Board of Trustees, met at the El Paso Marriott, Montana at Airway, El Paso, on January 29 and 30, 1984, at 2 p.m. and 9 a.m.,

respectively. Information may be obtained from William I. Martin, Jr., 1020 Southwest Tower, Austin, Texas 78701.

TRD-840964

Meetings Filed January 25

The Central Texas Mental Health and Mental Retardation Center, Board of Trustees, will meet at 408 Mulberry Drive, Brownwood, on January 31, 1984, at 4:30 p.m. Information may be obtained from Gloria Willen, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, ext. 102.

The Dallas County Appraisal District, Board of Directors, met in emergency session at 2601 Live Oak, Dallas, on January 25, 1984, at 11 a.m. Information may be

obtained from Shirley Lenskey, 2601 Live Oak, Dallas, Texas 75204, (214) 826-1480.

The Deep East Texas Regional Mental Health and Mental Retardation Services, Board of Trustees, will meet in the Ward R. Burke Community Room, Day Treatment/Administration Facility, 4101 South Medford Drive, Lufkin, on January 31, 1984, at 5:30 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141.

The West Central Texas Council of Governments, Regional Advisory Council on Aging, will meet in the large conference room, 1025 East North 10th, Abilene, on February 2, 1984, at 10 a.m. Information may be obtained from Dorothy Vanderslice, P.O.

Box 3195, Abilene, Texas 79604, (915) 672-8544.

TRD-840974

Meetings Filed January 26

The Dallas County Appraisal District, Board of Directors, will meet at 2601 Live Oak, Dallas, on February 1, 1984, at 7:30 a.m. Information may be obtained from Shirley Lenskey, 2601 Live Oak, Dallas, Texas 75204, (214) 826-1480

The Henderson County Appraisal District, Board of Directors, will meet at 101 East Corsicana, Athens, on February 7, 1984, at 7:30 p.m. Information may be obtained from Linda Hagar, 101 East Corsicana, Athens, Texas, (214) 675-9296.

TRD-841035

In Addition

The *Register* is required by statute to publish applications to purchase control of state banks (filed by the banking commissioner), notices of rate ceilings (filed by the consumer credit commissioner), changes in interest rate and applications to install remote service units (filed by Texas Savings and Loan commissioner); and consultant proposal requests and awards (filed by state agencies, regional councils of government, and the Texas State Library and Archives Commission)

In order to aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows. This often includes applications for construction permits (filed by the Texas Air Control Board), applications for amendment, declaratory ruling, and notices of intent (filed by the Texas Health Facilities Commission), applications for waste disposal permits (filed by the Texas Water Commission), and notices of public hearing.

Banking Department of Texas Application To Acquire Control of a State Bank

Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On January 18, 1984, the banking commissioner received an application to acquire control of the First Bank of Saginaw, Saginaw, by James D. Atchley, trustee, of Houston.

On January 23, 1984, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on January 23, 1984

TRD-840946 Archie P. Clayton III
General Counsel
Banking Department of Texas

Filed: January 24, 1984
For further information, please call (512) 475-4451.

Texas Education Agency Public Hearing

The State Board of Education will hold a public hearing on the description of content of textbooks called for by Textbook Proclamation 61. The hearing will be held on Wednesday, February 8, 1984, at 2.30 p.m., in the Joe Kelly Butler Board Room, Texas Education Agency North Building, 1200 East Anderson Lane, Austin.

Persons who wish to testify must notify J. Henry Perry, Division of Textbooks, Texas Education Agency, (512) 834-4055, by 5 p.m. on February 6, 1984.

Additional information concerning the hearing or the contents of Proclamation 61 is available from the Division of Textbooks, Texas Education Agency, 201 East 11th Street, Austin.

Issued in Austin, Texas, on January 24, 1984

TRD-840967 Raymon L. Bynum
Commissioner of Education

Filed: January 24, 1984
For further information, please call (512) 475-7077.

Region IX Education Service Center Notice of Application for Place on Ballot

Applications for Place on Ballot for election to the board of directors of the Region IX Education Service Center, 301 Loop 11, Wichita Falls, may be obtained at the Region IX office, same address, between the hours of 8 a.m. and 4 p.m. beginning Wednesday, February 1, 1984.

Open for election are Place Two, currently filled by Mrs. Garland Johnston of Vernon; Place Four, currently filled by Robert Ewing of Burkburnett; and Place Six, currently filled by Lawrence A. Berend of Windthorst. Board members are elected to three-year terms. Notice of filing must be received at the headquarters office in person or by certified mail not later than 4 p.m. on February 20, 1984.

Any citizen of the United States who is over 21 years of age, a resident of the region being served by the center, who is not engaged professionally in education, or who is not a member of a school district board of trustees, a county board of trustees, or a board of an institution of higher education, which is eligible for membership on the joint committee, may be elected to the board of direc-

tor membership. No member of the board or member of his or her immediate family shall be in the business of vending or servicing materials or equipment to regional education service centers.

Issued in Wichita Falls, Texas, on January 20, 1984

TRD-840861 Jim O. Rogers
Executive Director
Region IX Education Service
Center

Filed: January 23, 1984
For further information, please call (817) 322-6928.

Texas Health Facilities Commission Applications Accepted for Amendment, Declaratory Ruling, and Notices of Intent

Notice is hereby given by the Texas Health Facilities Commission of applications accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance; NIE indicates notice of intent to acquire major medical equipment; NIEH indicates notice of intent to acquire existing health care facilities; NIR indicates notice of intent regarding a research project; NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party to any of the above-stated applications, that person must file a proper request to become a party to the application within 15 days after the date of this publication of notice. If the 15th day is a Saturday, Sunday, state or federal holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, state or federal holiday. A request to become a party should be mailed to the chair of the commission at P.O. Box 50049, Austin, Texas 78763, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to any of these applications must meet the criteria set out in 25 TAC §515.9. Failure of a party to supply the necessary information in the correct form may result in a defective request to become a party.

Titus County Hospital District for Titus County
Memorial Hospital, Mount Pleasant
AH81-0319-019A(011784)
CN/AMD—Request for an extension of the completion deadline from December 31, 1983, to May 15, 1984, in Certificate of Need AH81-0319-019, which authorized the certificate holder to conduct an extensive construction and renovation project,

including the construction of 47,254 square feet and the renovation of 7,758 square feet.

McKenna Memorial Hospital, Inc., and Comal County Hospital Authority, New Braunfels
AH81-0217-021A(122983)
CN/AMD—Request for an extension of the completion deadline from January 1, 1984, to June 30, 1984, in Certificate of Need AH81-0217-021, which authorized the certificate holder to conduct a construction and renovation project involving a total of 85,806 square feet.

Texas Health Enterprises, Inc., Grand Prairie
AN83-1227-467
NIEH—Correction of notice published in the January 10, 1984, issue of the *Texas Register* (9 Tex-Reg 295). Request for a declaratory ruling that a certificate of need is not required for Texas Health Enterprises, Inc., to acquire by lease Hillside Manor Nursing Center, an existing 120-bed ICF nursing center located in Gatesville, from Stonebrook Properties, Inc.

Golden Horizon Care Centers, Wichita Falls
AN83-1230-477
NIEH—Request for a declaratory ruling that a certificate of need is not required for Golden Horizon Care Centers to acquire by purchase Spur Care Center, an existing 40-bed ICF nursing facility located in Spur, from Care One, Inc., and Care One Management, Inc.

Jewell Enterprises, Arlington
AN84-0116-032
NIEH—Request for a declaratory ruling that a certificate of need is not required for Jewell Enterprises to acquire by purchase Seagoville Lodge, an existing 150-bed ICF nursing facility located in Seagoville, from Cantex Health Care Centers, a Texas general partnership.

Stonebrook Properties, Inc., Arlington
AN84-0116-031
NIEH—Request for a declaratory ruling that a certificate of need is not required for Stonebrook Properties, Inc., to acquire by lease Seagoville Lodge, an existing 150-bed ICF nursing facility located in Seagoville, from Jewell Enterprises, a Texas general partnership. After the acquisition, the name of the facility will be changed to Stonebrook Lodge—Seagoville.

Huth Catholic Hospital Corporation, a to-be-formed subsidiary of Incarnate Word Health Services, Yoakum
AH84-0118-039
NIEH—Request for a declaratory ruling that a certificate of need is not required for Huth Catholic Hospital Corporation, a to-be-formed subsidiary of Incarnate Word Health Services, to acquire by purchase Huth Memorial Hospital, an existing 46-bed general acute care hospital with 39 medical/surgical, five OB, and two pediatric beds located in Yoakum, from Sisters of the Incarnate Word and Blessed Sacrament.

Southwest Health Villas, Inc., a Texas corporation,
Dallas
AN84-0116-034
NIEH—Request for a declaratory ruling that a certificate of need is not required for Southwest Health Villas, Inc., a Texas corporation, to acquire by purchase Valley View Nursing Home, an existing 108-bed ICF nursing facility located in Granbury, from Calmac Holdings, Inc., a Texas corporation.

Issued in Austin, Texas, on January 25, 1984

TRD-840981 Judith Monaco
Assistant General Counsel
Texas Health Facilities
Commission

Filed: January 25, 1984
For further information, please call (512) 475-6940.

Texas State Library and Archives Commission Consultant Proposal Request

The Texas State Library and Archives Commission, under authority of its enabling Act, Texas Civil Statutes, Article 5436, announces a request for proposals from its Library Development Division. Since proposals may be submitted requiring consultant services, notice is hereby given as required under Texas Civil Statutes, Article 6252-11c.

Description of Program Proposal. The Texas State Library and Archives Commission is soliciting proposals to implement projects involving cooperation between or among libraries of more than one type. These multi-type library cooperative projects may encompass the planning, establishment, expansion, or operation of local, regional, state, or interstate cooperative networks of libraries. The projects should provide for participation among school, public, academic, and special libraries and information centers. Although the proposals may require the delivery of consulting or human services to the participating libraries, some expenditures, especially the purchase of library materials, are not allowed.

Evaluation Process. The process of application review will involve the Library Services and Construction Act Advisory Council and the Texas State Library and Archives Commission staff. The grant application guidelines detail the weighted criteria and the process to be used to evaluate the applications. The final decisions regarding the awarding of the grants will be made by the Texas State Library and Archives Commission.

Eligible Applicants. Grants may be awarded to the city or county governing authorities of Texas system member public libraries, academic institutions, special libraries, school districts, and incorporated nonprofit organizations or consortia of libraries. Documentation must be included with the grant application indicating that two or more types of libraries will significantly participate in and be impacted by the proposed project.

Deadline for Submission of Proposals. Proposal applications must be postmarked no later than April 15, 1984. Proposals may be hand-delivered up to this date to the Library Development Division, Lorenzo de Zavala Archives and Library Building, 1201 Brazos Street, Austin, on any weekday between 8 a.m. and 5 p.m.

Duration of Programs and Amount of Funding. Federal Library Services and Construction Act Title III funding in the amount of \$480,000 is expected to be available. There is no specific allocation formula and no predetermined limitation on the amount per project. Because only proposals which are deemed to be of sufficient quality will be recommended for funding, some of the funds may remain ungranted. The duration of those projects which are funded is from September 1, 1984-August 31, 1985. The Texas State Library and Archives Commission reserves the right to accept or reject any or all proposals submitted, is under no legal requirement to execute any resulting contract on the basis of this advertisement, and provides this information only to fulfill the requirements of notification. Should the Texas State Library and Archives Commission award any contract(s), it will base its choice on the quality of the proposal, as assessed by the Library Services and Construction Act Advisory Council and library staff in accordance with the published grant application guidelines.

Contact. To receive a grant application guidelines packet, contact Jim Scheppke, Title III Project Manager, Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, (512) 475-4119.

Issued in Austin, Texas, on January 20, 1984

TRD-840936 William D. Gooch
Assistant State Librarian
Texas State Library and Archives
Commission

Filed: January 23, 1984
For further information, please call (512) 475-2166.

The Prosecutor Council Consultant Contract Award

Pursuant to Texas Civil Statutes, Article 6252-11c, The Prosecutor Council furnishes this notice of consultant contract award. The consultant proposal request appeared in the March 1, 1983, issue of the *Texas Register* (8 Tex-Reg 746).

Description of Services. The consultant provided a professional development course for prosecutors and their staff personnel. The seminar was presented June 20-24, 1983, in Austin.

Name and Address of Consultant. The consultant is the Texas District and County Attorneys Association, 1210 Nueces, Suite 200, Austin, Texas 78701.

Contract Value and Period. The total value of the contract is \$30,000. The beginning date of the contract was

April 25, 1983, and the ending date is three years after payment or until all questions arising from this contract are resolved.

Due Dates of Documents. All documents, films, recordings, or reports of the intangible results of the services performed by the consultant were available to The Prosecutor Council on or before June 29, 1983

Issued in Austin, Texas, on January 24, 1984.

TRD-840952 Andy Shuval
Executive Director
The Prosecutor Council

Filed: January 24, 1984
For further information, please call (512) 475-6825.

Public Utility Commission of Texas Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Public Utility Commission of Texas publishes this invitation for proposals for consulting services. The Public Utility Commission, Energy Efficiency Division (PUC/EED) seeks proposals from qualified firms and public agencies to develop three publications for the Texas appropriate energy technology grant projects. The three publications will address, but not be limited to, heat pump projects, community energy conservation projects and rural use of alternate energy sources. These publications will be used for statewide distribution.

This project is funded as part of the Appropriate Energy Technology Grant Program (AT) from the U.S. Department of Energy. The AT Program funded small-scale, decentralized, energy-efficient projects which used local materials, labor, and ingenuity and maximized the use of renewable energy resources. The purpose of the program was to encourage individuals, small businesses, communities, and community groups to develop energy-related ideas and to become involved in energy research and development. Although no further grants are available under this program, the projects are monitored through termination of the contract period. The PUC/EED is charged with the responsibility of project information dissemination.

Responses to this consultant proposal request must be postmarked no later than midnight, February 15, 1984, or hand-delivered no later than 5 p.m. on the same date, and are to be addressed to Sandy Becker, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757.

The AT publication award will be made on or before March 12, 1984. The contract period will be 90 days from the date of the signing of the contract. The contract total for these services will not exceed \$18,600.

Scope of Services. The contractor is expected to perform the following:

(1) develop and design three publications describing completed AT projects in the previously listed categories, including necessary artwork, graphics, and layout;

- (2) review AT project documents;
- (3) interview project managers if necessary;
- (4) travel to project sites if necessary;
- (5) promote to the Texas public the availability of these publications and the National Appropriate Technology Center's 14 publications which feature projects completed nationwide; and
- (6) submit artwork, graphics, and other preparation to the agency for approval prior to printing.

Deliverables. Consultants are to provide camera-ready copy of each publication not to exceed 50 pages per publication and a written distribution plan for disseminating publications.

Content of Proposals. Contents should include a narrative overview of the services to be performed; resumes of project personnel and the specific tasks to be performed; a timetable of milestones to be accomplished and the expenses per activity; a description of the qualifications of the organization as they relate to the selection criteria stated in the following section; an itemized budget; and three copies of the proposal.

Selection Criteria. The PUC/EED shall select and award contracts based upon demonstrated ability and qualifications to perform described services; performance of services at fair and reasonable prices; knowledge of energy conservation and alternate energy sources; ability to reach and work effectively with individuals, communities, and small businesses; develop and adapt project reports for use as educational materials and publications suited for target Texas audiences; and public relations and marketing expertise in Texas.

All proposals will be considered on their own merits, technically and with regard to price, and should not require explanation by the respondents. The PUC/EED may request interviews with respondents prior to final selection, but each written proposal must be able to stand on its own merit. Respondents must comply with all applicable policies and procedures of the PUC and the U.S. Department of Energy, as well as with all federal laws and regulations regarding grants to states and subgrantees. Responding firms may suggest additions or modifications to the services required

The PUC/EED reserves the right to enter into negotiations with selected respondents prior to the awarding of the contract. All contracts are contingent on continued receipt of federal funds. Final selection will be made by the PUC/EED based on staff recommendations.

If, upon conclusion of the review and evaluation of proposals received pursuant to this solicitation, two or more proposals are ranked so closely that a final selection cannot reasonably be made, the PUC/EED may request each proposer to provide it with additional information to be used for the purpose of determining the proposal to be selected. Such additional information may include additional written materials not specified in this solicitation or clarifications of proposals. Proposers may also be requested to meet with PUC/EED staff in Austin to review or clarify their proposals prior to the final selection of a contractor.

Funding. Maximum funding will be \$18,600. Proposals may address multiple levels of funding for these services, stating the effort to be undertaken at each level. Each proposal should include a budget divided into categories of salaries/wages (including hourly rate), fringe benefits, travel, supplies, telephone, and other. The contractor will be reimbursed after the contract award upon submission of these costs in a manner prescribed by the State of Texas and applicable federal standards. The contractor will not be reimbursed for costs, including travel costs, incurred with submission of this consultant proposal request.

Due Date. Written proposals should be sent by registered mail or by courier and must arrive no later than 5 p.m. on February 15, 1984. Send proposals to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, Attention: Sandy Becker. For further information, please contact Glenda Lormand, Energy Efficiency Division, (512) 458-0306.

Issued in Austin, Texas, on January 20, 1984

TRD-840790 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Filed: January 20, 1984
For further information, please call (512) 458-0306.

Texas Tech University Consultant Proposal Requests

Scope of work. In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, Texas Tech University is requesting proposals for services of a consultant to assist with the continued implementation of its new financial accounting system. Specifically, the consultant will:

- (1) assist in the preparation of systems modification specification,
- (2) assist in vendor contract review; and
- (3) assist with project implementation, including:
 - (a) project management,
 - (b) functional assistance, and
 - (c) contingency technical assistance.

Contact. Individuals or firms interested in submitting the proposals may contact Jay W. Lindsey, Assistant Vice-President for Investments and Operations Analysis, Texas Tech University, P.O. Box 4489, Lubbock, Texas 79409, (806) 742-2020.

Submission of proposal. A proposal sent by mail should be addressed to Jay W. Lindsey, Assistant Vice-President for Investments and Operation Analysis, Texas Tech University, P.O. Box 4489, Lubbock, Texas 79409. Hand-delivered proposals will be accepted daily between 8:30 a.m. and 4:30 p.m., except Saturdays, Sundays, and holidays, at the office of Jay W. Lindsey, Assistant Vice-President for Investments and Operations Analysis, Texas Tech University, Drane Hall, Suite 135, Lubbock. One original and six copies of the proposal are required.

Deadline for the proposals is 3 p.m. on February 10, 1984. Proposals received after that time will not be considered.

Proposal requirements. To be evaluated, the following items must be included in a consultant's proposal:

- (1) proposed plan of work for the engagement;
- (2) references from similar consulting engagements;
- (3) names of people to be used in this engagement; and
- (4) proposed fee for the engagement.

Proposals that cover the scope of work through shared responsibilities between consultant and university personnel will be accepted. Texas Tech intends to award this contract to a firm that assisted the university in the development of a financial system definition and conceptual design report unless a better offer is submitted.

Evaluation criteria. Criteria to be used in evaluating the proposals will include, but not necessarily be limited to, the following:

- (1) thorough knowledge and experience with higher education and health care financial systems, especially TUFIMS Software, developed by American Management Systems, Inc.,
- (2) experience in successfully evaluating, designing, developing, and implementing accounting and financial systems applications in a similar environment;
- (3) understanding of the specific needs of Texas Tech University and Texas Tech University Health Sciences Center for an improved financial system,
- (4) thorough understanding of internal control techniques and safeguards;
- (5) staff experience of the people assigned to the project;
- (6) references from similar consulting engagements;
- (7) quality of the proposal's technical approach to accomplish the project requirements; and
- (8) reasonableness of the proposed cost of services in relation to the work described.

Contract award procedures. Final selection will be made by the vice-president for finance and administration, Texas Tech University/Texas Tech University Health Sciences Center, based upon evaluations and recommendations provided by a panel of university personnel. The university will award a contract to the firm or organization which is considered to be best able to perform the services requested. However, the university reserves the right to reject, in total or part, any and/or all proposals received if it is considered in the best interest of the university. Issuance of this request in no way constitutes a commitment by the university to award a contract.

Issued in Lubbock, Texas, on January 11, 1984

TRD-840947 Eugene E. Payne, Ph.D.
Vice President for Finance and
Administration
Texas Tech University

Filed: January 24, 1984
For further information, please call (806) 742-2161.

Scope of Work. In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, Texas Tech University is requesting proposals for services of a consultant to assist with the continued implementation of its new financial accounting system.

Specifically, the consultant will:

- (1) convert the existing Texas Tech University/Texas Tech University Health Sciences Center Financial System Definition and Conceptual Design Report into detailed data processing systems specifications;
- (2) convert the systems specifications into a fully tested, operational system ready for implementation in a production environment by completing program coding and testing, system testing, preparation of program, system, operation, and user documentation, training for management, users, and data processors, and development and testing of conversion procedures; and
- (3) install the accepted and fully tested system in a production environment.

Contact. Individuals or firms interested in submitting the proposal may contact Jay W. Lindsey, Assistant Vice-President for Investments and Operations Analysis, Texas Tech University, P.O. Box 4489, Lubbock, Texas 79409, (806) 742-2020.

Submission of Proposal. A proposal sent by mail should be addressed to follows: Jay W. Lindsey, Assistant Vice-President for Investments and Operations Analysis, Texas Tech University, P.O. Box 4489, Lubbock, Texas 79409. Hand-delivered proposals will be accepted between 8:30 a.m. and 4:30 p.m., except Saturdays, Sundays, and holidays, at the following address: Jay W. Lindsey, Assistant Vice-President for Investments and Operations Analysis, Texas Tech University, Drane Hall, Suite 135, Lubbock, Texas. One original and six copies of the proposal are required. The deadline for proposals is 3 p.m. on February 10, 1984. Proposals received after that time will not be considered.

Proposal Requirements. To be evaluated, each proposal must include a proposed plan of work for the engagement; references from similar consulting engagements; names of people to be used in this engagement and a complete resume of each; and the proposed fee for the engagement. Proposals that cover the scope of work through shared responsibilities between the consultant and university personnel will be accepted.

Evaluation Criteria. Criteria to be used to evaluate proposals will include, but not necessarily be limited to, the following:

- (1) thorough knowledge and experience with higher education and health care financial systems, especially TUFIMS software, developed by American Management Systems, Inc ,
- (2) experience in successfully evaluating, designing, developing, and implementing accounting and financial systems applications in a similar environment;
- (3) understanding of the specific needs of Texas Tech University and Texas Tech University Health Sciences Center for an improved financial system;
- (4) thorough understanding of internal control techniques and safeguards;

- (5) staff experience as reflected in the resumes of the people assigned to the project;
- (6) references from similar consulting engagements;
- (7) quality of the proposal's technical approach to accomplish project requirements; and
- (8) reasonableness of the proposed cost of services in relation to the work described.

Contract Award Procedures. Final selection will be made by the vice-president for Finance and Administration, Texas Tech University/Texas Tech University Health Sciences Center, based upon evaluations and recommendations provided by a panel of university personnel. The university will award a contract to the firm or organization which is considered best able to perform the services requested. However, the university reserves the right to reject, in total or part, any and/or all proposals received if it is considered to be in the best interest of the university. Issuance of this request in no way constitutes a commitment by the university to award a contract.

Issued in Lubbock, Texas, on January 11, 1984

TRD-840948 Eugene E. Payne, Ph D
Vice President for Finance and
Administration
Texas Tech University

Filed: January 24, 1984

For further information, please call (806) 742-2161.

Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of January 16-20, 1984

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request, and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing after the issuance of proper and timely notice of the hearing. If no sufficient request for a hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 475-2678

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the

facility; permit number; and type of application—new permit, amendment, or renewal.

Period of January 16-20, 1984

The Colony Municipal Utility District 1, The Colony; wastewater treatment plant; approximately three miles north of the intersection of State Highway 121 and Farm Road 423 in Denton County; 11570-01; renewal

Annie Marie Galindo, Sinton; wastewater treatment plant; approximately 600 feet northeast of the intersection of County Roads 26 and 39 in San Patricio County; 12843-01; new permit

Orangefield Independent School District, Orangefield; sewage treatment plant; northeast of the intersection of IH 10 and State Highway 62 in Orange County; 11608-01; renewal

Orangefield Independent School District, Orangefield; sewage treatment plant; immediately north of FM Road 105 and 0.5 miles west of its intersection with FM Road 408 in Orangefield, Orange County; 11607-01; renewal

Texas Industries, Inc., Streetman; mining operation; the northwest quadrant defined by the crossing of the Fort Worth and Denver Railway over Elm Creek, approximately three miles northwest of the City of Streetman, Navarro County; 01691; renewal

Swift Independent Packing Company, Cactus; meat packing plant; Schroeder Industrial Park, the City of Cactus, Moore County; 02533; amendment

Formosa Plastics Corporation, Texas, Point Comfort, vinyl chloride and polyvinyl chloride manufacturing plant; northeast of the City of Point Comfort, north of and adjacent to State Highway 35 and east of and adjacent to FM Road 1593, Calhoun County; 02436; amendment

Aluminum Company of America, Point Comfort; aluminum manufacturing plant; south of State Highway 35 from its intersection with FM Road 1593, and both north and east of Lavaca Bay, Calhoun County; 00394; amendment

Mansell Brine Sales, Inc., Andrews; *in situ* brine mine; 12 miles southwest of Andrews, approximately 350 feet from the north line and 2,850 feet from the east line of Section 3, Block 1-10, University Lands Survey, Andrews County; BR-50077; new permit

Mobil Oil Corporation, Uranium/Minerals Division, Bruni; *in situ* uranium mine; 4.5 miles east of Bruni, in Sections 13, 15, 20, and 22-25 of the Cole Petroleum Company Subdivision of the Santa Maria de Los Angeles Grant, Duval County; UR-02156-001; amendment

Pecan Grove Municipal Utility District, Houston; wastewater treatment plant; 1504 Skinner Land (FM Road 359), approximately 1.5 miles north of U.S. Highway 90A and approximately 500 feet east of FM Road 359, Fort Bend County; 11655-01; amendment

The City of Yoakum; wastewater treatment plant; on the west side of Dunn Street, approximately one mile southwest of its intersection with State Highway 111 in Yoakum, DeWitt County; 10463-01; renewal

The City of Friendswood; wastewater treatment plant; approximately six miles south of the City of Friendswood and 240 yards west of the crossing of Dickinson Bayou by FM Road 528, Galveston County; 10175-03; amendment

Mobil Oil Corporation, Uranium/Minerals Division, Bruni; *in situ* uranium mine; approximately six miles east of Bruni in Shares 1-3, 3A, 4-6, and 8 of the El Mesquite Grant and part of the Santa Maria de Los Angeles de Abajo Grant in Duval County; UR-02155-001; amendment

Issued in Austin, Texas, on January 20, 1984

TRD-840756

Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: January 20, 1984

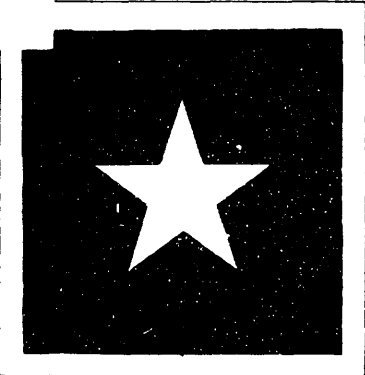
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Name

Organization

Occupation Telephone

Address

City State Zip Code

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