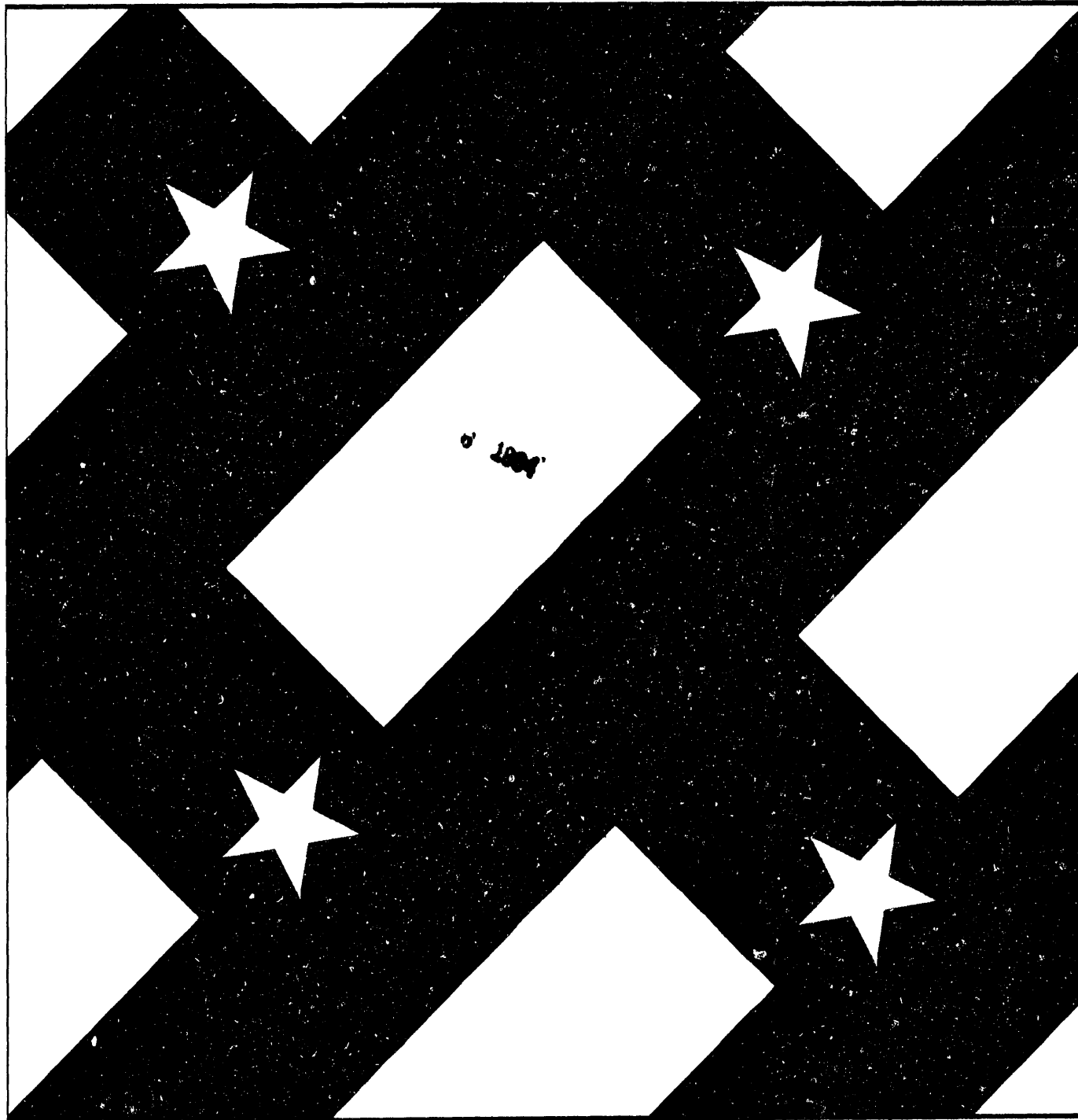


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Texas Register

Volume 9, Number 57, July 31, 1984

Pages 4101 - 4206



Highlights

The Office of the Secretary of State proposes an amendment concerning the filing of documents
Earliest possible date of adoption - August 31 page 4105
The Texas Department of Human Resources proposes repeals, amendments, and new sections

in a chapter concerning day care licensing
Proposed date of adoption - September 29 page 4112
The Texas Water Development Board adopts new sections in a chapter concerning industrial solid waste.
Effective date - September 1 page 4184

**Office of
the Secretary
of State**

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each 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.

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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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 9 TexReg 3."

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*,

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



Texas Register Publications

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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

Appointments Made July 23

Texas Public Building Authority

For a term to expire February 1, 1989:

Glen Hefner
571 North Post Lane
Houston, Texas 77019

For a term to expire February 1, 1987:

Marilyn Jones
11711 Braesview, #801
San Antonio, Texas 78213

For a term to expire February 1, 1985:

Gerald Goff
2901 Bonnie Road
Austin, Texas 78703

Mr. Hefner, Ms. Jones, and Mr. Goff are being reappointed pursuant to Senate Bill 11, 68th Legislature, Second Called Session, 1984.

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

TRD-847688

Mark White
Governor of Texas

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 and small businesses; 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 1. ADMINISTRATION Part IV. Office of the Secretary of State Chapter 91. Texas Register Filing of Documents

1 TAC §91.33

The Office of the Secretary of State proposes an amendment to §91.33, concerning the procedure for filing a notice related to the use of private consultant services. The section is amended in accordance with 34 TAC §5.54, which clarifies the requirements of Texas Civil Statutes, Article 6252-11c.

Susan Johnson, publications director, 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. Johnson 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 clarification of Texas Civil Statutes, Article 6252-11c. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Susan Johnson, Director of Publications, P.O. Box 13824, Austin, Texas 78711-3824.

The amendment is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13c, which provides the Texas Register, Office of the Secretary of State, with the authority to adopt rules governing the submission of documents for publication.

§91.33. Procedure for Filing Notices Related to the Use of Private Consultant Services.

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

(f) A notice of amendment or modification to contracts previously published in the *Register* with a total anticipated fee in excess of \$10,000 must be published in the *Register* at least 10 days prior to amending the contract if the amendment or modification increases the original anticipated fee by 15% or more. Contracts with a total anticipated fee of less than \$10,000 must comply with the notice requirements prescribed in Texas Civil Statutes, Article 6252-11c, §6, at the time it becomes reasonably foreseeable that the contract will be amended to allow payments in excess of \$10,000.

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 July 23, 1984.

TRD-847689 John W. Fainter, Jr.
Secretary of State

Earliest possible date of adoption:

August 31, 1984

For further information, please call (512) 475-7886.

Part V. State Purchasing and
General Services Commission
Chapter 113. Central Purchasing
Division
Purchasing
1 TAC §113.16

The State Purchasing and General Services Commission proposes amendments to §113.16, concerning embedded customer premises equipment (CPE) after divestiture January 1, 1984. As a result of the Federal Communication Commission's (FCC) ruling in Docket 81-893 (the second computer inquiry) on December 15, 1983, the FCC will continue to approve prices for CPE at least through December 31, 1985. The commission also wishes to clarify its rules to affirm that agencies will be able to continue two-tier and variable term payment plan contracts in effect even though relocation costs are incurred.

Herb Gersbach, centralized purchasing director, has determined that for the first five-year period the rule will be in effect there will be fiscal implications as a result of enforcing or administering the rule; however, the economic cost to state government is not ascertainable at this point. There is no anticipated economic cost to local government or small businesses.

Mr. Gersbach 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 continuation of FCC-approved pricing and of existing two-tier and variable term payment plan contracts for CPE for a longer time, with the attendant cost savings and reduced disruption to state activities. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to James H. Quick, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711, (512) 475-5966 or STS 822-5966.

The amendments are proposed under Texas Civil Statutes, Article 601b, §3, which provide the commission with the authority to acquire telecommunications services and equipment for use by state agencies from vendors where such services and equipment are de-tariffed.

§113.16. Embedded Customer Premises Equipment after Divestiture January 1, 1984.

- (a) (No change.)
- (b) This rule will expire and be of no further effect after **December 31** [June 30], 1985.
- (c) This rule will not have applicability:
 - (1)-(2) (No change.)
 - (3) with regard to agency relocations resulting in new installation charges, as well as system change outs made necessary by need requirement, **other than continuation of two-tier and variable term payment plan (VTPP) contracts referenced in subsection (d)(1) and (2) of this section.**

(d) (No change.)

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

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

TRD-847704

Homer A. Foerster
Executive Director
State Purchasing and General
Services Commission

Earliest possible date of adoption:
August 31, 1984

For further information, please call (512) 475-5966
or STS 822-5966.

TITLE 7. BANKING AND
SECURITIES
Part VII. State Securities Board
Chapter 109. Transactions Exempt
from Registration

7 TAC §109.4

The State Securities Board proposes an amendment to §109.4, concerning public solicitation or advertisements to clarify the interplay between the Securities Act, §5.1(c), and §139.7, the exemption for sales of securities to nonresidents of Texas.

Richard D. Latham, securities commissioner, 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.

Mr. Latham 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 clarification that sales to nonresidents of Texas made in compliance with §139.7 need not be counted in determining whether, for purposes of determining the availability of §5.1(c), sales to not more than 15 persons has occurred. This result stems from the language of the Act, §5.1(c), which allows for exclusion from the 15-person count purchasers of securities in transactions exempt under other provisions of the Act, §5. Section 139.7 is a §5.1 exemption. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendments are proposed under Texas Civil Statutes, Article 581, §28-1, which provide that the board may adopt rules and regulations governing registration statements and applications and may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

§109.4. Public Solicitation or Advertisements. This section is intended to reflect the support of the State Securities Board for the proposition that potential investors in transactions exempt under the Act, §5.I, have a legitimate interest in receiving reasonable information concerning the plan of business and the financial condition of the issuer of the securities.

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

(4) The phrase "the total number of security holders of the issuer" in §5.I(a) includes all security holders of the issuer without regard to their places of residence (within or without the State of Texas) and without regard to where they acquired the securities. In determining the number of persons for purposes of §5.I(c), prior sales to persons residing outside of the State of Texas and prior sales to Texas residents consummated outside the State of Texas shall be included **unless such sales were made in compliance with §139.7 of this title (relating to Sales of Securities to Nonresidents).**

(5)-(11) (No change.)

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

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

TRD-847719 Richard D. Latham
 Securities Commissioner
 State Securities Board

Earliest possible date of adoption:
August 31, 1984

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

Chapter 113. Registration of Securities

7 TAC §113.9

The State Securities Board proposes an amendment to §113.9, concerning securities underlying transferable warrants and employee stock options and the dealer registration requirements related thereto.

Richard D. Latham, securities commissioner, 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.

Mr. Latham 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 clarification that once the distribution of the registered securities underlying transferable warrants or employee stock options is completed pursuant to the registration, the issuer or dealer who sold such registered securities is not required to remain continuously registered as a dealer solely because of the existence of such outstanding warrants or options. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1 and §5.T, which provide, respectively, that the board may adopt rules and regulations governing registration statements and applications and may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes, and create new exemptions by rule, regulation, or order, conditionally or unconditionally.

§113.9. Securities Underlying Transferable Warrants and Employee Stock Options. When equity securities underlying transferable warrants or employee stock options are registered under §7, those equity securities shall thereafter be deemed to be properly registered in Texas regardless of the time at which the warrants are exercised by warrant or option holders. Continuous registration (or annual renewal of registration) of the underlying equity securities during the life of the warrants or options shall not be required solely because of the existence of outstanding warrants or options. **Once the distribution process is completed pursuant to the registration, the issuer or dealer who sold such registered securities is not required to remain continuously registered pursuant to §12 solely because of the existence of outstanding warrants or options. However, if the issuer or dealer solicits the holders to exercise their warrants or options, the issuer or dealer must be registered as a securities dealer if the transaction does not fall within an exemption other than this section. This section is adopted pursuant to the authority granted by the Securities Act, §5.T.**

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 July 24, 1984.

TRD-847721 Richard D. Latham
 Securities Commissioner
 State Securities Board

Earliest possible date of adoption:
August 31, 1984

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

Chapter 139. Exemptions by Rule or Order

7 TAC §139.1

The State Securities Board proposes amendments to §139.1, concerning policies in regard to the board's creation of new exemptions by rule or order pursuant to the Securities Act, §5.T.

Richard D. Latham, securities commissioner, 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.

Mr. Latham 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 clarification that the company or person engaging in a transaction exempt under a rule adopted pursuant to the Securities Act, §5.T, shall not be deemed a dealer for purposes of the Act unless such rule indicates otherwise. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendments are proposed under Texas Civil Statutes, Article 581, §28-1 and §5.T, which provide, respectively, that the board may adopt rules and regulations governing registration statements and applications and may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes, and create new exemptions by rule, regulation, or order, conditionally or unconditionally.

§139.1. Policies [Exemptive Orders and Individual Transactions].

(a) It is the policy of the State Securities Board to refuse to grant any exemptions by order under the Securities Act, §5.T, for specific individual transactions or issuers.

(b) The company or person engaged in a transaction exempt under a rule adopted pursuant to the Securities Act, §5.T, shall not be deemed a dealer within the meaning of the Act unless the rule by its terms indicates otherwise.

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 July 24, 1984.

TRD-847723 Richard D Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption
August 31, 1984

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

7 TAC §139.8

The State Securities Board proposes an amendment to §139.8, concerning the exemption for sales to underwriters to eliminate unnecessary language referring to dealer registration

Richard D. Latham, securities commissioner, 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.

Mr. Latham 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 the elimination of unnecessary and redundant language indicating that the company or person engaged in a transaction falling within the exemption is not required to be registered as a dealer. Because the exemption was adopted pursuant to §5.T, the preface language to the Securities Act, §5, controls. To reiterate the preface language within the rule itself is unnecessary. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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

§139.8. Sales to Underwriters. Any transaction between the issuer, or other person on whose behalf the offering is made, and an underwriter, or among underwriters, is hereby exempted from the securities registration requirements of the Securities Act, §7[, nor shall any company or person engaged therein be required to comply with the dealer registration provisions of the Act, §12].

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 July 24, 1984

TRD-847723 Richard D Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption
August 31, 1984

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

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

Early Childhood Intervention Services

25 TAC §§37.11-37.15

The Texas Department of Health (DOH) proposes new §37.11-37.15, concerning contracts covering early childhood intervention services. The purpose of the new sections is to establish procedures for the administration of contracts between the DOH and providers of early childhood intervention services.

Stephen Seale, Chief Accountant III, has determined that there will be fiscal implications as a result of enforcing or administering the rules. The effect on state government for the years 1985-1989 is an estimated

additional cost of \$2,500 for each year. The \$2,500 is the estimated maximum cost to the agency for conducting an administrative hearing provided by these rules. These estimates do not include costs of transcripts of hearings. The estimated cost to a unit of local government which chooses an administrative hearing may vary widely and depends upon many variables, such as attorney's fees, expenses, etc. The estimated cost to participate in an administrative hearing may range from \$0 to \$2,500. This estimate does not include the estimated cost to appeal the agency's decision to a district court in Travis County. There will be no anticipated economic effect on small businesses for the first five-year period the rules will be in effect.

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 the description of the procedures which the department will use to initiate and cancel contracts covering early childhood intervention services.

The possible economic cost to individuals who are required to comply with the rules as proposed will be an estimated cost to a person wishing to avail himself of an administrative hearing which may vary widely and depends upon many variables including personal travel expenses and time lost from employment, attorney's fees and expenses, etc. The estimated cost to participate in an administrative hearing may range from \$0 to \$2,500. This estimate does not include the estimated cost to appeal the agency's decision to a district court in Travis County.

Comments on the proposal may be submitted to Clift Price, M.D., Associate Commissioner for Personal Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7321. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under the Human Resources Code, §73.018, which requires the department to execute contracts for early childhood intervention services, and Texas Civil Statutes, Article 4414b, §1.05(a)(4), which provide the Texas Board of Health with the authority to adopt rules to implement the duties imposed on the department by law.

§37.11. Purpose. The purpose of these rules is to establish procedures for the administration of contracts between the Texas Department of Health and providers of early childhood intervention services which are executed under authority of the Human Resources Code, §73.018. The Texas Department of Health is under a duty to execute such contracts at the request of the Interagency Council on Early Childhood Intervention Services.

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

Department—The Texas Department of Health.

Interagency Council—The Interagency Council on Early Childhood Intervention Services, established under authority of the Human Resources Code, §73.002.

§37.13. Execution of Contracts.

(a) At the request of the interagency council, the department shall prepare and execute a contract with a provider who has been awarded a grant under the provisions of the Human Resources Code, §§73.016-73.021.

(b) The contract provisions shall be in conformance with the Human Resources Code, §73.018, and interagency council rule, §621.28 of this title (relating to Contract).

§37.14. Cancellation of Contract. The department may cancel the contract under the following conditions.

(1) The department, on its own initiative or at the request of the interagency council, may propose to cancel the contract in whole or in part prior to the date of completion. Either the department or the interagency council may propose this action whenever one of them determines that the provider has not been or is not in substantial compliance with the contract provisions.

(2) If the department proposes a contract cancellation at the request of the interagency council, the department shall notify the provider in writing of the proposed cancellation, giving the interagency council's reasons for the proposed action and giving the provider an opportunity for a hearing before the interagency council to contest the proposed action. The hearing shall be in accordance with the hearing procedures in interagency council rule, §621.31 of this title (relating to Formal Hearing Procedures). The provider may request a hearing by giving written notification to the Early Childhood Intervention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any questions which the provider might have concerning the proposed action shall be addressed to the Early Childhood Intervention Program.

(3) If the department proposes to cancel the contract on its own initiative, the department will do so only upon authorization of the department's deputy commissioner for management and administration and after prior consultation with the interagency council. The department shall notify the provider in writing of the proposed action, giving the department's reasons, and offering the provider an opportunity for a hearing to contest the proposed action. The hearing shall follow the hearing procedures in department rules, §§1.21-1.32 of this title (relating to Formal Hearing Procedures), and related provisions in the contract. The provider may request a hearing before the department by giving written notification to the department's deputy commissioner for management and administration, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. If a hearing before the department is requested by the provider in accordance with that section, the department shall notify the Interagency Council on Early Childhood Intervention of the hearing, and the interagency council shall be designated as a party. Any questions which the provider might have concerning the proposed action shall be addressed to the department's deputy commissioner for management and administration.

(4) The provider has 10 days to request a proposed cancellation under paragraphs (1)-(3) of this subsection. If the provider does not request a hearing in writing within the 10-day period, the provider shall be deemed to have waived the hearing and the department may proceed to cancel the contract.

(5) If the department proceeds to cancel the contract because either the provider has waived the hearing or the hearing decision upholds the proposed cancellation, the department shall give the provider 30 days written notice prior to termination. During this time period, the provider shall assist the department and the agency in providing for alternative services for children served under the contract.

(6) Any proposed cancellation of a contract may be in addition to or in conjunction with a decision to withhold funds under the provision of §37.15 of this title (relating to Withholding of Funds to Providers).

§37.15. Withholding of Funds to Providers. The department shall withhold funds to a provider as authorized by interagency council rule, §621.30 of this title (relating to Withholding of Funds to Provider).

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 July 24, 1984

TRD-847694 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption.
September 22, 1984

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

Chapter 29. Purchased Health Services

Subchapter A. Medicaid Procedures for Providers

The Texas Department of Human Resources proposes amendments to §29.5 and §29.1101, concerning unauthorized charges for purchased health services. The proposed amendments to §29.5 prohibit providers from billing recipients under certain conditions for services that have been denied by the Texas Medical Assistance (Medicaid) Program. The proposed amendments to §29.1101 detail the conditions that prohibit recipients being charged for services denied by the department's health insuring agent. The proposed amendments also delineate the responsibilities of the provider and the recipient concerning services that are beyond the amount, duration, and scope of the Texas Medicaid Program and/or are not medically necessary.

Under the proposed amendment to §29.5, providers are not allowed to bill recipients for charges the health insuring agent denies on the basis of administrative errors by the provider when filing his claim for medical care or services. These errors are addressed in

§29.1101 and include the provider's failure to file a claim; failure to meet the claim filing deadline; filing incomplete claims; and failure to pursue the appeals process in the prescribed manner. Providers are liable for claims denied as a result of administrative errors; the charges are not passed on to the recipient. Likewise, providers should be aware of the recipient's responsibility to pay for medical services that are not covered by the Texas Medicaid Program.

David Hawes, Programs Budget and Statistics director, has determined that there will be fiscal implications as a result of enforcing or administering the rules. There is no effect on state government. The loss of revenue to units of local government is estimated to be \$128,143 in fiscal year 1984, \$138,394 in fiscal year 1985, \$148,774 in fiscal year 1986, \$160,973 in fiscal year 1987, and \$173,530 in fiscal year 1988. There is no anticipated effect on small businesses.

Mr. Hawes also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is a better understanding by Medicaid recipients of the charges for which they are not responsible and the charges that providers cannot bill to the recipient. 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 Cathy Rossberg, Administrator, Policy Development Support Division-379, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

40 TAC §29.5

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

§29.5. Unauthorized Charges.

(a) **Eligible providers must certify** [Certification or agreement is required of each eligible provider to the effect] that no charges beyond reimbursement paid under the Texas Medical Assistance Program for covered services have been, or will be, billed to the eligible recipient.

(b) **Within the provisions cited in §29.1101 of this chapter (relating to Payment to Eligible Providers), providers may not bill eligible recipients or take other recourse against eligible recipients for claims denied as a result of error(s) attributed to the provider.**

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 July 25, 1984

TRD-847742 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption.
August 31, 1984

For further information, please call (512) 441-3355, ext. 2037.

Subchapter L. General Administration

40 TAC §29.1101

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

§29.1101. Payments to Eligible Providers.

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

(c) Providers may not bill eligible recipients or take other recourse against eligible recipients for denied or reduced claims for medical care and services within the amount, duration, or scope of benefits of the Texas Medical Assistance (Medicaid) Program if the denial or payment reductions result from any of the following, as determined by the department or its health insuring agent:

(1) the provider's failure to submit a claim, including claims that are not received by the department or its health insuring agent;

(2) the provider's failure to submit a claim within the claims filing period established by the department or its health insuring agent;

(3) the filing of an unsigned or otherwise incomplete claim, including but not limited to, failure to submit a valid hysterectomy acknowledgment statement or sterilization consent form when these forms are required for the applicable procedures;

(4) the filing of an incorrect claim;

(5) the provider's failure to resubmit a claim within the resubmittal period established by the department or its health insuring agent;

(6) the provider's failure to appeal a claim within the appeal filing period(s) established by the department or its health insuring agent;

(7) errors made in the claims preparation, submission, or appeal processes that are attributable to the provider as discerned by the department or its health insuring agent.

(d) The department does not pay claims for services that are not reasonable and medically necessary according to the criteria established by the department and its health insuring agent, as cited in §29.1112(a)(12) of this chapter (relating to Limitations and Exclusions).

(e) The provider may bill the recipient only if:

(1) a specific service is provided at the request of the recipient, and

(2) the provider has obtained and kept a written acknowledgment, signed by the recipient, stating that the provider has informed him of the following:

(A) in the provider's opinion, the service(s) or item(s) to be furnished are not considered reasonable and medically necessary and/or are not covered under the Texas Medicaid Program;

(B) the recipient is responsible for the payment of the service(s) or item(s) he requested and received; and

(C) the department or its health insuring agent determines the medical necessity of the service(s) or item(s) the recipient received.

(f) Providers who do not file Medicaid claims should inform eligible recipients before providing any service(s) or treatment(s). Recipients receiving service(s) or treatment(s) from providers who do not participate in the Texas Medicaid Program are directly responsible for

the payment of those services or treatment. The department and its health insuring agent have no liability for reimbursement for services or treatment to eligible recipients by providers not participating in the Texas Medicaid Program.

(g) Recipients are responsible for any medical care or services they receive that are beyond the amount, duration, and scope of the Texas Medicaid Program, as determined by the department or its health insuring agent.

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 July 25, 1984.

TRD-847743

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption.

August 31, 1984

For further information, please call (512) 441-3355, ext. 2037.

40 TAC §29.1112

The Texas Department of Human Resources proposes an amendment to §29.1112, concerning purchased health services. Section 29.1112 is being amended to delete reference to the exclusion of hearing aids and modify the reference to occupational therapy. Hearing aids and occupational therapy are covered services under other rules of the Texas Medical Assistance (Medicaid) Program.

David Hawes, programs budget and statistics director, has determined that for the first five-year period the rule 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. Hawes also has determined that for each year of the first five years the rule is in effect the public benefit will be a clearer understanding of the services covered under the Texas Medical Assistance (Medicaid) Program. There is no economic cost to individuals required to comply with the rule.

Comments may be sent to Cathy Rossberg, Administrator, Policy Development Support Division-490, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§29.1112. Exclusions and Limitations.

(a) Benefits do not extend to:

(1) (No change.)

(2) [hearing aids,] special shoes[,] or other supportive devices for the feet, ambulation aids (except as provided for in the home health services program), im-

munizations, or occupational therapy (except as provided for under other rules in this chapter).

(3)-(19) (No change.)

(b)-(d) (No change.)

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

Issued in Austin, Texas, on July 25, 1984.

TRD-847741 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption:

August 31, 1984

For further information, please call (512) 441-3355,
ext. 2037.

Chapter 45. Medical Assistance Programs

Subchapter F. General Policies

40 TAC §45.502

The Texas Department of Human Resources proposes amendments to §45.502, concerning collection from third-party resources and unauthorized charges for purchased health services. The proposed amendment clarifies reimbursement practices concerning payments by third-party resources (TPR) and the extent of recipient liability.

The proposed amendment establishes the extent of recipient liability concerning any differences between the amount allowed by the department's health insuring agent and the amount reimbursed the provider by a third-party resource for services that are within the amount, duration, and scope of the Texas Medicaid Program. All providers of medical services under the Purchased Health Services Program are reimbursed through the department's health insuring agent.

David Hawes, programs budget and statistics director, has determined that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Hawes also has determined that for each year of the first five years the rule as proposed is in effect the public benefit will be better understanding by Medicaid recipients of the charges for which they are not responsible.

Comments may be sent to Cathy Rossberg, Administrator, Policy Development Support Division-379, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

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

§45.502. Collection from Third-Party Resources.

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

(c) The department authorizes all providers of medical services [as] participating in the Texas Medical Assistance Program to collect or recover funds, or both, for recipients' medical expenses tendered from any source.

(d) If the payment by a third-party resource (TPR) is equal to or greater than the amount allowable by the department or its health insuring agent for covered services, eligible recipients are not liable for charges billed in excess of the amount paid by the TPR for the medical care and services within the amount, duration, and scope of benefits provided by the Texas Medicaid Program.

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

Issued in Austin, Texas, on July 25, 1984.

TRD-847744 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption:

August 31, 1984

For further information, please call (512) 441-3355,
ext. 2037.

Chapter 81. Day Care Licensing Subchapter C. Minimum Standards for Kindergartens and Nursery Schools

The Texas Department of Human Resources proposes the repeal of §§81.201-81.230, and simultaneously proposes new §§81.201-81.229, concerning minimum standards for kindergartens and nursery schools, in its day care licensing chapter.

The standards are being revised to increase requirements for the safety, transportation, and release of children. The qualifications and requirements of the director and staff have also been increased. In addition, the standards have been edited to clarify policy and requirements for providers and field staff.

Cris Ros-Dukler, assistant commissioner for licensing, has determined that for the first five-year period the repeal and new 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 new rules.

Ms. Ros-Dukler 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 or administering the rules will be the increased safety and protection of children in out-of-home care. There is no anticipated economic cost to individuals required to comply with the rules as proposed.

The department has scheduled public hearings across the state to accept comments on the proposed standards. At the same time, the department also will be

accepting comments on new standards for day care centers, drop-in care centers, group day care homes, and schools: grades kindergarten and above.

All hearings are being held from 3-8 p.m. They are scheduled as follows: August 13, Texas Department of Human Resources Board Room, Austin, 706 Banister Lane; August 14, Holiday Inn, Room #3, San Antonio, 318 West Durango; August 15, LaQuinta Royale, Sala #1, Corpus Christi, 601 North Water Street; August 16, Hilton Hotel, McAllen, Crockett/Bowie Room, 2721 South 10th; August 20, Room 134, University Center Building, Tyler, University of Texas-Tyler, 3900 University Boulevard; August 21, Twilight Ballroom, Student Center Nacogdoches, Stephen F. Austin State University; August 22, Civic Center, Beaumont, 701 Main Street; August 23, Personnel and Training Building, Houston, Room 6 and Room 8, 1349 East 40th Street; August 28, Community Center, Arlington, 2800 South Center; August 29, Texas Department of Human Resources Training Room, Wichita Falls, 600 Scott; August 30, Texas Department of Human Resources Training Room, Abilene, 4380 Spindletop; September 4, Lecture Hall on Highlander Drive, Waco, McLennan Community College; 1400 College Drive; September 5, Room 107, Lubbock Civic Center, Lubbock, 1501 6th Street, Room 107; September 6, Texas Tech Health Science Center Amarillo, 1400 Wallace Blvd.; September 11, Texas Department of Human Resources Regional Headquarters, Midland, Large Conference Room, 2301 North Big Spring; September 12, City Council Chambers, El Paso, 2nd Floor, #2 Civic Center Plaza.

Comments may be sent to Cathy Rossberg, Administrator, Policy Development Support Division—415, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 60 days of publication in this *Register*.

40 TAC §§81.201-81.230

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Department of Human Resources, 706 Banister Lane, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

- §81.201. *Organization.*
- §81.202. *General Administration.*
- §81.203. *Enrollment.*
- §81.204. *Attendance.*
- §81.205. *Records.*
- §81.206. *Director Qualifications.*
- §81.207. *Director Responsibilities.*
- §81.208. *Staff Qualifications.*
- §81.209. *Staff-Child Ratio.*
- §81.210. *Training.*
- §81.211. *Space.*
- §81.212. *Furnishings.*

- §81.213. *Equipment.*
- §81.214. *Toilet Facilities.*
- §81.215. *Use of the Facility.*
- §81.216. *Fire.*
- §81.217. *Sanitation.*
- §81.218. *Safety.*
- §81.219. *Health Requirements for Children.*
- §81.220. *Illness or Injury.*
- §81.221. *Medications.*
- §81.222. *Emergency Phone Numbers.*
- §81.223. *Animals.*
- §81.224. *Food Service.*
- §81.225. *Operation.*
- §81.226. *Discipline and Guidance.*
- §81.227. *Children with Need for Special Care.*
- §81.228. *Water Activities.*
- §81.229. *Transportation.*
- §81.230. *Definitions.*

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 July 23, 1984.

TRD-847674	Marlin W. Johnston Commissioner Texas Department of Human Resources
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Proposed date of adoption:
September 29, 1984

For further information, please call (512) 441-3355
ext. 2037.

40 TAC §§81.201-81.229

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

§81.201. *Organization.*

(a) A school must have a governing body that is responsible for its policies. The governing body must assure that the school operates in compliance with the minimum standards for kindergartens and nursery schools and the child care licensing law, Human Resources Code, Chapter 42. The governing body must inform the department of the name and mailing address of the sole proprietor, the partners, or its chief executive officer.

(b) A corporation operating a school must make one of the following available to the department for review:

- (1) the articles of incorporation;
- (2) the certificate of incorporation;
- (3) a copy of the certificate of authority (for an out-of-state corporation).

(c) A corporation or church must make available to the department a copy of the resolution authorizing the operation of the school unless the authorization is included in the document required in subsection (b) of this section.

(d) Each time a director is named, the governing body must send the department an official department

form naming the director. If the owner and the director are the same person, the governing body must state this on the form.

(e) The governing body must notify the department before, if possible, or on the next workday of any occurrence which affects the status of the school. This includes, but is not limited to, the following:

- (1) changes of the governing body or ownership,
- (2) change of school director,
- (3) change of board chairman of a corporate facility or other chief executive officer of the governing body,
- (4) change of governing body designee,
- (5) going out of business,
- (6) change in hours of operation,
- (7) change in age range of children in care, and
- (8) closing the school for more than one week (if not covered in the plan of operation).

(f) If any change violates the restrictions on the license, the governing body must request that the license be amended. It must wait until the department changes the restriction before making the change in operation.

(g) The governing body must notify the department and apply for a new license before changing the location of the school.

(h) The governing body must notify the department, in writing, of any planned addition or reduction in indoor or outdoor space before making the change.

(i) The governing body must notify the department, in writing, of the addition of a swimming or a fixed wading pool before using the pool

§81.202. General Administration.

(a) The school must display the following in a place where staff, parents, and others may review them:

- (1) its license,
- (2) the letter or compliance evaluation form that the licensing representative provides at or following the most recent inspection or investigation of the school, and
- (3) a current copy of the department's minimum standards for kindergartens and nursery schools.

(b) The school must immediately notify the department of any serious occurrences that affect its operation. These include, but are not limited to, the following:

- (1) death of a child enrolled in or attending the school,
- (2) fire, and
- (3) serious accident, injury, or communicable disease of a child or staff.

(c) The school must report suspected child abuse or neglect as required by the Texas Family Code to:

- (1) the nearest child protective services office, and
- (2) a local or state law enforcement agency.

(d) The governing body must ensure that a person who is indicted or the subject of an official criminal complaint accepted by a county or district attorney alleging he committed any of the offenses listed in paragraphs (1)-(3) of this subsection does not have contact with the children in care until the charges are resolved. The offenses are as follows:

- (1) a felony or misdemeanor classified as an offense against the person or family,

- (2) a felony or misdemeanor classified as public indecency, and

- (3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(e) The governing body must notify the licensing office of an indictment or complaint within 24 hours or on the next workday.

§81.203. Enrollment.

(a) The school must not racially discriminate against any child.

(b) Before a child is enrolled, staff must inform parents, in writing, about the school's activities and policies.

(c) Staff must obtain an enrollment agreement for each child before admission. Staff must keep the agreement on file at the school until six months after the child's last day. The director must ensure that the terms of the agreement related to paragraphs (1)-(16) of this subsection are met. When a child is withdrawn from the school, staff must enter the date of the last day the child attended. The parents and director must sign the agreement, which contains the following:

- (1) the child's name, birth date, home address, and home telephone number;
- (2) date of admission;
- (3) name and address of parents and telephone numbers at which parents can be reached while the child is in care;

(4) a statement that:

(A) the child will be released only to a parent or a person named by the parent, and

(B) in an emergency, the parent must call the school to give the name of and other identifying information about the person picking up the child;

(5) a statement that people bringing or picking up the child will be sure that staff is aware of the child's arrival or departure;

(6) a statement that a child who leaves the school must have written permission from his parent. (The parent must specify the activity, time, and method of transportation.) A statement of the child's arrival time if the child comes to the school alone. A statement that the school will notify the parent immediately if the child does not arrive at the stated time;

(7) hours the child will be in school (not to exceed four hours);

(8) name, address, and telephone number of the child's physician;

(9) a statement of the child's special problems or needs as indicated by the parent. This includes allergy, existing or pre-existing illness and injuries, and all hospitalizations.

(10) a statement that special problems or occurrences in the school that affect the child will be brought to the parent's attention. This includes serious communicable diseases.

(11) a statement providing for parent conferences;

(12) a statement informing parents that minimum standards are available in the school for review;

(13) a statement that:

(A) the copy of the agreement must remain in the school's records while the child is in care, and

(B) the parent must update information as necessary. The director and parent must initial and date all changes.

(14) transportation permission, if transportation is provided;

(15) permission for participation in water activities, if any; and

(16) emergency medical authorization.

§81.204. Records.

(a) School staff must maintain a record for each child. Records include statements of the child's progress and of any significant occurrences in the child's development.

(b) The school must have records of daily attendance of children and staff for the previous three months. The hours staff worked each day must be recorded.

(c) The school must maintain complete financial records. Licensing staff checks these records only on written notice from the director of licensing.

(d) The school must maintain personnel records for all staff and ensure that each staff's record includes:

(1) the date on which staff began work at the school;

(2) three references attesting to the staff's suitability for the job. This does not apply to a person who has been staff at the school continuously since June 29, 1976.

(A) For a person who has become staff since the effective date of these rules, the school must obtain references from his last three employers/supervisors. If the person has been employed in fewer than three places, the school must obtain references from other people. People other than employers/supervisors must be unrelated to the staff and not employed at the school. The school must obtain reference information from at least three people.

(B) The school must ensure that all reference information includes the following:

(i) the name, address, and telephone number of each reference, and

(ii) written statements attesting to the staff's character; physical, mental, and emotional health; and competency. The school must ensure that people submitting reference information have signed the statements. The director must copy and sign quotes from the people giving reference information orally.

(3) a statement from staff providing information about any felony and/or misdemeanor convictions within the preceding 10 years and about any pending criminal charges, including deferred adjudication;

(4) a record of a tuberculosis examination no earlier than 12 months before beginning this position. Re-examination is required if local health authorities or the regional office of the Texas Department of Health recommends it. People age 14 and older who are at the school while children are in care must also have a record of tuberculosis examination. People under 14 years old must meet the same requirements as children in care;

(5) documentation that staff meets the requirements in §81.207(a) or (b) of this title (relating to Staff Qualifications and Responsibilities).

(e) All required records (except financial records) must be available at the school for the department to inspect during hours of operation.

§81.205. Director Qualifications.

(a) The director of a kindergarten or nursery school must be at least 21 years old, have a high school diploma or its equivalent, and

(1) a bachelor's degree from an accredited college or university with at least 15 credit hours of child development or early childhood education; or

(2) a child development associate credential; or

(3) an associate of arts degree in child development or a closely related area; or

(4) an administrator's credential issued by a professional organization and recognized by the department's licensing branch; or

(5) one year of experience in group child care, teaching, or administration or management in a child care facility and at least 35 clock hours of documented training in child care, child development, or early childhood education. The director must have obtained this training in classes or workshops.

(b) Proof of meeting the qualifications mentioned in subsection (a) of this section must be available at the school.

(c) A person who was director of a kindergarten or nursery school on the effective date of these rules has 12 months from that date to meet compliance if he remains in the same position.

(d) The director of a kindergarten or nursery school licensed for 35 or more children must meet the requirements in subsection (a) of this section. He also must have two years experience in a kindergarten, nursery school, or day care center classroom or in kindergarten, nursery school, or day care center administration. Proof of meeting this qualification must be available at the school.

(e) A person who was a director of a kindergarten or nursery school licensed for 35 or more children on the effective date of these rules has two years from that date to meet the requirements in this rule if he remains in the same position.

(f) No one may serve as director of a school who has been convicted within the preceding 10 years of any of the following offenses unless the director of licensing has ruled that the person has established his rehabilitation:

(1) a felony or misdemeanor classified as an offense against the person or family,

(2) a felony or misdemeanor classified as public indecency, or

(3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(g) The director must send the department the following on an official official department form:

(1) a record of training and experience;

(2) information about felony and/or misdemeanor convictions within the preceding 10 years;

(3) information about any pending criminal charges, including deferred adjudication; and

(4) a list of references with addresses and telephone numbers. The references must be adults not related to the director and not working at the school. They

must be able to attest to the director's character; physical, mental, and emotional health; and competency. (The department must receive responses from at least three people.)

§81.206. Director Responsibilities.

(a) An on-site director must administer the school's daily operation in compliance with minimum standards. If the director is absent from the school, an adult staff must be designated in charge and given the authority to administer the school. During the director's absence, the designated person must administer the school in compliance with minimum standards.

(b) The director must provide the staff's assignments and supervise the staff.

(c) The director must give the department on an official department form the names and required identifying information on all staff and other people at the school older than age 14 who have contact with children in care. The director must submit this information as part of the application. He must submit new information within one week after a staff is selected.

§81.207. Staff Qualifications and Responsibilities.

(a) Staff who work directly with children must be age 18 or older. Each must have a high school diploma or its equivalent.

(b) The school may include in the staff-child ratio people 16 and 17 years old who:

(1) have graduated from high school, or

(2) are enrolled in child-care related career programs approved by the Texas Education Agency or other state or federally approved programs, or

(3) are on summer vacation from career programs. They must work under the direct supervision (in the same place at all times) of a qualified adult staff.

(c) A person who was on staff on the effective date of these rules has two years from that date to meet compliance if he remains in the same position.

(d) Staff having primary responsibility for and working with a kindergarten class must have a bachelor's degree from an accredited college or university; a valid teacher's certificate; a child development associate credential; or an associate of arts degree in child development or a closely related field.

(e) People working with kindergarten children on June 29, 1976, have two years from the effective date of these rules to meet compliance if they remain in the same position.

(f) Staff must show competency, good judgment, and self-control in working with children. Staff must be mentally, physically, and emotionally able to perform assigned duties.

(g) A person convicted within the preceding 10 years of any of the following offenses must not serve in any capacity where there is contact with children in care unless the director of licensing has ruled that the person has established his rehabilitation:

(1) a felony or misdemeanor classified as an offense against the person or the family,

(2) a felony or misdemeanor classified as public indecency, and

(3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(h) Staff must relate to the children with courtesy, respect, acceptance, and patience.

(i) People whose behavior or health status appears to endanger the health, safety, and well-being of children must not be at the school.

(j) People must not smoke in the presence of children or consume alcohol when children are at the school. People who appear to be under the influence of alcohol or other drugs must not be in the school when children are present.

(k) People working with children must be free from other duties except those directly involving the teaching, care, and supervision of children. Staff supervising the children must meet the physical needs of the group.

(l) Responsibilities include keeping the group's area clean. Administrative functions, meal preparation, or janitorial duties must not be included in responsibilities.

(m) Staff must supervise children at all times.

(n) If one staff leaves and another staff is given responsibility for the children, the staff leaving must provide the incoming staff with:

(1) significant information about any particular child, and

(2) a list of children present in the group. This may be the class roll sheet.

(o) If a parent calls to authorize the emergency release of a child, staff must verify that the caller is actually the parent.

(p) Staff must verify the identity of a person authorized to pick up a child but not known to the staff. Staff must view the picture identification on the person's driver's license and record the name and driver's license number. The school must keep this information for 24 hours.

(q) Staff must ensure that children are not out of control.

(r) People at the school must not abuse, neglect, or sexually molest children.

(s) Effective January 1, 1986, a staff trained in first aid and a staff trained in cardiopulmonary resuscitation must be present at the school during all hours of operation. The school must have on file current certificates attesting to the training.

(t) The school must have a written plan(s) for dealing with emergencies, including a description of what each staff must do in an emergency. Emergencies include, but are not limited to, fire, explosion, tornado, toxic fume or other chemical release, an injured child, a child with symptoms of acute illness, and a child who is not breathing. Each staff must have a copy of the plan and be familiar with it. One aspect of the plan must be practiced every three months. The school must practice these drills at different times of the school's operation. The director must document the date, time, and type of practice and keep the record on file at the school.

§81.208. Staff-Child Ratio.

(a) In a kindergarten or nursery school, the number of children must not exceed the following:

Age of Youngest Child in Group	Maximum Number of Children to be Supervised by One Staff
2 years	11
3 years	14
4 years	17
5 years	22
6 years and older	24

(1) Up to 25 children may be in regular classroom activities as long as the staff-child ratio is maintained.

(2) The school may combine more than 25 children for joint activities of limited duration (not to exceed 30 minutes) as long as the staff-child ratio is maintained. If all children in the group are age 5 or older, the school may extend the duration to a maximum of one and a half hours.

(3) In determining the staff-child ratio, the following apply:

(A) Staff must use the developmental or emotional age of mentally retarded or emotionally disturbed children as determined by a qualified consultant.

(B) The school must maintain staff-child ratios as stated in this subsection except during transportation, water activities, and field trips.

(b) Each child must have staff who is responsible for him and who is aware of details of the child's habits, interests, and special problems, if any. Staff must know the child's name and age.

§81.209. Training.

(a) The school must orient new staff members in understanding children and in job expectations when they begin work. The school must have documentation of the following orientation:

(1) instruction concerning the requirements in the minimum standards for kindergartens and nursery schools and the licensing law;

(2) information about the school's policies, including discipline and release of children;

(3) instruction in recognizing symptoms of child abuse or neglect and the responsibility and procedure for reporting these; and

(4) instructions in the procedures to be followed in handling emergencies.

(b) Staff must participate yearly in at least 15 clock hours of training in understanding children and improving job performance. The director must participate yearly in at least 20 clock hours of training. The training must be documented in the staff's record at the school. A year is defined as 12 months from the date of employment.

§81.210. Space.

(a) There must be at least 20 square feet of indoor activity space, measured wall-to-wall on the inside, for each child in the school. The measurement does not include single use areas.

(b) The school must have an outdoor play space of at least 80 square feet for each child using the area at one time.

(c) All outdoor play areas regularly used by children must be accessible by a safe route and enclosed by

a building or fence at least four feet high and with at least two exits. One exit must be away from the building. Staff must be able to open exits immediately in an emergency.

§81.211. Furnishings. The school must ensure the following:

(1) a working telephone with a listed number,
(2) children have storage available for personal belongings, and

(3) comfortable seating is available for the children.

§81.212. Equipment.

(a) The school must provide indoor and outdoor equipment and materials that are appropriate to the developmental needs, individual interests, and ages of the children. These items must correspond to the school's educational goals. There must be a sufficient amount of equipment and materials to avoid excessive competition among the children or long waits for materials.

(b) The following must be available to the children:

- (1) books,
- (2) art material,
- (3) music materials,
- (4) manipulative materials,
- (5) block and block accessories,
- (6) dramatic play materials, including home-making materials and dolls,
- (7) science materials, and
- (8) climbing equipment.

(c) If the school's educational goals do not require the equipment listed in subsection (b) of this section, the school must have the following:

(1) a written statement of the instructional goals of each curriculum area and instructional level. The school must give each parent a copy of this statement. The school also must make this statement available to the department;

(2) enough materials and a variety of equipment to support the teaching program;

(A) teachers and children must have access to the materials and equipment.

(B) the school must have on file a list of equipment and material that support each instructional goal.

§81.213. Toilet Facilities.

(a) The school must have inside toilets located and equipped so children can use them independently and staff can supervise as needed. Bathroom doors must have no locks within the children's reach. Children must have privacy in the use of the bathroom as needed.

(b) There must be one flush toilet for every 20 children.

(1) Urinals may be counted in the ratio of children to toilets, but they must not exceed 50% of the total number of toilets. Bathrooms which contain urinals must also have flush toilets.

(2) Potty chairs may be used, but they must not be counted in the ratio of children to toilets. They must be sanitized after each use.

(c) There must be one lavatory for every 20 children.

§81.214. Use of Facility. If programs not subject to regulation use the same facilities, the school must not use

any space at the same time another program is using that space.

§81.215. Fire.

(a) In case of fire or danger of fire or explosion, staff's first responsibility is to evacuate the children to a designated safe area.

(1) Staff must supervise children until the fire department determines the building is safe to re-enter or until the children are picked up by their families.

(2) A designated staff on duty must contact the fire department in case of fire or danger of fire, explosion, toxic fume, or other chemical release.

(b) The school must have an annual fire inspection by a local or state fire marshal. The school must post the written report of the inspection. It must make any corrections called for in the report. The school must comply with any restrictions imposed by the fire inspector.

(c) The school must have at least one fire extinguisher approved by the fire marshal. The school must mount the extinguisher on the wall by the hanger or bracket provided. The height must not exceed five feet from the top of the cylinder to the floor. The school must make the extinguisher readily available for immediate use by the staff. The director or assigned staff must inspect the fire extinguisher monthly and ensure it is serviced when required. The school must have documentation of the inspections and service.

(d) By 12 months after the adoption of these rules, the school must ensure it is equipped with smoke detectors installed and maintained according to the manufacturer's instructions and in compliance with requirements of the local fire code. Staff must keep a record of maintenance.

(e) The school must have emergency evacuation/relocation plans posted in each room used by the children. The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level.

(f) The school must have flashlights or other battery-powered lighting available to use in case of electrical failure.

(g) The school must ensure that all children and staff are able to exit safely from the building within three minutes in an emergency

(1) If a school allows children on any level above or below the ground floor, the school must obtain the written approval of a fire marshal for use of other levels. If the school cannot obtain the fire marshal's approval, the school must keep children on the ground floor.

(2) A school must have at least two exits to the outside located in distant parts of the building. An exit through a kitchen or other hazardous area cannot be one of the required exits.

(3) If there are any doors opening into a fenced yard, children must be able to open the doors easily from inside the school. The school must not have any locked doors between rooms while children are present.

(4) The school must not have any blocked doors or pathways.

(h) Staff must ensure that heating devices and areas near heat sources are not fire hazards and present no hazard to children.

(1) If the school has gas appliances, staff must ensure that the appliances have metal tubing and connections unless approved in writing by the fire marshal.

(2) Open flame space heaters are prohibited. Space heaters must be enclosed and have the seal of approval of a test laboratory approved by the fire marshal. Staff must safeguard floor and wall furnace grates so that children do not have access to them.

(3) If the school has liquid or gas fuel heaters, the school must properly vent them to the outside. Unvented liquid or gas fuel heaters are prohibited.

(4) If the school uses a fireplace or wood burning stove, the school must properly vent it to the outside. The school must install a rigid screen or guard to prevent children from falling into the fire or against the stove.

(i) The school must keep combustible material away from light bulbs and other heat sources.

(j) The school must ensure that gas pipes are tested annually for leaks. A copy of the test report must be posted at the school.

§81.216. Sanitation.

(a) The school must have an annual sanitation inspection with a written report by a local or state sanitation official. Staff must post the report at the school. The school must make any corrections called for in the report and must comply with any restrictions stated in the report.

(b) The school must keep its building, grounds, and equipment cleaned, repaired, and maintained to protect the health of the children.

(c) The school must have adequate light, ventilation, and heat.

(d) The school must have an adequate supply of water that meets the standards of the Texas Department of Health for drinking water. If possible, the source of water must be a public drinking water system.

(e) Staff must ensure that drinking water is always available to children. The school must supply the water in a safe and sanitary manner.

(f) The school must ensure that the temperature of hot water available to children is controlled by a thermostat so the water cannot scald (no higher than 120°F).

(g) The school must have adequate and safe flush toilets and sewage systems. If possible, the school must be connected to a public sewage system. If public sewers are not available, the school must have treatment facilities that meet the standards of the Texas Department of Health and that are approved by the local health authority.

(h) The school must keep all garbage in containers with tight lids away from areas used by children. It must remove garbage from the building daily and from the school at least once a week.

(i) The school must take measures to keep the school free of insects and rodents.

(j) Staff and children must wash their hands with soap and running water after using the toilet and before eating. Staff must wash hands with soap and running water before and after assisting a child with toileting, handling food, and after caring for a child with symptoms of a communicable disease.

(k) If children use washcloths or cloth towels, the school must ensure that each child has a clean individual cloth. If paper towels or facial tissues are furnished, the

school must provide a clean individual paper towel for each child.

§81.217. Safety.

(a) The school must keep its building, grounds, and equipment repaired and maintained to protect the safety of children.

(1) The school must have child-proof covers or safety outlets for electrical outlets accessible to children younger than five years old.

(2) The school's electric fans and heaters must be mounted out of children's reach or have safeguards that keep children from being injured.

(3) If the school has window air conditioners, they must be installed so children cannot reach working parts.

(4) If 220-volt electrical connections are within the children's reach, the school must cover them with a screen or guard.

(5) The school must equip stairs, porches, and platforms more than two feet above the ground with railings the children can reach.

(6) The school must keep its play area dry and free from sharp objects. The school must keep tanks, ponds, open wells, drainage ditches, sewage pipes, dangerous machinery, and other hazards fenced to keep the children out. The school must not have garbage cans or highly flammable material in the play area. Covered trash cans are permitted.

(7) By January 1, 1986, the school must maintain a resilient surface under and surrounding all:

(A) climbing equipment more than five feet high, and

(B) swings with supports more than five feet above the ground. This surface must be extended to cover the fall zone. The resilient surface must not be installed over asphalt or concrete. (Resilient surfaces include sand, pea gravel, shredded bark, or shredded rubber at least six inches deep. Resilient mats or tiles which meet the National Bureau of Standards test criteria for impact attenuation performance of surfaces installed under playground equipment also comply.)

(b) Indoor and outdoor equipment and supplies used both at and away from the school must be safe for the children.

(1) Outdoor play equipment must be placed away from busy areas in the yard and securely anchored unless portable by design.

(2) The school must not allow toys that explode or that shoot things.

(3) The school must not have furnishings, equipment, or toys that have lead painted surfaces or contain toxic material.

(4) The school must ensure that children do not have access to toxic substances indoors and out.

(5) All swing seats must be constructed of durable, lightweight, relatively pliable material, such as rubber or nylon webbing.

(6) All heavy equipment must be installed in a manner to prevent tipping over or collapsing.

(7) The school must not allow children to use:

(A) climbing equipment or swings on concrete or asphalt, or

(B) swings with concrete or asphalt in the fall zone.

(8) The school must ensure that no equipment has openings or angles that could entrap a child's head.

(9) The school must ensure that no pinch, crush, or shear points are on equipment or underneath equipment.

(c) The school must have first aid supplies readily available to staff, in a designated location, and out of the children's reach. The school must make a guide to first aid and emergency care immediately accessible.

§81.218. Health Requirements for Children.

(a) The school must have on file evidence that each child is physically able to take part in the school program. This must include a history of serious illness, injury, or abnormality in physical or mental development and a record of all hospitalizations. The history is not required for a child enrolled before the effective date of this rule. The school must require that parents present evidence of the general state of each child's health when the child is admitted to the school or within one week of admission. Any of the following constitutes compliance:

(1) a written statement from a licensed physician that he has examined the child within the past year; or

(2) a copy of the medical screening form of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program if no referral for further diagnosis and treatment is indicated; or

(3) a form or written statement from a health service or clinic, such as:

(A) Head Start physical exam,

(B) well-child conferences (clinics),

(C) maternity and infant programs, and

(D) children and youth programs; or

(4) if one of the documents in paragraphs (1)-(3) of this subsection is not available, a written statement submitted by the parent that a licensed physician (whose name and address are included) has examined the child within the past year and that the child is able to participate in the program. This must be followed within 12 months by a document as described in paragraphs (1)-(3) of this subsection; or

(5) if the parent cannot secure one of the documents in paragraphs (1)-(3) of this subsection within one week, a statement signed by the parent giving the name and address of the physician with whom an appointment for examination has been made or the address of the EPSDT screening site where the examination will take place. Following the examination, the parent must submit a document as described in paragraphs (1)-(3) of this subsection; or

(6) a signed statement from the parent that medical diagnosis and treatment are against his religion.

(b) The school must have available annual evidence of each two-, three-, or four-year-old child's continued ability to participate in the program. This is required for any child who has been in care for 12 or more months. Either of the following is acceptable if it has been dated within the past 12 months:

(1) a written or oral statement from the parent that the child is enrolled in an ongoing health supervision program with annual evaluation as described in sub-

section (a)(1)-(3) and (6) of this section. Staff must document any oral statement in the child's record; or

(2) a statement from a licensed physician that the child may continue to participate in the program.

(c) the school must keep current immunization records for each child. Staff must ensure that each child's immunization record includes the child's birth date, the number of doses and type, and the dates (month, date, year) the child received each immunization. The school's compliance with the standard is measured by one or more of the following for each child:

(1) a written and dated record that the child has been immunized against diphtheria, tetanus, pertussis, polio, measles, mumps, and rubella. There must be:

(A) a record with a rubber stamp or signature of the physician or health personnel, or

(B) a machine or handwritten copy of the immunization record. Staff copying the information must sign the handwritten copies.

(2) a written and dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the diseases mentioned in paragraph (1) of this subsection have begun. The immunization cycle must be completed as soon as is medically feasible. The school must have a current immunization record on file.

(3) a certificate signed by a licensed physician stating that the required immunization would be injurious to the health and well-being of the child or a member of the child's family or household.

(4) an affidavit (notarized statement) signed by the parent that the immunization conflicts with his religious beliefs and practices.

(5) a written and dated statement signed by the parent that the child's immunization record is current and is on file at a regulated facility the child attends. The parent must include the name of the facility in the statement.

(d) The school must have a record showing that the child has been tested for tuberculosis according to recommendations of the Texas Department of Health if the local health authorities or the regional office of the Texas Department of Health recommended a test. A written and dated statement signed by the parent that the child's tuberculosis test record is current and is on file at a regulated facility the child attends also complies. The parent must include the name of the facility in the statement.

§81.219. Illness or Injury.

(a) A child who appears ill must not be admitted to the school unless approved in writing by health personnel.

(b) The school must handle illness or injury to protect the health of all children in the school.

(1) The school must provide an ill or injured child with a bed, cot, or mat away from the other children. Staff must call the child's parent immediately. The child must be supervised until he leaves the school.

(2) Staff must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, staff must call the physician named by the parent, take the child to the nearest emergency room or minor emergency clinic, or call for an emergency vehicle.

(c) The school must follow the recommendations of the Texas Department of Health concerning the admission or readmission of any child after a communicable disease.

§81.220. Medications.

(a) If a school agrees to administer medications, staff must administer the medication to the child as follows:

(1) Prescription medications must be in the original container labeled with the child's name, a date, directions, and the physician's name. Staff must administer the medication as stated on the label directions. Staff must not administer medication after the expiration date.

(2) Staff must ensure that nonprescription medication is labeled with the child's name and the date the medication was brought to the school. Nonprescription medication must be in the original container. Staff must administer it according to label directions if approved in writing by health personnel or the child's parent.

(3) Staff must document each dose of medication administered showing the child's name; the name of the medicine; date, time, and amount administered; and the name of the staff administering the medicine.

(b) Staff must keep medications out of children's reach or in locked storage.

(c) Staff must keep medications requiring refrigeration separate from food.

(d) Staff must return medications when no longer needed to the child's parent. Staff must dispose of medications when a child withdraws from the school or when the medicine is out of date.

§81.221. Emergency Phone Numbers.

(a) The school must post the following emergency telephone numbers by a telephone accessible to all staff. This telephone must not be a pay phone.

(1) ambulance service or emergency medical services (EMS),

(2) police or sheriff's department,

(3) fire department,

(4) poison control center,

(5) licensing office,

(6) local children's protective services office or child abuse hotline, and

(7) the school (with address).

(b) The school must keep the following telephone numbers in a place accessible to the telephone and to all staff.

(1) numbers at which parents may be reached, and

(2) numbers of the physicians designated by the parents.

§81.222. Animals.

(a) The school must ensure that animals on the premises have been vaccinated according to a licensed veterinarian's recommendations. Staff must file documentation of vaccinations at the school.

(b) Staff must keep the school and play yard free of stray animals. Staff must not allow children to play with stray animals.

§81.223. Food Service.

(a) The school must ensure that all food and drink served are of safe quality and are stored, prepared, dis-

tributed, and served under sanitary and safe conditions. The school must wash and sanitize food service equipment.

(b) Cleaning supplies must be clearly marked, kept separate from food, and kept inaccessible to children.

(c) Staff must practice good hygiene when handling food. Staff with open or infected wounds must not work in the food preparation area. No one may smoke in any of the food areas.

(d) Staff must discard single service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(e) Staff must encourage, but not force, children to eat. Staff must promptly discuss eating problems with the child's parent and note this discussion in the child's record.

§81.224. Operation.

(a) Staff must provide activities for each group according to ages, interests, and abilities of the children. The activities must be appropriate to each child's health, safety, and well-being. They also must be flexible and promote each child's physical, emotional, social, and mental growth.

(1) The school must provide physical care routines appropriate to each child's developmental needs.

(2) The school must ensure that indoor and outdoor time periods include:

(A) alternating active and quiet activities,

(B) opportunity for individual and group activities, and

(C) outdoor time each day that weather permits.

(b) The school must ensure the children's safety on field trips and excursions and on any transportation provided by or for the school. Transportation includes, but is not limited to, transportation provided between home and the school and between the school and day care center.

(1) Staff supervising children must have emergency medical forms and emergency contact information for each child in the group.

(2) Staff must have a written list of the children in the group and must check roll before, during, and after the trip.

(3) Staff must have first aid supplies available on field trips.

(4) When children are not at the school, not being transported, and not in water activities, the staff-child ratio must be as follows:

Age of Youngest Child in Group	Maximum Number of Children to be Supervised by One Staff
2-3 years	6
4-5 years	8
6 years	15

§81.225. Discipline and Guidance.

(a) The school must ensure that discipline and guidance are consistent, are based on an understanding of individual needs and development, and promote self-discipline and acceptable behavior.

(b) There must be no cruel, harsh, or unusual punishment or treatment.

(1) Staff must not shake, bite, or hit children. No child under 5 years old must ever be spanked. Staff must not put anything in or on a child's mouth as punishment.

(2) If the governing body believes that it is necessary to spank children who have passed their fifth birthday, the school must have a statement on file that it is the school's policy to permit physical punishment. The statement of the rules that the school has adopted concerning the administration of physical punishment must include that spanking must be done only with a staff's open hand on a child's buttocks. Each incident must be witnessed by another staff and documented in the school's records. The school must inform the parents in writing of the policy and must have the parents' signed approval.

(3) The school may use brief, supervised separation from the group if necessary, but staff must not place children in a locked room or in a dark room with the door closed.

(4) Staff must not humiliate or subject children to abusive or profane language. Staff must not associate punishment with food, naps, or toilet training.

§81.226. Children with Need for Special Care. The school must ensure that children who need special care because of disabling or limiting conditions are given the care and activities qualified psychologists, physicians, or other experts recommend. The school must document the recommendations and their accomplishment.

§81.227. Water Activities.

(a) When a school uses a splashing pool or a wading pool with less than two feet of water, the following apply:

(1) When the pool is not in use, staff must keep it out of the child's reach. Pools which can be drained must be drained; those which cannot meet the requirements in subsection (b)(1) of this section.

(2) One staff with knowledge of water safety must supervise at all times. When children under 4 years old are in the water, two staff members must supervise.

(b) When the school uses a swimming pool (more than two feet of water), the following apply.

(1) At the school, the pool must be enclosed by a fence at least six feet high and built so children cannot easily climb over it. Staff must keep the gate locked when the pool is not in use.

(2) One lifesaving device must be available for each 2,000 square feet of water surface (or portions thereof) with a minimum of two for each pool.

(3) A certified lifeguard must be on duty at all times. This person must not be counted in the staff-child ratio.

(4) Staff must be able to see clearly all parts of the pool, including the bottom.

(c) Staff must ensure that all drain grates are in place, are in good repair, and cannot be removed without using tools.

(d) The staff-child ratio for water activities is as follows:

SWIMMING		
Age of Youngest Child in Group	Number of Staff	Maximum No. of Children
2 years	1	4
3 years	1	6
4 years	1	7
5 years	1	8
6 years	1	10

WADING & SPLASHING		
Age of Youngest Child in Group	Number of Staff	Maximum No. of Children
2 years	2	11
3 years	2	14
4 years	1	17
5 years	1	22
6 years	1	24

(e) When children are in a pool which has a pump and filtering system, an adult who is able to turn off the system immediately must be present.

(f) Staff must ensure that pool chemicals are inaccessible to children and that machinery rooms are locked.

(g) All pools the school uses must be maintained as stated in the standards of the Texas Department of Health and local regulations.

§81.228. Transportation.

(a) Twelve months from the effective date of this rule, if a school provides transportation, each child being transported must ride either in a child seat or a seat belt, as appropriate to the child's age and size.

(b) These requirements apply to all transportation including, but not limited to, transportation to and from the school, to and from a day care center, and on field trips.

(c) These requirements apply to any vehicle used by or for the school to provide transportation, regardless of whether owned by the school and regardless of the type of vehicle—automobile, van, school bus, or other. The requirements do not apply when children age five and older are being transported in buses weighing 10,000 pounds or more if seat belts were not installed at the time the bus was manufactured.

(1) Appropriateness is determined as follows.

(A) The school must ensure that each 2 year old who can sit alone is properly seated in a child seat that is dynamically crash-tested and federally approved as a child passenger restraint device.

(B) The school must ensure that each child age 3 and older rides in either a child seat that is dynamically crash-tested and federally approved as a child passenger restraint device or in a seat belt. Only one person may use each seat belt.

(C) A child may ride in a shoulder harness and seat belt if the shoulder harness goes across the child's chest and not across the child's face or neck.

(2) Staff must properly anchor each restraint device to the vehicle seat and use the device according to the manufacturer's specifications.

(3) Staff must ensure that each child transported remains seated and properly restrained by the passenger restraint device appropriate to his age, size, and physical condition while the vehicle is in motion.

(4) If parents provide equipment for the school to use for transporting the child, the equipment must meet the specifications stated in this rule.

(b) Twelve months from the effective date of this rule, the driver and all adult passengers in a vehicle transporting school children must be properly restrained by a shoulder harness and/or a seat belt when the vehicle is in motion.

(c) The school must load and unload children at the curb side of the vehicle or in a protected parking area or driveway. The school must ensure that children do not cross a street unsupervised after leaving a vehicle.

(d) The school must keep first aid supplies in all vehicles transporting children.

(e) The school must equip all vehicles used for transporting children with a minimum of one 6-BC portable fire extinguisher. The fire extinguishers must be installed in the passenger compartment of the vehicle and must be accessible to the adult occupants.

(f) The school must ensure that children are not transported in the open back of a truck and that children are not transported in vans or station wagons from which the bench seats have been removed.

(g) The staff-child ratio for transportation of children must be met. The driver is counted in the staff-child ratio.

(1) For children ages 2 and 3, the staff-child ratio is established by the requirements in §81.208(a) of this title (relating to Staff-Child Ratio). At least two adults must be present.

(2) For children who have passed their fourth birthday, the staff-child ratio is established by the requirements in §81.208(a) of this title (relating to Staff-Child Ratio).

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

Abuse—Nonaccidental infliction or threat of infliction of physical, emotional, or mental harm to a child.

Activity space—Area or rooms used for children's activity including those separate from a group's classroom.

Administrative functions—Functions which involve the management of a kindergarten or a nursery school such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

Admission—The process of entering a child in a school. The date of admission is the first day on which the child is actually present in the school.

Adult—A person 18 years old or older.

Application—The form the department furnishes to gather information about and to document the intent of the governing body to set up a kindergarten or nursery school. The application also includes all material required to be submitted to the department.

Attendance—Children actually present in the school at any given time. (Not to be confused with enrollment.)

Child—A person who has not reached his 18th birthday.

Child development associate credential—A credential which is highly desirable for staff working directly with young children; based on assessed competency in several areas of child care and child development. Child development training is available in the public community and junior college system as well as in four year colleges, either in regular child development, vocational programs, or through adult continuing education courses.

Children with need for special care—Children with disabling or limiting conditions which prevent or limit participation in the normal activities of the school and which may require additional supervision. Disabling or limiting conditions include visual impairment or deafness, other physical disabilities, mental retardation, emotional disturbance, or learning disabilities.

Consultative services for children with need for special care—

(A) Qualified consultants include psychologists, special education counselors, educational diagnosticians, special education supervisors, teachers certified by the Texas Education Agency to teach mentally retarded or emotionally disturbed children, pediatricians, and MSW social workers skilled in assessing normal and unusual developmental problems in children.

(B) Such consultants may be found in state schools and hospitals, MHMR centers, human development centers, public school special education departments, university psychology or special education departments, and the state listing of certified psychologists.

Day care—The care, supervision, and guidance of a child or children unaccompanied by a parent, guardian, or custodian on a regular basis, for a period of less than 24 hours per day, and in a place other than the child's or children's own home or homes.

Department—Used in these rules to refer only to the Texas Department of Human Resources.

Direct child care—The supervision, guidance, and care of children as compared to food service, janitorial functions, or administrative functions.

Director—That person the governing body designates to assume daily on-site responsibility for the operation of a kindergarten or nursery school, including maintenance of minimum standards. In multiple facilities under a chief administrative officer, the director is the person physically present at each kindergarten and nursery school.

Enrollment—The list of names of children registered with the school. (Not to be confused with attendance.)

Facility—Includes people, administration, governing body, activities (on or off the premises), operations, buildings, grounds, equipment, furnishings, and materials.

Family day care—Care for one through six children when at least one of the children is not related to the caregiver.

First aid supplies—Required supplies include mult-size adhesive bandages, gauze pads, tweezers, cotton balls, hydrogen peroxide, syrup of ipecac, and a thermometer.

Food service—The preparation or serving of meals or snacks.

Garbage—Waste food or items which, when deteriorating, cause offensive odors and attract rodents, insects, and the like.

Governing body—The entity with ultimate authority and responsibility for the overall operation of the kindergarten or nursery school. All governing bodies will be one of the following types:

(A) Sole proprietorship—Owned by an individual with the legal right and responsibility to possess, operate, sell, and otherwise deal with the facility. May include a facility owned in common by husband and wife.

(B) Partnership—Combination by contract of two or more people who use their money, labor, and skill to carry on a continuing business, dividing the profits and sharing the losses in an agreed manner. Includes general and limited partnerships.

(C) Corporation—An intangible entity created by individuals to operate for profit but to limit individual liability. Organized according to the Texas Business Corporation Act or similar act of another state as evidenced by its Articles of Incorporation.

(D) Nonprofit corporation—Equivalent of "not for profit corporation." None of the income is distributed to members, directors, or officers. Organized under the Texas Non-Profit Corporation Act.

(E) Nonprofit corporation with religious affiliation—Has nonprofit corporation status and is operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Does not include those whose relationship with a religious organization is only for business, such as those who only lease space.

(F) Association—A combination of individuals and interests of some kind without Internal Revenue Service tax-exempt status. Not organized under the Texas Business Corporation Act.

(G) Nonprofit association—Combination of individuals and interests of some kind, synonymous with "society," with operations devoted to charitable, benevolent, religious, patriotic, or educational purposes. Not organized under the Texas Business Corporation Act.

(H) Nonprofit association with religious affiliation—Combination of individuals and interests of some kind, synonymous with "society," with operations devoted to religious purposes. Not organized under the Texas Business Corporation Act. Operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Does not include those whose relationship with a religious organization is only for business, such as those who only lease space.

(I) State operated—Operated by, under the direct jurisdiction of, and responsible to an agency of the State of Texas.

(J) Other political subdivision—Operated by and under the jurisdiction of a county municipality, school district, or other political entity.

Group—A specific number of children assigned to specific staff. Each child in any group has the following things in common with every other child in his group:

(A) The same staff responsible for the child's basic needs, and

(B) The same classroom or activity space.

Group child care—Care for seven or more children when at least one of the children is not related to the caregiver.

Handwashing—Rubbing hands together with soap under running water.

Health personnel—A licensed physician, a licensed registered nurse, or a person providing preventive, diagnostic, or therapeutic medical care to individuals in the community.

Janitorial functions—Those services which involve cleaning and maintenance above that which is required for the continuation of the day care program, such as cleaning carpets, washing cots, and the like. Sweeping after an activity or mopping up spills may be necessary for continued use of the classroom, but total sweeping, vacuuming, or mopping of a classroom is a janitorial function.

Kindergarten class—A class planned for children who will be in first grade the next September.

Kindergarten or nursery school activities—Those services and activities which are provided by a kindergarten and nursery school: the daily schedule.

Kindergarten or nursery school area—That area specifically licensed for use by the kindergarten or nursery school. This may include a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location. The indoor and outdoor area designated in the plan of operation.

Kindergarten and nursery school—Any facility, whether or not known or incorporated under such descriptive title or name as "Day Nursery School," "Child Play School," "Child Development School," "Early Childhood School," and the like. Any facility receiving children for care and activities which has been licensed as a kindergarten or nursery school. This term applies to program, buildings, grounds, furnishings, and equipment

Kindergarten and nursery school location—The street address where the kindergarten or nursery school is located; the lot or lots on which the building or buildings are located.

Kindergarten and nursery school program—Those services and activities provided by a school: the daily schedule.

Kindergarten and nursery school staff—Any person, paid or volunteer, serving in a school in any capacity.

License—A complete document issued to the governing body of a school authorizing the licensee to operate at a specified location according to the provisions of the license, the law, and the rules and regulations of the Texas Department of Human Resources.

Neglect—Nonaccidental failure or threatened failure to provide a child with the physical and emotional requirements for life, growth, and development.

Parent—Used in this document to refer to parent, legal guardian, or managing conservator.

Plan of operation—The form the department furnishes on which the governing body outlines the plans for operating the school.

Probation—A sanction placed on a school instead of revocation. Under probation, the school may remain open and continue to provide day care.

Provisional license—A license the department issues to a school whose plans meet the department requirements but which is:

(A) not currently operating,

(B) not licensed for the location stated in the application, or

(C) changing ownership.

Sexual abuse—Any sexually oriented act or practice involving staff or another adult and a child in care.

Single use areas—Include, but are not limited to, bathrooms, hallways, storage rooms, cooking areas of kitchens, and indoor swimming pools.

Staff—Any person responsible for working in contact with children whether paid or unpaid. He must meet the qualifications and conditions outlined these rules.

Supervision—The act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of activity requirements and children's needs, and accountability for their care. This includes staff being near enough to children to intervene when needed.

Teaching staff—People whose primary duties include direct care, supervision, and guidance of children in a kindergarten or nursery school.

Training—Time spent in workshops; conferences of child care, early childhood, or educational associations; formal schooling; or time with consultants. Training must be in subject areas such as child care, child development, and early childhood education. Training for directors may also be in supervision of staff or program administration.

Trash/litter—Paper products, plastic, cloth, and the like.

Water activities—Related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

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 July 23, 1984

TRD-847675

Marlin W Johnston
Commissioner
Texas Department of Human
Resources

Proposed date of adoption.

September 29, 1984

For further information, please call (512) 441-3355, ext. 2037.

Subchapter D. Minimum Standards for Schools: Grades Kindergarten and Above

The Texas Department of Human Resources proposes the repeal of §§81.301-81.329, and simultaneously proposes new §§81.301-81.329, concerning minimum standards for schools: grades kindergarten and above, in its day care licensing chapter.

The standards are being revised to increase requirements for the safety, transportation, and release of children. The qualifications and requirements of the director and staff have also been increased. In addition, the standards have been edited to clarify policy and requirements for providers and field staff.

Cris Ros-Dukler, assistant commissioner for licensing, 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 rules.

Ms. Ros-Dukler 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 or administering the rules will be the increased safety and protection of children in out-of-home care. There is no anticipated economic cost to people required to comply with the rules as proposed.

The department has scheduled public hearings across the state to accept comments on the proposed standards. At the same time, the department also will be accepting comments on new standards for day care centers, drop-in care centers, group day homes, and kindergartens and nursery schools. All hearings are being held from 3-8 p.m. They are scheduled as follows: August 13, DHR boardroom, Austin, 706 Banister Lane; August 14, Holiday Inn #3, San Antonio, 318 West Durango; August 15, LaQuinta Royale, Sala #1, Corpus Christi, 601 North Water Street; August 16, Hilton Hotel, McAllen, Crockett/Bowie Room, 2721 South 10th; August 20, Room 134, University Center Building, University of Texas at Tyler, 3900 University Boulevard; August 21, Twilight Ballroom, Student Center, Nacogdoches, Stephen F. Austin State University; August 22, Civic Center, Beaumont, 701 Main Street; August 23, Personnel and Training Building, Houston, Room 6 and Room 8, 1349 East 40th Street; August 28, Community Center, Arlington, 2800 South Center; August 29, Texas Department of Human Resources (DHR) Training Room, Wichita Falls, 600 Scott; August 30, DHR Training Room, Abilene, 4380 Spindletop; September 4, Lecture Hall, Highlander Drive, Waco, McLennan Community College, 1400 College Drive; September 5, Room 107, Lubbock Civic Center, Lubbock, 1501 Sixth Street; September 6, Texas Tech Health Science Center, Amarillo, 1400 Wallace Boulevard; September 11, DHR Regional Headquarters, Midland, large conference room, 2301 North Big Spring; September 12, City Council Chambers, El Paso, Second Floor, 2 Civic Center Plaza.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division—437, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 60 days of publication in this *Register*.

40 TAC § 81.301-81.329

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Department of

Human Resources, 706 Banister Lane, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

- §81.301. *Organization.*
- §81.302. *General Administration.*
- §81.303. *Enrollment.*
- §81.304. *Records.*
- §81.305. *Director Qualifications.*
- §81.306. *Director Responsibilities.*
- §81.307. *Staff Qualifications.*
- §81.308. *Staff-Child Ratio.*
- §81.309. *Training.*
- §81.310. *Space.*
- §81.311. *Furnishings.*
- §81.312. *Equipment.*
- §81.313. *Toilet Facilities.*
- §81.314. *Fire.*
- §81.315. *Sanitation.*
- §81.316. *Safety.*
- §81.317. *Health Requirements for Children.*
- §81.318. *Illness or Injury.*
- §81.319. *Medication.*
- §81.320. *Emergency Phone Numbers.*
- §81.321. *Animals.*
- §81.322. *Food Service.*
- §81.323. *Nutrition.*
- §81.324. *Activities.*
- §81.325. *Discipline and Guidance.*
- §81.326. *Children with Special Needs.*
- §81.327. *Water Activities.*
- §81.328. *Transportation.*
- §81.329. *Definitions.*

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 July 23, 1984.

TRD-847684 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Proposed date of adoption:
September 29, 1984

For further information, please call (512) 441-3355,
ext. 2037.

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

- §81.301. *Organization.*
 - (a) A school must have a governing body that is responsible for its policies. The governing body must assure that the school operates in compliance with the Minimum Standards for Schools: Grades Kindergartens and Above and the child care licensing law, Human Resources

Code, Chapter 42. The governing body must inform the department of the name and mailing address of the sole proprietor, the partners, or its chief executive officer.

(b) A corporation operating a school must make one of the following available to the department for review:

- (1) The articles of incorporation;
- (2) The certificate of incorporation;
- (3) A copy of the certificate of authority (for an out-of-state corporation).

(c) A corporation or church must make available to the department a copy of the resolution authorizing the operation of the school unless the authorization is included in the document required in this subsection.

(d) Each time a director is named, the governing body must send the department an official department form naming the director. If the owner and the director are the same person, the governing body must state this on the form.

(e) The governing body must notify the department before, if possible, or on the next workday of any occurrence which affects the status of the school. This includes, but is not limited to, the following:

- (1) changes of the governing body or ownership;
- (2) change of school director;
- (3) change of board chairman of a corporate school or other chief executive officer of the governing body;
- (4) change of governing body designee;
- (5) going out of business;
- (6) change in hours of operation;
- (7) change in age range of children in care; and
- (8) closing the school for more than one week (if not covered in the plan of operation).

(f) If any change violates the restrictions on the license, the governing body must request that the license be amended. It must wait until the department changes the restriction before making the change in operation.

(g) The governing body must notify the department and apply for a new license before changing the location of the school.

(h) The governing body must notify the department, in writing, of any planned addition or reduction in indoor or outdoor space before making the change.

(i) The governing body must notify the department, in writing, of the addition of a swimming or a fixed wading pool before using the pool.

§81.302. General Administration.

(a) The school must display the following in a place where staff, parents, and others may review them:

- (1) its license,
- (2) the letter or compliance evaluation form that the licensing representative provides at or following the most recent inspection or investigation of the school, and
- (3) A current copy of the department's "Minimum Standards for Schools: Grades Kindergarten and Above."

(b) The school must immediately notify the department of any serious occurrences that affect its operation. These include, but are not limited to, the following:

- (1) death of a child enrolled in or attending the school;
- (2) fire; and

(3) serious accident, injury, or communicable disease of a child or staff.

(c) The school must report suspected child abuse or neglect as required by the Texas Family Code to:

- (1) the nearest child protective services office, and
- (2) a local or state law enforcement agency.

(d) The governing body must ensure that a person who is indicted or the subject of an official criminal complaint accepted by a county or district attorney alleging he committed any of the offenses listed as follows does not have contact with the children in care until the charges are resolved. The offenses are as follows:

- (1) a felony or misdemeanor classified as an offense against the person or family;
- (2) a felony or misdemeanor classified as public indecency; and
- (3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(e) The governing body must notify the licensing office of an indictment or complaint within 24 hours or on the next workday.

§81.303. Enrollment.

(a) The school must not racially discriminate against any child.

(b) Before a child is enrolled, staff must inform parents, in writing, about the school's activities and policies.

(c) Staff must obtain an enrollment agreement for each child before admission. Staff must keep the agreement on file at the school until six months after the child's last day. The director must ensure that the terms of the agreement related to paragraphs (1)-(14) of this subsection are met. When a child is withdrawn from the school, staff must enter the date of the withdrawal. The parent and director must sign the agreement, which contains the following:

- (1) the child's name, birth date, home address, and home telephone number;
- (2) date of admission;
- (3) name and address of parents and telephone numbers at which parents can be reached while the child is in school;
- (4) the names of the people to whom the child may be released. A statement that in an emergency the parent must call the school to give the name of and other identifying information about the person picking up the child;
- (5) hours the child will be in school;
- (6) name, address, and telephone number of the child's physician;
- (7) a statement of the child's special problems or needs as indicated by the parent. This includes allergy, existing or pre-existing illness and injuries, and all hospitalizations;
- (8) a statement that special problems or occurrences in the school that affect the child will be brought to the parent's attention. This includes serious communicable diseases;
- (9) a statement providing for parent conferences;

(10) a statement informing parents that minimum standards are available in the school for review;

(11) a statement that:

(A) the copy of the agreement must remain in the school's records while the child is in school; and

(B) the parent must update information as necessary. The director and parent must initial and date all changes;

(12) transportation permission, if transportation is provided;

(13) permission for participation in water activities, if any; and

(14) emergency medical authorization.

§81.304. Records.

(a) School staff must maintain a record for each child. Records include statements of the child's progress and of any significant occurrences in the child's development.

(b) The school must have records of daily attendance of children and staff for the previous three months. The hours staff worked each day must be recorded.

(c) The school must maintain complete financial records. Licensing staff checks these records only on written notice from the director of licensing.

(d) The school must maintain personnel records for all staff and ensure that each staff's record includes:

(1) the date on which staff began work at the school;

(2) three references attesting to the staff's suitability for the job. This does not apply to a person who has been on staff at the school continuously since June 29, 1976.

(A) For a person who has become staff since the effective date of these rules, the school must obtain references from his last three employers/supervisors. If the person has been employed in fewer than three places, the school must obtain references from other people. People other than employers/supervisors must be unrelated to the staff and not employed at the school. The school must be sure to obtain reference information from at least three people.

(B) The school must ensure that all reference information includes the following:

(i) The name, address, and telephone number of each reference.

(ii) Written statements attesting to the staff's character; physical, mental, and emotional health; and competency. The school must ensure that people submitting reference information have signed the statements. The director must copy and sign quotes from the people giving reference information orally.

(3) A statement from staff providing information about any felony and/or misdemeanor convictions within the preceding 10 years and about any pending criminal charges, including deferred adjudication.

(4) A record of a tuberculosis examination no earlier than 12 months before beginning this position. Re-examination is required if local health authorities or the regional office of the Texas Department of Health recommends it. People age 14 and older who are at the school while children are there must also have a record of tuberculosis examination. People under 14 years old must meet the same requirements as children in the school.

(5) Documentation that staff meets the requirements in §81.307(a) or §81.307(b) of this title (relating to Staff Qualifications and Responsibilities).

(e) All required records (except financial records) must be available at the school for the department to inspect during hours of operation.

§81.305. Director Qualifications.

(a) The director of a school must have a bachelor's degree from an accredited college or university with at least 15 credit hours of education or child development. The director also must have had two years of experience in teaching, administration, or management. Proof of meeting the qualifications must be available to the department.

(b) A person who was director of a school on the effective date of these rules has four years from that date to meet compliance if he remains in the same position.

(c) No one may serve as director of a school who has been convicted within the preceding 10 years of any of the following offenses unless the director of licensing has ruled that the person has established his rehabilitation:

(1) a felony or misdemeanor classified as an offense against the person or family;

(2) a felony or misdemeanor classified as public indecency; or

(3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(d) The director must send the department the following on an official department form:

(1) a record of training and experience;

(2) information about felony and/or misdemeanor convictions within the preceding 10 years;

(3) information about any pending criminal charges, including deferred adjudication; and

(4) a list of references with addresses and telephone numbers. The references must be adults not related to the director and not working at the school. They must be able to attest to the director's character; physical, mental, and emotional health; and competency. (The department must receive responses from at least three people.)

§81.306. Director Responsibilities.

(a) An on-site director must administer the school's daily operation in compliance with minimum standards. If the director is absent from the school, an adult staff member must be designated in charge and given the authority to administer the school. During the director's absence, the designated person must administer the school in compliance with minimum standards.

(b) The director must provide the staff's assignments and supervise the staff.

(c) The director must give the department on an official department form the names and required identifying information on all staff and other people at the school older than age 14 who have contact with children in the school. The director must submit this information as part of the application. He must submit new information within one week after a staff member is selected.

§81.307. Staff Qualifications and Responsibilities.

(a) Staff who teach first grade and above and who are counted in the staff-child ratio must have a bachelor's

degree from an accredited college or university or a valid teaching certificate.

(1) Proof of meeting the educational requirement must be available to the department.

(2) A person who was teaching first grade or above on June 29, 1976, but who does not comply with this requirement has two years from the effective date of these rules to meet compliance if he remains in the same position.

(b) Staff who teach kindergarten must have a bachelor's degree from an accredited college or university, a valid teaching certificate, a child development associate credential, or an associate of arts degree in child development or a closely related area.

(1) Proof of meeting the educational requirement must be available to the department.

(2) A person who was teaching kindergarten on June 29, 1976, but who does not comply with this requirement has two years from the effective date of these rules to meet compliance if he remains in the same position.

(c) Staff may be assigned as aides to classroom teachers and may be counted in the staff-child ratio.

(1) Aides must be at least 18 years old. They must have a high school diploma or its equivalent.

(2) Aides must work in the same room with and be supervised by classroom teachers.

(d) Staff must show competency, good judgment, and self-control in working with children. Staff must be mentally, physically, and emotionally able to perform assigned duties.

(e) A person convicted within the preceding 10 years of any of the following offenses must not serve in any capacity where there is contact with children unless the director of licensing has ruled that the person has established his rehabilitation:

(1) a felony or misdemeanor classified as an offense against the person or the family;

(2) a felony or misdemeanor classified as public indecency; or

(3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) Staff must relate to the children with courtesy, respect, acceptance, and patience.

(g) People whose behavior or health status appears to endanger the health, safety, and well-being of children must not be at the school.

(h) People must not smoke in the presence of children or consume alcohol when children are at the school. People who appear to be under the influence of alcohol or other drugs must not be in the school when children are present.

(i) People working with children must be free from other duties except those directly involving the teaching, care, and supervision of children. Staff supervising the children must meet the physical needs of the group.

(j) Responsibilities include keeping the group's area clean. Administrative functions, meal preparation, or janitorial duties must not be included in responsibilities.

(k) Staff must supervise children at all times.

(l) If one staff leaves and another staff is given responsibility for the children, the staff leaving must provide the incoming staff with:

(1) significant information about any particular child, and

(2) a list of children present in the group. This may be the class roll sheet.

(m) If a parent calls to authorize the emergency release of a child, staff must verify that the caller is actually the parent.

(n) Staff must verify the identity of a person authorized to pick up a child but not known to the staff. Staff must view the picture identification on the person's driver's license and record the name and driver's license number. The school must keep this information for 24 hours.

(o) Staff must ensure that children are not out of control.

(p) People at the school must not abuse, neglect, or sexually molest children.

(q) Effective January 1, 1986, a staff trained in first aid and a staff trained in cardiopulmonary resuscitation must be present at the school during all hours of operation. The school must have on file current certificates attesting to the training.

(r) The school must have a written plan(s) for dealing with emergencies, including a description of what each staff must do in an emergency. Emergencies include, but are not limited to, fire, explosion, tornado, toxic fume or other chemical release, an injured child, a child with symptoms of acute illness, and a child who is not breathing. Each staff must have a copy of the plan and be familiar with it. One aspect of the plan must be practiced every three months. The school must practice these drills at different times of the school's operation, including rest times.

§81.308. Staff-Child Ratio.

(a) In a school, the number of children supervised by one staff must not exceed the following:

Grade	Number of Children
Kindergarten	22
First-Third	24
Fourth and above	25

(1) Up to 35 children may be in regular classroom activities as long as the staff-child ratio is maintained.

(2) The school may combine more than 35 children for joint activities of limited duration as long as the staff-child ratio is maintained.

(3) In determining the staff-child ratio, the following apply:

(A) Staff must use the developmental or emotional age of mentally retarded or emotionally disturbed children, as determined by a qualified consultant.

(B) The school must maintain staff-child ratios as stated in this subsection except during water activities and field trips.

(b) Each child must have a staff who is responsible for him and who is aware of details of the child's habits, interests, and special problems, if any. Staff must know the child's name and age.

§81.309. Training.

(a) The school must orient new staff members in understanding children and in job expectations when they begin work. The school must have documentation of the following orientation:

(1) instruction concerning the requirements in the "Minimum Standards for Schools: Grades Kindergarten and Above" and the licensing law;

(2) information about the school's policies, including discipline and release of children;

(3) instruction in recognizing symptoms of child abuse or neglect and the responsibility and procedure for reporting these; and

(4) instructions in the procedures to be followed in handling emergencies.

(b) Staff must participate yearly in at least 15 clock hours of training in understanding children and improving job performance. The director must participate yearly in at least 20 clock hours of training. The training must be documented in the staff's record at the school. A year is defined as 12 months from the date of employment.

§81.310. Space.

(a) There must be at least 20 square feet of indoor activity space, measured wall-to-wall on the inside, for each child in the school. The measurement does not include single use areas.

(b) The school must have an outdoor play space of at least 80 square feet for each child using the area at one time.

(c) All outdoor play areas regularly used by children must be accessible by a safe route.

§81.311. Furnishings. The school must ensure the following:

(1) a working telephone with a listed number;

(2) children have storage available for personal belongings; and

(3) enough chairs and tables or desks to meet the children's needs.

§81.312. Equipment. The school must provide indoor and outdoor equipment and materials to support the instructional program and to meet the stated educational goals. The school must ensure that materials are appropriate to the developmental levels and individual interests of the children. There must be a sufficient amount of equipment and materials to avoid excessive competition among the children or long waits for materials.

§81.313. Toilet Facilities.

(a) The school must have inside toilets that are quickly available, convenient, and safe. Children must have privacy in the use of the bathroom as needed.

(b) There must be one flush toilet for every 20 children. Urinals may be counted in the ratio of children to toilets, but they must not exceed 50% of the total number of toilets. Bathrooms which contain urinals must also have flush toilets.

(c) There must be one lavatory for every 20 children.

§81.314. Use of Facility. If programs not subject to regulation use the same facilities, the school must not use any space at the same time another program is using that space.

§81.315. Fire.

(a) In case of fire or danger of fire or explosion, staff's first responsibility is to evacuate the children to a designated safe area.

(1) Staff must supervise children until the fire department determines the building is safe to re-enter, the children are picked up by their families, or the customary school day ends.

(2) A designated staff on duty must contact the fire department in case of fire or danger of fire, explosion, toxic fume, or other chemical release.

(b) The school must have an annual fire inspection by a local or state fire marshal. The school must post the written report of the inspection. It must make any corrections called for in the report. The school must comply with any restrictions imposed by the fire inspector.

(c) The school must have at least one fire extinguisher approved by the fire marshal. The school must mount the extinguisher on the wall by the hanger or bracket provided. The height must not exceed five feet from the top of the cylinder to the floor. The school must make the extinguisher readily available for immediate use by the staff. The director or assigned staff must inspect the fire extinguisher monthly and ensure it is serviced when required. The school must have documentation of the inspections and service.

(d) By 12 months after the adoption of these rules, the school must ensure that the building is equipped with smoke detectors installed and maintained according to the manufacturer's instructions and in compliance with requirements of the local fire code. Staff must keep a record of maintenance.

(e) The school must have emergency evacuation/relocation plans posted in each room used by the children. The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level.

(f) The school must have flashlights or other battery-powered lighting available to use in case of electrical failure.

(g) The school must ensure that all children and staff are able to exit safely from the building within three minutes in an emergency.

(1) If a school provides classes on any level above or below the ground floor, the school must obtain the written approval of a fire marshal for use on other levels. If the school cannot obtain the fire marshal's approval, the school must keep children on the ground floor.

(2) A school must have at least two exits to the outside located in distant parts of the building. An exit through a kitchen or other hazardous area cannot be one of the required exits.

(3) If there are any doors opening into a fenced yard, children must be able to open the doors easily from inside the school. The school must not have any locked doors between rooms while children are present.

(4) The school must not have any blocked doors or pathways.

(h) Staff must ensure that heating devices and areas near heat sources are not fire hazards and present no hazard to children.

(1) If the school has gas appliances, staff must ensure that the appliances have metal tubing and connections unless approved in writing by the fire marshal.

(2) Open flame space heaters are prohibited. Space heaters must be enclosed and have the seal of approval of a test laboratory approved by the fire marshal.

(3) If the school has liquid or gas fuel heaters, the school must properly vent them to the outside. Unvented liquid or gas fuel heaters are prohibited.

(4) If the school uses a fireplace or a wood burning stove, the school must properly vent it to the outside. The school must install a rigid screen or guard to prevent children from falling into the fire or against the stove.

(i) The school must keep combustible material away from light bulbs and other heat sources.

(j) The school must ensure that gas pipes are tested annually for leaks. A copy of the test report must be posted.

§81.316. Sanitation.

(a) The school must have an annual sanitation inspection with a written report by a local or state sanitation official. The school must make any corrections called for in the report and must comply with any restrictions stated in the report.

(b) The school must keep its building, grounds, and equipment cleaned, repaired, and maintained to protect the health of the children.

(c) The school must have adequate light, ventilation, and heat.

(d) The school must have an adequate supply of water that meets the standards of the Texas Department of Health for drinking water. If possible, the source of water must be a public drinking water system.

(e) Staff must ensure that drinking water is always available to children. The school must supply the water in a safe and sanitary manner.

(f) The school must ensure that the temperature of hot water available to children is controlled by a thermostat so the water cannot scald (no higher than 120°F).

(g) The school must have adequate and safe flush toilets and sewage systems. If possible, the school must be connected to a public sewage system. If public sewers are not available, the school must have treatment facilities that meet the standards of the Texas Department of Health and that are approved by the local health authority.

(h) The school must keep all garbage in containers with tight lids away from areas used by children. It must remove garbage from the building daily and from the school at least once a week.

(i) The school must take measures to keep the school free of insects and rodents.

(j) Staff and children must wash their hands with soap and running water after using the toilet and before eating. Staff must wash hands with soap and running water before and after caring for a child with symptoms of a communicable disease and before handling food.

(k) If children use washcloths or cloth towels, the school must ensure that each child has a clean individual cloth. If paper towels or facial tissues are furnished, the school must provide a clean individual paper towel for each child.

§81.317. Safety.

(a) The school must keep its building, grounds, and equipment repaired and maintained to protect the safety of children.

(1) The school's electric fans and heaters must be mounted out of children's reach or have safeguards that keep children from being injured.

(2) If the school has window air conditioners, they must be installed so children cannot reach working parts.

(3) If 220-volt electrical connections are within the children's reach, the school must cover them with a screen or guard.

(4) The school must equip stairs, porches, and platforms more than two feet above the ground with railings the children can reach.

(5) The school must keep its play area dry and free from sharp objects. The school must keep tanks, ponds, open wells, drainage ditches, sewage pipes, dangerous machinery, and other hazards fenced to keep the children out. The school must not have garbage cans or highly flammable material in the play area. Covered trash cans are permitted.

(6) By January 1, 1986, the school must maintain a resilient surface under and surrounding all:

(A) climbing equipment more than five feet high, and

(B) swings with supports more than five feet above the ground. This surface must be extended to cover the fall zone. The resilient surface must not be installed over asphalt or concrete. (Resilient surfaces include sand, pea gravel, shredded bark, or shredded rubber at least six inches deep. Resilient mats or tiles which meet the National Bureau of Standards test criteria for impact attenuation performance of surfaces installed under playground equipment also comply.)

(b) Indoor and outdoor equipment and supplies used both at and away from the school must be safe for the children.

(1) Outdoor play equipment must be placed away from busy areas in the yard and securely anchored unless portable by design.

(2) The school must not allow toys that explode or that shoot things.

(3) The school must not have furnishings, equipment, or toys that have lead painted surfaces or contain toxic material.

(4) The school must ensure that children do not have access to toxic substances indoors and out.

(5) All swing seats must be constructed of durable, lightweight, relatively pliable material, such as rubber or nylon webbing.

(6) All heavy equipment must be installed in a manner to prevent tipping over or collapsing.

(7) The school must not allow children to use:

(A) climbing equipment or swings on concrete or asphalt, or

(B) swings with concrete or asphalt in the fall zone.

(8) The school must ensure that no equipment has openings or angles that could entrap a child's head.

(9) The school must ensure that no pinch, crush, or shear points are on equipment or underneath equipment.

(c) The school must have first aid supplies readily available to staff, in a designated location, and out of the children's reach. The school must make a guide to first aid and emergency care immediately accessible.

§81.318. Health Requirements for Children.

(a) The school must have on file evidence that each child is physically able to take part in the school program. This must include a history of serious illness, injury, or abnormality in physical or mental development and a record of all hospitalizations. The history is not required for a child enrolled before the effective date of this rule. The school must require that parents present evidence of the general state of each child's health when the child is admitted to the school or within one week of admission. Any of the following constitutes compliance:

(1) a written statement from a licensed physician that he has examined the child within the past year;

(2) a copy of the medical screening form of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program if no referral for further diagnosis and treatment is indicated; or

(3) a form or written statement from a health service or clinic, such as

- (A) Head Start physical exam;
- (B) well-child conferences (clinics);
- (C) maternity and infant programs;
- (D) children and youth programs; or

(4) if one of the documents in paragraphs (1)-(3) of this subsection is not available, a written statement submitted by the parent that a licensed physician (whose name and address are included) has examined the child within the past year and that the child is able to participate in the program. This must be followed within 12 months by a document as described in paragraphs (1), (2), or (3) of this subsection; or

(5) if the parent cannot secure one of the documents in paragraphs (1)-(3) of this subsection within one week, a statement signed by the parent giving the name and address of the physician with whom an appointment for examination has been made or the address of the EPSDT screening site where the examination will take place. Following the examination, the parent must submit a document as described in paragraphs (1), (2), or (3) of this subsection; or

(6) a signed statement from the parent that medical diagnosis and treatment are against his religion.

(b) The school must keep current immunization records for each child at the school. Staff must ensure that each child's immunization record includes the child's birth date, the number of doses and type, and the dates (month, day, and year) the child received each immunization. The school's compliance with the standard is measured by one or more of the following for each child:

(1) a written and dated record that the child has been immunized against diphtheria, tetanus, pertussis, polio, measles, mumps, and rubella. There must be:

(A) a record with a rubber stamp or signature of the physician or health personnel, or

(B) a machine or handwritten copy of the immunization record. Staff copying the information must sign the handwritten copies.

(2) A written and dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the diseases in paragraph (1) of this subsection have begun. The immunization cycle must be completed as soon as is medically feasible. The school must have a current immunization record on file.

(3) A certificate signed by a licensed physician stating that the required immunization would be injurious to the health and well-being of the child or a member of the child's family or household.

(4) An affidavit (notarized statement) signed by the parent that the immunization conflicts with his religious beliefs and practices.

(5) A written and dated statement signed by the parent that the child's immunization record is current and is on file at a regulated facility the child attends. The parent must include the name of the facility in the statement.

(c) The school must have a record showing that the child has been tested for tuberculosis according to recommendations of the Texas Department of Health if the local health authorities or the regional office of the Texas Department of Health recommended a test. A written and dated statement signed by the parent that the child's tuberculosis test record is current and is on file at a regulated facility the child attends also complies. The parent must include the name of the facility in the statement.

§81.319. Illness or Injury.

(a) A child who appears ill must not be admitted to the school unless approved in writing by health personnel.

(b) The school must handle illness or injury to protect the health of all children in the school.

(1) The school must provide an ill or injured child with a bed, cot, or mat away from the other children. Staff must call the child's parent immediately. The child must be supervised until he leaves the school.

(2) Staff must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, staff must call the physician named by the parent, take the child to the nearest emergency room or minor emergency clinic, or call for an emergency vehicle.

(c) The school must follow the recommendations of the Texas Department of Health concerning the admission or readmission of any child after a communicable disease.

§81.320. Medications.

(a) If a school agrees to administer medications, staff must administer the medication to the child as follows:

(1) Prescription medications must be in the original container labeled with the child's name, a date, directions, and the physician's name. Staff must administer the medication as stated on the label directions. Staff must not administer medication after the expiration date.

(2) Staff must ensure that nonprescription medication is labeled with the child's name and the date the medication was brought to the school. Nonprescription medication must be in the original container. Staff must administer it according to label directions if approved in writing by health personnel or the child's parent.

(3) Staff must document each dose of medication administered showing the child's name; the name of the medicine; date, time, and amount administered; and the name of the staff administering the medicine.

(b) Staff must keep medications out of children's reach or in locked storage.

(c) Staff must keep medications requiring refrigeration separate from food.

(d) Staff must return medications when no longer needed to the child's parent. Staff must dispose of medications when a child withdraws from the school or when the medicine is out of date.

§81.321. Emergency Phone Numbers.

(a) The school must post the following emergency telephone numbers by a telephone accessible to all staff. This telephone must not be a pay phone.

- (1) Ambulance service or emergency medical services (EMS).
- (2) Police or sheriff's department.
- (3) Fire department.
- (4) Poison control center.
- (5) Licensing office.
- (6) Local children's protective services office or child abuse hotline.
- (7) The school (with address).

(b) The school must keep the following telephone numbers in a place accessible to the telephone and to all staff.

- (1) Numbers at which parents may be reached.
- (2) Numbers of the physicians designated by the parents.

§81.322. Animals.

(a) The school must ensure that animals on the premises have been vaccinated according to a licensed veterinarian's recommendations. Staff must file documentation of vaccinations at the school.

(b) Staff must keep the school and play yard free of stray animals. Staff must not allow children to play with stray animals.

§81.323. Food Service.

(a) Staff must ensure that all food and drink served are of safe quality and are stored, prepared, distributed, and served under sanitary and safe conditions. The school must wash and sanitize food service equipment.

(b) Cleaning supplies must be clearly marked and kept inaccessible to children.

(c) Staff must practice good hygiene when handling food. Staff with open or infected wounds must not work in the food preparation area. No one may smoke in any of the food areas.

(d) Staff must discard single service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(e) Staff must encourage, but not force, children to eat. Staff must promptly discuss eating problems with the child's parent and note this discussion in the child's record.

§81.324. Operation.

(a) Staff must provide activities for each group according to ages, interests, and abilities of the children. The activities must be appropriate to each child's health, safety, and well-being. They also must be flexible and promote each child's physical, emotional, social, and mental growth.

(1) The school must provide physical care routines appropriate to each child's developmental needs.

(2) The school must ensure that indoor and outdoor time periods include:

- (A) active and quiet activities;

(B) opportunity for individual and group activities; and

(C) outdoor time each day that weather permits.

(b) The school must ensure the children's safety on field trips and excursions and on any transportation provided by or for the school. Transportation includes, but is not limited to, transportation provided between home and the school and between the school and a day care center.

(1) Staff supervising children must have emergency medical forms and emergency contact information for each child in the group.

(2) Staff must have a written list of the children in the group and must check roll before, during, and after the trip.

(3) Staff must have first aid supplies available on field trips.

(4) When children are not at the school, not being transported, and not in water activities, the staff-child ratio must be as follows:

Grade	Maximum Number of Children to be Supervised by One Staff
Kindergarten	8
First Grade and Above	15

§81.325. Discipline and Guidance.

(a) The school must ensure that discipline and guidance are consistent, are based on an understanding of individual needs and development, and promote self-discipline and acceptable behavior.

(b) There must be no cruel, harsh, or unusual punishment or treatment.

(1) Staff must not shake, bite, or hit children. Staff must not put anything in or on a child's mouth as punishment.

(2) If the governing body believes that it is necessary to spank children, the school must have a statement on file that it is the school's policy to permit physical punishment. The statement of the rules that the school has adopted concerning the administration of physical punishment must include that spanking must be done only with a staff's open hand on a child's buttocks. Each incident must be witnessed by another staff and documented in the school's records. The school must inform the parents in writing of the policy and must have the parents' signed approval.

(3) The school may use brief, supervised separation from the group if necessary, but staff must not place children in a locked room or in a dark room with the door closed.

(4) Staff must not humiliate or subject children to abusive or profane language. Staff must not associate punishment with food.

§81.326. Children with Need for Special Care. The school must ensure that children who need special care because of disabling or limiting conditions are given the care and activities qualified psychologists, physicians, or other experts recommend. The school must document the recommendations and their accomplishment.

§81.327. Water Activities.

(a) When a school uses a splashing pool or a wading pool with less than two feet of water, one staff with knowledge of water safety must supervise at all times.

(b) When the school uses a swimming pool (more than two feet of water), the following apply:

(1) At the school, the pool must be enclosed by a fence at least six feet high and built so children cannot easily climb over it. Staff must keep the gate locked when the pool is not in use.

(2) One lifesaving device must be available for each 2,000 square feet of water surface (or portions thereof) with a minimum of two for each pool.

(3) A certified lifeguard must be on duty at all times. This person must not be counted in the staff-child ratio.

(4) Staff must be able to see clearly all parts of the pool, including the bottom.

(c) Staff must ensure that all drain grates are in place, are in good repair, and cannot be removed without using tools.

(d) The staff-child ratio for water activities is as follows:

SWIMMING

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
five years	1	8
six years and older	1	10

WADING AND SPLASHING

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
five years	1	20
six years and older	1	24

(e) When children are in a pool which has a pump and filtering system, an adult who is able to turn off the system immediately must be present.

(f) Staff must ensure that pool chemicals are inaccessible to children and that machinery rooms are locked.

(g) All pools the school uses must be maintained as stated in the standards of the Texas Department of Health and local regulations.

§81.328. Transportation.

(a) Effective January 1, 1986, if a school provides transportation, each child being transported must ride in a seat belt.

(1) These requirements apply to all transportation including, but not limited to, transportation to and from the school, to and from a day care center, and on field trips.

(2) These requirements apply to any vehicle used by or for the school to provide transportation, regardless of whether owned by the school and regardless of the type of vehicle—automobile, van, school bus, or other. The requirements do not apply when children are being transported in buses weighing 10,000 pounds or more if seat belts were not installed at the time the bus was manufactured.

(3) Appropriateness is determined as follows.

(A) The school must ensure that each child rides in a seat belt. Only one person may use each seat belt.

(B) A child may ride in a shoulder harness and seat belt if the shoulder harness goes across the child's chest and not across the child's face or neck.

(4) Staff must ensure that each child transported remains seated and properly restrained while the vehicle is in motion.

(b) Effective January 1, 1986, the driver and all adult passengers in a vehicle transporting school children must be properly restrained by a shoulder harness and/or a seat belt when the vehicle is in motion.

(c) The school must load and unload children at the curb side of the vehicle or in a protected parking area or driveway. The school must ensure children are supervised when they cross a street after leaving a vehicle.

(d) The school must keep first aid supplies in all vehicles transporting children.

(e) The school must equip all vehicles used for transporting children with a minimum of one 6-BC portable fire extinguisher. The fire extinguishers must be installed in the passenger compartment of the vehicle and must be accessible to the adult occupants.

(f) The school must ensure that children are not transported in the open back of a truck and that children are not transported in vans or station wagons from which the bench seats have been removed.

(g) The staff-child ratio must be met during transportation of children.

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

Abuse—Nonaccidental infliction or threat of infliction of physical, emotional, or mental harm to a child.

Activity space—Area or rooms used for children's activity including those separate from a group's classroom.

Administrative functions—Functions which involve the management of a school such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

Admission—The process of entering a child in a school. The date of admission is the first day on which the child is actually present in the school.

Adult—A person age 18 or older.

Aide—A person involved in direct care, supervision, and guidance of children. An aide works under the direction of the staff who has primary responsibility for the children.

Application—The form the department furnishes to gather information about and to document the intent of the governing body to set up a school. The application also includes all material required to be submitted to the department.

Attendance—Children actually present in the school at any given time. (Not to be confused with enrollment.)

Child—A person who has not reached his 18th birthday.

Child development associate credential—A credential which is highly desirable for staff working directly

with young children; based on assessed competency in several areas of child care and child development. Child development training is available in the public community and junior college system as well as in four year colleges, either in regular child development, vocational programs, or through adult continuing education courses.

Children with need for special care—Children with disabling or limiting conditions which prevent or limit participation in the normal activities of the school and which may require additional supervision. Disabling or limiting conditions include visual impairment or deafness, other physical disabilities, mental retardation, emotional disturbance, or learning disabilities.

Consultative services for children with need for special care:

(A) Qualified consultants include psychologists, special education counselors, educational diagnosticians, special education supervisors, teachers certified by the Texas Education Agency to teach mentally retarded or emotionally disturbed children, pediatricians, and MSW social workers skilled in assessing normal and unusual developmental problems in children.

(B) Such consultants may be found in state schools and hospitals, MHMR centers, human development centers, public school special education departments, university psychology or special education departments, and the state listing of certified psychologists.

Day care—The care, supervision, and guidance of a child or children unaccompanied by a parent, guardian, or custodian on a regular basis, for a period of less than 24 hours per day, and in a place other than the child's or children's own home or homes.

Department—Used in these rules to refer only to the Texas Department of Human Resources

Direct teaching—The supervision, guidance, instruction, and care of children as compared to food service, janitorial functions, or administrative functions.

Director—That person the governing body designates to assume daily on-site responsibility for the operation of a school, including maintenance of minimum standards. In multiple schools under a chief administrative officer, the director is the person physically present at each school.

Enrollment—The list of names of children registered with the school (Not to be confused with attendance.)

Facility—Includes people, administration, governing body, activities (on or off the premises), operations, buildings, grounds, equipment, furnishings, and materials.

First aid supplies—Required supplies include multi-size adhesive bandages, gauze pads, tweezers, cotton balls, hydrogen peroxide, syrup of ipecac, and a thermometer.

Food service—The preparation or serving of meals or snacks.

Garbage—Waste food or items which, when deteriorating, cause offensive odors and attract rodents, insects, and the like.

Governing body—The entity with ultimate authority and responsibility for the overall operation of the school. All governing bodies will be one of the following types:

(A) Sole proprietorship—Owned by an individual with the legal right and responsibility to possess, operate, sell, and otherwise deal with the facility. May include a facility owned in common by husband and wife.

(B) Partnership—Combination by contract of two or more people who use their money, labor, and skill to carry on a continuing business, dividing the profits and sharing the losses in an agreed manner. Includes general and limited partnerships.

(C) Corporation—An intangible entity created by individuals to operate for profit but to limit individual liability. Organized according to the Texas Business Corporation Act or similar act of another state as evidenced by its articles of incorporation.

(D) Nonprofit corporation—Equivalent of "not for profit corporation." None of the income is distributed to members, directors, or officers. Organized under the Texas Non-Profit Corporation Act.

(E) Nonprofit corporation with religious affiliation—Has nonprofit corporation status and is operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Does not include those whose relationship with a religious organization is only for business, such as those who only lease space.

(F) Association—A combination of individuals and interests of some kind without IRS tax-exempt status. Not organized under the Texas Business Corporation Act.

(G) Nonprofit association—A combination of individuals and interests of some kind, synonymous with "society," with operations devoted to charitable, benevolent, religious, patriotic, or educational purposes. Not organized under the Texas Business Corporation Act.

(H) Nonprofit association with religious affiliation—A combination of individuals and interests of some kind, synonymous with "society," with operations devoted to religious purposes. Not organized under the Texas Business Corporation Act. Operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Does not include those whose relationship with a religious organization is only for business, such as those who only lease space.

(I) State operated—Operated by, under the direct jurisdiction of, and responsible to an agency of the State of Texas.

(J) Other political subdivision—Operated by and under the jurisdiction of a county municipality, school district, or other political entity.

Group—A specific number of children assigned to specific staff. Each child in any group has the following things in common with every other child in his group:

(A) the same staff responsible for the child's basic needs, and

(B) the same classroom or activity space.

Handwashing—Rubbing hands together with soap under running water.

Health personnel—A licensed physician, a licensed registered nurse, or a person providing preventive, diagnostic, or therapeutic medical care to individuals in the community.

Janitorial functions—Those services which involve cleaning and maintenance above that which is required

for the continuation of the day care program, such as cleaning carpets, washing cots, and the like. Sweeping after an activity or mopping up spills may be necessary for continued use of the classroom, but total sweeping, vacuuming, or mopping of a classroom is a janitorial function.

Kindergarten class—A class planned for children who will be in first grade the next September.

License—A complete document issued to the governing body of a school authorizing the licensee to operate at a specified location according to the provisions of the license, the law, and the rules and regulations of the Texas Department of Human Resources.

Neglect—Nonaccidental failure or threatened failure to provide a child with the physical and emotional requirements for life, growth, and development.

Parent—Used in this document to refer to parent, legal guardian, or managing conservator

Plan of operation—The form the department furnishes on which the governing body outlines the plans for operating the school.

Probation—A sanction placed on a school instead of revocation. Under probation, the school may remain open and continue to provide day care.

Provisional license—A license the department issues to a school whose plans meet the department requirements but which is:

(A) not currently operating,

(B) not licensed for the location stated in the application, or

(C) changing ownership.

School—Any facility, whether known or incorporated under such descriptive title or name "school," "kindergarten," and the like, which receives children for an education program. This term applies to program, buildings, grounds, furnishings, and equipment.

School area—That area specifically licensed for use by the school program. This may include a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location. That area, both indoor and outdoor, designated in the plan of operation.

School location—The street address of the school; the lot or lots on which the building or buildings are located.

School program—Those services and activities provided by a school; the daily schedule

Sexual abuse—Any sexually oriented act or practice involving staff or another adult and a child in care

Single use areas—Include, but are not limited to, bathrooms, hallways, storage rooms, cooking areas of kitchens, and indoor swimming pools.

Staff—Any person responsible for working in contact with children whether paid or unpaid. He must meet the qualifications and conditions outlined the rules.

Supervision—The act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of activity requirements and children's needs, and accountability for their care. This includes staff being near enough to children to intervene when needed.

Training—Time spent in workshops; conferences of child care, early childhood, or educational associations;

formal schooling; or time with consultants. Training must be in subject areas such as child care, child development, and early childhood education. Training for directors may also be in supervision of staff or program administration.

Trash/litter—Paper products, plastic, cloth, and the like.

Water activities—Related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

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 July 23, 1984

TRD-847686

Marlin W Johnston
Commissioner
Texas Department of Human
Resources

Proposed date of adoption

September 29, 1984

For further information, please call (512) 441-3355,
ext. 2037.

Subchapter E. Standards for Day Care Centers

The Texas Department of Human Resources proposes the repeal of §§81.401-81.432, and simultaneously proposes new §§81.401-81.432, concerning minimum standards for day care centers, in its day care licensing chapter. The standards are being revised to increase requirements for the safety, transportation, and release of children. The qualifications and requirements of the director and staff have also been increased. In addition, the standards have been edited to clarify policy and requirements for providers and field staff.

Cris Ros-Dukler, assistant commissioner for licensing, 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 rules.

Ms. Ros-Dukler 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 or administering the rules will be the increased safety and protection of children in out-of-home care. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed

The department has scheduled public hearings across the state to accept comments on the proposed standards. At the same time, the department also will be accepting comments on new standards for drop-in care centers, group day care homes, kindergarten and nursery schools, and schools: grades kindergarten and above. All hearings are being held from 3-8 p.m. They are scheduled as follows: August 13, Texas Depart-

ment of Human Resources (DHR) boardroom, Austin, 706 Banister Lane; August 14, Holiday Inn, Room 3, San Antonio, 318 West Durango; August 15, LaQuinta Royale, Sala #1, Corpus Christi, 601 North Water Street; August 16, Hilton Hotel, McAllen, Crockett/Bowie Room, 2721 South 10th; August 20, Room 134, University Center Building, University of Texas at Tyler, 3900 University Boulevard; August 21, Twilight Ballroom, Student Center Nacogdoches, Stephen F. Austin State University; August 22, Civic Center, Beaumont, 701 Main Street; August 23, Personnel and Training Building, Houston, Room 6 and Room 8, 1349 East 40th Street; August 28, Community Center, Arlington, 2800 South Center; August 29, DHR training room, Wichita Falls, 600 Scott; August 30, DHR training room, Abilene, 4380 Spindletop; September 4, Lecture Hall, Highlander Drive, Waco, McLennan Community College, 1400 College Drive; September 5, Room 107, Lubbock Civic Center, Lubbock, 1501 Sixth Street, Room 107; September 6, Texas Tech Health Science Center, Amarillo, 1400 Wallace Boulevard; September 11, DHR regional headquarters, Midland, large conference room, 2301 North Big Spring; September 12, City Council Chambers, El Paso, Second Floor, 2 Civic Center Plaza.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division—376, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 60 days of publication in this *Register*.

40 TAC §§81.401-81.432

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Department of Human Resources, 706 Banister Lane, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

- §81.401. *Organization.*
- §81.402. *General Administration.*
- §81.403. *Enrollment*
- §81.404. *Records*
- §81.405. *Director Qualifications.*
- §81.406. *Director Responsibilities.*
- §81.407. *Staff Qualifications.*
- §81.408. *Staff-Child Ratio.*
- §81.409. *Training.*
- §81.410. *Space.*
- §81.411. *Furnishings.*
- §81.412. *Equipment.*
- §81.413. *Toilet Facilities.*
- §81.414. *Use of Facility.*
- §81.415. *Fire.*
- §81.416. *Sanitation.*
- §81.417. *Safety.*
- §81.418. *Health Requirements for Children.*
- §81.419. *Illness or Injury.*

- §81.420. *Medications.*
- §81.421. *Emergency Phone Numbers.*
- §81.422. *Animals.*
- §81.423. *Food Service.*
- §81.424. *Nutrition.*
- §81.425. *Operation.*
- §81.426. *Discipline and Guidance.*
- §81.427. *Infant and Toddler Care.*
- §81.428. *Children with Need for Special Care.*
- §81.429. *Evening and Night Care.*
- §81.430. *Water Activities.*
- §81.431. *Transportation.*
- §81.432. *Definitions.*

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 July 23, 1984.

TRD-847672 Marlin W. Johnston
 Commissioner
 Texas Department of Human
 Resources

Proposed date of adoption:
September 29, 1984

For further information, please call (512) 441-3355,
ext. 2037.

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

§81.401. *Organization.*

(a) The center must have a governing body that is responsible for its policies. The governing body must assure that the school operates in compliance with the "Minimum Standards for Day Care Centers" and the child care licensing law, Human Resources Code, Chapter 42. The governing body must inform the department of the name and mailing address of the sole proprietor, the partners, or its chief executive officer.

(b) A corporation operating a day care center must make one of the following available to the department for review:

- (1) the articles of incorporation;
- (2) the certificate of incorporation;
- (3) a copy of the certificate of authority (for an out-of-state corporation).

(c) A corporation or church must make available to the department a copy of the resolution authorizing the operation of the center unless the authorization is included in the document required in subsection (b) of this section.

(d) Each time a director is named, the governing body must send the department an official department form naming the director. If the owner and the director are the same person, the governing body must state this on the form.

(e) The governing body must notify the department before, if possible, or on the next workday of any occurrence which affects the status of the center. This includes, but is not limited to, the following:

- (1) changes in the governing body or ownership;

- (2) change of center director;
- (3) change of board chairman of a corporate day care center or other chief executive officer of the governing body;
- (4) change of governing body designee;
- (5) going out of business;
- (6) change in hours of operation;
- (7) change in age range of children in care; and
- (8) closing the center for more than one week (if not covered in the plan of operation).

(f) If any change violates the restrictions on the license, the governing body must request that the license be amended. It must wait until the department changes the restriction before making the change in operation.

(g) The governing body must notify the department and apply for a new license before changing the location of the day care center.

(h) The governing body must notify the department, in writing, of any planned addition or reduction in indoor or outdoor space before making the change.

(i) The governing body must notify the department, in writing, of the addition of a swimming or a fixed wading pool before using the pool.

§81.402. General Administration.

(a) The center must display the following in a place where staff, parents, and others may review them:

- (1) its license,
- (2) the letter or compliance evaluation form that the licensing representative provides at or following the most recent inspection or investigation of the center, and
- (3) a current copy of the department's "Minimum Standards for Day Care Centers."

(b) The center must immediately notify the department of any serious occurrences that affect its operation. These include, but are not limited to, the following:

- (1) death of a child enrolled in or attending the day care center;
- (2) fire; and
- (3) serious accident, injury, or communicable disease of a child or staff.

(c) The center must report suspected child abuse or neglect as required by the Texas Family Code to:

- (1) the nearest child protective services office, and
- (2) a local or state law enforcement agency.

(d) The governing body must ensure that a person who is indicted or the subject of an official criminal complaint accepted by a county or district attorney alleging he committed any of the offenses listed in paragraphs (1)-(3) of this subsection must not have contact with the children in care until the charges are resolved. The offenses are as follows:

- (1) a felony or misdemeanor classified as an offense against the person or family,
- (2) a felony or misdemeanor classified as public indecency, and
- (3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(e) The owner must notify the licensing office of an indictment or complaint within 24 hours or on the next workday.

§81.403. Enrollment.

(a) The center must not racially discriminate against any child.

(b) Before a child is enrolled, staff must inform parents, in writing, about the center's activities and policies.

(c) Staff must obtain an enrollment agreement for each child before admission. Staff must keep the agreement on file at the center until six months after the child's last day in care. The director must ensure that the terms of the agreement related to paragraphs (1)-(16) of this subsection are met. When a child is withdrawn from care, staff must enter the date of the last day the child was in care. The parent and director must sign the agreement, which contains the following:

- (1) the child's name, birth date, home address, and home telephone number;
- (2) date of admission;
- (3) name and address of parents and telephone numbers at which parents can be reached while the child is in care;
- (4) a statement that:

(A) the child will be released only to a parent or a person named by the parent, and

(B) in an emergency, the parent must call the center to give the name of and other identifying information about the person picking up the child.

(5) a statement that people bringing or picking up the child will be sure that staff is aware of the child's arrival or departure;

(6) a statement that a school-age child who leaves the center must have written permission from his parent. (The parent must specify the activity, time, and method of transportation.) A statement of the child's arrival time if a school-age child comes to the center alone. A statement that the center will notify the parent immediately if the child does not arrive at the stated time.

(7) hours the child will be in care (not to exceed 12 hours except in an emergency);

(8) name, address, and telephone number of the child's physician;

(9) a statement of the child's special problems or needs as indicated by the parent. This includes allergy, existing or pre-existing illness and injuries, and all hospitalizations;

(10) a statement that special problems or occurrences in the center that affect the child will be brought to the parent's attention. This includes serious communicable diseases;

(11) a statement providing for parent conferences;

(12) a statement informing parents that minimum standards are available in the center for review;

(13) a statement that:

(A) the copy of the agreement will remain in the center's records while the child is in care, and

(B) the parent must update information as necessary. The director and parent must initial and date all changes;

(14) transportation permission, if transportation is provided;

(15) permission for participation in water activities, if any; and

(16) emergency medical authorization.

§81.404. Records.

(a) Center staff must maintain a record for each child. Records include statements of the child's progress and of any significant occurrences in the child's development.

(b) The center must have records of daily attendance of children and staff for the previous three months. The hours staff worked each day must be recorded.

(c) The center must maintain complete financial records. Licensing staff checks these records only on written notice from the director of licensing.

(d) The center must maintain personnel records for all staff and ensure that each staff's record includes:

(1) the date on which staff began work at the center;

(2) three references attesting to the staff's suitability for the job. This does not apply to a person who has been on staff at the center continuously since June 29, 1976;

(A) For a person who has become staff since the effective date of these rules, the center must obtain references from his last three employers/supervisors. If the person has been employed in fewer than three places, the center must obtain references from other people. People other than employers/supervisors must be unrelated to the staff and not employed at the center. The center must be sure to obtain reference information from at least three people.

(B) The center must ensure that all reference information includes the following:

(i) the name, address, and telephone number of each reference; and

(ii) written statements attesting to the staff's character; physical, mental, and emotional health; and competency. The center must ensure that people submitting reference information have signed the statements. The director must copy and sign quotes from people giving reference information orally.

(3) a statement from staff providing information about any felony and/or misdemeanor convictions within the preceding 10 years and about any pending criminal charges, including deferred adjudication;

(4) a record of a tuberculosis examination no earlier than 12 months before beginning this position. Re-examination is required if local health authorities or the regional office of the Texas Department of Health recommends it. People age 14 and older who are at the center while children are in care must also have a record of tuberculosis examination. People under 14 years old must meet the same requirements as children in care; and

(5) documentation that staff meets the requirements in §81.407(a) of this title (relating to Staff Qualifications and Responsibilities).

(e) All required records (except financial records) must be available at the center for the department to inspect during hours of operation.

§81.405. Director Qualifications.

(a) The director of a day care center must be at least 21 years old, and have a high school diploma or its equivalent, and

(1) a bachelor's degree from an accredited college or university with at least 15 credit hours of child development or early childhood education; or

(2) a child development associate credential; or
(3) an associate of arts degree in child development or a closely related area; or

(4) a day care administrator's credential issued by a professional organization and recognized by the licensing branch; or

(5) one year of experience in group child care, teaching, or administration or management in a child care facility and at least 35 clock hours of documented training in child care, child development, or early childhood education. The director must have obtained this training in classes or workshops.

(b) Proof of meeting the qualifications in subsection (a) of this section must be available at the center.

(c) A person who was director of a day care center on the effective date of these rules has 12 months from that date to meet compliance if he remains in the same position.

(d) The director of a day care center licensed for 35 or more children must meet the requirements in subsection (a) of this section. He also must have two years experience in a day care center administration. Proof of meeting this qualification must be available at the center.

(e) A person who was a director of a day care center licensed for 35 or more children on the effective date of these rules has two years from that day to meet the requirements of subsection (a) of this section if he remains in the same position.

(f) No one may serve as director of a center who has been convicted within the preceding 10 years of any of the following offenses unless the director of licensing has ruled that the person has established his rehabilitation:

(1) a felony or misdemeanor classified as an offense against the person or family;

(2) a felony or misdemeanor classified as public indecency; and

(3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(g) The director must send the department the following on an official department form:

(1) a record of training and experience;

(2) information about felony and/or misdemeanor convictions within the preceding 10 years;

(3) information about any pending criminal charges, including deferred adjudication; and

(4) a list of references with addresses and telephone numbers. The references must be adults not related to the director and not working at the center. They must be able to attest to the director's character; physical, mental, and emotional health; and competency (The department must receive responses from at least three people.)

§81.406. Director Responsibilities.

(a) An on-site director must administer the center's daily operation in compliance with minimum standards. If the director is absent from the center, an adult must be designated in charge and given the authority to administer the center. During the director's absence, the designated person must administer the center in compliance with minimum standards.

(b) The director must provide the staff's assignments and supervise the staff.

(c) The director must give the department on an official department form the names and required identifying information on all staff and other people at the center older than age 14 who have contact with children in care. The director must submit this information as part of the application. He must submit new information within one week after a staff is selected.

§81.407. Staff Qualifications and Responsibilities.

(a) Staff who work directly with children must be age 18 or older. Each must have a high school diploma or its equivalent.

(b) The center may include in the staff-child ratio people 16 and 17 years old who:

- (1) have graduated from high school, or
- (2) are enrolled in child-care related career programs approved by the Texas Education Agency or other state or federally approved programs, or
- (3) are on summer vacation from career programs. They must work under the direct supervision (in the same place at all times) of a qualified adult staff.

(c) A person who was on staff on the effective date of these rules has two years from that date to meet compliance if he remains in the same position.

(d) Staff must show competency, good judgment, and self-control in working with children. Staff must be mentally, physically, and emotionally able to perform assigned duties.

(e) A person convicted within the preceding 10 years of any of the following offenses must not serve in any capacity where there is contact with children in care unless the director of licensing has ruled that the person has established his rehabilitation:

- (1) a felony or misdemeanor classified as an offense against the person or the family;
- (2) a felony or misdemeanor classified as public indecency; and
- (3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) Staff must relate to the children with courtesy, respect, acceptance, and patience.

(g) People whose behavior or health status appears to endanger the health, safety, and well-being of children must not be at the center.

(h) People must not smoke in the children's presence or consume alcohol when children are at the center. People who appear to be under the influence of alcohol or other drugs must not be in the center when children are present.

(i) People working with children must be free from other duties except those directly involving the care and supervision of children. Staff supervising the children must meet the physical needs of the group.

(j) Responsibilities include keeping the group's area clean. Administrative functions, meal preparation, or janitorial duties must not be included in responsibilities.

(k) Staff must supervise children at all times.

(l) If one staff leaves and another staff is given responsibility for the children, the staff leaving must provide the incoming staff with:

- (1) significant information about any particular child, and

(2) a list of children present in the group. This may be the class roll sheet.

(m) If a parent calls to authorize the emergency release of a child, staff must verify that the caller is actually the parent.

(n) Staff must verify the identity of a person authorized to pick up a child but not known to staff. Staff must view the picture identification on the person's driver's license and record the name and driver's license number. The center must keep this information for 24 hours.

(o) Staff must ensure that children are not out of control.

(p) People at the center must not abuse, neglect, or sexually molest children.

(q) Effective January 1, 1986, a staff trained in first aid and a staff trained in cardiopulmonary resuscitation must be present at the center during all times when children are in care. The center must have on file current certificates attesting to the training.

(r) The center must have a written plan(s) for dealing with emergencies, including a description of what staff must do in an emergency. Emergencies include, but are not limited to, fire, explosion, tornado, toxic fume or other chemical release, an injured child, a child with symptoms of acute illness, and a child who is not breathing. The director must ensure that all staff members are familiar with the plan. One aspect of the plan must be practiced every three months. The center must practice these drills at different times of the center's operation. The director must document the date, time, and type of practice and keep the record on file at the center.

§81.408. Staff-Child Ratio.

(a) In a day care center, the number of children must not exceed the following:

Infants		
Age of Youngest Child in Group	Maximum Number of Children	Number of Staff
0-11 months	5	1
0-11 months	12	2
12-17 months	6	1
12-17 months	14	2

(b) When a child in the group is younger than 18 months old, the oldest child in the group must not be more than 18 months older than the youngest child except as in paragraph (4) of this subsection.

Preschoolers and School-Age Children

Age of Youngest Child in Group	Maximum Number of Children to be Supervised by One Staff
18-23 months	8
two years	10
three years	13
four years	16
five years	20
six years and older	24

(1) If the youngest child in the group is younger than 18 months old, the maximum group size is 14 children. If the youngest child in the group is 18-23 months old, the maximum group size is 16 children. Up to 25 children may be in regular classroom activities if:

- (A) the staff-child ratio is maintained, and

(B) the youngest child is age two or older.

(2) The center may combine more than 25 children two years old or older, for joint activities of limited duration (not to exceed 30 minutes) as long as the staff-child ratio is maintained. If all children in the group are five years old or older, the center may extend the duration to a maximum of one and a half hours.

(3) In determining the staff-child ratio, the following apply:

(A) staff must use the developmental or emotional age of mentally retarded or emotionally disturbed children, as determined by a qualified consultant, and

(B) the center must maintain staff-child ratios as stated in subsection (a) of this section except during the following times:

(i) nap times when children over 18 months old may be under the supervision of 50% of the staff-child ratio if 75% of the staff-child ratio is maintained in the building. (This does not apply during evening or night care.) For any group with one or more infant, the center must always maintain the full staff-child ratio. In determining the 50% or 75%, the center does not count staff caring for infants or a group with an infant. It also does not count children in a group with an infant.

(ii) transportation,

(iii) water activities,

(iv) field trips,

(v) for 45 minutes after opening and 45 minutes before closing, the center may regroup children older than 18 months without reference to age. The staff-child ratio for regrouped children must be one staff to a maximum of 18 children.

(4) If nine or fewer children are in care at the center, one of the following groupings is the maximum number of children permitted in care of one staff:

(A) If one infant is cared for, no more than eight other children may be in care.

(B) If two infants are cared for, no more than six other children may be in care

(C) If three infants are cared for, no more than two other children may be in care. Each child must have staff who is responsible for him and who is aware of details of the child's habits, interests, and special problems, if any. Staff must know the child's name and age.

§81.409. Training.

(a) The center must orient new staff members in understanding children and in job expectations when they begin work. The center must have documentation of the following orientation on file:

(1) instruction concerning the requirements in the "Minimum Standards for Day Care Centers" and the licensing law,

(2) information about the center's policies, including discipline and release of children,

(3) instruction in recognizing symptoms of child abuse or neglect and the responsibility and procedure for reporting these, and

(4) instructions in the procedures to be followed in handling emergencies.

(b) Staff must participate yearly in at least 15 clock hours of training in understanding children and improving job performance. The director must participate yearly in at least 20 clock hours of training. The training must

be documented in the staff's record at the center. A year is defined as 12 months from the date of employment.

§81.410. Space.

(a) There must be at least 30 square feet of indoor activity space, measured wall-to-wall on the inside, for each child in the center. The measurement does not include single use areas.

(b) The center must have an outdoor play space of at least 80 square feet for each child using the area at one time.

(c) All outdoor play areas regularly used by children must be accessible by a safe route and enclosed by a building or fence at least four feet high and with at least two exits. An entrance to the building may count as one exit. Staff must be able to open exits immediately in an emergency.

§81.411. Furnishings. The center must ensure the following:

(1) a working telephone with a listed number;

(2) preschool children have individual cots, beds, or mats at least one inch thick that are waterproof and washable. The center must ensure that all sleeping equipment and furnishings are clean and sanitary. Linens must be washed before a different child uses them and when soiled.

(3) school-age children have comfortable arrangements for rest when they are in care more than seven hours;

(4) children have storage available for personal belongings; and

(5) comfortable seating is available for the children.

§81.412. Equipment.

(a) The center must provide indoor and outdoor equipment and materials that are appropriate to the developmental needs, individual interests, and ages of the children. There must be a sufficient amount of equipment and materials to avoid excessive competition among the children or long waits for materials.

(b) The following must be available to the children:

(1) books,

(2) art materials,

(3) music materials,

(4) manipulative materials,

(5) blocks and block accessories,

(6) dramatic play materials, including home-making materials and dolls,

(7) science materials, and

(8) climbing equipment.

§81.413. Toilet Facilities.

(a) The center must have inside toilets located and equipped so children can use them independently and staff can supervise as needed. Bathroom doors must have no locks within the children's reach. Children must have privacy in the use of the bathroom as needed.

(b) There must be one flush toilet for every 17 children.

(1) Urinals may be counted in the ratio of children to toilets, but they must not exceed 50% of the total number of toilets. Bathrooms which contain urinals must also have flush toilets.

(2) Potty chairs may be used, but they must not be counted in the ratio of children to toilets. They must be sanitized after each use.

(c) There must be one lavatory for every 17 children.

§81.414. Use of Facility. If programs not subject to regulation use the same facilities, the center must not use any space at the same time another program is using that space.

§81.415. Fire.

(a) In case of fire or danger of fire or explosion, staff's first responsibility is to evacuate the children to a designated safe area.

(1) Staff must supervise children until the fire department determines the building is safe to re-enter or until the children are picked up by their families.

(2) A designated staff on duty must contact the fire department in case of fire or danger of fire, explosion, toxic fume, or other chemical release. The staff must be designated in writing.

(b) The center must have an annual fire inspection by a local or state fire marshal. The center must post the written report of the inspection. It must make any corrections called for in the report. The center must comply with any restrictions imposed by the fire inspector.

(c) The center must have at least one fire extinguisher approved by the fire marshal. The center must mount the extinguisher on the wall by the hanger or bracket provided. The height must not exceed five feet from the top of the cylinder to the floor. The center must make the extinguisher readily available for immediate use by the staff. The director or assigned staff must inspect the fire extinguisher monthly and ensure it is serviced when required. The center must have documentation of the inspections and service.

(d) By 12 months after the adoption of these rules, the center must ensure the building is equipped with smoke detectors installed and maintained according to the manufacturer's instructions and in compliance with requirements of the local fire code. Staff must keep a record of maintenance.

(e) The center must have emergency evacuation/relocation plans posted in each room used by the children. The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level.

(f) The center must have flashlights or other battery-powered lighting available to use in case of electrical failure.

(g) The center must ensure that all children and staff are able to exit safely from the building within three minutes in an emergency.

(1) If a center allows children on any level above or below the ground floor, the center must obtain the written approval of a fire marshal for care on other levels. If the center cannot obtain the fire marshal's approval, the center must keep children on the ground floor.

(2) A center must have at least two exits to the outside located in distant parts of the building. An exit through a kitchen or other hazardous area cannot be one of the required exits.

(3) If there are any doors opening into a fenced yard, children must be able to open the doors easily from

inside the center. The center must not have any locked doors between rooms while children are present.

(4) The center must not have any blocked doors or pathways.

(h) Staff must ensure that heating devices and areas near heat sources are not fire hazards and present no hazard to children.

(1) If the center has gas appliances, staff must ensure that the appliances have metal tubing and connections unless approved in writing by the fire marshal.

(2) Open flame space heaters are prohibited. Space heaters must be enclosed and have the seal of approval of a test laboratory approved by the fire marshal. Staff must safeguard floor and wall furnace grates so that children do not have access to them.

(3) If the center has liquid or gas fuel heaters, the center must properly vent them to the outside. Unvented liquid or gas fuel heaters are prohibited.

(4) If the center uses a fireplace or wood burning stove, the center must properly vent it to the outside. The center must install a rigid screen or guard to prevent children from falling into the fire or against the stove.

(i) The center must keep combustible material away from light bulbs and other heat sources.

(j) The center must ensure that gas pipes are tested annually for leaks. A copy of the test report must be posted at the center.

§81.416. Sanitation.

(a) The center must have an annual sanitation inspection with a written report by a local or state sanitation official. Staff must post the report at the center. The center must make any corrections called for in the report and must comply with any restrictions stated in the report.

(b) The center must keep its building, grounds, and equipment cleaned, repaired, and maintained to protect the health of the children.

(c) The center must have adequate light, ventilation, and heat.

(d) The center must have an adequate supply of water that meets the standards of the Texas Department of Health for drinking water. If possible, the source of water must be a public drinking water system.

(e) Staff must ensure that drinking water is always available to children. The center must supply the water in a safe and sanitary manner.

(f) The center must ensure that the temperature of hot water available to children is controlled by a thermostat so the water cannot scald (no higher than 120°F).

(g) The center must have adequate and safe flush toilets and sewage systems. If possible, the school must be connected to a public sewage system. If public sewers are not available, the center must have treatment facilities that meet the standards of the Texas Department of Health and that are approved by the local health authority.

(h) The center must keep all garbage in containers with tight lids away from areas used by children. It must remove garbage from the building daily and from the school at least once a week.

(i) The center must take measures to keep the center free of insects and rodents.

(j) Staff and children must wash their hands with soap and running water after using the toilet and before

eating. Staff must wash hands with soap and running water before and after changing a diaper, assisting a child with toileting, before feeding a child or handling food, and after caring for a child with symptoms of a communicable disease.

(k) If children use washcloths or cloth towels, the center must ensure that each child has a clean individual cloth. If paper towels or facial tissues are furnished, the center must provide a clean individual paper towel for each child.

§81.417. Safety.

(a) The center must keep its building, grounds, and equipment repaired and maintained to protect the safety of children.

(1) The center must have child-proof covers or safety outlets for electrical outlets accessible to children younger than five years old.

(2) The center's electric fans and heaters must be mounted out of children's reach or have safeguards that keep children from being injured.

(3) If the center has window air conditioners, they must be installed so children cannot reach working parts.

(4) If 220-volt electrical connections are within the children's reach, the center must cover them with a screen or guard.

(5) The center must equip stairs, porches, and platforms more than two feet above the ground with railings the children can reach.

(6) The center must keep its play area dry and free from sharp objects. The center must keep tanks, ponds, open wells, drainage ditches, sewage pipes, dangerous machinery, and other hazards fenced to keep the children out. The center must not have garbage cans or highly flammable material in the play area. Covered trash cans are permitted.

(7) By January 1, 1986, the center must maintain a resilient surface under and surrounding all:

(A) climbing equipment more than five feet high, and

(B) swings with supports more than five feet above the ground. This surface must be extended to cover the fall zone. The resilient surface must not be installed over asphalt or concrete. (Resilient surfaces include sand, pea gravel, shredded bark, or shredded rubber at least six inches deep. Resilient mats or tiles which meet the National Bureau of Standards test criteria for impact attenuation performance of surfaces installed under playground equipment also comply.)

(b) Indoor and outdoor equipment and supplies used both at and away from the center must be safe for the children.

(1) Outdoor play equipment must be placed away from busy areas in the yard and securely anchored unless portable by design.

(2) The center must not allow toys that explode or that shoot things.

(3) The center must not have furnishings, equipment, or toys that have lead painted surfaces or contain toxic material.

(4) The center must ensure that children do not have access to toxic substances indoors and out.

(5) All swing seats must be constructed of durable, lightweight, relatively pliable material, such as rubber or nylon webbing.

(6) All heavy equipment must be installed in a manner to prevent tipping over or collapsing.

(7) The center must not allow children to use:
(A) climbing equipment or swings on concrete or asphalt, or

(B) swings with concrete or asphalt in the fall zone.

(8) The center must ensure that no equipment has openings or angles that could entrap a child's head.

(9) The center must ensure that no pinch, crush, or shear points are on equipment or underneath equipment.

(c) The center must have first aid supplies readily available to staff, in a designated location, and out of the children's reach. The center must post an immediately accessible guide to first aid and emergency care.

§81.418. Health Requirements for Children.

(a) The center must have on file evidence that each child is physically able to take part in the day-care program. This must include a history of serious illness, injury, or abnormality in physical or mental development and a record of all hospitalizations. The history is not required for a child enrolled before the effective date of this rule. The center must require that a parent present evidence of the general state of each child's health when the child is admitted to the center or within one week of admission. Any of the following constitutes compliance:

(1) a written statement from a licensed physician that he has examined the child within the past year; or

(2) a copy of the medical screening form of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program if no referral for further diagnosis and treatment is indicated; or

(3) a form or written statement from a health service or clinic, such as:

(A) Head Start physical exam,

(B) well-child conferences (clinics),

(C) maternity and infant programs,

(D) children and youth programs; or

(4) if one of the documents in paragraphs (1)-(3) of this subsection is not available, the parent must submit a written statement that a licensed physician (whose name and address are included) has examined the child within the past year and that the child is able to participate in the program. This must be followed within 12 months by a document as described in paragraphs (1)-(3) of this subsection; or

(5) if the parent cannot secure one of the documents in paragraphs (1)-(3) of this subsection within one week, a statement signed by the parent giving the name and address of the physician with whom an appointment for examination has been made or the address of the EPSDT screening site where the examination will take place. Following the examination, the parent must submit a document as described in paragraphs (1)-(3) of this subsection; or

(6) a signed statement from the parent that medical diagnosis and treatment are against his religion.

(b) The center must have available annual evidence of each preschool-age child's continued ability to partic-

ipate in the program. This is required for any child who has been in care for 12 or more months. Either of the following is acceptable if it has been dated within the past 12 months:

(1) a written or oral statement from the parent that the child is enrolled in an ongoing health supervision program with annual evaluation as described in subsection (a)(1)-(3), or (6) of this section. Staff must document any oral statement in the child's record; or

(2) a statement from a licensed physician that the child may continue to participate in the program.

(c) The center must keep current immunization records for each child at the center. Staff must ensure that each child's immunization record includes the child's birth date, the number of doses and type, and the dates (month, day, and year) the child received each immunization. The center's compliance with this rule is measured by one or more of the following for each child in care:

(1) a written and dated record that the child has been immunized against diphtheria, tetanus, pertussis, polio, measles, mumps, and rubella. There must be

(A) a record with a rubber stamp or signature of the physician or health personnel, or

(B) a machine or handwritten copy of the immunization record. Staff copying the information must sign the handwritten copies

(2) a written and dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the diseases mentioned in paragraph (1) of this subsection have begun. The immunization cycle must be completed as soon as is medically feasible. The center must have a current immunization record on file.

(3) a certificate signed by a licensed physician stating that the required immunization would be injurious to the health and well-being of the child or a member of the child's family or household;

(4) an affidavit (notarized statement) signed by the parent that the immunization conflicts with his religious beliefs and practices;

(5) a written and dated statement signed by the parent that the child's immunization record is current and is on file at the school the child attends. The parent must include the name of the school in the statement

(d) The center must have a record showing that the child has been tested for tuberculosis according to recommendations of the Texas Department of Health if the local health authorities or the regional office of the Texas Department of Health recommended a test. A written and dated statement signed by the parent that the child's tuberculosis test record is current and is on file at the school the child attends also complies. The parent must include the name of the school in the statement.

§81.419. Illness or Injury

(a) A child who appears ill must not be admitted to the center unless approved in writing by health personnel.

(b) The center must handle illness or injury to protect the health of all children in the school

(1) The center must provide an ill or injured child with a bed, cot, or mat away from the other children. Staff must call the child's parent immediately. The child must be supervised until he leaves the center.

(2) Staff must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, staff must call the physician named by the parent, take the child to the nearest emergency room or minor emergency clinic, or call for an emergency vehicle.

(c) The center must follow the recommendations of the Texas Department of Health concerning the admission or readmission of any child after a communicable disease

§81.420. Medications.

(a) If a center agrees to administer medications, staff must administer the medication to the child as follows:

(1) Prescription medications must be in the original container labeled with the child's name, a date, directions, and the physician's name. Staff must administer the medication as stated on the label directions. Staff must not administer medication after the expiration date.

(2) Staff must ensure that nonprescription medication is labeled with the child's name and the date the medication was brought to the center. Nonprescription medication must be in the original container. Staff must administer it according to label directions if approved in writing by health personnel or the child's parent.

(3) Staff must document each dose of medication administered showing the child's name; the name of the medicine; date, time, and amount administered; and the name of the staff administering the medicine.

(b) Staff must keep medications out of children's reach or in locked storage.

(c) Staff must keep medications requiring refrigeration separate from food.

(d) Staff must return medications when no longer needed to the child's parent. Staff must dispose of medications when a child withdraws from the center or when the medicine is out of date

§81.421. Emergency Phone Numbers.

(a) The center must post the following emergency telephone numbers by a telephone accessible to all staff. This telephone must not be a pay phone.

(1) ambulance service or emergency medical services (EMS);

(2) police or sheriff's department;

(3) fire department;

(4) poison control center;

(5) licensing office;

(6) local children's protective services office or child abuse hotline, and

(7) the center (with address).

(b) The center must keep the following telephone numbers in a place accessible to the telephone and to all staff:

(1) numbers at which parents may be reached, and

(2) numbers of the physicians designated by the parents

§81.422. Animals.

(a) The center must ensure that animals on the premises have been vaccinated according to a licensed veterinarian's recommendations. Staff must file documentation of vaccinations at the center.

(b) Staff must keep the center and play yard free of stray animals. Staff must not allow children to play with stray animals.

§81.423. Food Service.

(a) The center must ensure that all food and drink served are of safe quality and are stored, prepared, distributed, and served under sanitary and safe conditions. The center must wash and sanitize food service equipment.

(b) Cleaning supplies must be clearly marked, kept separate from food, and kept inaccessible to children.

(c) Staff must practice good hygiene when handling food. Staff with open or infected wounds must not work in the food preparation area. No one may smoke in any of the food areas.

(d) Staff must discard single service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(e) Staff must encourage, but not force, children to eat. Staff must promptly discuss eating problems with the child's parent and note this discussion in the child's record.

§81.424. Nutrition.

(a) The center must ensure that food is nutritious and is served in variety and amounts adequate to ensure growth and development.

(b) The center must maintain the daily menus for all meals and snacks prepared and served in the center. Staff must ensure that any substitution is of comparable food value and is recorded on the menu. The center must keep the menus for 30 days. Menus must be made available to parents, staff, and the public on request.

(c) All children must have regular meals and morning and afternoon snacks.

(d) If food a child brings into the center does not meet the nutritional requirements, the center must provide the additional food necessary to meet requirements. If food or drink a child brings into the center appears unsanitary, unclean, spoiled, or contaminated, staff must not permit the child to consume it. Staff must offer additional food to the child.

(e) The center must ensure that a child in the center for six or more hours per day has at least one-half of his daily food needs met. This does not apply to the child who arrives after the evening meal and leaves before the morning meal.

(f) The center must have the written approval of a physician, a registered dietician, or a licensed dietician for special or therapeutic diets.

§81.425. Operation.

(a) Staff must provide activities for each group according to ages, interests, and abilities of the children. The activities must be appropriate to each child's health, safety, and well-being. They also must be flexible and promote each child's physical, emotional, social, and mental growth.

(1) The center must provide physical care routines appropriate to each child's developmental needs.

(2) The center must ensure that indoor and outdoor time periods include:

(A) alternating active and quiet activities,

(B) opportunity for individual and group activities, and

(C) outdoor time each day that weather permits.

(b) The center must ensure the children's safety on field trips and excursions and on any transportation provided by or for the center. Transportation includes, but is not limited to, transportation provided between home and the center and between the center and school.

(1) Staff supervising children must have emergency medical forms and emergency contact information for each child in the group.

(2) Staff must have a written list of the children in the group and must check roll before, during, and after the trip.

(3) Staff must have first aid supplies available on field trips.

(4) When children are not at the center, not being transported, and not in water activities, the staff-child ratio must be as follows:

Age of Youngest Child in Group	Maximum Number of Children to be Supervised by One Staff
0-23 months	2
two-three years	6
four years	8
six years and older	15

§81.426. Discipline and Guidance.

(a) The center must ensure that discipline and guidance are consistent, are based on an understanding of individual needs and development, and promote self-discipline and acceptable behavior.

(b) There must be no cruel, harsh, or unusual punishment or treatment.

(1) Staff must not shake, bite, or hit children. No child under five years old must ever be spanked. Staff must not put anything in or on a child's mouth as punishment.

(2) If the governing body believes that it is necessary to spank children who have passed their fifth birthday, the center must have a statement on file that it is the center's policy to permit physical punishment. The statement of the rules that the center has adopted concerning the administration of physical punishment must include that spanking must be done only with a staff's open hand on a child's buttocks. Each incident must be witnessed by another staff and documented in the center's records. The center must inform the parents in writing of the policy and must have the parents' signed approval.

(3) The center may use brief, supervised separation from the group if necessary, but staff must not place children in a locked room or in a dark room with the door closed.

(4) Staff must not humiliate or subject children to abusive or profane language. Staff must not associate punishment with food, naps, or toilet training. Staff must assure that bedwetters are not shamed or punished.

§81.427. Infant and Toddler Care.

(a) Staff must provide infants with an indoor and outdoor environment which is safe and physically, mentally, emotionally, and socially stimulating.

(b) Staff must care for infants in rooms and outdoor play areas separate from older children (unless nine or fewer children are at the center) and in accord with infant groupings stated in §81.408(a) of this title (relating to Staff-Child Ratio.)

(c) Infants who are not yet climbing must have individual cribs with a waterproof mattress covered by a clean crib sheet. Mobile infants may sleep on a low cot or mat.

(d) Staff must talk to, hold, and play with the infants.

(e) Staff must allow each infant to explore outside the crib or playpen each morning and afternoon.

(f) Infants, while awake, may remain in their cribs for up to one hour as long as they stay content and responsive.

(g) A staff must always be in the room with the infants.

(h) Staff must properly store feeding bottles. Staff must ensure that bottles are clearly marked with the child's name.

(i) The center must ensure that infants up to six months old are held while being bottle fed. Infants over six months old must be held, if needed. Bottles must never be propped. The child or an adult must hold the bottle.

(j) The center must ensure that infants not yet ready for table food are fed an infant formula or diet approved in writing by the child's physician or parent. Staff must obtain written feeding instructions, dated and signed by the parent, and updated as changes are made.

(k) Infants no longer being held for feeding must be fed in a manner that ensures their safety and comfort. If an infant shows evidence of wanting to feed himself, staff must encourage the infant to do so.

(l) Staff must promptly discuss with parents feeding problems, poor weight gain, or failure to thrive.

(m) Staff must promptly change soiled or wet diapers and other clothing in a sanitary and safe manner.

(1) Staff must place the child on a clean, washable surface disinfected after each use. Staff may also use a surface with a clean, disposable covering which is changed after each use.

(2) Staff must use individual washcloths and towels or disposable towelettes to thoroughly cleanse and dry the child at each diaper change.

(3) Staff must promptly rinse soiled or wet reusable diapers by the flush toilet method.

(4) Staff must place all used diapers in a moisture proof bag or store them in a covered container which is cleaned daily.

(n) If a center has a diaper flush, the center may subtract the number of infants under 18 months old from the total number of children in the center when determining the child-toilet ratio. One diaper flush may serve 17 infants.

(o) Centers that began providing infant care after February 18, 1980, must have a lavatory in the infant area.

(p) Effective January 1, 1986, all centers providing infant care must have a lavatory in the infant area and in all other areas where staff changes children's diapers.

§81.428. Children with Need for Special Care. The center must ensure that children who need special care because of disabling or limiting conditions are given the care and activities qualified psychologists, physicians, or other experts recommend. The center must document the recommendations and their accomplishment in the child's record.

§81.429. Night Care.

(a) A center offering night care must comply with any applicable fire and safety requirements for this type of care.

(b) The center must have visible exits. This may be provided by exit lights or by lighted exits.

(c) Staff must be awake at all times. Staff must ensure that activities and routines meet the unique needs of children in night care.

(d) Children staying the night must have the opportunity to bathe. If bathtubs or showers are used, staff must supervise preschool-age children. Staff must ensure privacy for school-age children. The center must ensure that tubs or showers are cleaned after each use. Staff must ensure that each child has a fresh washcloth and towel.

(e) Sleeping equipment must be appropriate to the age and size of each child. The center must ensure that children in night care have a bed or cot; mattress or pad; and a pillow.

(1) Pillows and mattresses must have washable protective coverings.

(2) Each child must have his own clean linens and cover.

§81.430. Water Activities.

(a) When a center uses a splashing pool or a wading pool with less than two feet of water, the following apply:

(1) When the pool is not in use, staff must keep it out of the child's reach. Pools which can be drained must be drained; those which cannot must meet the requirements in subsection (b)(1) of this section.

(2) One staff with knowledge of water safety must supervise at all times. When children under four years old are in the water, two staff members must supervise.

(b) When the center uses a swimming pool (more than two feet of water), the following apply:

(1) At the center the pool must be enclosed by a fence at least six feet high and built so children cannot easily climb over it. Staff must keep the gate locked when the pool is not in use.

(2) One lifesaving device must be available for each 2,000 square feet of water surface (or portions thereof) with a minimum of two for each pool.

(3) A certified lifeguard must be on duty at all times. This person must not be counted in the staff-child ratio.

(4) Staff must be able to see clearly all parts of the pool, including the bottom.

(c) Staff must ensure that all drain grates are in place, are in good repair, and cannot be removed without using tools.

(d) The staff-child ratio for water activities is as follows:

Swimming		
Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
six months to 24 months	1	1
two years	1	4
three years	1	6
four years	1	7
five years	1	8
six years and older	1	10

Wading and Splashing		
Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
six months to 24 months	2	6
two years	2	10
three years	2	13
four years	1	17
five years	1	20
six years and older	1	24

(e) When children are in a pool which has a pump and filtering system, an adult who is able to turn off the system immediately must be present.

(f) Staff must ensure that pool chemicals are inaccessible to children and that machinery rooms are locked.

(g) All pools the center uses must be maintained as stated in the standards of the Texas Department of Health and local regulations.

§81.431. Transportation.

(a) Effective January 1, 1986, if a center provides transportation, each child being transported must ride either in an infant carrier, a child seat, or a seat belt, as appropriate to the child's age and size.

(b) These requirements apply to all transportation including, but not limited to and from the center, to and from school, and on field trips.

(c) These requirements apply to any vehicle used by or for the center to provide transportation, regardless of whether owned by the center and regardless of the type of vehicle—automobile, van, school bus, or other. The requirements do not apply when children age four and older are being transported in buses weighing 10,000 pounds or more if seat belts were not installed at the time the bus was manufactured.

(1) Appropriateness is determined as follows.

(A) The center must ensure that an infant who cannot sit up without support is properly restrained in a dynamically crash-tested and federally approved infant carrier designed as a child passenger restraint device. The carrier must be placed in a semi-reclining position, facing the back of the car, with a built-in five-point safety harness to hold the child in. The carrier must be held in the seat by the standard fixed seat belt.

(B) The center must ensure that each child under three years old who can sit alone is properly seated in a child seat that is dynamically crash-tested and federally approved as a child passenger restraint device.

(C) The center must ensure that each child age three or older rides in either a child seat that is dynamically crash-tested and federally approved as a passenger restraint device or in a seat belt. Only one person may use each seat belt.

(D) A child may ride in a shoulder harness and seat belt if the shoulder harness goes across the child's chest and not across the child's face or neck.

(2) Staff must properly anchor each restraint device to the vehicle seat and use the device according to the manufacturer's specifications.

(3) Staff must ensure that each child transported remains seated and properly restrained by the passenger restraint device appropriate to his age, size, and physical condition while the vehicle is in motion.

(4) If parents provide equipment for the center to use for transporting the child, the equipment must meet the specifications stated in this section.

(b) Effective January 1, 1986, the driver and all adult passengers in a vehicle transporting day care children must be properly restrained by a shoulder harness and/or a seat belt when the vehicle is in motion.

(c) The center must load and unload children at the curb side of the vehicle or in a protected parking area or driveway. The center must ensure that children do not cross a street unsupervised after leaving a vehicle.

(d) The center must keep first aid supplies in all vehicles transporting children.

(e) The center must equip all vehicles used for transporting children with a minimum of one 6-BC portable fire extinguisher. The fire extinguishers must be installed in the passenger compartment of the vehicle and must be accessible to the adult occupants.

(f) The center must ensure that children are not transported in the open back of a truck and that children are not transported in vans or station wagons from which the bench seats have been removed.

(g) The staff-child ratio for transportation of children must be met.

(1) One adult in addition to the driver must be present for each group of four children (or fraction of a group) under two years old.

(2) For children two years old or older, the staff-child ratio is established by any of the options outlined in §81.408(a) of this title (relating to Staff-Child Ratio). If there are children under four years old, at least two adults must always be present.

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

Abuse—Nonaccidental infliction or threat of infliction of physical, emotional, or mental harm to a child.

Activity space—Area or rooms used for children's activity including those separate from a group's classroom.

Administrative functions—Functions which involve the management of a day care center such as book-keeping, enrolling children, answering the telephone, and collecting fees.

Admission—The process of entering a child in a day care center. The date of admission is the first day on which the child is actually present in care in the center.

Adult—A person 18 years old or older.

Application—The form the department furnishes to gather information about and to document the intent of the governing body to set up a day care program. The application also includes all material required to be submitted to the department.

Attendance—Children actually present in the day care center at any given time. (Not to be confused with enrollment.)

Child—A person who has not reached his 18th birthday.

Child development associate credential—A credential which is highly desirable for staff working directly with young children; based on assessed competency in several areas of child care and child development. Child development training is available in the public community and junior college system as well as in four year colleges, either in regular child development, vocational programs, or through adult continuing education courses.

Children with need for special care—Children with disabling or limiting conditions which prevent or limit participation in the normal activities of the center and which may require additional supervision. Disabling or limiting conditions include visual impairment or deafness, other physical disabilities, mental retardation, emotional disturbance, or learning disabilities.

Consultative services for children with need for special care—

(A) Qualified consultants include psychologists, special education counselors, educational diagnosticians, special education supervisors, teachers certified by the Texas Education Agency to teach mentally retarded or emotionally disturbed children, pediatricians, and MSW social workers skilled in assessing normal and unusual developmental problems in children.

(B) Such consultants may be found in state schools and hospitals, MHMR centers, human development centers, public school special education departments, university psychology or special education departments, and the state listing of certified psychologists.

Day care—The care, supervision, and guidance of a child or children unaccompanied by a parent, guardian, or custodian on a regular basis, for a period of less than 24 hours per day, and in a place other than the child's or children's own home or homes.

Day care activities—Those services and activities provided by a day care center: the daily schedule.

Day care area—That area specifically licensed for use by the day care program. This may include a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location. That area, both indoor and outdoor, designated in the plan of operation.

Day care center—Any facility, whether or not known or incorporated under such descriptive title or name as "Day Nursery School," "Kindergarten," "Child Play School," "Child Development Center," "Early Childhood Center," and the like, which receives 13 or more children for day care. This term applies to program, buildings, grounds, furnishings, and equipment.

Day care location—The street address of the center; the lot or lots on which the building or buildings are located.

Day care program—Those services and activities provided by a center: the daily schedule.

Department—Used in these rules to refer only to the Texas Department of Human Resources.

Direct child care—The supervision, guidance, and care of children as compared to food service, janitorial functions, or administrative functions.

Director—That person the governing body designates to assume daily on-site responsibility for the operation of a center, including maintenance of minimum standards. In multiple day care centers under a chief administrative officer, the director is the person physically present at each center.

Enrollment—The list of names of children registered with the center. (Not to be confused with attendance.)

Facility—Includes people, administration, governing body, activities (on or off the premises), operations, buildings, grounds, equipment, furnishings, and materials.

Family day care—Care for one through six children when at least one of the children is not related to the caregiver.

First aid supplies—Required supplies include multi-size adhesive bandages, gauze pads, tweezers, cotton balls, hydrogen peroxide, syrup of ipecac, and a thermometer.

Food service—The preparation or serving of meals or snacks.

Garbage—Waste food or items which, when deteriorating, cause offensive odors and attract rodents, insects, and the like.

Governing body—The entity with ultimate authority and responsibility for the overall operation of the center. All governing bodies will be one of the following types:

(A) Sole proprietorship—Owned by an individual with the legal right and responsibility to possess, operate, sell, and otherwise deal with the facility. May include a facility owned in common by husband and wife.

(B) Partnership—A combination by contract of two or more people who use their money, labor, and skill to carry on a continuing business, dividing the profits and sharing the losses in an agreed manner. Includes general and limited partnerships.

(C) Corporation—An intangible entity created by individuals to operate for profit but to limit individual liability. Organized according to the Texas Business Corporation Act or similar act of another state as evidenced by its articles of incorporation.

(D) Nonprofit corporation—Equivalent of "not for profit corporation." None of the income is distributed to members, directors, or officers. Organized under the Texas Non-Profit Corporation Act.

(E) Nonprofit corporation with religious affiliation—Has nonprofit corporation status and is operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Does not include those whose relationship with a religious organization is only for business, such as those who only lease space.

(F) Association—A combination of individuals and interests of some kind without Internal Revenue

Service tax-exempt status. Not organized under the Texas Business Corporation Act.

(G) **Nonprofit association**—A combination of individuals and interests of some kind, synonymous with "society," with operations devoted to charitable, benevolent, religious, patriotic, or educational purposes. Not organized under the Texas Business Corporation Act.

(H) **Nonprofit association with religious affiliation**—A combination of individuals and interests of some kind, synonymous with "society," with operations devoted to religious purposes. Not organized under the Texas Business Corporation Act. Operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Does not include those whose relationship with a religious organization is only for business, such as those who only lease space

(I) **State operated**—Operated by, under the direct jurisdiction of, and responsible to an agency of the State of Texas.

(J) **Other political subdivision**—Operated by and under the jurisdiction of a county municipality, school district, or other political entity.

Group—A specific number of children assigned to specific staff; each child in any group has the following things in common with every other child in his group:

(A) The same staff responsible for the child's basic needs, and

(B) The same classroom or activity space.

Group child care—Care for seven or more children when at least one of the children is not related to the caregiver.

Handwashing—Rubbing hands together with soap under running water.

Health personnel—A licensed physician, a licensed registered nurse, or a person providing preventive, diagnostic, or therapeutic medical care to individuals in the community.

Infant—A child younger than 18 months old.

Janitorial functions—Those services which involve cleaning and maintenance above that which is required for the continuation of the day-care program, such as cleaning carpets, washing cots, and the like. Sweeping after an activity or mopping up spills may be necessary for continued use of the classroom, but total sweeping, vacuuming, or mopping of a classroom is a janitorial function.

License—A complete document issued to the governing body of a center authorizing the licensee to operate at a specified location according to the provisions of the license, the law, and the rules and regulations of the Texas Department of Human Resources.

Neglect—Nonaccidental failure or threatened failure to provide a child with the physical and emotional requirements for life, growth, and development.

Parent—Used in this document to refer to parent, legal guardian, or managing conservator.

Plan of operation—The form the department furnishes on which the governing body outlines the plans for operating the center.

Probation—A sanction placed on a center instead of revocation. Under probation, the center may remain open and continue to provide day care.

Provisional license—A license the department issues to a center whose plans meet the department requirements but which is:

(A) not currently operating,

(B) not licensed for the location stated in the application, or

(C) changing ownership.

Sanitary sleeping furnishings—Linens which have been laundered since a different person slept on them or after being soiled.

School-age-care—Care offered to children between the ages of five (before September of that school year) and 18.

Sexual abuse—Any sexually oriented act or practice involving staff or another adult and a child in care.

Single use areas—Include, but are not limited to, bathrooms, hallways, storage rooms, cooking areas of kitchens, and indoor swimming pools.

Staff—Any person responsible for working in contact with children whether paid or unpaid. He must meet the qualifications and conditions outlined in these rules.

Supervision—The act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of activity requirements and children's needs, and accountability for their care. This includes staff being near enough to children to intervene when needed.

Training—Time spent in workshops; conferences of child care, early childhood, or educational associations; formal schooling; or time with consultants. Training must be in subject areas such as child care, child development, and early childhood education. Training for directors may also be in supervision of staff or program administration.

Trash/litter—Paper products, plastic, cloth, and the like

Water activities—Related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

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 July 23, 1984

TRD-847673

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Proposed date of adoption

September 29, 1984

For further information, please call (512) 441-3355, ext 2037

Subchapter G. Minimum Standards for Group Day-Care Homes

The Texas Department of Human Resources proposes the repeal of §§81.601-81.630, and simultaneously proposes new §§81.601-81.630 and 81.632, concerning minimum standards for group day care homes, in its day care licensing chapter.

The standards are being revised to increase requirements for the safety, transportation, and release of children. The qualifications and requirements of the director and staff have also been increased. In addition, the standards have been edited to clarify policy and requirements for providers and field staff.

Cris Ros-Dukler, assistant commissioner for licensing, 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 rules.

Ms. Ros-Dukler 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 or administering the rules will be the increased safety and protection of children in out-of-home care. There is no anticipated economic cost to individuals required to comply with the rules as proposed.

The department has scheduled public hearings across the state to accept comments on the proposed standards. At the same time, the department also will be accepting comments on new standards for day care centers, drop-in care centers, kindergarten and nursery schools, and schools: grades kindergarten and above. All hearings are being held from 3-8 p.m. They are scheduled as follows:

August 13, DHR boardroom, Austin, 706 Banister Lane; August 14, Holiday Inn, Room #3, San Antonio, 318 West Durango; August 15, La Quinta Royale, Corpus Christi, Sala #1, 601 North Water Street; August 16, Hilton Hotel, McAllen, Crockett/Bowie Room, 2721 South 10th; August 20, Room 134, University Center Building, Tyler, UT Tyler, 3900 University Boulevard; August 21, Twilight Ballroom, Student Center, Nacogdoches, S. F. Austin State University; August 22, Civic Center, Beaumont, 701 Main Street; August 23, Personnel and Training Building, Houston, Rooms 6 and 8, 1349 East 40th Street; August 28, Community Center, Arlington, 2800 South Center; August 29, TDHR Training Room, Wichita Falls, 600 Scott; August 30, TDHR Training Room, Abilene, 4380 Spindletop; September 4, Lecture Hall on Highlander Drive, Waco, McLennan Community College, 1400 College Drive; September 5, Room 107, Lubbock Civic Center, Lubbock, 1501 6th Street, Room 107; September 6, Texas Tech Health Science Center, Amarillo, 1400 Wallace Boulevard, September 11, TDHR Regional Headquarters, Midland, large conference room, 2301 North Big Spring; September 12, City Council Chambers, El Paso, second floor, #2 Civic Center Plaza.

Comments may be sent to Cathy Rossberg, Administrator, Policy Development Support Division—416, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 60 days of publication in this *Register*.

40 TAC §§81.602-81.630

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be

examined in the offices of the Texas Department of Human Resources, 706 Banister Lane, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

- §81.601. *Organization.*
- §81.602. *General Administration.*
- §81.603. *Enrollment.*
- §81.604. *Records.*
- §81.605. *Director Qualifications.*
- §81.606. *Director Responsibilities.*
- §81.607. *Staff Qualifications.*
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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 July 20, 1984

TRD-847660 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest proposed date of adoption:

September 29, 1984

For further information, please call (512) 441-3355, ext. 2037.

40 TAC §§81.601-81.630, 81.632

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

§81.601. *Organization.*

(a) The owner of a group day-care home is responsible for its policies. The owner must assure that the home

operates in compliance with the "Minimum Standards for Group Day Care Homes" and the child care licensing law, Human Resources Code, Chapter 42.

(b) Each time a director is named, the owner must send the department an official department form naming the director. If the owner and the director are the same person, the owner must state this on the form.

(c) The owner must notify the department before, if possible, or on the next workday of any occurrence which affects the status of the home. This includes, but is not limited to, the following:

- (1) changes in ownership;
- (2) change of director;
- (3) going out of business;
- (4) change in hours of operation;
- (5) change in age range of children in care; and
- (6) closing the home for more than one week.

(d) If any change violates the restrictions on the license, the owner must request that the license be amended. He must wait until the department changes the restriction before making the change in operation.

(e) The owner must notify the department and apply for a new license before changing the location of the home.

(f) The owner must notify the department, in writing, of any planned addition or reduction in indoor or outdoor space before making the change.

(g) The owner must notify the department, in writing, of the addition of a swimming or a fixed wading pool before using the pool.

§81.602. General Administration.

(a) The home must display the following in a place where staff, parents, and others may review them:

- (1) its license;
- (2) the letter or compliance evaluation form that the licensing representative provides at or following the most recent inspection or investigation of the home; and
- (3) a current copy of the department's "Minimum Standards for Group Day Care Homes."

(b) The home must immediately notify the department of any serious occurrences that affect its operation. These include, but are not limited to, the following:

- (1) death of a child enrolled in or attending the home;
- (2) fire; and
- (3) serious accident, injury, or communicable disease of a child or staff.

(c) The home must report suspected child abuse or neglect as required by the Texas Family Code to:

- (1) the nearest child protective services office; and
- (2) a local or state law enforcement agency.

(d) A person who is indicted or the subject of an official criminal complaint accepted by a county or district attorney alleging he committed any of the offenses listed in paragraphs (1)-(3) of this subsection must not have contact with the children in care until the charges are resolved. The offenses are as follows:

- (1) a felony or misdemeanor classified as an offense against the person or family;
- (2) a felony or misdemeanor classified as public indecency; and

(3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(e) The owner must notify the licensing office of an indictment or complaint within 24 hours or on the next workday.

§81.603. Enrollment.

(a) The home must not racially discriminate against any child.

(b) Before a child is enrolled, the director must inform parents, in writing, about the home's activities and policies.

(c) The director must obtain an enrollment agreement for each child before admission. Staff must keep the agreement on file at the home until six months after the child's last day in care. The director must ensure that the terms of the agreement related to paragraphs (1)-(15) of this subsection are met. When a child is withdrawn from care, the director must record the date of the child's last day in care. The parents and director must sign the agreement, which contains the following:

- (1) the child's name, birth date, home address, and home telephone number;
- (2) date of admission;
- (3) name and address of parents and telephone numbers at which parents can be reached while the child is in care;

(4) a statement that:
(A) the child will be released only to a parent or a person named by the parent; and

(B) in an emergency, the parent must call the home to give the name of and other identifying information about the person picking up the child;

(5) a statement that people bringing or picking up the child will be sure that staff is aware of the child's arrival or departure;

(6) a statement that a school-age child who leaves the home must have written permission from his parent. (The parent must specify the activity, time, and method of transportation.) A statement of the child's arrival time if the child comes to the home alone. A statement that the home will notify the parent immediately if the child does not arrive at the stated time;

(7) hours the child will be in care;

(8) name, address, and telephone number of the child's physician;

(9) a statement of the child's special problems or needs as indicated by the parent. This includes allergy, existing or pre-existing illness and injuries, and all hospitalizations;

(10) a statement that special problems or occurrences in the home that affect the child will be brought to the parent's attention. This includes serious communicable diseases;

(11) a statement informing parents that minimum standards are available in the home for review;

(12) a statement that:
(A) the copy of the agreement will remain in the home's records while the child is in care; and
(B) the parent must update information as necessary. The director and parent must initial and date all changes.

- (13) transportation permission, if transportation is provided;
- (14) permission for participation in water activities, if any; and
- (15) emergency medical authorization.

§81.604. Records.

(a) The director must maintain a record for each child. Records include statements of the child's progress and of any significant occurrences in the child's development.

(b) The director must have records of daily attendance of children and staff for the previous three months. The hours staff worked must be recorded.

(c) The home must maintain complete financial records. Licensing staff checks these records only on written notice from the director of licensing.

(d) The home must maintain personnel records for all staff and ensure that each staff's record includes:

- (1) the date on which staff began work at the home; and
- (2) three references attesting to the staff's suitability for the job. This does not apply to a person who has been staff at the home continuously since June 29, 1976.

(e) For a person who has become staff since the effective date of these rules, the home must obtain references from his last three employers/supervisors. If the person has been employed in fewer than three places, the home must obtain references from other people. People other than employers/supervisors must be unrelated to the staff and not employed at the home. The home must obtain reference information from at least three people.

(f) The home must ensure that all reference information includes the following:

- (1) the name, address, and telephone number of each reference;
- (2) written statements attesting to the staff's character; physical, mental, and emotional health; and competency. The home must ensure that people submitting reference information have signed the statements. The director must copy and sign quotes from the people giving reference information orally;
- (3) a statement from staff providing information about any felony and/or misdemeanor convictions within the preceding 10 years and about any pending criminal charges, including deferred adjudication;
- (4) a record of a tuberculosis examination no earlier than 12 months before beginning this position. Re-examination is required if local health authorities or the regional office of the Texas Department of Health recommends it. People age 14 and older who are at the home while children are in care must also have a record of tuberculosis examination. People under 14 years old must meet the same requirements as children in care;
- (5) all required records (except financial records) must be available at the home for the department to inspect during hours of operation.

§81.605. Director Qualifications.

(a) The director of a home must be at least 21 years old and have a high school diploma or its equivalent. Proof of meeting this qualification must be available at the home.

(b) A person who was director of a group day-care home on the effective date of these rules has three years from that date to meet compliance if he remains in the same position.

(c) No one may serve as director of a group day-care home who has been convicted within the preceding 10 years of any of the following offenses, unless the director of licensing has ruled that the person has established his rehabilitation:

- (1) a felony or misdemeanor classified as an offense against the person or family;
- (2) a felony or misdemeanor classified as public indecency; and
- (3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(d) The director must send the department the following on an official department form:

- (1) a record of training and experience;
- (2) information about felony and/or misdemeanor convictions within the preceding 10 years;
- (3) information about any pending criminal charges, including deferred adjudication; and
- (4) a list of references with addresses and telephone numbers. The references must be adults not related to the director and not working at the home. They must be able to attest to the director's character; physical, mental, and emotional health; and competency. (The department must receive responses from at least three people.)

§81.606. Director Responsibilities.

(a) An on-site director must administer the home's daily operation in compliance with minimum standards. If the director is absent from the home, an adult with the same qualifications must be responsible for the children. During the director's absence, the designated person must administer the home in compliance with minimum standards.

(b) The director must give the department on an official department form the names and required identifying information on all staff and other household members present when children are in care. The director must submit this information as part of the application. The director must submit new information within one week after a staff is selected or a new person is present in the home.

§81.607. Staff Qualifications and Responsibilities.

(a) Staff who work directly with children must be age 18 or older. Each must have a high school diploma or its equivalent.

(b) The home may include in the staff-child ratio people 16 and 17 years old who:

- (1) have graduated from high school; or
- (2) are enrolled in child-care related career programs approved by the Texas Education Agency or other state- or federally-approved programs; or
- (3) are on summer vacation from career programs. They must work under the direct supervision (in the same place at all times) of a qualified adult staff.

(c) A person who was on staff on the effective date of these rules has two years from that date to meet compliance if he remains in the same position.

(d) Staff must show competency, good judgment, and self-control in working with children. Staff must be mentally, physically, and emotionally able to perform assigned duties.

(e) A person convicted within the preceding 10 years of any of the following offenses must not serve in any capacity where there is contact with children in care unless the director of licensing has ruled that the person has established his rehabilitation:

(1) a felony or misdemeanor classified as an offense against the person or the family;

(2) a felony or misdemeanor classified as public indecency;

(3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) Staff must relate to the children with courtesy, respect, acceptance, and patience.

(g) People whose behavior or health status appears to endanger the health, safety, and well-being of children must not be at the home.

(h) People must not smoke in the presence of children or consume alcohol when children are at the home. People who appear to be under the influence of alcohol or other drugs must not be in the home when children are present.

(i) Staff must give children a variety of positive experiences. These include setting limits, providing guidance, and settling arguments or fights

(j) Staff must supervise children at all times. When children are inside, staff must be inside. When they are outside, staff must be outside. If only one staff is present, that person and all the children must be either inside or outside.

(k) Staff must verify the identity of a person authorized to pick up a child but not known to staff. Staff must view the picture identification on the person's driver's license and record the name and driver's license number. The director must keep this information for 24 hours.

(l) Staff must ensure that children are not out of control.

(m) People at the home must not abuse, neglect, or sexually molest children

(n) Effective January 1, 1986, a staff trained in first aid and a staff trained in cardiopulmonary resuscitation must be present at the home during all times when children are in care. The home must have on file current certificates attesting to the training.

(o) The home must have a written plan(s) for dealing with emergencies, including a description of what staff must do in an emergency. Emergencies include, but are not limited to, fire, explosion, tornado, toxic fume or other chemical release, an injured child, a child with symptoms of acute illness, and a child who is not breathing. Each staff must have a copy of the plan and be familiar with it. One aspect of the plan must be practiced every three months. The home must practice these drills at different times of the home's operation, including rest times. The director must document the date, time, and type of practice and keep the record.

§81.608. Staff-Child Ratio.

(a) No more than 12 children under 14 years old must be in care in a group day care home. This number includes the director's or staff's children under age 14. Any of the following combinations are acceptable. School-age children may be substituted for preschoolers in any of these combinations.

One Person Caring for Children

Infants 0—17 mos.	Preschoolers 18 mos.—4 years	School-Age 5—13 years
0	8	4
1	6	4
2	5	3
3	2	1
4	0	0

Two People Caring For Children

Infants 0—17 mos.	Older Children 18 mos. and older
10	0
9	3
8	4
7	5
6	6
5	7
4	8
3	9
2	10
1	11
0	12

(b) If more than two people are caring for children, then the 12 children in care may be any age from infants through 13 years old.

§81.609. Training.

(a) The home must orient new staff members in understanding children and in job expectations when they begin work. The home must have documentation of the following orientation on file:

(1) instruction concerning the requirements in the "Minimum Standards for Group Day Care Homes" and the licensing law;

(2) information about the home's policies, including discipline and release of children;

(3) instruction in recognizing symptoms of child abuse or neglect and the responsibility and procedure for reporting these; and

(4) instructions in the procedures to be followed in handling emergencies.

(b) Staff must participate yearly in at least 15 clock hours of training in understanding children and improving job performance. The director must participate yearly in at least 20 clock hours of training. The training must be documented in the staff's record at the home. A year is defined as 12 months from the date of employment.

§81.610. Space.

(a) There must be at least 30 square feet of indoor activity space, measured wall-to-wall on the inside, for

each child in the home. The measurement does not include single use areas.

(b) The home must have an outdoor play space of at least 80 square feet for each child using the area at one time.

(c) All outdoor play areas regularly used by children must be accessible by a safe route and enclosed by a building or fence at least four feet high and with at least two exits. One exit must be away from the house. Staff must be able to open exits immediately in an emergency.

§81.611. Furnishings.

(a) The home must have a working telephone with a listed number.

(b) The director must ensure that preschool children have individual cots, beds, or mats at least one inch thick that are waterproof and washable. The home must ensure that all sleeping equipment and furnishings are clean and sanitary. Linens must be washed before a different child uses them and when soiled.

(c) The director must ensure that school-age children have comfortable arrangements for rest when they are in care more than seven hours.

§81.612. Equipment. The home must provide indoor and outdoor equipment and materials that are appropriate to the developmental needs, individual interests, and ages of the children. There must be a sufficient amount of equipment and materials to avoid excessive competition among the children or long waits for materials. Materials for the following activities must be available to the children:

- (1) arts and crafts;
- (2) building;
- (3) reading and language;
- (4) play acting;
- (5) large muscle activities (climbing, jumping, running); and
- (6) manipulative activities (activities done with the hands).

§81.613. Toilet Facilities. Bathroom and toilet equipment must be adequate to handle children's needs quickly and safely.

§81.614. Fire.

(a) In case of fire or danger of fire or explosion, staff's first responsibility is to evacuate the children to a designated safe area.

(1) Staff must supervise children until the fire department determines the building is safe to re-enter or until the children are picked up by their families.

(2) The director or staff in charge must contact the fire department in case of fire or danger of fire, explosion, toxic fume, or other chemical release.

(b) The home must have an annual fire inspection by a local or state fire marshal. The director must have the written report of the inspection on file at the home. The owner must make any corrections called for in the report. The home must comply with any restrictions imposed by the fire inspector.

(c) The home must have at least one fire extinguisher approved by the fire marshal. The owner must mount the extinguisher on the wall by the hanger or bracket provided. The height must not exceed five feet from the top of the cylinder to the floor. The director must make

the extinguisher readily available for immediate use by the staff. The director or assigned staff must inspect the fire extinguisher monthly and ensure it is serviced when required. The home must keep a record of the inspections and service.

(d) By 12 months after the adoption of these rules, the home must be equipped with smoke detectors installed and maintained according to the manufacturer's instructions and in compliance with requirements of the local fire code. The director must keep a record of maintenance.

(e) The director must have flashlights or other battery-powered lighting available to use in case of electrical failure.

(f) The director must ensure that all children and staff are able to exit safely from the building within three minutes in an emergency.

(1) If a home allows children on any level above or below the ground floor, the home must obtain the written approval of a fire marshal for care on other levels. If the home cannot obtain the fire marshal's approval, the home must keep children on the ground floor.

(2) A home must have at least two exits to the outside located in distant parts of the building. An exit through a kitchen or other hazardous area cannot be one of the required exits.

(3) If there are any doors opening into a fenced yard, children must be able to open the doors easily from inside the home. The home must not have any locked doors between rooms while children are present.

(4) The home must not have any blocked doors or pathways.

(g) The director must ensure that heating devices and areas near heat sources are not fire hazards and present no hazard to children.

(1) If the home has gas appliances, the director must ensure that the appliances have metal tubing and connections unless approved in writing by the fire marshal.

(2) Open flame space heaters are prohibited. Space heaters must be enclosed and have the seal of approval of a test laboratory approved by the fire marshal. The director must safeguard floor and wall furnace grates so that children do not have access to them.

(3) If the home has liquid or gas fuel heaters, the home must properly vent them to the outside. Unvented liquid or gas fuel heaters are prohibited.

(4) If the home uses a fireplace or wood burning stove, the home must properly vent it to the outside. The home must install a rigid screen or guard to prevent children from falling into the fire or against the stove.

(h) The director must keep combustible material away from light bulbs and other heat sources.

(i) The owner must ensure that gas pipes are tested annually for leaks. The owner must have a copy of the test report available at the home.

§81.615. Sanitation.

(a) The home must have an annual sanitation inspection with a written report by a local or state sanitation official. The home must make any corrections called for in the report and must comply with any restrictions stated in the report.

(b) The director must keep the home, yards, and equipment cleaned, repaired, and maintained to protect the health of the children.

(c) The home must have adequate light, ventilation, and heat.

(d) The home must have an adequate supply of water that meets the standards of the Texas Department of Health for drinking water. If possible, the source of water must be a public drinking water system.

(e) The director must ensure that drinking water is always available to children. The home must supply the water in a safe and sanitary manner.

(f) The director must ensure that the temperature of hot water available to children is controlled by a thermostat so the water cannot scald (no higher than 120°F).

(g) The home must have adequate and safe flush toilets and sewage systems. If possible, the home must be connected to a public sewage system. If public sewers are not available, the home must have treatment facilities that meet the standards of the Texas Department of Health and that are approved by the local health authority.

(h) The director must keep all garbage in containers with tight lids away from areas used by children. He must remove garbage from the house daily and from the yard at least once a week.

(i) The owner must take measures to keep the home free of insects and rodents.

(j) Staff and children must wash their hands with soap and running water after using the toilet and before eating. Staff must wash hands with soap and running water before and after changing a diaper, assisting a child with toileting, handling food, and after caring for a child with symptoms of a communicable disease.

(k) If children use washcloths or cloth towels, the director must ensure that each child has a clean individual cloth. If paper towels or facial tissues are furnished, the home must provide a clean individual paper towel for each child.

§81.616. Safety.

(a) The owner must keep the home, yard, and equipment repaired and maintained to protect the safety of children.

(1) The home must have child-proof covers or safety outlets for electrical outlets accessible to children younger than five years old.

(2) The home's electric fans and heaters must be mounted out of children's reach or have safeguards that keep children from being injured.

(3) If the home has window air conditioners, they must be installed so children cannot reach working parts.

(4) If 220-volt electrical connections are within the children's reach, the owner must cover them with a screen or guard.

(5) The owner must equip stairs, porches, and platforms more than two feet above the ground with railings the children can reach.

(6) The owner must keep its play area dry and free from sharp objects. The home must keep tanks, ponds, open wells, drainage ditches, sewage pipes, dangerous machinery, and other hazards fenced to keep the children out. The home must not have garbage cans or

highly flammable material in the play area. Covered trash cans are permitted.

(7) By January 1, 1986, the home must maintain a resilient surface under and surrounding all:

(A) climbing equipment more than five feet high, and

(B) swings with supports more than five feet above the ground. This surface must be extended to cover the fall zone. The resilient surface must not be installed over asphalt or concrete. (Resilient surfaces include sand, pea gravel, shredded bark, or shredded rubber at least six inches deep. Resilient mats or tiles which meet the National Bureau of Standards test criteria for impact attenuation performance of surfaces installed under playground equipment also comply.)

(b) Indoor and outdoor equipment and supplies used both at and away from the home must be safe for the children.

(1) Outdoor play equipment must be placed away from busy areas in the yard and securely anchored unless portable by design.

(2) The director must not allow toys that explode or that shoot things.

(3) The home must not have furnishings, equipment, or toys that have lead painted surfaces or contain toxic material.

(4) The home must ensure that children do not have access to toxic substances indoors and out.

(5) All swing seats must be constructed of durable, lightweight, relatively pliable material, such as rubber or nylon webbing.

(6) All heavy equipment must be installed in a manner to prevent tipping over or collapsing.

(7) The home must not allow children to use:

(A) climbing equipment or swings on concrete or asphalt; or

(B) swings with concrete or asphalt in the fall zone.

(8) The home must ensure that no equipment has openings or angles that could entrap a child's head.

(9) The home must ensure that no pinch, crush, or shear points are on equipment or underneath equipment.

(c) The home must have first aid supplies readily available to staff, in a designated location, and out of the children's reach. The director must make a guide to first aid and emergency care immediately accessible.

§81.617. Health Requirements for Children.

(a) The director must have on file evidence that each child is physically able to take part in the program. This must include a history of serious illness, injury, or abnormality in physical or mental development and a record of all hospitalizations. The history is not required for a child enrolled before the effective date of this rule. The director must require that a parent present evidence of the general state of each child's health when the child is admitted to the home or within one week of admission. Any of the following constitutes compliance:

(1) a written statement from a licensed physician that he has examined the child within the past year; or

(2) a copy of the medical screening form of the Early and Periodic Screening, Diagnosis, and Treatment

(EPSDT) Program if no referral for further diagnosis and treatment is indicated; or

(3) a form or written statement from a health service or clinic, such as:

- (A) Head Start physical exam;
- (B) well-child conferences (clinics);
- (C) maternity and infant programs;
- (D) children and youth programs; or

(4) if one of the documents in paragraphs (1)-(3) of this subsection is not available, a written statement submitted by the parent that a licensed physician (whose name and address are included) has examined the child within the past year and that the child is able to participate in the program. This must be followed within 12 months by a document as described in paragraph (a)(1), (2), or (3); or

(5) if the parent cannot secure one of the documents in paragraphs (1)-(3) of this subsection within one week, a statement signed by the parent giving the name and address of the physician with whom an appointment for examination has been made or the address of the EPSDT screening site where the examination will take place. Following the examination, the parent must submit a document as described in paragraph (a)(1), (2), or (3); or

(6) a signed statement from the parent that medical diagnosis and treatment are against his religion.

(b) The director must have available annual evidence of each preschool-age child's continued ability to participate in the program. This is required for any child who has been in care for 12 or more months. Either of the following is acceptable if it has been dated within the past 12 months:

(1) a written or oral statement from the parent that the child is enrolled in an ongoing health supervision program with annual evaluation as described in paragraph (a)(1), (2), (3), or (6) of this section. Staff must document any oral statement in the child's record; or

(2) a statement from a licensed physician that the child may continue to participate in the program

(c) The home must keep current immunization records for each child. Staff must ensure that each child's immunization record includes the child's birth date, the number of doses and type, and the dates (month, day, year) the child received each immunization. The home's compliance with the standard is measured by one or more of the following for each child in care:

(1) a written and dated record that the child has been immunized against diphtheria, tetanus, pertussis, polio, measles, mumps, and rubella. There must be:

(A) a record with a rubber stamp or signature of the physician or health personnel, or

(B) a machine or handwritten copy of the immunization record. Staff copying the information must sign the handwritten copies.

(2) a written and dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the diseases mentioned in paragraph (1) of this subsection have begun. The immunization cycle must be completed as soon as is medically feasible. The home must have a current immunization record on file.

(3) a certificate signed by a licensed physician stating that the required immunization would be injuri-

ous to the health and well-being of the child or a member of the child's family or household;

(4) an affidavit (notarized statement) signed by the parent that the immunization conflicts with his religious beliefs and practices; and

(5) a written and dated statement signed by the parent that the child's immunization record is current and is on file at a school the child attends. The parent must include the name of the school in the statement.

(d) The home must have a record showing that the child has been tested for tuberculosis according to recommendations of the Texas Department of Health if the local health authorities or the regional office of the Texas Department of Health recommended a test. A written and dated statement signed by the parent that the child's tuberculosis test record is current and is on file at a school the child attends also complies. The parent must include the name of the school in the statement.

§81.618. *Illness or Injury.*

(a) A child who appears ill must not be admitted to the home unless approved in writing by health personnel.

(b) The director must handle illness or injury to protect the health of all children in the home.

(1) The director must provide an ill or injured child with a bed, cot, or mat away from the other children. Staff must call the child's parent immediately. The child must be supervised until he leaves the home.

(2) Staff must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, staff must call the physician named by the parent, take the child to the nearest emergency room or minor emergency clinic, or call for an emergency vehicle.

(c) The home must follow the recommendations of the Texas Department of Health concerning the admission or readmission of any child after a communicable disease.

§81.619. *Medications.*

(a) If the director agrees to administer medications, staff must administer the medication to the child as follows:

(1) Prescription medications must be in the original container labeled with the child's name, a date, directions, and the physician's name. Staff must administer the medication as stated on the label directions. Staff must not administer medication after the expiration date.

(2) Staff must ensure that nonprescription medication is labeled with the child's name and the date the medication was brought to the home. Nonprescription medication must be in the original container. Staff must administer it according to label directions if approved in writing by health personnel or the child's parent.

(3) Staff must document each dose of medication administered showing the child's name; the name of the medicine; date, time, and amount administered; and the name of the staff administering the medicine.

(b) Staff must keep medications out of children's reach or in locked storage.

(c) Staff must keep medications requiring refrigeration separate from food

(d) Staff must return medications when no longer needed to the child's parent. Staff must dispose of medi-

cations when a child withdraws from the home or when the medicine is out of date.

§81.620. Emergency Phone Numbers.

(a) The director must post the following emergency telephone numbers by a telephone accessible to all staff. This telephone must not be a pay phone.

- (1) ambulance service or emergency medical services (EMS);
- (2) police or sheriff's department;
- (3) fire department;
- (4) poison control center;
- (5) licensing office;
- (6) local children's protective services office or child abuse hotline; and
- (7) the group day care home (with address).

(b) The home must keep the following telephone numbers in a place accessible to the telephone and to all staff.

- (1) numbers at which parents may be reached; and
- (2) numbers of the physicians designated by the parents.

§81.621. Animals.

(a) The director must ensure that animals on the premises have been vaccinated according to a licensed veterinarian's recommendations. Staff must file documentation of vaccinations at the home.

(b) Staff must keep the home and play yard free of stray animals. Staff must not allow children to play with stray animals.

§81.622. Food Service.

(a) The director must ensure that all food and drink served are of safe quality and are stored, prepared, distributed, and served under sanitary and safe conditions. The home must wash and sanitize food service equipment.

(b) Cleaning supplies must be clearly marked, kept separate from food, and kept inaccessible to children.

(c) Staff must practice good hygiene when handling food. Staff with open or infected wounds must not work in the food preparation area. No one may smoke in any of the food areas.

(d) Staff must discard single service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(e) Staff must encourage, but not force, children to eat. Staff must promptly discuss eating problems with the child's parent and note this discussion in the child's record.

§81.623. Nutrition

(a) The director must ensure that food is nutritious and is served in variety and amounts adequate to ensure growth and development.

(b) All children must have regular meals and morning and afternoon snacks.

(c) If food a child brings into the home does not meet the nutritional requirements, the director must provide the additional food necessary to meet requirements. If food or drink a child brings into the home appears unsanitary, unclean, spoiled, or contaminated, staff must not permit the child to consume it. Staff must offer additional food to the child.

(d) The director must ensure that a child in the home for six or more hours per day has at least one-half of his daily food needs met. This does not apply to the child who arrives after the evening meal and leaves before the morning meal.

(e) The director must have the written approval of a physician, a registered dietician, or a licensed dietician for special or therapeutic diets.

§81.624. Operation.

(a) The director must provide activities for children according to their ages, interests, and abilities. The activities must be appropriate to each child's health, safety, and well-being. They also must be flexible and promote each child's physical, emotional, social, and mental growth. These must include a supervised rest period after the noon meal. Rest periods must not last longer than two hours. The rest area must be adequately lighted to allow visual supervision at all times. The director must ensure that indoor and outdoor time periods include:

- (1) active and quiet activities;
- (2) opportunity for individual and group activities; and
- (3) outdoor time each day that weather permits.

(b) The director must ensure the children's safety on field trips and excursions and on any transportation provided by or for the home. Transportation includes, but is not limited to, transportation provided between the group home and the school and between the child's home and group home.

(1) Staff supervising children must have emergency medical forms and emergency contact information for each child in the group.

(2) Staff must have a written list of the children in the group and must check roll before, during, and after the trip.

(3) Staff must have first aid supplies available on field trips.

(4) When children are not at the home, not being transported, and not in water activities, the staff-child ratio must be as follows:

Age of Youngest Child in Group	Maximum Number of Children to be Supervised by One Staff
0-23 months	2
2-3 years	6
4-5 years	8
6 years and older	12

§81.625. Discipline and Guidance.

(a) The director must ensure that discipline and guidance are consistent, are based on an understanding of individual needs and development, and promote self-discipline and acceptable behavior.

(b) There must be no cruel, harsh, or unusual punishment or treatment.

(1) Staff must not shake, bite, or hit children. No child under five years old must ever be spanked. Staff must not put anything in or on a child's mouth as punishment.

(2) If the owner believes that it is necessary to spank children who have passed their fifth birthday, the home must have a statement on file that it is the owner's policy to permit physical punishment. The statement of

the rules concerning the administration of physical punishment must include that spanking must be done only with a staff's open hand on a child's buttocks. Each incident must be documented in the home's records. The director must inform the parents in writing of the policy and must have the parents' signed approval.

(3) The home may use brief, supervised separation from the group if necessary, but staff must not place children in a locked room or in a dark room with the door closed.

(4) Staff must not humiliate or subject children to abusive or profane language. Staff must not associate punishment with food, naps, or toilet training. Staff must ensure that bedwetters are not shamed or punished.

§81.626. Infant and Toddler Care.

(a) Staff must provide infants with an indoor and outdoor environment which is safe and physically, mentally, emotionally, and socially stimulating.

(b) Infants who are not yet climbing must have individual cribs with a waterproof mattress covered by a clean crib sheet. Mobile infants may sleep on a low cot or mat.

(c) Staff must talk to, hold, and play with the infants.

(d) Staff must allow each infant to explore outside the crib or playpen each morning and afternoon.

(e) Infants, while awake, may remain in their cribs for up to one hour as long as they stay content and responsive.

(f) A staff must always be in the room with the infants.

(g) Staff must properly store feeding bottles. Staff must ensure bottles are clearly marked with the child's name.

(h) The director must ensure that infants up to six months old are held while being bottle fed. Infants over six months must be held, if needed. Bottles must never be propped. The child or an adult must hold the bottle.

(i) The director must ensure that infants not yet ready for table food are fed an infant formula or diet approved in writing by the child's physician or parent. Staff must obtain written feeding instructions, dated and signed by the parent, and updated as changes are made.

(j) Infants no longer being held for feeding must be fed in a manner that ensures their safety and comfort. If an infant shows evidence of wanting to feed himself, staff must encourage the infant to do so.

(k) The director must promptly discuss with parents feeding problems, poor weight gain, or failure to thrive.

(l) Staff must promptly change soiled or wet diapers and other clothing in a sanitary and safe manner.

(1) Staff must place the child on a clean, washable surface disinfected after each use. Staff may also use a surface with a clean, disposable covering that is changed after each use.

(2) Staff must use individual washcloths and towels or disposable towelettes to thoroughly cleanse and dry the child at each diaper change.

(3) Staff must promptly rinse soiled or wet reusable diapers by the flush toilet method.

(4) Staff must place all used diapers in a moisture proof bag or store them in a covered container which is cleaned daily.

§81.627. Children with Need for Special Care The director must ensure that children who need special care because of disabling or limiting conditions are given the care and activities qualified psychologists, physicians, or other experts recommend. The director must document the recommendations and their accomplishment.

§81.628 Night Care.

(a) A group day-care home offering night care must comply with any applicable fire and safety requirements for this type of care

(b) The home must have visible exits. This may be provided by exit lights or by lighted exits

(c) Staff must be awake at all times. Staff must ensure that activities and routines meet the unique needs of children in night care.

(d) Children staying the night must have the opportunity to bathe. If bathtubs or showers are used, staff must supervise preschool-age children. Staff must ensure privacy for school-age children. The home must ensure that tubs or showers are cleaned after each use. Staff must ensure that each child has a fresh washcloth and towel.

(e) Sleeping equipment must be appropriate to the age and size of each child. The director must ensure that children in night care have a bed or cot, mattress or pad; and a pillow

(1) Pillows and mattresses must have washable protective coverings.

(2) Each child must have his own clean linens and cover.

§81.629. Water Activities.

(a) When a group day care home uses a splashing pool or a wading pool with less than two feet of water, the following apply:

(1) When the pool is not in use, staff must keep it out of the child's reach. Pools which can be drained must be drained, those which cannot must meet the requirement in paragraph (b)(1) of this section

(2) One staff with knowledge of water safety must supervise at all times. When children under four years old are in the water, two staff members must supervise.

(b) When the home uses a swimming pool (more than two feet of water), the following apply.

(1) At the home, the pool must be enclosed by a fence at least six feet high and built so children cannot easily climb over it. Staff must keep the gate locked when the pool is not in use

(2) One lifesaving device must be available for each 2,000 square feet of water surface (or portions thereof) with a minimum of two for each pool

(3) A certified lifeguard must be on duty at all times. This person must not be counted in the staff-child ratio

(4) Staff must be able to see clearly all parts of the pool, including the bottom

(c) Staff must ensure that all drain grates are in place, are in good repair, and cannot be removed without using tools.

(d) The staff-child ratio for water activities is as follows:

SWIMMING		
Age of Youngest Child in Group	Number of Staff	Maximum No of Children
6 mos. to 24 mos.	1	1
2 years	1	4
3 years	1	6
4 years	1	7
5 years	1	8
6 years and older	1	10

WADING & SPLASHING		
Age of Youngest Child in Group	Number of Staff	Maximum No. Children
6 mos. to 24 mos	2	6
2 years	2	10
3 years	2	11
4 years and older	1	12

(e) When children are in a pool which has a pump and filtering system, an adult who is able to turn off the system immediately must be present.

(f) Staff must ensure that pool chemicals are inaccessible to children and that machinery rooms are locked.

(g) All pools the home uses must be maintained as stated in the standards of the Texas Department of Health and local regulations.

§81.630. Transportation.

(a) Effective January 1, 1986, if a home provides transportation, each child being transported must ride either in an infant carrier, a child seat, or a seat belt, as appropriate to the child's age and size.

(b) These requirements apply to all transportation including, but not limited to, transportation to and from the home, to and from school, and on field trips.

(c) These requirements apply to any vehicle used by or for the home to provide transportation, regardless of whether owned by the home and regardless of the type of vehicle—automobile, van, home bus, or other.

(1) Appropriateness is determined as follows:

(A) The director must ensure that an infant who cannot sit up without support is properly restrained in a dynamically crash-tested and federally approved infant carrier designed as a child passenger restraint device. The carrier must be placed in a semi-reclining position, facing the back of the car, with a built-in five-point safety harness to hold the child in. The carrier must be held in the seat by the standard fixed seat belt.

(B) The director must ensure that each child age three years old who can sit alone is properly seated in a child seat that is dynamically crash-tested and federally approved as a child passenger restraint device.

(C) The director must ensure that each child age three and older rides in either a child seat that is dy-

namically crash-tested and federally approved as a child passenger restraint device or in a seat belt. Only one person may use each seat belt.

(D) A child may ride in a shoulder harness and seat belt if the shoulder harness goes across the child's chest and not across the child's face or neck.

(2) Staff must properly anchor each restraint device to the vehicle seat and use the device according to the manufacturer's specifications.

(3) Staff must ensure that each child transported remains seated and properly restrained by the passenger restraint device appropriate to his age, size, and physical condition while the vehicle is in motion.

(4) If parents provide equipment for the home to use for transporting the child, the equipment must meet the specifications stated in this rule.

(b) Effective January 1, 1986, the driver and all adult passengers in a vehicle transporting children must be properly restrained by a shoulder harness and/or a seat belt when the vehicle is in motion.

(c) Staff must load and unload children at the curb side of the vehicle or in a protected parking area or driveway. Staff must ensure that children do not cross a street unsupervised after leaving a vehicle.

(d) The director must keep first aid supplies in all vehicles transporting children.

(e) The owner must equip all vehicles used for transporting children with a minimum of one 6-BC portable fire extinguisher. The fire extinguishers must be installed in the passenger compartment of the vehicle and must be accessible to the adult occupants.

(f) The director must ensure that children are not transported in the open back of a truck and that children are not transported in vans or station wagons from which the bench seats have been removed.

(g) The staff-child ratio for transportation of children must be met.

(1) One adult in addition to the driver must be present for each group of four children (or fraction of a group) under two years old.

(2) For children age two or older, the staff-child ratio is established by any of the options outlined in §81.608(a) or (b) of this title (relating to Staff-Child Ratio). If there are children under four years old, at least two adults must always be present.

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

Abuse—Nonaccidental infliction or threat of infliction of physical, emotional, or mental harm to a child.

Activities—Those services and activities provided by the group day care home: the daily schedule.

Activity space—Area or rooms used for children's activity.

Admission—The process of accepting a child for care. The date of admission is the first day on which the child is actually in care in the home.

Adult—A person 18 years old or older.

Application—The form the department furnishes to gather information about and to document the intent of the owner to set up a group day care program. The application also includes all material required to be submitted to the department.

Attendance—Children actually present in the home at any given time. (Not to be confused with enrollment.)

Child—A person who has not reached his 18th birthday.

Child development associate credential—A credential which is highly desirable for staff working directly with young children; based on assessed competency in several areas of child care and child development. Child development training is available in the public community and junior college system as well as in four year colleges, either in regular child development, vocational programs, or through adult continuing education courses.

Children with need for special care—Children with disabling or limiting conditions which prevent or limit participation in the normal activities of the home and which may require additional supervision. Disabling or limiting conditions include visual impairment or deafness, other physical disabilities, mental retardation, emotional disturbance, or learning disabilities.

Consultative services for children with need for special care—

(A) Qualified consultants include psychologists, special education counselors, educational diagnosticians, special education supervisors, teachers certified by the Texas Education Agency to teach mentally retarded or emotionally disturbed children, pediatricians, and MSW social workers skilled in assessing normal and unusual developmental problems in children.

(B) Such consultants may be found in state homes and hospitals, MHMR centers, human development centers, public home special education departments, university psychology or special education departments, and the state listing of certified psychologists.

Day care—The care, supervision, and guidance of a child or children unaccompanied by a parent, guardian, or custodian on a regular basis, for a period of less than 24 hours per day, and in a place other than the child's or children's own home or homes.

Department—Used in this document to refer only to the Texas Department of Human Resources

Direct child care—The supervision, guidance, and care of children as compared to food service, janitorial functions, or administrative functions.

Director—That person the owner designates to assume daily on-site responsibility for the operation of a group day care home, including maintenance of minimum standards. In multiple facilities under a chief administrative officer, the owner of a group day care home is usually the director

Enrollment—The list of names of children registered with the home. (Not to be confused with attendance.)

First aid supplies—Required supplies include multi-size adhesive bandages, gauze pads, tweezers, cotton balls, hydrogen peroxide, syrup of ipecac, and a thermometer.

Food service—The preparation or serving of meals or snacks.

Garbage—Waste food or items which, when deteriorating, cause offensive odors and attract rodents, insects, and the like.

Group child care—Care for seven or more children when at least one of the children is not related to the caregiver.

Handwashing—Rubbing hands together with soap under running water.

Health personnel—A licensed physician, a licensed registered nurse, or a person providing preventive, diagnostic, or therapeutic medical care to individuals in the community.

Infant—A child younger than 18 months old.

License—A complete document issued to the owner of a group day care home authorizing the licensee to operate at a specified location according to the provisions of the license, the law, and the rules and regulations of the Texas Department of Human Resources.

Neglect—Nonaccidental failure or threatened failure to provide a child with the physical and emotional requirements for life, growth, and development.

Night care—Care given to children who are starting or continuing their night sleep or to children who spend the night at the home.

Parent—Used in this document to refer to parent, legal guardian, or managing conservator.

Probation—A sanction placed on a home instead of revocation. Under probation, the home may remain open and continue to provide care.

Provisional license—A license the department issues to a home whose plans meet the department requirements but which is:

(A) not currently operating;

(B) not licensed for the location stated in the application; or

(C) changing ownership

Sanitary sleeping furnishings—Linens which have been laundered since a different person slept on them or after being soiled.

School-age care—Care offered to children between the ages of five (before September of that school year) and 18.

Sexual abuse—Any sexually oriented act or practice involving staff or another adult and a child in care.

Staff—Any person responsible for working in contact with children whether paid or unpaid. He must meet the qualifications and conditions outlined in these rules.

Supervision—The act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of activity requirements and children's needs, and accountability for their care. This includes staff being near enough to children to intervene when needed.

Training—Time spent in workshops; conferences of child care, early childhood, or educational associations; formal schooling; or time with consultants. Training must be in subject areas such as child care, child development, and early childhood education. Training for directors may also be in supervision of staff or program administration.

Trash/litter—Paper products, plastic, cloth, and the like.

Water activities—Related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.

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 July 20, 1984

TRD-847661 Marlin W. Johnston
 Commissioner
 Texas Department of Human
 Resources

Proposed date of adoption
September 29, 1984

For further information, please call (512) 441-3355,
ext. 2037

Subchapter H. Minimum Standards for Drop-in Care Centers

The Texas Department of Human Resources proposes the repeal of §§81.701-81.726, and simultaneously proposes new §§81.701-81.730, concerning minimum standards for drop-in care centers, in its day care licensing chapter. The standards are being revised to increase requirements for the safety, transportation, and release of children. The qualifications and requirements of the director and staff have also been increased. In addition, the standards have been edited to clarify policy and requirements for providers and field staff.

Cris Ros-Dukler, assistant commissioner for licensing, 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 rules.

Ms. Ros-Dukler 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 or administering the rules will be the increased safety and protection of children in out-of-home care. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

The department has scheduled public hearings across the state to accept comments on the proposed standards. At the same time, the department also will be accepting comments on new standards for day care centers, group day care homes, kindergartens and nursery schools, and schools grades kindergarten and above. All hearings are being held from 3-8 p.m. They are scheduled as follows: August 13, Texas Department of Human Resources (DHR) boardroom, Austin, 706 Banister Lane; August 14, Holiday Inn, Room 3, San Antonio, 318 West Durango; August 15, LaQuinta Royale, Sala #1, Corpus Christi, 601 North Water Street; August 16, Hilton Hotel, McAllen, Crockett/Bowie Room, 2721 South 10th; August 20, Room 134, University Center Building, University of Texas at Tyler 3900 University Boulevard; August 21, Twilight Ballroom, Student Center, Nacogdoches; Stephen F. Austin State University, August 22, Civic Center, Beaumont, 701 Main Street; August 23, Person-

nel and Training Building, Houston, Room 6 and Room 8, 1349 East 40th Street; August 28, Community Center, Arlington, 2800 South Center; August 29, DHR training room, Wichita Falls, 600 Scott; August 30, DHR training room, Abilene, 4380 Spindletop; September 4, Lecture Hall on Highlander Drive, Waco, McLennan Community College, 1400 College Drive; September 5, Room 107, Lubbock Civic Center, Lubbock, 1501 Sixth Street, Room 107; September 8, Texas Tech Health Science Center, Amarillo, 1400 Wallace Boulevard; September 11, DHR Regional Headquarters, Midland, Large Conference Room, 2301 North Big Spring; September 12, City Council Chambers, El Paso, Second Floor, 2 Civic Center Plaza.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division—435, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 60 days of publication in this *Register*.

40 TAC §§81.701-81.726

(Editor's note. The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Department of Human Resources, 706 Banister Lane, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

- §81.701. *Organization.*
- §81.702. *General Administration*
- §81.703. *Admission of Children for Care.*
- §81.704. *Records*
- §81.705. *Director Qualifications.*
- §81.706. *Director Responsibilities.*
- §81.707. *Staff Qualifications and Responsibilities.*
- §81.708. *Staff-Child Ratio*
- §81.709. *Training.*
- §81.710. *Building, Grounds, and Equipment.*
- §81.711. *Fire.*
- §81.712. *Sanitation*
- §81.713. *Safety*
- §81.714. *Health Requirements for Children.*
- §81.715. *Illness or Injury.*
- §81.716. *Medications.*
- §81.717. *Emergency Phone Numbers.*
- §81.718. *Animals*
- §81.719. *Food Service and Nutrition.*
- §81.720. *Activities.*
- §81.721. *Discipline and Guidance.*
- §81.722. *Infant Care*
- §81.723. *Children with Need for Special Care.*
- §81.724. *Night Care.*
- §81.725. *Transportation.*
- §81.726. *Definitions.*

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

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 Commissioner
 Texas Department of Human
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ext. 2037

40 TAC §§81.701-81.730

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

§81.701. *Organization.*

(a) A drop-in care center must have a governing body that is responsible for its policies. The governing body must assure that the center operates in compliance with the "Minimum Standards for Drop-in Care Centers" and the child care licensing law, Human Resources Code, Chapter 42. The governing body must inform the department of the name and mailing address of the sole proprietor, the partners, or its chief executive officer.

(b) A corporation operating a drop-in care center must make one of the following available to the department for review:

- (1) the articles of incorporation;
- (2) the certificate of incorporation; or
- (3) a copy of the certificate of authority (for an out-of-state corporation).

(c) A corporation or church must make available to the department a copy of the resolution authorizing the operation of the center unless the authorization is included in the document required in subsection (b) of this section.

(d) Each time a director is named, the governing body must send the department an official department form naming the director. If the owner and the director are the same person, the governing body must state this on the form.

(e) The governing body must notify the department before, if possible, or on the next workday of any occurrence which affects the status of the center. This includes, but is not limited to, the following:

- (1) changes of the governing body or ownership;
- (2) change of center director;
- (3) change of board chairman of a corporate facility or other chief executive officer of the governing body;
- (4) change of governing body designee;
- (5) going out of business;
- (6) change in hours of operation;
- (7) change in age range of children in care; and
- (8) closing the center for more than one week (if not covered in the plan of operation).

(f) If any change violates the restrictions on the license, the governing body must request that the license be amended. It must wait until the department changes the restriction before making the change in operation.

(g) The governing body must notify the department and apply for a new license before changing the location of the center

(h) The governing body must notify the department, in writing, of any planned addition or reduction in indoor or outdoor space before making the change.

§81.702. *General Administration.*

(a) The center must display the following in a place where staff, parents, and others may review them:

- (1) its license,
- (2) the letter or compliance evaluation form that the licensing representative provides at or following the most recent inspection or investigation of the center, and
- (3) a current copy of the department's "Minimum Standards for Drop-In Care Centers."

(b) The center must immediately notify the department of any serious occurrences that affect its operation. These include, but are not limited to, the following:

- (1) death of a child enrolled in or attending the drop-in care center;
- (2) fire; and
- (3) serious accident, injury, or communicable disease of a child or staff.

(c) The center must report suspected child abuse or neglect as required by the Texas Family Code to:

- (1) the nearest child protective services office, and
- (2) a local or state law enforcement agency.

(d) The governing body must ensure that a person who is indicted or the subject of an official criminal complaint accepted by a county or district attorney alleging he committed any of the offenses listed in paragraph (1) and paragraph (2) of this subsection does not have contact with the children in care until the charges are resolved. The offenses are as follows:

- (1) a felony or misdemeanor classified as an offense against the person or family;
- (2) a felony or misdemeanor classified as public indecency; or
- (3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(e) The governing body must notify the licensing office of an indictment or complaint within 24 hours or on the next workday.

§81.703. *Admission of Children for Care.*

(a) The center must not racially discriminate against any child.

(b) Staff must inform a child's parents, in writing, about the center's activities and policies before the child is accepted for care.

(c) Staff must obtain an enrollment agreement for each child before admission. Staff must keep the agreement on file at the center until 12 months after the child's last day in care. The director must ensure that the terms of the agreement related to paragraphs (1)-(14) of this subsection are met. The parents and director must sign the agreement, which contains the following:

- (1) the child's name, birth date, home address, and home telephone number.
- (2) date of admission.
- (3) name and address of parents and telephone numbers at which parents can be reached while the child is in care.
- (4) a statement that:
 - (A) the child will be released only to a parent or a person named by the parent, and
 - (B) in an emergency, the parent must call the center to give the name of and other identifying information about the person picking up the child.
- (5) a statement that people bringing or picking up the child will be sure that staff is aware of the child's arrival or departure.
- (6) hours and days the center cares for children; maximum time the child may stay in care.
- (7) name, address, and telephone number of the child's physician.
- (8) a statement of the child's special problems or needs as indicated by the parent. This includes allergy, existing or pre-existing illness and injuries, and all hospitalizations.
- (9) a statement that special problems or occurrences in the center that affect the child will be brought to the parent's attention. This includes serious communicable diseases.
- (10) a statement providing for parent conferences.
- (11) a statement informing parents that minimum standards are available in the center for review.
- (12) a statement that:
 - (A) the copy of the agreement must remain in the center's records while the child is in care, and
 - (B) the parent must update information as necessary. The director and parent must initial and date all changes.
- (13) transportation permission, if transportation is provided.
- (14) emergency medical authorization

§81.704. Records

- (a) Center staff must maintain a record of any significant occurrences to the child
- (b) The center must have records of daily attendance of children and staff for the previous 12 months. The hours each child attended and each staff worked must be recorded.
- (c) The center must maintain complete financial records. Licensing staff checks these records only on written notice from the director of licensing.
- (d) The center must maintain personnel records for all staff and ensure that each staff's record includes:
 - (1) the date on which staff began work at the center; and
 - (2) three references attesting to the staff's suitability for the job
 - (A) The center must obtain references from the last three employers/supervisors. If the person has been employed in fewer than three places, the center must obtain references from other people. People other than employers/supervisors must be unrelated to the staff and not employed at the center. The center must obtain reference information from at least three people.

(B) The center must ensure that all reference information includes the following:

- (i) the name, address, and telephone number of each reference;
- (ii) written statements attesting to the staff's character; physical, mental, and emotional health; and competency. The center must ensure that people submitting reference information have signed the statements. The director must copy and sign quotes from the people giving reference information orally.
- (3) a statement from staff providing information about any felony and/or misdemeanor convictions within the preceding 10 years and about any pending criminal charges, including deferred adjudication.
- (4) a record of a tuberculosis examination no earlier than 12 months before beginning this position. Re-examination is required if local health authorities or the regional office of the Texas Department of Health recommends it. People age 14 and older who are at the center while children are in care must also have a record of tuberculosis examination. People under 14 years old must meet the same requirements as children in care.
- (5) documentation that staff meets the requirements in §81.707(a) or (b) of this title (relating to Staff Qualifications and Responsibilities).
- (e) All required records (except financial records) must be available at the center for the department to inspect during hours of operation.

§81.705. Director Qualifications.

- (a) The director of a drop-in care center must be at least 21 years old, have a high school diploma or its equivalent, and
 - (1) a bachelor's degree from an accredited college or university with at least 15 credit hours of child development or early childhood education;
 - (2) a child development associate credential,
 - (3) an associate of arts degree in child development or a closely related area;
 - (4) a day-care administrator's credential issued by a professional organization and recognized by the department's Licensing Branch, or
 - (5) one year of experience in group child care, teaching, or administration or management in a child-care facility and at least 35 clock hours of documented training in child care, child development, or early childhood education. The director must have obtained this training in classes or workshops.
- (b) Proof of meeting the above qualifications must be available at the center.
- (c) A person who was director of a drop-in care center on the effective date of these rules has 12 months from that date to meet compliance if he remains in the same position.
- (d) The director of a drop-in care center licensed for 35 or more children must meet the requirements in subsection (a) of this section. He also must have two years experience in a drop-in care center classroom or in drop-in care center administration. Proof of meeting this qualification must be available at the center.
- (e) A person who was a director of a drop-in care center licensed for 35 or more children on the effective date of these rules has two years from that date to meet

the requirements in this rule if he remains in the same position.

(f) No one may serve as director of a center who has been convicted within the preceding 10 years of any of the following offenses unless the director of licensing has ruled that the person has established his rehabilitation:

- (1) a felony or misdemeanor classified as an offense against the person or family;
- (2) a felony or misdemeanor classified as public indecency; or
- (3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(g) The director must send the department the following on an official department form:

- (1) a record of training and experience;
- (2) information about felony and/or misdemeanor convictions within the preceding 10 years;
- (3) information about any pending criminal charges, including deferred adjudication; and
- (4) a list of references with addresses and telephone numbers. The references must be adults not related to the director and not working at the center. They must be able to attest to the director's character; physical, mental, and emotional health; and competency. (The department must receive responses from at least three people.)

§81.706. Director Responsibilities.

(a) An on-site director must administer the center's daily operation in compliance with minimum standards. If the director is absent from the center, an adult staff must be designated in charge and given the authority to administer the center. During the director's absence, the designated person must administer the center in compliance with minimum standards.

(b) The director must provide the staff's assignments and supervise the staff

(c) The director must give the department on an official department form the names and required identifying information on all staff and other people at the center older than age 14 who have contact with children in care. The director must submit this information as part of the application. He must submit new information within one week after a staff is selected.

§81.707. Staff Qualifications and Responsibilities.

(a) Staff who work directly with children must be age 18 or older. Each must have a high school diploma or its equivalent.

(b) The center may include in the staff-child ratio people 16 and 17 years old who:

- (1) have graduated from high school,
- (2) are enrolled in child-care related career programs approved by the Texas Education Agency or other state or federally approved programs, or
- (3) are on summer vacation from career programs. They must work under the direct supervision (in the same place at all times) of a qualified adult staff.

(c) A person who was on staff on the effective date of these rules has two years from that date to meet compliance if he remains in the same position.

(d) Staff must show competency, good judgment, and self-control in working with children. Staff must be

mentally, physically, and emotionally able to perform assigned duties.

(e) A person convicted within the preceding 10 years of any of the following offenses must not serve in any capacity where there is contact with children in care unless the director of licensing has ruled that the person has established his rehabilitation:

- (1) a felony or misdemeanor classified as an offense against the person or the family;
- (2) a felony or misdemeanor classified as public indecency; or
- (3) a felony violation of any statute intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) Staff must relate to the children with courtesy, respect, acceptance, and patience.

(g) People whose behavior or health status appears to endanger the health, safety, and well-being of children must not be at the center.

(h) People must not smoke in the presence of children or consume alcohol when children are at the center. People who appear to be under the influence of alcohol or other drugs must not be in the center when children are present.

(i) People working with children must be free from other duties except those directly involving the teaching, care, and supervision of children. Staff supervising the children must meet the physical needs of the group.

(j) Responsibilities include keeping the group's area clean. Administrative functions, meal preparation, or janitorial duties must not be included in responsibilities.

(k) Staff must supervise children at all times.

(l) If one staff leaves and another staff is given responsibility for the children, the staff leaving must provide the incoming staff with:

- (1) significant information about any particular child, and
- (2) a list of children present in the group. This may be the class roll sheet.

(m) If a parent calls to authorize the emergency release of a child, staff must verify that the caller is actually the parent.

(n) Staff must verify the identity of a person authorized to pick up a child but not known to the staff. Staff must view the picture identification on the person's driver's license and record the name and driver's license number. The center must keep this information for 24 hours.

(o) Staff must ensure that children are not out of control.

(p) People at the center must not abuse, neglect, or sexually molest children.

(q) Effective January 1, 1986, a staff trained in first aid and a staff trained in cardiopulmonary resuscitation must be present at the center during all hours of operation. The center must have on file current certificates attesting to the training.

(r) The center must have a written plan(s) for dealing with emergencies, including a description of what each staff must do in an emergency. Emergencies include, but are not limited to, fire, explosion, tornado, toxic fume or other chemical release, an injured child, a child with symptoms of acute illness, and a child who is not breath-

ing. Each staff must have a copy of the plan and be familiar with it. One aspect of the plan must be practiced every three months. The center must practice these drills at different times of the center's operation. The director must document the practice and keep the record on file at the center.

§81.708. Staff-Child Ratio.

(a) In a drop-in care center, the number of children must not exceed the following:

Infants	
Age of Youngest Child in Group	Maximum Number of Children to Be Supervised by One Staff
0-11 months	4
12-17 months	5

(1) When a child in the group is younger than 18 months old, the oldest child in the group must not be more than 18 months older than the youngest child unless nine or fewer children are in the center.

(2) If nine or fewer children are in care at the center, one of the following groupings is the maximum number of children permitted in care of one staff:

(A) If one infant is cared for, no more than eight other children may be in care.

(B) If two infants are cared for, no more than six other children may be in care.

(C) If three infants are cared for, no more than two other children may be in care.

Preschool and School-age Children	
Age of Youngest Child in Group	Maximum Number of Children to be Supervised by One Staff
18-23 months	8
2-5 years	12
6 years and older	15

(b) Staff must use the developmental or emotional age of mentally retarded or emotionally disturbed children, as determined by a qualified consultant, to determine the staff-child ratio.

§81.709. Training.

(a) The center must orient new staff members in understanding children and in job expectations when they begin work. The center must have documentation of the following orientation.

(1) instruction concerning the requirements in the "Minimum Standards for Drop-in Care Centers" and the licensing law;

(2) information about the center's policies, including discipline and release of children;

(3) instruction in recognizing symptoms of child abuse or neglect and the responsibility and procedure for reporting these; and

(4) instructions in the procedures to be followed in handling emergencies.

(b) Staff must participate yearly in at least 15 clock hours of training in understanding children and improving job performance. The director must participate yearly in at least 20 clock hours of training. The training must be documented in the staff's record at the center. A year is defined as 12 months from the date of employment.

§81.710. Space.

(a) There must be at least 30 square feet of indoor activity space, measured wall-to-wall on the inside, for each child in the center. The measurement does not include single use areas.

(b) The center must have an outdoor play space of at least 80 square feet for each child using the area at one time.

(c) All outdoor play areas regularly used by children must be accessible by a safe route and enclosed by a building or fence at least four feet high and with at least two exits. One exit must be away from the building. Staff must be able to open exits immediately in an emergency.

§81.711. Furnishings. The center must ensure the following:

(1) a working telephone with a listed number;

(2) individual cots, beds, or mats at least one inch thick that are waterproof and washable. The center must ensure that all sleeping equipment and furnishings are clean and sanitary. Linens must be washed before a different child uses them and when soiled. If the center provides care after 9 p.m., the sleeping facilities must be available for 50% of the licensed capacity or for all the children present, whichever is less.

(3) Children have storage available for personal belongings.

(4) Comfortable arrangements according to the planned activities are available for the children.

§81.712. Equipment. The center must provide equipment and materials that are appropriate to the developmental needs, individual interests, and ages of the children. There must be a sufficient amount of equipment and materials to avoid excessive competition among the children or long waits for materials.

§81.713. Toilet Facilities

(a) The center must have inside toilets located and equipped so children can use them independently and staff can supervise as needed. Bathroom doors must have no locks within the children's reach. Children must have privacy in the use of the bathroom as needed.

(b) There must be one flush toilet for every 25 children.

(1) Urinals may be counted in the ratio of children to toilets, but they must not exceed 50% of the total number of toilets. Bathrooms which contain urinals must also have flush toilets.

(2) Potty chairs may be used, but they must not be counted in the ratio of children to toilets. They must be sanitized after each use.

(c) There must be one lavatory for every 25 children.

§81.714. Use of Facility. If programs not subject to regulation use the same facilities, the center must not use any space at the same time another program is using that space.

§81.715. Fire.

(a) In case of fire or danger of fire or explosion, staff's first responsibility is to evacuate the children to a designated safe area.

(1) Staff must supervise children until the fire department determines the building is safe to re-enter or until the children are picked up by their families.

(2) A designated staff on duty must contact the fire department in case of fire or danger of fire, explosion, toxic fume, or other chemical release.

(b) The center must have an annual fire inspection by a local or state fire marshal. The center must post the written report of the inspection. It must make any corrections called for in the report. The center must comply with any restrictions imposed by the fire inspector.

(c) The center must have at least one fire extinguisher approved by the fire marshal. The center must mount the extinguisher on the wall by the hanger or bracket provided. The height must not exceed five feet from the top of the cylinder to the floor. The center must make the extinguisher readily available for immediate use by the staff. The director or assigned staff must inspect the fire extinguisher monthly and ensure it is serviced when required. The center must have documentation of the inspections and service.

(d) By January 1, 1986, the center must ensure the building is equipped with smoke detectors installed and maintained according to the manufacturer's instructions and in compliance with requirements of the local fire code. Staff must keep a record of maintenance.

(e) The center must have emergency evacuation/relocation plans posted in each room used by the children. The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level.

(f) The center must have flashlights or other battery-powered lighting available to use in case of electrical failure.

(g) The center must ensure that all children and staff are able to exit safely from the building within three minutes in an emergency.

(1) If a center provides child care on any level above or below the ground floor, the center must obtain the written approval of a fire marshal for use of other levels. If the center cannot obtain the fire marshal's approval, the center must keep children on the ground floor.

(2) A center must have at least two exits to the outside located in distant parts of the building. An exit through a kitchen or other hazardous area cannot be one of the required exits.

(3) If there are any doors opening into a fenced yard, children must be able to open the doors easily from inside the center. The center must not have any locked doors between rooms while children are present.

(4) The center must not have any blocked doors or pathways.

(h) Staff must ensure that heating devices and areas near heat sources are not fire hazards and present no hazard to children.

(1) If the center has gas appliances, staff must ensure that the appliances have metal tubing and connections unless approved in writing by the fire marshal.

(2) Open flame space heaters are prohibited. Space heaters must be enclosed and have the seal of approval of a test laboratory approved by the fire marshal. Staff must safeguard floor and wall furnace grates so that children do not have access to them.

(3) If the center has liquid or gas fuel heaters, the center must properly vent them to the outside. Unvented liquid or gas fuel heaters are prohibited.

(4) If the center uses a fireplace or wood burning stove, the center must properly vent it to the outside. It must install a rigid screen or guard to prevent children from falling into the fire or against the stove.

(i) The center must keep combustible material away from light bulbs and other heat sources.

(j) The center must ensure that gas pipes are tested annually for leaks. A copy of the test report must be posted at the center.

§81.716. Sanitation.

(a) The center must have an annual sanitation inspection with a written report by a local or state sanitation official. Staff must post the report at the center. The center must make any corrections called for in the report and must comply with any restrictions stated in the report.

(b) The center must keep its building, grounds, and equipment cleaned, repaired, and maintained to protect the health of the children.

(c) The center must have adequate light, ventilation, and heat.

(d) The center must have an adequate supply of water that meets the standards of the Texas Department of Health for drinking water. If possible, the source of water must be a public drinking water system.

(e) Staff must ensure that drinking water is always available to children. The center must supply the water in a safe and sanitary manner.

(f) The center must ensure that the temperature of hot water available to children is controlled by a thermostat so the water cannot scald (no higher than 120°F).

(g) The center must have adequate and safe flush toilets and sewage systems. If possible, the center must be connected to a public sewage system. If public sewers are not available, the center must have treatment facilities that meet the standards of the Texas Department of Health and that are approved by the local health authority.

(h) The center must keep all garbage in containers with tight lids away from areas used by children. It must remove garbage from the building daily and from the center at least once a week.

(i) The center must take measures to keep the center free of insects and rodents.

(j) Staff and children must wash their hands with soap and running water after using the toilet and before eating. Staff must wash hands with soap and running water before and after changing a diaper, assisting a child with toileting, before feeding a child or handling food, and after caring for a child with symptoms of a communicable disease.

(k) If children use washcloths or cloth towels, the center must ensure that each child has a clean individual cloth. If paper towels or facial tissues are furnished, the center must provide a clean individual paper towel for each child.

§81.717. Safety.

(a) The center must keep its building, grounds, and equipment repaired and maintained to protect the safety of children.

(1) The center must have child-proof covers or safety outlets for electrical outlets accessible to children younger than five years old.

(2) The center's electric fans and heaters must be mounted out of children's reach or have safeguards that keep children from being injured.

(3) If the center has window air conditioners, they must be installed so children cannot reach working parts.

(4) If 220-volt electrical connections are within the children's reach, the center must cover them with a screen or guard.

(5) The center must equip stairs, porches, and platforms more than two feet above the ground with railings the children can reach.

(6) The center must keep its play area dry and free from sharp objects. The center must keep tanks, ponds, open wells, drainage ditches, sewage pipes, dangerous machinery, and other hazards fenced to keep the children out. The center must not have garbage cans or highly flammable material in the play area. Covered trash cans are permitted.

(7) By January 1, 1986, the center must maintain a resilient surface under and surrounding all:

(A) climbing equipment more than five feet high, and

(B) swings with supports more than five feet above the ground. This surface must be extended to cover the fall zone. The resilient surface must not be installed over asphalt or concrete. (Resilient surfaces include sand, pea gravel, shredded bark, or shredded rubber at least six inches deep. Resilient mats or tiles which meet the National Bureau of Standards test criteria for impact attenuation performance of surfaces installed under playground equipment also comply.)

(b) Indoor and outdoor equipment and supplies used both at and away from the center must be safe for the children.

(1) Outdoor play equipment must be placed away from busy areas in the yard and securely anchored unless portable by design.

(2) The center must not allow toys that explode or that shoot things

(3) The center must not have furnishings, equipment, or toys that have lead painted surfaces or contain toxic material.

(4) The center must ensure that children do not have access to toxic substances indoors and out.

(5) All swing seats must be constructed of durable, lightweight, relatively pliable material, such as rubber or nylon webbing.

(6) All heavy equipment must be installed in a manner to prevent tipping over or collapsing.

(7) The center must not allow children to use:

(A) climbing equipment or swings on concrete or asphalt, or

(B) swings with concrete or asphalt in the fall zone.

(8) The center must ensure that no equipment has openings or angles that could entrap a child's head.

(9) The center must ensure that no pinch, crush, or shear points are on equipment or underneath equipment.

(c) The center must have first aid supplies readily available to staff, in a designated location, and out of the children's reach. The center must post an immediately accessible guide to first aid and emergency care.

§81.718. Health Requirements for Children.

(a) The center must keep current immunization records for each child who has been to the center three or more times. Staff must ensure that each child's immunization record includes the child's birth date, the number of doses and type, and the dates (month, day, year) the child received each immunization. The center's compliance with this rule is measured by one or more of the following for each child:

(1) a written and dated record that the child has been immunized against diphtheria, tetanus, pertussis, polio, measles, mumps, and rubella. There must be:

(A) a record with a rubber stamp or signature of the physician or health personnel, or

(B) a machine or handwritten copy of the immunization record. Staff copying the information must sign the handwritten copies.

(2) a written and dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the diseases in paragraph (1) of this subsection have begun. The immunization cycle must be completed as soon as is medically feasible. The center must have a current immunization record on file.

(3) a certificate signed by a licensed physician stating that the required immunization would be injurious to the health and well-being of the child or a member of the child's family or household.

(4) an affidavit (notarized statement) signed by the parent that the immunization conflicts with his religious beliefs and practices.

(5) a written and dated statement signed by the parent that the child's immunization record is current and is on file at the school or other licensed facility the child attends. The parent must include the name of the facility in the statement.

(d) The center must have a record showing that the child has been tested for tuberculosis if the child has been at the center three or more times and if the local health authorities or the regional office of the Texas Department of Health recommended a test. A dated statement signed by the parent that the child's tuberculosis test record is current and is on file at the school or licensed facility the child attends also complies. The parent must include the name of the facility in the statement.

§81.719. Illness or Injury.

(a) A child who appears ill must not be admitted to the center unless approved in writing by health personnel

(b) The center must handle illness or injury to protect the health of all children in the center.

(1) The center must provide an ill or injured child with a bed, cot, or mat away from the other children. Staff must call the child's parent immediately. The child must be supervised until he leaves the center.

(2) Staff must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, staff must call the physician named

by the parent, take the child to the nearest emergency room or minor emergency clinic, or call for an emergency vehicle

§81 720. Medications.

(a) If a center agrees to administer medications, staff must administer the medication to the child as follows

(1) Prescription medications must be in the original container labeled with the child's name, a date, directions, and the physician's name. Staff administer the medication as stated on the label directions. Staff must not administer medication after the expiration date.

(2) Staff must ensure that nonprescription medication is labeled with the child's name and the date the medication was brought to the center. Nonprescription medication must be in the original container. Staff must administer it according to label directions if approved in writing by health personnel or the child's parent

(3) Staff must document each dose of medication administered showing the child's name; the name of the medicine, date, time, and amount administered; and the name of the staff administering the medicine

(b) Staff must keep medications out of children's reach or in locked storage.

(c) Staff must keep medications requiring refrigeration separate from food.

(d) Staff must return medications to the child's parent at the end of each stay

§81 721. Emergency Phone Numbers.

(a) The center must post the following emergency telephone numbers by a telephone accessible to all staff. This telephone must not be a pay phone

(1) Ambulance service or emergency medical services (EMS)

(2) Police or sheriff's department.

(3) Fire department

(4) Poison control center

(5) Licensing office

(6) Local children's protective services office or child abuse hotline

(7) The center (with address).

(b) The center must keep the following telephone numbers in a place accessible to the telephone and to all staff

(1) Numbers at which parents may be reached

(2) Numbers of the physicians designated by the parents.

(3) Numbers at which on-call staff may be reached

§81.722 Animals.

(a) The center must ensure that animals on the premises have been vaccinated according to a licensed veterinarian's recommendations. Staff must file documentation of vaccinations at the school

(b) Staff must keep the center and play yard free of stray animals. Staff must not allow children to play with stray animals

§81 723 Food Service and Nutrition

(a) The center must ensure that all food and drink served are of safe quality and are stored, prepared, distributed, and served under sanitary and safe conditions.

The center must wash and sanitize food service equipment.

(b) Cleaning supplies must be clearly marked, kept separate from food, and kept inaccessible to children.

(c) Staff must practice good hygiene when handling food. Staff with open or infected wounds must not work in the food preparation area. No one may smoke in any of the food areas

(d) Staff must discard single service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(e) Staff must serve a snack or a meal to each child who stays at the center for four or more consecutive hours. The food may be brought from home or provided by the center

(f) If food or drink a child brings into the home appears unsanitary, unclean, spoiled, or contaminated, staff must not permit the child to consume it. If the child has been in the center four hours, staff must offer additional food to the child

§81 724 Operation

(a) Staff must provide activities for each group according to ages, interests, and abilities of the children. The activities must be appropriate to each child's health, safety, and well-being. Staff must include opportunities for both quiet and active play.

(b) If a child appears tired, staff must give him the opportunity rest. Rest periods must not last longer than two hours. The rest area must be adequately lighted to allow visual supervision at all times.

(c) The center must ensure the children's safety at the center, on field trips and excursions and on any transportation provided by or for the center

(1) Staff supervising children must have emergency medical forms and emergency contact information for each child in the group.

(2) Staff must have a written list of the children in the group and must check roll before, during, and after the trip

(3) Staff must have first aid supplies available on field trips

(4) When children are not at the center and not being transported, the staff-child ratio must be as follows:

Age of Youngest Child in Group	Maximum Number of Children to Be Supervised by One Adult
0-23 months	2
2-3 years	6
4-5 years	8
6 years	15

(d) Swimming and wading activities are not permitted

§81 725 Discipline and Guidance.

(a) The center must ensure that discipline and guidance are consistent, are based on an understanding of individual needs and development, and promote self-discipline and acceptable behavior

(b) There must be no cruel, harsh, or unusual punishment or treatment

(1) Staff must not shake, bite, or hit, or spank children. Staff must not put anything in or on a child's mouth as punishment.

(2) The center may use brief, supervised separation from the group if necessary, but staff must not place children in a locked room or in a dark room with the door closed.

(3) Staff must not humiliate or subject children to abusive or profane language. Staff must not associate punishment with food, naps, or toilet training. Staff must assure that bedwetters are not shamed or punished.

§81.726. Infant Care.

(a) Staff must provide infants with an environment which is safe and physically, mentally, emotionally, and socially stimulating. Staff must care for infants in rooms and outdoor play areas separate from older children and in accord with infant groupings stated in §81.708(a) of this title (relating to Staff-Child Ratio).

(b) Infants who are not yet climbing must have individual cribs with a waterproof mattress covered by a clean crib sheet. Mobile infants may sleep on a low cot or mat.

(c) Staff must talk to, hold, and play with the infants.

(d) Infants, while awake, may remain in their cribs for up to one hour as long as they stay content and responsive.

(e) A staff must always be in the room with the infants.

(f) Staff must properly store feeding bottles. Staff must ensure bottles are clearly marked with the child's name.

(g) The center must ensure that infants up to six months old are held while being bottle fed. Infants over six months old must be held, if needed. Bottles must never be propped. The child or an adult must hold the bottle.

(h) The center must ensure that infants not yet ready for table food are fed an infant formula or diet approved in writing by the child's physician or parent. Staff must obtain written feeding instructions, dated and signed by the parent, and updated as changes are made.

(i) Infants no longer being held for feeding must be fed in a manner that ensures their safety and comfort. If an infant shows evidence of wanting to feed himself, staff must encourage the infant to do so.

(j) Staff must promptly discuss feeding problems with parents.

(k) Staff must promptly change soiled or wet diapers and other clothing in a sanitary and safe manner.

(1) Staff must place the child on a clean, washable surface disinfected after each use. Staff may also use surface with a clean, disposable covering which is changed after each use.

(2) Staff must use individual washcloths and towels or disposable towelettes to thoroughly cleanse and dry the child at each diaper change.

(3) Staff must promptly rinse soiled or wet reusable diapers by the flush toilet method.

(4) Staff must place all used diapers in a moisture proof bag or store them in a covered container which is cleaned daily.

§81.727. Children with Need for Special Care. The center must ensure that children who need special care because of disabling or limiting conditions are given the care qualified psychologists, physicians, or other experts

recommend. The center document the recommendations and their accomplishment.

§81.728. Night Care.

(a) A center offering night care must comply with any applicable fire and safety requirements for this type of care.

(b) The center must have visible exits. This may be provided by exit lights or by lighted exits.

(c) Staff must be awake at all times. Staff must ensure that activities and routines meet the unique needs of children in night care.

(d) Children staying the night must have the opportunity to bathe. If bathtubs or showers are used, staff must supervise preschool-age children. Staff must ensure privacy for school-age children. The center must ensure that tubs or showers are cleaned after each use. Staff must ensure that each child has a fresh washcloth and towel.

§81.729. Transportation.

(a) Effective January 1, 1986, if a drop-in care center provides transportation, each child being transported must ride either in an infant carrier, a child seat, or a seat belt, as appropriate to the child's age and size.

(b) These requirements apply to all transportation including, but not limited to, transportation to and from the center, to and from school, and on field trips.

(c) These requirements apply to any vehicle used by or for the center to provide transportation, regardless of whether owned by the center and regardless of the type of vehicle—automobile, van, school bus, or other. The requirements do not apply when children age five and older are being transported in buses weighing 10,000 pounds or more if seat belts were not installed at the time the bus was manufactured.

(1) Appropriateness is determined as follows:

(A) The center must ensure that an infant who cannot sit up without support is properly restrained in a dynamically crash-tested and federally approved infant carrier designed as a child passenger restraint device. The carrier must be placed in a semi-reclining position, facing the back of the car, with a built-in five-point safety harness to hold the child in. The carrier must be held in the seat by the standard fixed seat belt.

(B) The center must ensure that each child under three years old who can sit alone is properly seated in a child seat that is dynamically crash-tested and federally approved as a child passenger restraint device.

(C) The center must ensure that each child age three and older rides in either a child seat that is dynamically crash-tested and federally approved as a child passenger restraint device or in a seat belt. Only one person may use each seat belt.

(D) A child may ride in a shoulder harness and seat belt if the shoulder harness goes across the child's chest and not across the child's face or neck.

(2) Staff must properly anchor each restraint device to the vehicle seat and use the device according to the manufacturer's specifications.

(3) Staff must ensure that each child transported remains seated and properly restrained by the passenger restraint device appropriate to his age, size, and physical condition while the vehicle is in motion.

(4) If parents provide equipment for the center to use for transporting the child, the equipment must meet the specifications stated in this rule

(b) Effective January 1, 1986, the driver and all adult passengers in a vehicle transporting drop-in care children must be properly restrained by a shoulder harness and/or a seat belt when the vehicle is in motion

(c) The center must load and unload children at the curb side of the vehicle or in a protected parking area or driveway. The center must not allow children to cross a street unsupervised after leaving a vehicle.

(d) The center must keep first aid supplies in all vehicles transporting children

(e) The center must equip all vehicles used for transporting children with a minimum of one 6-BC portable fire extinguisher. The fire extinguishers must be installed in the passenger compartment of the vehicle and must be accessible to the adult occupants.

(f) The center must ensure that children are not transported in the open back of a truck and that children are not transported in vans or station wagons from which the bench seats have been removed

(g) The staff-child ratio for transportation of children must be met

(1) One adult in addition to the driver must be present for each group of four children (or fraction of a group) under two years old.

(2) For children age two or older, the staff-child ratio is established by any of the options outlined in §81.708(a) of this title (relating to Staff-Child Ratio). If there are children under four years old, at least two adults must always be present

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

Abuse—Nonaccidental infliction or threat of infliction of physical, emotional, or mental harm to a child

Activity space—Area or rooms used for children's activity including those separate from a group's classroom

Administrative functions—Functions which involve the management of a drop-in care center such as bookkeeping, enrolling children, answering the telephone, and collecting fees

Admission—The process of entering a child in a center. The date of admission is the first day on which the child is actually present in the center

Adult—A person 18 years old or older

Application—The form the department furnishes to gather information about and to document the intent of the governing body to set up a drop-in care center. The application also includes all material required to be submitted to the department

Attendance—Children actually present in the drop-in care center at any given time. (Not to be confused with enrollment.)

Child—A person who has not reached his 18th birthday

Child development associate credential—A credential which is highly desirable for staff working directly with young children; based on assessed competency in several areas of child care and child development. Child development training is available in the public commu-

nity and junior college system as well as in four year colleges, either in regular child development, vocational programs, or through adult continuing education courses.

Children with need for special care—Children with disabling or limiting conditions which prevent or limit participation in the normal activities of the school and which may require additional supervision. Disabling or limiting conditions include visual impairment or deafness, other physical disabilities, mental retardation, emotional disturbance, or learning disabilities. Consultative services for children with need for special care.

(A) Qualified consultants include psychologists, special education counselors, educational diagnosticians, special education supervisors, teachers certified by the Texas Education Agency to teach mentally retarded or emotionally disturbed children, pediatricians, and MSW social workers skilled in assessing normal and unusual developmental problems in children.

(B) Such consultants may be found in state schools and hospitals, MHMR centers, human development centers, public school special education departments, university psychology or special education departments, and the state listing of certified psychologists

Department—Used in these rules to refer only to the Texas Department of Human Resources

Direct child care—The supervision, guidance, and care of children as compared to food service, janitorial functions, or administrative functions

Director—That person the governing body designates to assume daily on-site responsibility for the operation of a drop-in care center, including maintenance of minimum standards. In multiple centers under a chief administrative officer, the director is the person physically present at each center

Drop-in care—The care, supervision, and guidance of a child or children, unaccompanied by parent, guardian or custodian, in a place other than the child's own home or homes

Drop-in care activities—The planned program provided by a drop-in care center. The daily schedule

Drop-in care area—That area specifically licensed for use by the drop-in care program. This may include a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location. That area, both indoor and outdoor, designated in the plan of operation

Drop-in care center—The entire facility. This term applies to program, buildings, grounds, furnishings, and equipment

Drop-in care location—The street address of the drop-in care center, the lot or lots on which the building or buildings are located

Drop-in care program—Those services and activities which are provided by a drop-in care center. The daily schedule

Facility—Includes people, administration, governing body, activities (on or off the premises), operations, buildings, grounds, equipment, furnishings, and materials

Family day care—Care for one through six children when at least one of the children is not related to the caregiver

First aid supplies—Required supplies include multise adhesive bandages, gauze pads, tweezers, cotton balls, hydrogen peroxide, syrup of ipecac, and a thermometer

Food service—The preparation or serving of meals or snacks

Garbage—Waste food or items which, when deteriorating, cause offensive odors and attract rodents, insects, and the like

Governing body—The entity with ultimate authority and responsibility for the overall operation of the drop-in care center. All governing bodies will be one of the following types:

(A) **Sole proprietorship**—Owned by an individual with the legal right and responsibility to possess, operate, sell, and otherwise deal with the facility. May include a facility owned in common by husband and wife

(B) **Partnership**—A combination by contract of two or more people who use their money, labor, and skill to carry on a continuing business, dividing the profits and sharing the losses in an agreed manner. Includes general and limited partnerships.

(C) **Corporation**—An intangible entity created by individuals to operate for profit but to limit individual liability. Organized according to the Texas Business Corporation Act or similar act of another state as evidenced by its articles of incorporation

(D) **Nonprofit corporation**—Equivalent of "not for profit corporation." None of the income is distributed to members, directors, or officers. Organized under the Texas Non-Profit Corporation Act

(E) **Nonprofit corporation with religious affiliation**—Has nonprofit corporation status and is operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Does not include those whose relationship with a religious organization is only for business, such as those who only lease space

(F) **Association**—A combination of individuals and interests of some kind without Internal Revenue Service tax-exempt status. Not organized under the Texas Business Corporation Act

(G) **Nonprofit association**—A combination of individuals and interests of some kind, synonymous with "society," with operations devoted to charitable, benevolent, religious, patriotic, or educational purposes. Not organized under the Texas Business Corporation Act

(H) **Nonprofit association with religious affiliation**—A combination of individuals and interests of some kind, synonymous with "society," with operations devoted to religious purposes. Not organized under the Texas Business Corporation Act. Operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Does not include those whose relationship with a religious organization is only for business, such as those who only lease space

(I) **State operated**—Operated by, under the direct jurisdiction of, and responsible to an agency of the State of Texas

(J) **Other political subdivision**—Operated by and under the jurisdiction of a county municipality, school district, or other political entity

Group—A specific number of children assigned to specific staff. Each child in any group has the following things in common with every other child in his group:

(A) the same staff responsible for the child's basic needs, and

(B) the same classroom or activity space.

Group child care—Care for seven or more children when at least one of the children is not related to the caregiver.

Handwashing—Rubbing hands together with soap under running water

Health personnel—A licensed physician, a licensed registered nurse, or a person providing preventive, diagnostic, or therapeutic medical care to individuals in the community

Janitorial functions—Those services which involve cleaning and maintenance above that which is required for the continuation of the a drop-in care program, such as cleaning carpets, washing cots, and the like. Sweeping after an activity or mopping up spills may be necessary for continued use of the classroom, but total sweeping, vacuuming, or mopping of a classroom is a janitorial function

License—A complete document issued to the governing body of a center authorizing the licensee to operate at a specified location according to the provisions of the license, the law, and the rules and regulations of the Texas Department of Human Resources.

Neglect—Nonaccidental failure or threatened failure to provide a child with the physical and emotional requirements for life, growth, and development

Night care—Care given to children who are starting or continuing their night sleep or to children who spend the night at the center

Parent—Used in this document to refer to parent, legal guardian, or managing conservator

Plan of operation—The form the department furnishes on which the governing body outlines the plans for operating a drop-in care center.

Probation—A sanction placed on a center instead of revocation. Under probation, the school may remain open and continue to provide day care

Provisional license—A license the department issues to a center whose plans meet the department requirements but which is

(A) not currently operating,

(B) not licensed for the location stated in the application, or

(C) changing ownership.

Sanitary seeping furnishings—Linens which have been laundered since a different person slept on them or laundered after being soiled.

School-age care—Care offered to children between the ages of five before September of that school year and 18

Sexual abuse—Any sexually oriented act or practice involving staff or another adult and a child in care

Single use areas—Include, but are not limited to, bathrooms, hallways, storage rooms, cooking areas of kitchens, and indoor swimming pools

Staff—Any person responsible for working in contact with children whether paid or unpaid. He must meet the qualifications and conditions outlined in these rules.

Supervision—The act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of activity requirements and children's needs, and accountability for their care. This includes staff being near enough to children to intervene when needed

Training—Time spent in workshops; conferences of child care, early childhood, or educational associations; formal schooling; or time with consultants. Training must be in subject areas such as child care, child development, and early childhood education. Training for directors may also be in supervision of staff or program administration.

Trash/litter—Paper products, plastic, cloth, and the like.

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 July 31, 1984

TRD-847683 Marlin W Johnston
Commissioner
Texas Department of Human
Resources

Proposed date of adoption
September 29, 1984

For further information, please call (512) 441-3355,
ext. 2037

Subchapter UUUU. Support Documents 40 TAC §81.9801

The Texas Department of Human Resources proposes amendments to §81.9801, concerning the information in its table of foods to be served to meet nutritional needs in its day care licensing rules. Section 81.9801 adopts by reference the department's table titled "Kinds and Amounts of Foods to Be Served to Meet Nutritional Needs."

The rule is being amended to combine information on kinds and amounts of food that day care facilities must serve to meet nutritional needs. The department has also included additional foods that meet nutritional needs.

Cris Ros-Dukler, assistant commissioner for licensing, 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 Ros-Dukler 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 or administering the rule is the increased safety and protection of children in out-of-home care. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

The department has scheduled public hearings across the state to accept comments on the proposed amendment. At the same time, the department also will be

accepting comments on new standards for day care centers; drop-in care centers, group day homes, kindergartens and nursery schools, and schools grades kindergarten and above. All hearings are being held from 3 to 8 p.m. They are scheduled as follows: August 13, DHR boardroom, Austin, 706 Banister Lane; August 14, Holiday Inn, Room #3, San Antonio, 318 West Durango; August 15, La Quinta Royale, Sala #1, Corpus Christi, 601 North Water Street; August 16, Hilton Hotel, McAllen, Crockett/Bowie Room, 2721 South 10th; August 20, Room 134, University Center Building, Tyler, UT-Tyler, 3900 University Boulevard; August 21, Twilight Ballroom, Student Center, Nacogdoches, Stephen F. Austin State University; August 22, Civic Center, Beaumont, 701 Main Street; August 23, Personnel and Training Building, Houston, Room 6 and Room 8, 1349 East 40th Street; August 28, Community Center, Arlington, 2800 South Center; August 29, DHR training room, Wichita Falls, 600 Scott; August 30, DHR training room, Abilene, 4380 Spindletop; September 4, Lecture Hall on Highlander Drive, Waco, McLennan Community College, 1400 College Drive; September 5, Room 107, Lubbock Civic Center, Lubbock, 1501 Sixth Street, Room 107; September 6, Texas Tech Health Science Center, Amarillo, 1400 Wallace Boulevard; September 11, DHR Regional Headquarters, Midland, large conference room, 2301 North Big Spring; September 12, City Council Chambers, El Paso, second floor, 2 Civic Center Plaza.

Comments may be sent to Cathy Rossberg, administrator, Policy Development Support Division--502, Texas Department of Human Resources 153-B, P O Box 2960, Austin, Texas 78769, within 60 days of publication in this *Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

§81.9801. Kinds and Amounts of Foods to Be Served. The Texas Department of Human Resources adopts by reference the table [tables] titled "**Kinds and Amounts of Foods to Be Served to Meet Nutritional Needs**" ["Kinds of Foods to Be Served to Meet Nutritional Needs" and "Amounts of Foods to Be Served to Meet Nutritional Needs"] as amended in **January 1985**. Copies of the table [these tables] may be obtained from the Texas Department of Human Resources, Licensing Branch, P O Box 2960, Austin, Texas 78769.

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 July 20, 1984

TRD-847662 Marlin W Johnston
Commissioner
Texas Department of Human
Resources

Proposed date of adoption
September 29, 1984

For further information, please call (512) 441-3355,
ext 2037

Chapter 85. General Licensing
Procedures
Subchapter UUUU. Support Documents
40 TAC §85.9801

The Texas Department of Human Resources proposes amendments to §85.9801, concerning immunization requirements, in its general licensing chapter. Section 85.9801 adopts by reference the table titled "Child Care Facility Immunization Requirements" and following "Notes"

The amendments delete obsolete dates and clarify the requirements

Cris Ros-Dukler, assistant commissioner for licensing, 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 Ros-Dukler 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 or administering the rule will be the increased safety and protection of children in out-of-home care. There is no anticipated economic cost to individuals required to comply with the rule as proposed

The department has scheduled public hearings across the state to accept comments on the proposed amendment. At the same time, the department also will be accepting comments on new standards for day care centers, drop-in care centers, group day homes, and kindergartens and nursery schools, and schools grades kindergarten and above. All hearings are being held from 3-8 p.m. They are scheduled as follows: August 13, DHR boardroom, Austin, 706 Banister Lane; August 14, Holiday Inn, Room #3, San Antonio, 318 West Durango; August 15, La Quinta Royale, Sala #1, Corpus Christi, 601 North Water Street; August 16, Hilton Hotel, McAllen, Crockett/Bowie Room, 2721 South 10th; August 20, Room 134, University Center Building, Tyler, University of Texas at Tyler, 3900 University Boulevard; August 21, Twilight Ballroom, Student Center, Nacogdoches, Stephen F. Austin State University; August 22, Civic Center,

Beaumont, 701 Main Street; August 23, Personnel and Training Building, Houston, Room 6 and Room 8, 1349 East 40th Street; August 28, Community Center, Arlington, 2800 South Center; August 29, DHR training room, Wichita Falls, 600 Scott; August 30, DHR training room, Abilene, 4380 Spindletop; September 4, Lecture Hall on Highlander Drive, Waco, McLennan Community College, 1400 College Drive; September 5, Room 107, Lubbock Civic Center, Lubbock, 1501 Sixth Street, Room 107; September 6, Texas Tech Health Science Center, Amarillo, 1400 Wallace Boulevard; September 11, DHR Regional Headquarters, Midland, large conference room, 2301 North Big Spring; September 12, City Council Chambers, El Paso, second floor, 2 Civic Center Plaza.

Comments on the proposal may be sent to Cathy Rossberg, Administrator, Policy Development Support Division—502, Texas Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 60 days of publication in this Register.

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 42, which authorizes the department to administer public assistance and day care licensing programs.

§85.9801. *Child Care Facility Immunization Requirements*. The Texas Department of Human Resources adopts by reference the table titled "Child Care Facility Immunization Requirements" and following "Notes," dated **January 1985** [September 1, 1979]. This document is published by the Texas Department of Health and available from **Policy Development Support Division** [Systems and Procedures], Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769.

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 July 20, 1984

TRD-847663

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Used date of adoption.

September 29, 1984

For further information, please call (512) 441-3355.

10/20/84

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 with the *Register*.

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*. 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.

Withdrawn Rules

TITLE 7. BANKING AND SECURITIES Part VII. State Securities Board Chapter 113. Registration of Securities

7 TAC §113.9

The State Securities Board has withdrawn from consideration for permanent adoption proposed amend-

ments to §113.9, concerning registration of securities. The text of the amended section as proposed appeared in the March 9, 1984, issue of the *Texas Register* (9 TexReg 1411)

Issued in Austin, Texas, on July 24, 1984

TRD-847720 Denise Voigt Crawford
General Counsel
State Securities Board

Filed: July 24, 1984

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

Adopted Rules

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.

TITLE 1. ADMINISTRATION Part IV. Office of the Secretary of State Chapter 91. Texas Register Filing of Documents

1 TAC §91.24

The Office of the Secretary of State adopts amendments to §91.24, without changes to the proposed text published in the May 18, 1984, issue of the *Texas Register* (9 TexReg 2733).

Previously, an agency had to file a withdrawal on the day it was to be effective, it could not specify a later effective date. This made it difficult to withdraw an emergency rule being replaced by an adopted rule, because the agency had to file the withdrawal of the emergency rule on the effective date of the adopted rule.

The amendments allow an agency filing a withdrawal to specify an effective date not to exceed 20 days from filing.

The Texas Department of Health commented in favor of the amendments, however it requested that an agency withdrawing a rule be permitted to give a reason for the withdrawal, because in some instances a reason is necessary or appropriate. The reason for the withdrawal of an emergency rule might be that it is being replaced by an adopted rule prior to the regular expiration date of the emergency rule. However, a reader of the withdrawal notice in the *Register* would not know from reading the notice that an adopted rule is replacing the emergency rule and would have to ob-

tain that information elsewhere in the same or another issue of the *Register*.

The *Register* disagrees with the Texas Department of Health. To include a reason for a withdrawal would create unnecessary paperwork and increase the volume size and printing costs of the *Register*.

The amendments are adopted under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provides the Texas Register, Office of the Secretary of State, with the authority to adopt rules governing the submission of documents for publication.

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 July 23, 1984.

TRD-847690 John W. Fainter, Jr.
Secretary of State

Effective date: August 14, 1984
Proposal publication date: May 18, 1984
For further information, please call (512) 475-7886.



**TITLE 10. COMMUNITY
DEVELOPMENT
Part II. Texas Economic
Development Commission
Chapter 107. Industrial Projects
General Rules and Industrial Revenue
Bond Program**

10 TAC §107.2

The Texas Economic Development Commission adopts amendments to §107.2, with changes to the proposed text published in the April 10, 1984, issue of the *Texas Register* (9 TexReg 2010)

The amendments are adopted to set the amount of the fee for filing a bond application with the commission at \$500, and to establish guidelines that describe the kinds of areas that may be considered to be blighted or economically depressed for purposes of financing commercial projects with bond proceeds pursuant to Texas Civil Statutes, Article 5190 6

The changes include the addition of the terms "development area" and "economically depressed area" to the definition of blighted area in subsection (a)(3)(C), the addition of the phrase "or areas immediately adjacent thereto" to subsection (b)(9)(A), the omission of the phrase "the date of the first publication being not less than 15 days prior to the hearing" in subsection (b)(9)(A)(v)(III), and the addition of item (-c-) to subsection (b)(9)(A)(v)(III), concerning the use of alternative unemployment statistics when unemployment data for a particular geographic area is not published or otherwise reasonably available from the Texas Employment Commission (TEC)

Comments on the amendments were presented to the commission in writing and during a discussion of the amendments at two public meetings held in Ft. Worth, on May 17, and 18, 1984, respectively. A total of four persons commented on the amendments at the public meetings

One commenter suggested that the phrase "areas immediately adjacent to" be added to subsection (b)(9)(A) to make it clear that a project may still be financed with bond proceeds when the project is located within an area found by a city to be immediately adjacent to a designated eligible blighted area. Subsection (b)(9)(A) was changed to comply with the commenter's suggestion

One commenter suggested that the requirement in subsection (b)(9)(A)(v), concerning publication of notice of designation of an eligible blighted area in a newspaper at least 15 days prior to a public hearing, could result in unnecessary delay in the designation process without providing the general public with any additional information or opportunities for objection. The commission agreed with the commenter and omitted the 15-day newspaper publication requirements. Notice of hearing still must be published once a week for two consecutive weeks in a newspaper of general

circulation in the city and posted at the city hall not later than 15 days prior to the hearing date.

One commenter questioned use of the word "actual" in subsection (b)(9)(A)(v)(III)(-a-) with reference to unemployment rates based on data published by the TEC. A change was not considered necessary, since the word "actual" is used to differentiate between "actual" and "seasonally adjusted" unemployment rates published by the TEC

Several comments were received concerning various other provisions of subsection (b)(9)(A)(v)(III). One commenter suggested that the language "and which designation is based in whole or in part on unemployment, or any combination of the foregoing" be omitted from item (-b-) and that a fixed unemployment rate be used in item (-a-) and item (-b-), as opposed to a variable rate. One commenter questioned whether the 9.0% floor on the qualifying rate of unemployment in item (-a-) and item (-b-) was too restrictive, while another commenter suggested elimination of the 9.0% floor, a substitution of "1.20 times" for "1 1/2 times" the state unemployment rate for specified periods, and the addition of the "most recent three-year period for which data has been published by the Texas Employment Commission" to item (-a-) of the referenced subsection. After consideration of each referenced comment, the commission concluded that the unemployment criteria established in subsection (b)(9)(A)(v)(III) constituted a reasonable interpretation of and was consistent with applicable provisions of the Development Corporation Act of 1979, as amended, Texas Civil Statutes, Article 5190 6, and that the suggested changes were not necessary. The commission reached the same conclusion with respect to the suggestion by two commenters that the term "guidelines" be used in various subclauses of §107.2(b)

One commenter suggested the addition of language which would allow a city to use alternative unemployment statistics when unemployment data for a particular geographic area is not published or otherwise reasonably available from the TEC. The commission agreed with the commenter and added item (-c-) to subsection (b)(9)(A)(v)(III)

One commenter suggested substitution of the term "economically depressed" for "blighted" in various subclauses of subsection (b). In response to this comment, the commission changed the definition of "blighted area" in subsection (a)(3)(C) to include the terms "economically depressed area" and "development area," thereby permitting the use of either term in lieu of the term "blighted area"

One commenter suggested substitution of "four" for "two" years in subsection (b)(9)(A)(v) and corresponding language pertaining to eligible blighted areas designated by a city before January 1, 1981. The commission concluded that the provisions of subsection (b)(9)(A)(v), as amended, were reasonable, but did substitute "August 16, 1984" for the phrase "the effective date of this amendment" to reflect a date certain for the purpose of determining the longevity

of existing eligible blighted areas designated under prior rules.

The following individuals, groups, or firms expressed concerns regarding certain subclauses and items in subsection (b) of the rule and offered recommendations for changes: Nash Phillips/Copus, Austin, Vinson and Elkins, Austin, McCall, Parkhurst, & Horton, Dallas; Johnson & Swanson, Dallas, and Hutchison, Price, Boyle, & Brooks, Austin. Changes in the proposed text were made as a result of recommendations made by commenters.

The amendments are adopted under authority of Texas Civil Statutes, Article 5190 6, which provide the commission with the authority to set the amount of the fee for filing a bond application, to adopt guidelines that describe the kinds of areas that may be considered to be blighted or economically depressed for purposes of financing commercial projects with bond proceeds, and to promulgate rules setting forth minimum standards for lease, sale, and loan agreements, and for project eligibility.

§107.2. Industrial Revenue Bond Program.

(a) General.

(1) (No change.)

(2) Filing fee. Each application for approval of an industrial revenue bond financing shall be accompanied by a filing fee in the amount of \$500. This fee is payable to the commission upon the initial filing of such application.

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

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

(C) Blighted area—Those areas and areas immediately adjacent thereto within a city which, by reason of the presence of a substantial number of substandard, slum-deteriorated, or deteriorating structures, or which suffer from a high relative rate of unemployment, or which have been designated and included in tax incremental districts created under Acts of the 66th Legislature, 1979, Texas Civil Statutes, Chapter 695, Article 1066d, or any combination of the foregoing, which the city finds and determines, after a hearing held pursuant to subsection (b)(9) of this section, substantially impair or arrest the sound growth of the city, or constitute an economic or social liability and/or a menace to the public health, safety, or welfare in the present condition and use. Blighted area includes the terms "development area" and "economically distressed area," all of which must comply with the requirements set forth in this subchapter for eligibility as a blighted area.

(D)-(F) (No change.)

(G) Commission—The Texas Economic Development Commission.

(H)-(L) (No change.)

(M) Executive director—The executive director of the commission.

(N)-(X) (No change.)

(4) (No change.)

(b) Application contents.

(1)-(8) (No change.)

(9) Special rules for commercial projects in blighted or economically depressed areas.

(A) Establishment of eligible blighted areas.

Under the Act, the financing of projects for commercial uses is confined to, among others, geographic areas within the corporate limits of a city found by the governing body of such city to be a blighted area or areas immediately adjacent thereto. The provisions of this rule govern the method of establishing blighted areas and set forth the criteria to be used by a city in declaring an area (whether one or more) within its jurisdiction to be a blighted area.

(i) The commission will not approve the designation of any area as a blighted area unless:

(I) the governing body of a city shall first notify the commission of its intention to hold a public hearing under the Act and these rules for the purpose of establishing one or more eligible blighted areas. The notice to the commission shall be given in writing not less than 15 days prior to the date of the public hearing; and

(II) notice of such hearing is given to the public by publishing once a week for two consecutive weeks in a newspaper of general circulation in the city, and posting a copy of the same at the city hall not later than 15 days prior to the date thereof. Such notice shall contain a description of the area or areas proposed by the city to be designated as eligible blighted areas, and the date, time, and location of such hearing.

(ii) The commission may refuse to approve all or any part of an area designated by a city as an eligible blighted area if the governing body of such city does not find that the designated area (whether one or more) is in a tax incremental district established by the city pursuant to and in accordance with the provisions of Texas Civil Statutes, Article 1066d, or contains a substantial number of substandard, slum, deteriorated, or deteriorating structures, or suffers from a high relative rate of unemployment, or any combination of the foregoing. If the area or areas proposed to be designated as eligible blighted areas are not located in a tax incremental district as provided in Texas Civil Statutes, Article 1066d, the determination of the existence of either a substantial number of slum, deteriorated, or deteriorating structures or a high relative rate of unemployment shall be in accordance with the following criteria:

(I) Substandard structures. A geographic area constituting all or less than all of the geographic area within the corporate limits of a city may be designated as an eligible blighted area if:

(-a-) the area is designated as a reinvestment zone pursuant to Texas Civil Statutes, Article 1066e, or Texas Civil Statutes, Article 1066f;

(-b-) the area is designated as an enterprise zone by the city and the state Enterprise Zone Board as provided in House Bill 1125, 68th Legislature, 1983, and such designation is based in whole or in part on substandard structures; or

(-c-) twenty-five percent or more of the structures in such area are found by the governing body of a city to constitute substandard, slum, deteriorated, or deteriorating structures as defined by local law. If local law does not define what constitutes a substandard, slum, deteriorated, or deteriorating structure, the governing body of a city may consider as substandard a structure which:

- (-1-) is abandoned;
- (-2-) does not have plumbing;
- (-3-) has been condemned or cited for building or fire code violations by appropriate city authority;
- (-4-) is in an inadequate state of repair under applicable public health, safety, fire, or building codes;
- (-5-) is the subject of a tax or special assessment delinquency stated as a percentage of total taxes assessed, which exceeds the fair market value of the land involved and the improvements thereon; or
- (-6-) is functionally or economically obsolete as determined by a qualified appraiser.

(II) Unemployment.

(-a-) A geographic area constituting all of the geographic area within the corporate limits of a city may be designated as an eligible blighted area if the governing body of the city finds that the city's actual civilian labor force unemployment rate for the most recent month for which data has been published by the Texas Employment Commission is equal to or in excess of one and one-half times the actual state unemployment rate for the same month, or the city's actual civilian labor force unemployment rate for the most recent calendar quarter or calendar year for which data has been published by the Texas Employment Commission is equal to or in excess of one and one-half times the average actual state unemployment rate for the same calendar quarter or calendar year, provided that in no event shall the resulting product be less than 9.0%.

(-b-) A geographic area constituting less than all of the geographic area within the corporate limits of a city may be designated as an eligible blighted area if the governing body of the city finds that the percentage of unemployment of the civilian labor force residing in such area is equal to or in excess of the percentage of unemployment which would otherwise justify a designation of the entire corporate limits of the city as a blighted area as provided in item (-a-) of this subclause, or that such area has been designated by the city as an enterprise zone and approved by the state Enterprise Zone Board as provided in House Bill 1125, 68th Legislature, 1983, or that such area constitutes all or part of an area designated by any state or federal agency as an area of economic distress, blighted area, targeted area, or other similar designation, and which designation is based in whole or in part on unemployment, or any combination of the foregoing.

(-c-) With respect to any area for which the unemployment data referred to in item (-a-) and item (-b-) of this subclause is not published or otherwise reasonably available from the Texas Employment Commission, a city may substitute alternative unemployment statistics upon a representation by the city that the substituted data is reasonably accurate and verifiable and is available for inspection by the commission.

(iii) If the governing body of a city shall conclude to request the commission to approve projects for commercial uses, it shall adopt a resolution, citing the Act and this chapter, and further containing:

- (I) (No change.)

(II) a statement specifying the particular provision(s) of the Act and these rules relied upon by the governing body in designating each area (whether one or more) as an eligible blighted area;

(III) detailed findings of the governing body of the city regarding, as applicable, the number and percentage of substandard, slum, deteriorated, or deteriorating structures in the designated area, or the number and percentage of unemployed persons in the civilian labor force residing in the designated area, together with a description of the overall objectives of the city for redevelopment and recovery of the designated area;

(IV) a finding and representation to the commission that the availability of financing of projects for commercial uses under the Act will contribute significantly to the alleviation of the blighted conditions found to exist in the designated area or areas;

(V) a description of the type of projects for commercial uses desired and authorized by the city to enhance its redevelopment efforts in the eligible blighted area together with a description of any exclusions or limitations by type or amount of commercial uses which the city would consider detrimental to its efforts to redevelop the area designated;

(VI) a representation on the part of the governing body of the city that it will review all project descriptions for approval of specific projects for commercial uses in order to determine whether such projects are consistent with the city's objectives for redevelopment of the eligible blighted area; and

(VII) based upon the city's best estimates at the time of adoption of the resolution, a description of proposed public improvements, if any, to be made in the eligible blighted area, the estimated commencement date for such public improvements, the approximate schedule for such improvements, and the sources of funds the city will use for such purposes.

(iv) Unless the city shall be notified by the commission to the contrary in writing within 30 days from the date of receipt of such resolution, the eligible blighted area described in such resolution shall be deemed accepted by the commission. After final acceptance of a resolution under this provision, the commission will approve projects for commercial uses in and adjacent to the eligible blighted area only after the applicant demonstrates to the satisfaction of the commission that:

- (I) (No change.)

(II) the city, after posting notice and holding public hearing, has approved the project and has made the determinations and findings required by this chapter;

- (III) (No change.)

(v) The designation of an eligible blighted area under this section shall continue for a period ending on the date of the earlier of written notice to the commission by the governing body of the city of the termination of such designation, or two years from the effective date of such designation, notice of which is given in writing to the commission by the city. All eligible blighted areas designated by the governing body of a city and not disapproved by the commission prior to August 16, 1984, shall be deemed as having been created on the next occurring annual anniversary date of such previous designation for purposes of this rule. If a designation is termi-

nated or expires under this provision, the city may revive the designation, in whole or in part, by following the procedures prescribed in this section for the original designation; provided that the termination or expiration of the designation will not affect or impair the ability of a corporation to issue bonds for any project located or to be located in such area for which a corporation has adopted an inducement resolution or taken other similar official action with respect to the project (whether one or more) prior to termination or expiration of the eligible blighted area designation.

- (vi) (No change.)
- (B) (No change.)
- (10)-(12) (No change.)
- (c) (No change.)

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

Issued in Austin, Texas, on July 24, 1984

TRD-847732 Kent Yeates
 General Counsel
 Texas Economic Development
 Commission

Effective date: August 16, 1984
Proposal publication date: April 10, 1984
For further information, please call (512) 472-5059.

TITLE 19. EDUCATION

Part I. Coordinating Board, Texas College and University System

Chapter 17. Campus Planning and Physical Facilities Development

Subchapter B. Criteria for Approval of New Construction and Major Repair and Rehabilitation

19 TAC §17.30

The Coordinating Board, Texas College and University System adopts amendments to §17.30, without changes to the proposed text published in the May 25, 1984, issue of the *Texas Register* (9 TexReg 2852).

The amended section clarifies for the institutions the function of the special emergency committee. The amendments change the composition of the special committee, clarify certain provisions in the section, and reinforce a provision that the special committee may either refuse to consider a request, approve it, disapprove it, or refer it to the full board.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §61.058, which gives the Coordinating Board, Texas College and University System, the authority to establish rules and regulations for the ap-

proval of new construction and major repair and rehabilitation projects.

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 July 23, 1984.

TRD-847702 James McWhorter
 Assistant Commissioner for
 Administration
 Coordinating Board, Texas
 College and University System

Effective date: August 14, 1984
Proposal publication date: May 25, 1984
For further information, please call (512) 475-2033.

Subchapter B. Criteria for Approval of New Construction and Major Repair and Rehabilitation

19 TAC §17.31

The Coordinating Board, Texas College and University System adopts new §17.31, without changes to the proposed text published in the June 8, 1984, issue of the *Texas Register* (9 TexReg 3092).

These construction cost reviews provide the coordinating board with the expert advice of qualified engineers and architects in evaluating costs and assuring the board that projects do not involve elaborate or extravagant design or materials.

The authority of the commissioner to enter into an interagency contract with the State Purchasing and General Services Commission to evaluate construction costs is set out in a separate section rather than appearing only as an option of the special committee.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §61.058, which gives the Coordinating Board, Texas College and University System authority to establish rules and regulations for the approval of new construction and major repair and rehabilitation projects.

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 July 23, 1984.

TRD-847701 James McWhorter
 Assistant Commissioner for
 Administration
 Coordinating Board, Texas
 College and University System

Effective date: August 14, 1984
Proposal publication date: June 8, 1984
For further information, please call (512) 475-2033.

**Part II. Texas Education Agency
Chapter 157. Hearings and Appeals
Subchapter A. Hearings and Appeals
Generally**

19 TAC §157.1, §157.7

The Texas Education Agency adopts amendments to §157.1, with changes to the proposed text published in the May 4, 1984, issue of the *Texas Register* (9 TexReg 2421). In §157.1(b)(6), the words "any division of" were added before "the State Department of Education" for clarity. Section 157.7 is adopted without changes and will not be republished.

The amendments to §157.1 clarify that the rules in Chapter 157 apply not only to cases which come to the commissioner of education as appeals from actions or decisions of a local school district board of trustees but also proceedings involving enforcement actions undertaken by the State Department of Education. Proceedings concerning recommendations made to the commissioner by the Teachers' Professional Practices Commission are clearly distinguished from other proceedings concerning suspension or revocation of a certificate or permit. The amendment to §157.7 strengthens the commissioner's ability to enforce the rules concerning conduct and decorum in a hearing.

All cases of the types listed in §157.1 will be heard by the commissioner of education in accordance with the rules in Chapter 157.

No comments were received regarding adoption of the amendments.

These amendments are adopted under the Texas Education Code, §11.13, which provides that persons having any matter of dispute arising under the school laws of Texas or persons aggrieved by the school laws of Texas or by actions of a local board of education may appeal to the commissioner of education and then to the State Board of Education; the Texas Education Code, §11.25(b), which authorizes the State Board of Education to pass on appeals from decisions of the commissioner of education; Texas Civil Statutes, Article 6252-13a, *passim*, which sets out minimum standards for agency practice in contested cases, and especially §4(a)(1), which requires each agency to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available; and the Texas Education Code, §13.046, which authorizes the state commissioner of education to reprimand a teacher, or to suspend or cancel a teacher's certificate.

§157.1. Nature of Hearings and Appeals.

(a) Persons having any matter of dispute among them arising under the school laws of Texas or any person aggrieved by the school laws of Texas or by actions or decisions of any board of trustees or board of education may appeal in writing to the commissioner of education who, after due notice to the parties interested, shall hold a hearing and render a decision without cost to the parties involved, save and except where provided for in

this chapter, but nothing contained in this chapter shall deprive any party of any legal remedy.

(b) This chapter shall govern the proceedings in all contested cases before the commissioner, including, but not limited to, the following:

(1) appeals from actions or decisions by a district board of trustees or board of education;

(2) appeals from actions or decisions by a county superintendent;

(3) proceedings concerning recommendations made to the commissioner by the Teachers' Professional Practices Commission;

(4) any other proceedings concerning the suspension, revocation, or cancellation of a certificate or permit which would entitle a person to hold a position as an educator;

(5) appeals brought pursuant to the Texas Proprietary School Act;

(6) proceedings involving enforcement actions against a school district or other entity by any division of the State Department of Education where the opportunity for a full evidentiary hearing must be afforded.

(c) (No change.)

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

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

TRD-847729

Raymon L. Bynum
Commissioner of Education

Effective date: August 14, 1984

Proposal publication date: May 4, 1984

For further information, please call (512) 475-7077.

**Subchapter B. Hearings of Appeals to
the Commissioner**

19 TAC §§157.43, 157.65, 157.66

The Texas Education Agency adopts amendments to §157.43, and new §157.65, and §157.66, with changes to the proposed text published in the May 4, 1984, issue of the *Texas Register* (9 TexReg 2422).

In §157.43(a), a list of various bodies or entities whose actions may be appealed has been replaced with a reference to §157.1(b), where a similar list already appears. In §157.43(b), the words "directly involving the Central Education Agency" have been changed to "to which the Central Education Agency is a party" for greater precision.

In §157.65, a new subsection (c) has been added to clarify procedures for serving copies of findings and recommendations of the Teachers' Professional Practices Commission (TPPC) on all parties, including provisions for responses. Subsequent subsections have been relettered. In §157.65(d), the word "recommendations" has been changed to "recommendation" in the first sentence. Similar changes have been made in (e) and (f). Subsection (f) has been rewritten, in response to public comment, to clarify that the TPPC

has the authority to make its own rules of procedure. The commission is not required to hold hearings in accordance with the Texas rules of evidence; however, in cases where the commission chooses not to so proceed, the hearing before the commissioner of education must be *de novo* and cannot be based on the record of the hearing before the TPPC. In subsection (i), in the first sentence, the words "grounds for review" have been changed to "grounds for suspension or cancellation of a certificate or permit" for clarity. The words "for review" are deleted from the second sentence. In subsection (j), the title in the cross-reference to § 157.66 has been corrected.

In § 157.66, the title of the rule has been revised to clarify that the commissioner of education remains empowered to set for hearing a case in which the TPPC has recommended dismissal. The wording in subsection (a) has been similarly clarified. In subsection (b), the word "the" has been added in the phrase "the division "

The amendments and new sections streamline existing hearing procedures generally and more clearly explain the specific procedures to be used in any complaint concerning suspension or revocation of teaching certificate.

In all cases covered by § 157.43, when a decision is announced in the presence of the petitioner or petitioner's counsel at a hearing of record, the announced decision shall constitute communication to the petitioner.

Section 157.65 concerns recommendations to the commissioner of education by the TPPC. The commission has the authority to set its own rules of procedure for hearings on complaints brought before the commission. The findings and recommendations of the commission must be received by the commissioner of education in final form no later than six months after the commission has accepted jurisdiction. If the commission has conducted its hearing with the advice of an attorney assigned by the commissioner and in accordance with the Texas rules of evidence, the record of the hearing may be considered by the commissioner. If the commission has not so proceeded, the hearing before the commissioner must be *de novo*. The rules provide for intervention in proceedings by the Division of Teacher Certification (DTC) of the Texas Education Agency.

Section 157.66 provides that a complaint may be filed at any time by a school district or by the agency's DTC, recommending that a teacher certificate be suspended or revoked and giving reasons for the recommendation. This section also provides for intervention by the DTC of the agency. The burden of proof in such cases will be on the petitioner or the DTC as the petitioner/intervenor.

Public comment on the proposed rules was received from Kathryn E. White, chairman of the TPPC. Ms. White commented that proposed new § 157.65(b) requires the findings and recommendations of the commission to be presented to the commissioner of education within six months after the commission has

accepted jurisdiction. Section 157.65(c) requires that the findings and recommendations be filed in the record of hearing within 10 days of notification by the commissioner that the complaint has been set for a hearing by the commissioner. She expressed concern that in both cases the time limit is not found in the statutes which created the TPPC, and the time limit is an infringement on the right of the commission to make its own rules of procedure.

The TPPC hears complaints from certified professional educators concerning violations on the part of other certified professionals of the code of ethics and standard practices for educators. After hearing, the TPPC recommends to the commissioner of education either that the complaint be dismissed or that it be heard by the commissioner. After hearing by the commissioner, an educator complained against has the right of further appeal to the State Board of Education. This is a lengthy procedure at best. The complaints brought before the TPPC can be very serious ones, and it is within the authority of the commissioner of education to establish a reasonable time within which recommendations to the commissioner concerning such complaints must be made. The rule does not affect the internal workings of the commission, but the communication of recommendations from the commission to the commissioner. Complaints against professional educators need to be resolved as expeditiously as possible. If the complaint is a valid one, and one for which a teaching certificate should be revoked, the unfit teacher should not be allowed to continue in the classroom because of the slowness of administrative procedures. Where the complaint is without merit, any question which has been raised about a teacher's fitness should be put to rest as quickly as possible. Six months is not an unreasonable time for the first stage of what can be a three-stage administrative hearing process.

Ms. White expressed concern that the language in § 157.65(e), concerning the use of the Texas rules of evidence, leaves the impression that the commission must conduct its hearings in accordance with those rules and that this was not the intent when the commission was established to allow the teaching profession to be self-regulating.

The rule does not require the TPPC to provide hearings in accordance with the Administrative Procedure and Texas Register Act, nor does it require the use of the Texas rules of evidence in hearings before the commission. It does provide that the transcript and evidence from a hearing before the commission will be considered by the commissioner when the Texas rules of evidence were used and when the commission had the assistance of a staff attorney in conducting the hearing. Where these things did not occur, the hearing before the commissioner must be *de novo*, with witnesses recalled and evidence reintroduced in accordance with the Texas rules of evidence. The production of a usable record in hearings before the commission could result in a substantial saving of both time and money for educators and school districts involved in proceedings before the commission, as well

as the agency. However, as Ms. White pointed out, this is a decision for the commission, and this is not required by the rule. Section 157.65(f), as adopted, has been rewritten to clarify that the TPPC may set its own rules of procedure.

These amendments are adopted under the Texas Education Code, § 11.13, which provides that persons having any matter of dispute arising under the school laws of Texas or persons aggrieved by the school laws of Texas or by actions of a local board of education may appeal to the commissioner of education and then to the State Board of Education, the Texas Education Code, § 11.25(b), which authorizes the State Board of Education to pass on appeals from decisions of the commissioner of education; Texas Civil Statutes, Article 6252-13a, *passim*, which sets out minimum standards for agency practice in contested cases, and especially § 4(a)(1), which requires each agency to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available; and the Texas Education Code, § 13.046, which authorizes the state commissioner of education to reprimand a teacher, or to suspend or cancel a teacher's certificate

§157.43. Notice of Appeal.

(a) Where a case involves an appeal from an action or decision by any of the entities listed in §157.1(b) of this title (relating to Nature of Hearings and Appeals), within 30 days after the decision, ruling, or failure to act complained of is communicated to the party making the appeal, notice of appeal shall be sent to the commissioner and to the entity rendering the decision or ruling or failing to act. In all cases (including appeals brought pursuant to the Term Contract Nonrenewal Act), when a decision is announced in the presence of the petitioner or the petitioner's counsel at a hearing of record, the announced decision shall constitute communication to the petitioner.

(b) This section is inapplicable to proceedings concerning the suspension or cancellation of a certificate or permit or to any other proceeding to which the Central Education Agency is a party

§157.65. Proceedings Concerning Recommendations Made to the Commissioner by the Teachers' Professional Practices Commission.

(a) Proceedings concerning recommendations made by the Teachers' Professional Practices Commission (TPPC) to the commissioner shall be governed by the rules contained in this chapter and the Texas Education Code, §§13.213-13.215.

(b) Where the TPPC has made findings and recommendations on any complaint concerning a member of the teaching profession, the commissioner of education may dismiss the complaint or set the matter for hearing. The findings and recommendations shall be received by the commissioner in final form no more than six months after the TPPC accepts jurisdiction.

(c) After findings and recommendations are made by the TPPC, a copy of the findings and recommendations shall be served on all parties to the proceeding by the TPPC within 10 days of entry of the findings and recommendations. All parties shall be entitled to respond

to the findings of fact and recommendations of the TPPC. All responses shall be in writing, and filed before the TPPC within 30 days of receipt by the party of the recommendations and findings. Any responses so filed shall be made a part of the record submitted to the commissioner of education.

(d) Where the commissioner elects to proceed based on the recommendation of the TPPC, the commissioner shall notify the holder of the certificate or permit and the employing district. The findings made by the TPPC shall serve as the petition for review, and shall be filed in the record of hearing within 10 days of notification by the commissioner that the complaint has been set for a hearing.

(e) Where the commissioner elects to proceed based on the recommendation of the TPPC, the commissioner shall arrange for the appointment of counsel to represent the TPPC.

(f) The TPPC has the authority to determine its own rules of procedure. In any case where the commission elects to conduct its hearing in accordance with the Texas rules of evidence, with the advice of an attorney assigned by the commissioner of education to assist the commission, the record of the commission's hearing shall be admissible in the hearing before the commissioner of education, subject to specific objections. If the commission does not elect to so proceed, the hearing before the commissioner of education shall be strictly *de novo*.

(g) The commissioner shall have the authority to narrow the grounds for review at the time the commissioner decides to set the complaint for hearing.

(h) The Division of Teacher Certification (DTC) may intervene at any time in proceedings governed by this section.

(i) Where the DTC intervenes, the division may request leave of the commissioner to enlarge the grounds for suspension or cancellation of a certificate or permit by way of a supplemental petition. Any supplemental petition requesting that the grounds be enlarged shall be filed within 30 days from the date on which leave to intervene is granted.

(j) In cases where the TPPC has recommended dismissal of the complaint, the commissioner of education remains empowered to set the matter for hearing and disposition by the commissioner of education under the procedures stated in §157.66 of this title (relating to Proceedings Concerning the Suspension or Cancellation of a Certificate or Permit Other Than Proceedings Brought to the Commissioner by the Teachers' Professional Practices Commission).

§157.66. Proceedings Concerning the Suspension or Cancellation of a Certificate or Permit Other Than Proceedings Brought to the Commissioner by the Teachers' Professional Practices Commission.

(a) This section shall apply to all proceedings concerning the suspension or cancellation of any certificate or permit issued by the commissioner of education other than those proceedings concerning recommendations brought to the commissioner by the Teachers' Professional Practices Commission (TPPC). To the extent that this section conflicts with any other section governing proceedings before the commissioner, the provisions of this section shall prevail.

(b) A complaint may be filed at any time by a school district or the Division of Teacher Certification (DTC) of the State Department of Education, as petitioner, requesting the commissioner to suspend or revoke a certificate or permit issued by the agency. Any such complaint must clearly set forth the facts which would justify the taking of such action. This complaint shall constitute and its contents be subject to the rules governing petitions for review.

(c) The respondent shall file an answer which complies with §157.45 of this title (relating to Answers). If the respondent fails to submit a timely answer, the commissioner may consider the allegations in the complaint to be true and may take whatever action the commissioner deems appropriate.

(d) The DTC of the State Department of Education may intervene in any action brought pursuant to this section in behalf of either the petitioner or the respondent. If a division intervenes on behalf of the petitioner, the petitioner may be dismissed at the request of any party if it appears that no substantial interest will be served by petitioner's continued participation in the proceedings. Such intervention shall be effected by the filing of a petition in intervention, the contents of which shall be subject to the rules governing petitions for review.

(e) Upon receipt of the respondent's answer, the commissioner shall schedule a hearing at which all parties shall have the opportunity to present evidence and argument concerning the merits of the complaint.

(f) The burden of proof at any such hearing will be on the petitioner or petitioner/intervenor to prove its allegations by a preponderance of the evidence.

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 July 24, 1984

TRD-847730 Raymon L. Bynum
Commissioner of Education

Effective date: August 14, 1984
Proposal publication date: May 4, 1984
For further information, please call (512) 475-7077.

TITLE 22. EXAMINING BOARDS

Part XXI. Board of Vocational Nurse Examiners

Chapter 231. Administration Disciplinary Action

22 TAC §231.81, §231.90

The Board of Vocational Nurse Examiners adopts amendments to §231.81 and §231.90, without changes to the proposed text published in the June 22, 1984, issue of the *Texas Register* (9 TexReg 3497).

The amendments describe the action that can be taken against persons with criminal convictions and the ap-

peal process. It also allows individual consideration of each case.

Comments were received from Knapp Memorial Methodist Hospital, Weslaco, and McKenna Memorial Hospital, New Braunfels. Both comments were in support of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purpose of the law.

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 July 23, 1984.

TRD-847739 Joyce A. Hammer
Executive Director
Board of Vocational Nurse
Examiners

Effective date: August 15, 1984
Proposal publication date: June 22, 1984
For further information, please call (512) 835-2071.

TITLE 25. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Health

Chapter 97. Communicable Diseases Control of Communicable Diseases

The Texas Department of Health (DOH) adopts new §97.10, concerning the list of quarantinable diseases, with changes to the proposed text published in the May 22, 1984, issue of the *Texas Register* (9 TexReg 2815). Amendments to §97.4, concerning the list of reportable diseases, are adopted without changes and will not be republished.

The public benefit anticipated is an updated list of communicable diseases by adding diseases cited in the recently revised U. S. Foreign Quarantine Regulations, and other diseases of public concern, and deletion of diseases for which reporting no longer serves a useful function in protecting the public health or which may be consolidated with other listed diseases; and a list of those communicable diseases that present a threat to the public health if not immediately controlled.

The amendments to §97.4 update the list of reportable diseases by adding and deleting diseases. New §97.10 lists those diseases which present a threat to the public health if not immediately controlled.

One commenter recommended that the laws mentioned in §97.10 be given their statutory citation for clarification purposes.

The department agrees and has changed §97.10 accordingly.

One individual commented in favor of the rule but had a recommended change. No groups or associations commented on the rules.

25 TAC §97.4

The amendments are adopted under the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, §2.02, which authorizes the Texas Board of Health to adopt rules to implement the Act.

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

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

TRD-847695 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: August 14, 1984
Proposal publication date: May 22, 1984
For further information, please call (512) 458-7455.

Chapter 157. Emergency Medical Care

Emergency Medical Services Systems

25 TAC §157.43

The Texas Department of Health (DOH) adopts an amendment to §157.43, concerning Texas Department of Health Emergency Medical Services (EMS) Systems guidelines, without changes to the proposed text published in the April 24, 1984, issue of the *Texas Register* (9 TexReg 2294).

The amendment allows reference to §1202 for a continuation of Regional EMS Advisory Council activities. The amended section assures continuation of delivery of improved EMS systems.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4447o, §2.03, which provide the Texas Board of Health with the authority to adopt rules covering EMS delivery areas.

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 July 24, 1984

TRD-847697 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: August 14, 1984
Proposal publication date: April 24, 1984
For further information, please call (512) 458-1393.

25 TAC §97.10

The new section is adopted under the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, §2.02, which authorizes the Texas Board of Health to adopt rules to implement the Act.

§97.10. *List of Quarantinable Diseases.* The following communicable diseases present a threat to the public health if not immediately controlled and persons infected with them may be subjected to quarantine in accordance with The Texas Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, Sec. 4.02; The Tuberculosis Code, Texas Civil Statutes, Article 4477-11; or The Venereal Disease Act, Texas Civil Statutes, Article 4445d: cholera, diphtheria, gonorrhoea, plague, syphilis, tuberculosis, viral hemorrhagic fever (any etiology), and yellow fever.

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 July 24, 1984.

TRD-847696 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: August 14, 1984
Proposal publication date: May 22, 1984
For further information, please call (512) 458-7455.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 335. Industrial Solid Waste Subchapter V. Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities

31 TAC §335.452

The Texas Department of Water Resources adopts an amendment to §335.452, without changes to the proposed text published in the March 16, 1984, issue of the *Texas Register* (9 TexReg 1516).

The adoption deletes 40 Code of Federal Regulations §264.18(b) from those provisions of Title 40, Part 264, which are incorporated by reference into §335.452 as general facility standards. The Code of Federal Regulations, Title 40, §264.18(b), would, however, be retained as a floodplain standard for hazardous waste management facilities which would not be subject to the requirements of §§335.501-335.505.

Section 335.452 establishes consistency with new §335.501 of this title, relating to location standards for hazardous waste storage, processing, or disposal—purpose, scope and applicability; §335.502 of this title, relating to location standards for hazardous waste storage, processing, or disposal—definitions; §335.503 of this title, relating to location standards for hazardous waste storage, processing, or disposal—site selection to protect groundwater or surface water; §335.504 of this title, relating to location standards for hazardous waste storage, processing, or disposal—unsuitable site characteristics; and §335.505, relating to location standards for hazardous waste storage, processing, or disposal—prohibition of permit issuance.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Water Code, §5.131 and §5.132, which provides the Texas Water Development Board with the authority to make any rules necessary to carry out the powers and duties under the provisions of the Code and other laws of the state and to establish and approve all general policy of the Texas Department of Water Resources. These amendments are adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the department to adopt and promulgate rules consistent with the general intent and purposes of the Act and establish minimum standards of operation for all aspects of the management and control of industrial solid waste. The requirement of §4(c) that the department consult with the State Soil and Water Conservation Board and the Bureau of Economic Geology of the University of Texas at Austin has been fulfilled. Under the Solid Waste Disposal Act, §3(b), the Texas Department of Water Resources is designated as the state solid waste agency with respect to the management of industrial solid waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under the Act and other existing legislation. Section 3(b) grants to the department the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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 July 23, 1984.

TRD-847870 Susan Plattman
General Counsel
Texas Department of Water
Resources

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For further information, please call (512) 475-7845.



Subchapter W. Location Standards for Hazardous Waste Storage, Processing, or Disposal

31 TAC §§335.501-335.505

The Texas Department of Water Resources (TDWR) adopts new §§335.501, 335.502, 335.504, and 335.505, establishing location standards for hazardous waste storage, processing, or disposal, with changes to the proposed text published in the March 16, 1984, issue of the *Texas Register* (9 TexReg 1517). Section 335.503 is adopted without changes and will not be republished.

The new sections are the result of House Bill 487, effective September 1, 1983, passed in the last regular session of the legislature, which amended the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c). House Bill 487, as finally passed and signed by the governor, stipulated that each affected state agency shall adopt rules that condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater; define the characteristics that make an area unsuitable for a hazardous waste management facility, including, but not limited to, consideration of flood hazards, discharge from or recharge to a groundwater aquifer, or soil conditions; and prohibit issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the agency unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics.

The TDWR administers the industrial hazardous waste management program under the authority of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7. This program provides regulatory control for the generation, handling, transportation, storage, and disposal of hazardous waste from "cradle to grave." In 1981 and 1982, the TDWR adopted permitting

standards for the design, construction, operation, and maintenance of hazardous waste management facilities. The department has been authorized by the U.S. Environmental Protection Agency (EPA) to implement its hazardous waste program in lieu of the federal program under the Resource Conservation and Recovery Act (RCRA), 42 United States Code §6501, *et seq.* Pursuant to this authority, the department has begun the task of permitting existing and new hazardous waste management facilities.

All federal site selection standards promulgated by the EPA pursuant to the RCRA have previously been adopted by the department. In 1983, the Texas Legislature passed House Bill 487, which amended the Texas Solid Waste Disposal Act to require the state to establish its own minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These rules were written pursuant to that authority, and they apply to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities.

A new hazardous waste management facility is defined in §335.502 as any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility. Thus, the key for determining the applicability of these rules is understanding the definition of existing hazardous waste management facility, which is also found in §335.502.

Existing hazardous waste management facilities fall into one of three distinct categories. The first of these categories includes facilities already authorized by a solid waste permit.

The second category of hazardous waste management facilities to be considered existing, for the purpose of these rules, includes those facilities with applications pending with the TDWR, which were submitted pursuant to §335.2(c) and §335.43(b), including any revisions made in accordance with §341.185. This means that any facility which had commenced on-site storage, processing, or disposal of a hazardous waste on or before November 19, 1980, and for which a hazardous waste permit application had been filed with the department on or before November 19, 1980, in accordance with the rules and regulations of the department, and which application has not been denied by the Texas Water Commission, is considered to be an existing facility for the purpose of these rules.

The third category of hazardous waste management facilities to be considered existing, for the purpose of these rules, includes those facilities for which there are applications pending with the TDWR which were submitted pursuant to §335.2(a) and in accordance with Chapter 341, relating to consolidated permits, which have been declared to be administratively complete pursuant to §357.3, relating to permit applications, prior to September 1, 1984, the effective date of these rules.

These rules are also applicable to areal expansions of existing hazardous waste management facilities. An

areal expansion of an existing facility is defined in §335.502 as the enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility. Thus, these rules will not apply to existing on-site facility components which expand in area until after a permit has been issued for the facility.

Any hazardous waste management facility not considered to be existing under these guidelines is subject to the requirements of these proposed rules. It should be remembered that existing facility components are presently, and will continue to be, subject to review for site suitability pursuant to §335.479. While these proposed rules do not apply to the review of existing facility site suitability, they will by virtue of their specificity, clarify to some degree the areas of concern which must be considered under §335.479.

The objective of the department in this rule making is to clarify and formalize the existing review process for site suitability and to establish uniform standards for what are considered to be unsuitable locations for hazardous waste management activities. This approach recognizes that certain generic locations are unsuitable due to the difficulty of isolating wastes and protecting groundwater and surface water at these sites. Additionally, it recognizes that the variety and complexity of hydrogeologic and climatic conditions in Texas requires a case-by-case review of sites in the permitting process.

Section 335.503 stipulates the factors to be considered by the Texas Water Commission in making its decision about whether the proposed facility reasonably minimizes possible contamination of surface water and groundwater: active geologic processes, groundwater conditions, soil conditions, and climatological conditions. These factors are to be evaluated in light of the proposed design, construction, and operational features of the facility.

Section 335.504 identifies location characteristics which the department believes would make a site unsuitable for storage or processing facilities, land treatment facilities, waste piles, surface storage impoundments, and landfills. These types of facility components are separately listed in the rule, along with the specific location characteristics which would make a proposed site unsuitable for each type of facility component. The identification of these characteristics is based on hydrologic, hydrogeologic, and geotechnical considerations. The §335.504 standards identify only those locations which are clearly unsuitable. A determination that a site does not evidence characteristics which would disqualify it from permitting under §335.504 is not sufficient to support the conclusion that the site should be permitted. The commission must also consider the factors in §335.503 when making its decision on the permit application. For example, demonstration of conformance to the aquifer protection and permeability standards in §335.504 will not alone satisfy the requirement expressed in §335.503 that groundwater and soil conditions must be considered. The applicant is required to make this kind of demonstration of suitability based on a site

specific analysis. In addition, some proposed locations may be considered inadequate because conditions exist which are not addressed in §335.504, but which are required to be considered by §335.503.

Existing rules in Chapter 335, Subchapter V, prescribe performance standards for the design, construction, operation, and maintenance of hazardous waste management facilities. Based upon these requirements, primary barriers to contaminant migration are established for a facility component and must be described in the application. Such barriers are labeled primary, since they function first in order of time to prevent or minimize the migration of contaminants. For example, primary barriers to waste migration for a landfill consist of a liner or liner system, a leachate collection system, and a cover system. The primary barrier for a tank consists of the walls and floor of the tank. For each type of waste management unit, specific types of primary barriers are required by Chapter 335, Subchapter V

The Subchapter W rules would require secondary barriers for certain locations and certain types of facility components. A secondary barrier is any physical condition which prevents or minimizes the migration to surface water or groundwater of waste which penetrates the primary barrier. Secondary barriers, thus, act later in order of time than do primary barriers. The hydrogeologic, geomorphic, and soil conditions of facility location are important factors to consider in determining the degree of containment to be provided by secondary barriers.

The location criteria are based upon the type of waste management activity proposed. The major consideration is whether hazardous wastes will remain in the unit after the facility is closed. For those units where wastes will be removed at the time of closure, stringent facility design features can generally provide adequate assurance of waste containment and thereby prevent adverse effects from unsuitable site characteristics. For this reason, the rules allow an applicant to meet facility design specifications which are more stringent than the requirements of Subchapter V, as an alternative to demonstrating conformance to the regional aquifer and soil condition standards of these rules. For example, the operator of a storage or processing facility may construct secondary containment structures (e.g., a hard-surfaced curbed or diked area surrounding a tank) as one means of demonstrating conformance with these rules. Likewise, the operator of a storage surface impoundment may construct a double-lined facility with an intervening leak detection system as one means of demonstrating conformance with these sections of the rules.

For units where hazardous waste will remain after closure (e.g., landfills and surface impoundments to be closed as landfills) facility design features alone without appropriate containment conditions at the site (i.e., secondary barriers) may not provide adequate assurance of waste isolation. Primary containment structures such as liner systems can be designed and installed to contain wastes for a certain design life; however, given sufficient time, the barrier may be pene-

trated. Therefore, the rules define in §335.504 locations with such poor secondary barrier conditions that they are unsuitable for facilities where hazardous wastes will remain after closure. For example, §335.504(e)(4) specifies, except for areas of the state where evaporation greatly exceeds precipitation, the minimum thickness of low permeability soil material which must separate the base of a landfill's liner system from an underlying regional aquifer. Design of a landfill with more stringent liner and leachate collection system (primary barrier) standards than those required by Chapter 335, Subchapter V, does not provide sufficient assurance of long-term waste containment to obviate the need for a secondary barrier. However, for facilities where the natural geologic conditions do not provide the secondary barrier required by §335.504, a man-made secondary barrier, designed and constructed in accordance with accepted engineering standards, may be used in addition to the primary barrier required by Chapter 335, Subchapter V, to satisfy the requirement.

Aquifer protection. These rules provide special protection to regional aquifers and sole-source aquifers as identified by the department and EPA, respectively. The department is also concerned with aquifers which may not be identified by the agencies. In accordance with previously adopted rules and §335.503, the department will continue to examine the hydrogeologic setting underlying every proposed disposal facility to assure protection of groundwater resources.

Active geologic processes. The department has considered the inclusion in §335.504 of standards to address unsuitable locations with respect to active geologic processes (i.e., faulting, subsidence, submergence, and erosion). The consensus of the department staff and reviewers at the University of Texas Bureau of Economic Geology is that active geologic processes must be considered on a site specific basis. There are too many uncertainties in the measurement of these processes to formulate specific performance standards. Existing quantitative data related to geologic processes that might adversely affect a site preclude the formulation of quantitative rules. For that reason, specific active geologic process location standards have not been included in §335.504. However, case-by-case review of the manner in which active geologic processes affect a particular facility location is required by §335.503.

The 100-year floodplain. Section 335.504 of this title provides additional restrictions to the existing flood protection standard which requires that all hazardous waste facilities be located, designed, constructed, and maintained to prevent washout of any hazardous waste by a 100-year flood. In the past, hazardous waste management facilities located in the 100-year floodplain have been required to protect against the 100-year flood by the construction of dikes or levees around the facility.

The department believes that dikes or other flood protection measures can protect against flood hazards during the active life of a hazardous waste storage,

processing, or disposal facility. However, those areas of the floodplain which are subject to significant flood velocities or flood depths from either river flooding or hurricane storm surge tides are unsuitable for long-term waste containment due to the potential for significant erosion caused by wave energy and currents. In accordance with §335.504(e)(1), those disposal facilities where hazardous waste remains after closure (landfills and surface impoundments to be closed as landfills) will be prohibited from such areas within the 100-year floodplain. Such facility components shall not be located in that portion of the 100-year floodplain where high flood elevations (three feet or greater) occur. In addition, those portions of the 100-year floodplain where shallow or sheet flooding occurs due to poor drainage features would be acceptable only if the facility is protected by dikes or other flood protection measures.

Permeability standards. For each type of waste management facility component, §335.504 includes two permeability standards for soils underlying and surrounding a facility. These standards are complementary but are designed to achieve different goals. The first type of standard requires materials with a minimum thickness of 10 feet and a hydraulic conductivity less than or equal to 1×10^{-7} cm/sec to separate the facility from a regional aquifer. In most cases, the hydraulic conductivity values of interest will be in the vertical direction to allow assessment of secondary barrier conditions which will protect a regional aquifer underlying a facility. Notice that these standards do not require that a single low permeability barrier be 10 or more feet thick. The aggregate thickness of separate clay beds or other low permeability units may be used to meet these standards. These standards can be viewed as aquifer resource protection standards.

The second type of standard requires that soil units within five feet of the facility shall have a hydraulic conductivity less than or equal to 1×10^{-5} cm/sec unless a more stringent facility design modification is allowed or it is demonstrated that the soils do not provide a significant pathway for pollutant migration. The purpose of these standards is to assure that any leachate which may penetrate the facility's primary barrier will not come into direct contact with permeable soil materials. These standards serve to help isolate the waste within the immediate area of the facility and to help assure that there will not be appreciable lateral or downward migration of pollutants. As a result, to document conformance to this requirement, a hydraulic conductivity testing program should be performed to determine the degree to which the surrounding soils will retard leachate migration from the facility. This may include determinations from both vertical and horizontal (and at some other orientation if necessary) laboratory testing or field hydraulic conductivity measurements. These standards specifying permeability conditions of surrounding soils can be viewed as leachate containment standards. The department plans to develop further guidance for applicants in the area of site investigation. Such guidance

will delineate acceptable test methods and procedures for measuring the hydraulic conductivity of soils.

Use of existing technical guidelines and other data. In developing these rules, the department has attempted to use existing published reports, maps, and guidelines. These resources include the federal flood insurance rate maps, TDWR technical reports on groundwater resources (e.g., Report 238), and evaporation and rainfall maps available from the department.

Additionally, the department has developed technical guidelines for landfills and land treatment facilities to assist applicants in site selection and design. These guidelines include recommendations to assist in selecting a site which will satisfy the considerations listed in §335.503. The department will continue to encourage applicants to use these guidelines when seeking environmentally sound locations for hazardous waste management facilities. It is important to note that whereas the department's technical guidelines are designed to help applicants find the best possible site for a hazardous waste management facility, these rules are intended to establish criteria to prevent the use of sites which are clearly unsuitable for that purpose. The department intends to review its existing technical guidelines and make any modifications necessary to achieve a consistent policy, as reflected in rules and guidelines, relating to the siting of hazardous waste management facilities.

In adopting the rules, the Texas Water Development Board clarified §335.501 by establishing a specific effective date of the rules, clarified the meaning of the phrase "secondary containment" as used in §335.504, by including a definition of secondary containment in §335.502, clarified §335.504(e)(1) to establish that a landfill or any surface impoundment to be closed as a landfill may not be located in the 100-year floodplain existing prior to site development, except in areas with flood depths less than three feet, and clarified §335.505 to make clear that the Texas Water Commission is not required to issue a permit simply because the requirements of §335.503 and §335.504 have been satisfied. The commission is empowered by law to consider other factors before finally deciding whether a permit should be issued.

Several comments were received regarding the proposed rules. What follows is discussion of each section of the rules, explained in light of the comments received and changes that were made for the purpose of clarification.

Section 335.501, concerning purpose, scope, and applicability, establishes the applicability of the rules to new hazardous waste management facilities and areal expansions of existing facilities. The Sierra Club and the League of Women Voters of Texas submitted comments urging that the final permitting process include, as much as possible, a review of the sites of existing facilities to insure that those sites along with the design and operation of the facilities, do not present a threat to human health and the environment. These commenters also requested a more detailed explana-

tion of how these proposed location standards would be applied to existing facilities.

The location standards in Subchapter W apply to the areal expansion of an existing facility. As defined in §335.502, this is the enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit. For an existing permitted facility, these rules apply to any expansion beyond that authorized in the permit. For an existing nonpermitted facility, the rules do not apply until after a permit has been issued for the facility.

Section 335.502, concerning definitions, provides definitions for key terms used in the rules. Several comments were received concerning the definitions for aquifer and 100-year floodplain. The proposed definitions are consistent with those definitions already accepted in other subchapters of the state rules and those used by the EPA in the federal regulations.

The Texas Chemical Council observed that the term "storage surface impoundment" includes impoundments used not only for storage, but also for processing or treatment of hazardous waste. For the purpose of these rules, the operative distinction is between those impoundments used for ultimate disposal and those used only for storage and/or processing during the active life of the facility. The League of Women Voters of Texas and Professor G. F. Lee of Texas Tech University noted that the term "secondary containment" appeared in the rules as a requirement, but it was not defined in §335.502. Section 335.502 now includes a definition of secondary containment, the purpose of which is to clarify what is required for storage and processing facilities and waste piles which are proposed in certain locations. The definition envisions a physical structure which is capable of containing wastes or contaminated rainwater which may escape from the storage or processing unit or waste pile until the waste or contaminated rainwater can be removed. Secondary containment also functions to prevent rainfall run-on from outside the structure.

Section 335.503, concerning site selection to protect groundwater or surface water, outlines the location factors that the Texas Water Commission will consider in its evaluation of a proposed hazardous waste management facility. Pursuant to this section, the commission may not issue a permit unless it finds that the proposed site, when evaluated in light of its proposed design, construction, and operational features, reasonably minimizes possible contamination of surface water or groundwater. The factors to be considered are active geologic processes, groundwater conditions, soil conditions, and climatological conditions.

Both the Sierra Club and the League of Women Voters of Texas noted that specific location criteria accounting for active geologic processes have not been included in the proposed rules. Their comments urged, therefore, that the Bureau of Economic Geology (BEG) and other agencies be included in the case-by-case analyses, so that the department may have sufficient data available to properly evaluate the active geologic processes pertinent to a specific application.

In general, permit applications are not provided to the BEG for comment, since it is not identified in the Solid Waste Disposal Act as a review agency and is not provided specific funding for that purpose. However, the BEG has published numerous reports of investigations and maps describing the geology and active geologic processes in many areas of the state. The department encourages applicants to use those reports and other available published references to describe a proposed facility location. During the review process, TDWR staff geologists evaluate the proposed facility in light of available references published by the BEG and a number of other sources. In addition, the department has in recent months requested the BEG to review not only these proposed siting rules but also a technical guideline pertaining to siting recommendations for hazardous waste landfills. The TDWR envisions consulting with the BEG in the future pertaining to any additional guidance developed by the department which is of a geological nature. The department welcomes any comments that the BEG or other similar entity may wish to provide pertaining to the technical merits of a particular hazardous waste facility. Such review would be of a supplemental nature, since the department maintains on its staff a number of geologists who are qualified both by training and experience to evaluate potential adverse effects due to active geologic processes at proposed facilities.

The League of Women Voters of Texas also urged that when groundwater conditions are assessed during the review of a permit application, reasonable efforts should be made to avoid the contamination of poor quality groundwater which may become usable in the future, possibly as a result of improved water reclamation technology. This concern was echoed by the league's Baytown chapter. This is the kind of issue which is most appropriately evaluated on a site-specific basis. The rules provide equal protection for all regional aquifers in the state regardless of the groundwater quality.

The Texas Eastman Company commented that applications for facilities having man-made secondary containment should not be required to address the issues enumerated in §335.503 in as much detail as applications for facilities which would rely on natural conditions to provide adequate secondary containment. The proposed rules actually do not stipulate how much evidence must be presented in support of an application. The evaluation of the site is to be performed in light of the proposed design, construction, and operational features of the facility, and the information in support of the application should be sufficient to establish that the possibility of groundwater or surface water contamination is reasonably minimized.

Section 335.504, concerning unsuitable site characteristics, identifies location characteristics which would make a site unsuitable for hazardous waste management facilities. The identification of these characteristics is based on hydrologic, hydrogeologic, and geotechnical considerations. These standards are intended to identify only those locations which are clearly unsuitable.

The site locations standards prohibit the location of land treatment facilities, waste piles, storage surface impoundments, and landfills on the recharge zone of a sole source aquifer. Storage and processing facilities may be located on the recharge zone, provided secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges. The department received two comments pertaining to this standard. The Sierra Club and the League of Women Voters of Texas recommended that the prohibition against locating facilities on the recharge zone of a sole source aquifer also be applied to storage and processing facilities. Both commenters further suggested that similar protection be provided for the recharge zones of other regional aquifers.

As explained heretofore, the rules differentiate between units where hazardous wastes will remain after closure and units where hazardous wastes will be removed at the time of closure. To function properly, a storage and processing facility must be capable of containing hazardous waste only through the active life of the facility. Storage and processing facilities can be designed using established engineering principles to contain waste for this design life. A secondary containment area, as defined previously, provides protection for the aquifer, should the facility fail to perform as designed.

The commenters are correct that the rules do not specifically prohibit the location of facilities on the recharge zone of regional aquifers. Wherever possible, the rules have been constructed so that the information required to determine conformance with the standards is readily available. The recharge zone for the Edwards Aquifer, the only sole-source aquifer presently designated in Texas, is carefully delineated on maps retained by the department. Thus, an applicant can easily determine whether a proposed facility would be located on the recharge zone. Geologic and hydrologic information pertaining to the recharge and discharge patterns of the state's other regional aquifers is available; however, the recharge zones for these aquifers have not been defined with the same degree of specificity as the Edwards Aquifer. Thus, with the exception of the Edwards Aquifer, neither the applicant nor the department could unambiguously determine from an acceptable reference whether a facility is proposed to be located on the recharge zone of a regional aquifer. For this reason, the regional aquifer protection standards in §335.504 are not expressed in terms of recharge zones. However, the commission is required by §335.503 to consider aquifer recharge or discharge conditions when determining whether a proposed facility reasonably minimizes possible contamination of surface water and groundwater. The department believes that this requirement in combination with the standards expressed in §335.504 which are designed for aquifer resource protection and leachate containment will provide a high degree of protection for the state's regional aquifers.

But for certain specific conditions defined for each kind of hazardous waste management facility component, the site location standards require that storage and

processing facilities, land treatment facilities, waste piles and storage surface impoundments, and landfills be separated from a regional aquifer by a minimum of 10 feet of material having a hydraulic conductivity toward the aquifer not greater than 1×10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration. A demonstration of conformance to this aquifer protection standard in §335.504 will not by itself satisfy the requirement expressed in §335.503 that soil and groundwater conditions must be considered.

The department received four comments pertaining to the first portion of this site location standard specifying thickness and hydraulic conductivity. The Texas Eastman Company questioned the need for 10 feet of relatively impermeable material and stated that the department had not demonstrated conclusively that a lesser thickness could not adequately protect a usable aquifer. Conversely, Professor Lee of Texas Tech University pointed out that another state requires a minimum of 21 feet of material with a maximum permeability of 1×10^{-7} cm/sec to underlie hazardous waste landfills. He felt that 10 feet is somewhat thin where there is concern about protection of an important aquifer of the region. Diamond Shamrock Corporation and the Texas Chemical Council did not express an evaluation of the proposed standards, but requested that the department explain the rationale upon which the 10 feet of 1×10^{-7} cm/sec criterion was based.

The standards which contain the 10 feet of 1×10^{-7} cm/sec criterion are aquifer resource protection standards. These standards are included in view of the extreme importance of maintaining the state's major and minor aquifers free of hazardous waste contamination. Where hazardous wastes will be removed at the time of facility closure, a facility can be designed to retain waste for the life of the facility and the rules allow more stringent engineering design features, such as a constructed secondary containment area for a tank, to be used instead of an underlying low permeability soil barrier. However, where hazardous waste will remain after closure, facility design features alone without appropriate natural containment conditions at the site may not provide adequate assurance of waste isolation. Even though existing rules in Chapter 335, Subchapter V, contain detailed performance requirements for landfills to prevent the generation of leachate, to withdraw any leachate which forms, and to prevent the migration of leachate, the department believes, given the length of time that hazardous waste must be contained, that it is prudent and necessary to prohibit the siting of new hazardous waste landfills in locations where regional aquifers may be readily contaminated, should waste pass through the landfill's liner system.

To isolate effectively waste from an underlying regional aquifer, a soil barrier must have a low hydraulic conductivity, be sufficiently thick to retain the waste for an extended period, and be a continuous feature under a proposed hazardous waste facility. For approxi-

mately 10 years, the department has used a maximum hydraulic conductivity value of 1×10^{-7} cm/sec in technical guidelines and in permits to designate primary liner soil materials which are practically impervious. A hydraulic conductivity of 1×10^{-7} cm/sec is typically associated with clay and is accepted in engineering literature and practice as representative of an effective barrier to fluid transport. A 10-foot thick barrier provides extended protection of an underlying regional aquifer due to the substantial transit time required for fluid to pass through that barrier. Moreover, since the continuity of a soil barrier is typically based on correlations between soil units logged in widely spaced borings, the thicker the unit in question the greater the assurance that it represents a continuous feature. The standard which requires at least 10 feet of material having a hydraulic conductivity toward the aquifer not greater than 1×10^{-7} cm/sec is appropriate for the purpose of identifying proposed facility locations which clearly do not provide adequate natural protection of the aquifers in the state.

The department has likewise received two comments pertaining to the second portion of this site location standard which allows a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration. The Texas Chemical Council inquired what was meant by equivalent or greater retardation to pollutant migration and also whether an interval thinner than 10 feet with a hydraulic conductivity of less than 1×10^{-7} cm/sec would be acceptable. Professor Lee expressed the concern that the proposed rules would allow a facility with a highly porous system to be approved if the distance to the aquifer was sufficiently long. He felt that this would be a dangerous approach to take.

The purpose of this portion of standard is to provide the applicant with an opportunity to demonstrate that the soil barrier which underlies a proposed facility provides an equivalent degree of protection for an underlying aquifer as the barrier specified in the standard.

The department has specified a maximum hydraulic conductivity of 1×10^{-7} cm/sec for soils used as primary liners at land disposal facilities in its technical guidelines. As discussed previously, soils which meet this criterion are very well suited for minimizing the rate of any leakage associated with a land disposal facility. The department has elected to apply this same criterion with regard to *in situ* soils at proposed hazardous waste management facilities. However, due to the wide variation in geologic settings in Texas, provision is made for the permit applicant to demonstrate that a proposed location which does not clearly meet the criterion provides an equivalent or greater degree of protection.

Generally, sites at which soils do not meet the 10 feet of 1×10^{-7} cm/sec criterion will be evaluated in terms of equivalent protection. For example, if the *in situ* soils at a proposed site have a hydraulic conductivity of 5×10^{-7} cm/sec and exceed 50 feet in thickness, the applicant may attempt to demonstrate that

these soils provide an equivalent or greater retardation to pollutant migration. In such a case, the department will review the geologic report which establishes the hydrogeologic conditions as well as the wastes proposed for disposal and their potential for migration (mobility, potential for attenuation, waste variability, etc.) to determine if the site meets the criterion.

In response to Professor Lee, an applicant for a proposed site where highly porous soils (i.e., sand or gravel) would serve as the barrier to leachate migration could not make these demonstrations due to the great thickness of barrier required and the poor sorptive properties of these materials. In addition, the standard does not allow a thinner interval of less permeable soil to be used in place of the 10-foot barrier. Since soil unit correlations are generally based upon the logs of fairly widely spaced borings, there is less assurance that thinner units are continuous beneath a proposed facility. Moreover, any discontinuities present which are not detected in the hydrologic site investigation such as sand channels and lenses or fractures and fissures would have greater adverse effect on the containment capacity of a thinner barrier.

The proposed site location standards prohibit facilities to be located in areas where soil units within five feet of the facility's containment structure have a unified soil classification of GW, GP, GM, GC, SW, SP, or SM or a hydraulic conductivity greater than 1×10^{-5} cm/sec unless a more stringent facility engineering design feature is allowed or it is demonstrated that the soils do not provide a significant pathway for pollutant migration. Land treatment facilities and landfills are exempted from this requirement if it can be demonstrated that the facility is to be located in an area where the average annual evaporation exceeds average annual rainfall (plus the hydraulic loading rate for land treatment facilities) by more than 40 inches. The department received two comments pertaining to the standards. The Texas Chemical Council inquired whether the containment structure for a tank would be the walls of the tank or a surrounding diked secondary containment area. Professor Lee expressed concern with regard to the 1×10^{-5} cm/sec hydraulic conductivity standards because in his evaluation it represents highly porous strata. He also expressed concern with the approach advocated in the standard because he felt that it appeared to be based on the concept that contamination of groundwater cannot occur if evaporation exceeds precipitation by 40 inches per year. Professor Lee contends that this is clearly not the case and provided an example of a domestic wastewater land disposal operation on the high plains.

As stated heretofore, the purpose of the standards which contain the 1×10^{-5} cm/sec hydraulic conductivity criterion is to assure that any leachate which may penetrate the facility's primary barrier will not come into direct contact with permeable soil material. These standards serve to help isolate the waste within the immediate area of the facility and to help assure that there will not be appreciable lateral or downward migration of pollutants. The response to the inquiry

of the Texas Chemical Council is that the walls of the tank would be considered the containment structure. Therefore, if proper secondary containment, as defined previously, is constructed, the storage or processing facility would not be required to satisfy the hydraulic conductivity portion of this standard. With regard to Professor Lee's comment, the 1×10^{-5} cm/sec criterion was selected as a reasonable value to designate those soils which are clearly unsuited to provide an appreciable degree of containment for any leachate which penetrates the facility's liner. Use of the 1×10^{-5} criterion would allow soils, such as clay and shale, which typically have a hydraulic conductivity less than 1×10^{-7} cm/sec as well as certain sandy clay, silt, fine sandstone, and perhaps clayey sand material to occur within five feet of a facility's liner. Unless one of the exceptions applies, a facility could not be placed in a location where more permeable soils such as silty sand, sand, and gravel as well as certain other silt and sandstone material occur within this zone. Hydraulic conductivity values and unified soil classification determinations necessary to demonstrate conformance with this standard must be determined by an on-site hydrogeologic investigation. Further, the department believes, based upon its experience and published references, that appreciable quantities of leachate are less likely to form at land treatment facilities and landfills where evaporation greatly exceeds rainfall. Based on this analysis, the standard allows an exemption from the 1×10^{-5} cm/sec hydraulic conductivity criterion for areas with favorable rainfall and evaporation conditions. Readily available information, such as the Climatic Atlas of Texas (LP-192) recently published by the department allows an applicant to determine easily whether a proposed facility location conforms to the standard due to favorable climate. However, demonstration of conformance to either aspect of this §335.504 standard should be viewed as only the first step, since further consideration of hydrogeologic and climatological conditions is required by §335.503. The example provided by the commenter of the domestic wastewater land disposal operation does not appear to take into account the requirement to consider the hydraulic loading rate for land treatment facilities and is therefore not directly applicable to the proposed standard.

Several comments were received regarding the restriction expressed in §335.504(e)(1) that landfills may not be located in the 100-year floodplain existing prior to site development except in areas with flood depths less than three feet and flood velocities less than three feet per second. CECOS International, Inc., and Chemical Waste Management, Inc., contended that present technology makes it possible to construct a hazardous waste landfill in the 100-year floodplain without posing a serious risk to human health and the environment over the long term. Monsanto Company suggested that the rule state simply that any landfill within the 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood. The Texas Chemical Council expressed concern about the consistency of methods for mapping the 100-year flood-

plain, as well as areas where flood depths are greater than three feet and flood velocities are greater than three feet per second.

The primary technical consideration regarding siting a hazardous waste landfill in the 100-year floodplain is the potential for erosion to result in waste exposure. The potential effects of erosion on landfills differ from other types of waste management facilities due to the extremely long periods of time involved. Relatively small erosion rates can ultimately result in hazardous waste exposure, unless maintenance is provided for an indefinite period of time.

Those areas where flood depths are less than three feet are designated as areas AO and AH on the flood insurance rate maps (FIRMs), published by the Federal Emergency Management Agency. Flooding in these areas may be caused by riverine flooding, intense or prolonged rainfall associated with lack of adequate drainage, and shallow flooding by coastal storm surges. Most of the public comment considered the floodplain criteria for landfills to be too restrictive and suggested that engineering solutions be used to upgrade deficient sites to minimize erosion losses. However, landfills differ from other facility types due to the very long periods of time the facility is subject to erosion. A landfill is essentially a permanent facility which must be sited, designed, and constructed in a manner which minimizes the amount of maintenance necessary to contain the waste materials. The department requires that landfill covers and dikes be constructed of relatively fine-grained (clay-rich) soils. The soils specified are very well suited for minimizing the movement of water or wastes to and from the facility. However, these soils can be subject to significant erosion losses if not adequately protected both by facility location and design. Erosion protection usually consists of suitable vegetation or, in some cases, rip-rap. These erosion control mechanisms are well-proven and generally effective. However, they will require some degree of maintenance to remain effective over time. In addition, their ability to cope with floodwater inundation is also less certain. It is necessary to prevent the location of hazardous waste facilities in areas where the integrity of the erosion control components of the landfill will eventually be impaired. For this reason, these rules prohibit hazardous waste landfills in areas of the floodplain where they will be subjected to significant erosional forces. In addition, the three-foot depth limitation is sufficiently restrictive that moderate increases in flood depth should not significantly reduce site security.

A review of FIRMs indicates that very limited velocity data are available from this primary source of information. The department has deleted the three feet-per-second criterion based on the difficulty the regulated community would have in obtaining the flood velocity data from published sources. The department will, however, require owners/operators of proposed hazardous waste facilities to supply velocity data as necessary to demonstrate that the facility is designed and constructed to prevent washout on a long-term basis. This will require the applicant to evaluate the erosion

potential of the soils on a site-specific basis. In some cases, velocities less than three feet per second may result in unacceptable soil losses, depending on the soil type and facility design.

The Sierra Club questioned the use of the 100-year flood as the basis for evaluating flood hazard and suggested a more restrictive standard (such as the 500-year flood) would be more appropriate. However, the same problem exists with using the storm of record or the 500-year storm as exists with the use of a three feet-per-second velocity restriction. Published data sources are generally limited and the department would have difficulty administering rules which are based on criteria for which information is not generally available. Moreover, there is little difference between the 100-year floodplain and the 500-year floodplain in most locations. Where FIRMs are available, they normally will be determinative of the 100-year floodplain. Where FIRMs are not available for a facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation and flood depth would be. The 100-year floodplain has historically been utilized in both the state and federal solid waste regulatory programs.

No comments were received regarding adoption of new §335.505. However, the Texas Water Commission (TWC) submitted comments which recommend that an additional rule be included to recognize explicitly the TWC's authority and responsibility to consider other criteria beyond those specified in the proposed rules. It is the present state of the law that the TWC has the authority under the Solid Waste Disposal Act to consider other criteria beyond those specified in Subchapter W when making its decision on a permit application. It was noted earlier that existing facilities are presently, and will continue to be, subject to review for site suitability pursuant to §335.479. The general performance standard in §335.479 states that no person may cause, suffer, allow, or permit the storage, processing, or disposal of hazardous waste in such a manner so as to cause the discharge or imminent threat of discharge of hazardous waste, the creation and maintenance of a nuisance, or the endangerment of the public health or welfare.

This general performance standard is a permitting standard which applies to facility location, design, construction, and operation. In finalizing the Subchapter W location standards, the department has clarified §335.505 so that it clearly recognizes that sites must satisfy the general performance standard in Subchapter V, and that the commission is not bound to issue a permit, notwithstanding the fact that a facility is not disqualified pursuant to §335.504 and does reasonably minimize possible contamination of groundwater and surface water in accordance with §335.503.

These new sections are adopted under the Texas Water Code, §5.131 and §5.132, which provide the Texas Water Development Board with the authority to make any rules necessary to carry out the powers and duties under the provisions of the Code and other

laws of the state; and to establish and approve all general policy of the TDWR. These new sections are also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the department to adopt and promulgate rules consistent with the general intent and purposes of the Act and establish minimum standards of operation for all aspects of the management and control of industrial solid waste and as amended, by House Bill 487, which requires the department to adopt rules relating to site suitability for hazardous waste management facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Department of Water Resources is designated as the state solid waste agency with respect to the management of industrial solid waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under the Act and other existing legislation. Section 3(b) grants to the department the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.501. Purpose, Scope, and Applicability.

(a) This subchapter establishes minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste. These rules apply to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities, filed on or after September 1, 1984, the effective date of these rules. These rules do not apply to the following.

(1) permit applications submitted pursuant to §335.2(c) of this title (relating to Permit Required) and §335.43(b) of this title (relating to Permit Required), including any revision submitted pursuant to §341.185 of this title (relating to Revision of Application for Hazardous Waste Permits), and

(2) permit applications filed pursuant to §335.2(a) of this title (relating to Permit Required) which have been submitted in accordance with Chapter 341 and which have been declared to be administratively complete pursuant to §357.3 of this title (relating to Initial Review) prior to September 1, 1984, the effective date of these rules.

(b) The purpose of these rules is to condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a site that reasonably minimizes possible contamination of surface water and groundwater; to define the characteristics that make an area unsuitable for a hazardous waste management facility; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics. Nothing herein is intended to restrict or abrogate the department's general authority under the Solid Waste Disposal Act to review site suitability for all facilities which manage industrial solid waste.

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

Aquifer—A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

Areal expansion of an existing facility—The enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility.

Existing hazardous waste management facility—Any facility used or proposed to be used for the storage, processing, or disposal of hazardous waste and which is authorized by a solid waste permit. Facilities identified in the following pending applications will also be considered existing hazardous waste management facilities pending final action on the application by the commission:

(A) an application submitted pursuant to §335.2(c) of this title (relating to Permit Required) and §335.43(b) of this title (relating to Permit Required), including any revisions made in accordance with §341.185 of this title (relating to Revision of Application for Hazardous Waste Permits); or

(B) an application filed pursuant to §335.2(a) of this title (relating to Permit Required) which has been submitted in accordance with Chapter 341 and which has been declared to be administratively complete pursuant to §357.3 of this title (relating to Initial Review) prior to September 1, 1984, the effective date of these rules.

New hazardous waste management facility—Any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility.

One hundred-year floodplain—Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

Regional aquifer—An aquifer which has been identified by the Texas Department of Water Resources as a major or minor aquifer. Major aquifers yield large quantities of water in large areas of the state. Minor aquifers yield large quantities of water in small areas of the state or small quantities of water in large areas of the state. (These aquifers are identified in Appendix B of the Texas Department of Water Resources Report 238).

Secondary containment—A system designed and constructed to collect rainfall runoff, to prevent rainfall run-on from outside the structure, and to contain waste spills, leaks, or discharges within the structure until such waste can be removed.

Sole-source aquifer—An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. Note: The Edwards Aquifer has been designated a sole-source aquifer by the U.S. Environmental Protection Agency. The Edwards Aquifer Recharge Zone is specifically that area delineated on maps in the offices of the executive director.

Storage surface impoundment—A surface impoundment from which all wastes and waste-contami-

nated soils are removed at the time of closure of the impoundment.

Wetlands—Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§335.504. Unsuitable Site Characteristics.

(a) Storage or processing facilities (excluding storage surface impoundments).

(1) A storage or processing facility (excluding storage surface impoundments) may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A storage or processing facility (excluding storage surface impoundments) may not be located in wetlands.

(3) A storage or processing facility (excluding storage surface impoundments) may not be located on the recharge zone of a sole-source aquifer unless secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges.

(4) A storage or processing facility (excluding storage surface impoundments) may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the facility by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} centimeters/second (cm/sec.), or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges.

(5) A storage or processing facility (excluding storage surface impoundments) may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec. unless:

(A) secondary containment is provided to preclude migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(b) Land treatment facilities.

(1) A land treatment facility may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A land treatment facility may not be located in wetlands.

(3) A land treatment facility may not be located in the recharge zone of a sole-source aquifer.

(4) A land treatment facility may not be located in areas overlying regional aquifers unless:

(A) it is an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate of the facility by more than 40 inches

and the depth to the regional aquifer is greater than 100 feet from the base of the treatment zone; or

(B) the regional aquifer is separated from the base of the treatment zone by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec., or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A land treatment facility may not be located in areas where soil unit(s) within five feet of the treatment zone have a Unified Soil Classification of GW, GP, GM, GC, SW, SP or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec., unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(c) Waste piles.

(1) A waste pile may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A waste pile may not be located in wetlands.

(3) A waste pile may not be located on the recharge zone of a sole-source aquifer.

(4) A waste pile may not be located in areas overlying regional aquifers unless

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec. or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration, or

(B) secondary containment is provided to preclude pollutant migration to groundwater from spills, leaks, or discharges

(5) A waste pile may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec. unless.

(A) secondary containment is provided to preclude pollutant migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(d) Surface storage impoundments.

(1) A storage surface impoundment may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A storage surface impoundment may not be located in wetlands.

(3) A storage surface impoundment may not be located on the recharge zone of a sole-source aquifer.

(4) A storage surface impoundment may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec. or a thicker interval

of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment.

(5) A storage surface impoundment may not be located in areas where the soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec. unless:

(A) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(e) Landfills. Note: Any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(1) A landfill may not be located in the 100-year floodplain existing prior to site development except in areas with flood depths less than three feet. Any landfill within the 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A landfill may not be located in wetlands.

(3) A landfill may not be located on the recharge zone of a sole-source aquifer

(4) A landfill may not be located in areas overlying regional aquifers unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the containment structure; or

(B) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec. or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A landfill may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec. unless:

(A) it is an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

§335.505. Prohibition of Permit Issuance.

(a) The commission shall not issue a permit for a new hazardous waste management facility or an areal expansion of an existing facility if the facility or expansion does not meet the requirements of §335.504 of this title (relating to Unsuitable Site Characteristics).

(b) Nothing in this subchapter shall be construed to require the commission to issue a permit, notwithstand-

ing a finding that the proposed facility would satisfy the requirements of §335.503 of this title (relating to Site Selection to Protect Groundwater or Surface Water) and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to §335.504 of this title (relating to Unsuitable Site Characteristics).

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 July 23, 1984.

TRD-847869 Susan Plettman
General Counsel
Texas Department of Water
Resources

Effective date: September 1, 1984
Proposal publication date: March 16, 1984
For further information, please call (512) 475-7845.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

Chapter 15. Medicaid Eligibility Subchapter GG. Resources for Individuals Related to the SSI Program

The Texas Department of Human Resources (DHR) adopts repeals, amendments, and a new section in its Medicaid Eligibility rules. The repeal of §§15.3206, 15.3207, and 15.3208 is adopted without changes to the proposal published in the April 24, 1984, issue of the *Texas Register* (9 TexReg 2295). Amendments to §15.3218 and §15.3225 and new §15.3206 are adopted without changes to the proposed text published in the April 24, 1984, issue of the *Texas Register* (9 TexReg 2295).

These rule changes are necessary to comply with Supplemental Security Income policy. Sections 15.3206, 15.3207, and 15.3208 are repealed and replaced by new §15.3206. New §15.3206 clarifies that an individual's home is excluded as a resource if it is his principal place of residence. Section 15.3206 also defines dependent relative for those cases in which the home is an excludable resource because a relative lives there. A home can no longer be automatically excluded for six months during an individual's temporary absence for health reasons. The exclusion is based on the individual's intent to return home. If an individual transfers his home while it is excluded for his intent to return, the exclusion terminates immediately and the caseworker follows the policy in §15.3225. Section 15.3218 specifies that the caseworker may grant only one three-month extension to the disposition period when an individual is making an effort to dispose of a resource. If a contract for sale is made during the allowable disposition period, the caseworker continues to exclude the property through the closing date of

the sale. The individual must be making a reasonable effort to conclude the transaction. If an individual transfers property being excluded for disposition without reasonable compensation, the exclusion terminates immediately. The caseworker then applies the policy in §15.3225. Section 15.3225 defines compensation for the transfer of a resource as goods, care, or services that are provided according to a legally binding agreement, either written or oral. If the individual receives cash as additional compensation for a transferred resource, the caseworker reduces the amount of uncompensated value by the amount of the payment, effective the date paid. Section 15.3225 is also amended to state that if a transferred resource is returned to an individual, the transfer is nullified, effective the date of return.

No comments were received regarding adoption of the repeal, amendments, and new section.

40 TAC §§15.3206-15.3208

The repeal 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 July 24, 1984.

TRD-847715 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: August 14, 1984
Proposal publication date: April 24, 1984
For further information, please call (512) 441-3355,
ext 2037

40 TAC §15.3206

The new section 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 July 24, 1984.

TRD-847716 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: August 14, 1984
Proposal publication date: April 24, 1984
For further information, please call (512) 441-3355,
ext. 2037.



40 TAC §15.3218, §15.3225

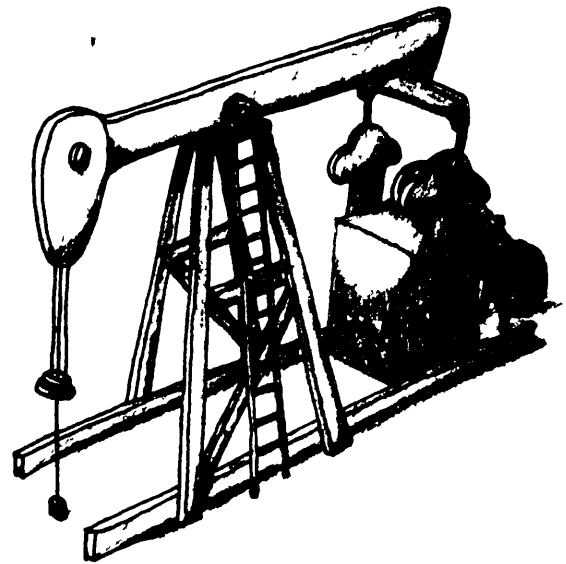
The amendments are adopted under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

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 July 24, 1984

TRD-847717 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: August 14, 1984
Proposal publication date: April 24, 1984
For further information, please call (512) 441-3355,
ext. 2037.



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*.

Open Meetings

Texas Economic Development Commission

Wednesday, July 25, 1984, 7 p.m. The Board of Directors of the Texas Small Business Industrial Development Corporation (TSBIDC) of the Texas Economic Development Commission met in emergency session in the Fort Worth Group Room, Terminal 4E, Dallas/Fort Worth Airport. According to the agenda, information will be presented to the board concerning the effect of new tax legislation on the TSBIDC, hear a corporation status report, and consider possible TSBIDC bond program alternatives. The emergency status was necessary because an informal, nondecision-making meeting was needed for the purposes stated.

Contact: Kent Yeates, 410 East Fifth Street, Austin, Texas, (512) 472-5059.

Filed: July 24, 1984, 3:25 p.m.
TRD-847731

Texas Education Agency

Friday, August 3, 1984. Committees of the State Board of Education of the Texas Education Agency (TEA) will meet in the TEA North Building, 1200 East Anderson Lane, Austin. Times, rooms, committees, and agendas follow.

8:30 a.m. In the Joe Kelly Butler boardroom, the Committee of the Whole will consider special education funding; testing and classification of students for bilingual education; educational aid for teachers, concerning designation of areas and fields of acute teacher shortage; fees for testing for basic skills tests for teachers; essential curriculum elements for grades 9-12; per capita apportionment for 1984-1985; the Price Differential Index Advisory Committee; rules for occupational education and technology; meetings, compensatory per diem, and expenses for the State Textbook Committee; the State Textbook Program;

the balanced six-year textbook adoption cycle; requirements for pupil attendance accounting for state funding purposes; composition of and an appointment to the Commission on Standards for the Teaching Profession; designation of 1984-1985 areas and fields of acute teacher shortages; 19 TAC §5.5, concerning agendas; travel for board members; sunset reports for advisory committees; and discussion of provisions other than school finance under House Bill 72, 68th Legislature, Second Called Session, 1984.

Contact: Raymon L. Bynum, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: July 25, 1984, 2:07 p.m.
TRD-847750

3 p.m. In Room 101-E, the Committee for Investment of the Permanent School Fund will consider a progress report on the July/August program, review of the investment portfolio, estimated funds available

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rior completion of the July/August program, and the report of the investment officer.

Contact: Raymon L. Bynum, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: July 25, 1984, 2:07 p.m.
TRD-847751

Saturday, August 4, 1984, 8:30 a.m. The State Board of Education of the Texas Education Agency will meet in the Joe Kelly Butler boardroom, TEA North Building, 1200 East Anderson Lane, Austin. Items on the agenda summary include agency administration, special education funding; testing and classification of students for bilingual education; educational aid for teachers, concerning designation of areas and fields of acute teacher shortage; fees for testing for basic skills tests for teachers; essential curriculum elements for grades 9-12; per capita apportionment for 1984-1985; recommendations for appointment to the Price Differential Index Advisory Committee; rules for occupational education and technology; meetings, compensatory per diem, and expenses for the State Textbook Committee; the State Textbook Program; the balanced six-year textbook adoption cycle; requirements for pupil attendance accounting for state funding purposes; composition of and an appointment to the Commission on Standards for the Teaching Profession; recommendations for the designation of 1984-1985 areas and fields of acute teacher shortages; an amendment to 19 TAC §5.5, concerning agendas; travel for board members; and requests by the staff to hold other positions of honor, trust or profit.

Contact: Raymon L. Bynum, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: July 25, 1984, 2:06 p.m.
TRD-847752

Tuesday, August 7, 1984, 9 a.m. The State Advisory Committee for Marketing and Distributive Education of the Texas Education Agency will meet in Ballroom VII, Hyatt Regency Hotel, 208 Barton Springs Road, Austin. Items on the agenda include public relations, public affairs, a financial report, advisory committee development, the Evaluation Committee, and a report on the Austin Advisory Committee meeting.

Contact: Norris Young, 201 East 11th Street, Austin, Texas 78701, (512) 834-4261.

Filed: July 24, 1984, 3:21 p.m.
TRD-847727

Monday, August 20, 1984, 8:30 a.m. The State Textbook Committee of the Texas Education Agency will meet in the Joe Kelly

Butler boardroom, 1200 East Anderson Lane, Austin. Items on the agenda include balloting for selection of textbooks for recommendation to the State Board of Education and meetings of special committees.

Contact: J. Henry Perry, Jr., 201 East 11th Street, Austin, Texas 78701, (512) 834-4055.

Filed: July 24, 1984, 3:21 p.m.
TRD-847728

Texas Employment Commission

Wednesday, August 1, 1984, 9 a.m. The Texas Employment Commission (TEC) will meet in emergency session in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. Items on the agenda include office procedures and staffing in the Office of Commission Appeals. The emergency status is necessary to put into effect an immediate plan to improve federal time lapse statistics.

Contact: Courtenay Browning, TEC Building, 15th Street and Congress Avenue, Room 608, Austin, Texas, (512) 397-4415.

Filed: July 25, 1984, 2:29 p.m.
TRD-847753

Texas Health Facilities Commission

Thursday, August 2, 1984, 1:30 p.m. The Texas Health Facilities Commission made additions to the agenda of a meeting to be held in Suite 305, 1600 West 38th Street, Austin. The additions concern consideration of the following applications.

Certificate of Need

Humana Hospital Bryan-College Station,
Bryan
AH84-0104-012

Amendment of Certificate of Need Orders

Vista Hills Medical Center, El Paso
AH83-0107-016A(061384)
Medical City Dallas Hospital and
Medical City Dallas, Ltd., Dallas
AH80-0905-029A(061584)

Notice of Intent to Acquire an Existing Health Care Facility

The Heritage Nursing Home, Mount
Vernon
AN84-0622-400

Contact: John R. Neel, P.O. Box 50049,
Austin, Texas 78763.

Filed: July 25, 1984, 8:27 a.m.
TRD-847735

Texas Housing Agency

Wednesday, July 25, 1984, 10 a.m. The Board of Directors of the Texas Housing Agency met in emergency session in the conference room, Suite 700, 411 West 13th Street, Austin. Items on the agenda summary included consideration and possible action on establishing, subject to modification, a single family mortgage revenue bond ceiling for the State of Texas; consideration and possible action on a proposal for the sale of tax-exempt single family mortgage revenue bonds; consideration and possible action on investment contracts for certain funds, including without limitation the debt service reserve fund, mortgage revenue loan proceeds fund, cash flow, and mortgage reserve fund; and consideration and possible action on allocation of funds to lenders and notification to those lenders of funds availability. The emergency status was necessary to set a revised single-family mortgage revenue bond ceiling and to authorize the sale of additional bonds to help alleviate a critical shortage of affordable home financing.

Contact: Earline Jewett, P.O. Box 13941,
Austin, Texas 78711, (512) 475-0812.

Filed: July 24, 1984, 12:41 p.m.
TRD-847707

Wednesday, July 25, 1984, 2:30 p.m. The Board of Directors of the Texas Housing Agency met in emergency session in the office of the bank president, First Bank and Trust, 101 North Texas, Bryan. Items on the agenda summary included consideration and possible action on establishing, subject to modification, a single family mortgage revenue bond ceiling for the State of Texas; consideration and possible action on a proposal for the sale of tax-exempt single family mortgage revenue bonds; consideration and possible action on investment contracts for certain funds, including without limitation the debt service reserve fund, mortgage revenue loan proceeds fund, cash flow, and mortgage reserve fund; and consideration and possible action on allocation of funds to lenders and notification to those lenders of funds availability. The emergency status was necessary to set a revised single-family mortgage revenue bond ceiling and to authorize the sale of additional bonds to help alleviate a critical shortage of affordable home financing.

Contact: Earline Jewett, P.O. Box 13941,
Austin, Texas 78711, (512) 475-0812.

Filed: July 25, 1984, 12:27 p.m.
TRD-847748

State Board of Insurance

Wednesday, August 1, 1984. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. Times and agendas follow.

10 a.m. The board will consider a petition by the Texas Automobile Insurance Service Office to amend Rule 059.21.26.003, by adding a new paragraph (17) to specify the following as an unfair claims settlement practice: with respect to the Texas personal auto policy, to delay or refuse a claim solely because there is other insurance of a different type to pay for all or part of the loss; it is specified that the claimant who has a right to recover from either or both of the insurers may choose the coverage to pay and in what order payment will be made; and an alternative staff proposal for a filing by Insurance Services Office, Inc., to withdraw all rates, rules, and form filings for bridges and commercial fine arts classes for commercial inland marine insurance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: July 24, 1984, 3:07 p.m.
TRD-847724

2 p.m. The board will consider mortgage guaranty insurance rate filings by Mortgage Guaranty Insurance Corporation and PMI Mortgage Insurance Company.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: July 24, 1984, 3:07 p.m.
TRD-847725

Lamar University

Friday, July 27, 1984, 1 p.m. The Academic Affairs Committee and the Personnel Committee of the Board of Regents of Lamar University met in a joint emergency session at W. Donham Crawford, 104 West Caldwell, Beaumont. According to the agenda, the committees met in executive session to consider appointments to administrative offices. The emergency status was necessary because this was the only available time for the committees to meet prior to the next regular board meeting.

Contact: Andrew J. Johnson, P.O. Box 10014, Beaumont, Texas 77710, (409) 838-8403.

Filed: July 24, 1984, 12:32 p.m.
TRD-847708

**Texas Parks and Wildlife
Department**

Wednesday, July 25, 1984, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department made an emergency addition to the agenda of a meeting held in Parks and Wildlife Headquarters Complex Building B, 4200 Smith School Road, Austin. The addition concerned a briefing regarding an archeological investigation at Seminole Canyon Cave (41VV620), Seminole Canyon State Historical Park, Val Verde County. The emergency status was necessary to insure the adequate protection of state archeological resources.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: July 24, 1984, 1:58 p.m.
TRD-847718



**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.

Wednesday, August 1, 1984, 9 a.m. The division will consider the following dockets—5777, 5376, 5379, 5517, 5684, 5612, 5574, 5113, 5024, 5453, 5652, 5667, 5794, 5694, and 5780. The division will also meet in executive session to discuss pending litigation.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1984, 2:39 p.m.
TRD-847726

Friday, August 3, 1984, 1:30 p.m. A prehearing conference in Docket 4959—application of Manville Water Supply Corporation to amend a certificate of convenience and necessity within Travis County and Williamson County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 25, 1984, 2:34 p.m.
TRD-847754

Tuesday, August 7, 1984, 9:30 a.m. A prehearing conference in Docket 5782—application of the City of Schertz to transfer Schaefer Road Rural Water Supply Corporation in Bexar County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 26, 1984, 9:41 a.m.
TRD-847777

Tuesday, August 7, 1984, 1:30 p.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the commission will conduct a prehearing conference in Docket 5793—application of Harlingen System to purchase Stuart Place Water Supply Corporation within Cameron County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 26, 1984, 9:41 a.m.
TRD-847776

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.

Tuesday, August 21, 1984, 10 a.m. The division will consider Docket 5823—inquiry of the general counsel into the PURA, §43(h), rate increase of North County Water Corporation.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 25, 1984, 8:30 a.m.
TRD-847738

Wednesday, September 12, 1984, 9 a.m. The division will consider Docket 5827—petition of Southwestern Bell Telephone Company for rule making.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 26, 1984, 9:42 a.m.
TRD-847774

**Texas Rehabilitation
Commission**

Friday, August 3, 1984, 1 p.m. The Ad Hoc Subcommittee on Deaf-Blind/Deaf-Blind Multi-Disabled Persons of the Governor's Committee for Disabled Persons of

Texas Register

the Texas Rehabilitation Commission will meet in the auditorium, Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin. According to the agenda, the committee will hear comments by interested citizens regarding services for deaf-blind/deaf-blind multidisabled persons.

Contact: James H. Loyd, Sam Houston Building, Room 607, 201 East 14th Street, Austin, Texas 78711, (512) 475-7881.

Filed: July 24, 1984, 1:13 p.m.
TRD-847706

Sunset Advisory Commission

Monday-Wednesday, August 6-8, 1984, 9 a.m. daily. The Sunset Advisory Commission will meet in Room E, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda summary, the commission will discuss the 1985 operating budget; hear a presentation and public testimony on the Veterans Land Board, School Land Board, Board for Lease of University Land, Boards for Lease of State-Owned Lands, Texas Department of Water Resources, River Compacts, Gulf States Marine Fisheries Compact, Texas Air Control Board, and Texas Health Facilities Commission and make decisions on the Office of State Entomologist, Office of the State Forester, Texas State Soil and Water Conservation Board, Texas Advisory Board of Occupational Therapy, Texas Commission for the Deaf, and the Texas Department on Aging.

Contact: Cindy Unsell, Room 305, John H. Reagan Building, Austin, Texas 78701, (512) 475-1718.

Filed: July 24, 1984, 11:22 a.m.
TRD-847700

Texas Southern University

Friday, August 3, 1984. Committees of Texas Southern University will meet in Room 117, Hannah Hall, 3100 Cleburne Avenue, Houston. Times, committees, and agendas follow.

8:30 a.m. The Development Committee will receive reports from the administration on university fund raising and hear a status report on educational and developmental gifts and grants.

8:45 a.m. The Student Affairs Committee will receive reports from the adminis-

tration on student financial aid, recruitment and admissions, grant awards, scholarships, and loans.

9 a.m. The Building and Grounds Committee will consider approval of payments for construction contracts; approval/ratification of building contracts; discussing a construction change order, improvements to land, sale of improvements; and hear a report on central plant expansion and renovation and a progress report of on-going construction projects.

10:15 a.m. The Finance Committee will consider the university's annual (1984-1985) educational, general, and auxiliary enterprises budgets and receive routine fiscal reports from the administration.

11 a.m. The Personnel and Academic Affairs Committee will receive enrollment and curricula data from the administration; consider faculty and staff appointments and academic program changes; cancel appointments; consider changes in status of personnel and a request for leaves; and approve the appointment of personnel.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: July 24, 1984, 1:15 p.m.
TRD-847714, 847713, 847712,
847711, 847710

Friday, August 3, 1984, 1:30 p.m. The Board of Regents of Texas Southern University will meet in Board Room 203, Sterling Student Life Center, 3100 Cleburne Avenue, Houston. According to the agenda, the board will receive and consider reports from the following standing committees: Finance, Building and Grounds, Student Affairs, Personnel and Academic Affairs, and Development; receive reports from the president; and approve the university's 1984-1985 educational, general, and auxiliary enterprises budgets. The board also will meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: July 24, 1984, 1:15 p.m.
TRD-847709

Regional Agencies Meeting Filed July 24

The West Central Texas Council of Governments, Regional Advisory Council on Aging, will meet in the large conference room,

1025 East North 10th Street, Abilene, on August 2, 1984, at 10:30 a.m. Information may be obtained from Dorothy Vanderslice, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

TRD-847705

Meetings Filed July 25

The Burnet County Appraisal District, Appraisal Review Board, will meet at 215 Pierce Street, Burnet, on August 9, 10, and 13, 1984, at 9 a.m. daily. The appraisal district will meet at the same location on August 9, 1984, at 6:30 p.m. Information may be obtained from Alvin C. Williams, Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Central Texas Mental Health and Mental Retardation Center, Board of Trustees, will meet at 408 Mulberry, Brownwood, on July 31, 1984, at 4:30 p.m. Information may be obtained from Gloria Willen, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574.

The Heart of Texas Council of Governments, Board of Directors, will meet in the Bellmead Community Center, 3900 Parrish, Bellmead, on August 2, 1984, at 6:30 p.m. Information may be obtained from H. W. Davis, 320 Franklin, Waco, Texas 76701, (817) 756-6631.

TRD-847737

Meetings Filed July 26

The Dallas Area Rapid Transit Authority, Service Plan/Work Program Committee, met in emergency session at 601 Pacific, Dallas, on July 27, 1984, at 3:30 p.m. The Special Needs Committee will meet at the same location on August 3, 1984, at 2 p.m., and the Search Committee will meet at the same location on August 31, 1984, at 4:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific, Dallas, Texas 75202, (214) 748-3278.

The Dallas County Appraisal District, Board of Directors, will meet at 2601 Live Oak, Dallas, on August 1, 1984, at 7:30 a.m. Information may be obtained from Shirley Lensky, 2601 Live Oak, Dallas, Texas 75204, (214) 826-1480.

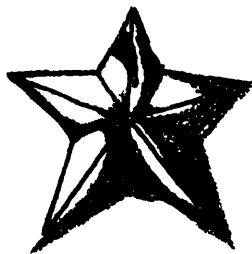
The Edwards County Appraisal District, Appraisal Review Board, will meet at the new county office building, Rocksprings, on July 31, 1984, at 8 a.m. Information may be obtained from Frank O. Cloudt, Box 378, Rocksprings, Texas 78880, (512) 683-2337.

TRD-847778

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

In Addition



ADM Feed Corporation, Sweetwater; mixed seed plant; Sweetwater, Nolan County; 305A; modification

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

TRD-847740

Paul M. Shinkawa
Director of Hearings
Texas Air Control Board

Filed: July 25, 1984

For further information, please call (512) 451-5711, ext. 354.

Texas Air Control Board Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of July 16-20, 1984.

Information relative to the applications listed as follows, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously stated address, and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Goodyear Tire and Rubber Company, Beaumont; polybutadiene polymerization; IH 10 and Smith Road; 9500; new source

Kerr-McGee Corporation, Grand Saline; oil and gas production; Grand Saline, Van Zandt County; 9501; new source

Archer Daniels Midland Company, Sweetwater; cottonseed hulls fired boiler; Sweetwater, Nolan County; 6062A; modification

Texas Department of Community Affairs Consultant Proposal Request

The Texas Department of Community Affairs (TDCA), as the state agency responsible for implementation and management of the Job Training Partnership Act (JTPA) Program in Texas, announces its consultant proposal request pursuant to Texas Civil Statutes, Article 6252-11c, under the negotiation method to perform auditing and evaluation services in accordance with United States Department of Labor (USDOL) and state guidelines and procedures pertaining to JTPA funds. The TDCA is soliciting proposals to perform services which may include:

- (1) evaluations of JTPA recipients and/or entities selected to administer JTPA funds;
- (2) training and technical assistance to state and local agencies or organizations involved in the administration/operation of JTPA programs; and
- (3) financial and compliance auditing services as determined necessary by the TDCA to ensure proper accountability for JTPA funds.

Detailed information regarding the project format is set forth in the request for proposal instructions which will be available on or after July 25, 1984, at the Texas Department of Community Affairs, Management Audit Divi-

sion, 2015 IH 35 South, P.O. Box 13166, Austin, Texas 78711.

The deadline for submission of proposals in response to this request will be 5 p.m. on Friday, August 24, 1984.

The TDCA reserves the right to accept or reject any or all proposals submitted. The TDCA is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractor alternatives. The TDCA intends to use responses as a basis for further negotiation of specific project details with potential contractors. The TDCA will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This request for proposals does not commit the TDCA to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the TDCA to award a contract or to pay any costs incurred in the preparation of a response. The TDCA specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the TDCA deems it to be in the best interest of the State of Texas.

For further information regarding this notice or to obtain copies of the request for proposal instructions, please contact Natalia A. Sanchez, CPA, Texas Department of Community Affairs, Management Audit Division, 2015 IH 35 South, P.O. Box 13166, Austin, Texas 78711, (512) 443-4100, ext. 350.

Issued in Austin, Texas, on July 25, 1984

TRD-847733 Douglas C. Brown
 General Counsel
 Texas Department of Community
 Affairs

Filed. July 25, 1984
 For further information, please call (512) 443-4100,
 ext. 210.

Texas Department of Health Public Hearings

In compliance with the National Health Planning and Resource Development Act of 1974 (Public Law 93-641), public hearings on the Statewide Health Coordinating Council's proposed state health plan for Texas will be conducted as follows.

- (1) August 9, 1984, 4 p.m.-6 p.m.
 Alamo Area Council of Governments
 118 Broadway, Suite 400
 San Antonio
- (2) August 13, 1984, 10 a.m.-Noon
 Middle Rio Grande Development Council
 The McNelly Room, First State Bank
 Building
 Uvalde
- (3) August 14, 1984, 2 p.m.-5 p.m.
 North Central Texas Council of Governments
 Second Floor, Board Room

- 616 Six Flags Drive
 Arlington
- (4) August 14, 1984, 7 p.m.
 Brazos Valley Development Council
 Conference Room
 3006 East 29th Street
 Bryan
- (5) August 16, 1984, 2 p.m.-4 p.m.
 West Central Texas Council of Governments
 Conference Room
 1025 East North 10th Street
 Abilene
- (6) August 17, 1984, 1:30 p.m.
 Panhandle Regional Planning Commission
 First Floor Conference Room
 Briercroft Savings Building
 415 West Eighth Street
 Amarillo
- (7) August 21, 1984, 2 p.m.-5 p.m.
 Lower Rio Grande Valley Development
 Council
 Town Hall Meeting Room, Second Floor
 Harlingen City Hall
 118 East Tyler
 Harlingen
- (8) August 22, 1984, 1 p.m.-3 p.m.
 West Texas Council of Governments
 Eighth Floor Conference Room
 Two Civic Center Plaza
 City Hall
 El Paso
- (9) August 22, 1984, 2 p.m.
 South Plains Association of Governments
 Family Park Shopping Center
 3424 Avenue H
 Lubbock
- (10) August 23, 1984, 2 p.m.-4 p.m.
 Capital Area Planning Council
 Stokes/Searcey Building, Suite 100
 2520 IH 35 South
 Austin
- (11) August 24, 1984, 10 a.m.
 Houston-Galveston Area Council
 Fourth Floor Conference Room
 3555 Timmins Lane
 Houston
- (12) August 28, 1984, 2 p.m.-4 p.m.
 Nortex Regional Planning Commission
 Conference Room
 2101 Kemp Street
 Wichita Falls
- (13) August 29, 1984, 9 a.m.
 Central Texas Council of Governments
 302 East Central Avenue
 Belton
- (14) August 30, 1984, 10 a.m.-Noon
 Deep East Texas Council of Governments
 Commissioners Court Meeting Room
 Angelina County Courthouse
 Lufkin
- (15) August 31, 1984, 10 a.m.
 Texas Department of Health
 Room G-209

1100 West 49th Street
Austin

The proposed plan presents statewide health concerns and proposes means to begin solving statewide health problems. Beginning August 1, copies of the proposed plan will be available for public review during working hours as follows.

- (1) Alamo Area Council of Governments
118 Broadway, Suite 400
San Antonio
- (2) Middle Rio Grande Development
Council
403 East Nopal
Carrizo Springs
- (3) North Central Texas Council of
Governments
616 Six Flags Drive
Arlington
- (4) Brazos Valley Development Council
3006 East 29th Street
Bryan
- (5) West Central Texas Council of
Governments
1025 East North 10th Street
Abilene
- (6) Panhandle Regional Planning
Commission
415 West Eighth Street, Suite 200
Amarillo
- (7) West Texas Council of Governments
Two Civic Center Plaza, Fifth Floor
El Paso
- (8) Lower Rio Grande Valley Development
Council
Texas Commerce Bank Building, Suite 207
McAllen
- (9) South Plains Association of
Governments
3424 Avenue H, Family Park Shopping
Center
Lubbock
- (10) Capital Area Planning Council
2520 IH 35 South, Suite 100
Austin
- (11) Houston-Galveston Area Council
3555 Timmins Lane
Houston
- (12) Nortex Regional Planning
Commission
2102 Kemp Street
Wichita Falls
- (13) Central Texas Council of
Governments
Bell County Courthouse East
302 East Central Avenue
Belton
- (14) Deep East Texas Council of
Governments
272 East Lamar
Jasper
- (15) Texas Department of Health
1100 West 49th Street
Austin

Oral and written comments pertaining to the proposed state health plan are invited and encouraged from the public. Written comments may be submitted at hearings or received by mail not later than August 31, 1984, by the Chairman, Statewide Health Coordinating Council, 1100 West 49th Street, Austin, Texas 78756-3199.

Issued in Austin, Texas, on July 25, 1984

TRD-847734

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

Filed: July 25, 1984

For further information, please call (512) 458-7261.



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 previously 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.

The University of Texas System Cancer Center,
M. D. Anderson Hospital and Tumor Institute,
Houston
AH84-0702-429

NIR—Request for a declaratory ruling that a certificate of need is not required for the University of Texas System Cancer Center, M. D. Anderson Hospital and Tumor Institute to establish an animal research facility in 12,000 gross square feet of space in the R. E. Smith Research Building. The project will be completed at a cost of \$750,000.

Memorial Hospital, Lufkin
AH81-1001-054A(071384)

CN/AMD—Request for an extension of the completion deadline from July 17, 1984, to July 17, 1985, in Certificate of Need AH81-1001-054, which authorized the certificate holder to conduct an extensive construction and renovation project including the construction of a three-floor addition containing 55,975 square feet and 78 beds, the renovation of 28,552 square feet, and the expansion and relocation of ancillary and support services.

Donala H. Grether and Rebecca Grether,
Lake Jackson
AN84-0716-465

NIEH—Request for a declaratory ruling that a certificate of need is not required for Donald H. Grether and Rebecca Grether to acquire by purchase Golden Villa Nursing Home, an existing 103-bed ICF nursing facility located in Angleton, from Frances Barcelo.

Arlington Hospital Authority, Arlington
AH84-0720-474

NIEH/DR—Request for a declaratory ruling that neither a certificate of need nor a notice of intent to acquire an existing health care facility is required for Arlington Hospital Authority to acquire Arlington Memorial Hospital, an existing 380-bed general acute care hospital located in Arlington, from Arlington Memorial Hospital Foundation, Inc.; or, in the alternative, that only a notice of intent to acquire an existing health care facility is required.

Concurrently with the acquisition of Arlington Memorial Hospital from Arlington Memorial Hospital Foundation, Inc., Arlington Hospital Authority will enter into an operating agreement with the foundation whereby the authority will lease the hospital to the foundation and the foundation will operate the hospital.

Issued in Austin, Texas, on July 25, 1984.

TRD-847736 John R. Neel
General Counsel
Texas Health Facilities
Commission

Filed: July 25, 1984

For further information, please call (512) 475-6940.

State Department of Highways and Public Transportation Consultant Contract Award

In compliance with Texas Civil Statutes, Article 6252-11c, the State Department of Highways and Public Transportation hereby furnishes this notice of contract award. The consultant proposal request appeared in the June 15, 1984, issue of the *Texas Register* (9 TexReg 3274). The contract effort consists of the development and performance of two nonurbanized public transportation workshops on marketing principles and techniques for rural and small urban public transportation systems receiving funds under the federal Section 18 Grant Program.

The contractor is Canga Enterprises, Inc., 8304 Tecumseh Drive, Austin, Texas 78753. The total value of the contract is \$14,934. The contract will begin on approximately August 1, 1984, and will terminate upon completion of the second workshop.

Final reports under this contract are not required.

Issued in Austin, Texas, on July 20, 1984.

TRD-847668 Diane L. Northam
Administrative Technician
State Department of Highways
and Public Transportation

Filed: July 23, 1984

For further information, please call (512) 475-2141.

Public Utility Commission of Texas Consultant Contract Award

In compliance with the provisions of Texas Civil Statutes, Article 6252-11c, the Energy Efficiency Division of the Public Utility Commission of Texas furnishes notice of a contract award.

Description of services. Pursuant to a consultant proposal request published in the April 17, 1984, issue of the *Texas Register* (9 TexReg 2181), a contractor has

been selected to conduct a series of fleet management workshops at various sites in Texas. The contractor is responsible for the following:

- (1) a 20-25 page self-instruction booklet for fleet managers;
- (2) eight workshops for fleet managers;
- (3) follow-up technical assistance to workshop attendees, on request;
- (4) final written report on estimated energy savings.

Contractor, Total Value, and Period of Contract. The consultant selected is Ernst & Whitney, 1225 Connecticut Avenue, Northwest, Washington, D.C. 20036. The total value of the contract is \$50,000. The beginning and ending dates of the contract are July 16, 1984, and May 31, 1985, respectively.

Due Date of Documents. All documents produced are due at the agency office no later than May 31, 1985.

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

TRD-847703 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Filed: July 24, 1984
For further information, please call (512) 458-0314.



Texas Savings and Loan Department Application to Establish Remote Service Unit

Application has been filed with the savings and loan commissioner of Texas by Texoma Savings Association, for approval to establish and operate a remote service unit at Highway 75 at 82 (Sher-den Mall), Sherman, Grayson County.

The applicant association asserts that security of the association's funds and that of its account holders will be maintained, and the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the application must file a written protest with the commissioner within 10 days following this notice. The commissioner may dispense with a hearing.

This application is filed pursuant to 7 TAC §§53.11-53.16 of the rules and regulations for savings and loan associations. Such rules are on file with the Office of the Secretary of State, Texas Register, or may be seen at the department's offices at 1004 Lavaca Street, Austin.

Issued in Austin, Texas, on July 16, 1984.

TRD-847659 L. L. Bowman III
Commissioner
Texas Savings and Loan
Department

Filed: July 23, 1984
For further information, please call (512) 475-7991.

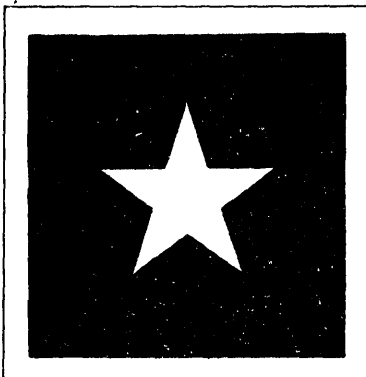
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