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Texas Register

Volume 10, Number 11

Pages 441 - 526



Highlights

The **Comptroller of Public Accounts** adopts on an emergency basis amendments concerning a change in the Franchise Tax Act.

Effective date - February 4 **page 449**

The **Railroad Commission of Texas** proposes amendments and new sections in a chapter

concerning regulations for compressed natural gas fuel systems. Earliest possible date of adoption - March 11 **page 452**

The **Texas Water Development Board** proposes amendments and new sections in a chapter concerning underground injection control. Earliest possible date of adoption - March 11 **page 456**

**Office of
the Secretary
of State**

Texas Register

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

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

Specific explanations on the contents of each section can be found on the beginning page of the section. The division also publishes 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: "10 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 10 TexReg 3."

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*.

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



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The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 475-3021

Editor's note: The following appointment has been submitted by the governor to the Senate of the 69th Legislature, 1985, for confirmation.)

Appointment Submitted January 19

Board of Pardons and Paroles

for a term to expire January 31, 1991:

Winona Wilson Miles
7204 Marywood Circle
Austin, Texas 78723

Ms. Miles is being reappointed.

Issued in Austin, Texas, on January 19, 1985.

RD-851032 Mark White
Governor of Texas

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Appointment Made January 21

Job Injury Advisory Committee

for a term to continue at the pleasure of the governor:

Paul M. Yeager
2602 Chase Drive
Wichita Falls, Texas 76308

Issued in Austin, Texas, on January 21, 1985.

RD-851032 Mark White
Governor of Texas

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Editor's note: The following appointment has been submitted by the governor to the Senate of the 69th Legislature, 1985, for confirmation.)

Appointment Submitted January 25

Board of Pardons and Paroles

for a term to expire January 31, 1991:

Wendell A. Odom
3351 Plainview
Pasadena, Texas 77504

Judge Odom is replacing Dr. George G. Killinger of Austin, who resigned.

Issued in Austin, Texas, on January 25, 1985.

TRD-851032 Mark White
Governor of Texas

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Appointments Made January 30

Governor's Select Committee on Water Quality Standards for the Colorado River

For terms to continue at the pleasure of the governor:

Martin Lee
1002 Koenigheim
San Angelo, Texas 76903

Beatrice Shapiro
403 East Wallace
San Saba, Texas 76877

John W. Jones
106 West 12th
Brady, Texas 76825

Everett Grindstaff, Jr.
501 Sixth Street
Ballinger, Texas 76821

Clay Roming
Route 1, Box 588
Eddy, Texas 76524

Stuart Henry
1519 Mohle
Austin, Texas 78703

Alan R. Erwin
3 Jeffery Cove
Austin, Texas 78746

Mark Rose
7322 Cave Hollow
Austin, Texas

Ernest T. Smerdon, Ph.D.
Center for Research in Water Resources
University of Texas at Austin
Austin, Texas 78712

Leslie Appelt
4010 One Shell Plaza
Houston, Texas 77002

Lester Cranek
Box 236
Columbus, Texas 78935

Burt O'Connell
P.O. Box 487
Bay City, Texas 77414

Jack A. Griesenbeck
Bastrop County Courthouse
Bastrop, Texas 78602

Larry Wadler
215 Delmas
Wharton, Texas 77488

To serve as chairman:

John W. Fainter, Jr.
2604 Escondido Cove
Austin, Texas 78703

Statewide Health Coordinating Council

Representing consumers for terms to expire
October 21, 1985:

Giles Dalby
P.O. Box 818
Post, Texas 79356

Marjorie Daniels
126 Juniper
Hereford, Texas 79045

Representing providers for terms to expire
October 21, 1985:

Dr. Robert B. Stell
2634 Oxford
San Angelo, Texas 76904

Doris M. Watson
1307 Angelina Court
College Station, Texas 77840

Representing consumers for terms to expire
October 21, 1986:

Adrian Arriaga
107 East Ulex
McAllen, Texas 78501

Buddy Cole
P.O. Box 684
Pilot Point, Texas 76258

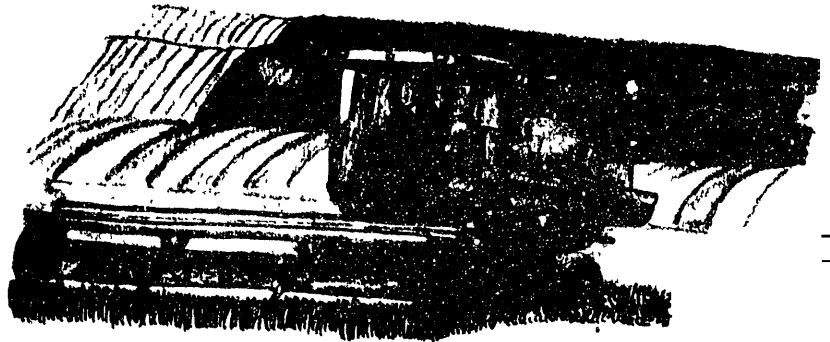
M. Madesta Smith
300 East Pierce
Clarksville, Texas 75426

Representing providers for a term to expire
October 21, 1986:

Melinda Gonzales
4206 Pecan Valley
Corpus Christi, Texas 78413

Issued in Austin, Texas, on January 30, 1985.

TRD-851032 Mark White
 Governor of Texas



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Proclamation 41-1980

WHEREAS, the Internal Revenue Code of 1954, §103A, as amended (the Code), provides that interest on bonds issued by or on behalf of a state or a political subdivision thereof to provide financing for owner-occupied residences shall be exempt from federal income taxation under certain circumstances; and

WHEREAS, the Code, §103A(g), imposes a ceiling on the aggregate amount of such housing bonds that may be issued within any state during any calendar year; and

WHEREAS, the Deficit Reduction Act of 1984, §611(d)(4); Texas Civil Statutes, Article 1269I-8, §2, as amended; and Executive Order MW-25 (July 13, 1984) provide that both the governor of Texas and the Texas Housing Agency, prior to February 1, 1985, shall determine the amount of such state ceiling for calendar year 1985 based on such evidence as they may determine and that, in the event that the governor and the Texas Housing Agency act on different dates in making such determination, the latter date shall control; and

WHEREAS, on July 18, 1984, the Internal Revenue Service released Revenue Procedure 84-53, which establishes \$1,014 billion as the state ceiling safe harbor limitation for the State of Texas for calendar year 1984, and the Internal Revenue Service has announced that such figure may be relied upon as the state ceiling safe harbor limitation for the State of Texas for calendar year 1985 until the Internal Revenue Service establishes the state ceiling safe harbor limitation for calendar year 1985; and

WHEREAS, the Board of Directors of the Texas Housing Agency determined the state ceiling for calendar year 1985 to be \$1,014 billion, with such determination to be effective as of January 31, 1985;

NOW, THEREFORE, I, Mark White, governor of Texas, under the authority vested in me, do hereby proclaim as follows:

- (1) that, for the purposes set forth previously, the state ceiling for the State of Texas for calendar year 1985 is hereby determined to be \$1.014 billion;
- (2) that I shall consider adjusting the determination set forth in §1 hereof upon the issuance by the Internal Revenue Service of a state ceiling safe harbor limitation for the State of Texas for calendar year 1985; and
- (3) that the determination set forth in §1 hereof shall be deemed to be effective on January 31, 1985, which shall be the date upon which issuers may file reservation requests with the Texas Department of Community Affairs pursuant to Texas Civil Statutes, Article 1269I-8, as amended; and Executive Order MW-25 (July 13, 1984).

Issued in Austin, Texas, on January 18, 1985.

TRD-851068

Mark White
Governor of Texas

Executive Orders MW-25A

Establishing Interim Procedures for the Allocation of the State Ceiling on Certain Housing Bonds.

WHEREAS, the Internal Revenue Code of 1954, §103A, as amended (the Code), provides that interest on bonds issued by or on behalf of a state or a political subdivision thereof prior to or on December 31, 1983, to provide financing for owner-occupied residences shall be exempt from federal income taxation under certain conditions; and

WHEREAS, the United States Congress has enacted the Deficit Reduction Act of 1984, House Resolution 4170 (referred to hereinafter as HR 4170), certain provisions of which serve to amend the Code, §103A, to cause it to be applicable to bonds issued prior to or on December 31, 1987; and

WHEREAS, the Code, §103A(g), imposes a ceiling on the aggregate amount of such housing bonds that may be issued within any state during any calendar year and provides that each state, by law enacted after December 5, 1980, may allocate such state ceiling among state and local issuers within such state; and

WHEREAS, Chapter 852, 67th Legislature, 1981 (codified as Texas Civil Statutes, Article 12691-8, as amended, and referred to hereinafter as Article 12691-8), established an allocation procedure for the issuance of such housing bonds in the State of Texas during calendar years 1981-1983, but not for subsequent years; and

WHEREAS, HR 4170, §611(d)(4), provides as follows:

Transitional Rule Where State Formula for Allocating State Ceiling Expires—

(A) In General—If a state law which provided a formula for allocating the state ceiling under the Code, §103A(g), for calendar year 1983, expires as of the close of calendar year 1983, for purposes of the Code, §103A(g), such state law shall be treated as remaining in effect after 1983. In any case to which the preceding sentence applies, where the state's expiring allocation formula requires action by a state official to allocate the state ceiling among issuers, actions of such state official in allocating such ceiling shall be effective.

(B) Termination—Subparagraph (A) shall not apply on or after the effective date of any state legislation enacted after the date of the enactment of this Act with respect to the allocation of the state ceiling.

(C) Special Rule for Texas—In the case of Texas, the governor of such state may take the action described in subparagraph (A) pursuant to procedures established by the governor consistent with the state laws of Texas.

WHEREAS, the Texas Legislature has not yet enacted any legislation with respect to the allocation of the state ceiling on such housing bonds during 1984 and subsequent years; and

WHEREAS, state and local issuers of such housing bonds in the State of Texas have indicated their desire to proceed expeditiously to issue such housing bonds during 1984 and subsequent years as permitted by HR 4170, and have further indicated their desire to market such bonds at the earliest practicable date to obtain favorable interest rates on such bonds; and

WHEREAS, any delay in the implementation of the interim procedures set forth herein would place persons and families of low and moderate income in Texas at a material disadvantage in obtaining low-interest home mortgage loans under the provision of HR 4170; and

WHEREAS, in view of the foregoing, the governor of the State of Texas has determined to promulgate and adopt the interim procedures set forth in this Executive Order; **NOW, THEREFORE, I, Mark White, governor of Texas, under the authority vested in me, do hereby order as follows.**

(1) It is hereby ordered that the terms and provisions of Article 12691-8, with the modifications set forth herein, are adopted for allocating the state ceiling on housing bonds issued in Texas pursuant to the Code, §103A.

(2) It is hereby ordered that the Texas Department of Community Affairs (TDCA) is authorized and directed to continue to administer such allocation procedure in accordance with the terms and provisions of this Executive Order and together with the modifications set forth herein, Article 12691-8 and the procedures and forms issued by the TDCA on June 30, 1981, and published in the July 7, 1981, issue of the *Texas Register* (the TDCA procedures).

(3) It is hereby ordered that Article 12691-8 and the TDCA procedures shall be deemed modified for the purposes hereof by inserting "1984" in all places where "1981" appears, by inserting "1985" in all places where "1982" appears, and by inserting "1986 and 1987" in all places where "1983" appears.

(4) It is hereby ordered that requests for reservation of a portion of the local share of the state ceiling for calendar years 1984-1987 shall be accepted for filing at the TDCA only upon and after the date upon which both the governor and the Texas Housing Agency have made an initial determination of the state ceiling for such calendar year. In connection therewith, the governor hereby declares his intention to determine the state ceiling for calendar year 1984 on July 18, 1984. It is hereby ordered that both the governor and the Texas Housing Agency shall determine and, if necessary, adjust the state ceiling for each calendar year. In the event that the governor and the Texas Housing Agency act on different dates in making such determination or adjustment, the latter date shall control.

(5) It is hereby ordered that all bond purchase contracts accompanying requests for reservation of a portion of the local share of the state ceiling for calendar years 1985-1987 shall be dated no earlier than the first business day of January of each respective year, and that all bond purchase contracts accompanying requests for reservation of a portion of the local share of the state ceiling for calendar years 1985-1987 shall be dated no earlier than 30 days prior to the date of filing of such reservation request; provided, however, that for 1985 only, the requirements set forth in this §5 shall not be applicable to those local housing finance corporations that filed a reservation request in 1984 but did not receive an allocation in such year due to the exhaustion of the local share of the state ceiling, and such local housing finance corporations shall be eligible to file 1985 reservation requests accompanied by bond purchase contracts that were filed in 1984.

(6) It is hereby ordered that no more than one reservation request may be filed by an issuer with the TDCA during each calendar year unless the reservation issued with respect to a prior reservation request of such issuer during such year has lapsed or has been exhausted, in which event such issuer may thereupon file another reservation request during such year.

(7) It is hereby ordered that any reservation request for which a reservation certificate is not immediately available shall remain eligible for a reservation certificate during the remainder of the calendar year during which such request was filed without the necessity of refiling a subsequent reservation request by the issuer; provided, however, that the 45-day period referred to in Article 12691-8, §5(c), and the TDCA TAC, §121.13, shall not be deemed to commence until the issuance by the TDCA of a reservation certificate pertaining to such reservation request.

(8) It is hereby ordered that the executive director of the TDCA shall certify in connection with each reservation certificate that the issuer of such certificate is the subject of such certificate meets the requirements of the Code, §103A(g).

(9) It is hereby ordered that the executive director of the TDCA may and is hereby authorized to adopt such other and further forms and procedures as may be necessary to carry out the intent of this executive order.

(10) This amendment of Executive Order MW-25 shall be given retroactive effect as of the original date of MW-25. It shall remain in full force and effect until modified, amended, or rescinded by me or until the effective date of any state legislation with respect to allocation of the state ceiling.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas, on January 31, 1985.

TRD-851069

Mark White
Governor of Texas

MW-32

Establishing the Governor's Advisory Committee on Water Quality Standards for the Colorado River and its Tributaries between Austin and Columbus.

WHEREAS, the Colorado River below Austin is among the most beautiful and economically important rivers in the State of Texas; and

WHEREAS, the growth and development of areas upstream of this section of the Colorado River had increased and will undoubtedly result in increased requests for sewage effluent discharges into this river; and

WHEREAS, there exists sufficient public concern that current discharge standards need to be examined to insure their adequacy; and

WHEREAS, environmentalists, developers, and governmental bodies in these areas have an interest in preserving the natural beauty of this river; and

WHEREAS, the State of Texas has a strong commitment to maintaining the quality of our water resources;

NOW, THEREFORE, I, Mark White, governor of Texas, under the authority vested in me, do hereby create and establish the Governor's Advisory Committee on Water Quality for the Colorado River between Austin and Columbus, hereinafter referred to as the committee.

The committee will consist of not more than 15 members appointed by the governor, and who will serve at the pleasure of the governor. The governor shall designate a chairman from the membership who will serve at the pleasure of the governor. The committee shall be comprised of representatives from environmental groups, upstream and downstream government officials, developers, members of the engineering community, and members of the general public.

The committee will be charged with the following responsibilities:

(1) to examine water existing water quality standards for the Colorado River between Austin and Columbus and to determine whether these standards are adequate to protect the public health and environment; and

(2) to make recommendations within 75 days to the Texas Water Development Board, the Texas Water Commission, the Public Utility Commission of Texas, the Lower Colorado River Authority, and the Texas Parks and Wildlife Commission, with respect to adequacy of present water quality standards for this segment of the Colorado River.

The committee shall meet at the call of the chairman. A majority of the membership shall constitute a quorum. The chairman shall, in consultation with the governor, establish the agenda for committee meetings.

Staff assistance will be provided by the Office of the Governor with the assistance of the Texas Water Development Board, the Texas Water Commission, the Public Utility Commission of Texas, the Lower Colorado River Authority, and the Texas Parks and Wildlife Commission. All other state agencies and governmental units are hereby directed to cooperate with and provide information and technical assistance to the committee.

Members of the committee shall serve without compensation. Committee members, not otherwise reimbursed by a governmental unit, shall receive travel and per diem at the same rates as provided to members of statutory boards and commissions under the General Appropriations Act.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas, on January 29, 1985.

TRD-851069

Mark White
Governor of Texas

Attorney General

Description of attorney general submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Requests for Opinions

RQ-488. Request from Richard W. Carter, Chairman, Texas Crime Stoppers Advisory Council, Arlington, concerning whether a judge may require a probationer to make a one-time contribution to a crime stoppers program.

RQ-489. Request from Jesusa Sanchez-Vera, Jim Wells County attorney, Alice, concerning whether a municipal judge may simultaneously serve as county auditor.

RQ-490. Request from T. R. Bandy, Jr., Nueces County attorney, Corpus Christi, concerning whether a county may impose an annual fee for parking of motor vehicles on Gulf Coast beaches.

RQ-491. Request from Charles D. Penick, criminal district attorney, Bastrop, concerning whether a county may maintain a road which has not been dedicated to the county.

RQ-492. Request from James Rasmussen, Wichita County attorney, Wichita Falls, concerning whether a commissioners court may reduce a county attorney's salary after the annual budget has been adopted.

RQ-493. Request from Oscar Mauzy, chairman, Senate Committee on Jurisprudence, Austin, concerning whether a municipal court has jurisdiction to try a Class C nontraffic misdemeanor case involving a defendant under the age of 17.

RQ-494. Request from James B. Adams, director, Texas Department of Public Safety, Austin, concerning whether reports filed by judges and prosecutors pursuant to the

Code of Criminal Procedure, Article 18.20, §15(c), are available to the public.

RQ-495. Request from William Y. Cobb, state chemist, Texas Agricultural Experiment Station, College Station, concerning whether the sale of cotton plant byproducts by a gin qualifies for exemption under the Property Code.

RQ-496. Request from Representative Lloyd Criss, chairman, Committee on Labor and Employment, House of Representatives, Austin, concerning whether a state agency may adopt certain policies with regard to overtime and compensatory time.

RQ-497. Request from Garry Mauro, commissioner, General Land Office, Austin, concerning constitutionality of Texas Civil Statutes, Article 6673a-1, and the Natural Resources Code, §34.002, which prohibit oil and gas leases on state highway rights of way.

RQ-498. Request from Willie Arpe, Nolan County auditor, Sweetwater, concerning whether an elected county official may purchase supplies from a business at which his brother is employed.

RQ-499. Request from Bill Messer, House of Representatives, Austin, concerning whether the maximum amount of an automobile liability insurance policy was automatically raised by amendments to Texas Civil Statutes Article 6701(h).

RQ-500. Request from Garry Mauro, commissioner, General Land Office, Austin, concerning whether the School Land Board is authorized to sell certain tracts of land acquired through the foreclosure sales.

RQ-501. Request from James Weems, Hockley County attorney, Levelland, concerning whether a commissioners court may expend travel funds for the purpose of protesting the issuance of a private club license by the Alcoholic Beverage Commission.

RQ-502. Request from Jerry Hodge, R.Ph., president, Texas State Board of Pharmacy, Austin, concerning whether the Texas State Board of Pharmacy may license and regulate out-of-state mail order pharmacies.

RQ-503. Request from F. Duncan Thomas, 196th District attorney, Greenville, concerning whether certain fees may be charged by a district clerk.

RQ-504. Request from Frank Tejada, chairman, House Judicial Affairs Committee, House of Representatives, Austin, concerning whether the legislature may authorize a county court-at-law judge to grant license under the Alcoholic Beverage Code.

RQ-505. Request from William L. Ferguson, Rusk County attorney, Henderson, concerning circumstances under which a county may dispose of an abandoned right of way.

RQ-506. Request from Representative Lloyd Criss, chairman, Committee on Labor and Employment Relations, House of Representatives, Austin, concerning whether a city or county official may engage in the writing of bail bonds.

TRD-851064

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Emergency

Rules

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

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter Q. Franchise Tax

★34 TAC §3.403

The Comptroller of Public Accounts adopts on an emergency basis amendments to §3.403, concerning gross receipts and determining percent of Texas business. One amendment reflects a change to the Franchise Tax Act made by the legislature in the 1984 special session. The new "throwback" rule legislation provides that each sale of tangible personal property shipped from Texas to a purchaser in another state will be considered a Texas receipt when the seller is not subject to taxation in the state to which the property is shipped. A subsection also is being amended to reflect a change in the method for reporting a corporation's income from a partnership or joint venture in which it is a partner or joint venturer. Two subsections are being deleted because they are addressed elsewhere.

The amendments are adopted on an emergency basis under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

§3.403. *Gross Receipts: Determining Percent of Texas Business.*

(a) **Definitions [General].** The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. [The portion of a corporation's "taxable capital" as that term is defined in Article 12.01, that is allocated and apportioned to Texas is determined by multiplying such taxable capital by an allocation percentage, which is the percentage relationship which the gross receipts from its business done in Texas bear to the total gross receipts of the corporation from its entire business, both within and outside the State of Texas. The terms "gross receipts from its business done in Texas" and "total gross

receipts of the corporation from its entire business" are defined in Article 12.02, Chapter 12, Title 122 - A, Texas Civil Statutes. The only exception from the foregoing is special reporting method granted to a corporation by the comptroller under the provisions of §3.393 of this title (relating to Special Reporting Procedures--Article 1202). In this rule, the phrases "Texas receipts" and "business done in Texas" are synonymous and used interchangeably.]

(1) **Gross receipts from business done in this state (Texas receipts and gross receipts from business done in this state are synonymous and may be used interchangeably)—The sum of a corporation's receipts from:**

(A) each sale of tangible personal property if the property is delivered or shipped to a purchaser in this state regardless of the F.O.B. point or other conditions of the sale;

(B) for reports due on or after October 2, 1984, each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation;

(i) another state—a state of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States;

(ii) subject to taxation—constitutional nexus. The seller must have sufficient contact with the other state that it could impose tax on the seller; however, the seller need not actually pay tax in the other state. If the seller is doing business, has a certificate of authority, is incorporated or required to pay tax in another state, the seller is subject to taxation in that state. Voluntarily collecting or paying a tax to another state, by itself, is not enough contact to make sales to the other state non-Texas receipts;

(C) each service performed in this state;

(D) each rental of property situated in this state;

(E) that portion of each royalty for the use of a patent or copyright in this state; and

(F) other business done within this state.

(2) **Gross receipts from its entire business—The sum of a corporation's receipts from:**

(A) each sale of the corporation's tangible personal property;

(B) each service, rental, or royalty;

(C) other business.

(b) **Determining the amount of taxable capital allocated to this state. The part of a corporation's taxable capital used to determine the amount of franchise tax due this state is obtained by multiplying the corporation's taxable capital by an allocation fraction, the numerator of which is the corporation's gross receipts from business done in this state, and the denominator of which is the corporation's gross receipts from its entire business. A corporation must use this allocation method unless it is granted permission to use a special reporting method by the comptroller under the provisions of §3.393 of this title (relating to Special Reporting Procedures).**

(c)[(b)] General rules of application.

(1) (No change.)

[(2) Receipts of a car company subject to the Gross Receipts Tax, Texas Taxation General Annotated, Chapter 11, which are not based on its car company operations are not exempt from the franchise tax.]

(2)[(3)] An occupation tax, or other similar excise tax, may not be deducted from the sales price charged to customers in determining gross receipts in franchise tax calculations.

(3)[(4)] For the purpose of determining whether a particular transaction constitutes business done in this state [Texas], the dividing line between Texas waters and international waters is established at 10.359 statute miles, or nine nautical miles from the Texas coastline.

(4)[(5)] In long-term construction contracts, actual monies received must be used in calculating receipts for franchise tax purposes, as distinguished from the amounts that are billed or from recognition of income.

(5)[(6)] Insurance payments received on fire and casualty claims to repair or replace damaged or destroyed property are not receipts in franchise tax calculations. However, business interruption insurance payments are gross receipts for franchise tax purposes when the proceeds are to replace lost net profits.

(6)[(7)] Amounts received from subleases are reportable as gross receipts.

(7)[(8)] When a corporation changes its accounting year, gross receipts for the 12-month period ending with the new accounting year end must be used in calculating the percentage of business in Texas.

(8)[(9)] Advance rentals paid by a lessee are receipts which must be allocated to the years for which the rentals are paid.

(9)[(10)] Gains on the sale of real property are allocated to the state in which the realty is located.

(10)[(11)] Net gains and losses rather than gross sales price from the sales of investments and capital assets shall be added together to determine the total receipts from such transactions. If there is a net loss, the corporation must report zero receipts from such transactions. If only part of such transactions are Texas sales, for the purpose of allocating the receipts under the Texas Tax Code, §§171.103-171.106 and 171.108 [Article 12.02], a separate calculation must be made of the net gains and losses of the Texas sales.

(11)[(12)] Regardless of the method of accounting for investments in subsidiaries and affiliated corporations, dividends paid, rather than earnings of the subsidiary or investee, constitute gross receipts in the accounting year in which received by the parent or investor.

(12)[(13)] In the absence of an election to report under one of the two optional reporting methods referred to in this paragraph, a transportation company is required to report as Texas receipts only those receipts derived from the transportation of goods or passengers in intrastate commerce (wholly within Texas).

(A) Optional methods: Transportation companies transporting goods or passengers in interstate commerce may determine their percentage of business in Texas using:

(i) total mileage inside the borders of Texas and total mileage everywhere; or

(ii) total mileage in transporting goods or passengers picked up and delivered within Texas and total mileage everywhere.

(B) The taxpayer must maintain adequate records to validate the percentage of business in Texas determined under this paragraph. Should the taxpayer report using one of the alternative methods allowable under this paragraph, such action will constitute an irrevocable election of the alternate reporting method for the reporting period. A prospective election for a different reporting method may be made at any time.

(13)[(14)] The fact that sales to the federal government are completed on a government reservation does not remove the receipts from such sales from franchise tax calculations. A corporation is not relieved from payment of the franchise tax by rea-

son of residing in a federal reservation and receiving income from sales and services completed in the reservation.

(14)[(15)] Deliveries of oil and gas pursuant to written exchange agreements between oil and gas companies do not result in receipts for franchise tax calculations.

(15)[(16)] A sale to an out-of-state purchaser with delivery or transfer of possession to the purchaser occurring within Texas, constitutes gross receipts from business done in this state [Texas], regardless of F.O.B. point or other conditions of the sale.

(16)[(17)] Receipts from intercorporate sales and charges for services rendered between parent and subsidiary, or between other related corporations, constitute gross receipts for franchise tax calculations, as a parent and its subsidiaries, or other affiliated corporations, are separate legal entities. The foregoing applies even though the sales or services are centralized in one of the corporations and reimbursement to it is based on the actual cost expended in behalf of the other corporations.

(17)[(18)] Commissions of a stock broker for services performed in buying and selling on the stock exchanges are allocated on the basis of the percentage of such services performed in Texas and the percentage performed in other states.

(18)[(19)] A corporation's share of the gross receipts [net profit] from a partnership or joint venture in which the corporation is a partner or joint venturer constitutes receipts to the corporation. [If the partnership or joint venture operates at a net loss, the corporation's share of the loss results in zero receipts for franchise tax calculations.] For the purpose of allocating receipts under the Texas Tax Code, §§171.103-171.106 and 171.108 [Article 12.02], receipts from partnerships or joint ventures having their principal place of business in Texas are considered Texas receipts.

(19)[(20)] The "location of payor" test is used in determining whether dividends and interest are attributable as receipts from business done in Texas. In accordance with that test, dividends and interest paid by a domestic corporation are includible in gross receipts from business done in this state [Texas], whereas dividends and interest paid by a foreign corporation do not constitute Texas [gross] receipts. Consequently,

(A) dividends and interest paid by a bank organized under the Banking Code of Texas are includible in gross receipts from business done in this state [Texas], and

(B) dividends and interest paid on or after January 1, 1983, by a national bank whose principal office is located within Texas are includible in gross receipts from business done in this state [Texas].

(20)[(21)] Gross receipts coming into the hands of the receiver of a corpora-

tion in receivership are gross receipts of the corporation.

(21)[(22)] For franchise tax purposes, A domestic international sales corporation (DISC) is treated the same as any other corporation doing business in Texas, except that a commission DISC, if it desires to do so, may use the percentage of Texas business of its parent which does business in Texas.

(22)[(23)] Where a seller prepays freight charges for goods and merchandise shipped to a customer and enters the charges as a separate item in the sales invoice, the reimbursement of the freight charges by the customer does not give rise to gross receipts in the seller's franchise tax calculations.

(23)[(24)] A Federal Power Commission ruling which requires refunds of price increases by a gas public utility results in a reduction in receipts rather than an expense to the utility. Adjustments as may be required to gross receipts, percentage of business in Texas, and surplus must be made for each year during which the increase was in effect, depending on whether the price increase is carried on the corporate books as receipts or as a liability.

(24)[(25)] Charges made by a hotel, motel, or other lodging facility for local telephone calls at a fixed charge per call or per rental unit are gross receipts for franchise tax calculations. However, charges for long distance charges are not gross receipts if the lodging facility charges the same amount billed by the telephone company for the call.

(25)[(26)] State or federal tax refunds do not constitute gross receipts.

(26)[(27)] Bad debt recoveries do not constitute gross receipts.

(27)[(28)] Installment sales. (For the period in which receipts from installment sales are includible, see §3.405 of this title (relating to Surplus and Undivided Profits).)

(28)[(29)] If a corporation's books and records do not accurately reflect a division between Texas and out-of-state receipts, the comptroller may project an allocation of Texas receipts based upon any information available.

(d)[(c)] Transactions not resulting in Texas [gross] receipts.

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

(3) The sale of oil, goods, or merchandise delivered to a third-party carrier for delivery outside the State of Texas, does not constitute gross receipts from business done in this state [Texas], regardless of F.O.B. designation, unless it is established that the oil, goods, or merchandise were delivered to a purchaser in Texas.

(4)-(5) (No change.)

(6) The Texas Tax Code, §171.104 [Article 12.02(1)(c)], allows a deduction from Texas receipts based on sales of drugs, medicines, or other products exempted un-

der the Texas Tax Code, §151.313 and §151.314(a) [Section (M) Article 20.04 of Texas Taxation General Annotated (Vernon 1969)], to the extent such sales are shipped from outside the State of Texas. The sale of drugs, medicines, or other products are exempt under §151.313 [Section (M)] only when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts. Consequently, the deduction in the Texas Tax Code, §171.104 [Article 12.02(1)(c)] is allowable for drugs, medicines, or other products shipped into Texas from outside the state only when prescribed for humans or animals by a licensed practitioner.

(e)(d) Transactions resulting in Texas [gross] receipts.

(1) The sale of oil or gas by a Texas producer to an interstate pipeline compa-

ny, with delivery and passage of title and possession in Texas, results in receipts from business done in this state [Texas].

(2) (No change.)

(3) The delivery in Texas of petroleum products into barges leased or owned by the purchaser constitutes delivery to the purchaser in Texas, and, consequently, results in gross receipts from business done in this state [Texas].

(4) (No change.)

(5) All revenues of a radio or television operation which broadcasts or transmits from stations within Texas constitute Texas receipts, even though some of the listening and viewing audiences are outside the state, except revenues from programs filmed or otherwise developed by a station in Texas which are [is] sold or leased to a

national media for broadcasting or transmitting by the national media.

[(6) A lease of personal property contracted in Texas may, depending upon the legal situs of the personal property at the time of the lease, constitute business done in Texas without regard to where the property is used.]

Issued in Austin, Texas, on February 4, 1985.

TRD-851072

Bob Bullock
Comptroller of Public
Accounts

Effective date: February 1, 1985
Expiration date: June 5, 1985
For further information, please call
(512) 475-1913.

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Proposed Rules

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. Also, in the case of substantive rules, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency or an association having at least 25 members.

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 13. Regulations for Compressed Natural Gas (CNG) Fuel Systems

Subchapter A. Scope and Definitions

★ 16 TAC §13.2

The Railroad Commission of Texas proposes amendments to §13.2, concerning definitions used in compressed natural gas (CNG) regulations. The amendments add definitions which give greater clarity to the regulations and delete those definitions which no longer are necessary.

Thomas D. Petru, LP-Gas Division 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.

Mr. Petru 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 greater clarity in CNG regulation. 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 Thomas D. Petru, Director, Railroad Commission of Texas, LP-Gas Division, P.O. Drawer 12967, Austin, Texas 78711.

The amendments are proposed under the Natural Resources Code, §116.011, which provides the Railroad Commission of Texas with the authority to adopt necessary rules and standards relating to compressed natural gas work and operations.

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

Approved—Acceptable to the section or the [railroad] commission.

Cascade storage system [systems]—Storage in multiple cylinders.

CNG cylinder—A cylinder or other container designed for use or used as part of a CNG system.

CNG system [systems]—A system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or public place by the general public or in conjunction with a motor vehicle fueled by compressed natural gas and any system of equipment designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of compressed natural gas in portable CNG cylinders, but does not include a natural gas pipeline located upstream of the inlet of the compressor.

Commission—The Railroad Commission of Texas.

Compressed natural gas (CNG)—Natural gas which is mixtures of hydrocarbon gases and vapors, consisting principally of methane (CH₄) in gaseous form that is [which has been] compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

CNG cargo tank—A container in accordance with American Society of Mechanical Engineers (ASME) or Department of Transportation (DOT) specifications and used to transport CNG for delivery.

[Cylinder—A container constructed, inspected, and maintained according to Department of Transportation (DOT) regulations for the purpose of storing natural gas and having not over 1,000 pounds of water capacity (nominal).]

Cylinder service valve—A hand-wheel-operated valve connected directly to a CNG cylinder [outlet not larger than 3/4 inch].

Dispensing station—A compressed natural gas installation that dispenses CNG from any source [storage cylinders] by any means [of a compressor or pressure booster] into fuel supply cylinders installed on vehicles or into portable cylinders.

[Flexible metal and wire braided hose—A metal hose approved by the Railroad Commission of Texas and made from continuous tubing which is corrugated for

flexibility and which, for pressurized applications, shall have an external wire braid.]

Fuel supply cylinder—A cylinder mounted upon a vehicle for storage of [to store] CNG as a fuel supply to an [the] internal combustion engine [of the vehicle].
Location—A site operated by a CNG licensee at which the licensee carries on an essential element of its CNG-related activities, but where the activities of the site alone are not enough to qualify such site as an outlet.

Manifold—The assembly of piping and fittings used for interconnecting CNG [all] cylinders [to a common pipe line].

[Manual shut off valve—A quick-closing valve located downstream of all CNG fuel supply cylinders on the vehicle.]

Motor vehicle—A self-propelled vehicle licensed for highway use or used on a public highway.

Outlet—A site operated by a CNG licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license. Elements to be considered in determining the existence of an outlet include, but are not limited to, the following:

- (A) storage of CNG on the site;
- (B) sale or distribution of CNG from the site;
- (C) licensee supervision of employees at the site;
- (D) proximity of the site to other outlets;
- (E) communication between the site and other outlets; and
- (F) nature of licensee activities.

Person—An individual, sole proprietor, partnership, joint venture, corporation, or other entity.

Pressure relief valve [device]—A device designed to prevent rupture of a normally charged cylinder [when it is placed in a fire].

[Pressure relief device channels—The passage or passages beyond the operating parts of the pressure relief device through which gas must pass to reach the atmosphere.]

Section—The Compressed Natural Gas Section of the Liquefied Petroleum Gas Division of the Railroad Commission of Texas.

Transport—Any vehicle or combination of vehicles and CNG cylinders designed or adapted for use or used principally as a

means of moving or delivering CNG from one place to another. This shall include, but not be limited to, any truck, trailer, semi-trailer, cargo tank, or other vehicle used in the distribution of CNG.

Ultimate consumer—The individual controlling CNG immediately prior to its ignition.

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

Issued in Austin, Texas, on January 21, 1985.

TRD-851049 Walter Earl Lile
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
March 11, 1985
For further information, please call
(512) 445-1186.

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Subchapter E. Classification, Registration, and Examination

16 TAC §§13.81, 13.84, 13.86,
13.88-13.90, 13.95-13.99

The Railroad Commission of Texas proposes new §§13.81, 13.84, 13.86, 13.88-13.90, and 13.95-13.99, concerning the classification, registration, and examination of those individuals or businesses subject to the jurisdiction of the CNG Section of the LP-Gas Division. These revised new sections are submitted for publication following a public hearing held by the LP-Gas Division in November 1984.

Thomas D. Petru, LP-Gas Division director, has determined that for the first five-year period the rules will be in effect there will be fiscal implications as a result of enforcing or administering the rules. The effect on state government for the first five-year period is estimated to be approximately \$15,000 per year for 1984-1985. This is approximately what it will cost the section to administer the proposed rules. There is no anticipated effect on local governments.

There will be a financial cost to small businesses subject to the CNG Section's jurisdiction, as the proposed rules require licensing fees of either \$150 per year or \$500 per year, depending on the nature of the CNG-related activities of the small business. Additionally, there will be costs associated with the insurance required by these proposals. Because of the divergent costs of insurance, and because these costs will depend, to a large degree, upon

the nature of a licensee's activities, the division is not able to assess what this cost per year will be. Employees of any business will be required to take examinations. These examinations cost either \$10 per exam or \$25 per exam, depending on the level of proficiency tested. Although the licensee is not required to pay an employee's examination fee, this could also contribute to increased costs for businesses. The costs to small businesses will be identical to those of large businesses, except in the field of insurance, where a large company may wield better bargaining power.

Mr. Petru also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is greater safety in the CNG marketplace and increased clarity in regulation. The anticipated economic cost to individuals who are required to comply with the rule as proposed has been stated previously. CNG-related businesses will have to pay licensing fees each year, meet the insurance requirements of the rules in each year, and pay, in some cases, for the costs of examination of employees and representatives. These examinations are either \$10 per exam or \$25 per exam, depending on the degree of proficiency measured. Since the nature of those who may be affected by these rules is varied, more accurate estimates of the cost to the public cannot be offered. All costs would continue on a yearly basis until a rule is revoked.

Comments on the proposal may be submitted to Thomas D. Petru, Director, LP-Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

The new sections are proposed under the Natural Resources Code, §116.011, which provides the Railroad Commission of Texas with the authority to adopt necessary rules and standards relating to compressed natural gas work and operations.

§13.81. Licensing.

(a) The Railroad Commission of Texas establishes the following classes of licensees and license fees.

(1) Category 1. This category includes persons who manufacture, assemble, repair, install, or subframe CNG cylinders for use in this state. The Category 1 license fee shall be \$500 per year.

(2) Category 2. This category includes persons who sell, install, service, or repair CNG systems for use in this state. The Category 2 license fee shall be \$150 per year.

(3) Category 3. This category includes persons who sell CNG or who store, transport for delivery, or dispense CNG for use other than as an ultimate consumer. The Category 3 license fee shall be \$500 per year.

(4) Category 4. This category includes persons who engage in the testing of CNG cylinders and parts of CNG systems. The Category 4 license fee shall be \$150 per year.

(b) Unless a person has obtained a license, under the provisions of these sections, the person may not engage in any of the activities previously listed. If a license expires or lapses, CNG operations shall immediately cease.

(c) Subsection (a)(2) of this section notwithstanding, no ultimate consumer is required to be licensed in order to perform those operations dealing only with the ultimate consumer.

(d) A license obtained by an individual, partnership, corporation, or other legal entity extends to the entity's employees who are performing CNG work, provided that each employee is qualified as required by this chapter.

(e) All licenses issued by the CNG Section expire each year at midnight on the 31st day of May. In order to continue operations without interruption, licensees must renew licenses yearly prior to the time of expiration.

§13.84. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has adopted the following insurance requirements for those persons or businesses licensed by the CNG Section to do business in Texas. A valid certificate of insurance shall be filed with the CNG Section before the section grants or renews a license.

(1) Each member of each category shall have the following coverage:

(A) general liability insurance, including, specifically, premises and operations coverage and products and completed operations coverage, with the following minimum amounts of coverage: \$500,000 bodily injury coverages, plus \$300,000 property damage coverage per occurrence, with \$500,000 aggregate for property damage, or \$800,000 combined single limits coverage.

(B) workers' compensation coverage, including employer's liability coverage as required by Texas law.

(2) All licensees or ultimate consumers who have purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this chapter shall have automobile bodily injury and property damage liability coverage with the following minimum amounts of coverage: \$250,000 bodily injury per person with \$750,000 bodily injury per occurrence; plus \$150,000 property damage per occurrence, or \$900,000 combined single limits coverage.

(b) A licensee or applicant for a license that does not employ or contemplate employing any person in CNG-related activities may file CNG Form 1996B in lieu of a certificate of workers' compensation coverage, including employer's liability insurance. The licensee or applicant for license must file

the required insurance certificate with the CNG Section before hiring any person as an employee in a CNG-related position.

(c) A licensee or applicant for license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file CNG Form 1998C in lieu of a certificate of general liability insurance. The licensee or applicant for a license must file the required insurance certificate with the CNG Section before engaging in any operations that require general liability insurance.

(d) All policies of insurance provided under this section shall be effective until canceled by the insurer, and all certificates of insurance received by the CNG Section shall so state. Additionally, the CNG Section shall be notified immediately upon the cancellation of any policy of insurance, by both the insured and the insurer, and all certificates of insurance shall so state.

(e) All providers of insurance under this section shall be approved by the State Board of Insurance, or they shall be substantially similar in form and financial soundness as those firms approved by the board.

§13.86. Limitation/Avoidance of Licensee Liability.

(a) A CNG licensee may not limit or avoid its liability or that of its insurer for damages proximately caused by any negligent act or acts of the licensee in handling CNG.

(b) An attempt to limit or avoid liability before the negligent act or acts, through indemnity clauses or otherwise, shall be null and void.

(c) This section does not apply to negotiations and/or settlements made subsequent to the recognition by the parties to a contract of the licensee's negligent act or acts.

(d) To the extent that any damage occurring during or subsequent to any of the following acts does not proximately result from any negligent act of the licensee, the licensee may limit liability based on the following:

(1) unauthorized, unsafe, or improper applications of CNG and/or CNG systems or equipment by any user or other person;

(2) any use or operation of CNG and/or CNG systems or equipment contrary to the specific representations made by any user or other person to a CNG licensee during or preceding installations or servicing of such CNG systems or equipment and relied upon by such CNG licensee in selecting, designing, installing, or servicing such systems or equipment, or

(3) any modification, change, installation, alteration, tampering, or other action by any unlicensed person, to or upon any CNG system or equipment

§13.88. Changes in Ownership and/or Form of Dealership.

(a) Transfer of dealership outlet or location by sale, lease, or gift.

(1) Licensing. The purchaser, lessee, or donee of any dealership outlet or location shall apply for and be issued a notice of tentative CNG license approval, prior to engaging in the transfer of such an entity. Such tentative CNG license approval, when issued, shall be valid for a period not to exceed 90 days from the date of issue. During this 90-day period, the licensee and the recipient of the tentative CNG license approval shall be allowed to conduct business under this subchapter. Any applicable licensing fees shall be prorated to cover this period of tentative approval and shall be payable at the time of application for tentative approval. Any portion of the licensing fees unused during this 90-day period shall be applied on a prorated basis to the licensing fee required of the new purchaser, lessee, or donee of such dealership or outlet.

(2) Notice. The purchaser, lessee, or donee of any dealership outlet or location, or the authorized representative thereof, shall notify the CNG Section of the completed transfer of such dealership by certified mail immediately upon the completion of said transfer, and shall cause to be filed with the CNG Section all forms of application for licensing or registration required by this subchapter.

(b) Other changes in ownership.

(1) Licensing. Upon the death of a sole proprietor or partner, the dissolution of a corporation or partnership, any changes in the members of a partnership, or other changes in ownership not specifically provided for elsewhere in this section, the CNG operation shall continue for no longer than 30 days, unless a CNG license is issued to the successor in interest and the notice requirements of paragraph (2) of this subsection have been satisfied. This 30-day period shall be allowed only when the licensee meets all other pertinent requirements of this subchapter, specifically those regarding the licensee's representative.

(2) Notice. An authorized representative of the previously existing dealership or successor in interest shall notify the CNG Section by certified mail of the death of a sole proprietorship or partner, the dissolution of a corporation or partnership, any change in partnership members, or other changes in ownership not specifically provided for elsewhere in this section

(3) Change in partnership members. A change in partnership members occurs upon the death, withdrawal, expulsion, or addition of a partner.

(4) Transfer of stock. The provisions of paragraphs (1)-(3) of this subsection notwithstanding, a change in ownership does not occur, for the purposes of this section, when shares of stock in a corporation are transferred, exchanged, sold, or alienated,

unless such action creates a new controlling interest in such corporation.

(c) Changes in dealership business form.

(1) Licensing. When a dealership converts from one business entity to a different kind of business entity, the newly formed entity shall apply for and be issued a notice of tentative CNG license approval, prior to engaging in the conversion. Such tentative CNG license approval, when issued, shall be valid for a period not to exceed 90 days from the date of issue. During this 90-day period, the licensee (regardless of form) shall be allowed to conduct business under this subchapter. Any applicable licensing fees shall be paid or maintained to cover this period of tentative approval and shall be paid or payable at the time of application for tentative approval. Any fees paid by this original entity shall be credited on a prorated basis to the account of the new entity.

(2) Notice. An authorized representative of the original entity or of the new entity shall notify the CNG Section by certified mail of an accomplished change in business form immediately upon the completion of such conversion, and shall cause to be filed with the CNG Section all forms of applications for licensing or registration required by this subchapter.

§13.89. Dealership Name Change.

(a) Duty to report. A licensee shall file the following forms evidencing any change in the licensee's name with the CNG Section prior to engaging in operations that require a CNG license under a new business form:

(1) an amended application for license;

(2) certificates of insurance and/or statement in lieu of insurance (where permitted); and

(3) any other forms required by the CNG Section.

(b) Duty to register. A licensee operating under a changed name shall cause the reregistration of any CNG transport unit from the old name to the changed name of the licensee by filing an amended Form 1007 with the CNG Section prior to the use of any such unit in the transport or delivery of CNG in the State of Texas.

§13.90. Registration of CNG Transport Units.

(a) A licensee who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this subchapter shall register each such unit with the CNG Section in the name of licensee, prior to the use of such unit for the transport or delivery of CNG in Texas.

(b) An ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this subchapter shall register each such unit with the CNG Section in the name of the consumer, prior to the use of such unit for the transport of CNG on public highways in Texas.

the transport of CNG on public highways in Texas.

§13.95. Examination and Notification Generally.

(a) Each individual wishing to submit to examination by the CNG Section shall file with the CNG Section a Form 1016, application for examination, prior to the examination and within any deadlines established by the CNG Section.

(b) The CNG Section will administer all examinations in Austin and at other selected sites, when appropriate, unless an applicant demonstrates good cause for administering examination elsewhere. Good cause includes, but is not limited to, severe economic hardship.

(c) Satisfactory completion of any required examination shall accrue to the individual.

(d) Failure of any examination shall immediately disqualify the individual from performing any CNG activities covered by the examination which is failed.

(e) Information regarding examinations may be acquired from the Austin office of the CNG Section.

(f) Any individual who fails to pass any test administered by the CNG Section may not be reexamined for a period of at least 24 hours.

(g) A licensee shall notify the CNG Section when a previously qualified person is hired. Notification will include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous licensee-employer, and CNG-related work to be performed.

(h) Any notice, application, or statement submitted to the CNG Section shall have effect only on the date of receipt in the Austin office, and not on the date of mailing. In this regard, the CNG Section charges the licensee with the duty to ensure by whatever means necessary that correspondence reaches the CNG Section promptly. Notice may be received by United States post, by telegram, or by private postal carrier at the Austin office of the CNG Section. Notice may also be delivered in person by any other appropriate means.

(i) Any person required to pass an examination or participate in a seminar pursuant to these rules must renew certification by reexamination or by participation in a seminar every five years. The person must pay the current examination or seminar fee and pass the examination or participate in the seminar on or before the fifth anniversary date of that person's most recent certification.

§13.96. Examination of Representative.

(a) Each applicant for a license or license renewal shall file with the CNG Section Form 1001, designating a representative who shall be an owner or employee of the licensee, and shall be directly responsible for

actively supervising CNG operations of the licensee. Sole proprietors licensed as retail and wholesale dealers under this subchapter must pass the management examination of the CNG Section and be qualified as a representative.

(b) A licensee may not engage in CNG-related activities governed by the Texas Natural Resources Code, Chapter 116, until its designated representative has passed the management examination administered by the CNG Section. The CNG Section shall not issue or renew a license unless the designated representative has passed this examination.

(c) The licensee shall notify the CNG Section in writing upon termination of its representative of record and shall at the same time designate a replacement by submitting a new CNG Form 1001.

(d) The licensee must cease operations if, at the termination of its representative, there is no other qualified representative of the license acknowledged and recorded by the CNG Section at its Austin office. The licensee may not resume operation until such time as it has a qualified representative.

(e) A licensee may have more than one representative.

§13.97. Designation and Testing of Operations Supervisors.

(a) The CNG Section shall designate whether a site is an outlet for the purpose of this subchapter.

(b) A licensee maintaining more than one outlet shall designate a person as operations supervisor at each outlet. The operations of the licensee at the outlet may not commence or continue when the operations supervisor has not passed the management examination as administered by the CNG Section.

(c) An operations supervisor may be a representative of the licensee, provided, however, that an individual may be designated as an operations supervisor at no more than one outlet.

(d) The operations supervisor shall be directly responsible for actively supervising CNG operations of the licensee at the designated outlet.

§13.98. Examination of Employees.

(a) No individual may work or be employed in any capacity which requires contact with CNG or CNG systems, until that person has submitted to and passed a CNG Section examination which measures the competency of that person to perform the CNG-related activities anticipated. This rule applies to all licensees and their employees who perform CNG-related activities. This rule also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this subchapter and includes any employee of such an ultimate consumer if that employee drives or in any way operates such a CNG transport. Driving a motor vehicle powered by CNG does not in itself constitute

CNG-related work. The fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees does not in itself constitute CNG-related work.

(b) Notwithstanding the requirements of subsection (a) of this section, a licensee or consumer may employ an individual as a trainee for a period not to exceed 45 days, without that person having passed the necessary examination. During this training period, however, the trainee must be directly and individually supervised at all times by an individual who has passed the CNG Section examination for the areas of work being performed by the trainee. In addition, the licensee or consumer is responsible for ensuring that a Form 1016 is on file with the CNG Section for each employee in training. No trainee may perform any work while unsupervised, if such work involves CNG or CNG systems.

(c) A trainee who attempts to pass the CNG Section examination, and who fails the examination, shall cease to perform any CNG-related activities covered by the examination failed. A trainee who has been in training for a total period of 45 days, in any combination or for any number of employers, shall cease to perform any CNG-related activities. A trainee who continues to work in violation of this section may be held responsible for its violation. An employer who employs an individual in violation of this section may be held responsible for its violation.

(d) Any employee applying for the transport driver examination must also submit to and pass the service and installation examination for CNG systems.

(e) A licensee or ultimate consumer who employs any individual in the capacities previously outlined shall exercise due diligence in training personnel in the maintenance and storage of CNG and CNG systems, and in the operation of equipment during the filling of and dispensing from storage containers, and in the protection of containers and equipment against mechanical injury or against tampering by unauthorized persons.

§13.99. Examination Fees.

(a) Each applicant shall pay to the CNG Section in advance a nonrefundable examination fee for each required examination. The fee for all categories of management examination shall be \$25 per exam. The fee for all employee examinations shall be \$10 per exam. If an applicant fails an examination, the full examination fee shall be charged for each subsequent examination.

(b) Qualified employee status must be renewed on a yearly basis for those years in which reexamination or seminar participation is not required. In order for an individual who is qualified to maintain status as a qualified employee, a renewal fee of \$10 must be paid annually, on or before the day of the year on which the individual was qualified. Failure to timely renew qualified

status will require the employee to pay another examination or seminar fee and to be reexamined or to participate in another seminar.

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

Issued in Austin, Texas, on January 21, 1985.

TRD-851050 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
March 11, 1985
For further information, please call
(512) 445-1186.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION Part X. Texas Water Development Board Chapter 341. Consolidated Permits Permit Characteristics and Conditions

★ 31 TAC §341.316

The Texas Water Development Board proposes an amendment to §341.316, concerning conditions for individual permits. The amendment clarifies that no discharge permits may be for a 10-year, or other term, determined by the commission to be appropriate.

Mike Hodges, Fiscal Services Section chief, 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. Hodges also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is clarification of duration of permits granted by the Texas Water Commission. 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 Kenneth L. Petersen, Jr., Assistant General Counsel, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

The amendment is proposed under the Texas Water Code, §526.011, 5.131, and 5.132, which provide the Texas Water Development Board with the authority to make 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.

§341.316. *Conditions to Be Determined for Individual Permits.* The following conditions are to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable shall be incorporated into the permit expressly or by reference.

(1) Duration.

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

(C) Waste discharge permits [which authorize a direct discharge into or adjacent to water in the state shall be effective for a term not to exceed five years].

(i) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be effective for a term not to exceed five years.

(ii) Confined animal feeding operation permits may be effective for the life of the project.

(iii) Other wastewater permits, including permits which regulate no discharge systems, shall be effective for a term not to exceed 10 years.

(D)-(F) (No change.)

(2)-(6) (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 January 30, 1985

TRD-851077 Susan Plettman
General Counsel
Texas Department of
Water Resources

Earliest possible date of adoption:
March 11, 1985
For further information, please call
(512) 475-7845

★ ★ ★

Chapter 353. Underground Injection Control General Provisions

★ 31 TAC §§353.2, 353.15, 353.20

The Texas Water Development Board proposes amendments to §§353.2, 353.15, and 353.20. In §353.20, concerning definitions, the term "artificial liner" is defined for use with proposed new §353.47. Liners currently are re-

quired by some permits. This definition is needed because the term "artificial liner," although widely used, is occasionally used in reference to liners other than those actually made of manmade materials.

The amendment to §353.15, concerning injection authorized by rule, corrects references in the section to reflect amended section numbers and titles for requirements for wells authorized by rule. This amendment also changes the section to require large volume sewage disposal (Class V) wells to obtain a permit and amends the section regarding procedures to require any Class V well to have a permit.

This amendment allows 90 days to an owner or operator of such a well to submit an application. Upon receipt of a letter from the executive director requesting an application, and following submission of that application, the owner or operator of the Class V well may submit a request to the commission that the permit not be required. This amendment will enhance the enforceability of this aspect of the program because the rights and duties of the owner or operator of a Class V well are clearly stated, so that refusal to comply can be readily determined and further action initiated. This amendment is consistent with current practice.

The amendment to §353.20, concerning the classification of injection wells, resolves conflict between the Texas Water Code, §26.031, §26.032, and §27.002(13).

Mike Hodges, Fiscal Services' Section chief, 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. The effect on state government is an estimated increase in revenue of \$150 each year in 1984-1988. There is no anticipated fiscal effect on local government or small businesses.

Mr. Hodges also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is assurance that injection wells authorized by rules are adequately operated, monitored, and closed to assure protection of groundwater quality. The anticipated economic cost to individuals who are required to comply with the rule as proposed is \$5,000 each year in 1984-1988.

Comments on the proposal may be submitted to Kenneth L. Petersen, Jr., Assistant General Counsel, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

The amendments are proposed under the Texas Water Code, Chapter 26 and Chapter 27, and §§131 and §132, which provide the Texas Water Development Board with the authority to regulate injection wells and private sewage facilities and to promulgate rules.

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

Artificial liner—the impermeable lining of a pit, lagoon, pond, reservoir, or other impoundment, that is made of a synthetic material such as butyl rubber, chlorosulfonated polyethylene, elasticized polyolefin, polyvinyl chloride (PVC), other manmade materials, or similar materials.

§353.15. *Injection Authorized by Rule.*

(a) Injection into existing Class I and Class III wells is authorized by virtue of this section, provided compliance with any permit issued before the date of approval is maintained, provided compliance with the following sections of this chapter is achieved within one year from the date of approval, and provided mechanical integrity is demonstrated within two years from the date of approval for each individually authorized Class I and Class III well.

(1) (No change.)

(2) Operating, monitoring, and reporting. Class I, §353.63, of this title (relating to Operating Requirements); §353.64 of this title (relating to Monitoring Requirements); and §353.65 of this title (relating to Reporting Requirements); Class III, §353.83 of this title (relating to Operating Requirements); §353.84 of this title (relating to Monitoring Requirements), and §353.85 of this title (relating to Reporting Requirements); or §353.103 of this title (relating to Production Area Monitor Wells); §353.104 of this title (relating to Establishment of Baseline Water Quality); §353.105 of this title (relating to Monitoring Standards); §353.106 of this title (relating to Remedial Action for Excursion); §353.107 of this title (relating to Restoration [Six-Month Information Report]); §353.86 of this title (relating to Closure); §353.108 of this title (relating to Restoration); §353.109 of this title (relating to Closure).

(3)-(7) (No change.)

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

(e) Injection into Class V wells, unless otherwise provided herein, is authorized by virtue of this rule: injection into new Class V wells used for the disposal of over 1,000 gallons per day of sewage or sewage effluent must apply for and obtain a permit from the TDWR prior to operations.

(f) The executive director may determine that [require] the owner or operator of an injection well authorized by rule should be required to apply for and obtain an injection well permit. The owner or operator shall submit a complete application within 90 days after the receipt of a letter

from the executive director requesting that the owner or operator of an injection well submit an application for permit. Cases for which a permit may be required include, but are not limited to:

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

(g) (No change.)

§353.20. *Classification of Injection Wells.* Injection wells within the jurisdiction of the department are classified as follows:

(1) (No change.)

(2) Class III. Wells which inject for extraction of minerals, including:

(A) (No change.)

(B) solution mining of minerals which includes brine, sodium chloride, sodium sulfate, sulfur, potash, phosphate, copper, uranium, and any other mineral which can be mined by this process. (Note: Class III injection wells used for the mining of uranium also fall, in part, within the jurisdiction of the Texas Department of Health.)

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

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

Issued in Austin, Texas, on January 30, 1985

TRD-851082 Susan Plettman
General Counsel
Texas Department of
Water Resources

Earliest possible date of adoption:

March 11, 1985

For further information, please call
(512) 475-7845.

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Standards for Class I Wells

★ 31 TAC §353.63

The Texas Department of Water Resources proposes an amendment to §353.63, concerning operating requirements for Class I wells. This amendment mandates blow out prevention during workovers in the form of pressure control equipment. Department experience shows that the use of this equipment is advisable and an accepted practice in the industry.

Mike Hodges, Fiscal Services Section chief, 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. Hodges also has determined that for each year of the first five years the rule is in effect the public benefit anticipated

as a result of enforcing the rule is further assurance that the environment and the public health and safety are adequately safeguarded. 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 Mary Reagan, Assistant General Counsel, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

The amendment is proposed under the Texas Water Code, §§27.019, 5.131, and 5.132, which provides the Texas Water Development Board with the authority to regulate underground injection and to promulgate rules.

§353.63. *Operating Requirements.*

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

(f) The permittee shall notify the executive director before commencing any workover operation or corrective maintenance which involves taking the injection well out of service. The notification shall be in writing and shall include plans for the proposed work. The executive director may grant an exception of the prior written notification when immediate action is required. Approval by the executive director shall be obtained before the permittee may begin any workover operation or corrective maintenance that involves taking the well out of service. **Press control equipment shall be installed and maintained during workovers which involve the removal of tubing.**

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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TRD-851083 Susan Plettman
General Counsel
Texas Department of
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(512) 475-7845

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Standards for Class III Wells

★ 31 TAC §§353.82, 353.84, 353.85

The Texas Department of Water Resources proposes amendments to §§353.82, 353.84, and 353.85.

The amendments to §353.82, concerning construction requirements for Class III wells, adopts current practices for monitoring of Class III mining operations. Class III mining wells have different construction and monitoring requirements

than Class I disposal wells due to the needs of production. For example, maintaining a tubing-long string annulus to continuously monitor for leaks is not possible in Class III wells. It is therefore necessary to monitor the performance of these wells other than at the same borehole. The Texas Department of Water Resources requires installation of monitor wells surrounding the injection area or zone to indicate the presence of contaminants which could indicate well malfunction. Monitor wells are needed because mechanical integrity testing is required infrequently and great damage could be incurred without a more reliable means of discovering problems for correction. The existing language was intended to apply to and was written for the coverage of *in situ* uranium mining operations. The rule also applies to brine, sulphur, and other mines, though it does not so neatly fit the practice and requirements of those industries. This amendment is intended to clarify the application of this requirement to Class III wells other than uranium mines. In these Class III wells, the pollutant to be safeguarded is the product, the steaming sulphur, or brine. Where these wells occur in locally anomalous geological structures such as salt domes, the parameter most indicative of the integrity of the well is the production fluid. The Texas Department of Water Resources currently requires monitoring of these fluids in some permits.

The amendment to §353.84, concerning monitoring requirements for Class III wells, clarifies that the monitoring frequency specified by rule is a minimum and the Texas Water Commission may require more frequent monitoring frequencies by permit.

The amendments to §353.85, concerning reporting requirements for Class III wells, reduces the reporting requirements for routine monitoring data from monthly reports to minimum quarterly reports. The Texas Water Commission can require more frequent reporting frequencies by permit. The amendments also add area-wide monitoring data to the routine reporting requirements. The executive director has found that well monitoring data is as meaningfully reviewed quarterly as monthly, and that monthly reports are not as useful as data from longer reporting periods, which will show trends in water quality more readily than data from shorter periods. The executive director also has found that area-wide data are useful in assessing the significance of routine reports. The data was required to be collected and maintained on site by an existing section (353.84) and will now be reported quarterly.

Mike Hodges, Fiscal Services Section chief, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules

Mr. Hodges also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is assurance that construction requirements and monitoring are adequate to protect groundwater quality and that the department is adequately informed of operations. 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 Claire Patterson, Staff Attorney, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

The amendments are proposed under the Texas Water Code, §§27.019, 5.131, and 5.132, which provides the Texas Water Development Board with the authority to regulate underground injection and to promulgate rules.

§353.82. Construction Requirements.

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

(f) Monitor well location.—water bearing formation. Where the injection formation contains water with less than 10,000 mg/l TDS,] Monitor [monitoring] wells may be required to be completed into the injection zone, into any freshwater aquifer above the injection zone, and into the first freshwater aquifer below the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, production fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse, the monitoring wells shall be located so that they will not be physically affected. [In all cases] Designated monitor wells shall be installed at least 100 feet inside any permit area boundary unless excepted by written authorization from the commission.

(g)-(h) (No change.)

§353.84. Monitoring Requirements.

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

(e) Specified wells within ¼ mile of the injection site shall be monitored at least once every three months to detect any migration from the injection zone into fresh water.

(f) (No change.)

§353.85. Reporting Requirements.

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

(e) Routine monitoring data required in §353.84(d) and (e) of this title (relating

to Monitoring Requirements) shall be reported at least quarterly [monthly] to the Texas Department of Water Resources (TDWR) Austin headquarters and district office on a form provided by the TDWR and in accordance with the form completion instructions. These reports must be post-marked no later than the 10th day of the following reporting period [month].

(f) (No change.)

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

Issued in Austin, Texas, on January 30, 1985.

TRD-851080 Susan Plattman
General Counsel
Texas Department of
Water Resources

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March 11, 1985
For further information, please call
(512) 475-7845.

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Standards for Class III Well Production Area Development

★ 31 TAC §§353.104, 353.106, 353.107

The Texas Department of Water Resources (TDWR) proposes amendments to §353.104 and §353.106 and new §353.107, concerning restoration of *in situ* uranium mining operations. The amendments include updating TDWR report form numbers to reflect current forms and exempt all Class III operations other than uranium solution mining from the summarization requirements. The amendments to §353.104 also expressly determine the derivation of control parameter upper limits and restoration table values, consistent with current practice. New §353.107 is proposed to specify the procedures for restoration, and for determining that restoration has been accomplished. This proposed section requires notification upon completion of mining. The operator will be required, from that date, to submit semiannual restoration progress reports until restoration has been achieved, and according to the restoration timetable included in the permit. Once restoration has been achieved, the permittee is required to sample for three consecutive months and verify restoration, and report the results. Upon acknowledgement, in writing, that final restoration has been achieved, the permittee may cease all activities at the site. The proposed new section also provides an alternate procedure for amending the restoration table where there is

caused to believe that restoration cannot reasonably be achieved. This procedure involves permit amendment, with specified findings.

Mike Hodges, Fiscal Services Section chief, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules; however, the rules will require some shifting of project priorities in state government to accommodate applications submitted pursuant to proposed §353.107.

Mr. Hodges also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules is reasonable restoration of groundwater and closure of *in situ* uranium mining operations. The anticipated economic cost to individuals who are required to comply with the rules as proposed is \$12,000 each year from 1984-1988 (\$200 times 60 (two per individual)).

Comments on the proposal may be submitted to Claire Patterson, Staff Attorney, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

The amendments and new section are proposed under the Texas Water Code, §§27.019, 5.131, and 5.132, which provides the Texas Water Development Board with the authority to regulate underground injection and to promulgate rules.

§353.104. Establishment of Baseline and Restoration Values [Water Quality].

(a) One or more water samples shall be collected from each designated monitor well (production and nonproduction zones) and designated production well in the permit or [] production area. These samples will be analyzed and the results for each well submitted on Form TDWR-0678 or TDWR-0361 [TDWR-0177] and summarized on Form TDWR-0296 as follows.

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

(b) All samples shall be collected, preserved, analyzed, and controlled according to accepted methods as stated in the permit. [The baseline water quality values for a permit/production area shall be used to determine control parameter upper limits and restoration table values for that permit/production area. All samples shall be collected, preserved, analyzed, and controlled according to accepted methods.]

(c) The baseline water quality values for a permit or production area shall be used to determine control parameter upper limits.

(d) The baseline water quality values for a permit or production area shall be used to determine restoration table values.

Each production area authorization shall contain a restoration table. The table may be developed by using either:

(1) the higher value in either the column headed "Mine Area Average" or the column headed "Production Area Average" for parameters shown on the production area baseline water quality form for the production zone; or

(2) predictions or restoration quality that are reasonably certain after giving consideration to the factors specified in §353.107(f) of this title (relating to Restoration).

§353.106. Remedial Action for Excursion. If the verifying analysis indicates that mining solutions are present in a designated monitor well, the operator shall take the following actions.

(1) (No change.)

(2) Analysis—Complete a groundwater analysis report for each affected well on Form TDWR-0678 or TDWR-0361 [TDWR-0177] provided by the department (including accuracy checks and stiff diagram) for the following: pH, calcium, magnesium, sodium, potassium, carbonate, bicarbonate, sulfate, chloride, silica, [uranium, ammonia,] total dissolved solids (180°C), specific conductance and dilute conductance, and any other specified component. Results shall be reported in accordance with §353.85(e) of this title (relating to Reporting Requirements).

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

§353.107. Restoration.

(a) Restoration table. Upon issuance and renewal, Class III permits and production area authorizations shall contain a restoration table listing restoration goals as provided by §353.104 of this title (relating to Establishment of Baseline and Restoration Values).

(b) Mining completion. When the mining of a permit or production area is completed, the permittee shall notify the appropriate Texas Department of Water Resources district office and the executive director, and shall proceed to reestablish groundwater quality in the affected permit or mine area aquifers to levels consistent with the values listed in the restoration table for that permit or mine area.

(c) Timetable. Aquifer restoration, where appropriate for each permit or mine area, shall be accomplished in accordance with the timetable specified in the currently-approved mine plan, unless otherwise authorized by the commission. Authorization for expansion of mining into new production areas may be contingent upon achieving restoration progress in previously-mined production areas within the schedule set forth in the mine plan.

(d) Reports. Beginning six months after the date of initiation of restoration of a permit or production area, as defined in

the mine plan, the operator shall provide to the executive director semiannual restoration progress reports until restoration is accomplished for the permit or mine area.

(e) Restoration table values achieved. Once restoration has returned total dissolved solids (TDS) and other specified parameters to concentrations to levels equal to or better than the values listed in the restoration table, as determined by the results of three consecutive sample sets taken at a minimum of 30-day intervals, the permittee may cease restoration operations. The permittee shall sample and complete an analysis of all permit or production area wells used to determine the restoration table for all parameters listed in the restoration table. The permittee shall file with the executive director a written report of the results of the analysis and a summary of restoration efforts. After filing the report, sampling for all parameters listed in the restoration table shall be conducted at one month intervals for a minimum of three sample sets and reported to the executive director. The permittee shall notify the executive director at least one week in advance of sample dates and provide the opportunity for splitting samples to the executive director. The executive director shall determine within 120 days of receiving the report following the receipt of all department sample analyses whether or not restoration has been achieved. Upon acknowledgement in writing by the executive director confirming achievement of final restoration, the permittee may cease all monitoring and restoration activities in the affected area.

(f) Restoration table values not achieved. After an appropriate effort has been made to achieve restoration to levels equal to or better than the values listed in the restoration table for the permit or mine area, the permittee may request that the restoration table be amended.

(1) In determining whether the restoration table should be amended, the commission may consider the following:

(A) uses for which the groundwater was suitable at baseline water quality levels;

(B) actual existing use of groundwater in the area prior to and during mining;

(C) potential future use of groundwater of baseline quality, and of proposed restoration quality;

(D) the effort made by the permittee to restore the groundwater to baseline;

(E) technology available to restore groundwater for particular parameters;

(F) the ability of existing technology to restore groundwater to baseline quality in the area under consideration;

(G) the cost of further restoration efforts;

(H) the consumption of ground-water resources during further restoration; and

(I) the harmful effects of levels of particular parameters.

(2) The commission may amend the restoration table if it finds that:

(A) reasonable restoration efforts have been undertaken giving consideration to the factors listed in paragraph (1) of this subsection;

(B) the values for the parameters describing water quality have stabilized for a period of 180 days;

(C) the formation water present in the aquifer would be suitable for any use to which it was reasonably suited prior to mining; and

(D) further restoration efforts would consume energy, water, or other natural resources of the state without providing a corresponding benefit to the state.

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

Issued in Austin, Texas, on January 30, 1985.

TRD-851078 Susan Plattman
General Counsel,
Texas Department of
Water Resources

Earliest possible date of adoption:
March 11, 1985
For further information, please call
(512) 475-7845.

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★ 31 TAC §353.107

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Water Development Board, Room 511, Stephen F. Austin Building, 1700 North Congress, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Water Development Board proposes the repeal of §353.107, concerning restoration. The section will be replaced by new §353.107 simultaneously proposed.

Mike Hodges, Fiscal Services Section chief, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Hodges also has determined that for each year of the first five years the repeal

as proposed is in effect the public benefit anticipated as a result of the repeal as proposed is assurance of restoration of groundwater quality and closure of *in situ* uranium mines. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Claire Patterson, Staff Attorney, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711, (512) 475-6943.

The repeal is proposed under the Texas Water Code, §§27.019, 5.131, and 5.132, which provides the Texas Water Development Board with the authority to regulate underground injection and to promulgate rules.

§353.107. Restoration.

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

Issued in Austin, Texas, on January 30, 1985.

TRD-851078 Susan Plattman
General Counsel
Texas Department of
Water Resources

Earliest possible date of adoption:
March 11, 1985
For further information, please call
(512) 475-7845.

★ ★ ★

Standards for Class V Wells

★ 31 TAC §§353.131-353.133

The Texas Water Development Board proposes new §§353.131-353.133, concerning standards for Class V wells. The new sections identify minimum acceptable construction and closure standards for Class V wells statewide. Except in extraordinary cases, compliance with these standards will result in authorization by rule for these wells.

Mike Hodges, Fiscal Services Section chief, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules.

Mr. Hodges 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 the rules as proposed is a readily determinable minimum standard of construction and closure of Class V wells. The anticipated

economic cost to individuals who are required to comply with the rules as proposed is \$450,000 each year in 1984-1988, determined by multiplying \$150 per individual by 3,000 wells.

Comments on the proposal may be submitted to Kenneth L. Petersen, Jr., Assistant General Counsel, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711.

The new sections are proposed under the Texas Water Code, §§27.019, 5.131, and 5.132, which provides the Texas Water Development Board with the authority to regulate underground injection and to promulgate rules.

§353.131. *Applicability.* The sections of this chapter apply to all new Class V injection wells under the jurisdiction of the Texas Department of Water Resources.

§353.132. Construction Standards.

(a) All Class V wells shall be completed in accordance with the following specifications unless otherwise authorized by the executive director.

(b) For all Class V wells, a Texas Department of Water Resources water well report Form TDWR-0392 shall be completed and submitted to the executive director.

(c) The annular space between the borehole and the casing shall be filled from ground level to a depth of not less than 10 feet below the land surface or well head with cement slurry. In areas of shallow, unconfined, groundwater aquifers, the cement need not be placed below the static water level. In areas of shallow, confined, groundwater aquifers having artesian head, the cement need not be placed below the top of the water-bearing strata.

(d) In all wells where plastic casing is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.

(1) The slab or block shall extend at least two feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(2) The surface of the slab shall be sloped to drain away from the well.

(3) The top of the casing shall extend a minimum of one foot above the original ground surface or known flood elevation.

(e) In wells where steel casing is used, a slab or block as described in subsection (d)(1) of this section will be required above the cement slurry except when a pitless adapter is used.

(1) Pitless adapters may be used in such wells provided that:

(A) the adapter is welded to the casing or fitted with another suitably effective seal; and

(B) the annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.

(2) The casing shall extend a minimum of one foot above the original ground surface or known flood elevation.

(f) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer zone.

(g) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(h) When undesirable water is encountered in a Class V well, the undesirable water shall be sealed off and confined to the zone(s) of origin.

§353.133. Closure Standards.

(a) It is the responsibility of the landowner or person having the well drilled, deepened, or otherwise altered to plug or have plugged, under standards set forth in these sections, a Class V well which is to be abandoned.

(b) Closure shall be accomplished by removing all of the removable casing and the entire well filled with cement to land surface.

(c) In lieu of the procedure in subsection (b) of this section and if the use of a Class V well that does not contain undesirable water is to be permanently discontinued, the well may be filled with fine sand, clay, or heavy mud followed by a cement plug extending from land surface to a depth of not less than 10 feet.

(d) In lieu of the procedure in subsection (b) of this section, and if the use of Class V well that does contain undesirable water, or the fresh water zone(s) shall be isolated with cement plugs and the remainder of the wellbore filled with sand, clay, or heavy mud to form a base for a cement plug extending from land surface to a depth of not less than 10 feet.

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

Issued in Austin, Texas, on January 30, 1985

TRD-851081

Susan Plattman
General Counsel
Texas Department of
Water Resources

Earliest possible date of adoption:

March 11, 1985

For further information, please call
(512) 476-7845.

★ ★ ★

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter O. State Sales and Use Tax

★34 TAC §3.291

The Comptroller of Public Accounts proposes amendments to §3.291, concerning contractors. The amendments are necessary to reflect changes made by the legislature concerning the taxability of tangible personal property used or consumed in performing improvements to realty for the federal government. Consumable supplies and equipment not incorporated into the property being improved will no longer be exempt effective October 2, 1984. Materials which are incorporated into realty belonging to the federal government may still be purchased tax free.

Billy Hamilton, revenue estimating 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 as a result of enforcing or administering the rule. The section is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Hamilton 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 new information for the public regarding its tax responsibilities under changes made by the legislature. 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 D. Carolyn Busch, P.O. Box 13528, Austin, Texas 78711.

The amendments are proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the sales tax.

§3.291. Contractors.

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

(1) Agreed contract price of materials—The price specified in the contract for the materials, plus any additional charges directly attributable to the materials. For example, profit calculated as a percentage of the cost of materials, cost of transporting the materials, mark up or handling charges

related directly to the materials charge are includable in the agreed contract price. A charge calculated as a percentage of the total contract cost will not be considered a part of the material's selling price. The agreed contract price of materials cannot be less than the price the contractor paid for the materials.

(2) Contractor—Any person who improves real estate and who, in making the improvement, incorporates tangible personal property belonging to him into the property being improved. The term includes subcontractors but does not include material men and suppliers.

(3) Improvements to realty—[See §3.347 of this title (relating to Improvements to Realty) for this definition.]

(A) Contract for the improvement to realty includes a contract with the intended purpose to:

(i) erect, construct, alter, or repair any building or other structure, or other permanent improvement on, real property, whether fee or leasehold;

(ii) furnish and install property becoming a part of any building or other structure, or other permanent improvement on or to such real property including tangible personal property, which after installation becomes real property by virtue of being embedded in or permanently affixed to the land or to a structure constituting realty and which property after installation is necessary to the intended usefulness of the building or other structure; or

(iii) alter the land surface of real property by incorporating tangible personal property into real property. An example would be creating a road.

(B) Contract for the improvement to realty does not include:

(i) a contract for the sale and installation of tangible personal property; this includes a contract to furnish and install machinery, equipment, or other tangible property not essential to the building or structure, nor adapted or intended to become a part of the realty, but which incidentally may, on account of its nature, be temporarily attached to the realty without losing its identity as a particular piece of machinery, equipment, or property and, if attached, is readily removeable without substantial damage to the unit or to the realty or without destroying the intended usefulness of the realty;

(ii) the furnishing of tangible personal property if the person furnishing the property is not responsible for the final affixation or installation of any of the property furnished; or

(iii) the furnishing of tangible personal property if the person furnishing the property is only responsible for supervision or warranty of installation without contractual responsibility for installation.

(iv) a contract to remove minerals, soil, or timber from the land. Mines, quarries, pits, minerals in place, and

free-standing timber are real property but are not equivalent to improvements.

(4) **Lump-sum contract**—A contract in which the agreed price is one lump-sum amount and in which the charges for materials are not separate from the charges for skill and labor. Separated invoices issued to the customer will not change a lump-sum contract into a separated contract unless the invoices are a **controlling part of the contract** [incorporated into the contract and specifically amend the original contract].

(5) (No change.)

(b) **Tax responsibilities of contractors improving real property belonging to nonexempt customers.**

(1) **Consumable supplies and equipment.** Tax must be paid by a contractor at the time of purchase of those supplies, tools, and equipment used to perform a contract but which [that] are not physically incorporated into the property of a customer. The contractor may not collect tax from the customer on the charges for consumables.

(2) **Lump-sum contracts.**

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

(D) **Contractors performing lump-sum contracts for persons having direct payment permits may not accept a direct payment exemption certificate from those persons [in lieu of tax]. When performing lump-sum contracts for a direct payment permit holder, the contractor must pay sales tax to the supplier or accrue and remit sales tax on materials removed from a tax-free inventory for incorporation into the direct payment permit holder's realty.** Direct payment permit holders cannot authorize the contractor or any other person to purchase any taxable item using their permit. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(3)-(6) (No change.)

(c) **Tax responsibilities of contractors improving real property for exempt customers.**

(1) **Exempt customers are those listed in the Texas Tax Code, §151.039 and §151.310[(a)(1), (2), and (5)]. Contractors improving realty for an organization claiming an exemption from tax under §151.309 and §151.310[(a)(1), (2), and (5)] should obtain a properly completed exemption certificate to substantiate the exemption. (An exemption certificate is not required for contracts with federal or state agencies.) If the validity of the exemption is not clear, a contractor cannot accept the exemption certificate in good faith and should request additional evidence of the exempt status of the organization. A sales tax letter of exemption from the comptroller addressed to the organization is evidence of its exempt status and will relieve a contractor from further inquiry, except under the circumstances set out in paragraph (2) of this subsection.**

If a contractor claims an exemption in lieu of paying tax on a purchase by reason of performing a contract with an exempt organization and the comptroller subsequently determines the organization is not exempt, the contractor will [shall] be liable for all taxes, penalties, and interest accruing upon such purchase unless the contractor accepted in good faith a properly completed exemption certificate.

(2) (No change.)

(3) **Materials furnished by exempt customers.** A contract may specify that a customer which is an organization is exempt from tax under §151.309 and §151.310[(a)(1), (2), and (5)] will furnish the materials and the contractor will furnish the skill and labor necessary to perform the contract. Under this type of contract, the contractor will not incur tax liability on materials. The customer may issue an exemption certificate to suppliers in lieu of tax when purchasing the materials, unless the contract for improvements is of the type outlined in paragraph (2) of this subsection or for improvements that are unrelated to the activity which qualifies the customer for exemption. In either of the last two cases, the exempt customers must pay tax to suppliers at the time the materials are purchased. See also §3.322 of this title (relating to Organizations Exempted from Sales/Use Tax).

(4) **Transactions exempt from sales and use taxes include:**

(A) the purchase by a contractor of all materials, supplies, equipment, and other tangible personal property incorporated into the property being improved for the exempt customer including the United States, its agencies, and instrumentalities.

(B) the purchase, rental, or lease by a contractor of all materials, supplies, equipment, and other tangible personal property used in the performance of the contract with a [the exempt] customer exempt under §151.309(4) or (5) or §151.310. The purchase, rental, or lease by a contractor of all materials, supplies, equipment, and other tangible personal property used in the performance of a contract with the United States, its agencies, and instrumentalities is taxable if the item is not incorporated into the property being improved.

(5) **An exemption certificate may be issued to suppliers for the purchase, rental, or lease by a contractor of those items identified in paragraph (4) of this subsection and [See §3.287 of this title (relating to Exemption Certificates). Under "reasons said purchaser is claiming this exemption," a contractor] must identify the exempt entity and the project for which the equipment, materials, and supplies are being purchased, leased, or rented. See §3.287 of this title (relating to Exemption Certificates).**

(d) **Uses of equipment; tax due; method of computation.**

(1) **Purchase of equipment.** Contractors improving realty for both exempt

and nonexempt entities may purchase equipment from suppliers tax free by issuing an exemption certificate in lieu of sales tax. When equipment is used on a job other than as described in subsection (c)(4) of this section [nonexempt jobs], sales tax should be computed as outlined in paragraphs (5) and (6) of this subsection.

(2) **Refund or credit for tax paid.** If sales tax was paid to a supplier at the time of purchase and at a later date equipment is used on a [an exempt] job as described in subsection (c)(4) of this section, the contractor may [only] obtain a refund or credit for sales tax directly from the state only by obtaining a written assignment of the right to the refund from the supplier to whom the tax was paid.

(3) **Computation of credit.** If an assignment is received and if the contractor's records are accurate and complete as required by paragraph (6) of this subsection, credit will be allowed for equipment purchased for use on a taxable job and subsequently used on an exempt job for the period of exempt use.

(A) (No change.)

(B) **The total amount of credit due from the exempt use of machinery or equipment initially purchased tax paid will [may] not exceed the total amount paid at the time of purchase.**

(4) **Consumable materials and supplies.** If a contractor purchases, rents, or leases materials or supplies tax free for use in performing a contract with an exempt organization under §151.309(4) or (5) or §151.310 and uses the items in some manner or for some purpose other than as described in subsection (c)(4) of this section [the improvement to realty for an exempt organization], the contractor is, at the time of the nonexempt use, liable for tax based upon the purchase price of the items. The tax should be reported and remitted to the comptroller for the reporting period in which the taxable use occurred. For local tax responsibilities, see §3.377 of this title (relating to Divergent Use of a Direct Payment, Resale, or Exemption Certificate).

(5) **Equipment used on nonexempt job.**

(A) **Equipment purchased for use on an exempt job and subsequently used on a nonexempt job is subject to tax for the period of nonexempt use. The amount of tax due will [shall] be based on the equipment's value, as determined by straight-line depreciation, for the period of nonexempt use.**

(B)-(C) (No change.)

(6) **Records to substantiate exemption.** To qualify for exemption from tax on materials, supplies, or equipment claimed to have been used in the performance of exempt contracts, a contractor must keep records which clearly substantiate such exempt use. The records must identify the item claimed to be exempt, and designate each job upon which it has been used. To

qualify for a partial exemption from tax on equipment claimed to have been used on both exempt and nonexempt jobs, the records must identify the equipment, designate each job upon which it has been used, and indicate the date of use and the length of time the equipment was used on each exempt or nonexempt job. Contracts, job specifications prepared for bids, or other estimates are not acceptable records of the use of material, supplies, or equipment. **Refund requests based on samples are not acceptable.** Tax is due on the full purchase price of the materials, supplies, and/or equipment unless these records are maintained.

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 February 4, 1985.

TRD-851073

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:

March 11, 1985

For further information, please call
(512) 475-1913.

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Part VIII. State Depository Board

Chapter 171. Collateral Transactions

★34 TAC §171.3

The State Depository Board proposes new §171.3, concerning collateral re-

ports from custodial banks. The new section requires a bank acting as custodian of securities pledged by a state depository to file collateral reports with the state treasurer on June 30 and December 31 of each year, on forms provided by the state treasurer.

Jorge A. Gutierrez, general counsel, 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. Gutierrez 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 increased information relating to the collateral securing the deposits of state funds. This information will assist the board in preserving the safety of state deposits. 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 Jorge A. Gutierrez, General Counsel, State Depository Board, LBJ Building, 111 East 17th Street, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 2525, *et seq.*, which authorizes the State Depository Board to adopt rules and regulations governing compliance with the state depository statutes.

§171.3. Collateral Reports by Custodial Banks. A bank, acting as custodian of securities pledged by a state depository as collateral for the deposit of state funds,

shall file a collateral report with the state treasurer. The report shall be filed on June 30 and December 31 of each year on forms provided by the state treasurer. Failure to file a timely report in accordance with this rule shall disqualify the bank from acting as a custodian bank.

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

Issued in Austin, Texas, on January 31, 1985.

TRD-851059

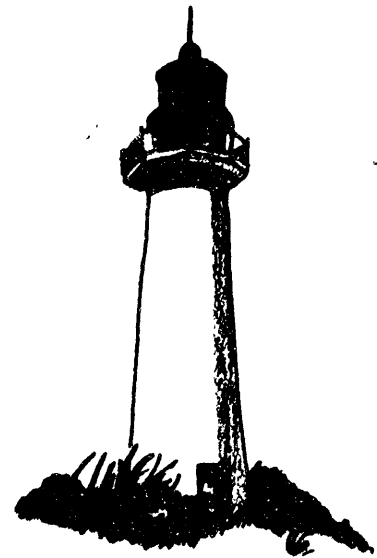
Jorge A. Gutierrez
General Counsel
State Depository Board

Earliest possible date of adoption:

March 11, 1985

For further information, please call
(512) 475-2591.

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Withdrawn

Rules

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

**TITLE 16. ECONOMIC
REGULATION**
**Part I. Railroad Commission
of Texas**
**Chapter 13. Regulations for
Compressed Natural Gas
(CNG) Fuel Systems**
**Subchapter A. Scope and
Definitions**
★16 TAC §13.2

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption proposed amendments to §13.2, concerning scope and definitions. The text of the proposed amendments appeared in the September 28, 1984, is-

sue of the *Texas Register* (9 TexReg 5036).

Issued in Austin, Texas, on January 31, 1985.

TRD-851051

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Filed: January 31, 1985
For further information, please call
(512) 445-1186.

★ ★ ★

**Subchapter E. Classification,
Registration, and Examination**

★16 TAC §§13.81, 13.84, 13.86,
13.88-13.90, 13.95-13.99

The Railroad Commission of Texas has withdrawn from consideration for perma-

nent adoption proposed new §§13.81, 13.84, 13.86, 13.88-13.90, and 13.95-13.99, concerning classification, registration, and examination. The text of the proposed new sections appeared in the September 28, 1984, issue of the *Texas Register* (9 TexReg 5036).

Issued in Austin, Texas, on January 28, 1985.

TRD-851052

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Filed: January 31, 1985
For further information, please call
(512) 445-1186.

★ ★ ★



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.

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. If an agency adopts the rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

★ 16 TAC §9.28

The Railroad Commission of Texas adopts the repeal of §9.28, without changes to the proposal published in the December 21, 1984, issue of the *Texas Register* (9 TexReg 6410).

The repeal of this exemption for master or journeyman plumbers increases the safety of LP-gas installations in Texas by requiring all plumbers to be tested over LP-gas and its properties, to carry insurance, and to pay licensing fees that help offset the costs of agency inspections in the field.

Because of the repeal, plumbers formerly exempted from licensing requirements, must now meet the qualifications of a Category D license, as set forth in the LP-Gas Division safety rules. These requirements include testing for competency and the filing of certificates of insurance, as well as the payment of the Category D license fee.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Natural Resources Code, §113.082, which provides that the Railroad Commission of Texas may exempt master and journeyman plumbers from licensing requirements of Category D. The granting of such authority implicitly carries the power to revoke such exemption, which the commission does at this time.

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

Issued in Austin, Texas, on January 28, 1985.

TRD-851054 Buddy Temple
Chairman
Jim Nugent and
Mack Wallace,
Commissioners
Railroad Commission of
Texas

Effective date: May 1, 1985
Proposal publication date: December 21, 1984
For further information, please call
(512) 445-1186.

★ ★ ★

TITLE 22. EXAMINING BOARDS

Part XVI. Texas State Board of Physical Therapy Examiners

Chapter 339. Fees

★ 22 TAC §§339.1-339.3

The Texas State Board of Physical Therapy Examiners adopts amendments to §339.3, with changes to the proposed text published in the December 21, 1984, issue of the *Texas Register* (9 TexReg 6395). Section 339.1 and §339.2 are adopted without changes and will not be republished.

The board increases the licensure fees for physical therapists and physical therapists assistants, in order to meet the escalated examination costs from the Professional Examination Service of New York. The increase in the cost of applying for licensure by examination for physical therapists and physical therapist assistants is \$35, and the cost of applying for licensure by endorsement is \$15 per individual. The fees also are increased for a temporary license to the physical therapist by \$10 and to the physical therapist assistant by \$5.00.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Physical Therapy Practice

Act to carry out its duties in administering the Act.

§339.3. License. Beginning July 1, 1985, the following fees will be in effect.

- (1) Endorsement.
 - (A) Physical therapist—\$60.
 - (B) Physical therapist assistant—\$50.
- (2) Temporary license.
 - (A) Physical therapist—\$30.
 - (B) Physical therapist assistant—\$20.

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

Issued in Austin, Texas, on January 31, 1985.

TRD-851065 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: July 1, 1985
Proposal publication date: December 21, 1984
For further information, please call
(512) 835-1846.

★ ★ ★

TITLE 28. INSURANCE

Part I. State Board of Insurance

(Editor's note: Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register numbers. However, the rules will be published under the agency's correct title and part.)

Health Maintenance Organizations Regulatory Requirements for a Health Maintenance Organization Subsequent to Issuance of a Certificate of Authority

★ 059.51.04.001

The State Board of Insurance adopts amendments to Rule 059.51.04.001,

without changes to the proposed text published in the December 11, 1984, issue of the *Texas Register* (9 TexReg 6256).

The rule specifies filing requirements for a health maintenance organization (HMO) subsequent to the issuance of a certificate of authority. In paragraph (1) of the present rule, certain information is required to be filed for approval with the commissioner, and the commissioner's approval must be obtained before modifications are effectuated. In paragraph (2), certain information is required to be filed for information only. This amendment moves much of the documentation and other material now requiring the commissioner's approval to paragraph (2), requiring a filing for information only. The board believes the present level of review of HMO operations is not necessary in some areas and believes these amendments will cause the regulation of HMOs to be brought more into line with the board's traditional concepts of regulation.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Health Maintenance Act, §4, pursuant to which the State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of the Act to require a health maintenance organization, subsequent to receiving a certificate of authority, to submit modifications or amendments to the operations or documents described in §4(a), either for approval or for information only, prior to the effectuation of the modification or amendment.

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

Issued in Austin, Texas, on January 31, 1985.

TRD-851053

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: February 21, 1985
Proposal publication date: December 11, 1984
For further information, please call
(512) 475-2950.



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

★ 34 TAC §3.394

The Comptroller of Public Accounts adopts amendments to §3.394, without changes to the proposed text published in the December 18, 1984, issue of the *Texas Register* (9 TexReg 6364).

The amendments reflect a change in the Franchise Tax Act by the 68th Legislature, 2nd Called Session, 1984. The due date for annual reports was changed to March 15 of each year.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

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

Issued in Austin, Texas, on February 4, 1985.

TRD-851074

Bob Bullock
Comptroller of Public
Accounts

Effective date: February 25, 1985
Proposal publication date: December 18, 1984
For further information, please call
(512) 475-1913.

★ ★ ★

★ 34 TAC §3.410

The Comptroller of Public Accounts adopts new §3.410, with changes to the proposed text published in the December 25, 1984, issue of the *Texas Register* (9 TexReg 6460).

The new section reflects a change in the Franchise Tax Act by the legislature during the special session. The due date for annual reports was changed to March 15 of each year. A corporation will be granted an extension to June 15 to file its annual report if it fulfills the requirements set out in the section. The new section also specifies the method for calculating penalty and interest due on annual reports. In addition, the section states that no extensions will be granted for annual reports pursuant to the Texas Tax Code, §111.057.

A comment was received from Kenneth C. England to the effect that the statements of fiscal implications and of public benefit/cost were incorrect. The comptroller's response was that these statements are estimates and could prove to be incorrect, but no significant additional expense and time were anticipated.

The changes to the proposed text are in subsection (c) and are necessary to clarify how penalty and interest will be calculated when an extension is granted.

The new section is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the franchise tax.

§3.410. Extensions for Annual Reports.

(a) A corporation will be granted an extension to file an annual report on or before the next June 15, if the corporation:

(1) requests the extension on or before March 15;

(2) requests the extension on a form provided by the comptroller; and

(3) remits with the extension request:

(A) 90% or more of the amount of tax reported as due on the report filed on or before June 15; or

(B) 100% of the tax paid in the previous calendar year; but

(C) in either case, at least \$68.

(b) If the last report due for which a corporation paid a tax in the previous calendar year was an initial report, the payment provided in subsection (a)(3)(B) of this section must equal an amount produced by multiplying the Texas portion of taxable capital and surplus, as required to be shown on the initial report, by \$4.25 per \$1,000 for the 1985 report and by \$5.25 per \$1,000 for 1986 and later reports.

(c) Penalty and interest will be calculated based on the following due dates.

(1) If a corporation is granted an extension and pays 100% of the tax paid in the previous calendar year on or before March 15, then June 15 will be the due date for any additional tax due.

(2) If a corporation is granted an extension and pays on or before March 15 90% or more of the tax which will be reported as due on or before June 15, then June 15 will be the due date for any additional amounts due.

(3) If a corporation timely requests an extension and pays at least \$68 but does not qualify for an extension under paragraph (1) or paragraph (2) of this subsection, then March 15 is the due date for 90% of the tax finally determined to be due and June 15 is the due date for 10% of the tax finally determined to be due.

(d) No extensions will be granted for annual franchise tax reports pursuant to the Texas Tax Code, §111.057.

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 February 4, 1985.

TRD-851075 Bob Bullock
Comptroller of Public
Accounts

Effective date: February 25, 1985
Proposal publication date: December 25, 1984
For further information, please call
(512) 476-1913.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources Chapter 48. CCAD Case Management

★40 TAC §48.3903

The Texas Department of Human Resources adopts an amendment to §48.3903, without changes to the proposed text published in the October 9, 1984, issue of the *Texas Register* (9 TexReg 5196).

The amendment ensures that client abuse of emergency response services is grounds for termination of the service. The amendment specifies the number and frequency of false alarms that make a client ineligible to receive emergency response services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, 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 February 1, 1985.

TRD-851061 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: March 8, 1985
Proposal publication date: October 8, 1984
For further information, please call
(512) 450-3766.

★ ★ ★

Chapter 79. Legal Services Subchapter Z. Reimbursement Rates for Prosecution of Food Stamp Intentional Program Violations

★40 TAC §79.2501

The Texas Department of Human Resources (DHR) adopts the repeal of and new §79.2501, without changes to the proposed text published in the December 4, 1984, issue of the *Texas Register* (9 TexReg 6120).

The department reimburses county commissioners for the cost of prosecution. The department has established a formula by which to determine the rates of reimbursement for both contested and uncontested cases. These rates are reviewed and updated periodically to ensure that they are equitable. The new section explains the formula rather than states the most current rates.

The new section is expected to help deter violations of the Food Stamp Program by allowing for more of these cases to be prosecuted.

No comments were received regarding the adoption of the repeal and new section.

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

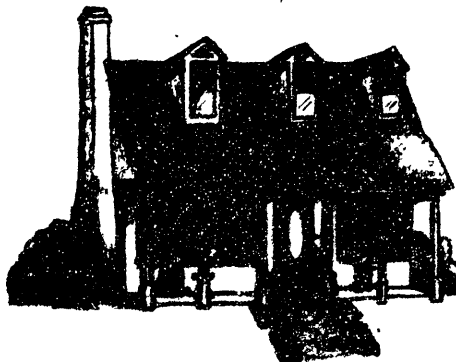
This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 31, 1985.

TRD-851024 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: February 21, 1985
Proposal publication date: December 4, 1984
For further information, please call
(512) 450-3766.

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

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

Issued in Austin, Texas, on January 31, 1985.

TRD-851025 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: February 21, 1985
Proposal publication date: December 4, 1984
For further information, please call
(512) 450-3766.

(Editor's note: A notice appeared in the February 5, 1985, issue of the Texas Register indicating that the following adoptions by the Texas Department of Human Resources would be serialized in this issue.)

Chapter 81. Day-Care Licensing

The Texas Department of Human Resources adopts the repeal of §§81.201-81.230, 81.301-81.329, 81.401-81.432, 81.601-81.630, and 81.701-81.726 without changes to the proposal and simultaneously adopts new §§81.201-81.210, 81.212, 81.215-81.230, 81.301-81.309, 81.315-81.329, 81.401-81.412, 81.415-81.432, 81.601-81.630, 81.632, 81.701-81.711, and 81.715-81.730, with changes to the proposed text published in the July 31, 1984, issue of the *Texas Register* (9 TexReg 4112). Sections 81.211, 81.213, 81.214, 81.310-81.314, 81.413, 81.414, and 81.712-81.714 are adopted without changes and will not be republished.

The new sections contain requirements stated in the minimum standards for kindergartens and nursery schools; schools; grades kindergarten and above; day-care centers; group day-care homes; and drop-in care centers.

The new minimum standards ensure the protection of children in out-of-home care and promote the health, safety, and well-being of children while in care. Included in the new minimum standards are changes in staff-child ratios for field trips and water activities; director and staff qualifications; staff training; playground safety; transportation safety; nutrition; posting requirements; and emergency procedures.

The proposed standards were sent to all licensees for review and comment dur-

ing August and September 1984. The licensing branch also conducted public hearings in 16 cities in the state. The department received more than 5,000 comments. Most of them were in response to the minimum standards for day care centers (§§81.401-81.432); however, the comments are applicable to all five sets of standards. Major concerns expressed in both written and oral comments were that these standards would make child care too costly for many working parents. The proposed revisions that were most criticized include changes in staff-child ratio, playground equipment, requirements for child restraint during transportation, nutrition requirements, increased qualifications for caregivers, and requirements for increased record keeping.

After evaluating all of the comments, licensing staff met with two ad hoc groups composed of parents, day-care providers, child advocates, and department staff to reevaluate cost, appropriateness and effectiveness of standards in reducing risk, fairness, enforceability, and administrative impact. The result was the deletion of 21 standards from the proposed rules. In addition, 41 standards have been modified or streamlined.

The most substantive changes from the proposal are in the areas of staff-child ratios, director's qualifications, staff qualifications, transportation—child safety restraints, safety—fall zone under climbing equipment and swings, nutrition, training, maximum group size, small number of children in care—special staff-child ratio, and posting.

In addition, the department decided to reverse the section numbers and content of two sections in each set, §§81.208 and 81.209; 81.308 and 81.309; 81.408 and 81.409; 81.608 and 81.609; and 81.708 and 81.709, originally relating to staff-child ratio and training, to strengthen the logical order of the rules.

The following is a summary of those day care standards receiving the most comments. Concerning §81.402(a), many providers commented that they should not be required to post their licensing compliance evaluation form, fire inspection report, sanitation inspection report, or gas pipe inspection report. Several parents, however, supported the requirement. The department revised the standards to require posting the licensing report if it shows noncompliance which affects the health, safety, or well-being of children and a department form stating that the other reports are available. The licensing report is to be posted for 60 days or until the licensing representative furnishes a new report,

whichever is sooner. Facilities also must post a department form stating that other inspection reports and minimum standards are available at the facility.

Concerning §81.405(a), many commenters supported the minimum age of 21 for directors of facilities. The department adopted that proposal. A director under 21 years old who is currently employed on May 1, 1985, may stay in that position.

Many commenters supported the proposed change in the director's education and experience qualifications; many others opposed the change. Still others indicated the requirements were unclear. A number of commenters supported an experience requirement for directors of facilities caring for more than 35 children. The department adopted changes to the proposal to clarify and strengthen the requirements. Directors currently employed on May 1, 1985, will have three years from that date to meet requirements if they stay in the same position. This change is based on the fact that the director's competency has a vital impact on the operation of the facility.

Concerning §81.406(c), many commenters objected to this proposed standard, and the department deleted the standard.

Concerning §81.407(a), many commenters supported a requirement for staff to have a high school diploma, stating that this is a basic measure of competency; many others objected to the proposed requirement. A significant number of commenters requested that current staff be exempt from the requirement. The department adopted the requirements and exempted the staff currently employed on May 1, 1985.

Many commenters asked that high school students preparing for careers in child care not be required to be directly supervised while being counted in the staff-child ratio. The department maintained the requirement for direct supervision, but deleted the requirement that the supervisor be in the same room at all times with the student. A qualified adult staff member, however, must be at the facility at all times and must be with any group that leaves the facility.

Concerning §81.405(c) and §81.407(c), several people commented that anyone who has ever been convicted of a felony should not be allowed to serve as director or staff at a facility. The department deleted from the standard the reference to 10 years and the reference to the assistant commissioner for licensing ruling on rehabilitation. Facilities may still request a ruling on rehabilitation from the assistant commissioner for licensing. The

time that has elapsed since the violation will be considered in the decision.

Concerning §81.407(h), comments were received for and against the requirement that people trained in cardiopulmonary resuscitation and first aid be present in all facilities during hours of operation. The department adopted the standard.

Concerning §81.407(o), many comments were received opposing or questioning this standard concerning procedures to verify the identity of a person authorized to pick up a child. The department deleted the specific procedure but included other standards that facilities must have, as well as a plan to verify the person's identity.

Concerning §81.408(a), many comments were received concerning staff-child ratio requirements. Some supported the proposal while others supported a more stringent standard. The largest number supported adoption of the current requirement. Commenters stated that the increased staff and director qualifications and increased in-service training requirements would make the current staff-child ratio adequate. The department adopted the requirements from the standard currently in effect.

Concerning §81.408(a)(1), licensees commented that a change in the maximum group size from 35 to 25 would be unnecessarily costly without a commensurate value to the children. The department adopted the standard currently in effect.

Concerning §81.408(a)(4), commenters suggested that the groupings allowed for small day care centers should be the same as those allowed for group day-care homes. The department adopted a revision so that they now are the same.

Concerning §81.409(b), commenters spoke in support of and in opposition to the annual training requirements. The department adopted a more specific training requirement than the proposed standard. The new requirement increases the number of hours of training required for a director from 12 to 20 hours and for other staff from 12 to 15 hours. Ways of obtaining this training are stated in §81.432. In addition, the director is required to have annual training in both child care and business management or staff supervision.

Concerning §81.417(a)(7), the department received many comments opposing a requirement for resilient surfaces under certain play equipment and the prohibition of concrete and asphalt under equipment. The department deleted the requirement for resilient surfaces but adopted the prohibition of concrete and

asphalt under climbing equipment and swings.

Concerning §81.424(e), comments were received opposing the amount of food required. The department adopted a revision clarifying that the center must ensure that the food is available.

Concerning §81.425(a)(1), commentors objected to the two-hour time limit on the rest period. The department adopted a revised standard specifying a three-hour limit.

Concerning §81.425(b), parents asked that facilities be required to give the parents more information concerning field trips. The department adopted a standard to require notice of field trips.

Concerning §81.425(b)(4), commentors objected to the more stringent staff-child ratio for field trips. They stated that many field trips are made to places where children are enclosed and as easily supervised as at the child care facility. The department adopted a standard that separates field trips to enclosed, controlled areas from field trips to areas that are open to the general public. The standard also clarifies that trained volunteers may serve in the adult-child ratio. The new standard specifies that additional supervision is necessary when children are in a vulnerable situation.

Concerning §81.430, many commentors testified in favor of, and others testified against, the proposed, more stringent staff-child ratio for swimming activities. The department adopted a staff-child ratio that is the same as the current standard except for children age six and older. In this case, fewer children are allowed in the staff-child ratio. The department adopted additional standards that state that trained volunteers may supervise swimming. Other adopted revisions require that all people supervising swimming be able to swim, and that when four or more children are swimming, two adults must be present. The lifeguard cannot be counted in the staff-child ratio if people other than the facility's children are swimming. The changes require a greater measure of protection in situations of higher risk.

Concerning §81.431(a), many comments were made both for and against the child restraint requirement in the transportation standards. Abundant data supports the proposal. The department adopted the requirement with slight revision. The effective date is July 1, 1985. The proposed age of 3 years was changed to 2 years. Children under age 2 must sit in a child safety seat.

A number of commentors recommended either more exemptions or fewer exemptions from the seat belt requirements.

The department deleted the exemption to ensure the children's safety.

The following organizations and organization representatives commented in support of the proposed sections: Texas Association for the Education of Young Children (AEYC), Dallas AEYC, Austin AEYC, Hous.on Committee for Private Sector Initiatives, De Etta Sayers, Elizabeth Newell, Charlotte Brantley, Joan Wageman, Martha Anderson, Jewel E. Hocott, Jeannette Watson, Marie Scheel, Ninna Jones, Mary Dodge, Josephene Worthan, Forrest Hancock, Melissa Thompson, Suzanne Stein, Luisa Sanderaf, Inez Jeffery, Stuart Reifel, Sandra Johnson, Jensie Madden, Kathleen Bouska, and Maggie Cuellar.

The following organizations also commented, but their comments consisted primarily of concerns and recommendations about specific portions of the sections: Coastal Bend Child Care Administrators, Judy Morris, Mae Smith, Evelyn Bourland, Cheryl McLemore, Faye Warmley, Sally Scott, Norma Ziegler, San Angelo Licensed Child Care Association, Texas Day Care Parents Association, Bonnie McClister for Home Economics Co-operative Education, Bob Hughes for Texas Licensing Child Care Association, Geraldine Nitzburg, Texas Licensed Child Care Association, The El Paso Licensed Child Care Association, Texas Licensed Child Care Association of San Antonio, Marcus J. Hanfling, M.D. for Houston/Galveston Child Passenger Safety, Coalition, Southwest Association for the Education of Young Children, and Child Care Protective Action Committee.

Comments on standards other than day-care center standards are as follows.

Greater Randolph Area Preschool Educators supported §81.205(a) in the minimum standards for kindergartens and nursery schools. The department adopted the proposed minimum age of 21 years for the director, and clarified and strengthened the director's education and experience requirements by stating that directors who are currently employed on May 1, 1985, will have three years from that date to meet the requirements, if they stay in the same position. This group also supported §81.207(a) in which the department adopts the requirements and exempts the staff currently employed on May 1, 1985. As in the day-care center standards, the supervisor need not be in the same room with the student caregiver at all times, but a qualified adult staff member must be at the facility at all times and must be with any group that leaves the facility. The group also supported §81.207(n), which the department adopted as proposed, and supported the standards in §81.217, concerning requirements for resilient sur-

faces under certain playground equipment. The same group expressed concern about the following standards.

Concerning §81.201(g), the department adopted the proposed standard requiring the facility to notify the department of any planned changes in indoor or outdoor space.

Concerning §81.202(a)(2), the department revised this standard to require posting the licensing report for 60 days or until the licensing representative furnishes a new report, whichever is sooner, if the report shows noncompliance.

Concerning §81.203(c), the department revised the requirements for the enrollment information form and deleted requirements for conferences, filing, and updating the form.

Concerning §81.203(c)(9), the department clarified this requirement by explaining that a child's special problems include allergy, existing illness, previous serious illness and injury, hospitalizations during the past 12 months, and any medication prescribed for long-term, continuous use.

Concerning §81.203(c)(13), the department deleted the proposed standard requiring the parents and director to update and initial the enrollment agreement.

Concerning §81.205(a)(5), the department adopted requirements for three years of experience in a licensed child care facility and six credit hours in child development, or early childhood education and six credit hours in business management.

Concerning §81.207(p), the department deleted specific procedures to verify the identity of a person authorized to pick up a child, but specified that the facility must have and follow a plan to verify identity.

Concerning §81.208(a), the department adopted the requirements from the minimum standards currently in effect.

Concerning §81.209(b), the department adopted a new requirement that increases the number of hours of training required for a director from 12 to 20 hours and for other staff from 12 to 16 hours. The director, furthermore, is required to have annual training in both early childhood education and business management or staff supervision.

Concerning §81.228, the department adopted the requirements for transportation with slight revision. The effective date is July 1, 1985. The proposed age of three years was changed to two years (children under age two must be in safety seats). The department deleted the exemption of certain vehicles.

Concerning §81.228(c), the department adopted a standard specifying that fire extinguishers be installed only in the facility's vehicles.

Georgia Robbins, Professional Home Child Care Association, objected to the following proposed minimum standards for group day-care homes.

Concerning §81.605(b), the department deleted from the standard the reference to 10 years and the reference to the director of licensing ruling on rehabilitation.

Concerning §81.607(l), the department deleted specific procedures for identifying a person authorized to pick up a child; the facility is still required to have and follow a plan for verifying the person's identity.

Concerning §81.608(a), the department adopted the requirements from the standards currently in effect.

Concerning §81.614(f)(2), the department adopted the standard as proposed but added a provision allowing the fire marshal to approve exceptions.

Concerning §81.624(b)(4), the department adopted a standard that separates field trips to enclosed controlled areas from those to areas open to the general public. Trained volunteers also may serve in the adult-child ratio.

Concerning §81.630(a)(1) and (b), the department adopted an effective date of July 1, 1985. The proposed age of three years was changed to two years (children under age two must be in child safety seats).

Concerning §81.630(g), in the adopted standard, the department deleted the requirement for a second adult when a two- or three-year-old is in the group and deleted the exclusion of counting the driver when children younger than two years old are in the group.

A group of parents objected to time limits for care in §81.703 of the minimum standards for drop-in care centers. The department adopted the proposed standard. The time limits required by this standard distinguish drop-in care centers from day care centers.

Subchapter C. Minimum Standards for Kindergarten and Nursery Schools

★40 TAC §§81.201-81.230

The repeal is adopted 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.

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

Issued in Austin, Texas, on January 28, 1985.

TRD-850902 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985
Proposal publication date: July 31, 1984
For further information, please call
(512) 460-3786.

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★40 TAC §§81.201-81.229

The new sections are adopted 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;

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 school unless the authorization is included in the document required in subsection (b) of this section.

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

(e) The governing body must notify the department in writing of:

(1) any planned addition or reduction in indoor or outdoor space before using the changed area; and

(2) the addition of a swimming or a fixed wading pool before using the pool.

(f) The governing body must notify the department by telephone or in writing before, if possible, or within five workdays of any occurrence affecting the operation of the school. This includes, but is not limited to, the following:

- (1) change 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;
- and
- (7) change in age range of children in care.

(g) If any change would violate 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.

§81.202. General Administration.

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

- (1) its license;
- (2) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the school (if the notification includes a requirement for posting); and

(3) a department form stating that the items required in paragraph (b) of this section are available.

(b) The school must have the following available for review on request:

(1) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the school (if the notification does not include a requirement for posting);

(2) a current copy of the department's minimum standards for kindergartens and nursery schools; and

(3) the school's most recent:

- (A) fire inspection report;
- (B) sanitation inspection report;

and

(C) gas pipe inspection report.

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

- (1) fire; and
- (2) death, serious accident, serious injury, or serious communicable disease of a child or staff.

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

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

(e) The school 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 para-

graphs (1)-(3) of this subsection must not be at the school while children are in care and 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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) The school must notify the licensing office of the indictment or complaint within 24 hours or on the next workday.

§81.203. Enrollment.

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

(b) The school must obtain enrollment information for each child before admission. The school must keep this information while the child is in the school. The parents must sign a form that contains:

(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 people to whom the child may be released;

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

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

(7) a statement of the child's special problems or needs. This includes allergy, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medication prescribed for long-term, continuous use;

(8) transportation permission, if transportation is provided;

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

(10) emergency medical authorization.

(c) The school must:

(1) give the parent of each child in care a copy of the department booklet, "A Parent's Guide to Day Care;" and

(2) keep on file a copy of the receipt showing that the parent was given the booklet and discussed it with the school.

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

§81.204. Records.

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

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

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

(2) a statement from the staff providing information about all felony and misdemeanor convictions and all pending criminal charges, including deferred adjudication;

(3) a record of a tuberculosis examination no earlier than 12 months before beginning this position; and

(4) a copy of the application or other document showing that staff meets the requirements in §81.207(a), (b), or (c) of this title (relating to Staff Qualifications and Responsibilities).

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

§81.205. Director Qualifications.

(a) The on-site director of a kindergarten or nursery school must be at least 21 years old, have a high school diploma or its equivalent, and one of the following:

(1) a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education and one year experience in a kindergarten or nursery school;

(2) a Child Development Associate credential;

(3) an associate of arts degree in child development or a closely related area and one year of experience in a school;

(4) an administrator's credential issued by a professional organization or educational institution and recognized by the Licensing Branch and one year of experience in a school (the experience may have been part of the credential requirements); or

(5) three years of experience as a director or staff in a licensed child care facility and at least six credit hours in child development or early childhood education and six credit hours in business management from an accredited college or university. Five continuing education units may be substituted for each three credit hours.

(b) Documentation showing how the director meets the qualifications 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 May 1, 1985, has three years from that date to meet compliance if the person 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. The director also must have two years experience as a director or staff in a licensed day care facility. This may include experience toward meeting the requirements in subsection (a) of this section.

(e) A person who was a director of a kindergarten or nursery school licensed

for 35 or more children on May 1, 1985, has three years from that date to meet the requirements in this section if the person remains in the same position.

(f) No one may serve as director of a school who has been convicted of any of the following offenses:

(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 law 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 a department form:

(1) a record of training and experience;

(2) information about all felony and misdemeanor convictions; and

(3) information about all pending criminal charges, including deferred adjudication.

§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.

§81.207. Staff Qualifications and Responsibilities.

(a) Staff working with children must be age 18 or older. The school, however, may include in the staff-child ratio a person 16 or 17 years old who works under the direct supervision of a qualified adult staff and

(1) has graduated from high school; or

(2) is enrolled in child care related career programs approved by the Texas Education Agency or other state or federally approved programs. At least one qualified adult staff must be included in the staff-child ratio when children are away from the school.

(b) Each staff employed after May 1, 1985, must have a high school diploma or its equivalent unless meeting the requirements in subsection (a)(2) of this section.

(c) 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.

(d) People working with kindergarten children on May 1, 1985, have two years from that date to meet compliance if they remain in the same position.

(e) Staff must show competency, good judgment, and self-control in working with children.

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

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

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

(i) A person convicted of any of the following offenses must not be at the school when children are in care and must not serve in any capacity where there is contact with children in care:

(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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

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

(k) 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 alco-

hol or other drugs must not be in the school when children are present.

(l) Staff must supervise children at all times.

(m) People working with children and counted in the staff-child ratio must be free from other duties except those directly involving the teaching, care, and supervision of children. These responsibilities include keeping the group's area clean. Administrative and clerical functions that take the staff's attention away from the children, meal preparation, or janitorial duties must not be included in the responsibilities of staff while counted in the staff-child ratio.

(n) The school must ensure that children are not out of control.

(o) The school must ensure that a child is released only to a parent or an adult designated by the parent.

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

(q) The school must have and follow a plan to verify the identity of a person authorized to pick up a child but not known to the staff. The school keeps this identifying information for 24 hours.

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

(1) any significant information he has about a child; and

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

§81.208. 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 that each staff was oriented in the following:

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

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

(3) recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure for reporting these; and

(4) procedures to follow in handling emergencies (after the school has explored its environment for external hazards and formulated its training plan accordingly).

(b) If volunteers are counted in the staff-child ratio for special activities only, the school must:

(1) ensure that each volunteer receives relevant orientation; and

(2) obtain from each volunteer the statement required in 81.204(b) of this title (relating to Records).

(c) 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. At least six clock hours must be in staff supervision. 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.

§81.209. 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	Number of Children of Youngest Age	Maximum Number of Children to be Supervised by One Staff
2 years	If there are five or more 2-year-olds	11
2 years	If there are no more than four 2-year-olds	13
3 years	If there are seven or more 3-year-olds	15
3 years	If there are no more than six 3-year-olds	17
4 years	If there are 11 or more 4-year-olds	18
4 years	If there are no more than 10 children 4 years old	20
5 years	If there are 13 or more 5-year-olds	24
5 years	If there are no more than 12 children 5 years old	26
6 years		28

(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 (not to exceed 30 minutes) as long as the staff-child ratio is maintained. If all children in the group are age five or older, the school may extend the duration to a maximum of 1½ hours.

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

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

(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 the child and who is aware of details of the child's habits, interests, and any special problems. Staff must know the child's name and have information showing his age.

§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 4 feet high and with at least two exits. An entrance to the building may count as one exit, but one exit must be away from the building. Staff must be able to open exits immediately in an emergency.

§81.212. *Equipment.*

(a) The school must provide indoor and outdoor equipment and materials 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) If the school's educational goals do not require the equipment listed in the definition for "equipment" in §81.229 of this title (relating to Glossary), the school must have the following:

(1) a 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.

§81.215. *Fire.*

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

(1) The school 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 school 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 with a written report by a local or state fire marshal. The school must make any corrections called for in the report and 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 so that all staff can reach and use the extinguisher. The school must make the extinguisher readily available for immediate use by the staff. The school must inspect the fire extinguisher monthly, record the date, and ensure the extinguisher is serviced when required.

(d) By January 1, 1986, the school 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.

(e) The school must have emergency evacuation and relocation plans posted in each room the children use. The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level. The school must practice a fire drill every three months and must practice other emergency procedures once each year.

(f) The school must have a flashlight 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) A school must not allow children on any level above or below the ground floor unless the school obtains the specific written approval of a fire marshal for use of other levels.

(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 unless specifically approved in writing by the fire marshal.

(3) If any doors open 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) The school 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, the school 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 school 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 ensure that gas pipes are tested annually for leaks.

§81.216. *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 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 meeting 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 school 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. The garbage

must be kept away from areas used by children. The school 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 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 on electrical outlets accessible to children younger than five years old. If 220-volt electrical connections are within the children's reach, the school must cover them with a screen or guard.

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

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

(4) The school must keep its play area free from standing water and 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.

(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 ensure that both indoors and outdoors children do not have access to toxic substances.

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

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

(6) 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.

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

(8) 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 out of the children's reach. The school must have a guide to first aid and emergency care immediately accessible.

§81.218. Health Requirements for Children.

(a) The school must have on file within one week of admission evidence that each child is physically able to take part in the school program. Any of the following constitutes compliance:

(1) a written statement from a licensed physician who 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;

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

(A) Head Start physical exam;

(B) well-child conferences or clinics;

(C) maternity and infant programs;

(D) children and youth programs; or

(4) a signed statement from a parent:

(A) giving the name and address of a licensed physician who has examined the child within the past year and states 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

(B) 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

(C) stating that medical diagnosis and treatment are against the parent's religion.

(b) The school must keep current immunization records for each child. The school 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 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 dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the above mentioned diseases 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 the parent's religious beliefs and practices;

(5) a 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 recommends a test. A 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. The school must call the child's parent immediately. The child must be supervised until he leaves the school.

(2) The school must plan how it would provide emergency care for an injured child, a child with symptoms of acute illness, and a child who is choking or not breathing. The planning must include the continued supervision of other children in care.

(3) The school must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or

injury, the school 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, the school 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. The school must administer the medication as stated on the label directions. The school must not administer medication after the expiration date.

(2) The school 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. The school must administer it according to label directions if approved in writing by health personnel or the child's parent.

(3) The school 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. The record must be kept for two weeks.

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

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

(d) The school must return medications when no longer needed to the child's parent. The school 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) local DHR children's protective services office or child abuse hotline;
- (6) 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. The school must have documentation of the vaccinations.

(b) The school must keep the school and play yard free of stray animals. The school 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, distributed, and served under sanitary and safe conditions. The school must wash and sanitize food service equipment.

(b) The school 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.

(c) The school must discard single-service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(d) The school must encourage, but not force, children to eat. The school must discuss recurring eating problems with the child's parent.

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

§81.224. Operation.

(a) The school 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. The activities 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 during 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) At least 48 hours before a field trip, the school must post in a prominent place a notice showing which group of children will be on the trip and where and when they will go. The school must ensure that the notice remains posted until the group returns to the school.

(2) Staff supervising children must have immediate access to emergency medi-

cal forms and emergency contact information for each child in the group.

(3) Staff must have a written list of the children in the group and must check the roll frequently.

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

(5) When children are on a field trip in an enclosed, controlled area, the school must maintain the staff-child ratio as outlined in §81.209(a) of this title (relating to Staff-Child Ratio).

(6) When children are on a field trip and mixing with other children or adults, the adult-child ratio must be as follows:

Age of Youngest Child in Group	Maximum Number of Children to be Supervised by One Adult
2 years	6
3 years	8
4 years	9
5 years	11
6 years	15

(A) The number of regular staff supervising this type of field trip must be at least equal to the number required in §81.209(a) of this title (relating to Staff-Child Ratio). Staff may be supplemented by parents or volunteers trained in the school's field trip procedures.

(B) Children must have name tags or other identification listing the name and phone number of the school.

(7) Staff supervising a field trip must have transportation or a plan for transportation at the field trip location in case of emergency.

§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 the children. No child under five years old must ever be spanked. The school 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 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 neces-

sary, but the school must not place children in a locked room or in a dark room with the door closed.

(4) The school must not humiliate or subject children to abusive or profane language. The school 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 at the school because of disabling or limiting conditions are given the care and activities qualified psychologists, physicians, or other experts recommend.

§81.227. Water Activities.

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

(1) The school must meet staff-child ratio for wading.

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
2 years	2	11
3 years	2	13
4 years	1	18
5 years	1	22
6 years	1	25

(2) When a child under four years old is in the water, two staff members must supervise.

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

(b) When a 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. The school 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 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 if people other than the children from the school are swimming.

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

(c) The school 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 swimming is as follows:

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
2 years	1	6
3 years	1	8
4 years	1	12
5 years	1	15
6 years	1	18

(1) The number of staff supervising swimming activities must be at least equal to the number required by §81.209(a) of this title (relating to Staff-Child Ratio). The number may be supplemented by parents and volunteers trained in the school's procedures for supervising swimming.

(2) Adults included in the staff-child ratio for swimming must be able to swim and must constantly supervise the swimming activity.

(3) When four or more children are swimming, two adults must be present.

(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) The school 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) Effective July 1, 1985, 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) This requirement applies 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) This requirement applies 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.

(1) Appropriateness is determined as follows:

(A) The school must ensure that each child age two and older rides in either a child seat that is a dynamically crash-tested child passenger restraint device manufactured according to federal standards or 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.

(2) The school must properly anchor each restraint device and use the device according to the manufacturer's specifications.

(3) If a parent provides equipment for the school to use for transporting the child, the equipment must meet the specifications stated in this rule.

(b) Effective July 1, 1985, the driver and all adult passengers in a vehicle transporting school children must be properly restrained by 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 school vehicles transporting children.

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

(f) The staff-child ratio in §81.209(a) of this title (relating to Staff-Child Ratio) must be met during transportation. The driver is counted in the staff-child ratio. For children ages 2 and 3, at least two adults must be present.

§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.

Consultation 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, licensed registered nurses, child psychiatrists, 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.

Continuing education unit (CEU)—A certificate granted by an educational institution to a person who has completed a training course. (One CEU is granted for 10 clock hours of formal training.)

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 (DHR)—Used in this document to refer only to the Texas Department of Human Resources.

Direct child care or direct teaching—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.)

Entrapping equipment—A component or group of components on play equip-

ment that forms angles or openings that could trap a child's head by being:

(A) too small to allow the child to withdraw his head easily; and

(B) placed so that the child would be unable to support his weight by means other than his head or neck.

Equipment and materials—Include, but are not limited to, books; art materials; music materials; manipulative materials, blocks and block accessories; dramatic play materials, including homemaking materials and dolls; science materials; and climbing equipment.

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

Fall zone—An area extending four feet from climbing structures; five feet from the bottom of a slide (other parts of the slide are climbing structures); seven feet plus the length of the swing's chain from its point of suspension; and seven feet from a merry-go-round and other revolving devices.

First aid supplies—Required supplies include multisize 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 IRS 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.

Governing body designee—The person named on the application as the designated representative of a governing body that is not a sole proprietorship or partnership.

Group—A specific number of children assigned to specific staff. Each child in any group has the following 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 program, such as cleaning carpets, washing tables, 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 "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.

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 accept children.

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 or sexual molestation—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.

Supervision—Care 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; self-instructional materials; or planned learning opportunities provided by the director, other staff, or 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 28, 1985.

TRD-850903 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985
Proposal publication date: July 31, 1984
For further information, please call
(512) 450-3786.

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

★40 TAC §§81.301-81.329

The repeal is adopted 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 28, 1985.

TRD-850900 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985
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For further information, please call
(512) 450-3786.

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The new sections are adopted 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;

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 school unless the authorization is included in the document required in this subsection.

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

(e) The governing body must notify the department in writing of:

(1) any planned addition or reduction in indoor or outdoor space before using the changed area; and

(2) the addition of a swimming or a fixed-wading pool before using the pool.

(f) The governing body must notify the department by telephone or in writing before, if possible, or within five workdays of any occurrence affecting the operation of the school. This includes, but is not limited to, the following:

(1) change 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;
- and
- (7) change in age range of children in care.

(g) If any change would violate 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.

§81.302. General Administration.

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

- (1) its license;
- (2) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the school (if the notification includes a requirement for posting);
- (3) current menus; and
- (4) a department form stating that the items required in subsection (b) of this section are available.

(b) The school must have available for review on request:

- (1) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the school (if the notification does not include a requirement for posting);
- (2) a current copy of the department's minimum standards for schools: grades kindergarten and above; and
- (3) the school's most recent
 - (A) fire inspection report;
 - (B) sanitation inspection report;

and

- (C) gas pipe inspection report.

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

- (1) fire; and
- (2) death, serious accident, serious injury, or serious communicable disease of a child or staff.

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

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

(e) The school 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 below must not be at the school while children are in

school and must not have contact with the children 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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) The school must notify the department of an indictment or complaint within 24 hours or on the next workday.

§81.303. Enrollment.

(a) Before a child is enrolled, the school must inform parents about the school's activities and policies, including curriculum and educational goals.

(b) The school must obtain enrollment information for each child before admission. The school must keep this information while the child is in school. The parent must sign a form that 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 parent(s) and telephone numbers at which parent(s) can be reached while the child is in school;
- (4) the names of the people to whom the child may be released;
- (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. This includes allergy, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medication prescribed for long-term, continuous use;
- (8) transportation permission, if transportation is provided;
- (9) permission for participation in water activities, if any; and
- (10) emergency medical authorization.

(c) The school must:

- (1) give the parent of each child in school a copy of the department booklet, "A Parent's Guide to Day Care;" and
- (2) keep on file a copy of the receipt showing that the parent was given the booklet and discussed it with the school.

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

§81.304. Records.

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

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

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

(2) a statement from staff providing information about all felony and misdemeanor convictions and about all pending criminal charges, including deferred adjudication;

(3) a record of a tuberculosis examination no earlier than 12 months before beginning this position;

(4) a copy of an application or other document showing that staff meets the requirements in §81.307(a), (b), or (c) of this title (relating to Staff Qualifications and Responsibilities).

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

§81.305. Director Qualifications.

(a) The on-site director of a school must have a bachelor's degree from an accredited college or university with at least 12 credit hours of education or child development. The director also must have had two years of experience in teaching or in school administration or management. Documentation showing how the director meets the qualifications must be available to the department.

(b) A person who was director of a school on May 1, 1985, has four years from that date to comply if he remains in the same position.

(c) No one may serve as director of a school who has been convicted of any of the following offenses:

- (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 law 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 a department form:

- (1) a record of training and experience;
- (2) information about all felony and misdemeanor convictions; and
- (3) information about all pending criminal charges, including deferred adjudication.

§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 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.

§81.307. Staff Qualifications and Responsibilities.

(a) Staff teaching first grade and above 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 May 1, 1985, has two years from that date to comply 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 May 1, 1985, has two years from that date to comply 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.

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

(f) Effective January 1, 1986, a person certified in first aid and a person certified in cardiopulmonary resuscitation of children must be present at the school during all hours of operation. The school must have current certificates attesting to the training.

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

(h) A person convicted of any of the following offenses must not be at the school when children are present and must not serve in any capacity where there is contact with children:

(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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(i) People whose behavior or health appears to endanger the health, safety, or

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) Staff must supervise children at all times.

(l) People working with children and counted in the staff-child ratio must be free from other duties except those directly involving the care and supervision of children. These responsibilities include keeping the group's area clean. Administrative and clerical functions that take the staff's attention from the children, meal preparation, or janitorial duties must not be included in responsibilities of staff while counted in the staff-child ratio.

(m) The school must ensure that children are not out of control.

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

(o) The school must have and follow a plan to verify the identity of a person authorized to pick up a child but not known to the staff. The school keeps this identifying information for 24 hours.

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

(1) any significant information he has about a child; and

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

§81.308. 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 that each staff was oriented in the following:

(1) the requirements in the minimum standards for schools: grades kindergarten and above and the licensing law;

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

(3) recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure for reporting these; and

(4) procedures to follow in handling emergencies (after the school has explored its environment for external hazards and formulated its training plan accordingly).

(b) When volunteers are counted in the staff-child ratio for special activities only, the school must:

(1) ensure that each volunteer receives relevant orientation; and

(2) obtain from each volunteer the statement required in §81.304(b)(2) of this title (relating to Records).

(c) 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. A least six clock hours must be in staff supervision or management and at least six clock hours must be in child development or childhood education. 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.

§81.309. 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	24
1st-3rd	28
4th and above	32

(1) Up to 60 children may be in regular classroom activities as long as the staff-child ratio is maintained.

(2) The school may combine more than 60 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) The school 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 subsection (a) of this section except during water activities and field trips.

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

§81.315. Fire.

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

(1) The school 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) The school 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 with a written report by a local or state fire marshal. The school 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 extinguish-

er on the wall by the hanger or bracket provided so that staff can reach and use the extinguisher. The school must make the extinguisher readily available for immediate use by the staff. The school must inspect the fire extinguisher monthly, record the date, and ensure the extinguisher is serviced when required.

(d) By January 1, 1986, 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.

(e) The school must have emergency evacuation and relocation plans posted in each room the children use. The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level. The school must practice a fire drill every three months. It must practice other emergency procedures once each year.

(f) The school must have a flashlight 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) A school must not provide classes on any level above or below the ground floor unless the school obtains the specific written approval of a fire marshal for use on other levels.

(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 unless specifically approved in writing by the fire marshal.

(3) If any doors open 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) The school 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, the school 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 ensure that gas pipes are tested annually for leaks.

§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 meeting 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 school 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. Garbage must be kept away from areas used by children. The school 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 air conditions, electric fans, and heaters must be mounted out of children's reach or have safeguards that keep children from being injured.

(2) If 220-volt electrical connections are within the children's reach, the

school must cover them with a screen or guard.

(3) The school must equip stairs, porches, and platforms more than 2 feet above the ground with railings the children can reach.

(4) The school must keep its play area free from standing water and 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.

(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 ensure that both indoors and outdoors children do not have access to toxic substances.

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

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

(6) 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.

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

(8) 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 out of the children's reach. The school must have a guide to first aid and emergency care immediately accessible.

§81.318. Health Requirements for Children.

(a) The school must have on file within one week of admission evidence that each child is physically able to take part in the school program. Any of the following constitutes compliance:

(1) a written statement from a licensed physician who 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;

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

(A) Head Start physical exam;

- (B) well-child conferences or clinics;
- (C) maternity and infant programs; and
- (D) children and youth programs; or

(4) a signed statement from a parent:

(A) giving the name and address of a licensed physician who has examined the child within the past year and states 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;

(B) 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

(C) stating that medical diagnosis and treatment are against the parent's religion.

(b) The school must keep current immunization records for each child at the school. The school 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 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 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 the parent's religious beliefs and practices;

(5) a 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 in-

clude 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 recommends 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. The school must call the child's parent immediately. The child must be supervised until he leaves the school.

(2) The school must plan how it would provide emergency care for an injured child, a child with symptoms of acute illness, and a child who is choking or not breathing. The planning must include the continued supervision of other children in the school.

(3) The school must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, the school 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, the school 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. The school must administer the medication as stated on the label directions. The school must not administer medication after the expiration date.

(2) The school 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. The school must administer it according to label directions if approved in writing by health personnel or the child's parent.

(3) The school 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. The school must keep the record two weeks.

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

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

(d) The school 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) local DHR children's protective services office or child abuse hotline;

(6) 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.

§81.322. *Animals.*

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

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

§81.323. *Food Service.*

(a) The school 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) The school 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.

(c) The school must discard single-service napkins, dishes, and utensils after use. Washable napkins and tablecloths must be cleaned after each use.

(d) The school must encourage, but not force, children to eat. The school must discuss recurring eating problems with the child's parent.

(e) Cleaning supplies must be clearly marked and kept separate from food.

§81.324. Operation.

(a) The school 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;

(C) outdoor time each day that weather permits.

(b) The school must ensure the children's safety on field trips and excursions and during 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) At least 48 hours before a field trip, the school must post in a prominent place a notice showing which group of children will be on the field trip and where and when the group will go. The school must ensure that the notice remains posted until the group returns to the school.

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

(3) Staff must have a written list of the children in the group and must check the roll frequently.

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

(5) When children are on a field trip in an enclosed, controlled area, the school must maintain the staff-child ratio as outlined in §81.309(a) of this title (relating to Staff-Child Ratio).

(6) When children are on a field trip and mixing with other children or adults, the adult-child ratio must be as follows:

Age of Youngest Child in Group	Maximum Number of Children to be Supervised by One Adult
4 years	9
5 years	11
6 years and older	15

(A) The number of regular staff supervising this type of field trip must be at least equal to the number required by §81.309(a) of this title (relating to Staff-Child Ratio). The number may be supplemented by parents or volunteers trained in the school's field trip procedures.

(B) Children must have name tags or other identification listing the name and phone number of the school.

(7) Staff supervising a field trip must have transportation or a plan for transportation at the field trip location in case of emergency.

§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 the children. The school 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 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 it must not place children in a locked room or in a dark room with the door closed.

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

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

§81.327. Water Activities.

(a) When a school uses a splashing or a wading pool with less than two feet of water, the following staff-child ratio must be maintained:

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
4 years	1	18
5 years	1	22
6 years and older	1	26

(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. The school 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 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 if people other than the children from the school are swimming.

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

(c) The school 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 swimming is as follows:

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
4 years	1	12
5 years	1	15
6 years and older	1	18

(1) The number of regular staff supervising swimming activities must be at least equal to the number required by §81.309(a) of this title (relating to Staff-Child Ratio). The number may be supplemented by parents or volunteers trained in the school's procedures for supervising swimming.

(2) Adults included in the staff-child ratio for swimming must be able to swim and must constantly supervise the swimming activity.

(3) When four or more children are swimming, two adults must be present.

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

(f) The school 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 and local regulations.

§81.328. Transportation.

(a) Effective July 1, 1985, if a school provides transportation, each child being transported must ride in a seat belt.

(1) This requirement applies 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) This requirement applies 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.

(A) 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.

(b) Effective July 1, 1985, the driver and all adult passengers in a vehicle transporting children must be properly restrained by 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 school vehicles transporting children.

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

(f) 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 eighteenth birthday.

Child Development Associate credential—A credential which is highly desirable for staff working directly with young children; based on assessed com-

petency 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.

Consultation 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, licensed registered nurses, child psychiatrists, 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.

Continuing education unit (CEU)—A certificate granted by an educational institution to a person who has completed a training course. (One CEU is granted for 10 clock hours of formal training.)

Department (DHR)—Used in this document 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.)

Entrapping equipment—A component or group of components on play equipment that forms angles or openings that could trap a child's head by being

(A) Too small to allow the child to withdraw his head easily, and

(B) Placed so that the child would be unable to support his weight by means other than his head or neck.

Facility—Includes people, administration, governing body, activities (on or off

the premises), operations, buildings, grounds, equipment, furnishings, and materials.

Fall zone—An area extending four feet from climbing structures; five feet from the bottom of a slide (other parts of the slide are climbing structures); seven feet plus the length of a swing's chain from the point of its suspension; and seven feet from a merry-go-round and other revolving devices.

First aid supplies—Required supplies include multisize 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 educa-

poses. 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.

Governing body designee—The person named on the application as the designated representative of a governing body that is not a sole proprietorship or partnership.

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 that involve cleaning and maintenance above that which is required for the continuation of the school program. 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 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 a program for children.

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 or sexual molestation—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.

Supervision—Caring for or teaching a child or a 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; self-instructional materials; or planned learning opportunities provided by directors, other staff, or 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 28, 1985.

TRD-850901

Merlin W. Johnston
Commissioner
Texas Department of
Human Resources

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Proposal publication date: July 31, 1984
For further information, please call
(512) 450-3786.

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Subchapter E. Standards for Day-Care Centers

★ 40 TAC §§81.401-81.432

The repeal is adopted 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.

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

Issued in Austin, Texas, on January 29, 1985.

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Commissioner
Texas Department of
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(512) 450-3786.

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The new sections are adopted 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) A center must have a governing body that is responsible for the center's policies. The governing body must assure that the center operates in compliance with the minimum standards for day-care centers and the child care licensing law, Chapter 42, Human Resources Code. 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) The governing body must notify the department and apply for a new license before changing the location of the center.

(e) The governing body must notify the department in writing of:

(1) any planned addition or reduction to indoor or outdoor space before using the changed area; and

(2) the addition of a swimming or a fixed wading pool before using the pool.

(f) The governing body must notify the department by telephone or in writing before, if possible, or within five workdays of any occurrence affecting the operation of the center. This includes, but is not limited to, the following:

(1) change of the governing body or ownership;

(2) change of center director;

(3) change of board chairman of a corporate 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; and

(7) change in age range of children in care.

(g) If any change would violate 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.

§81.402. General Administration.

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

(1) its license;

(2) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the center (if the notification includes a requirement for posting);

(3) current menus; and

(4) a department form stating that the items required in subsection (b) of this section are available.

(b) The center must have available for review on request:

(1) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the center (if the notification is not posted);

(2) a current copy of the department's minimum standards for day care centers; and

(3) the center's most recent:

(A) fire inspection report;

(B) sanitation inspection report; and

(C) gas pipe inspection report.

(c) The center must immediately notify the department of any serious occurrences affecting the day care operation. These include, but are not limited to, the following:

(1) fire; and

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

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

(1) the nearest DHR child protective services office; and

(2) a local or state law enforcement agency.

(e) The center 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 be at the center while children are in care and 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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) The center must notify the department of an indictment or complaint within 24 hours or on the next workday.

§81.403. Enrollment.

(a) Before a child is enrolled, the center must inform parents about the center's activities and policies.

(b) The center must obtain enrollment information for each child before admission. The center must keep this information as long as the child is in care. The parent must sign a form that contains the following:

(1) the child's name, birth date, home address, and home telephone number;

(2) the school telephone number for a school-age child;

(3) date of admission;

(4) name and address of parents and telephone numbers at which parents can be reached while the child is in care;

(5) names of people to whom the child may be released;

(6) hours the child will be in care (not to exceed 12 hours);

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

(8) a statement of the child's special problems or needs. This includes allergy, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medication prescribed for long-term, continuous use;

(9) transportation permission, if transportation is provided;

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

(11) emergency medical authorization.

(c) The center must:

(1) give the parent of each child in care a copy of the department's booklet, "A Parent's Guide to Day Care;" and

(2) keep on file a copy of the receipt to show that the parent was given the booklet and discussed it with the center.

(d) The center must not racially discriminate against any child.

§81.404. Records.

(a) The center must have records of daily attendance of children and staff for the previous three months. The hours staff worked must be recorded.

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

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

(2) a statement from the staff providing information about all felony and misdemeanor convictions and all pending criminal charges, including deferred adjudication;

(3) a record of a tuberculosis examination no earlier than 12 months before beginning this position; and

(4) a copy of an application or other document showing how the staff meets the requirements in §81.407(a) and (b) of this title (relating to Staff Qualifications and Responsibilities).

(c) All required records must be available at the center for the department to inspect during hours of operation.

§81.405. Director Qualifications.

(a) The on-site director of a day care center must be at least 21 years old and have a high school diploma or its equivalent and one of the following:

(1) a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education and one year of experience in a center;

(2) a Child Development Associate credential;

(3) an associate of arts degree in child development or a closely related area and one year of experience in a center;

(4) a day care administrator's credential issued by a professional organi-

zation or an educational institution and recognized by the Licensing Branch and one year of experience in a center (the experience may have been part of the credential requirements); or

(5) three years of experience as a director or staff in a licensed child care facility and six credit hours in child care, child development, or early childhood education and six credit hours in business management from an accredited college or university. Five continuing education units may be substituted for each three credit hours.

(b) Documentation showing how the director meets the qualifications in subsection (a) of this section must be available at the center.

(c) A person who was director of a center on May 1, 1985, has three years 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 as a director or staff in a licensed day care facility. This may include experience toward meeting the requirements in subsection (a) of this section.

(e) A person who was a director of a center licensed for 35 or more children on May 1, 1985, has three years from that date to meet compliance if he remains in the same position.

(f) No one may serve as director of a center who has been convicted of any of the following offenses:

(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 law 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 a department form:

(1) a record of training and experience;

(2) information about all felony and misdemeanor convictions; and

(3) information about all pending criminal charges, including deferred adjudication.

§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 staff member must be designated in charge and given the authority to administer the center. During the director's absence, the designated staff member must administer the center in compliance with minimum standards.

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

§81.407. Staff Qualifications and Responsibilities.

(a) Staff working with children must be age 18 or older. The center, however, may include in the staff-child ratio a person 16 or 17 years old who works under the direct supervision of a qualified adult staff and

(1) has graduated from high school; or

(2) is enrolled in a career program related to child care approved by the Texas Education Agency or in other state or federally approved programs. At least one qualified adult staff member must be included in the staff-child ratio of the group when children are in activities away from the center.

(b) Each staff member employed after May 1, 1985, must have a high school diploma or its equivalent except when meeting the requirements in subsection (a)(2) of this section.

(c) Staff must show competency, good judgment, and self-control in working with children.

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

(e) Effective January 1, 1986, a person certified in first aid and a person certified in cardiopulmonary resuscitation of children must be present at the center during all hours of operation. The center must have current certificates attesting to the training on file.

(f) People at the center must not abuse, neglect, or sexually molest children.

(g) A person convicted of any of the following offenses must not be at the center while children are in care and must not serve in any capacity where there is contact with children in care:

(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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(h) People whose behavior or health appears to endanger the health, safety, or well-being of children must not be at the center.

(i) 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.

(j) Staff must supervise children at all times.

(k) People working with children and counted in the staff-child ratio must be free from other duties except those directly involving the care and supervision of children. These responsibilities include keeping the

group's area clean. Administrative and clerical functions that take the staff's attention away from the children, meal preparation, or janitorial duties must not be included in the responsibilities of staff while the staff is counted in the staff-child ratio.

(l) The center must ensure that children are not out of control.

(m) The center must ensure that a child is released only to a parent or an adult designated by the parent.

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

(o) The center must have and follow a plan to verify the identity of a person authorized to pick up a child but not known to the staff. The center keeps identifying information for 24 hours.

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

(1) any significant information he has about a child; and

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

§81.408. 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 that each staff member has been oriented in:

(1) the requirements in the minimum standards for day care centers and the licensing law;

(2) the center's child care policies, including discipline, guidance, and the release of children;

(3) recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure for reporting these; and

(4) the procedures to follow in handling emergencies (after the center has explored its environment for external hazards and formulated training plans accordingly).

(b) If volunteers are counted in the staff-child ratio for special activities only, the center must:

(1) ensure that each volunteer receives relevant orientation; and

(2) obtain from each volunteer the statement required in §81.404(b)(2) of this title (relating to Records).

(c) 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. At least six clock hours must be in staff supervision or management and at least six clock hours must be in child development or early childhood education. 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.

§81.409. Staff-Child Ratio.

(a) In a center, the number of children must not exceed the following:

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
0-11 months	5	11
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.

Preschool and School-age Children

Age of Youngest Child in Group	Number of Children of Youngest Age	Maximum Number of Children to be Supervised by One Staff
18 months	If four or more children are under 2 years old	9
18 months	If no more than three children are under 2 years old	10
2 years	If there are five or more 2-year-olds	11
2 years	If there are no more than four 2-year-olds	13
3 years	If there are seven or more 3-year-olds	15
3 years	If there are no more than six 3-year-olds	17
4 years	If there are 11 or more 4-year-olds	18
4 years	If no more than 10 children are 4 years old	20
5 years	If there are 13 or more 5-year-olds	22
5 years	If no more than 12 children are 5 years old	24
6 years and older		26

(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 through 23 months old, the maximum group size is 18 children. Up to 35 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 35 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) the center 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. 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 infants, the center must maintain the full staff-child ratio. In determining the 50% or 75%, the center does not count staff caring for 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) forty-five 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 11 or fewer children are in care at the center, one of the following groupings is the maximum number of children permitted in the care of one staff:

(A) If one infant is cared for, no more than six preschool and four older children may be in care.

(B) If two infants are cared for, no more than five preschool and three older children may be in care.

(C) If three infants are cared for, no more than two preschool children and one older child may be in care.

(D) If four infants are cared for, no children older than 18 months may be in care.

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

child's name and have information showing his age.

§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, but one exit must be away from the building. 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 list- ed number;

(2) preschool children have individual cots, beds, or mats at least one inch thick that are waterproof or 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;

(5) comfortable seating is available for the children.

§81.412. Equipment. 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.

§81.415. Fire.

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

(1) The center 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 center 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 with a written report by a local or state fire marshal. The center must make any corrections called for in the report and 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 so that all staff can reach and use the extinguisher. The center must make the extinguisher readily available for immediate use by the staff. The center must inspect the fire extinguisher monthly, record the date, and ensure the extinguisher is serviced when required.

(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.

(e) The center must have emergency evacuation and relocation plans posted in each room the children use. The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level. The center must practice a fire drill every three months; it must practice any different emergency procedures once each year.

(f) The center must have a flashlight 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) A center must not provide child care on any level above or below the ground floor unless the center obtains from a fire marshal specific written approval for care on other levels.

(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 unless specifically approved in writing by the fire marshal.

(3) If any doors open 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) The center 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, the center 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 center 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 pre-

vent children from falling into the fire or against the stove.

(i) The center must ensure that gas pipes are tested annually for leaks.

§81.416. Sanitation.

(a) The center must have an annual sanitation inspection with a written report by a local or state sanitation official. 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 meeting 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 center 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. Garbage must be kept away from areas used by children. The center 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, feeding a child or handling food, and 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. If 220-volt electrical connec-

tions are within the children's reach, the center must cover them with a screen or guard.

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

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

(4) The center must keep its play area free from standing water and 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.

(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 ensure that both indoors and outdoors children do not have access to toxic substances.

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

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

(6) 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.

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

(8) 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 out of the children's reach. The center must have an immediately accessible guide to first aid and emergency care.

§81.418. Health Requirements for Children.

(a) Within one week of admission, the center must have on file evidence that each preschool child is physically able to take part in the day care program. Any of the following constitutes compliance:

(1) a written statement from a licensed physician who 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;

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

(A) Head Start physical exam;

(B) well-child conferences or clinics;

(C) maternity and infant programs; or

(D) children and youth programs; or

(4) a signed statement from the parent:

(A) giving the name and address of a licensed physician who has examined the child within the past year and stated 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;

(B) 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;

(C) stating that medical diagnosis and treatment are against the parent's religion.

(b) The center must keep current immunization records for each child at the center. The center 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 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 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 immu-

nization conflicts with the parent's religious beliefs and practices;

(5) a 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.

(c) 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 recommends 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 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 center.

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

(2) The center must plan for providing emergency care for an injured child, a child with symptoms of acute illness, and a child who is choking or not breathing. The planning must include the continued supervision of other children in care.

(3) The center must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, the center 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, the center 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. The center must administer the medication as stated on the label directions. The center must not administer medication after the expiration date.

(2) The center 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. The center must ad-

minister it according to label directions if approved in writing by health personnel or the child's parent.

(3) The center 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. The record must be kept for two weeks.

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

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

(d) The center must return medications when no longer needed to the child's parent. The center 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) local DHR children's protective services office or child abuse hotline;
- (6) 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. The center must have documentation of the vaccinations.

(b) The center must keep the center and play yard free of stray animals. The center 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) The center 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.

(c) The center must discard single-service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(d) The center must encourage, but not force, children to eat. The center must

discuss recurring eating problems with the child's parent.

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

§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. The center 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.

(c) All children must have regular meals and morning and afternoon snacks.

(d) The center must ensure that children in the center for six or more hours per day have food available that meets at least one-half of their daily food needs. This does not apply to children arriving after the evening meal and leaving before the morning meal.

(e) The center must have the written approval of a physician or a registered or licensed dietician for special or therapeutic diets.

§81.425. *Operation.*

(a) The center must provide activities for each group according to the children's ages, interests, and abilities. The activities must be appropriate to each child's health, safety, and well-being. The activities 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. These must include a supervised rest period after the noon meal. Rest periods must not last longer than three hours. After two hours, the center must allow children who are awake to get up and participate in quiet activities. The rest area must be adequately lighted to allow visual supervision at all times.

(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 during 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) At least 48 hours before a field trip, the center must post in a prominent place a notice showing the group of children who will be on the trip and where and when they will go. The center must ensure that

the notice remains posted until the group returns to the center.

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

(3) Staff must have a written list of the children in the group and must check the roll frequently.

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

(5) When children are on a field trip in an enclosed, controlled area, the center must maintain the staff-child ratio as outlined in §81.409(a) of this title (relating to Staff-Child Ratio).

(6) When children are on a field trip and mixing with other children or adults, the adult-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 years	6
3 years	8
4 years	9
5 years	11
6 years and older	15

(A) The number of regular staff supervising this type of field trip must be at least equal to the number required in §81.409(a) of this title (relating to Staff-Child Ratio). The number may be supplemented by parents or volunteers trained in the center's field trip procedures.

(B) Children must have name tags or other identification listing the name and phone number of the center.

(7) Staff supervising a field trip must have transportation or a plan for transportation at the field trip location in case of emergency.

§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 the children. No child under five years old must ever be spanked. The center 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 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 parents of the policy in writing and must have the parents' signed approval.

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

(4) The center must not humiliate or subject children to abusive or profane language. It must not associate punishment with food, naps, or toilet training. The center must ensure that bedwetters are not shamed or punished.

§81.427. Infant and Toddler Care.

(a) The center must provide infants with an indoor and outdoor environment that is safe and physically, mentally, emotionally, and socially stimulating.

(b) The center must care for infants in rooms and outdoor play areas separate from older children (unless 11 or fewer children are present) and according to infant groupings stated in §81.409(a) of this title (relating to Staff-Child Ratio).

(c) An infant who is not yet climbing must have an individual crib with a waterproof mattress covered by a clean crib sheet. A mobile infant may sleep on a low cot or mat.

(d) Staff must talk to, hold, and play with the infants.

(e) The center 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) The center 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 an infant not yet ready for table food is fed an infant formula or diet approved in writing by the child's physician or parent. The center must obtain 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.

(l) The center must ensure that staff promptly change soiled or wet diaper and other clothing in a sanitary and safe manner. The center must ensure that staff members

(1) Place the child on a clean, washable surface disinfected after each use. The center may also use a surface with a

clean, disposable covering that is changed after each use.

(2) Use individual washcloths and towels or disposable towelettes to thoroughly cleanse and dry the child at each diaper change.

(3) Place all used diapers in a moisture proof bag or store them in a covered container that is cleaned daily.

(m) 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.

(n) 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 at the center because of disabling or limiting conditions are given the care and activities qualified psychologists, physicians, or other experts recommend.

§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. The center must ensure that activities and routines meet the unique needs of children in night care.

(d) The center must ensure that each child, including a school-age child, has a cot, bed, or mat that complies with §81.411(a)(2) of this title (relating to Furnishings).

§81.430. Water Activities.

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

(1) The center must meet the staff-child ratio for wading:

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
6 months—23 months	2	6
2 years	2	11
3 years	2	13
4 years	1	18
5 years	1	22
6 years and older	1	26

(2) When a child under four years old is in the water, two staff members must supervise.

(3) When the pool is not in use, the center must keep it out of the children's reach. Pools that can be drained must be drained; those that cannot must meet the

requirements in subsection (b)(1) of this section.

(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 6 feet high and built so children cannot easily climb over it. The center 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 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 if people other than the children from the center are swimming.

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

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

(d) The center must meet the staff-child ratio for swimming:

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
6 months—23 months	1	1
2 years	1	6
3 years	1	8
4 years	1	12
5 years	1	15
6 years and older	1	18

(1) The number of regular staff supervising swimming activities must be at least equal to the number required by §81.409(a) of this title (relating to Staff-Child Ratio). The number may be supplemented by parents or volunteers trained in the center's procedures for supervising swimming.

(2) Adults included in the staff-child ratio for swimming must be able to swim and must constantly supervise the swimming activity.

(3) When four or more children are swimming, two adults must be present.

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

(f) The center 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 July 1, 1985, 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) This requirement applies to all transportation including, but not limited to, transportation to and from the center, to and from school, and on field trips.

(c) This requirement applies 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.

(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 infant carrier designed as a child passenger restraint device and manufactured according to federal standards. The carrier must be placed in a semi-reclining position facing the back of the car. The carrier must be held in the seat by the standard fixed seat belt.

(B) The center must ensure that each child under two years old who can sit alone is properly seated in a child seat that is a dynamically crash-tested child passenger restraint device manufactured according to federal standards.

(C) The center must ensure that each child age two or older rides in either a child seat that is a dynamically crash-tested passenger restraint device manufactured according to federal standards 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) The center must properly anchor each restraint device and use the device according to the manufacturer's specifications.

(3) If a parent provides equipment for the center to use for transporting the child, the equipment must meet the specifications stated in this rule.

(b) Effective July 1, 1985, the driver and all adult passengers in a vehicle transporting day care children must be properly restrained by 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 center vehicles transporting children.

(e) The center must equip all center vehicles used for transporting children with a minimum of one six-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 staff-child ratio for transporting children must be met.

(1) One adult in addition to the driver must be present for each group of four children 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 §81.409(a) of this title (relating to Staff-Child Ratio). If there are children under 4 years old, at least two adults must 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 bookkeeping, 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 eighteenth 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.

Consultation 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, licensed registered nurses, child psychiatrists, 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.

Continuing education unit (CEU)—A certificate granted by an educational institution to a person who has completed a training course. (One CEU is granted for 10 clock hours of formal training.)

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 "Nursery School," "Kindergarten," "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 (DHR)—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 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.)

Entrapping equipment—A component or group of components on play equipment that forms angles or openings that could trap a child's head by being

(A) Too small to allow the child to withdraw his head easily, and

(B) Placed so that the child would be unable to support his weight by means other than his head or neck.

Equipment and materials—Include, but are not limited to, books; art materials; music materials; manipulative materials; blocks and block accessories; dramatic play materials, including homemaking materials and dolls; science materials; and climbing equipment.

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

Fall zone—An area extending four feet from climbing structures; five feet from the bottom of a slide (other parts of the slide are climbing structures); seven feet plus the length of the chain from a swing's point of suspension; and seven feet from a merry-go-round and other revolving device.

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 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.

Governing body designee—The person named on the application as the designated representative of a governing body that is not a sole proprietorship or partnership.

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.

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 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 and 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 or sexual molestation—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.

Supervision—Care 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; self-instructional material; or planned learning opportunities provided by a director, other staff, or 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 29, 1985.

TRD-850923 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985
Proposal publication date: July 31, 1984
For further information, please call
(512) 450-3786.

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Subchapter G. Minimum Standards for Group Day Care Homes

★40 TAC §§81.601-81.630

The repeal is adopted 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.

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

Issued in Austin, Texas, on January 29, 1985.

TRD-850924 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985
Proposal publication date: July 31, 1984
For further information, please call
(512) 450-3786.

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★40 TAC §§81.601-81.630, 81.632

The new sections are adopted 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, the Human Resources Code, Chapter 42.

(b) The home must notify the department and apply for a new license before changing the location of the home.

(c) The home must notify the department in writing of:

(1) any planned addition or reduction in indoor or outdoor space before using the changed area;

(2) the addition of a swimming or a fixed wading pool before using the pool.

(d) The home must notify the department by telephone or in writing before, if possible, or within five workdays of any occurrence affecting the operation of the home. This includes, but is not limited to, the following:

- (1) change in ownership;
- (2) change of director;
- (3) going out of business;
- (4) change in hours of operation;

and

(5) change in age range of children in care.

(e) If any change would violate 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.

§81.602. General Administration.

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

- (1) the license;
- (2) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the home (if notification includes a requirement for posting); and

(3) a department form stating that the items required in subsection (b) of this section are available.

(b) The home must have available for review on request:

(1) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the home (if notification is not posted);

(2) a current copy of the department's minimum standards for group day-care homes; and

- (3) the home's most recent:
 - (A) fire inspection report;
 - (B) sanitation inspection report;

and

(C) gas pipe inspection report.

(c) The home must immediately notify the department of any serious occurrences affecting its operation. These

include, but are not limited to, the following:

- (1) fire; and
- (2) death, serious accident, serious injury, or serious communicable disease of a child or staff.

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

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

(e) 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 be in the home while children are in care and must not have contact with the children in care until the charges are resolved. The offenses are:

- (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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) The home must notify the department of the indictment or complaint within 24 hours or on the next workday.

§81.603. Enrollment.

(a) Before a child is enrolled, the home must inform parents about the home's activities and policies.

(b) The home must obtain enrollment information for each child before admission. The home must keep this information while the child is in care. The parent must sign a form that contains the following: enrollment information for each child before admission. The home must keep this information while the child is in care. The parent must sign a form that contains the following:

- (1) the child's name, birth date, home address, and home telephone number;
- (2) school telephone number for a school-age child;
- (3) date of admission;
- (4) name and address of parent(s) and telephone numbers at which parent(s) can be reached while the child is in care;
- (5) the names of people to whom the child may be released;
- (6) hours the child will be in care;
- (7) name, address, and telephone number of the child's physician;
- (8) a statement of the child's special problems or needs. This includes allergy, existing illness, previous serious illness and injuries, hospitalizations during the past 12 months, and any medication prescribed for long-term, continuous use;

(9) transportation permission, if transportation is provided;

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

(11) emergency medical authorization.

(c) The home must:

(1) give the parent of each child in care a copy of the department booklet, "A Parent's Guide to Day Care," and

(2) keep on file a copy of the receipt showing the parent was given the booklet and discussed it with the home.

(d) The home must not racially discriminate against any child.

§81.604. Records.

(a) The home must have records of daily attendance of children and staff for the previous three months. The hours staff worked must be recorded.

(b) 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.
- (2) a statement from the staff providing information about all felony and misdemeanor convictions and about all pending criminal charges, including deferred adjudication.
- (3) a record of a tuberculosis examination no earlier than 12 months before beginning the position.

(c) All required records must be available at the home for the department to inspect during hours of operation.

(d) All required records must be available at the home for the department to inspect during hours of operation.

§81.605. Director Qualifications.

(a) A person who becomes the director of a home after May 1, 1985, must be at least 21 years old and have a high school diploma or its equivalent.

(b) No one may serve as director of a home who has been convicted of any of the following offenses:

- (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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(c) The director must send the following to the department on a department form:

- (1) a record of training and experience;
- (2) information about all felony and misdemeanor convictions; and
- (3) information about all pending criminal charges, including deferred adjudication.

§81.606. Director Responsibilities. 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.

§81.607. Staff Qualifications and Responsibilities.

(a) Staff working directly with children must be age 18 or older. The home, however, may include in the staff-child ratio a person 16 and 17 years old who works under the direct supervision of a qualified adult and

(1) has graduated from high school, or

(2) is enrolled in child care related career programs approved by the Texas Education Agency or other state or federally approved programs. At least one qualified adult staff must be included in the staff-child ratio of the group when children are in activities away from the home.

(b) Each staff employed after May 1, 1985, must have a high school diploma or its equivalent except when meeting the requirements in subsection (a)(2) of this section.

(c) Staff must show competency, good judgment, and self-control in working with children.

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

(e) Staff must give children a variety of positive experiences. These include setting limits, providing guidance, and settling arguments or fights.

(f) Effective January 1, 1986, a person certified in first aid and a person certified in cardiopulmonary resuscitation of children must be present at the home during all times when children are in care. The home must have current certificates attesting to the training.

(g) A person convicted of any of the following offenses must not be in the home while children are in care and must not serve in any capacity where there is contact with children in care:

(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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(h) People at the home must not abuse, neglect, or sexually molest children.

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

(j) 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.

(k) Staff must supervise children at all times.

(l) The home must ensure that children are not out of control.

(m) The home must ensure that a child is released only to a parent or an adult designated by the parent.

(n) The home must have and follow a plan to verify the identity of a person authorized to pick up a child but not known to staff. The home keeps this identifying information for 24 hours.

§81.608. 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 that each staff received orientation in:

(1) the requirements in the minimum standards for group day-care homes and the licensing law;

(2) the home's child care policies, including discipline, guidance, and release of children;

(3) recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure for reporting these;

(4) the procedures to follow in handling emergencies (after the home has explored its environment for external hazards and formulated emergency plans).

(b) If volunteers are counted in the staff-child ratio for special activities only, the home must:

(1) ensure that each volunteer receives relevant orientation; and

(2) obtain from each volunteer the statement required in §81.604(b)(2) of this title (relating to Records).

(c) 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. At least six clock hours must be in staff supervision or management and at least six clock hours must be in child development or early childhood education. 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.

§81.609. 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 and 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.

Infants 0 - 17 mos.	One Person Caring for Children Preschoolers 18 mos. - 3 years	School-Age 4 - 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.

§81.610. 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 a fence at least four feet high and with at least two exits. An entrance to the house may count as one exit, but 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 home must ensure that preschool children have individual cots, beds, or mats at least one inch thick that are waterproof or 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 home 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.

§81.613. Toilet Facilities. The home must have bathroom and toilet equipment adequate to handle children's needs quickly and safely.

§81.614. Fire.

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

(1) The home must supervise children until the fire department determines the building is safe to reenter or until the children are picked up by their families.

(2) The home 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 with a written report by a local or state fire marshal. The home must make any corrections called for in the report and 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 home must mount the extinguisher on the wall by the hanger or bracket provided so that all adults in the home can reach the extinguisher and use it. The home must make the extinguisher readily available for immediate use by the staff. The home must inspect the fire extinguisher monthly, record the date, and ensure the extinguisher is serviced when required.

(d) By January 1, 1986, 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.

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

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

(1) The home must practice a fire drill every three months and any different emergency procedures once each year.

(2) A home must not allow children on any level above or below the ground floor unless the home obtains special written approval of a fire marshal for care on other levels.

(3) 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 unless specifically approved in writing by the fire marshal.

(4) If any doors open 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.

(5) The home must not have any blocked doors or pathways.

(g) The home 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 home 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 home 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 home must ensure that gas pipes are tested annually for leaks.

§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 and must comply with any restrictions stated in the report.

(b) The home 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 meeting 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 home must ensure that drinking water is always available to children. The home must supply the water in a safe and sanitary manner.

(f) The home 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 home must keep all garbage in containers with tight lids. Garbage must be kept away from areas used by children. The home must remove garbage from the house daily and from the yard at least once a week.

(i) The home 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, feeding a child, handling food, and caring for a child with symptoms of a communicable disease.

(k) If children use washcloths or cloth towels, the home 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 home 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 on electrical outlets accessible to children younger than five years old. If 220-volt electrical connections are within the children's reach, the owner must cover them with a screen or guard.

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

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

(4) The home must keep its play area free from standing water and 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.

(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 home must not allow toys that explode or that shoot things.

(3) The home must ensure that both indoors and outdoors children do not have access to toxic substances.

(4) All swing seats must be constructed of durable, lightweight, relatively

pliable material, such as rubber or nylon webbing.

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

(6) 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.

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

(8) 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 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 home must have on file within one week of admission evidence that each preschool child is physically able to take part in the program. Any of the following constitutes compliance:

(1) a written statement from a licensed physician who 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;

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

(A) Head Start physical exam;

(B) well-child conferences or clinics;

(C) maternity and infant programs;

(D) children and youth programs; or

(4) a signed statement from the parent:

(A) giving the name and address of a licensed physician who has examined the child within the past year and states that the child is able to participate in the program. This must be followed within 12 months by a document as described in subsection (a)(1),(2), or (3); or

(B) 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 subsection (a)(1), (2), or (3); or

(C) stating that medical diagnosis and treatment are against the parent's religion.

(b) The home must keep current immunization records for each child. The home 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 home's compliance with the standard is measured by one or more of the following for each child in care:

(1) a 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 dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the above mentioned diseases 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 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 the parent's religious beliefs and practices;

(5) a 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.

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

(2) The home must plan how it would provide emergency care for an injured child, a child with symptoms of acute illness, and a child who is choking or not

breathing. The planning must include the continued supervision of other children in care.

(3) The home must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, the home 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 home agrees to administer medications, the home 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. The home must administer the medication as stated on the label directions. The home must not administer medication after the expiration date.

(2) The home 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. The home must administer it according to label directions if approved in writing by health personnel or the child's parent.

(3) The home 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. The record must be kept for two weeks.

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

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

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

§81.620. Emergency Phone Numbers.

(a) The home 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) local DHR children's protective services office or child abuse hotline;

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

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

§81.622. Food Service.

(a) The home 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) The home 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.

(c) The home must discard single-service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(d) The home must encourage, but not force, children to eat. The home must discuss recurring eating problems with the child's parent.

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

§81.623. Nutrition.

(a) The home must ensure that food is nutritious and is served in variety and amounts adequate to ensure growth and development. All children must have regular meals and morning and afternoon snacks.

(b) The home must ensure that children in the home for six or more hours per day having available the food necessary to meet at least one-half of their daily food needs. This does not apply to the children arriving after the evening meal and leaving before the morning meal.

(c) The home must have the written approval of a physician or a registered licensed dietician for special or therapeutic diets.

§81.624. Operation.

(a) The home 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. The activities 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 three hours. After two hours the home must allow children who are awake to get up and take part in quiet activities. The rest area must be adequately

lighted to allow visual supervision at all times. The home 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 home must ensure the children's safety on field trips and excursions and during any transportation provided by or for the home. Transportation includes, but is not limited to, transportation provided between the home and the school and between the child's home and group home.

(1) Before taking children away from the home, the home must notify the children's parents where and when the children will go.

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

(3) Staff must have a written list of the children in the group and must check the roll frequently.

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

(5) When children are on a field trip in an enclosed, controlled area, the home must maintain the staff-child ratio as outlined in §81.609(a) of this title (relating to Staff-Child Ratio).

(6) When children are on a field trip and mixing with other children or adults, the adult-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 years	6
3 years	8
4 years	9
5 years	11
6 years and older	12

(A) The number of regular staff supervising this type of field trip must be at least equal to the number required by §81.609(a) of this title (relating to Staff-Child Ratio). The number may be supplemented by parents or volunteers trained in the home's field trip procedures.

(B) Children must have name tags or other identification listing the name and phone number of the home.

(7) Staff supervising a field trip must have transportation or a plan for transportation at the field trip location in case of emergency.

§81.625. Discipline and Guidance.

(a) The home 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) The home must not shake, bite, or hit the children. No child under five years old must ever be spanked. The home 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 home's policy to permit physical punishment. The statement of the rules concerning the administration of physical punishment must include that spanking 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 home 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 the home must not place children in a locked room or in a dark room with the door closed.

(4) The home must not humiliate or subject children to abusive or profane language. It must not associate punishment with food, naps, or toilet training. The home must ensure that bed wetters are not shamed or punished.

§81.626. Infant and Toddler Care.

(a) The home must provide infants with an indoor and outdoor environment that is safe and physically, mentally, emotionally, and socially stimulating.

(b) An infant who is not yet climbing must have an individual crib with a waterproof mattress covered by a clean crib sheet. A mobile infant may sleep on a low cot or mat.

(c) Staff must talk to, hold, and play with the infants.

(d) The home 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) The home must ensure bottles are clearly marked with the child's name.

(g) The home 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.

(h) The home must ensure that an infant not yet ready for table food is fed an infant formula or diet approved in writing by the child's physician or parent. The home must obtain 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.

(j) The home must promptly change soiled or wet diapers and other clothing in a sanitary and safe manner.

(1) The home must place the child on a clean, washable surface disinfected after each use. The home may also use a surface with a clean, disposable covering that is changed after each use.

(2) The home must use individual washcloths and towels or disposable towelettes to thoroughly cleanse and dry the child at each diaper change.

(3) The home 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 home must ensure that children who need special care at the home because of disabling or limiting conditions are given the care and activities qualified psychologists, physicians, or other experts recommend.

§81.628. Night Care.

(a) A 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. The home must ensure that activities and routines meet the unique needs of children in night care.

(d) The home must ensure that each child, including a school-age child, in night care has a bed, cot, or mat that complies with the requirements of §81.611(b) of this title (relating to Furnishings).

§81.629. Water Activities.

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

(1) The home must meet the staff-child ratio for wading:

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
6 months—23 months	2	6
2 years	2	11
3 years	2	12
4 years and older	1	12

(2) When a child under four years old is in the water, two staff members must supervise.

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

(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. The home 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 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 if people other than the children from the home are swimming.

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

(c) The home 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:

Age of Youngest Child in Group	Number of Staff	Maximum Number of Children
6 mos.-23 mos.	1	1
2 years	1	6
3 years	1	8
4 years and older	1	12

(1) The number of regular staff supervising swimming activities must be at least equal to the number required in §81.609(a) of this title (relating to Staff-Child Ratio). The number may be supplemented by parents or volunteers trained in the home's procedures for supervising swimming.

(2) Adults included in the staff-child ratio for swimming must be able to swim and must constantly supervise the swimming activity.

(3) When four or more children are swimming, two adults must be present.

(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) The home 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 July 1, 1985, 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) This requirement applies to all transportation including, but not limited to, transportation to and from the home, to and from school, and on field trips.

(c) This requirement applies 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 home must ensure that an infant who cannot sit up without support is properly restrained in a dynamically crash-tested infant carrier designed as a child passenger restraint device and manufactured according to federal standards. The carrier must be placed in a semireclining position facing the back of the car. The carrier must be held in the seat by the standard fixed seat belt.

(B) The home must ensure that each child under age two who can sit alone is properly seated in a child seat that is a dynamically crash-tested child passenger restraint device manufactured according to federal standards.

(C) The home must ensure that each child age two and older rides in either a child seat that is dynamically crash-tested child passenger restraint device manufactured according to federal standards 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) The home must properly anchor each restraint device and use the device according to the manufacturer's specifications.

(3) If a parent provides equipment for the home to use for transporting the child, the equipment must meet the specifications stated in this rule.

(b) Effective July 1, 1985, the driver and all adult passengers in a vehicle transporting children must be properly restrained by a seat belt when the vehicle is in motion.

(c) The home must load and unload children at the curb side of the vehicle or in a protected parking area or driveway. The home 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 home must equip the home's vehicles used for transporting children with a minimum of one six-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 staff-child ratio for transportation of children must be met.

(1) One adult must be present for each group of four children under two years old.

(2) For children age two or older, the staff-child ratio is established by any of

the options outlined in §81.609(a) or (b) of this title (relating to Staff-Child Ratio).

§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.

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 home. 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.

Consultation 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, licensed registered nurses, child psychiatrists, 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 unac-

panied 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 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.

Entrapping equipment—A component or group of components on play equipment that forms angles or openings that could trap a child's head by being

(A) Too small to allow the child to withdraw his head easily, and

(B) Placed so that the child would be unable to support his weight by means other than his head or neck.

Equipment and materials—Include, but are not limited to, those used for arts and crafts; building; reading and language; play acting, including dolls; large muscle activities (climbing, running, jumping); and manipulative activities (those done with the hands).

Fall zone—An area extending four feet from climbing structures; five feet from the bottom of a slide (other parts of the slide are climbing structures); seven feet plus the length of a swing's chain from the point of its suspension; and seven feet from a merry-go-round or other revolving device.

First aid supplies—Required supplies include multisize 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—Linen which have been laundered since a different person slept on them and 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 or sexual molestation—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.

Supervision—Care 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 self-instructional material; or planned learning opportunities provided by director, other staff or 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 rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 29, 1985.

TRD-850925 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985
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For further information, please call
(512) 450-3766.

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Subchapter H. Minimum Standards for Drop-in Care Centers

★ 40 TAC §§81.701-81.726

The repeal is adopted 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.

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

Issued in Austin, Texas, on January 29, 1985.

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Commissioner
Texas Department of
Human Resources

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(512) 450-3766.

★ ★ ★

★ 40 TAC §§81.701-81.730

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

§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, the 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) The governing body must notify the department and apply for a new license before changing the location of the center

(e) The governing body must notify the department in writing of any planned addition or reduction in indoor or outdoor space before using the changed area.

(f) The governing body must notify the department by telephone or in writing before, if possible, or within five workdays of any occurrence affecting the operation of the center. This includes, but is not limited to, the following:

(1) change of the governing body or ownership;

(2) change of center director;

(3) change of board chairman of a corporate 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;
and

(7) change in age range of children in care.

(f) If any change would violate 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.

§81.702. General Administration.

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

(1) its license,

(2) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the center (if the notification includes a requirement for posting);

(3) current menus; and

(4) a department form stating that the items required in subsection (b) of this section are available.

(b) The center must have available for review on request:

(1) the letter or compliance evaluation form that the licensing representative provided at or following the most recent inspection or investigation of the center (if the notification does not include a requirement for posting);

(2) a current copy of the department's minimum standards for drop-in care centers; and

(3) the center's most recent

(A) fire inspection report;
(B) sanitation inspection report;
and

(C) gas pipe inspection report.

(c) The center must immediately notify the department of any serious occurrences affecting its operation. These include, but are not limited to, the following:

(1) fire; and

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

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

(1) the nearest DHR child protective services office, and

(2) a local or state law enforcement agency.

(e) The center 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 be at the center while children are in care and 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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(f) The center must notify the department of the indictment or complaint within 24 hours or on the next workday.

§81.703. Admission of Children for Care.

(a) The center must inform a child's parents about the center's activities and policies before the child is accepted for care.

(b) The center must obtain enrollment information for each child before admission. The center must keep this information until 12 months after the child's last day in care. The parent must sign a form that 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) the names of people to whom the child may be released;

(5) name, address, and telephone number of the child's physician.

(6) a statement of the child's special problems or needs. This includes allergy, existing illness, previous serious illness and injuries, hospitalizations during the

past 12 months, and any medication prescribed for long-term, continuous use;

(7) transportation permission, if transportation is provided; and

(8) emergency medical authorization.

(c) The center must:

(1) give the parent of each child in care a copy of the department booklet, "A Parent's Guide to Day Care;" and

(2) keep on file a copy of the receipt to show the parent was given the booklet and discussed it with the center.

(d) The center must not racially discriminate against any child.

(e) If a child arrives at the center between 6 a.m. and 6 p.m., the center must not allow the child to stay longer than four and a half hours. If the child arrives at the center between 6 p.m. and 6 a.m., the center must not allow the child to stay longer than six hours. The center may allow a child to stay in care a maximum of seven hours during a 24-hour period. The center must not allow a child to stay at the center for more than 15 days in one calendar month regardless of the duration of each stay.

§81.704. Records.

(a) 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.

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

(1) the date the staff began work at the center;

(2) a statement from staff providing information about all felony and misdemeanor convictions and about all pending criminal charges, including deferred adjudication;

(3) a record of a tuberculosis examination no earlier than 12 months before beginning this position; and

(4) a copy of an application or other document showing that staff meets the requirements in §81.707(a) and (b) of this title (relating to Staff Qualifications and Responsibilities).

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

§81.705. Director Qualifications.

(a) The on-site director of a drop-in care center must be at least 21 years old, have a high school diploma or its equivalent and one of the following:

(1) a bachelor's degree from an accredited college or university with at least 12 credit hours of child development or early childhood education and one year of experience in a center;

(2) a Child Development Associate credential;

(3) an associate of arts degree in child development or a closely related area and one year of experience in a center;

(4) a day-care administrator's credential issued by a professional organization or an educational institution and recognized by the Licensing Branch and one year of experience in a center (the experience may have been part of the credential requirement); or

(5) three years of experience a director or staff in a licensed child care facility and six credit hours in child care, child development, or early childhood education and six credit hours in business management from an accredited college or university. Five continuing education units may be substituted for each three credit hours.

(b) Documentation showing how the director meets the qualifications in subsection (a) of this section must be available at the center.

(c) A person who was director of a center on May 1, 1985, has three years from that date to comply if he remains in the same position.

(d) The director of a center licensed for 35 or more children must meet the requirements in subsection (a) of this section. The director also must have had two years experience as a director or staff in a licensed day care facility. This may include experience toward meeting the requirements in subsection (a) of this section.

(e) A person who was a director of a center licensed for 35 or more children on May 1, 1985, has three years from that date to comply if he remains in the same position.

(f) No one may serve as director of a center who has been convicted of any of the following offenses:

(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 law 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 a department form:

(1) a record of training and experience;

(2) information about all felony and misdemeanor convictions; and

(3) information about all pending criminal charges, including deferred adjudication.

§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.

§81.707. Staff Qualifications and Responsibilities.

(a) Staff working with children must be age 18 or older. The center, however, may include in the staff-child ratio a person 16 or 17 years old who works under the direct supervision of a qualified adult staff and

(1) has graduated from high school; or

(2) is enrolled in child care related career programs approved by the Texas Education Agency or other state or federally approved programs. At least one qualified adult staff must be included in the staff-child ratio of the group when children are in activities away from the center.

(b) Each staff employed after May 1, 1985, must have a high school diploma or its equivalent except when meeting the requirements in subsection (a)(2) of this section.

(c) Staff must show competency, good judgment, and self-control in working with children.

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

(e) Effective January 1, 1986, a person certified in first aid and a person certified in cardiopulmonary resuscitation of children must be present at the center during all hours of operation. The center must have current certificates attesting to the training.

(f) People at the center must not abuse, neglect, or sexually molest children.

(g) A person convicted of any of the following offenses must not be at the center while children are in care and must not serve in any capacity where there is contact with children in care:

(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 law intended to control the possession or distribution of any substance included as a controlled substance in the Texas Controlled Substances Act.

(h) People whose behavior or health appears to endanger the health, safety, or well-being of children must not be at the center.

(i) 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.

(j) Staff must supervise children at all times.

(k) People working with children and counted in the staff-child ratio must be free from other duties except those directly in-

volving the teaching, care, and supervision of children. These responsibilities include keeping the group's area clean. Administrative and clerical functions that take the staff's attention from the children, meal preparation, or janitorial duties must not be included in the responsibilities of staff while the staff is counted in the staff-child ratio.

(l) The center must ensure that children are not out of control.

(m) The center must ensure that a child is released only to a parent or an adult designated by the parent.

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

(o) The center must have and follow a plan to verify the identity of a person authorized to pick up a child but not known to the staff. The center keeps identifying information for 24 hours.

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

(1) any significant information he has about a child, and

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

§81.708. 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 that each staff has been oriented in:

(1) the requirements in the minimum standards for drop-in care centers and the licensing law;

(2) the center's child care policies, including discipline, guidance, and release of children;

(3) recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure for reporting these; and

(4) the procedures to follow in handling emergencies (after the center has explored its environment for external hazards and formulated training plans accordingly).

(b) If volunteers are counted in the staff-child ratio for special activities only, the center must:

(1) ensure each volunteer receives relevant orientation; and

(2) obtain from each volunteer the statement required in §81.704(b)(2) of this title (relating to Records).

(c) 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. At least six clock hours must be in staff supervision or management and at least six clock hours must be in child development or early childhood education. 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.

§81.709. 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 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	10
2-5 years	12
6 years and older	15

(b) The center 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.

§81.710. 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. An entrance to the building may count as one exit, but 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 or 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.

§81.715. Fire.

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

(1) The center must supervise children until the fire department determines the building is safe to reenter or until the children are picked up by their families.

(2) The center 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 with a written report by a local or state fire marshal. The center must make any corrections called for in the report and 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 so that all staff can reach and use the fire extinguisher. The center must make the extinguisher readily available for immediate use by the staff. The center must inspect the fire extinguisher monthly, record the date, and ensure the extinguisher is serviced when required.

(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 any requirements of the local fire code.

(e) The center must have emergency evacuation and relocation plans posted in each room the children use. The plan must show two exit paths from each room unless the room opens directly to the outdoors at ground level. The center must practice a fire drill every three months; it must practice other emergency procedures once each year.

(f) The center must have a flashlight 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) A center must not provide child care on any level above or below the ground floor unless the center obtains the specific written approval from a fire marshal for care on other levels.

(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 unless specifically approved in writing by the fire marshal.

(3) If any doors open 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) The center 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, the center 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 center 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 ensure that gas pipes are tested annually for leaks.

§81.716. Sanitation.

(a) The center must have an annual sanitation inspection with a written report by a local or state sanitation official. The center must make any corrections 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 meeting 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 center 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 chil-

dren 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. The garbage must be kept away from areas used by children. The center 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, feeding a child or handling food, and 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 on electrical outlets accessible to children younger than five years old. If 220-volt electrical connections are within the children's reach, the center must cover them with a screen or guard.

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

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

(4) The center must keep its play area free from standing water and 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.

(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 ensure that both indoors and outdoors children do not have access to toxic substances.

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

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

(6) 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.

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

(8) 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 out of the children's reach. The center must have an immediately accessible guide to first aid and emergency care.

§81.718. Health Requirements for Children.

(a) The center must file 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, 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:

(1) a 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 dated statement from a licensed physician or other authorized health personnel that immunizations against at least one of the above mentioned diseases 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 the parent's religious beliefs and practices;

(5) a 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.

(b) 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. The center must call the child's parent immediately. The child must be supervised until he leaves the center.

(2) The center must plan for providing emergency care for an injured child, a child with symptoms of acute illness, and a child who is choking or not breathing. The planning must include the continued supervision of other children in care.

(3) The center must give the child first aid or cardiopulmonary resuscitation, if needed. In the case of a critical illness or injury, the center 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, the center 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. The center must administer the medication as stated on the label directions. The center must not administer medication after the expiration date.

(2) The center 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. The center must administer it according to label directions if approved in writing by health personnel or the child's parent.

(3) The center 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. The record must be kept for two weeks.

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

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

(d) The center 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) local DHR children's protective services office or child abuse hotline;
- (6) 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; and
- (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. The center must have documentation of vaccinations.

(b) The center must keep the center and play yard free of stray animals. The center 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) The center 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.

(c) The center must discard single-service napkins, bibs, dishes, and utensils after use. Washable napkins, bibs, and tablecloths must be cleaned after each use.

(d) The center 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.

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

§81.724. Operation.

(a) The center 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. The center must include opportunities for both quiet and active play.

(b) If a child appears tired, the center must give him the opportunity to rest. Rest periods must not last longer than three hours. After two hours, the center must allow children who are awake to get up and take part in quiet activities. 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 during any transportation provided by or for the center.

(1) The center must inform parents before children are taken away from the center where and when they will go and how long they will be gone.

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

(3) Staff must have a written list of the children in the group and must check the roll frequently.

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

(5) When children are on a field trip in an enclosed, controlled area, the center must maintain the staff-child ratio as outlined in §81.709(a) of this title (relating to Staff-Child Ratio).

(6) When children are on a field trip and mixing with other children or adults, the adult-child ratio must be as follows:

Age of Youngest Child in Group	Maximum Number of Children to be Supervised One Adult
0-23 months	2
2 years	6
3 years	8
4 years	9
5 years	11
6 years and older	15

(A) The number of regular staff supervising this type of field trip must be at least equal to the number required in §81.709(a) of this title (relating to Staff-Child Ratio). The number may be supplemented by parents or volunteers trained in the center's field trip procedures.

(B) Children must have name tags or other identification listing the name and phone number of the center.

(7) Staff supervising a field trip must have transportation or a plan for transportation at the field trip location in case of emergency.

(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 the children. The center 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 the center must not place children in a locked room or in a dark room with the door closed.

(3) The center must not humiliate or subject children to abusive or profane language. The center must not associate punishment with food, naps, or toilet training. Staff must ensure that bed wetters are not shamed or punished.

§81.726. Infant Care.

(a) The center must provide infants with an environment that 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 §81.709(a) of this title (relating to Staff-Child Ratio).

(b) An infant who is not yet climbing must have an individual crib with a waterproof mattress covered by a clean crib sheet. A mobile infant 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) The center 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 an infant not yet ready for table food is fed an infant formula or diet approved in writing by the child's physician or parent. The center must obtain 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.

(j) The center must ensure that staff promptly change soiled or wet diapers and other clothing in a sanitary and safe manner. The center must ensure that staff members:

(1) place the child on a clean, washable surface disinfected after each use.

The center may also use a surface with a clean, disposable covering that is changed after each use;

(2) use individual washcloths and towels or disposable towelettes to thoroughly cleanse and dry the child at each diaper change;

(3) place all used diapers in a moisture proof bag or store them in a covered container which is cleaned daily.

(k) 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 to determine the child-toilet ratio. One diaper flush may serve 17 infants.

(l) Centers providing infant care must have a lavatory in the infant area.

§81.727. Children with Need for Special Care. The center must ensure that children who need special care at the center because of disabling or limiting conditions are given the care qualified psychologists, physicians, or other experts recommend.

§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. The center must ensure that activities and routines meet the unique needs of children in night care.

§81.729. Transportation.

(a) Effective July 1, 1985, if a center provides transportation, each child being transported must ride in an infant carrier, a child seat, or a seat belt, as appropriate to the child's age and size.

(b) This requirement applies to all transportation including, but not limited to, transportation to and from the center, to and from school, and on field trips.

(c) This requirement applies 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.

(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 infant carrier designed as a child passenger restraint device and manufactured according to federal standards. The carrier must be placed in a semi-reclining position facing the back of the car. The carrier must be held in the seat by the standard fixed seat belt.

(B) The center must ensure that each child under two years old who can sit alone is properly seated in a child seat that is a dynamically crash-tested passenger res-

traint device manufactured according to federal standards.

(C) The center must ensure that each child age two and older rides in either a child seat that is a dynamically crash-tested passenger restraint device manufactured according to federal standards 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) The center must properly anchor each restraint device and use the device according to the manufacturer's specifications.

(3) If a parent provides equipment for the center to use for transporting the child, the equipment must meet the specifications stated in this rule.

(b) Effective July 1, 1985, the driver and all adult passengers in a vehicle transporting drop in care children must be properly restrained by 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 center vehicles transporting children.

(e) The center must equip all center vehicles used for transporting children with a minimum of one six-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 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 under two years old.

(2) For children age two or older, the staff-child ratio is established by any of the options outlined in §81.709(a) of this title (relating to Staff-Child Ratio). If there are children under four years old, at least two adults must 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 eighteenth 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.

Consultation 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, licensed registered nurses, child psychiatrists, 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.

Continuing education unit (CEU)—A certificate granted by an educational institution to a person who has completed a training course. (One CEU is granted for 10 clock hours of formal training.)

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 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.

Entrapping equipment—A component or group of components on play equipment that forms angles or openings that could trap a child's head by being:

(A) too small to allow the child to withdraw his head easily; and

(B) placed so that the child would be unable to support his weight by means other than his head or neck.

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

Fall zone—An area extending four feet from climbing structures, five feet from the bottom of a slide (other parts of the slide are climbing structures), seven feet plus the length of the chain from a swing's point of suspension, and seven feet from a merry-go-round and other revolving device.

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 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 Article 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.

Governing body designee—The person named on the application as the designated representation of a governing body that is not a sole proprietorship or partnership.

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 under 18 months old.

Janitorial functions—Those services which involve cleaning and maintenance above that which is required for the continuation of the 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 sleeping furnishings—Linens which have been laundered since a different person slept on them and 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 or sexual molestation—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.

Supervision—Care 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; self-instructional materials, or planned learning opportunities provided by a director, staff, or 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 29, 1985

TRD-850927 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985
Proposal publication date: July 31, 1984
For further information, please call
(512) 450-3766

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Subchapter UUUU. Support Documents

★40 TAC §81.9801

The Texas Department of Human Resources adopts amendments to §81.9801, concerning the information in its table of foods to be served to meet nutritional needs of children in day care facilities, without changes to the proposed text published in the July 31, 1984, issue of the *Texas Register* (9 Tex-Reg 4171).

Section 81.9801 adopts by reference the department's table titled "Kinds and

Amounts of Foods to Be Served to Meet Nutritional Needs." The amendments combine information on kinds and amounts of food that day care facilities must have available to meet nutritional needs. The department has also included additional foods that meet nutritional needs. The amendments are meant to ensure the health and well-being of children in out-of-home care.

No comments were received regarding the adoption of the amendment.

The amendment is adopted 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.

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

Issued in Austin, Texas, on January 29, 1985.

TRD-850928 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985
Proposal publication date: July 31, 1984
For further information, please call
(512) 450-3766.

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Chapter 85. General Licensing Procedures

Subchapter UUUU. Support Documents

★40 TAC §85.9801

The Texas Department of Human Resources adopts amendments to §85.9801, concerning immunization requirements, without changes to the proposed text published in the July 31, 1984, issue of the *Texas Register* (9 Tex-Reg 4172).

Section 85.9801 adopts by reference the table titled "Child Care Facility Immunization Requirements" and following "Notes." The amendments delete obsolete dates, clarify the requirements, and help to reduce the risk of harm and to ensure the health, safety, and well-being of children in out-of-home care.

No comments were received regarding the adoption of the amendments.

The amendments are adopted 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.

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

Issued in Austin, Texas, on January 29, 1985.

TRD-850929

Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Effective date: May 1, 1985

Proposal publication date: July 31, 1984

For further information, please call
(512) 450-3766.



Part IX. Texas Department on Aging Chapter 265. Grant-Related Income

★40 TAC §265.1

The Texas Department on Aging (TDOA) adopts new §265.1, without changes to the proposed text published in the October 16, 1984, issue of the *Texas Register* (9 TexReg 5377).

The West Texas Council of Governments commented in favor of the new section.

The new section gives guidance to department grantees regarding the allowable use of program income in Older Americans Act aging programs, by outlining the allowable uses.

The new section is adopted under the Human Resources Code, §101, which provides the TDOA with the authority to adopt rules governing the function of the department.

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

Issued in Austin, Texas, on January 31, 1985.

TRD-851056

O. P. (Bob) Bobbitt
Executive Director
Texas Department on
Aging

Effective date: February 21, 1985

Proposal publication date: October 16, 1984

For further information, please call
(512) 475-2717.



State Board of Insurance Exempt Filings

State Board of Insurance Notifications Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.)

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance adopts the following changes to the *Texas Basic Manual of Rules, Classifications, and Rates for Workers' Compensation and Employers' Liability Insurance*, hereafter called the basic manual.

Rule II and Rule XV of the basic manual are amended to remove all reference to agricultural workers or employments as being exempt from the Workers' Compensation Law. Senate Bill 25 of the 68th Legislature, 1984, extends coverage to

agricultural workers effective January 1, 1985, making some of the present rules obsolete.

The classification underwriting guide of the basic manual is amended by adding several entries which have been routinely assigned to the respective occupation for some time. Printing these classifications in the manual will aid the industry by making them readily available and is in line with normal procedure.

The standard workers compensation and employers liability endorsements section of the basic manual has been expanded to include two endorsements; domestic and agricultural workers exclusion endorsement, WC 00 03 15, and the partners, officers, and others exclusion endorsement, WC 00 03 08. Both are standard National Council endorsements which were not adopted with the new policy.

The purpose of the domestic and agricultural workers exclusion endorsement is to permit exclusion of those agricultural workers or employments not subject to the Workers' Compensation Law and to exclude employers' liability insurance for both domestic or household workers and those agricultural workers who are statutorily excluded from workers' compensation coverage.

The purpose of the partners, officers, and others exclusion endorsement is to ex-

clude employers' liability coverage for those indicated in the schedule. While there is no workers' compensation coverage provided by the policy for partners, officers, and certain other employments except by election, employers' liability coverage is provided unless specifically excluded by endorsement.

The premium discount endorsement found in the standard workers' compensation and employers' liability endorsements section of the basic manual has been revised amending the footnote. The revised wording provides for greater adaptability when used on multistate policies where states have different rules for determining premium discount.

These amendments are effective March 1, 1985.

This notification is made pursuant to the Insurance Code, Article 5.96, which is an alternative to the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on January 31, 1985.

TRD-851092

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: March 1, 1985

For further information, please call
(512) 475-2950.



The State Board of Insurance adopts an amendment to the Texas assigned risk pool maritime coverage endorsement, WC 42 02 01, which is contained in the Texas standards workers' compensation and employers' liability section of the *Texas Basic Manual of Rules, Classifications, and Rates for Workers' Compensation and Employers' Liability Insurance*.

The endorsement wording is broadened to include: "D. We Will Defend is changed by adding the following statement. We will treat a suit or other action *in rem* against a vessel owned or chartered by you as a suit against you."

Prior to July 1, 1984, *in rem* coverage was provided by a separate endorsement; however, with the adoption of the simplified workers' compensation and employers' liability policy and endorsements, *in rem* coverage was incorporated in the wording of the maritime coverage endorsement, WC 00 02 01, and the separate *in rem* endorsement eliminated, leaving the Texas workers' assigned risk pool no vehicle to provide *in rem* coverage.

These amendments are effective March 1, 1985.

This notification is made pursuant to the Insurance Code, Article 5.96, which is an alternative to the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on January 31, 1985.

TRD-851091

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: March 1, 1985
For further information, please call
(512) 475-2950.

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Adult Probation Commission

Thursday, February 7, 1985, 2 p.m. The Program Committee of the Texas Adult Probation Commission (TAPC) made an emergency addition to the agenda of a meeting held in Suite 600, Building B, 8100 Cameron Road, Austin. The addition concerned a new department special program funding grant application in McCullough County. The emergency status was necessary because this item was omitted from the original agenda.

Friday, February 8, 1985, 9 a.m. The TAPC made emergency additions to the agenda for a meeting to be held in Suite 600, Building B, 8100 Cameron Road, Austin. The additions concern a new department special program funding grant application for McCullough County; a data services report regarding a statistical report and projections on growth; a fiscal services report regarding the Audit Review Committee report and Legislative Budget Board recommendations, including funding and riders; and the executive director's report regarding legislative issues, final adoption of proposed standards, and consideration of new standards. The emergency status is necessary because these items were omitted from the original agenda.

Contact: Virginia Grote, Building B, Suite 600, 8100 Cameron Road, Austin, Texas 78753.

Filed: January 31, 1985, 10:43 a.m.
TRD-851016, 851017

Emergency addition to the previous agenda: agenda.

A fiscal services report item concerning deobligation of fiscal year 1985 grants. The emergency status is necessary because this item was omitted from the agenda.

Contact: Virginia Grote, Building B, Suite 600, 8100 Cameron Road, Austin, Texas 78753, (512) 834-8188.

Filed: February 4, 1985, 1 p.m.
TRD-851098

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Texas Department of Agriculture

The Texas Department of Agriculture will conduct administrative hearings in Suite 301, 2800 Northeast Loop 410, San Antonio. Times and agendas follow.

10 a.m. Review of a possible violation of the Texas Agriculture Code, §10.013, by Fernando's, Inc., as petitioned by Van De Walle Farms, Inc.

11 a.m. Review of a possible violation of the Texas Agriculture Code, §101.013, by Fernando's, Inc., as petitioned by Valley Onions, Inc.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 475-6686.

Filed: January 31, 1985, 10:29 a.m.
TRD-851012, 851011

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Battleship Texas Advisory Board

Saturday, February 9, 1985, 2 p.m. The Battleship Texas Advisory Board will meet at the Battleship Texas, 3527 Battleground Road, La Porte, Texas 77571. Items on the agenda include approval of the minutes, an update of architectural progress, and a report from the Fund Raising Committee. The board also will meet in executive session to discuss proposals and bids in regard to fund raising.

Contact: Denny G. Hair, 1003 Eastlake, Houston, Texas 77034, (713) 947-8089 or (713) 230-2300, ext. 361.

Filed: January 31, 1985, 10:49 a.m.
TRD-851018

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Texas Coastal and Marine Council

Thursday, February 14, 1985, 1:30 p.m. The Texas Coastal and Marine Council will meet in the auditorium, third floor, United

Bank Building, 15th and Guadalupe Streets, Austin. Items on the agenda include approval of the November 29, 1984, minutes; the status of the council's reauthorization legislation and budget requests for fiscal year 1986-1987; recommendations to the governor on coastal beach litter; committee reports; past/future council projects; public testimony; and the date and location of the April meeting.

Contact: Charles L. Branton, 105 West Riverside Drive, Suite 112, Austin, Texas 78711, (512) 479-5041

Filed: February 4, 1985, 4:20 p.m.
TRD-851119

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Texas School for the Deaf

Saturday, February 22, 1985, 10 a.m. The Governing Board of the Texas School for the Deaf submitted an emergency revised agenda for a meeting to be held in the boardroom, Administration Building, 1102 South Congress Avenue, Austin. Items on the revised agenda include approval of the December 8, 1984, minutes; business requiring board action, including a professional contract approval, policy adoption, the NSBA national convention, the board meeting schedule, the election of officers, board communications, consultant contracts, and legislation for criminal record checks; business for information purposes, the health services report; the special services annual report; a Chapter 75 and House Bill 72 update; an interim code of student conduct update; the annual maintenance report; reports from board members; and individuals from the audience wishing to make a report. The board also will meet in executive session. The emergency status is necessary be-

cause additional agenda items need to be approved prior to the March meeting.

Contact: Sheila O'Leary, 1102 South Congress Avenue, Austin, Texas 78704, (512) 442-7821, ext. 303.

Filed: January 31, 1985, 3:53 p.m.
TRD-851048

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Employees Retirement System of Texas

Tuesday, February 12, 1985, 1:30 p.m. The Group Insurance Advisory Committee of the Employees Retirement System of Texas (ERS) will meet in Room 332, 6330 U.S. Highway 290 East, Austin. Items on the agenda include approval of the previous minutes, a summary of recent rerate activity, a review of the HMO approval process, discussion of the refund policy and advisory subcommittees for ERS staff, and other related insurance matters.

Contact: Henry D. Eckert, 18th and Brazos Streets, Austin, Texas 78711, (512) 476-6431.

Filed: January 31, 1985, 10:39 a.m.
TRD-851015

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Texas Employment Commission

Monday, February 4, 1985, noon. The Texas Employment Commission (TEC) met in an emergency rescheduled session in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. According to the agenda summary, the commission considered commission appeals originally scheduled for February 5, 1985. The emergency status was necessary in view of a severe weather forecast.

Contact: C. Ed Davis, TEC Building, Room 660, 15th Street and Congress Avenue, Austin, Texas, (512) 397-4400.

Filed: February 4, 1985, 9:53 a.m.
TRD-851094

Monday, February 11, 1985, 1 p.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. According to the agenda summary, the commission will consider prior meeting notes; conduct a public comment period; hear a legislative update and a JM-204 progress report; consider House Concurrent Resolution 26, concerning the labor force survey; consider Advisory Council membership, the agenda, and agency conversion to the Cen-

trex telephone system; hear reports of administrative staff on program operations, funding, and legislation; consider actions, if any, resulting from an executive session meeting; and set the date and agenda items for the next meeting. The commission also will meet in executive session to consider United Farm Workers of America v. TEC, challenging the agricultural labor exemption and Reed Act expenditures, and the possibility of potential litigation.

Contact: C. Ed Davis, TEC Building, Room 660, 15th Street and Congress Avenue, Austin, Texas, (512) 397-4400.

Filed: January 31, 1985, 4:05 p.m.
TRD-851046

Tuesday, February 12, 1985, 9 a.m. The TEC will meet in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. According to the agenda summary, the commission will consider prior meeting notes and internal procedures of the Office of Commission Appeals, consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 7, and set the date of the next meeting.

Contact: Courtenay Browning, TEC Building, Room 608, 15th Street and Congress Avenue, Austin, Texas, (512) 397-4415.

Filed: February 4, 1985, 11:24 a.m.
TRD-851097

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Office of the Governor

Tuesday, February 12, 1985, 9 a.m. The Governor's Executive Development Council of the Office of the Governor will meet in the auditorium, first floor, Employees Retirement System Building, 18th and Brazos Streets, Austin. According to the agenda summary, the council will hear committee reports.

Contact: Cora L. Hilliard, P.O. Box 13561, Austin, Texas, (512) 475-0226.

Filed: February 4, 1985, 4:01 p.m.
TRD-851116

Friday, February 15, 1985, 10:30 a.m. The Task Force on the Advancement of Labor-Management Relations of the Governor's Office of Economic Development of the Office of the Governor will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, this is the first meeting of the task force. There are no specific agenda items other than a review of the charge given to the task force and a discussion of how it will proceed to carry out the charge

given by the governor in Executive Order MW-31.

Contact: Steve Spinner, P.O. Box 13561, Austin, Texas 78711, (512) 475-1147.

Filed: February 4, 1985, 10:54 a.m.
TRD-851096

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Texas Department of Health

Tuesday, February 12, 1985. Committees of the Texas Board of Health of the Texas Department of Health and the full board will meet at 1100 West 49th Street, Austin. Times, rooms, committees, and agendas follow.

8:30 a.m. In Room T-604, the Environmental Health Committee will consider a resolution concerning the effects of asbestos in state buildings.

9 a.m. In Room T-407, the Personnel Committee will consider an appointment to the Children's Speech, Hearing, and Language Screening Advisory Committee and appointments to the Lay Midwifery Board.

9:15 a.m. In Room G-107, the Hospitals Committee will consider an application of a hospital to participate in the Crippled Children's Services Program and discuss goals and objectives in data gathering.

9:30 a.m. In Room T-610, the board will approve the January 19, 1985, minutes, board resolutions for Hal J. Dewlett, M.D., Gary A. Fuchs, John S. Nill, Jr., and A. F. Tasch, M.D., a proposed method of allocation regarding block grants, proposed amendments to the emergency medical services rules concerning certification and recertification of emergency medical services personnel, proposed rules covering the *Texas Lay Midwifery Manual*, a proposed amendment to the rules for small quantity municipal hazardous waste generators, and proposed rules covering guidelines for regional and local solid waste plans; hear the commissioner's report, a Legislative Committee report on consideration of draft legislation and an update on the activities of the 69th Legislature, the Hospitals Committee report on approval of a hospital to participate in the Crippled Children's Services Program, the Budget Committee Report on approval of the use of certain fiscal year 1985 unexpended balances for projects and purchases at the South Texas Hospital and for operations and purchases at the San Antonio State Chest Hospital, the Personnel Committee report on an appointment to the Children's Speech, Hearing, and Language Screening Advisory Committee and appointments to the Lay Midwifery Board, and announcements and comments requiring no board action; and consider the March

1985 meeting date. The board also will meet in executive session.

11 a.m. In Room G-107, the Legislative Committee will consider draft legislation and receive an update on the 69th legislative session.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: February 4, 1985, 4:23 p.m.
TRD-851120-851124

Wednesday, February 13, 1985, 1:30 p.m. The Texas Agent Orange Advisory Committee of the Texas Department of Health will meet in Room G-209, 1100 West 49th Street, Austin. According to the agenda summary, the committee will hear an update of Agent Orange Program activities, a cassette tape titled *Toxic Herbicide Exposure* produced by the Pennsylvania Vietnam Herbicide Information Commission, an update on veterans' liability lawsuit against chemical companies, comments by committee members, and a summary report on current research.

Contact: George R. Anderson, M.D., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7251.

Filed: January 31, 1985, 3:42 p.m.
TRD-851030

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Texas Health and Human Services Coordinating Council

Monday, February 11, 1985, 8:30 a.m. The Administration Committee of the Texas Health and Human Services Coordinating Council will meet at the John H. Winters Building, 701 West 51st Street, Austin. Items on the agenda include approval of the committee minutes, an update on potential foundation funds, discussion of pending legislation affecting the council, a review of major legislation in maternal and child health or adolescent parenthood, and an update on requests and questions the council is receiving.

Contact: Lynn H. Leverty, Ph.D., P.O. Box 12428, Austin, Texas 78711, (512) 475-1306.

Filed: February 1, 1985, 10:42 a.m.
TRD-851067

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Industrial Accident Board

Friday, February 8, 1985, 9 a.m. The Industrial Accident Board rescheduled a meeting to be held in Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary,

the board will discuss amendments to Rules 061.02.00.011, 061.06.00.005, 061.07.00.025, 061.07.00.035, and 061.08.00.200 and board policy pertaining to charges for medical reports; new rules 061.05.06.337, 061.07.00.065, and 061.13.00.020(1)(V); the repeal of Rules 061.08.00.190 and 061.08.00.205; Texas Civil Statutes, Article 8309h, §5(a); revision of Employer's Wage Statement IAB-150; Rule 061.01.00.220, concerning the cost of medical reports; and a policy statement from the board to health care providers on billing procedures when the carrier's payment of bill is less than submitted. The meeting originally was scheduled for February 1, 1985.

Contact: William Treacy, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: January 31, 1985, 2:51 p.m.
TRD-851027

Friday, February 8, 1985, 9 a.m. The Industrial Accident Board revised the agenda for a meeting to be held in Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. The changes concern discussion of the repeal of Rule 061.08.00.210, regarding presumption of timely notice; and deletion from the agenda of Rule 061.08.00.205, regarding withdrawal of consent by death.

Contact: William Treacy, Bevington A. Reed Building, First Floor, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: February 5, 1985, 8:38 a.m.
TRD-851125

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State Board of Insurance

Tuesday, February 12, 1985, 10 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider a joint motion for dismissal of the appeal of Dr. John P. Vanderpool and Dr. Beverly J. Vanderpool from action of the Texas Catastrophe Property Insurance Association, the commissioner's and the fire marshal's report (both including personnel matters), and board orders on several different matters

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: February 4, 1985, 1:13 p.m.
TRD-851100

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto

Street, Austin. Days, times, and dockets follow.

Wednesday, February 13, 1985, 1:30 p.m. Docket 7925—consideration of the proposed plan of merger of Trans Automotive Insurance Company, Dallas, into Trans Automotive Insurance Company, Newark, New Jersey.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: February 4, 1985, 1:23 p.m.
TRD-851101

Thursday, February 14, 1985, 1:30 p.m. Docket 7926—application of Kent Reagan Norris, Fort Worth, for a property and casualty local recording agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: February 4, 1985, 1:24 p.m.
TRD-851102

Friday, February 15, 1985, 9 a.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will hear the Research and Information Services report.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: February 4, 1985, 1:12 p.m.
TRD-851099

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin. Days, times, and dockets follow.

Friday, February 15, 1985, 9 a.m. Docket 7929—application for original charter of Life Insurance Company of Texas, Dallas.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: February 4, 1985, 1:23 p.m.
TRD-851103

Tuesday, February 19, 1985, 1:30 p.m. Docket 7914—whether disciplinary action should be taken against Key Acceptance Corporation, San Antonio, which holds an insurance premium finance license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: February 4, 1985, 1:24 p.m.
TRD-851104

Tuesday, February 19, 1985, 2:30 p.m. Docket 7915—whether disciplinary action should be taken against Peoples Acceptance Corporation, Dallas, which holds an insurance premium finance license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: February 4, 1985, 1:25 p.m.
TRD-851105

Wednesday, February 20, 1985, 9 a.m. Docket 7933—application of Emin C. O. Montgomery, Austin, for a legal reserve life insurance agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: February 4, 1985, 1:25 p.m.
TRD-851106

Thursday, February 21, 1985, 9 a.m. Docket 7934—application of Emin Ernest Kuhn, Colleyville, for a legal reserve life insurance agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: February 4, 1985, 1:25 p.m.
TRD-851107

Thursday, February 21, 1985, 1:30 p.m. Docket 7918—whether disciplinary action should be taken against Alberto Aguilar, Brownsville, holder of a Group I, legal reserve life insurance agent's license.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: February 4, 1985, 1:24 p.m.
TRD-851108

Friday, February 22, 1985, 1:30 p.m. Docket 7935—application of Lloyd Craig Hodge, Bellmead, for a legal reserve life insurance agent's license.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: February 4, 1985, 1:24 p.m.
TRD-851109

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Job Training Partnership Act Legislative Oversight Committee

Friday, February 8, 1985, 2 p.m. The Job Training Partnership Act Legislative Oversight Committee rescheduled a meeting to be held at the Texas Department of Community Affairs, 2015 IH 35 South, Austin. Items on the agenda include the budget, a program update, a report from the representative of the State Job Training Coordinating Council, a presentation by the Texas Association of Private Industry Councils, a talk from the Association of Employment and Training Directors of Texas, and consideration of other business. The meeting originally was scheduled for February 1, 1985.

Contact: Paula Campbell, P.O. Box 2910, Austin, Texas 78769, (512) 475-5973.

Filed: January 31, 1985, 1:59 p.m.
TRD-851022

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Legislative Committee on State Telecommunications

Wednesday, February 6, 1985, 4 p.m. The Legislative Committee on State Telecommunications met in emergency session in the Senate Sergeant's Committee Room, State Capitol, Austin. Items on the agenda included election of a chairman, discussion of a work schedule, and receipt and discussion of a report by the State Purchasing and General Services Commission on replacement of the state long distance telephone system. The emergency status was necessary because of time constraints placed on the committee by Senate Bill 35, 68th Legislature, 2nd Called Session, 1984.

Contact: Walter C. Fisher, P.O. Box 12128, Austin, Texas 78711, (512) 475-2736.

Filed: February 4, 1985, 4:11 p.m.
TRD-851118

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Legislative Council

Wednesday, February 6, 1985, 4 p.m. The State Telecommunications Study Committee of the Legislative Council met in emergency session in the Senate Sergeant's Committee Room, State Capitol, Austin. Items on the agenda included election of a chairman, discussion of a work schedule, and receipt and discussion of a report by the State Purchasing and General Services Commission on replacement of the state long distance telephone system. The emergency status was necessary because of time constraints placed on the committee by Senate Bill 35, 68th Legislature, 2nd Called Session, 1984.

Contact: Walter C. Fisher, P.O. Box 12128, Austin, Texas 78711, (512) 475-2736.

Filed: February 4, 1985, 4:11 p.m.
TRD-851117

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Texas State Library and Archives Commission

Friday, February 15, 1985, 10 a.m. The Library Services and Construction Act Advisory Council of the Texas State Library and Archives Commission rescheduled a meeting to be held in Room 202, Lorenzo de Zavala Archives and Library Building, 12th and Brazos Streets, Austin. Items on the agenda include approval of LSCA Title II guidelines and budget and program changes for LSCA Title I and Title III, a report on fiscal year 1985 LSCA Title III grant projects, a review process for rating LSCA Title III applications, and a report on the survey of library usage by targeted disadvantaged persons. The meeting origi-

nally was scheduled for February 1, 1985, as published at 10 TexReg 213.

Contact: Patricia Smith, P.O. Box 12927, Austin, Texas 78711, (512) 475-4119.

Filed: February 5, 1985, 9:27 a.m.
TRD-851127

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Texas National Guard Armory Board

Friday, February 8, 1985, 9:30 a.m. The Texas National Guard Armory Board will meet in the conference room, Building 64, Camp Mabry, Austin. According to the agenda summary, the board will consider administrative and fiscal matters and facility construction, remodeling, and renovation.

Contact: Donald J. Kerr, P.O. Box 5218, Austin, Texas 78763, (512) 451-6394.

Filed: January 31, 1985, 10:38 a.m.
TRD-851014

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Board of Pardons and Paroles

Tuesday, February 5, 1985, 1:30 p.m. The Board of Pardons and Paroles met in emergency session at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board considered a request for a reprieve hearing and commutation of the death sentence in the case of Chester Lee Wicker, Execution 678. The emergency status was necessary because Chester Lee Wicker is scheduled to be executed "some hour before sunrise" on February 11, 1985.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: February 5, 1985, 9:40 a.m.
TRD-851131

Monday-Friday, February 11-15, 1985, 1:30 p.m., daily Monday-Thursday and 11 a.m. Friday. A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners/inmates and administrative releaseses subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2713.

Filed: January 31, 1985, 10:30 a.m.
TRD-851009

Tuesday, February 12, 1985, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions, other than out-of-country conditional pardons, including full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2704.

Filed: January 31, 1985, 10:30 a.m.
TRD-851008

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Texas Parks and Wildlife Department

Tuesday, February 12, 1985, 7 p.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at 400 West 15th Street, Austin. According to the agenda summary, the commission will have dinner. Although this function is primarily a social event and no formal action is planned, the commission may discuss items on the public hearing agenda scheduled for 9 a.m. on February 1985.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: February 4, 1985, 2:31 p.m.
TRD-851115

Wednesday, February 13, 1985. The Texas Parks and Wildlife Commission will meet in Building B, Parks and Wildlife Headquarters Complex, 4200 Smith School Road, Austin. Times and agendas follow.

9 a.m. The commission will approve the January 10, 1985, public hearing court reporter minutes; present service plaques; consider a resolution of appreciation for Perry R. Bass and a resolution concerning the Texas Parks and Wildlife Department Sunset Act, a rough fish removal review, and a concession contract renewal concerning Garner State Park, Uvalde County; nominate lands for an oil and gas lease on the Matador Wildlife Management Area; and consider a concession contract concerning Palo Duro Canyon State Park, Armstrong County and Randall County, a proposed land exchange concerning Inks Lake State Park, Burnet County, an application of Michael E. Killebrew under the Agricultural Development Act, concerning proposals for the waterfowl stamp contract, a resolution supporting Governor White's state fiscal policies, and land acquisition

concerning Franklin Mountains State Parks, El Paso County.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: February 4, 1985, 2:29 p.m.
TRD-851113

Wednesday, February 13, 1985, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at 4200 Smith School Road, Austin. According to the agenda, the commission will consider proposed statewide hunting and fishing regulations for 1985-1986 and parks programs.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: February 4, 1985, 2:29 p.m.
TRD-851114

Noon. The commission will meet in executive session to discuss potential acquisitions, the settlement of pending litigation matters, and personnel matters.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: February 4, 1985, 2:29 p.m.
TRD-851112

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Texas Peanut Producers Board

Tuesday, February 12, 1985, 1 p.m. The Texas Peanut Producers Board of the Texas Department of Agriculture will meet at Howard Johnson's Motor Inn, 7800 IH 35 North, Austin. According to the agenda, the board will discuss promotion activities, research projects, and legislation.

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2853.

Filed: February 5, 1985, 9:24 a.m.
TRD-851128

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State Pension Review Board

Wednesday, February 13, 1985, 8:30 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet in Room G-35-B, State Capitol, Austin. According to the agenda, the committee will discuss upcoming legislation.

Contact: Benette Meadows, P.O. Box 13498, Austin, Texas 78711.

Filed: February 4, 1985, 10:50 a.m.
TRD-851095

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Texas State Board of Public Accountancy

Tuesday, February 12, 1985, 1:30 p.m. The Continuing Education Committee of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda summary, the committee will review exemption requests, requests for additional credit, sponsor registrations, statistical reports, non-compliance with reporting/attendance requirements, and policy regarding changing from nonpublic to public practice during the license year.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752, (512) 451-0241.

Filed: February 4, 1985, 3:55 p.m.
TRD-851116

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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 agendas follow.

Friday, February 8, 1985, 10 a.m. The commissioners will hear a staff presentation of results of the management audit of San Patricio Electric Cooperative, Inc.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1985, 3:01 p.m.
TRD-851028

Friday, February 15, 1985, 9 a.m. Docket 6096—petition of Lufkin Telephone Exchange *et al*, for exemption from the Spanish language requirements of 16 TAC §23.41.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 1, 1985, 1:54 p.m.
TRD-851085

Friday, February 15, 1985, 10 a.m. A rescheduled hearing in Docket 5888—application of the City of Forest Hill to purchase Hillcrest Water Company within Tarrant County. The meeting originally was scheduled for February 1, 1985, as published at 10 TexReg 299.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 4, 1985, 2:04 p.m.
TRD-851111

Thursday, February 21, 1985, 1:30 p.m. A prehearing conference in Docket 5119—application of the City of Mercedes for a certificate of convenience and necessity within Hidalgo County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 5, 1985, 9:30 a.m.
TRD-851129

Friday, February 22, 1985, 10 a.m. A rescheduled hearing on the merits in Docket 5907—application of Hickory Water Works for a certificate of convenience and necessity within Atascosa County. The meeting originally was scheduled for February 20, 1985, as published at 9 TexReg 6096.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 1, 1985, 1:52 p.m.
TRD-851086

Monday, March 18, 1985, 10 a.m. A hearing on the merits in Docket 5940—notice of intent by Texas-New Mexico Power Company for a certificate of convenience and necessity application for a generating unit.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 1, 1985, 1:55 p.m.
TRD-851087

Thursday, April 18, 1985, 10 a.m. A rescheduled hearing on the merits in Docket 6015—application of Southwestern Bell Telephone Company for a tariff change to modify and clarify regulations concerning the provision of on-premises private line service. The meeting originally was scheduled for March 18, 1985, as published at 10 TexReg 118.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1985, 3:42 p.m.
TRD-851031

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Railroad Commission of Texas

Monday, February 4, 1985, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas made an emergency addition to the agenda for a meeting held in Room 309, 1124 IH 35 South, Austin. The addition concerned Docket 4692 and Docket 4693—statements of intent filed by Owen-

town Gas Company to change the city gate rate for the City of Winona, and rates for the unincorporated town of Owentown. The emergency status was necessary because this item was properly noticed for the January 28, 1985, meeting and was passed.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 475-0461.

Filed: February 1, 1985, 9:04 a.m.
TRD-851062

Monday, February 4, 1985, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency addition to the agenda for a meeting held in Room 309, 1124 IH 35 South, Austin. The addition concerned a motion for rehearing in Oil and Gas Docket 92,568—Getty Oil Company, Rule 37, Franklin Scurlock J Lease, Well 2, Ingram Trinity (Odessa) Field, Freestone County. The emergency status was necessary because this item was properly noticed for the January 28, 1985, meeting and was passed.

Contact: Sandra Joseph, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1293.

Filed: January 31, 1985, 3:53 p.m.
TRD-851033

Monday, February 11, 1985, 9 a.m. The Railroad Commission of Texas will meet in Room 309, 1124 IH 35 South, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1211.

Filed: January 31, 1985, 3:51 p.m.
TRD-851034

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1204.

Filed: January 31, 1985, 3:52 p.m.
TRD-851035

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1103.

Filed: January 31, 1985, 3:51 p.m.
TRD-851036

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 475-0461.

Filed: February 1, 1985, 9:05 a.m.
TRD-851063

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711.

Filed: January 31, 1985, 3:53 p.m.
TRD-851037

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711.

Filed: January 31, 1985, 3:53 p.m.
TRD-851038

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Liz Nauert, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1307.

Filed: January 31, 1985, 3:52 p.m.
TRD-851039

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Madalyn J. Girvin, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1209.

Filed: January 31, 1985, 3:51 p.m.
TRD-851040

Consideration of subpoena *duces tecum* of Robert P. Lammerts to produce information relevant to Oil and Gas Docket 3-84,411—application of B.W.O.C., Inc., for approval of the Bryan (Woodbine) Unit, and for secondary recovery operations in the Bryan (Woodbine) Field, Brazos County.

Contact: Sandra Joseph, P.O. Box 12967, Austin, Texas 78711, (512) 445-1293.

Filed: February 1, 1985, 2 p.m.
TRD-851070

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1120.

Filed: January 31, 1985, 3:49 p.m.
TRD-851041

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711.

Filed: January 31, 1985, 3:53 p.m.
TRD-851042

The Office of Special Counsel director's report relating to pending litigation, state

and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lille, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1186.

Filed: January 31, 1985, 3:50 p.m.
TRD-851043

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: J. Randel (Jerry) Hill, 105 West Riverside Drive, Austin, Texas, (512) 475-8751.

Filed: January 31, 1985, 3:53 p.m.
TRD-851044

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Michael A. James, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1331.

Filed: January 31, 1985, 3:54 p.m.
TRD-851045

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Texas Rehabilitation Commission

Friday, February 1, 1985, 9:30 a.m. The Monitoring and Evaluation Committee of the Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission (TRC) made an emergency location change for a meeting held in Room 163, 118 East Riverside Drive, Austin. According to the agenda, the committee will discuss the yearly report. The emergency status was necessary because a priority meeting was scheduled for the same room. The meeting originally was scheduled for Room 302, as published at 10 TexReg 344.

Contact: Joellen F. Simmons, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: January 31, 1985, 10:37 a.m.
TRD-851013

Friday, February 22, 1985, 9:30 a.m. The Monitoring and Evaluation Committee of the Texas Planning Council for Developmental Disabilities of the TRC rescheduled a meeting to be held in Room 163, 118 East Riverside Drive, Austin. According to the agenda, the committee will discuss the yearly report. The meeting originally was scheduled for February 1, 1985, as published at 10 TexReg 344.

Contact: Joellen F. Simmons, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: January 31, 1985, 3:53 p.m.
TRD-851047

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Texas Savings and Loan Department

The Texas Savings and Loan Department will meet at 1004 Lavaca Street, Austin. Times and agendas follow.

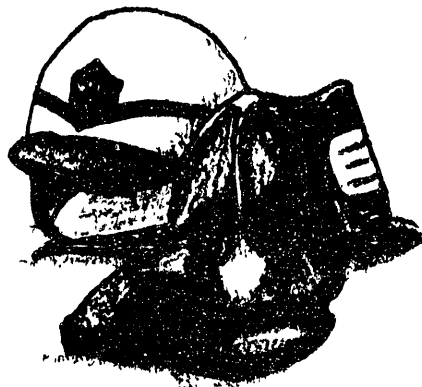
Tuesday, February 19, 1985, 9 a.m. The department will accumulate a record of evidence in regard to the application of Murray Savings Association, Dallas, and Murray Savings, a federal association, San Antonio, to merge, from which record the commissioner shall grant or deny the application.

Thursday, February 21, 1985, 9 a.m. The department will accumulate a record of evidence in regard to the application of La Hacienda Savings and Loan Association, San Diego, to establish a branch office at 11333 IH 10 West, San Antonio, Bexar County, from which record the commissioner shall grant or deny the application.

Contact: Russell R. Oliver, 1004 Lavaca Street, Austin, Texas 78701, (512) 475-7991.

Filed: February 31, 1985, 10:21 a.m.
TRD-851006, 851007

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State Securities Board

Friday, February 8, 1985, 9:30 a.m. The State Securities Board rescheduled a meeting to be held at 1800 San Jacinto Street, Austin. According to the agenda summary, the board will discuss the previous meeting minutes; previously-published proposals to create new 7 TAC §109.13, concerning private offering exemptions to provide for the addition of a Texas version of the NASAA's uniform limited offering exemption, the repeal of current 7 TAC §109.4; concerning private offerings, the creation of new 7 TAC §109.14 to allow use of proposed new 7 TAC §109.13(k) for the types of offerings addressed by the Act, §5.0, the repeal of current 7 TAC §109.9, concerning private offerings of oil and gas interests, the repeal of 7 TAC §133.29, which is the form titled "Form 133.29—Sales under Regulation 109.4(11)," and the amendment of 7 TAC §107.2 to eliminate the unnecessary defini-

tion of "business days"; a petition for a new rule to exempt from securities registration under limited conditions as to minimum purchase amount and quality of the security; the sales of securities to entities who are not natural persons having characteristics which tend to place them in a class generally regarded as "accredited investors"; the staff's second draft of a brochure intended to comply with the Act, §2.L; and general agency operations, with reports from division directors and the securities commissioner.

Contact: Richard D. Latham, 1800 San Jacinto Street, Austin, Texas, (512) 474-2233.

Filed: January 31, 1985, 4:22 p.m.
TRD-851055

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Board of Tax Professional Examiners

Monday, February 25, 1985, 2 p.m. The Board of Texas Professional Examiners rescheduled a meeting to be held in the conference room, 9501 IH 35 North, Austin. According to the agenda summary, the board will elect officers for 1985; approve the December 14, 1984, minutes; consider certification and recertification of qualified registrants, a request for exception to the law, increasing the time allowed for the registered professional appraiser exam, and update policy and procedure items and initiate a requirements update study; discuss a letter regarding course requirements, enforcement deadlines and lists, class size standards, a proposed informal meeting with the State Property Tax Board members, the 1986-1987 biennium budget request, and the 1985 operating budget; and hear an administrative report by the executive director regarding cancellations, a renewal program, projected activities, special certification programs, and the status of complaints. The meeting originally was scheduled for February 11, 1985.

Contact: Sam H. Smith, P.O. Box 15920, Austin, Texas 78761, (512) 834-4981 or (800) 252-9304.

Filed: February 1, 1985, 1:52 p.m.
TRD-851071

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University Interscholastic League

Thursday, February 7, 1985, 1 p.m. The State Executive Committee of the University Interscholastic League met in Room 2.102, Joe C. Thompson Conference Center, University of Texas campus, 26th and Red

River Streets, Austin. According to the agenda summary, the committee considered cases regarding mistreatment of officials, reassignment of Waco schools, and rule interpretations.

Contact: Bailey Marshall, 2622 Wichita Street, Austin, Texas, (512) 471-5883.

Filed: February 1, 1985, 10:31 a.m.
TRD-851066

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Texas Water Commission

Tuesday, February 5, 1985, 10 a.m. The Texas Water Commission submitted an emergency revised agenda for a meeting held in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the revised agenda, the commission considered a petition for creation of Harris County Municipal Utility District 277 for the filing and setting of a hearing date. The emergency status was necessary because the applicant requested emergency consideration so that the hearing date could be set in time to meet the regular election date of April 1985.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: January 31, 1985, 3:23 p.m.
TRD-851029

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, and agendas follow.

Monday, February 25, 1985, 2 p.m. The commission will conduct a hearing to determine whether Temporary Order 85-5E, issued on January 22, 1985, to the City of Austin, in care of Molly Cagle, Attorney, Vinson and Elkins, Austin National Bank Tower, Austin, Texas 78701, should be affirmed, modified, or set aside. The order permitted the City of Austin, whose facilities are located between Onion Creek and Williamson Creek immediately east of the intersection of Nuckols Crossing and Bluff Springs Road in Travis County, to discharge treated wastewater effluent at a volume not to exceed an average flow of 5.3 million gallons per day (8.8 million gallons daily maximum) and to dispose of treated wastewater from the Williamson Creek Wastewater Treatment Plant by spray irrigation on the South Irrigation Site. The commission withdrew its decision of January 21, 1985, granting the city's application for authorization to increase discharges and to dispose of effluent by irrigation at the plant, which application was filed on or about July 13, 1984, and the commission took such application under advisement. The order and the

authorizations contained therein expires at midnight on March 25, 1985.

Contact: Kenneth L. Petersen, Jr., P.O. Box 13087, Austin, Texas 78711, (512) 475-7841.

Filed: January 31, 1985, 1:57 p.m.
TRD-851020

Wednesday, February 27, 1985, 2 p.m. The commission will meet in a rescheduled session to consider an application of Longhorn Army Ammunition Plant, Marshall, Texas 75670, to the Texas Department of Water Resources for a temporary order to authorize the discharge of 3.6 million gallons of industrial wash water (300,000 daily maximum) from the government-owned, contractor-operated, industrial installation that loads, assembles, and packs pyrotechnics, illuminating signal ammunition, and solid rocket propellant motors. The plant is bordered on the west by FM Road 134, on the north by FM Road 2198 and Caddo Lake, on the east by FM Road 9, and on the south by the Louisiana and Arkansas Railway in Harrison County. The applicant states that such a request is necessary to authorize the treatment and disposal of fluids retained in an unlined evaporation pond and to allow closure of that pond.

Contact: Scott Peterson, P.O. Box 13087, Austin, Texas 78711, (512) 475-6943.

Filed: January 31, 1985, 1:58 p.m.
TRD-851021

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Texas Water Well Drillers Board

Tuesday, February 12, 1985, noon. The Texas Water Well Drillers Board will meet at the Convention Center, San Antonio. According to the agenda summary, the board will consider approval of the minutes, certification of applicants for registration, applications for driller-trainee registration, whether to set a complaint for appropriate legal action or other board action for Kenneth Korenek, adoption of new rules concerning reciprocity for drillers from other states, a briefing on registration of drillers since the last board meeting, and staff reports.

Contact: Jack Overton, P.E., P.O. Box 13087, Austin, Texas 78711, (512) 475-3191.

Filed: February 4, 1985, 2:03 p.m.
TRD-851110

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Regional Agencies

Meetings Filed January 31

The Colorado River Municipal Water District, Board of Directors, met at the Hyatt

Regency Hotel, Austin, on February 6, 1985, at 4 p.m. Information may be obtained from O. H. Ivie, Box 869, Big Spring, Texas 79720, (915) 267-6341.

The Comal Appraisal District, Appraisal Review Board, met at 644 North Loop 337, New Braunfels, on February 6, 1985, at 9 a.m. Information may be obtained from Glenn L. Brucks, P.O. Box 1222, New Braunfels, Texas 78130.

The Dallas Area Rapid Transit Authority, Service Plan/Work Program, met in emergency session at 601 Pacific Avenue, Dallas, on February 1, 1985, at 3:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 748-3278.

The Edwards County Appraisal District, Appraisal Review Board, will meet at the new county office building, Rocksprings, on February 1, 1985, at 1:30 p.m. Information may be obtained from Sondra Madden, P.O. Box 378, Rocksprings, Texas 78880.

The Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, on February 5, 1985, at 7:30 p.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79540, (915) 573-8549.

The Tyler County Tax Appraisal District, Board of Directors, met at 103 Pecan, Woodville, on February 5, 1985, at 4 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-851010

Meetings Filed February 1

The Bell County Appraisal District will meet in the commissioners courtroom, second floor, Bell County Courthouse, Belton, on February 20, 1985, at 7 p.m. Information may be obtained from Tolly Moore, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-3521, ext. 410.

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on February 8 and 12, 1985, at 9 a.m. daily. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Coryell County Appraisal District, Board of Directors, met at 105 North Seventh Street, Gatesville, on February 7, 1985, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Dallas Area Rapid Transit Authority, Budget and Finance Committee, met at 601 Pacific Avenue, Dallas, on February 4, 1985, at 4 p.m. The Real Estate Committee met at the same location on February 5,

1985, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 748-3278.

The Dallas County Appraisal District, Board of Directors, met in the boardroom, 2612 Live Oak, Dallas, on February 6, 1985, at 7:30 a.m. The Appraisal Review Board will meet at the same location on February 15, 1985, at 10 a.m. Information may be obtained from Rick L. Kuehler, 2601 Live Oak, Dallas, Texas 75204, (214) 826-0030.

The Region IV Education Service Center, Board of Directors, will meet in the boardroom, 7200 West Tidwell, Houston. Information may be obtained from Tom Pate, Jr., P.O. Box 863, Houston, Texas, (713) 462-7708.

The Gonzales County Appraisal District, Board of Directors, will meet at 928 St. Paul Street, Gonzales, on February 14, 1985, at 5 p.m. Information may be obtained from Nancy Seitz, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Henderson County Appraisal District, Appraisal Review Board, met at 101 East Corsicana, Athens, on February 5, 1985, at 9 a.m. Information may be obtained from Ron Groom, 101 East Corsicana, Athens, Texas, (214) 675-9296.

The Permian Basin Regional Planning Commission, Permian Basin Housing Finance Corporation Committee, will meet at the air terminal, Midland, on February 13, 1985, at 2:15 p.m. Information may be obtained from Pam K. Hammit, P.O. Box 6391, Midland, Texas 79701, (915) 563-1061.

TRD-851060

Meetings Filed February 4

The Amarillo Mental Health and Mental Retardation Center, Board of Trustees, met in a rescheduled session in Room J-13, Psy-

chiatric Pavilion, 7201 Evans Street, Amarillo, on February 7, 1985, at 1 p.m. The meeting originally was scheduled for January 31, 1985. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

The Dallas Area Rapid Transit Authority, Real Estate Committee submitted an emergency revised agenda for a meeting held at 601 Pacific Avenue, Dallas, on February 5, 1985, at 11:30 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202.

The Deep East Texas Council of Governments, Emergency Medical Services Advisory Board, will meet at the Nacogdoches Memorial Hospital, 1204 Mound Street, Nacogdoches, on February 13, 1985, at 7 p.m. The Criminal Justice Advisory Board will meet in the commissioners room, city hall, Lufkin, on February 14, 1985, at 1:30 p.m. Information may be obtained from Francy Tafur, P.O. Box 661, Nacogdoches, Texas 75963-0661, (409) 569-0492, or Rhonda Ruckel, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704, respectively.

The Garza County Appraisal District, Board of Directors, met in emergency session at the courthouse, Post, on February 7, 1985, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 493-3518.

The Lavaca County Central Appraisal District, Board of Directors, will meet at 113 North Main Street, Hallettsville, on February 18, 1985, at 4 p.m. Information may be obtained from Joe Pat Davis, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Liberty County Central Appraisal District, Appraisal Review Board, met in emergency session at 1820 Sam Houston, Liberty, on February 7, 1985, at 9:30 a.m. Information may be obtained from Sherry

Creak, P.O. Box 712, Liberty, Texas 77575, (409) 336-6771.
TRD-851088

Meetings Filed February 5

The Blanco County Central Appraisal District, Board of Directors, will meet at the Blanco County Courthouse Annex, Johnson City, on February 11, 1985, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Brazos Valley Development Council, Executive Committee, will meet at 3006 East 29th, Bryan, on February 14, 1985, at 1:30 p.m. Information may be obtained from R. J. Holmgren, P.O. Drawer 4128, Bryan, Texas 77805, (409) 822-7421.

The Gregg County Appraisal District, Board of Directors, will meet at 2010 Glimmer Road, Longview, on February 12, 1985, at noon. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The San Patricio County Appraisal District, Board of Directors, will meet in Room 226, Courthouse Annex, Sinton, on February 14, 1985, at 9:30 a.m. Information may be obtained from Bennie L. Stewart, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

The Wheeler County Appraisal District, Board of Directors, will meet at the County Courthouse Square, Wheeler, on February 11, 1985, at 2 p.m. Information may be obtained from Marilyn Copeland, P.O. Box 349, Wheeler, Texas 79096, (806) 826-5900.
TRD-851130

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In Addition

The Register is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows

Banking Department of Texas Application to Acquire Control of a State Bank

Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On January 29, 1985, the banking commissioner received an application to acquire control of The First State Bank, Cellna, by Richard L. Donaldson, Craig Glendenning, Don T. Glendenning, Leigh Glendenning, Rex Keith Glendenning, James R. McIlroy, Joe F. Sagnibene, Ralph Stelzer, William F. Tolleson, Henry D. Waldrep, and Jerry Bob Willard, all of Celina; Don W. Taylor and John T. Razor, both of Gunter; Jack F. Ferguson, Richardson; Michael R. Hynds and Oran Selby, both of Van Alstyne; and Johnny B. Hunn, Lewisville.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on January 29, 1985.

TRD-850989 William F. Aldridge
Director of Corporate
Activities
Banking Department of
Texas

Filed: January 30, 1985
For further information, please call (512) 475-4451.

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Texas Department of Community Affairs Consultant Contract Award Amendment

On September 25, 1984, pursuant to the provisions of Texas Civil Statutes, Article 6252-11c, a consultant contract was awarded by the Texas Department of Community Affairs to Arthur Andersen and Company to provide training and to develop a technical assistance guide on personnel management under the Job Training Partnership Act (JTPA). Notice is given of the intent to modify the existing contract after 10 days from the date of this publication.

The proposed modification requires the contractor to collect data on the training needs of JTPA contractors, analyze the data received, and prepare a report on the findings of the training needs analysis.

The complete name and business address of the consultant is Arthur Andersen and Company, 1201 Elm Street, Suite 2200, Dallas, Texas 75270.

As proposed, this modification increases the amount of the original award by \$9,800. The ending date of the contract remains the same. The original consultant proposal request appeared in the March 30, 1984, issue of the *Texas Register* (9 TexReg 1822).

Issued in Austin, Texas, on January 28, 1985.

TRD-850987 Douglas C. Brown
General Counsel
Texas Department of Community
Affairs

Filed: January 30, 1985
For further information, please call (512) 443-4100, ext. 210.

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Office of Consumer Credit Commissioner Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽²⁾ /Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 02/11/85-02/17/85	18.00%	18.00%
Monthly Rate— Article 1.04(c)(1) 02/01/85-02/28/85	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 01/01/85-03/31/85	19.60%	19.60%
Retail Credit Card Quarterly Rate— Article 1.11(3) 01/01/85-03/31/85	19.60%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d)(3) 01/01/85-03/31/85	19.60%	N/A
Standard Annual Rate— Article 1.04(a)(2)(2) 01/01/85-03/31/85	19.60%	19.60%
Retail Credit Card Annual Rate— Article 1.11(3) 01/01/85-03/31/85	19.60%	N/A

Type of Rate Collings Effective Period (Dates are inclusive)	Consumer ⁽²⁾ Agricul- tural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
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Annual Rate Applica-
ble to Pre-July 1, 1983,
Retail Credit Card and
Lender Credit Card
Balances with Annual
Implementation Dates
from

01/01/85-03/31/85	19.74%	N/A
Judgment Rate— Article 1.05, §2 02/01/85-02/28/85	10.00%	10.00%

- (1) For variable rate commercial transactions only.
(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)
(3) Credit for personal, family, or household use
(4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on February 4, 1985.

TRD-851089 Sam Kelley
Consumer Credit
Commissioner

Filed: February 4, 1984
For further information, please call (512) 475-2111.

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Gulf States Marine Fisheries Commission Meeting

The Gulf States Marine Fisheries Commission will hold its 35th annual spring meeting March 11-15, 1985. Alabama is the host state and arrangements have been made to convene at the Riverview Plaza Hotel, 64 Water Street, Mobile, Alabama. Dr. Richard L. Leard, Director of the Bureau of Marine Resources, Mississippi Department of Wildlife Conservation, will be presiding chairman.

All persons interested in the Gulf State Marine Fisheries Commission are invited to attend. For additional information please call Ginny Herring, (601) 875-5912.

Issued in Austin, Texas, on January 30, 1985.

TRD-850986 Charles D. Travis
Executive Director
Texas Parks and Wildlife Department

Filed: January 30, 1985
For further information, please call (512) 479-4806.

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Texas Health Facilities Commission

Applications Accepted for Amendment, Declaratory Ruling, Notices of Intent, and Petition for Reissuance of Certificate of Need

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 or interested person to any of the previously stated applications, that person must file a proper request to become a party or interested person to the application within 10 days after the date of this publication of notice. If the 10th day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, or state holiday. A request to become a party or interested person 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 or interested person.

The contents and form of a request to become a party or interested person to any of these applications must meet the criteria set out in 25 TAC §515.9. Failure of a party or interested person to supply the necessary information in the correct form may result in a defective request to become a party or interested person.

Forum Group, Inc., Indianapolis, Indiana
AN84-1228-853

NIEH—Request for a declaratory ruling that a certificate of need is not required for Forum Group, Inc., to acquire by purchase Oakhaven Nursing Center, an existing 175-bed skilled nursing facility located in Arlington, from D & B Associates.

Memorial Hospital—El Campo, a Texas nonprofit Corporation, Houston
AH85-0128-062

NIEH—Request for a declaratory ruling that a certificate of need is not required for Memorial Hospital—El Campo, a Texas nonprofit corporation, to acquire by lease El Campo Memorial Hospital, an existing 60-bed general acute care hospital located in El Campo, from El Campo Hospital Authority. The name of the facility will be changed to Memorial Hospital—El Campo.

Healthcare Management Group, Inc.,
Birmingham, Alabama
AH85-0129-064

NIEH—Request for a declaratory ruling that a certificate of need is not required for Healthcare Management Group, Inc., to acquire by lease Memorial Hospital of Waller County, an existing 34-bed general acute care hospital located in Hempstead, from Waller County. The name of the fa-

ility will be changed to Hempstead Community Hospital.

The University of Texas System Cancer Center,
M.D. Anderson Hospital and Tumor Institute,
Houston

AH84-0120-042A(110584)

CN/AMD—Request for an extension of the completion deadline from October 31, 1984, to April 30, 1985, in Certificate of Need AH84-0120-042, which authorized the certificate holder to repair approximately 58,000 square feet of damaged roof surface.

Issued in Austin, Texas, on February 4, 1985.

TRD-861090 John R. Neel
 General Counsel
 Texas Health Facilities
 Commission

Filed: February 4, 1985

For further information, please call (512) 475-8940.

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Texas Housing Agency Public Hearings for Approval of Industrial Development Bonds for Residential Real Property

The Texas Housing Agency (THA) will conduct a public hearing concerning public approval for the issuance of industrial development bonds for residential real property. In accordance with federal law, the THA intends to seek public approval from the attorney general, the governor, or other applicable elected representative or designated official of the State of Texas for the issuance of a series of multifamily residential development revenue bonds (the bonds), in an amount not expected to exceed the following approximate amounts.

The bonds, pursuant to the statutory authority of the THA, are being proposed to provide financing for sanitary, decent, and safe dwelling accommodations for persons and families of low income and families of moderate income. If issued, the bonds will constitute limited obligations of the THA. Neither the State of Texas nor any political subdivision, other than the THA, will be liable for the bonds. The bonds will not constitute a debt of the State of Texas.

The executive administrator or deputy administrator of the THA will hold public hearings on the residential projects proposed to be financed by the bonds. The hearings will be held on the dates and at the times and places shown as follows.

The hearing will be held at 10 a.m. on Tuesday, February 12, 1985, in Suite 700, Texas Housing Agency, 411 West 13th Street, Austin, (512) 475-0812. The proposed residential project and description follows.

\$8.1 million for the benefit of The Saint Austin Development Company, a Texas general partnership between Community Investing and Development Corporation, a Missouri corporation, and Barnes/Connally Partnership, a Texas general partnership whose general partners are John B. Connally and Ben F. Barnes, to provide financing for the acquisition and construction of a multifamily rental residential development consisting of approxi-

mately 264 units to be located on approximately 11 acres at the southeast corner of Crossing Place and Elmout Drive, Austin, Travis County. Upon completion of such construction and development, the development may be transferred to a new limited partnership having as general partners one or both of the same general partners as the Saint Austin Development Company (Eagle Ridge Apartments, THA #06137).

The hearing will be held at 3 p.m. on Tuesday, February 12, 1985, at the Hallmark Motor Inn, 4500 East Central Texas Expressway, Killeen, (817) 634-1313. The proposed residential projects and descriptions are as follows.

\$4.2 million for the benefit of The Saint Austin Development Company, a Texas general partnership between Community Investing and Development Corporation, a Missouri corporation, and Barnes/Connally Partnership, a Texas general partnership whose general partners are John B. Connally and Ben F. Barnes, to provide financing for the acquisition and construction of a multifamily rental residential development consisting of approximately 144 units to be located on approximately 4.3 acres at 500 Central Texas Expressway, Harker Heights, Bell County. Upon completion of such construction and development, the development may be transferred to a new limited partnership having as general partners one or both of the same general partners as The Saint Austin Development Company (Lionshead Apartments, THA #06140).

\$4.4 million for the benefit of Hunter's Glen Village Apartments, Ltd.—Killeen, a partnership having A.D.C. Financial Corporation as general partner, to provide financing for a multifamily rental residential development consisting of 152 units to be located on approximately 6.01 acres located on the north side of Bacon Ranch Road approximately 460 feet east of Trimmier Road, Killeen, Bell County (Hunter's Glen Village Apartments, THA #06104).

The hearing will be held at 3 p.m. on Wednesday, February 13, 1985, at the Rodeway Inn, 2130 South First Street, U.S. Highway 59, Lufkin, (409) 639-3301. The proposed residential project and description follows.

\$5 million for the benefit of The Saint Austin Development Company, a Texas general partnership between Community Investing and Development Corporation, a Missouri corporation, and Barnes/Connally Partnership, a Texas general partnership whose general partners are John B. Connally and Ben F. Barnes, to provide financing for the acquisition and construction of a multifamily rental residential development consisting of approximately 168 units to be located on approximately 8.6 acres south of the McCall Drive/U.S. Highway 59 intersection and north of the Temple Boulevard/U.S. Highway 59 intersection, Lufkin, Angelina County. Upon completion of such construction and development, the development may be transferred to a new limited partnership having as general partners one or both of the same general partners as The Saint Austin Development Company (Deer Cross Apartments, THA #06141).

The public hearing will be held at 11 a.m. on Thursday, February 14, 1985, at the LaQuinta Downtown, 1001 East Commerce, San Antonio, (512) 222-9181. The proposed residential project and description follows.

\$6.6 million for the benefit of The Saint Austin Development Company, a Texas general partnership between Community Investing and Development Corporation, a Missouri corporation, and Barnes/Connally Partnership, a Texas general partnership whose general partners are John B. Connally and Ben F. Barnes, to provide financ-

ing for the acquisition and construction of a multifamily rental residential development consisting of approximately 216 units to be located on approximately 6.5 acres at the southeast corner of Pecan Valley Drive and Southcross Street, San Antonio, Bexar County. Upon completion of such construction and development, the development may be transferred to a new limited partnership having as general partners one or both of the same general partners as The Saint Austin Development Company (Pecan Ridge Apartments, THA #06138).

The public hearing will be held at 3 p.m. on Thursday, February 14, 1985, at the Holiday Inn, 2705 Houston Highway, Victoria, Victoria County, (512) 575-0251. The proposed residential project and description follows.

\$5.3 million for the benefit of The Saint Austin Development Company, a Texas general partnership between Community Investing and Development Corporation, a Missouri corporation, and Barnes/Connally Partnership, a Texas general partnership whose general partners are John B. Connally and Ben F. Barnes, to provide financing for the acquisition and construction of a multifamily rental residential development consisting of approximately 184 units to be located on approximately 7.0 acres at the corner of Salem Street and Hallettsville Highway, Victoria, Victoria County. Upon completion of such construction and development, the development may be transferred to a new limited partnership having as general partners one or both of the same general partners as The Saint Austin Development Company (The Coventry Apartments, THA #06139).

All interested persons are invited to attend the hearings to express their views on the projects and the proposed issuance of the bonds. For details, contact Stan Kantrowitz, General Counsel, Texas Housing Agency, 411 West 13th Street, Suite 700, Austin, Texas 78701. (512) 475-0812 or (800) 792-1119.

Persons who intend to appear at the hearings and express views are encouraged to contact Mr. Kantrowitz before the hearings. Any interested persons unable to attend the hearings may submit their views in writing to Mr. Kantrowitz before the hearings. All written comments will be made available for review by all parties attending the public hearings.

Issued in Austin, Texas, on January 29, 1985.

TRD-851019 Stan Kantrowitz
General Counsel
Texas Housing Agency

Filed: January 31, 1985
For further information, please call (512) 475-0812
or (800) 792-1119.

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State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

(1) Application for incorporation of Av-Med of Texas, Inc., to be a domestic health maintenance organization. The home office is in Dallas.

(2) Application for admission to do business in Texas of Fidelity General Life Insurance Company, a foreign life insurance company. The home office is in Wilmington, Delaware.

(3) Application for incorporation of Pinkston Life Insurance Company, to be a domestic life insurance company. The home office is in Fort Worth.

(4) Application for admission to do business in Texas of Financial Benefit Life Insurance Company, a foreign life insurance company. The home office is in Hollywood, California.

(5) Application for admission to do business in Texas of CIGNA Life Insurance Company, a foreign life insurance company. The home office is in Bloomfield, Connecticut.

(6) Application for admission to do business in Texas of Summit Reassurance Corporation, a foreign life insurance company. The home office is in Nashville, Tennessee.

(7) Application for a name change by Fire Insurance Company of Quaker City, a foreign fire and casualty insurance company. The home office is in Philadelphia, Pennsylvania. The proposed new name is United Casualty Insurance Company of America.

(8) Application for admission to do business in Texas of Scor Reinsurance Company of New York, a foreign fire and casualty insurance company. The home office is in New York, New York.

(9) Application for a name change by Old Equity Mutual Life Insurance Company, a foreign life insurance company. The home office is in Chicago, Illinois. The proposed new name is Old Equity Life Insurance Company.

(10) Application for a name change by Old Equity Life Insurance Company, a foreign life insurance company. The home office is in Chicago, Illinois. The proposed new name is Inter-American Insurance Company of Illinois.

Issued in Austin, Texas, on January 31, 1985.

TRD-851093 James W. Norman
Chief Clerk
State Board of Insurance

Filed: February 4, 1985

For further information, please call (512) 475-2980.

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Texas Judicial Council Announcement of Meeting

The Texas Judicial Council will meet at 10 a.m. on Friday, February 8, 1985, at the Texas Law Center, 1414 Colorado Street, Austin. The agenda summary includes a report on staff activities, a report of the Committee on Municipal Judges Continuing Legal Education, and discussion of proposed legislation.

For further information contact C. Raymond Judice, Executive Director, Texas Judicial Council, 1414 Colorado Street, Austin, Texas 78701, (512) 475-2421.

Issued in Austin, Texas, on January 25, 1985.

TRD-851026 Jim Hutcherson
General Counsel
Texas Judicial Council

Filed: January 31, 1985

For further information, please call (512) 475-2421.

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Texas Parks and Wildlife Department Consultant Contract Award

This consultant contract award is filed in accordance with the provisions of Texas Civil Statutes, Article 6252-11c. The consultant proposal request appeared in the November 23, 1984, issue of the *Texas Register* (9 TexReg 6033).

The service to be performed will be the supplying of a cast, crew, costumes and production equipment to produce a 25-30 minute, 35 millimeter, synchronized sound motion picture. The contractor will provide these services at Washington-on-the-Brazos State Park. The motion picture will be used at that park to interpret the events surrounding the signing of the Texas Declaration of Independence in 1836.

The name and address of the consultant selected is Texas Pacific Film Video, Inc., 501 IH 35 North, Austin, Texas 78702. The total value of the award is \$91,000, to be paid in three parts. Part one shall amount to \$22,750 and will be payable upon completed script breakdown and agreement on production schedule. Part two shall amount to \$22,750 and will be payable upon completion of casting and rehearsals and final on-location preproduction meetings with crew members. Part three shall amount to \$45,500 and shall be payable upon acceptance of processed film footage. The contract is dated January 24, 1985. The consulting service is to be provided through March 1, 1985.

Issued in Austin, Texas, on January 31, 1985.

TRD-851023 Charles D. Travis
Executive Director
Texas Parks and Wildlife Department

Filed: January 31, 1985
For further information, please call (512) 479-4808.

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The Prosecutor Council Consultant Contract Awards

Pursuant to Texas Civil Statutes, Article 6252-11c, The Prosecutor Council furnishes this notice of consultant contract award. The consultant proposal request appeared in the November 13, 1984, issue of the *Texas Register* (9 TexReg 5861).

Description of Services. The consultant will provide investigative services, liaison services, and evaluate and contribute to the *Investigator's Desk Manual* and other publications of the council.

Name and Address of Consultant. The consultant is E. K. Murray, 1402 Nueces Street, Austin, Texas 78701.

Contract Value and Period. The total value of the contract is not to exceed \$30,000. The beginning date of the contract was January 2, 1985, and the ending date is August 31, 1985. For three years consultant agrees to maintain and make available for inspection all records.

Due Date of Documents. All documents, films, recording, or reports of the intangible results of the services performed by the consultant shall be the property of The Prosecutor Council.

Issued in Austin, Texas, on January 31, 1985.

TRD-851057 Andy Shuval
Executive Director
The Prosecutor Council

Filed: January 31, 1985
For further information, please call (512) 475-6826.

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Pursuant to Texas Civil Statutes, Article 6252-11c, The Prosecutor Council furnishes this notice of consultant contract award. The consultant proposal request appeared in the December 14, 1984, issue of the *Texas Register* (9 TexReg 6386).

Description of Services. The consultant will provide an investigators school for prosecutors' investigators. The course will be presented February 25, 1985, through March 1, 1985, in Austin.

Name and Address of Consultant. The consultant is the Texas District and County Attorneys Association, 1210 Nueces Street, Suite 200, Austin, Texas 78701.

Contract Value and Period. The total value of the contract is \$17,500. The beginning date of the contract was January 28, 1985, and the ending date is three years after payment or until all questions arising from this contract are resolved.

Due Dates of Documents. All documents, films, recordings, or reports of the intangible results of the services performed by the consultant shall be available to The Prosecutor Council on or before March 1, 1985.

Issued in Austin, Texas, on January 31, 1985.

TRD-851058 Andy Shuval
Executive Director
The Prosecutor Council

Filed: January 31, 1985
For further information, please call (512) 475-6826.

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