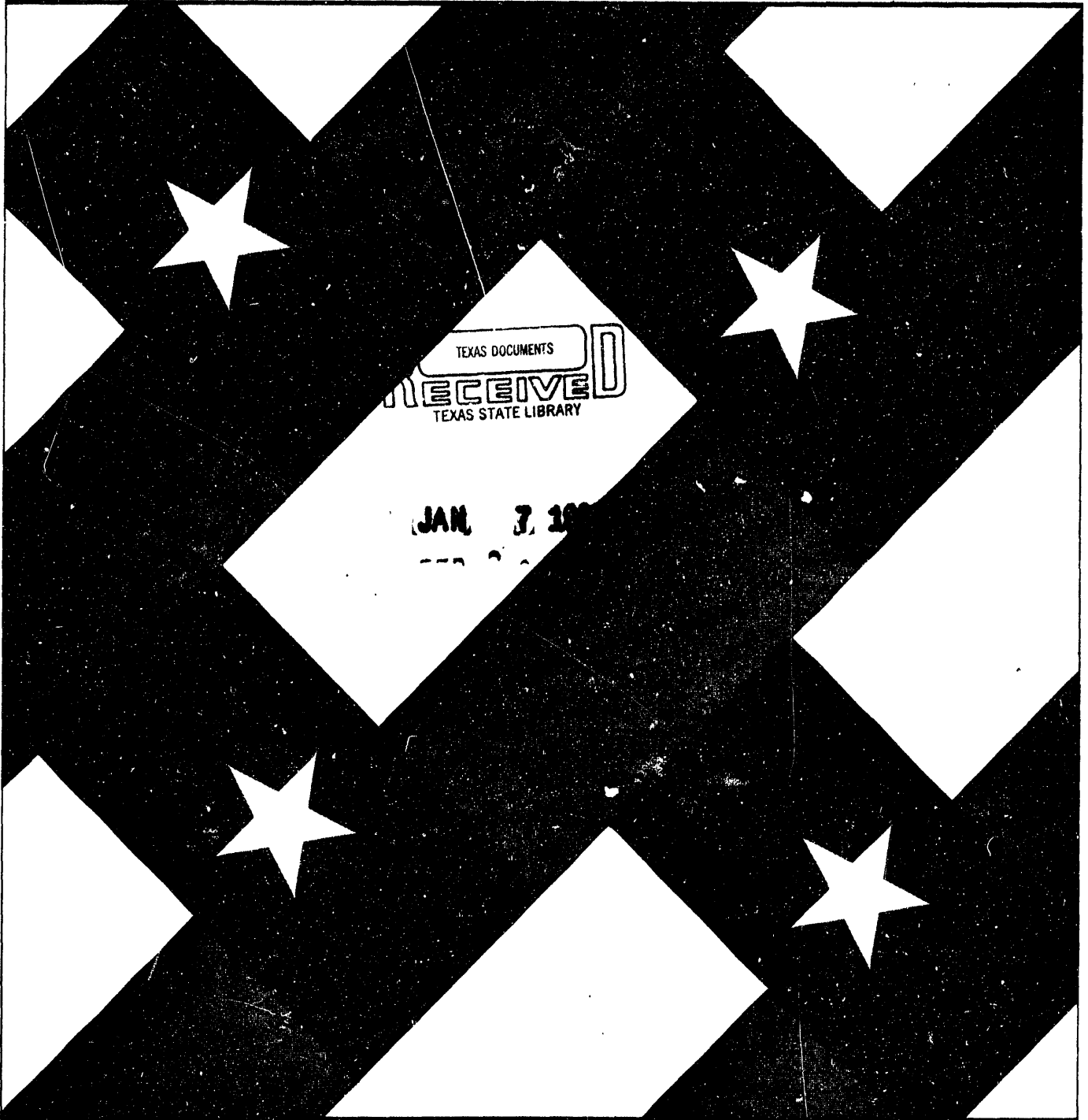


Texas Register

1

Volume 11, Number 1, January 3, 1986

Pages 1-79



Highlights

The **Office of the Secretary of State** adopts sections concerning the Elections Division. Effective date - December 20..... **page 7**

The **Department of Labor and Standards** adopts

an new emergency section concerning housing. Effective date - January 1..... **page 9**

The **Board of Veterinary Medical Examiners** proposes a section concerning licensing. Earliest possible date of adoption - February 3..... **page 30**

Office of the Secretary of State

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1985 with the exception of June 25, July 9, August 30, December 3, and December 31, by the Office of the Secretary of State.

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Information Available: The 11 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- 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.

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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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TAC Titles Affected—January

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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) 463-1814.

Appointment Made December 16

Texas School for the Deaf

For a term to expire January 31, 1991:

Polly Piercy Walton
6950 Westgate
Beaumont, Texas 77706

Ms. Walton is being reappointed.

Issued in Austin, Texas, on December 16, 1985.

TRD-8512292

Mark White
Governor of Texas



Appointments Made December 17

Board of Directors, Trinity River Authority of Texas

For a term to expire March 15, 1991:

David B. Jenkins
P.O. Box 65
Stowell, Texas 77661

Mr. Jenkins is replacing John G. Middleton of Liberty, whose term expired.

Texas Tourist Development Board

For a term to expire August 23, 1991:

Robert Alpert
4936 Briarwood Place
Dallas, Texas 75209

Mr. Alpert is replacing Dominic Joseph Bernardi, Jr., of El Paso, whose term expired.

Issued in Austin, Texas, on December 17, 1985.

TRD-8512292

Mark White
Governor of Texas



Emergency

Rules

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

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 1.

ADMINISTRATION

Part IV. Office of the Secretary of State Chapter 81. Elections Miscellaneous

★ 1 TAC §§81.123-81.140

The Elections Division of the Office of the Secretary of State repeal §§81.123-81.140 on an emergency basis and adopts new §§81.123-81.130, 81.132-81.140, and 81.142-81.149 on an emergency basis.

Emergency action is necessary because the new sections which replace the repealed sections, concern the state financing of the political parties' preparation and holding of the May 3, 1986, general primary election—e.g. payment of support personnel and election officers, rental on office and equipment, and the requirement of competitive quotations for election services and supplies—which commences or takes place prior to January 3, 1986, the first day for most candidates to file for a place on the primary ballot. Political party chairman may begin submitting their estimated primary election cost reports as early as January 1, 1986. The secretary of state determines from these reports what is payable with state funds. These sections provide guidelines for party officers concerning what expenditures the secretary of state will approve for payment with state funds. It is imperative, therefore, that these sections be adopted on an emergency basis to be in effect by such a date as to provide political party officers a basis for submitting their estimated primary election costs reports, and to avoid the imminent peril to the public welfare which would result from confusion in the application of the law.

These sections are promulgated pursuant to the duty of the secretary of state, under the Texas Election Code, Texas Civil Statutes, Article 1.03, to obtain and maintain uniformity in the application, operation, and interpretation of the election laws.

§81.123. *Primary Administrator.*

§81.124. *Clerical Personnel.*

§81.125. *Employee Fidelity Bond.*

§81.126. *Estimating Voter Turnout and the Necessary Physical Requirements.*

§81.127. *Office Rent.*

§81.128. *Office Equipment.*

§81.129. *Office Supplies and Copies of the Texas Election Code.*

§81.130. *Telephone and Postage Charges.*

§81.131. *Precinct Ballot Tabulators Used in Conjunction with the Punch Card and Optical Scanner Voting Methods.*

§81.132. *Competitive Quotations for Services or Products.*

§81.133. *Contracts for Labor.*

§81.134. *Bank Account for Primary Fund Deposits and Expenditures.*

§81.135. *Deposit of Currency.*

§81.136. *List of Candidates and Filing Fees.*

§81.137. *Signature on Checks; Authorization of Primary Fund Expenditures.*

§81.138. *Payee of Checks Restricted to an Entity or Persons.*

§81.139. *Form of Payments; Petty Cash Fund; Documentation of Petty Cash Transactions.*

§81.140. *Documentation of Expenses.*

Issued in Austin, Texas, on December 20, 1985.

TRD-8512152

Myra A. McDaniel
Secretary of State

Effective date: December 20, 1985

Expiration date: April 19, 1986

For further information, please call
(512) 475-2015.

★ ★ ★

★ 1 TAC §§81.123-81.130, 81.132-81.140, 81.142-81.149

These rules are promulgated pursuant to the duty of the secretary of state, under the Texas Election Code, Texas Civil Statutes, Article 1.03, to obtain and maintain uniformity in the application, operation, and interpretation of the election laws.

§81.123. *Primary Administrator.* In counties with registered voters in excess of 100,000, county chairmen may employ a primary administrator for the period beginning on January 1 preceding the primary, and ending on the last day of the month in which the last primary is held (general or runoff primary). The maximum salary payable from the primary fund to a primary administrator shall be \$2,000 per month. No

additional payment from the primary fund is allowable for transportation or other personal expenses incurred by primary administrators in performance of their duties.

§81.124. *Other Salaried Personnel.* Salaries or wages of personnel necessary to aid in the conduct of the primary elections are payable from the primary fund for the period beginning on January 1 preceding the primary, and ending on the last day of the month in which the last primary is held (general or runoff primary). Such compensation for each salaried personnel must be less than \$2,000 per month. A list of necessary personnel shall be transmitted to the secretary of state, with each finance report, indicating the name and title of employee, job duties, period of employment, monthly or hourly rate of pay, and the estimated or actual gross pay for the period. A copy of all quarterly 941 returns filed with the IRS shall be transmitted to the secretary of state along with the final primary election cost report.

§81.125. *Contracts for Labor.* All contracts for labor necessary for the conduct of primary elections must be in writing. The contract shall include the name of the individual, the duties, job, or services to be performed, period of employment, and the rate or fee to be paid. The contract shall be signed by both the county chairman and the employee. Copies of all contracts of labor shall be transmitted to the secretary of state along with the final primary election cost report.

§81.126. *Employee Fidelity Bond.* The purchase of an employee fidelity bond for employees whose responsibilities include the receipt and/or expenditure of primary funds is required and payable from the primary fund.

§81.127. *Office Rent.* Office rent is payable from the primary fund for the period to begin on January 1 preceding the primary, and ending on the last day of the month in which the last primary is held (general or runoff primary). A copy of the lease agreement or explanation of change in such agreement shall be transmitted to the secretary of state along with the general primary election cost estimate. Office rent shall not exceed the fair market rate for office space in the locale. Any change in a lease agreement and explanation of such change shall be transmitted to the secretary

of state with the next required primary estimate or report.

§81.128. Office Equipment. Office equipment (including telephone equipment) necessary for the administration of the primary elections may be leased for the period beginning January 1 preceding the primary, and ending on the last day of the month in which the last primary is held (general or runoff primary). Such rental costs are payable from the primary fund.

§81.129. Office Supplies and Copies of the Texas Election Code. Purchases of office supplies necessary for the administration of the primary elections are payable from the primary fund. The expenditure for purchase of two copies of a paperback version of the Texas Election Code is authorized from the primary fund.

§81.130. Telephone and Postage Charges. Telephone and postage charges which are incurred during the period from January 1 preceding the primary, and ending on the last day of the month in which the last primary is held, and which are related to the administration of the primary elections, are payable from the primary fund. Any costs not directly attributable to the conduct of primary are not chargeable to the primary fund.

§81.132. Competitive Quotations for Services or Products. Unless prior approval of the secretary of state is obtained, county chairmen must purchase all services and products using competitive quotations from two or more sources if more than one source is available in the state. Documentation of the lack of availability of competitive quotations must be submitted with the general or runoff primary election cost estimate, whichever is applicable. This rule does not apply to petty cash expenditures of \$100 or less.

§81.134. Bank Account for Primary Fund Deposits and Expenditures. County chairmen shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds. Primary funds shall not be commingled with any other fund or account.

§81.135. Deposit of Currency. All filing fees and contributions received in currency shall be deposited intact into the primary fund.

§81.136. List of Candidates and Filing Fees. A complete list of candidates, including the office sought and amount of filing fee received from each candidate, shall be transmitted to the secretary of state by February 14th.

§81.137. Signature on Checks; Authorization of Primary Fund Expenditures. All checks written on the primary fund shall be personally signed by either the county chairman or a bonded agent for the county chairman, except that payroll checks and checks

to sole source vendors must be signed by the county chairman. All primary fund expenditures shall be authorized by the county chairman.

§81.138. Payee of Checks Restricted to an Entity or Person. No check written on the primary fund shall be made payable to cash or bearer. All checks shall be made payable to an entity or person.

§81.139. Form of Payments; Petty Cash Fund; Documentation of Petty Cash Transactions. All payments from the primary fund shall be made by check, except that county chairmen may establish a petty cash fund not exceeding \$100 for minor purchases and payments. Complete documentation of all petty cash transactions shall be made.

§81.140. Documentation of Expenses. Copies of all bills, invoices, contracts, and petty cash receipts supporting primary election costs shall be transmitted to the secretary of state upon request.

§81.142. General Primary Election Cost Estimate Transmitted to the Secretary of State Prior to the Close of the Regular Filing Period. If the general primary election cost estimate is transmitted to the secretary of state prior to the close of the regular filing period, county chairmen shall estimate the amount of filing fees to be collected. The amount of estimated filing fees shall be reported as a financing source on the general primary election cost estimate. When the general primary election cost estimate is transmitted to the secretary of state after the close of the regular filing period, county chairmen shall report the actual

amount of filing fees received as a financing source on the general primary election cost estimate.

§81.143. Returning Surplus Funds. Any surplus remaining in a county primary fund account after payment of approved expenses shall be remitted to the secretary of state, primary fund account, with the final cost report.

§81.144. County Election Officer Not to Receive Compensation under Election Services Contracts for 1986 Primary Election. An election services contract for the 1986 primary elections shall not provide for any additional salary or compensation of the county election officer for the performance of any primary election duty or service.

§81.145. Compensation For Services at the Polling Place. For the 1986 general and runoff primary elections, the hourly compensation for election officers shall not exceed \$4.

§81.146. Compensation for Delivering Election Records and Supplies. Compensation of the election judge or clerk for delivery of the election records, equipment, and unused supplies after the 1986 general and runoff primary elections may not exceed \$15 for each election.

§81.147. Number of Election Workers per Voting Precinct. The following table must be used to determine the number of election workers allowable for each precinct.

Number of Election Workers Per Voting Precinct
Number of Election Workers
(Includes one judge and one alternate judge)

Estimated Voter Turnout Per Voting Precinct	Paper Ballot	Punch Card, Optical tabulators and Voting Machine
100 or less	3	3
101 - 300	5	4
301 - 600	6	5
601 - 1,000	8	6
1,001 or more	12	8

§81.148. Number of Voting Machines, Devices and/or Precinct Ballot Counters per Voting Precinct. Except as expressly authorized by the secretary of state, the

following table must be used to determine the number of voting machines or optical tabulators, and punch card voting devices allowable for each precinct.

Number of Voting Machines, Devices and/or Precinct Ballot Counter

Estimated Voter Turnout per Voting Precinct	Voting Machines	Punch Card Devices	Precinct Ballot Counters (punch card or optical tabulators)
100 or less	1	1	1
101 - 300	1	2	1
301 - 600	2	4	1
601 - 900	3	6	1
For each additional 300 voters	1	N/A	N/A
350 voters	N/A	1	N/A

§81.149. Estimating Voter Turnout. County Chairmen may use the precinct by precinct method as recommended by the secretary of state or any other reasonable method for estimating voter turnout for the primary elections. When using a method other than the precinct by precinct method, county chairmen shall submit an explanation and complete documentation of the method used to the secretary of state along with the general runoff primary election cost estimates. Instructions for the precinct by precinct method are available from the Elections Division, Office of Secretary of State, P.O. Box 12887, Austin, Texas 78711-2987.

Issued in Austin, Texas, on December 20, 1985.

TRD-8512153 Myra A. McDaniel
Secretary of State

Effective date: December 20, 1985
Expiration date: April 19, 1986
For further information, please call
(512) 475-2015.

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TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards

Chapter 70. Industrialized Housing and Buildings

Subchapter A. Legislative Intent, Purpose, Scope, and Definitions

★ 16 TAC §§70.1-70.4

The Texas Department of Labor and Standards adopts §§70.1-70.4, on an emergency basis, concerning legislative intent, purpose of rules, scopes of rules, and definitions. The new sections are adopted as a result of House Bill 1218, which was enacted by the 69th Legislature, 1985. Section 70.1 and §70.2 detail the legislative intent and purpose of Chapter 70, concerning industrialized housing and buildings. Section 70.3 gives the scope of rules, and §70.4 gives the definitions to be used in the industrialized housing rules.

The sections are being adopted on an emergency basis because Texas Civil Statutes, Article 5221f-1, becomes effective January 1, 1986.

As a result of House Bill 1218, modular housing will no longer be regulated under Texas Civil Statutes, Article 5221f, in Texas. House Bill 1218 provides for a 12-member council, the Texas Industrialized Building Code Council, which was appointed by the governor and which was created to assure that the designs, plans, and specifications of industrialized housing and buildings meet the

mandatory state code. Local municipalities will have primary on-site construction inspection responsibility. The department will inspect the construction of industrialized housing or buildings at the manufacturing plant or facility. The Act also provides for third-party inspectors which shall be approved by the council upon recommendation of the department.

The sections are adopted on an emergency basis to protect the health, safety, and welfare of the modular housing consumer and industry in Texas. The sections adopted on an emergency basis were proposed for permanent adoption in the November 19, 1985, issue of the *Texas Register* (10 TexReg 4465).

§70.1. Legislative Intent. The 69th Legislature has found and determined that there is great need to provide safe, durable code-constructed housing and buildings and to encourage the economics realized through mass production and assembly line building techniques in order to produce and provide more affordable dwellings and buildings. The 69th Legislature, 1985, has also found and determined that existing statutes and regulations prior to September 1, 1985, are not adequate to coordinate properly the interests of both the state and local political subdivisions including home rule cities. In recognition of its findings, and in order to promote the public health, safety, and welfare, the 69th Legislature, 1985, enacted House Bill 1218 mandating the regulation of industrialized housing and buildings and provided that such Act shall be liberally construed and applied to encourage innovative building and construction techniques. (Chapter 84, 69th Legislature, 1985, Vernon's Texas Session Law Service, 1985, page 332).

§70.2. Purpose of Rules. The rules in this chapter are adopted in order to implement the provisions of Texas Civil Statutes, Article 5221f-1, relating to industrialized housing and buildings (Act) and to conform to the legislative mandate in the Act, §6, to assure compliance and to provide for uniform enforcement. In addition, it is the intent of these sections to recognize the vital role of municipalities in this state in the regulation of on-site construction and erection of industrialized housing and buildings within their jurisdictions and in coordinating properly the public interests of both the local political subdivisions and the state.

§70.3. Scope of Rules. The scope of the sections in this chapter is limited by the Act; accordingly they do not apply to:

- (1) mobile homes or HUD-code manufactured homes as defined in Texas Civil Statutes, Article 5221f;
- (2) housing constructed of sectional or panelized systems not utilizing modular components;
- (3) ready-built homes which are constructed so that the entire living area is

contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location; provided that modular components are not utilized nor used in the construction of the ready-built home;

(4) any residential or commercial structure which is in excess of three stories or 49 feet in height as measured from the finished grade elevation at the entrance of the structure to the peak of the roof; or

(5) temporary structures which are not designed for, and are not installed on, permanent foundations. Any structure placed on a permanent foundation system is not a temporary structure.

§70.4. Definitions.

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

(1) Act—Texas Civil Statutes, Article 5221f-1, as passed in House Bill 1218, Acts of the 69th Legislature, 1985.

(2) Approved—Approved by the council or the department.

(3) Builder—A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings or of modules or modular components from a manufacturer for sale to the public; a subcontractor of a builder is not a builder for purposes of these sections.

(4) Building site—See site, paragraph (36) of this subsection.

(5) Building system—The design and/or method of assembly of modular components represented in the plans, specifications, and other documentation which may include structural, electrical, mechanical, plumbing, fire protection, and other systems affecting health and safety.

(6) CABO—Council of American Building Officials composed of ICBO, SBCCI, and Building Officials and Code Administrators International, Inc. (BOCA).

(7) Commercial structure—An industrialized building classified by the applicable model code for occupancy and use groups other than residential for one or more families.

(8) Commissioner—Commissioner of the Texas Department of Labor and Standards.

(9) Compliance Assurance Program—The system, documentation, and methods of assuring that industrialized housing, buildings, and modular components, including their manufacture, storage, transportation, assembly, handling, and on-site construction, conform with the Act and these rules and regulations.

(10) Component—A sub-assembly, subsystem, or combination of elements for use as a part of a building system or part of a modular component that is not structurally independent, but may be part of

structural, plumbing, mechanical, electrical, fire protection, or other systems affecting life safety.

(11) Closed construction—That condition when any industrialized housing or building, modular component, or portion thereof is manufactured in such a manner that all portions cannot be readily inspected at the site without disassembly or destruction thereof.

(12) Council—The Texas Industrialized Building Code Council.

(13) Decal—The approved form of certification issued by the department to the manufacturer to be permanently affixed to the module indicating that it has been constructed to meet or exceed the code requirements and in compliance with these sections.

(14) Design package—The aggregate of all plans, designs, specifications, and documentation required by these rules to be submitted to the design review agency, or required by the design review agency for compliance review, including the compliance assurance manual and the on-site construction documentation. Unique or site specific foundation drawings and special on-site construction details prepared for specific projects are not a part of the design package except as expressly set forth in §70.103 of this title (relating to Alterations or Deviations).

(15) Design review agency—An approved organization, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, and demonstrated reliability to review designs, plans, specifications and building systems documentation, and to certify compliance to these rules evidenced by affixing the council's stamp.

(16) Department—Texas Department of Labor and Standards.

(17) ICBO—International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(18) Insignia—The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with these sections.

(19) Industrialized building—A commercial structure that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent commercial site, and that is designed to be used as a commercial building when the modules or modular components are transported to the permanent commercial site and are erected on or affixed to a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems.

(20) Industrialized housing—A residential structure that is designed for the use

and occupancy of one or more families, that is constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent residential site, and that is designed to be used as a permanent residential structure when the modules or modular components are transported to the permanent residential site and are erected on or affixed to a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems.

(21) Installation—On-site construction (paragraph 29 of this subsection).

(22) Local building official—The agency or department of a municipality with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(23) Manufacturer—A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(24) Manufacturing facility—The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembling industrialized housing, buildings, modules, or modular components.

(25) Model—A specific design of an industrialized housing, buildings, or modular components, which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical or electrical equipment and systems therein in accordance with an approved design package.

(26) Modular component—A structural portion of any dwelling or building that is constructed at a location other than the site in such a manner that its construction cannot be adequately inspected for code compliance at the site without damage or without removal of a part thereof and reconstruction.

(27) Module—An industrialized house or building, or portion thereof, designed and approved to be transported as a single section and as a structurally independent unit to a site for on-site construction with or without other modules or modular components.

(28) NFPA—National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(29) On-site construction—Preparation of the site, foundation construction, assembly and connection of the modules, modular components or components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, and specifications.

(30) Open construction—That condition when any industrialized housing, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(31) Permanent foundation system—A system by which industrialized housing or buildings are permanently affixed to the building site and which is designed to meet the applicable building code as set forth in Subchapter C of this chapter (relating to Standards and Codes).

(32) Person—An individual, partnership, company, corporation, association, or other group, however organized.

(33) Registrant—A person who, or which, is registered with the department pursuant to the rules of this chapter as a manufacturer, builder, design review agency, or third-party inspector.

(34) Residential structure—Industrialized housing designed for occupancy and use as a residence by one or more families.

(35) SBCCI—Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213.

(36) Site or building site—A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are permanently attached to foundations.

(37) Structure—An industrialized house or building which results from the complete assemblage of the modules, modular components, or components designed to be used together to form a completed unit.

(38) Third-party inspector—An approved person or agency, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, buildings, and portions thereof for compliance with the approved plans, documentation, compliance assurance program, and applicable codes.

(b) Other definitions may be set forth in the text of the sections in this chapter. For purposes of these sections, the singular means the plural, and the plural means the singular.

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For further information, please call
(512) 475-0155.

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Subchapter B. Responsibility and Authority of Local Building Officials, Council, and Department

★ 16 TAC §§70.10-70.13

The Texas Department of Labor and Standards adopts §§70.10-70.13, on an emergency basis, concerning the division of responsibility and authority between and among the local building official, the council, and the department, with regard to industrialized housing and buildings. The Act delineates different roles for local building officials, the council, and the department, which §§70.10-70.13 seek to define.

The sections are adopted on an emergency basis to protect the health, safety, and welfare of the modular housing consumer and industry in Texas. The sections adopted on an emergency basis were proposed for permanent adoption in the November 19, 1985, issue of the *Texas Register* (10 TexReg 4467).

§70.10. Intent. This subchapter implements the intent of the Act in the public interest for the division of responsibility and authority between and among the local building official, the council, and the department.

§70.11. Local Building Official. The local building official shall have the authority:

(1) to require and review, for compliance with the mandatory state codes, a set of design plans and specifications bearing the stamp of the council for the placement of industrialized housing or buildings within its jurisdiction;

(2) to require that all applicable local permits and licenses be obtained before any construction begins on a building site or before the placement of any module or modular component;

(3) to enforce the requirements of all local ordinances relating to land use and zoning, building setback, side and rear yard offsets, site planning, development, subdivision control, and landscape architectural requirements;

(4) to require that all modules or modular components have affixed the decal or insignia issued by the department;

(5) to witness in-plant inspections to make recommendations for inspection procedures to the council;

(6) to inspect all construction done at the site including the construction of the foundation system and the erection, assembly, and connection of the modules or modular components to the permanent foundation to assure compliance with the approved design package for industrialized housing or buildings to be sited within its jurisdiction;

(7) to perform an overall visual inspection for obvious nonconformity to the applicable code, to require final inspections

along with any tests which are approved by the council, and to require the correction of deficiencies identified by the tests or discovered in final inspections;

(8) to notify the commissioner of any damage to a module or modular component resulting from transportation to, or handling at, the building site which is not corrected by the builder; to notify the commissioner of any noncompliance to, or deviation from, the approved building system or applicable code; and to report to the commissioner any violation of these rules and regulations; these notices and reports shall be submitted by certified mail; and

(9) to petition the council to amend the mandatory state codes if the amendment is essential for the health and safety of the public on a statewide basis.

§70.12. Council. The council shall have authority to:

(1) establish the criteria for the qualification of third-party inspectors and design review agencies;

(2) approve or disapprove all applications to be an approved third-party inspector or design review agency;

(3) adopt and approve a stamp to be used by a design review agency or the department to certify that the design package meets or exceeds the requirements of the mandatory state codes;

(4) determine if amendments or revisions to the model codes as finally approved, respectively, by ICBO, SBCCI, or NFPA are in the public interest and consistent with the purposes of the Act; if so determined, to require that the mandatory state codes be amended accordingly;

(5) determine and resolve all questions relating to the design package concerning code equivalency or the use of alternate materials or methods of construction, from an engineering performance standpoint, to the standards and requirements of the mandatory state codes as may be submitted in writing by a local building official, the department, or a manufacturer;

(6) review a petition for amendment to the mandatory state codes submitted by a local building official and determine if the petition alleges sufficient facts or reasons as to why the amendment is essential in the public interest on a statewide basis; if not, reject the petition, or if so, request the commissioner to call a hearing to receive evidence for and against the proposed amendment; make a determination as to whether the amendment is essential for the health and safety of the public on a statewide basis; if not, reject the proposed amendment, or if so, adopt the amendment to become effective on a date certain;

(7) interpret these rules; and issue instructions for the inspection of both the in-plant and on-site construction of industrialized housing and buildings; and

(8) submit to the department for adoption and issuance any rules necessary

to implement the decisions, actions, and interpretations of the council.

§70.13. Department. The department shall have authority to:

(1) adopt rules and regulations and administrative orders as necessary to assure compliance with the Act and the actions and decisions of the council;

(2) set fees for registration, for inspections, for decals, insignia, and review time;

(3) evaluate, according to the council's criteria, the qualifications of third-party inspector and design review agencies, and then make recommendations to the council;

(4) publish a listing of all approved third-party inspectors and design review agencies;

(5) review (when the department acts as a design review agency) designs, plans, specifications, and documentation to determine compliance of the submitted building system with the mandatory state codes and these rules; and cause the stamp of the council to be placed on each page of such documentation that meets or exceeds the code standards and these rules and regulations;

(6) inspect the construction of industrialized housing or buildings, modules or modular components at the manufacturing facility and on-site construction in accordance with the Act and any inspection instructions of the council to assure compliance with the applicable mandatory codes; and

(7) monitor and evaluate the performance of third-party inspectors and design review agencies and make performance reports and recommendations to the council as may be necessary.

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(512) 475-0155.

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Subchapter C. Standards and Codes

★ 16 TAC §§70.20-70.22, 70.25-70.27

The Texas Department of Labor and Standards adopts §§70.20-70.22 and 70.25-70.27, on an emergency basis, concerning the mandatory building codes for manufacturing industrialized housing and buildings in Texas. The sections also detail amendments to model codes, use and construction of codes, alternate methods and materials, local amend-

ments, and the need for code uniformity and resolution of code conflicts.

The sections are adopted on an emergency basis to protect the health, safety, and welfare of the modular housing consumer and industry in Texas. The sections adopted on an emergency basis were proposed for permanent adoption in the November 19, 1985, issue of the *Texas Register* (10 TexReg 4468).

§70.20. Mandatory Codes. All industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes and their appendices:

(1) NFPA—National Electrical Code, 1984 Edition; and

(2) either:

(A) ICBO—Uniform Building Code, 1982 Edition; Uniform Mechanical Code, 1982 Edition; and Uniform Plumbing Code, 1982 Edition; or

(B) SBCCI—Standard Building Code, 1982 Edition; Standard Plumbing Code, 1982 Edition; Standard Mechanical Code, 1982 Edition; and Standard Gas Code, 1982 Edition.

§70.21. Amendments to Model Codes.

(a) The council shall consider and review all amendment(s) to these codes which are approved and recommended by ICBO or SBCCI, and if such are determined to be in the public interest, the amendment(s) shall be effective 180 days following the date of the council's determination or at such later date as set by the council.

(b) Any amendment proposed by a local building official and determined by the council following a public hearing to be essential to the health and safety of the public on a statewide basis shall become effective 180 days following the date of the council's determination or at such later date as set by the council.

§70.22. Use and Construction of Codes.

(a) The local building official shall advise the department in writing as to whether the municipality bases its code on the ICBO code group or the SBCCI code group. Any industrialized housing or building, module, or modular component, to be located within the jurisdiction of the municipality must be constructed to meet or exceed the standards and requirements of the model code referenced in this subchapter for the code group used by the municipality.

(b) If the industrialized housing or building, module, or modular component, is located either outside a municipality or in a municipality that does not base its code on the SBCCI or ICBO code groups, then the manufacturer may choose which of the two code groups with which the construction must comply. The manufacturer shall specify which of the two model code groups is applicable to the design package.

(c) The codes adopted in this subchapter shall be construed so as to conform

to the intent of the Act and of these rules and regulations. For example, where reference is made in any of the codes to the "building official," the "plumbing" or "mechanical" official, or the "administrative authority" or "enforcement official," such reference shall be construed pursuant to the Act and the sections in this chapter to mean, where applicable, the council or the local building official or the department.

§70.25. Alternate Methods and Materials.

(a) Alternate methods of construction or use of materials other than as certified by a registered professional engineer in accordance with performance criteria and standards pursuant to the mandatory codes set forth in this subchapter must be approved by the council.

(b) Manufacturers shall submit descriptions of alternate methods or materials required to be approved by the council to the commissioner for consideration by the council. The submittal shall include 15 legible copies of drawings, specifications, and substantiating evidence for each such alternate method or material.

§70.26. Local Amendments. A local building official or municipality shall not require or enforce any amendments to the mandatory codes, set forth in this subchapter, as a prerequisite for granting or approving any local building or construction permits or certificates of occupancy.

§70.27. Uniformity and Conflicts. A municipality or local building official shall reasonably and uniformly apply and enforce all local ordinances and regulations without distinction as to whether the housing or buildings are manufactured (industrialized) or are constructed on-site. Any local requirements, regulations, or ordinances which are in conflict with the Act, or other state law relating to the transportation, on-site construction, or use of industrialized housing or buildings, shall not be enforced.

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(512) 475-0155.

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Subchapter D. Administration and Enforcement

★ 16 TAC §§70.30-70.42

The Texas Department of Labor and Standards adopts §§70.30-70.42, on an emergency basis, concerning compliance required, right of entry, registration requirements, approval of design review agencies and third-party inspectors, review and approval of designs and plans, compliance assurance program, on-site construction specifications on documentation, plant certification, in-plant inspections, building site inspections, manufacturers data plate, decals and insignia, and delivery to other states.

The sections are adopted on an emergency basis to protect the health, safety, and welfare of the modular housing consumer and industry in Texas. The sections adopted on an emergency basis were proposed for permanent adoption in the November 19, 1985, issue of the *Texas Register* (10 TexReg 4469).

§70.30. Compliance Required.

(a) No person shall construct, sell, lease, offer to sell or lease, any industrialized housing or buildings, modules, or modular components, in violation of the Act or of the rules, regulations, or administrative orders promulgated by the department.

(b) Manufacturers and builders as defined in §70.4. of this title (relating to Definitions) shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department and before receiving a certificate of registration.

§70.31. Right of Entry.

(a) Department personnel may enter any business establishment to review applicable and relevant documents and records to determine if any person is violating the Act or the rules and regulations of the department.

(b) The department is authorized to enter at reasonable times and without advance notice any manufacturing facility, warehouse, establishment, or location of any person to make any inspections and review records for necessary corrective actions that are reasonably required to determine whether the person is in compliance with the Act and the rules, regulations, and administrative orders promulgated by the department.

§70.32. Registration Requirements.

(a) A manufacturer, as defined in this chapter, shall not engage in business in this state prior to being issued a manufacturer's certificate of registration. A builder, as defined in this chapter, shall not engage in business in this state prior to being issued a builder's certificate of registration.

(b) An application for registration shall be submitted to the department on a form and shall contain such information as

may be required by the department. The application must be verified under oath by the owner of a sole proprietorship, the managing partner of a partnership, or the chief executive or chief operating officer of a corporation. The application must be accompanied by the fee set forth in §70.52. of this title (relating to Fees).

(c) The registration shall be for twelve months and must be renewed annually. Every corporate entity must be separately registered. Each separate manufacturing facility must be registered; a manufacturing facility is separate if it is not on property which is contiguous to a registered manufacturing facility. A builder must register each separate office but is not required to register each job location.

(d) A registered manufacturer or builder shall notify the department in writing within 10 days of any of the following occurrences:

- (1) the corporate or firm name is changed;
- (2) the main address of the registrant is changed;
- (3) there is a change in 25% or more of the ownership interest of the company within a twelve month period;
- (4) the location of any manufacturing facility is changed;
- (5) a new manufacturing facility is established; or
- (6) there are changes in principal officers of the firm.

(e) Design review agencies and third-party inspectors must register with the department in accordance with §70.33 of this title (relating to Approval of Design Review Agencies and Third-Party Inspectors).

(f) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be cancelled and the registration revoked or suspended for any violation of the Act, violation of the rules and regulations in this chapter or administrative orders of the department, or violations of the instructions and determinations of the council in accordance with Subchapter G of this chapter.

§70.33. *Approval of Design Review Agencies and Third-Party Inspectors.*

(a) Pursuant to the criteria established by the council, the department will recommend design review agencies and third-party inspectors to the council for approval. An application for approval shall be submitted in writing to the department for consideration and recommendation to the council. The application shall be on the form and contain such information as may be required by the council.

(b) If the application is approved by the council, it shall be filed with the department as the registration of the applicant as a design review agency or a third-party inspector to perform specific functions. This registration shall be a continuous registra-

tion so long as the information required by this section is updated in accordance with subsection (e) of this section and the annual fee is paid. The department shall issue a certificate of registration which shall contain the specific functions which the registrant is approved to perform; it shall be valid for a 12-month period on receipt of the application and the registration fee by the department.

(c) Design review agencies and third-party inspectors shall notify the department in writing within 10 days of any of the following occurrences:

- (1) the name of the registrant is changed;
- (2) the address of the registrant is changed;
- (3) if a partnership or corporation is created or exists, there is a change in 25% or more of the ownership of the business entity within a twelve month period; or
- (4) there are changes in principal officers or key supervisory personnel of the business entity.

(d) In the event a third-party inspector or design review agency is not approved, the department shall return one complete application to the applicant with a written explanation attached thereto setting forth the reasons of the council for such disapproval.

§70.34. *Review and Approval of Designs and Plans.*

(a) An approved design review agency or the department shall review all designs, plans, specifications, calculations, compliance assurance programs, on-site construction documentation or specifications, and other documents as necessary to assure compliance with the mandatory construction codes in accordance with the interpretations, instructions, and determinations of the council. The department or design review agency will obtain from the manufacturer such information as is reasonably necessary to assure that the manufacturer's designs and procedures are in compliance with the mandatory codes and the sections in this chapter.

(b) All documents shall have all pages numbered and arranged in accordance with a table of contents and to the extent practical, they shall be on 8½ inch by 11 inch pages. The floor plans shall have no scale smaller than 1/8th inch equals one foot. All documents shall be identified to indicate the manufacturer's name and address. A rectangular blank space shall be provided on all documents for the council's stamp of approval, and all documents shall be dated by the manufacturer.

(c) The manufacturer shall provide the design review agency a design package which must, at the minimum, contain the following:

- (1) specifications and/or detail drawings for all materials, devices, appliances, equipment, and fasteners used in construction;

(2) detailed drawings of all assemblies and components (with cross-sections as necessary to identify major building components);

(3) floor plans for all models and options;

(4) electrical schematics for all models and options;

(5) water system and drain waste vent system drawings for all models and options;

(6) gas piping system drawings for all models and options;

(7) mechanical system drawings for all models and options;

(8) fire protection, fire safety, and exit details;

(9) thermal resistance details;

(10) heating, ventilation, and air conditioning details;

(11) structural, thermal, and electrical load calculations;

(12) weather resistance details;

(13) condensation protection details;

(14) decay protection details;

(15) insect and vermin protection details;

(16) fastening schedule; and

(17) assembly and connection instructions for all components, materials, devices, equipment, and appliances.

(d) The manufacturer shall also provide the design review agency a compliance assurance manual and on-site construction documentation or specifications in accordance with §70.35 of this title (relating to Compliance Assurance Program) and §70.36 of this title (relating to On-Site Construction Specifications or Documentation).

(e) The department or design review agency will signify approval of a drawing, specification, calculation, or other document by application of the stamp of the council to each page thereof. The manufacturer and the design review agency (or department) must keep copies of the approved documents. The manufacturer must make a copy available to the person performing in-plant inspections. A design review agency will forward one approved copy of the design package, including additions and revisions, to the department within five days of approval and will return one approved copy to the manufacturer.

(f) The department (when acting as a design review agency) or a design review agency may withdraw the approval of any document whenever the approval is later found to be in violation of code requirements or the rules and regulations in this chapter. Notice of such withdrawal of the approval shall be in writing with the reasons for such withdrawal set forth therein.

§70.35. *Compliance Assurance Program.*

(a) The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part

of such construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance assurance program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance assurance program shall be documented in the form of a manual which must be approved by the design review agency.

(b) The compliance assurance manual shall include at least the following:

- (1) table of contents;
- (2) a chart indicating the manufacturer's organizational structure to assure compliance and to assure that the compliance assurance staff shall maintain independence from the production personnel;
- (3) a statement which defines the obligation, responsibility, and authority for the manufacturer's compliance assurance program;
- (4) identification of compliance assurance personnel, their accountability by position, responsibility for inspections, method of marking nonconformances observed, and system for assuring corrections are made;
- (5) materials handling methods, including inspection checklists, for receiving materials and methods for marking and removing rejected materials both, upon receipt and from the production line. The area for rejected materials must be clearly indicated to assure that such material is not used;
- (6) a description of an identification system to mark each individual module, modular component, or group of related components at the first stage of production to assure appropriate inspection and rechecking of any deviation corrections;
- (7) a diagram of the manufacturing sequence with the plant layout, including a description of the activities to be performed along with a listing of those which may be performed at one or more stations;
- (8) an inspection checklist including:
 - (A) a list of inspections to be made at each production station; and
 - (B) accept/reject criteria (i.e., each significant dimension and component should be given tolerances);
- (9) step-by-step test procedures and a description of the station at which each production test will be performed including, where applicable:
 - (A) dielectric test, continuity test, polarity test, electrical operational test, gas supply pressure tests, water supply pressure tests, and drain-waste-vent system tests;
 - (B) description of required testing equipment; and
 - (C) procedures for periodic checking, recalibration, and readjustment of test equipment.

(10) storage procedures for completed structures at the plant and for any other locations prior to installation;

(11) statement indicating the person who is responsible for compliance assurance at each manufacturing facility and who will assume responsibility for decals and insignia, their application, and the reporting procedure;

(12) procedure for maintaining reliable, retrievable records of the inspections performed, decal and insignia numbers assigned, the deficiencies and how they were corrected, and the site to which the modules or modular components were transported;

(13) procedures and information to demonstrate how the modules and modular components are to be transported to the building site so that damage will not occur or that compliance deviations will not result. (Actual transportation without damage or deviation is evidence sufficient to justify the method.)

§70.36. *On-Site Construction Specifications or Documentation.*

(a) All work to be performed on the building site shall be specifically identified and distinguished from construction to be performed in the manufacturing facility, i.e., assembly and connection of all modules, modular components, systems, equipment, and appliances and attachment to the foundation system. The work to be performed on-site shall be described in detail in documents (architectural sheets, specifications, instructions, etc.) which shall be made available to the builder and the inspector at the building site.

(b) The on-site construction documentation must contain (but is not limited to) the following:

- (1) foundation system designs for all models in accordance with the applicable mandatory state code;
- (2) details for module to module or modular component assembly and connection;
- (3) details for connection and attachment of all modules and modular components to the foundation system;
- (4) fastening and draftstopping details;
- (5) details for fire exits, balconies, walkways, and other site-built attachments;
- (6) exterior weatherproofing details;
- (7) details for thermal, condensation, decay, corrosion, and insect protection;
- (8) electrical, mechanical, heating, cooling, and plumbing system completion details;
- (9) electrical, mechanical, heating, cooling, and plumbing system test procedures;
- (10) fire safety provisions;
- (11) compliance assurance checklist for the preceding requirements; and
- (12) specifications and instructions for cooling equipment, and complete infor-

mation necessary to calculate sensible heat gain along with information on the sizing of the air distribution system, if applicable, and the R values of insulation in the ceiling, walls, and floor.

(c) If the typical foundation drawing in the on-site construction documentation is not suitable for a specific site, or if the structure is only partially constructed of modular components, or if the builder will add unique on-site details, a registered professional engineer (or architect for one and two family dwellings and buildings having one story and a total floor area of 5,000 square feet or less) shall design and stamp the unique foundation drawings or on-site details and no review by a design review agency is needed nor required.

§70.37. *Plant Certification.*

(a) Prior to being issued decals or insignia, each manufacturing facility will undergo a certification inspection. A representative of the design review agency must be present during the manufacturer's certification inspection. The plant certification will be conducted by a team of one or more department inspectors or, when designated by the department, third-party inspectors. The purpose of the plant certification inspection will be to assure that the compliance assurance program in the manufacturing facility is capable of producing structures in compliance with the approved design package. The team will become familiar with all aspects of the manufacturer's approved design package. Structures on the production line will be checked to assure that failures to conform located by the inspection team are being located by the plant quality control program and are being corrected by the plant personnel. The inspection team will work closely with the plant quality control personnel to assure that the approved design package and compliance assurance manuals for that facility are clearly understood and are being followed. The plant certification inspection will terminate when the inspection team has fully evaluated all aspects of the manufacturing facility. At least one module or modular component containing all systems, or a combination of modules or modular components containing all systems, shall be observed during all phases of construction. The team must inspect all modules or modular components in the production line during the certification.

(b) Following completion of the plant certification inspection, the team will issue a plant certification report. The plant certification report will contain the following:

- (1) name and address of manufacturer;
- (2) names and titles of personnel performing the certification inspection;
- (3) serial or identification numbers of the modules or modular components inspected;
- (4) a list of nonconformances observed on the modules or modular compo-

nents inspected (with appropriate design package references) and corrective action taken in each case;

(5) a list of deviations from the approved compliance assurance procedures (with section or manual references) observed during the certification with the corrective action taken in each case;

(6) date of certification;

(7) the following statement;

This report concludes that (name of agency), after evaluating the facility, certifies that (name of factory) of (city) is capable of producing (industrialized housing and buildings or modular components) in accordance with the approved building system and compliance assurance manuals on file in the manufacturing facility and in compliance with the requirements of the Texas Industrialized Building Code Council.

(8) signature of the inspection team leader.

(c) If during the certification inspection, the manufacturer is judged not capable of building structures in compliance with the approved design package and compliance assurance manual, the agency will issue a deviation report. The deviation report will detail the specific areas in which the manufacturer was found to be deficient and will make recommendations for improvement. The certification inspection will continue from the date of the report until all certification requirements are met or 45 days, whichever comes first.

(d) A manufacturing facility which was registered with the department for the construction of modular homes on September 1, 1985, and which had previously been issued a plant certification report, shall not be required to have an additional certification inspection in order to receive decals and insignia.

§70.38. *In-Plant Inspections.*

(a) The department shall conduct announced and unannounced inspections at the manufacturing facility at reasonable, but varying, intervals to review any and all aspects of the manufacturer's production and compliance assurance program. In order to determine if the compliance assurance program is working as set forth in the compliance assurance manual, inspection of every visible aspect of every module or modular component shall be made at least at one point during the manufacturing process.

(b) Inspections at the manufacturing facility shall be increased in frequency as may be necessary for the department inspectors to assure that the manufacturer is performing in accordance with the approved compliance assurance manual.

(c) The department, in its discretion, may require or may authorize upon written request by the manufacturer, the use of third-party inspectors approved by the council to perform in-plant inspections subject to the sections in this chapter and to monitoring by department personnel.

§70.39. *Building Site Inspections.*

(a) When the building site is within a municipality which has a building inspection agency or department, the local building official will inspect all on-site construction done at the site and the attachment of the structure to the permanent foundation to assure completion and attachment in accordance with the design package, the on-site construction documentation, and any unique foundation system or on-site detailed drawings.

(b) When the building site is outside a municipality, or within a municipality which has no building department or agency, the department or third-party inspectors will perform the required inspections. The builder may elect to utilize the services of the department or third-party inspectors approved by the council for the on-site construction inspections at any building site; the election must be made in writing to the commissioner. The builder may utilize the services of the department on one or more projects and utilize third-party inspectors on other projects; however, the election may not be changed once made for a particular project at the building site except with written approval of the department.

(c) If the design package has the stamp of the council on each page, if the foundation drawing has been approved by a registered architect or engineer, and if the module, modular components, and components have the decal or insignia affixed thereto, the local building official, third-party inspector, or the department shall not stop assembly, connection and on-site construction except for deviations from, or non-conformance to, the approved design package, on-site construction documentation, or any unique foundation system or on-site detailed drawings.

(d) Destructive disassembly shall not be performed at the site in order to conduct tests or inspections, nor shall there be imposed standards or test criteria different from those approved by the council. Non-destructive disassembly may be performed only to the extent of opening access panels and cover plates.

(e) If a structure, or any part thereof, is found by the inspector at the building site to be in violation of the approved design package, the inspector shall immediately post a deviation notice and notify the builder. The builder after making corrections as necessary to bring the unit into compliance shall request an inspection, either by the department or the on-site inspector. If the deviation is not corrected, then no certificate of occupancy shall be issued.

§70.40. *Manufacturer's Data Plate.*

(a) The manufacturer will permanently attach a data plate to each dwelling unit of a residential structure and to each appropriate unit of a commercial structure. The data plate will be placed on or near the electrical distribution panel or in some other

easily accessible location as designated in the approved design package.

(b) The data plate must contain the following information:

(1) manufacturer's name and address;

(2) serial or identification number of the unit;

(3) decal and insignia numbers;

(4) name and date of applicable codes;

(5) manufacturer and model designation of major appliances;

(6) identification of permissible type of gas for appliances;

(7) maximum live load (floor) (psf);

(8) maximum snow load (roof) (psf);

(9) maximum wind load (psf);

(10) seismic zone;

(11) heating, ventilation, and air-conditioning (HVAC) design temperatures;

(12) occupancy/use group type;

(13) construction type.

§70.41. *Decals and Insignia.*

(a) Decals are used for module certification, and insignia are used for modular component certification. The department will issue decals and insignia to the manufacturer on application and payment of the fee therefor following certification of the manufacturing facility. Each module or modular component of industrialized housing or buildings shall have the decal or insignia, respectively, affixed thereto before leaving the manufacturing facility. The decal or insignia shall be placed in a visible location as set forth in the approved design package and in the on-site construction documentation and shall be permanently attached so that it cannot be removed without destruction.

(b) Each decal or insignia shall be assigned to a specific module or modular component and the manufacturer shall keep records as necessary to show, by decal or insignia number, the module or modular component (by identification number) to which the decal or insignia was assigned. The manufacturer shall keep complete records of all decals and insignia received, decals and insignia used, and that which is on-hand. These records shall be made available to the department or in-plant inspector on request. Assigned decals or insignia are not transferrable and are void when not affixed as assigned. All decals or insignia which are voided must be returned to, or shall be confiscated by, the department.

(c) By affixing the decal and insignia, the manufacturer certifies that the module or modular component is constructed in accordance with the approved design package.

(d) The control of the decals and insignia shall remain with the department. Should inspection reveal that the manufacturer is not constructing structures or any portion thereof in accordance with the approved design package, the manufacturer

will be notified of the specific deviations. Such shall be corrected at a point in the construction process before the deviation is covered up or hidden by additional construction; otherwise, the department (or third-party inspector) shall confiscate any decals or insignia previously issued and presently on-hand at the manufacturing facility. In addition, new decals or insignia will not be issued until the manufacturer has shown proof of compliance.

§70.42. Delivery to Other States.

(a) Industrialized housing or buildings designed and constructed by a manufacturer in this state for delivery and placement on a building site in another state are not subject to the sections in this chapter. The manufacturer shall notify the department in writing prior to the construction of any modules or modular components designed for out-of-state delivery.

(b) The manufacturer of industrialized housing or buildings designed and constructed for delivery and placement in another state may, however, elect to build such structures in accordance with the sections of this chapter by notifying the department in writing.

(c) A manufacturer engaged exclusively in constructing industrialized housing or buildings in this state for delivery to another state is subject to the registration requirements expressly set forth in §70.32 of this title (relating to Registration Requirements).

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Subchapter E. Fees and Reports

★ 16 TAC §§70.50-70.52

The Texas Department of Labor and Standards adopts §§70.50-70.52, on an emergency basis, concerning fees and reports. Section 70.52 provides fees to be assessed by the department to persons engaged in industrialized housing and buildings activities in Texas. Section 70.50 sets out the monthly reports required of manufacturer and builder registrants. Section 70.51 sets out the reports required of third-party inspectors.

The sections are adopted on an emergency basis to protect the health, safety, and welfare of the modular housing consumer and industry in Texas. The sections adopted on an emergency basis were proposed for permanent adoption in the November 19, 1985, Issue of the *Texas Register* (10 TexReg 4473).

§70.50. Manufacturer and Builder Monthly Reports.

(a) A monthly report shall be submitted to the department by the manufacturer on a form or in the format required by the department of all industrialized housing, buildings, modules, and modular components which were constructed and to which decals and insignia were applied during the month. The report must state the name and address of the builder (or other person) to whom the structures, modules, or modular components were sold, consigned, or shipped. If any of such units were produced and stored, the report must state the place and location of storage. The report shall also contain:

- (1) the serial or identification number of the unit;
- (2) the decal and insignia numbers assigned to each identified unit;
- (3) the registration number of the builder (as assigned by the department) to whom the units were sold, consigned, and shipped;
- (4) the building site location to which any units were shipped; and
- (5) an identification as to the type of structure for which the units are to be assembled and installed, i.e., single family residence, duplex, two-story motel, 75-unit three-story apartment, etc.

(b) Each builder shall submit to the department a monthly report on a form or in the format required by the department which shall contain:

- (1) the specific address and location of each building site on which the builder has performed any on-site construction work during the month;
- (2) identification of the city and the number and description of any building permit issued by the city to the builder during the month;
- (3) the decal and insignia numbers and unit identification number of all modules or modular components assembled or installed at a building site during the month;
- (4) the location and description of the type of structure for which a certificate of occupancy was issued during the month; and
- (5) such other information as the department may require on the form or by separate instruction letter.

(c) The manufacturer's and builder's monthly reports must be filed with the department no later than the 10th day of the following month.

§70.51. Third-Party Inspection Reports.

(a) When performing in-plant inspections at a manufacturing facility or performing inspections at the building site, the third-party inspector must file reports on the forms and in the format as the department may require by written instruction (in accordance with any requirements set by the council).

(b) The reports must be filed with the department each week or at such other in-

tervals as the department may require pursuant to instructions of the council.

§70.52. Fees.

(a) The manufacturer's registration fee is \$1,000 annually.

(b) The builder's registration fee is \$500 annually.

(c) The design review agency's registration fee is \$200 annually.

(d) The third-party inspector's registration fee is \$100 per firm and \$100 per inspector, annually.

(e) The registration fee shall be paid prior to the issuance of the certificate of registration and annually thereafter.

(f) The fee for department personnel for in-plant inspections at a manufacturing facility shall be \$25 per inspector-hour for all inspections including plant certification inspections, varying interval inspections to monitor the manufacturer's compliance assurance program, and for increased frequency inspections. The department will give a monthly statement to the manufacturer, and it must be paid within 15 days from the date of the statement.

(g) When the department acts as a design review agency, the fee for such services is \$35 per engineer-hour. The fee shall be paid by the manufacturer for whom the services are offered prior to the approval of the designs, plans, specifications, compliance assurance, and installation manuals and the release of the documents to the manufacturer.

(h) The fees for the issuance of decals and insignia are as follows:

- (1) \$20 per decal for each module;

or

- (2) \$10 per insignia for each modular component or for each group of related components.

(i) The fee for department personnel for building site inspections is as follows and shall be paid within 15 days from the date of the department's statement:

- (1) a minimum fee of \$50 per inspector for each day in which any inspections are performed at the site; and
- (2) a maximum of \$100 per inspector per day or \$15 per inspector-hour whichever is less.

(j) The department (as is the case for third-party inspectors) may agree to a reasonable maximum inspection fee per unit or structure based on the number of inspections estimated to be necessary to assure compliance.

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Subchapter F. General and Miscellaneous

★ 16 TAC §§70.101-70.105

The Texas Department of Labor and Standards adopts new §§70.101-70.105, on an emergency basis, concerning miscellaneous activities in industrialized housing and buildings which require regulation such as compliance disputes, alterations, or deviations of design plans, selection of design review agencies, owner information, and proprietary information.

The sections are adopted on an emergency basis to protect the health, safety, and welfare of the modular housing consumer and industry in Texas. The sections adopted on an emergency basis were proposed for permanent adoption in the November 19, 1985, issue of the *Texas Register* (10 TexReg 4474).

§70.101. Design Review Agency Selection. The manufacturer must select either the department or a council-approved design review agency to perform all required review and evaluation of plans, designs, specifications, compliance assurance, and on-site construction documentation, etc. This election shall be made in writing to the commissioner and, if an agency other than the department is selected, the written election will state the name, address, and registration number of the design review agency selected.

§70.102. Compliance Disputes.

(a) Any dispute, disagreement, or difference of opinion as to whether the approved design package meets or exceeds the requirements of the mandatory building codes set forth in this chapter between the design review agency (or department when acting as a design review agency) and a local building official shall be resolved by the council. The decision or determination by the council shall be timely made and shall be binding on all parties.

(b) If the local building official is of the opinion that the approved design package and on-site construction documentation does not meet the code requirements of this chapter, this opinion shall be forwarded in writing to the commissioner for submission to the council within five working days following the filing of an application for a building permit. This written opinion shall set forth specifically those sections of the codes for which the noncompliance allegedly exists and the specific reasons the local building official is of the opinion that the design package and on-site construction documentation fail to meet the requirements of such code sections. The local official shall submit 15 copies of the written opinion to the commissioner. Once a local building permit is issued, the local building official shall not stop any on-site construction due to questions about the approved

design package or on-site construction documentation.

(c) If a dispute or difference of opinion arises between the manufacturer and the department or third-party inspector during an in-plant inspection as to whether the construction meets or exceeds the approved design package, the dispute or difference shall be forthwith resolved by the commissioner.

(d) If a dispute or difference of opinion arises between the builder and a local building official or third-party inspector (or the department when acting as a building site inspector) as to whether the on-site construction meets or exceeds the approved design package and on-site construction documentation or unique foundation system, the dispute or difference of opinion shall be forthwith resolved by the commissioner.

§70.103. Alterations or Deviations. The builder shall not alter nor deviate from the approved design package and on-site construction documentation unless approved by the design review agency or the council. Unique foundation drawings and on-site details are subject §70.36(c) of this title (relating to On-Site Construction Specifications or Documentation).

§70.104. Owner Information.

(a) The builder shall provide the purchaser (owner) of any industrialized housing or building the following information:

- (1) the name, location, and address of the manufacturer and builder;
- (2) description of the location of the data plate and explanation of the information thereon;
- (3) floor plan of the structure; and
- (4) drawings of the plumbing, electrical, and heating/ventilation systems.

(b) The builder must have written proof that the information in subsection (a) of this section was delivered to the purchaser (owner) and keep such proof in the builder's files for a period of two years.

§70.105. Proprietary Information Protected.

(a) All designs, plans, specifications, compliance assurance programs, manual, on-site construction instructions and documentation, information relating to alternate methods or materials, or any other documents submitted by a manufacturer to a design review agency, the council, the department, or local building official is proprietary information and shall only be used for purposes of assuring compliance with the provisions of the Act and this chapter.

(b) The items and information set forth in subsection (a) of this section furnished by the manufacturer to a design review agency, the council, the department, or local building official, shall not be copied or distributed to any other person except with the written permission of the manufacturer.

(c) This section is subject to applicable law relating to public records as set

forth in Texas Civil Statutes, Article 6252-17a.

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Subchapter G. Sanctions and Penalties

★ 16 TAC §70.125, §70.126

The Texas Department of Labor and Standards adopts §70.125 and §70.126, on an emergency basis, concerning sanctions and penalties. The sections provide for penalties and injunctions and refusal, revocation, or suspension of registrations which violate the Act or its rules.

The sections are adopted on an emergency basis to protect the health, safety, and welfare of the modular housing consumer and industry in Texas. The sections adopted on an emergency basis were proposed for permanent adoption in the *Texas Register* (10 TexReg 4475).

§70.125. Civil Penalties and Injunctions.

(a) No person shall construct, sell or offer to sell, lease or offer to lease, or transport over the roads, streets, or highways of this state, any industrialized housing or buildings, modules or modular components, in violation of the Act or the rules, regulations, or administrative orders of the department.

(b) Any person who violates any provision of the Act or of the rules, regulations, or administrative orders of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper.

(c) Whenever it appears that any person has violated, or is about to violate, any of the provisions of the Act or of the rules, regulations, or administrative orders of the department, the attorney general may cause a civil suit to be instituted either for appropriate injunctive relief or for the assessment and recovery of the civil penalty or for both. Civil suits filed pursuant to this section shall be filed in a district court in Travis County, Texas.

(d) A person who knowingly and willfully violates any provision of the Act or of any published rule, regulation, or administrative order of the department commits a Class A misdemeanor.

§70.126. Refusal, Revocation, and Suspension of Registration.

(a) Violations. The commissioner, after notice and hearing, may refuse to issue

or may permanently revoke or suspend for a definite period of time and for a specified geographic area or location, any certificate or registration if the commissioner finds that the applicant or registrant:

(1) furnished false information on any application, report, or other document filed with the department;

(2) failed to pay any fee or to furnish or file any reports required by the department for the administration and enforcement of the Act or this chapter;

(3) engaged in any false, misleading, or deceptive acts or practices as those terms are set forth in and as those acts are declared unlawful by the provisions of Business and Commerce Code, Chapter 17, Subchapter E; or

(4) violated any provision of the Act or any rule, regulation, or administrative order made or issued by the department in, or pursuant to this chapter, or any decisions, actions, or interpretations of the council.

(b) Hearings.

(1) A formal complaint must be filed by addressing a written complaint to the commissioner. The complaint must set forth the specific acts or omissions of the registrant which are alleged to constitute the basis of the refusal, denial, or suspension. The commissioner will forward a copy of the complaint to the registrant. The registrant may respond in writing to the complaint within 20 days following its receipt.

(2) If the commissioner believes that just cause may exist, a hearing will be held pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, to show cause why the registration should not be refused, revoked, or suspended for a time certain. Following the hearing, the commissioner shall make a final decision as to the denial of the application or as to the revocation or suspension for a time certain of the registration and shall issue an appropriate order.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 123. Respiratory Care Practitioner Certification

★ 25 TAC §§123.1-123.14

The Texas Department of Health adopts on an emergency basis new §§123.1-123.14, concerning the certification and regulation of persons practicing respiratory care. The new sections are intended to implement Senate Bill 1007, 69th Legislature, 1985, concerning the certification of respiratory care practitioners. The new sections cover fees, application qualifications and procedures, types of certificates and permits issued, examinations, certificate renewal, a code of ethics, certifying persons with criminal backgrounds to be respiratory care practitioners and violations, complaints and subsequent actions.

The new sections are adopted on an emergency basis because Senate Bill 1007, 69th Legislature, 1985, requires the department to establish, by rule fees, application procedures and related requirements by January 1, 1986. Therefore, to implement this statutory requirement by January 1, 1986, the Board of Health is adopting these new sections on an emergency basis.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4512l, §3, which provide the Board of Health with the authority to adopt rules to implement the new law and establish the minimum standards for issuing, renewing, suspending, or revoking any temporary permit or any certificate; Article 6252-13a, §5(d), which authorize state agencies to adopt emergency rules; and Article 6252-13d, §4, which authorize state agencies to adopt rules covering the eligibility of persons with criminal backgrounds for certain occupations, professions, and licenses.

§123.1. Purpose and Scope.

(a) Purpose. These sections are intended to implement the provisions of Texas Civil Statutes, Article 4512l (Senate Bill 1007, 69th Legislature, 1985), concerning the regulation and certification of respiratory care practitioners.

(b) Scope. These sections cover definitions; the Advisory Board's operation; fees; exceptions to certification; application requirements and procedures; types of certificates, temporary permits and temporary certificates, and applicant eligibility; examination; certificate renewal; continuing education requirements; changes of name or address; professional and ethical standards; certifying or permitting persons with criminal background to be respiratory care practitioners; violations, complaints, and subsequent actions.

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

AART—The American Association for Respiratory Therapy or its successor organization.

Act—Texas Civil Statutes, Article 4512l (Senate Bill 1007, 69th Legislature, 1985).

Administrator—The department employee designated as the administrator of certification activities authorized by the Act.

Advisory board—The Respiratory Care Practitioners Advisory Board.

Aides/orderlies—Health workers who perform routine tasks such as transportation patients, assembling treatment equipment, preparing work areas, assisting with predetermined segments of patient-related activities, and other assigned duties. Aides/orderlies do not practice respiratory care.

AMA—The American Medical Association.

Applicant—A person who applies to the Texas Department of Health for a certificate, temporary permit, or temporary certificate.

Appropriate educational agency—The Texas Education Agency or other governmental agency authorized by law or statute to approve educational institutions and curriculum, or an educational accrediting body of a professional organization, such as CAHEA or its successor organization.

BME—Texas State Board of Medical Examiners.

Board—The Texas Board of Health.

CAHEA—Committee on Allied Health Education and Accreditation of the American Medical Association.

Certificate—A respiratory care practitioner certificate issued by the Texas Department of Health.

Commissioner—The commissioner of the Texas Department of Health.

Delegated authority—As defined in rules promulgated by the BME in 22 TAC §§193.1-193.6 (relating to Standing Delegation Orders).

Department—The Texas Department of Health.

Diagnostic—Of or relating to or used in the art or act of identifying a disease or disorders.

Formally trained—Training in respiratory care procedures as established by the scope of practice defined in the statute regulating nursing, vocational nursing, physical therapy, or other appropriate statutorily regulated health profession, or attested to by a qualified medical director or a physician licensed by and in good standing with the BME.

NBRC—The National Board for Respiratory Care, Inc., or its successor organization.

Palliative—Serving to moderate the intensity of pain or other disease process.

Practice—Engaging in respiratory care as a clinician, educator, or consultant.

Practitioner—A person who holds a certificate, temporary certificate, or temporary permit issued under this Act to practice respiratory care.

Qualified medical director—The medical director for respiratory care for any inpatient or outpatient respiratory care service, department, or home health care agency, who is a physician licensed and in good standing with the BME, and who has special interest and knowledge in the diagnosis and treatment of respiratory care problems. This physician must be a member of the active medical staff of a Texas licensed health care facility.

Respiratory care—The treatment, management, control, diagnostic evaluation, and care of patients who have deficiencies and abnormalities associated with the cardiorespiratory system.

Respiratory care educational program—An AMA approved program in respiratory care.

Respiratory care practitioner (R.C.P.)—A person certified under this Act to practice respiratory care.

Respiratory care procedure—Respiratory care provided by the therapeutic and diagnostic use of medical gases, humidifiers, and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring the cardiorespiratory system.

Respiratory therapist—A person certified under this act to practice respiratory care.

Temporary certificate—A certificate which expires August 31, 1987, issued to a person who is practicing respiratory care under the direction of a qualified medical director or other licensed physician, and who is not registered or certified by the NBRC.

Temporary permit—Effective January 1, 1987, a permit issued for a period of six months to a person who has successfully completed all requirements for certification except for the examination prescribed by the board. The temporary permit may be extended pending re-examination.

Therapeutic—Of or relating to the treatment of disorders by remedial agents or methods.

§123.3. *The Advisory Board's Operation.*

(a) Purpose. This section sets out the organization and administration and other general policies governing the operation of the advisory board.

(b) Officers.

(1) Chairperson. The chairperson shall preside at all advisory board meetings at which he or she is in attendance and perform all duties prescribed by these sections.

(2) Vice-chairperson.

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

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

(c) Elections.

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

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

(d) Committees.

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

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

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

(4) Committees shall direct all reports or other materials to the administrator for distribution.

(5) Committees shall meet when called by the chairperson of the committee or when so directed by the advisory board.

(e) Meetings.

(1) The advisory board shall hold at least one meeting each calendar quarter and additional meetings as necessary to transact its business at such designated date, place, and time as may be determined by the chairperson, with the concurrence of the department.

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

(f) Quorum. A quorum of the advisory board necessary to transact official business is five members.

(g) Transaction of official business.

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

(2) Advisory board action shall require a majority vote of those members present and voting.

(3) Roberts Rules of Order Revised shall be the basis of parliamentary decisions except where otherwise provided by these sections.

(h) Agendas.

(1) The administrator shall prepare and submit to each member of the advisory board, at least five days prior to each meeting, an agenda which includes items requested by members; items requested by the board, the department, or the administrator; items required by law; old business; and other matters of advisory board business.

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

(i) Minutes.

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

(2) After approval by the advisory board, the minutes are official only when affixed with the original signatures of the advisory board chairperson and the administrator.

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

(j) Attendance.

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

(2) Except in case of emergency, advisory board members shall notify the administrator at least 48 hours prior to the scheduled meeting if they are unable to be present.

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

(k) Reimbursement for expenses.

(1) An advisory board member is entitled to a per diem payment at the rate set by the legislature for state employees in the latest General Appropriations Act passed by the Texas Legislature.

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

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

(4) Requests for out of state travel for advisory board activities must be approved in advance by the department on appropriate forms.

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

(l) Policy against discrimination. The advisory board shall make no decision in the discharge of its statutory authority with regard to any person's race, creed, sex, religion, color, national origin, geographical distribution, age, physical condition, or economic status.

§123.4. Fees. The following fees are prescribed by the board and are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check and/or money order and are non-refundable.

(1) Schedule of fees for certification as a respiratory care practitioner:

(A) application processing fee—\$30;

(B) certification fee—\$30 (prorated at \$2.50 per month);

(C) renewal fee—\$30;

(D) sixty-day reinstatement fee—\$30 (plus all unpaid renewal fees when the certificate is renewed within 60 days of expiration);

(E) one hundred twenty day reinstatement fee—\$45 (plus all unpaid renewal fees when the certificate is renewed within 120 days of expiration);

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

(G) NBRC examination—the fee designated by the NBRC at the time of examination or re-examination.

(2) Schedule of fees for a temporary permit as a respiratory care practitioner (effective November 16, 1986):

(A) application processing fee—\$30;

(B) temporary permit fee—\$15;

(C) temporary permit extension fee—\$15; and

(D) temporary permit replacement fee—\$10.

(3) Schedule of fees for a temporary certificate (for persons making application to the department on or before November 16, 1986):

(A) application processing fee—\$30;

(B) temporary certificate fee—\$30 (prorated at \$2.50 per month through August 31, 1987);

(C) temporary certificate replacement fee—\$10.

(4) Fees for upgrading a temporary certificate or temporary permit—\$30 (prorated at \$2.50 per month).

(5) An applicant whose check for the application fee is returned due to insufficient funds shall be allowed to reinstate the application by remitting to the department a money order or check for guaranteed funds within 30 days of the date of receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared

through the appropriate financial institution.

(6) An approved applicant whose check for the temporary permit, temporary certificate, or certificate fee is returned due to insufficient funds shall remit to the department a money order or check for guaranteed funds within 30 days of the date of receipt of the department's notice. Otherwise, the application and the approval shall be invalid.

(7) A temporary permit holder whose check for the temporary permit extension fee is returned due to insufficient funds shall remit to the department a money order or check for guaranteed funds within 30 days of the date of receipt of the department's notice. Otherwise, the temporary permit shall not be extended, or if already extended, shall be invalid.

(8) A certificate holder whose check for the renewal fee is returned due to insufficient funds shall remit to the department a money order or check for guaranteed funds within 30 days of the date of receipt of the department's notice. Otherwise, the certificate shall not be renewed. If a renewal certificate has already been issued, it shall be invalid.

(9) The advisory board, on behalf of the board, shall make periodic reviews of the fee schedule and make any adjustments necessary to provide sufficient funds to meet the expenses of the respiratory care practitioner certification program without creating an unnecessary surplus. Such adjustments shall be made through rule amendments.

§123.5. Exceptions to Certification.

(a) The purpose of this section is to set out who is exempt from certification under the Act and who must be certified under the Act.

(b) Except as specifically exempted by subsection (c) of this section, the provisions of this section apply to any person or facility representing that he or she practices or provides respiratory care services.

(c) These sections do not apply to:

(1) a student in an approved respiratory care education program who is performing respiratory care services in his or her capacity as a student. A person who has completed an approved respiratory care education program is not exempt from these sections and may not thereafter practice respiratory care until a certificate, temporary permit, or temporary certificate has been issued by the department;

(2) a student enrolled in the clinical part of an approved respiratory care educational program who is employed by a health care facility and who delivers limited respiratory care support services under the supervision of persons who hold certificates issued under the Act, so long as the student does not perform invasive procedures related to critical respiratory care, including therapeutic, diagnostic, or palliative procedures;

(3) the gratuitous care of the ill by a friend or family member who does not represent himself or herself as a respiratory care practitioner, R.C.P., certified respiratory care practitioner, respiratory therapist, or who does not use any other words, letters, abbreviations, or insignia indicating or implying that he or she is a respiratory care practitioner;

(4) emergency respiratory care services provided by an individual who does not represent himself as a respiratory care practitioner, R.C.P., certified respiratory care practitioner, respiratory therapist, or who does not use any other words, letters, abbreviations, or insignia indicating or implying that he or she is a respiratory care practitioner;

(5) a person certified under the Act who performs advances in the art and techniques of respiratory care learned through formal or specialized training;

(6) the delivery of respiratory care services by health care personnel who have been formally trained in these techniques and who are duly licensed under the Texas practice acts regulating their professions;

(7) the delivery of respiratory care services by health care personnel who have been formally trained in these techniques who are acting under the delegated authority of a Texas licensed physician, pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, and rules adopted by the BME;

(8) the delivery of respiratory care services by any legally qualified respiratory care practitioner employed by the United States government while in the discharge of official duties;

(9) the delivery, assembly, setup, testing, and demonstration of respiratory care equipment upon the order of a licensed physician. Demonstration is not to be interpreted here as the actual teaching, administration, or performance of the respiratory care procedure(s); or

(10) aides/orderlies assisting respiratory care practitioners.

(d) All persons who apply to become certified or permitted as a practitioner, all persons who believe they are exempt under the Act, and all other persons who are interested in practicing respiratory care need to be aware of the penalty provisions under the Act concerning violations: effective January 1, 1987, §13, provides that any person who knowingly or intentionally violates a provision of the Act commits a Class B misdemeanor.

§123.6. Application Requirements and Procedures.

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

(b) General.

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

(2) The department will not consider an application as officially submitted until the applicant pays the application fee and the fee clears the appropriate financial institution. The fee must accompany the application form.

(3) The administrator will send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the notice shall be invalid.

(4) For persons applying for the temporary certificate, the department must receive all required application materials at least four months prior to the date the applicant wishes to take the examination for the regular certificate.

(5) Applications will be accepted for a temporary certificate (effective January 1, 1986-November 16, 1986) from students in a respiratory care education program who expect to graduate within 45 days. After November 16, 1986, applications will be accepted for the temporary permit.

(c) Required application materials.

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

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

(B) a statement that the applicant has read the Act and these sections and agrees to abide by them;

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

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

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

(F) a statement that the applicant understands that materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted any certificate or permit, or the revocation of any certificate or permit issued;

(H) a statement that if issued any certificate or permit the practitioner will

keep the department advised of his or her current mailing address; and

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

(2) Educational records. Applicants for a certificate or a temporary permit (effective November 16, 1986) must submit:

(A) a photocopy which has been notarized as a true and exact copy of an unaltered:

(i) high school diploma;

(ii) official high school transcript indicating graduation;

(iii) certificate of high school equivalency issued by the appropriate educational agency; or

(iv) official transcript from an accredited college or university indicating that the applicant received a high school diploma or equivalency; and

(B) a photocopy which has been notarized as a true and exact copy of an unaltered certificate of completion from a respiratory care educational program. The certificate must contain:

(i) name and number of the program (exactly as listed with AMA);

(ii) name of the graduate;

(iii) exact day and month individual is recognized as a program graduate;

(iv) AMA accreditation statement; and

(v) signatures of the medical director, program director, and administrative official; or

(C) an expected graduation statement signed by the program director. Notarized copies of the certificate of completion must be received within 30 days of the completion date noted in the statement signed by the program director.

(3) Examination results.

(A) If the applicant is making application for a temporary permit, a form must be signed allowing the department to obtain the applicant's examination results from the NBRC, or other agency administering the examination prescribed by the board.

(B) If an applicant for a regular certificate is:

(i) registered or certified by the NBRC at the time of application, a photocopy of the certificate issued by NBRC shall be submitted in lieu of examination results; or

(ii) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of his or her examination results, the applicant shall sign a form allowing the department to obtain the applicant's examination results from the NBRC or other agency administering the examination prescribed by the board.

(4) Employment/experience documentation report form.

(A) Persons applying for any certificate or permit who are not registered or certified by the NBRC and who are licensed, registered, or otherwise regulated in another state, territory, or country at the time of application must submit with his or her application a properly completed employment/experience documentation report form signed by his or her medical director attesting that the applicant is currently practicing, or has practiced within the 12-month period immediately preceding application to the department, respiratory care.

(B) Persons applying for a temporary certificate must submit his or her application on or before November 16, 1986, with a properly completed employment/experience documentation report form signed by his or her qualified medical director attesting that the applicant is presently functioning as a respiratory care practitioner.

(d) Disapproved applications.

(1) The department shall disapprove the application if the person:

(A) has not completed the requirements in subsection (c) of this section;

(B) has failed to pass the examination prescribed by the board as set out in §123.8 of this title (relating to Examination), if applicable;

(C) has failed to remit any applicable fees required in §123.4 of this title (relating to Fees);

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

(E) has been in violation of the Act, as set out in §123.14 of this title (relating to Violations, Complaints, and Subsequent Actions), the code of ethics, as set out in §123.12 of this title (relating to the Professional and Ethical Standards), or any other applicable provision of this section;

(F) has been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a respiratory care practitioner as set out in §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds to be Respiratory Care Practitioners); or

(G) is not currently practicing, or has not practiced within the 12-month period preceding the date of application, respiratory care as set out in subsection (c)(4)(A) of this section.

(2) If, after review, the administrator determines that the application should not be approved, the administrator will ask the advisory board to review the application. The advisory board shall take either one of the following actions.

(A) If the advisory board concurs that the application should not be approved, the advisory board shall instruct the administrator to give the applicant written

notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to §§1.21-1.32 of this title (relating to Formal Hearing Procedures). Within 10 days after receipt of the written notice, the applicant shall give written notice to the administrator that the applicant either waives the hearing or wants the hearing. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the administrator that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the department will disapprove the application.

(B) If the advisory board determines that the application should be approved, the administrator shall approve the application.

(3) An applicant whose application has been disapproved under paragraph (1) (E) and (F) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

§123.7. Types of Certificates and Temporary Permits or Temporary Certificates, and Applicant Eligibility.

(a) General. The purpose of this section is to set out the types of certificates and permits issued, and the qualifications of applicants for certification as respiratory care practitioners.

(1) The department shall prepare and provide to each respiratory care practitioner a certificate, temporary certificate, or temporary permit and an identification card(s) which contain the practitioner's name, certificate or permit number, and date of certificate or permit issue. The temporary certificate, temporary permit, and all identification cards shall indicate an expiration date.

(2) Official certificates or permits shall be signed by the commissioner and the chairman of the advisory board. Official identification cards shall bear the signature of the commissioner.

(3) Any certificate or permit and identification cards issued by the department remain the property of the department and must be surrendered to the department on demand.

(4) Employers shall keep on file an unaltered photocopy of the practitioner's original certificate or permit and current identification card.

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

(6) Neither the practitioner nor anyone else shall make any alteration on any certificate, permit, or identification card issued by the department.

(b) Issuance of certificates and permits.

(1) The department will send each applicant whose application has been approved a form to complete and return with the prorated or temporary permit fee in the form of a personal or certified check or money order.

(2) Certificates and temporary certificates issued within three months of the practitioner's birth month shall be issued for that period of time plus the next full year, excepting temporary certificates which expire August 31, 1987.

(3) Upon receiving the approved applicant's form and fee, the department shall issue the person a certificate, temporary certificate, or temporary permit and identification card(s) with an expiration date and a certificate or permit number.

(4) The department will replace a lost, damaged, or destroyed certificate, temporary permit, or temporary certificate, and/or identification card(s) upon a written request from the practitioner and payment of the replacement fee. Requests must include a statement detailing the loss or destruction of the original certificate, temporary permit, or temporary certificate and/or identification card(s), or be accompanied by the damaged certificate, permit, or card(s).

(c) Applicant eligibility.

(1) Temporary permit. Effective January 1, 1987, the department shall issue a temporary permit to practice respiratory care to:

(A) an applicant who has applied on the forms prescribed by the department, who has paid the prescribed application fee, who will complete a respiratory care educational program within 45 days after application to the department, and meets all qualifications for a certificate except taking the written examination prescribed by the department for certification. A temporary permit is valid for six months from date of issuance by the department. After the applicant passes the prescribed examination and pays the prescribed fee, a regular certificate may be issued effective on the date of expiration of the temporary permit;

(B) an applicant who has applied on the forms prescribed by the department, who has paid the prescribed application fee, who is currently practicing, or has within the 12-month period immediately preceding the date of the application to the department practiced respiratory care in another state, territory, or country, who holds a valid license or other form of registration to practice respiratory care in that state, territory, or country, and is in good standing and who is not registered or certified by the NBRC. However, a regular certificate may be issued by the department upon approval of the application and payment of prescribed fees to an applicant who submits evidence satisfactory to the department that

he or she has passed the prescribed examination, with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or reexamination, and is in good standing with the agency or organization with which they are licensed or registered to practice respiratory care. The regular certificate issued will be effective on the date of expiration of the temporary permit. Applicants for a temporary permit under this paragraph who have not passed the prescribed examination with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or reexamination shall not be issued a regular certificate; or

(C) an applicant who holds a valid temporary permit pending reexamination who has applied for an extension of the temporary permit on the form prescribed by the department and who has paid the additional prescribed fee. This temporary permit shall expire not more than 12 months from the date of issuance of the original permit. After the applicant passes the prescribed examination, with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or reexamination, and has paid the prescribed fee, a regular certificate may be issued effective on the date of expiration of the temporary permit.

(2) Reapplication for a temporary permit.

(A) Prior to expiration of a temporary permit which has been extended in accordance with subsection (c) of this section, a person who demonstrates to the department that he or she has taken the NBRC examination may reapply one additional time, on the form prescribed by the department, in accordance with §123.6 of this title (relating to Application Requirements and Procedures) for a temporary permit for a period not to exceed six months, plus one six-month extension period. No further reapplications or extensions will be allowed except when a petition clearly indicates that failure to appear for an examination was unavoidable and the administrator approves the reapplication.

(B) Any person who practices respiratory care with an expired permit is in violation of the Act and these sections.

(3) Regular certificate. The department shall issue a regular certificate to practice respiratory care to an applicant who has applied on a form prescribed by the department, who has paid the prescribed application fee and who:

(A) has, prior to making application to the department, passed the entry level certified respiratory therapy technician (CRTT) examination administered by or under the auspices of the NBRC with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or re-examination; or

(B) has, prior to making application to the department, passed the registered

respiratory therapist (RRT) examination administered by or under the auspices of the NBRC; or

(C) holds a valid temporary permit and who has passed, prior to the expiration of the temporary permit or an extended temporary permit, the prescribed examination with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or re-examination. The regular certificate issued will be effective on the date of expiration of the temporary permit.

(4) Reciprocity. The department shall issue a regular certificate to practice respiratory care to an applicant who is in good standing and holds a valid license or other form of registration to practice respiratory care in another state, territory, or country, and who:

(A) has applied on forms prescribed by the department; and

(B) has paid the prescribed application fee;

(C) at the time of application to the department, has completed the educational requirements as set out in §123.6 of this title (relating to Application Requirements and Procedures);

(D) has passed the prescribed examination with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or re-examination;

(E) submits satisfactory evidence on a form prescribed by the department that the applicant is currently practicing, or has within the 12-month period immediately preceding the date of application to the department practiced, respiratory care in the state, territory, or country in which he or she is licensed or otherwise regulated if the applicant is not registered or certified by the NBRC; and

(F) submits proof on a form prescribed by the department that the applicant is in good standing and holds a valid license or other form of registration to practice respiratory care in another state, territory, or country.

(5) Temporary certificate. The department shall issue a temporary certificate expiring August 31, 1987, to an applicant who has applied on or before November 16, 1986, on the forms prescribed by the department, who has paid the prescribed application fee, and who demonstrates through written evidence as set out in §123.6 of this title (relating to Application Requirements and Procedures) that he or she is functioning in the capacity of a respiratory care practitioner at the time of application to the department. Temporary certificate fees will be prorated from the month following approval through August 31, 1987.

(6) Temporary certificate holders who are students. Effective January 1, 1987, temporary certificate holders who are also students in an approved respiratory care education program who comply with §123.6(c)(2) of this title (relating to Applica-

tion Requirements and Procedures) may be issued a temporary permit in accordance with subsection (c)(1) of this section. The temporary certificate must be returned to the department before a temporary permit will be issued.

§123.8. Examination.

(a) Purpose. This section sets out the rules governing the administration, content, grading, and other procedures for examination for certification.

(b) Examination eligibility. Holders of temporary permits and temporary certificates are allowed to take the examination provided the holder complies with the requirements of the Act and these sections.

(c) Approved examination. The approved examination for all applicants consists of an entry level certified respiratory therapy technician (CRTT) examination administered under the auspices of the NBRC or its designee, the advisory board may designate an equivalent examination.

(d) Standards of acceptable performance. The advisory board shall recommend to the department standards of acceptable performance on all approved examinations for certification, whether or not they are developed or administered either wholly or in part under its jurisdiction. The cut-score determined by the NBRC at the time of examination or re-examination shall be the cut-score utilized by the department to determine pass or fail performance, unless otherwise determined by the advisory board.

(e) Completion of application forms. Each applicant is responsible for completing and transmitting appropriate application forms and paying appropriate fees by the deadlines set by the NBRC, if an NBRC examination is prescribed.

(f) Results.

(1) Results of an examination prescribed by the board but administered under the auspices of another agency will be communicated to the applicant by that agency.

(2) It is the responsibility of the applicant or temporary permit holder to arrange to have examination scores forwarded to the department. The results shall be in the form of a copy which has been notarized as a true and exact copy of the original of either:

(A) a letter or other official notification from the examining agency to the examinee; or

(B) the certified respiratory therapy technician certificate issued by the NBRC.

(3) For persons holding a temporary certificate, if the examination is graded by a national or state testing service, or by the NBRC or its designee, the department shall notify each examinee of the examination results within 14 days of the date the department receives the results.

(4) If the examination is graded by the department or its designee, the department shall notify each examinee of the

results of the examination within 45 days of the date of the exam. If the results will be delayed for more than 45 days after the examination, the department shall notify each applicant of the reason for the delay.

(5) If the department is required to provide official notice of examination results to the applicant, no matter what numerical or other scoring system is used in arriving at examination results, the results shall be stated in terms of pass or fail.

(g) Re-examinations. An applicant who fails the exam two times must furnish the department evidence that said applicant has taken appropriate measures to improve his or her proficiency prior to the third examination. Such evidence must include one or more of the following:

(1) an official transcript (not a grade report) from a respiratory care educational program indicating successful completion of respiratory care courses for credit or audit purposes; or

(2) a certificate of completion of acceptable continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements) for a minimum of 10 clock hours; or

(3) a statement(s) from a practitioner(s) who holds a valid certificate attesting to the applicant's successful completion of tutoring in respiratory care for a minimum of 10 clock hours.

(h) Refunds. Examination fee refunds to persons who fail to appear for the examination will be in accordance with policies and procedures of the NBRC or other agency approved by the board to administer an examination prescribed in this section.

§123.9. Certificate Renewal.

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

(b) General.

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

(2) A practitioner must renew the certificate annually.

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

(4) Each practitioner is responsible for renewing the certificate before the expiration date and shall not be excused from paying reinstatement fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or late renewal.

(5) The department will not renew the certificate of the practitioner who is in violation of the Act or board rules at the time of application for renewal.

(c) Staggered renewals. The department shall use a staggered system for certificate renewals.

(1) Fees will be prorated when the practitioner's initial renewal date occurs less

than 12 months after the original date of certification:

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

(d) Certificate renewal.

(1) At least 30 days prior to the expiration date of a person's certificate, the department shall send notice to the practitioner, at the address in the department's records, of the expiration date of the certificate, the amount of the renewal fee due, and a renewal form which the practitioner must complete and return to the department with the required renewal fee.

(2) The renewal form for all practitioners shall require the provision of the preferred mailing address, primary employment address and telephone number, and category of employment, misdemeanor and felony convictions, and continuing education completed.

(3) A practitioner has renewed the certificate when the practitioner has mailed the renewal form, continuing education report forms required as set out in §123.10 of this title (relating to Continuing Education Requirements), and the required renewal fee to the department prior to the expiration date of the certificate. The postmark date shall be considered as the date of mailing.

(4) The department shall issue identification cards for the current renewal period to a practitioner who has met all requirements for renewal.

(e) Late renewal.

(1) A person whose certificate has expired for not more than 60 days may renew the certificate by submitting to the department the renewal form; continuing education report forms required; the required renewal fee; and the 60-day reinstatement fee. Payment shall be in the form of a certified check or money order. The renewal is effective if it is mailed to the department not more than 60 days after the expiration date of the certificate. The postmark date shall be considered as the date of mailing.

(2) The department, by certified mail, shall inform a person who has not renewed a certificate after a period of more than 60 days after the expiration of the certificate of the amount of the fee required for renewal and the date the certificate expired.

(3) A person whose certificate has been expired for at least 60 days but not more than 120 days after expiration may renew the certificate by remitting the regular renewal fee; the 120-day reinstatement fee; and complying with the current requirements and procedures for obtaining a certificate.

(4) A person who fails to renew a certificate after 120 days is required to surrender the certificate and identification card(s) to the department.

(f) Inactive status. A respiratory care practitioner who holds a certificate under the Act and who is not actively engaged in the practice of respiratory care may make application to the department in writing on a form prescribed by the department to be placed on an inactive status list maintained by the department. The application for inactive status must be postmarked prior to the expiration of the practitioner's certificate. No refund will be made of any fees paid prior to application for inactive status.

(1) A person on inactive status is not required to pay the annual renewal fee.

(2) A person on inactive status may not perform any activities regulated under this Act. Practice as a respiratory care practitioner in any capacity for compensation or as a volunteer is prohibited, and the person may not use the title respiratory care practitioner while on inactive status.

(3) If a person on inactive status desires to re-enter active practice, the person shall:

(A) notify the department in writing;

(B) complete appropriate forms;

(C) pay a prorated renewal fee in an amount determined by the department; and

(D) submit to the department proof of successful completion, within the 12-month period prior to reentering active status, of the following continuing education credits, as set out in §123.10 of this title (relating to Continuing Education Requirements).

(i) Persons inactive for three years or less shall complete not less than six clock hours.

(ii) Persons inactive for more than three years but less than six years shall complete not less than 12 clock hours.

(iii) Persons inactive for six or more years shall complete not less than 18 clock hours.

(g) Expiration of certificate.

(1) A person whose certificate has expired may not use the title or represent or imply that he has the title of certified respiratory care practitioner, respiratory care practitioner, or respiratory therapist, or use the letters R.C.P., and may not use any facsimile of those titles in any manner. Any person who practices respiratory care with an expired certificate is in violation of the Act.

(2) Temporary certificates expiring August 31, 1987, are not subject to renewal.

§123.10. Continuing Education Requirements.

(a) Purpose. The purpose of this section is to establish the continuing education requirements which a respiratory care practitioner must complete periodically to maintain certification. These requirements are intended to maintain and improve the quality of professional services in respiratory care provided to the public and keep the practitioner knowledgeable of current re-

search, techniques, and practice, and provide other resources which will improve skill and competence in respiratory care.

(b) Deadlines. Continuing education requirements for recertification shall be fulfilled during three-year periods beginning on the first day following each practitioner's birth month and ending on the last day of each practitioner's birth month.

(1) The initial three-year period shall begin on the first day of the practitioner's renewal year which occurs after the effective date of these sections.

(2) Each practitioner shall be notified of the continuing education requirements with the first annual renewal notice sent after the effective date of these sections.

(c) Hour requirements for continuing education. A practitioner must complete 18 clock hours of continuing education acceptable to the department during each three-year period as described in subsection (b) of this section.

(1) A clock hour shall be 60 minutes of attendance and participation in an acceptable continuing education experience.

(2) Continuing education experiences acceptable to the department shall be those set forth in subsection (d) of this section.

(d) Types of acceptable continuing education. Continuing education undertaken by a practitioner for recertification shall be acceptable if the experience falls in one or more of the following categories:

(1) respiratory care coursework completed at or through a respiratory care education program or Texas Board of Education approved program;

(2) participation in any program (e.g., institutes, seminars, workshops, and conferences) for which continuing respiratory therapy education (CRTE), continuing education units (CEU), except as set out in subsection (h) of this section, or equivalent credits are granted through a national or state respiratory care association such as the AART or the Texas Society for Respiratory Therapy, or their successor organizations; or

(3) instruction or teaching in programs set out in paragraphs (1) and (2) of this subsection, provided that such instruction or teaching is not a part of, or required as a part of, one's employment.

(e) Acceptable criteria for continuing education. Continuing education experiences should include the following criteria:

(1) relevance of the subject matter to increase or support the development of skill and competence in respiratory care;

(2) objectives of specific information and/or skill to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of programs including the name of the sponsoring individual(s) or organization(s), and program leaders/faculty if different from sponsors and contact person.

(f) Determination of clock hour credits. The department shall credit continuing education experiences as follows.

(1) Completion of course work at or through a respiratory care educational program as set out in subsection (d)(1) of this section shall be credited on the basis of 15 clock hours of credit for each semester hour successfully completed for credit or audit, evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (d)(2) of this section shall be credited on a one-for-one basis with one clock hour credit for each clock hour spent in the continuing education activity.

(3) Teaching in programs which meet the department's criteria as set out in subsection (d)(3) of this section shall be credited on the basis of two clock hour credits for each hour actually taught.

(g) Reporting of continuing education. Each practitioner shall file with the department the following subsequent to the completion of continuing education activities for which credit is claimed.

(1) A continuing education report shall be filed on a form provided by the department which the practitioner shall complete.

(2) A practitioner may submit the required report at the time of certificate renewal.

(3) Each report filed by a practitioner must be accompanied by appropriate documentation of the continuing education claimed on the report as follows.

(A) For a program attended, signed certification by a program leader or instructor of the practitioner's participation in the program by certificate, or letter on letterhead of the sponsoring agency, or official continuing education validation form or official transcript of the sponsoring agency plus a brochure, agenda, program, or other applicable information must be attached.

(B) For teaching or instruction in approved programs, a letter on sponsoring agency's letterhead giving name of program, location, dates, and subjects taught and giving total clock hours of teaching or instruction.

(C) For completion of course work at or through respiratory care education programs, a certificate of successful completion or an official transcript.

(h) Activities unacceptable as continuing education. The department will not grant continuing education credit to any practitioner for:

(1) education incidental to the regular professional activities of a practitioner

such as learning occurring from experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization;

(3) meetings and activities such as in-service programs which are required as a part of one's job;

(4) any experience which does not fit the types of acceptable continuing education in subsection (d) of this section;

(5) any continuing education activity completed before or after the three year period for which the continuing education credit is submitted except as in subsection (i)(2) of this section; or

(6) nonsupervised self-study continuing education programs or activities.

(i) Failure to complete required continuing education. The department shall not renew the certificate of a person who fails to complete the required continuing education within any three-year reporting period.

(1) A person whose certificate is not renewed due to failure to meet the requirements for certification renewal shall return his or her certificate to the board and shall not advertise or represent himself or herself as a respiratory care practitioner in any manner.

(2) A person whose certificate is not renewed due to failure to complete the hour requirements for continuing education, as specified in subsection (c) of this section, may be reinstated as a practitioner within one calendar year after the expiration of his or her certificate if the person completes the required continuing education within that year, has complied with paragraph (1) of this subsection, and pays the required reinstatement fees and/or penalties as appropriate.

(j) Hardships. The board has considered hardship situations in formulating these sections.

§123.11. *Changes of Name or Address.*

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes.

(b) The practitioner shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 days of such change(s).

(c) Notification of address changes shall be made in writing including the name, mailing address, and zip codes, and be mailed to the administrator.

(d) Before another certificate or permit and identification cards will be issued by the department, notification of name changes must be mailed to the administrator and shall include a notarized copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The practitioner shall return the old certificate or permit and identification cards and remit the appropriate replacement fee as set out in §123.4 of this title (relating to Fees).

§123.12. *Professional and Ethical Standards.* The rules on the profession of respiratory care shall be to establish the standards of professional and ethical conduct required of a practitioner pursuant to the Act, §11(b)(4).

(1) Professional representation and responsibilities.

(A) A practitioner shall not misrepresent any professional qualifications or credentials or provide any information that is false, deceptive, or misleading in connection with one's own application for employment or work assignment as a respiratory care practitioner, or fail to disclose any information that could affect the decision to employ or assign a task as a respiratory care practitioner.

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

(C) A practitioner shall not extend his or her practice beyond his or her competence and authority vested in him or her by a physician or this Act.

(D) A practitioner shall not permit the use of his or her name for the purpose of documenting that respiratory care services have been rendered unless that practitioner has provided those services.

(E) A practitioner shall not promote or endorse products, services, or equipment in a manner that is false and misleading.

(F) A practitioner shall maintain knowledge and skills for continuing professional competence.

(G) A practitioner shall not use alcohol or any drugs in any manner which detrimentally affects the provision of respiratory care.

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

(I) A practitioner shall have the responsibility of reporting alleged misrepresentations or violations of the Act or board rules to the department.

(J) The practitioner shall be responsible for competent and efficient performance of his assigned duties and shall report to the department incompetence and illegal or unethical conduct of members of the profession.

(K) A practitioner shall keep his or her file updated by notifying the department of changes in preferred mailing address and telephone number.

(L) A practitioner shall not make any false, misleading, or deceptive claims in any advertisement, announcement, presentation, or in competitive bidding.

(M) A practitioner shall conform to medically accepted principles and standards of respiratory care which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the AART, the NBRC, the Texas Society for Respiratory Therapy, the AMA, the advisory board, the board, the department, and other professional or governmental bodies.

(N) A practitioner shall not delegate respiratory care functions or responsibilities to a person who lacks the ability or knowledge to perform the function or responsibility.

(O) A practitioner shall not leave an assignment without notifying appropriate personnel.

(2) Relationships with patients/clients.

(A) A practitioner shall make known to a prospective patient the important aspects of the professional relationship, including fees and arrangement for payment which might affect the decision to enter into a contractual relationship.

(B) A practitioner shall not receive or give a commission or rebate or any other form of direct or indirect remuneration or benefit for the referral of patients/clients for professional services.

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

(D) A practitioner shall not accept gratuities for preferential consideration of the patient. The practitioner shall guard against conflicts of interest.

(E) A practitioner shall take reasonable action to inform a patient's/client's physician and any appropriate allied health care provider in cases where a patient's/client's cardiorespiratory status indicates a change in medical status.

(F) A practitioner shall provide respiratory care with respect for the patient's dignity without discrimination based on race, creed, sex, religion, national origin, or age.

(G) A practitioner shall not violate any provision of any federal or state statute relating to confidentiality of patient/client communication and/or records. All inquiries shall be referred to the physician in charge of the patient's medical care.

§123.13. *Certifying or Permitting Persons with Criminal Backgrounds to be Respiratory Care Practitioners.*

(a) Purpose. This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain certificates or temporary permits or certificates as respiratory care practitioners.

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

(1) The department may suspend or revoke any existing certificate or permit, disqualify a person from receiving any certificate or permit, or deny to a person the opportunity to be examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a respiratory care practitioner.

(2) In considering whether a criminal conviction directly relates to the occupation of a respiratory care practitioner, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification as a respiratory care practitioner. The following felonies and misdemeanors relate to any certificate or permit of a respiratory care practitioner because these criminal offenses indicate an inability or a tendency to be unable to perform as a respiratory care practitioner.

(i) the misdemeanor of knowingly or intentionally acting as a respiratory care practitioner without any certificate or permit under the Act, §13;

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

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

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

(II) offenses against property (Title 7);

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

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

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

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

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

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

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

(1) The administrator will give written notice to the person that the depart-

ment intends to deny, suspend, or revoke the certificate, temporary permit, or temporary certificate after hearing in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the formal hearing procedures in §§1.21-1.32 of this title (relating to Formal Hearing Procedures).

(2) If the department denies, suspends, or revokes a certificate, temporary permit, or temporary certificate under these sections after hearing, the administrator will give the person written notice:

(A) of the reasons for the decision;

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

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

§123.14. *Violations, Complaints, and Subsequent Actions.*

(a) Purpose. The purpose of this section is to establish standards relating to:

(1) offenses and prohibited actions which result in the penalty of a Class B misdemeanor;

(2) violations which result in disciplinary actions;

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

(4) the department's investigation of complaints and the department's and commissioner's actions, on behalf of the board, when offenses and prohibited actions and violations have occurred.

(b) Types of offenses and prohibited actions. Effective January 1, 1987, a person is guilty of a Class B misdemeanor if:

(1) a person intentionally or knowingly represents himself or herself as able to practice respiratory care or represents himself or herself as a respiratory care practitioner unless the person holds a certificate or permit issued under the Act or these sections;

(2) a person who is not certified under the Act and these sections as a respiratory care practitioner, or whose certification has expired, or whose certification has been suspended or revoked may not use in connection with his or her name or practice the words: "respiratory care," "respiratory therapist," "certified respiratory care practitioner," or the letters "R.C.P." or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner. Such a person may not in any way, either orally, in writing, in print, or by sign or device, directly or by implication, represent himself or herself as a respiratory care practitioner

or impersonate a respiratory care practitioner;

(3) a person practices respiratory care other than under the direction of a qualified medical director or other physician licensed by the BME;

(4) a person sells, fraudulently obtains, or furnishes any respiratory care diploma, certificate, permit, or record;

(5) a person practices respiratory care under a respiratory care diploma, certificate, permit, or record illegally or fraudulently obtained or issued;

(6) a person practices respiratory care during the time his or her certificate or permit is suspended, revoked, or expired;

(7) a person conducts or assists in conducting a formal respiratory care education program designed as a one-year certificate, two-year associate degree, or four-year bachelor's degree granting program for the preparation of respiratory care personnel unless the program is approved by the board;

(8) a person employs another person who does not hold a certificate or permit to practice respiratory care in the capacity of a respiratory care practitioner;

(9) a person who holds a certificate or permit to practice respiratory care practices medicine, as defined by the Medical Practice Act (Texas Civil Statutes, Article 4495b) without holding an appropriate license issued by the BME; or

(10) a person otherwise violates the Act, §§4, 10, or 13.

(c) Disciplinary action. The department, on behalf of the board, shall take disciplinary action if it determines that a person who holds a certificate or permit:

(1) is guilty of fraud or deceit in procuring or attempting to procure a certificate or permit, or the renewal or extension thereof, to practice respiratory care;

(2) is unfit or incompetent by reason of negligence or other causes of incompetency;

(3) is addicted to or has improperly obtained, possessed, used, or distributed habit-forming drugs, narcotics, or other controlled substances, or is habitually in-temperate in the use of alcoholic beverages;

(4) is guilty of dishonest or unethical conduct as set out in §123.12 of this title (relating to Professional and Ethical Standards); or

(5) has practiced respiratory care after his or her certificate or permit has expired;

(6) has practiced respiratory care under cover of any certificate or permit illegally or fraudulently obtained or issued;

(7) has violated or aided and abetted others in violation of this Act; or

(8) has practiced respiratory care other than under the direction of a qualified medical director or other physician licensed by the BME.

(d) Filing of complaints.

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

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against a practitioner or other person shall notify the administrator. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office. (Mailing address: 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7111).

(3) Upon receipt of a complaint, the administrator shall send an acknowledgment letter to the complainant and the department's complaint form which the complainant must complete and return to the administrator before further action can be taken. If the complaint is made by a visit to the administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the administrator before further action may be taken. Copies of the complaint form may be obtained from the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183.

(4) Anonymous complaints shall be investigated by the administrator or his or her designee, provided sufficient information is submitted.

(e) Investigation of complaints.

(1) The administrator and the department are responsible for handling complaints.

(2) The administrator or his or her designee shall make the initial investigation and report the findings to the director of Hospital and Professional Licensure Division or his or her successor.

(f) The department's action.

(1) The department shall take one or more actions described in this section.

(2) The department may determine that an allegation is groundless and dismiss the complaint.

(3) The department may determine that a noncertified/nonpermitted person has committed an offense or prohibited action under subsection (b) of this section. If this is the person's first prohibited action and it represents no immediate threat to the health or safety of an individual or the public, the department shall attempt to resolve the complaint by requesting the offender or violator to stop the action immediately. If the violator complies, the department will close the complaint file. If the person refuses to comply, or the offense or prohibited action represents an immediate threat to the health and safety of an individual or the general public, or if this is a second, subsequent, or repeat offense or prohibited action, the department with the concurrence of the advisory board chairperson, may initiate a request to the attorney general, district attorney, or county

attorney to take appropriate legal action against the offender or violator. The Act, §13(c), makes it a criminal offense of a Class B misdemeanor if a person commits an offense or prohibited action described in subsection (b)(1)-(10) of this section.

(4) The department may determine that a practitioner has violated the Act or a board rule. If this is the practitioners' first violation during the annual certification period, or during the period for which the temporary certificate or temporary permit was issued, and it represents no immediate threat to the health and safety of an individual or the general public, the department shall:

(A) with the concurrence of the advisory board chairperson, initiate a request to the attorney general, or district or county attorney to institute a suit to take appropriate legal action if the offense or prohibited action occurred on or after January 1, 1987, in accordance with subsection (b) of this section; and/or

(B) institute disciplinary action in accordance with subsection (g) of this section.

(5) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory board, the complainant, and the accused party.

(g) Disciplinary actions.

(1) The department, on behalf of the board, may reprimand a practitioner or initiate action to suspend or revoke a certificate or temporary certificate or not renew a certificate, or not extend a temporary permit.

(2) The department may also suspend or revoke a certificate or temporary certificate or not renew a certificate or not extend a temporary permit if the practitioner has been convicted of a misdemeanor or felony offense under §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds to be Respiratory Care Practitioners).

(3) A reprimand is a written notice from the administrator to the practitioner stating that the practitioner has violated the Act or board rule. A reprimand shall include a request to the practitioner that he or she stop the offense, prohibited action, or violation immediately. The department shall issue the reprimand to stop committing a first violation during the annual certification period, or during the period for which the temporary certificate or permit was issued, which represents no immediate threat to the health and safety of an individual or the general public.

(4) The department initiates suspension of a certificate, temporary certificate, or temporary permit or nonrenewal of a certificate, or disapproval of the extension of a temporary permit, when the practitioner refuses or fails to comply with the reprimand request to stop the offense, pro-

hibited action, or violation, or when there is a second, subsequent, or repeat offense, prohibited action, or violation during the annual certification period, or during the period for which the temporary certificate or permit was issued, if the offense, prohibited action, or violation does not immediately threaten the health or safety of the individual or the general public.

(5) The department initiates revocation of a certificate, temporary certificate, or temporary permit or nonrenewal of a certificate when there are three or more offenses, prohibited actions, or violations (which may include repeat or different violations) during the annual certification period, or during the period for which the temporary certificate or permit was issued, or when any one offense, prohibited action, or violation represents an immediate threat to the health or safety of an individual or the general public.

(h) Formal hearing.

(1) The department may issue reprimands, but may only initiate or propose action to suspend, revoke, or not renew a certificate or revoke, or not extend a permit. Final action to suspend, revoke or not renew can be taken by the commissioner only after the practitioner has had an opportunity for a formal hearing to contest the proposed action.

(2) The formal hearing shall be conducted according to the hearing procedures in §§1.21-1.32 of this title (relating to Formal Hearing Procedures) or §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds to be Respiratory Care Practitioners).

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

(A) If the practitioner fails to pick up the notice, if mailed by certified mail, or fails to respond within 10 days after receipt of the notice of opportunity, or if the practitioner notifies the administrator that the hearing be waived, the practitioner is deemed to have waived the hearing. If the hearing has been waived, the department shall recommend to the commissioner that the certificate or permit be suspended, revoked, or not renewed.

(B) If the practitioner requests a hearing within 10 days after receiving the notice of opportunity for hearing, the department shall initiate formal hearing procedures in accordance with §§1.21-1.32 of this title (relating to Formal Hearing Procedures).

(i) Final action.

(1) If the commissioner suspends a certificate or permit, the suspension remains in effect until the administrator or the department determines that the reasons for suspension no longer exist. The administrator or the department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate or permit holder shall return the certificate or permit and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder must comply with the normal renewal procedures in these sections; however, the department will not renew the certificate until the administrator or the department determines that the reasons for suspension have been removed.

(4) If the commissioner suspends a temporary permit and the suspension is in effect at the time of the expiration of the temporary permit, the former temporary permit holder must reapply in order to obtain a new temporary permit. The department will not issue a new temporary permit until the administrator or the department determines that the reasons for suspension have been removed.

(5) If the commissioner suspends or revokes a temporary certificate and the suspension is in effect at the time of expiration of the temporary certificate, the former temporary certificate holder is not eligible to reapply for a temporary certificate.

(6) If the commissioner revokes or does not renew the certificate or extend a temporary permit, the former certificate or temporary permit holder may reapply in order to obtain a new certificate or permit by complying with the requirements and procedures at the time of reapplication. The department will not issue a new certificate or temporary permit until the administrator or the department determines that the reasons for revocation or nonrenewal have been removed. An investigation may be required.

(7) Upon revocation or nonrenewal, the former certificate or permit holder shall return the certificate or permit and any identification card(s) to the department.

Issued in Austin, Texas, on December 23, 1985.

TRD-8512185

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

Effective date: December 3, 1985
Expiration date: April 22, 1986
For further information, please call
(512) 458-7631.

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Chapter 325. Solid Waste Management

Subchapter E. Permit Procedures and Design Criteria Permits

★ 25 TAC §§325.55, 325.56, 325.59, 325.61, 325.63

The emergency adoptions submitted by the Texas Department of Health will be serialized in the January 7, 1986, issue of the *Texas Register*. The effective date for the documents is December 27, 1985, and they will expire on April 26, 1986.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 322. Certification of Competency

Certification of Competency

★ 31 TAC §322.8, §322.13

The Texas Water Commission adopts on an emergency basis amendments to §322.8 and §322.13.

On September 4, 1985, the Texas Water Commission adopted on an emergency basis Chapter 322, concerning certification of competency. Under §322.8, concerning renewal of certificate for operators, existing Texas Department of Health certificates of competency are to remain valid until a higher level certificate was issued, until permanent sections were adopted for this program by the Texas Water Commission, or until January 1, 1986, whichever occurred first. Under §322.13 of the emergency adoption, concerning certification of companies, treatment facilities operations companies which employ a treatment operator holding a valid certificate of competency as a sewage treatment plant operator issued by the Texas Water Commission or the Texas Department of Health were certified by rule. This certification by rule was to be valid only until the commission adopted permanent sections for this program, or until January 1, 1986, whichever occurred first.

The process of adopting permanent sections in Chapter 322 has commenced. However, those sections will not take effect by January 1, 1986. Accordingly, on December 17, 1985, the commission amended emergency §322.8, concerning renewal of certificates for operators, and §322.13, concerning certification of companies, to prevent the expiration of certifications merely because of the passage of time between January 1, 1986, and the effective date of the permanent sections. These amended emergency

sections eliminate the January 1, 1986, expiration date in §322.8 and §322.13.

The amendments are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 26.0301, which authorize the commission to adopt rules and establish policy.

§322.8. *Renewal of Certificates for Operators.* Unexpired existing certificates of competency for operators which were issued by the Texas Department of Health shall remain valid at the same grade/class as issued until expiration date. Certificates which expire after August 15, 1985, will remain valid at the same class until a higher level certificate is issued or permanent certification

rules are adopted by the Texas Water Commission [or until January 1, 1986], whichever occurs first.

§322.13. *Certification of Companies.* Any sewage treatment facility operations company which employs a holder of a valid sewage treatment plant operator certificate of competency issued by the Texas Water Commission or the Texas Department of Health is hereby certified by rule as a certified sewage treatment facility operations company, provided that the employee devotes 100% of his or her work time to the operation of sewage treatment facilities permitted by the Texas Water Commission. The certification by rule shall be valid only

until the Texas Water Commission adopts permanent sections relating to the certification of sewage treatment facility operations companies [or until January 1, 1986, whichever occurs first].

Issued in Austin, Texas, on December 11, 1985.

TRD-8512184

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: December 23, 1985
Expiration date: March 3, 1986
For further information, please call
(512) 463-7875.

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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 22. EXAMINING BOARDS

Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 571. Licensing

★22 TAC §571.9

The Texas Board of Veterinary Medical Examiners proposes new §571.9, concerning waiver of licensure requirement.

This section concerns veterinarians employed by governmental agencies and institutions of higher education who perform veterinary duties incidental to those duties prescribed by the employing institution.

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

Mr. Shipman also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to protect the public from the unlawful practice of veterinary medicine. The possible economic cost to individuals who are required to comply with the section as proposed will be \$25 in 1986 and 1987. Applicable individuals will be exempted from this provision in 1988-1990.

Comments on the proposal may be submitted to Roger D. Shipman, Executive Secretary, Texas Board of Veterinary Medical Examiners, 3810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183.

The new section is proposed under Texas Civil Statutes, Article 7465a, which provides the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of the Act.

§571.9. Waiver of Licensure Requirement.

(a) Veterinarians employed by governmental agencies. Veterinarians who perform veterinary services for governmental agencies are not exempt from the licensing provisions of Texas Civil Statutes, Article

7465a; however, Article 7465a's license requirement applies only to veterinarians that practice, offer, or attempt to practice veterinary medicine, as defined in the Act, §2(b). Any veterinarian employed by the state whose title or functions do not bring him within the provisions of the Act, §2(b), would not be subject to the requirements of Article 7465a.

(b) Employees of institutes of higher education. Employees of institutes of higher education and Texas Veterinary Diagnostic Labs who hold veterinary licenses in other states and who perform veterinary duties incidental to those duties prescribed to them by the institute of higher education in Texas, or the diagnostic lab, may qualify for a license exemption under Texas Civil Statutes, Article 7465a, §10(b). The Texas Board of Veterinary Medical Examiners will provide an examination on Texas Veterinary Medical Examiners will provide an examination on Texas veterinary jurisprudence and veterinary medical subjects, which are either unique to Texas or common to Texas and not common in most other states, to applicants seeking a license waiver who are certified by the institution of higher education in Texas employing them as eligible for license waiver under §10(b). The license waiver will extend only to those duties prescribed by the institute of higher education or veterinary diagnostic lab and do not empower holders of this exemption to practice veterinary medicine in Texas in any manner except to complete the duties prescribed by the institute of higher education or veterinary diagnostic lab.

(c) Application. All employees of institutes of higher education seeking a waiver under Texas Civil Statutes, Article 7465a, §10(b), must apply to the Board of Veterinary Medical Examiners on an application prescribed by the board. The board will examine the credentials of those applicants to determine if they qualify.

(d) Examination. The board will compile an examination on Texas veterinary jurisprudence and veterinary medical subject, which are either unique to Texas or are common to Texas and not common to most other states, and examine applicants for a license waiver who are otherwise qualified.

(e) Recommendations of candidates for license waiver by institutes of higher education. Institutes of higher education in Texas who wish to have certain of their qualified employees receive a waiver under §10(b) shall form a committee of at least

three members appointed by the dean or other official. This committee shall recommend to the board candidates for a license waiver.

(f) Fees. A fee of \$25 per license waiver shall be collected by the Texas Board of Veterinary Medical Examiners, together with an annual renewal fee of \$25. Upon renewal of waiver status, an applicant must sign an affidavit concerning his activities during the period of his waiver status. The committees, appointed under the former section, shall inform the board annually of additions or deletions of waiver status employees.

(g) Revocation of license waiver. Upon notice and hearing, the board may remove any employee of an institute of higher education on waiver status from waiver status, should that employee take any action which violates the Veterinary Licensing Act, Article 7465a, or the rules of professional conduct for the veterinary profession. Employees under license waiver status lose their license waiver status immediately upon termination from the institute of higher education.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512308

Roger D. Shipman
Director
Texas Board of
Veterinary Medical
Examiners

Earliest possible date of adoption:

February 3, 1986

For further information, please call
(512) 458-1183.

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Chapter 573. Rules of Professional Conduct

★22 TAC §573.2

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.2, concerning avoidance to encroachment on another's practice. This amendment eliminates the awkward language and condenses the meaning of the regulation.

Roger D. Shipman, executive secretary, has determined that for the first five-year period the proposed amendment 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 amendment.

Mr. Shipman also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to eliminate awkward language and condense the meaning of the regulation. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Roger D. Shipman, Executive Secretary, Texas Board of Veterinary Medical Examiners, 3810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183.

The amendment is proposed under Texas Civil Statutes, Article 7465a, §8(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity.

§573.2. Avoidance of Encroachment on Another's Practice. A veterinarian may not make any effort, direct or indirect, which in any manner is calculated to influence the sound professional judgement of another veterinarian. [Any effort, direct or indirect, which in any way encroaches upon the practice of another veterinarian is a violation of these sections.] It is the right of any veterinarian, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful veterinary services, generally after communication with the veterinarian of whom complaint is made.

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

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

TRD-8512198 Roger D. Shipman
Executive Secretary
State Board of
Veterinary Medical
Examiners

Earliest possible date of adoption:
February 4, 1986
For further information, please call
(512) 458-1183.

★ ★ ★

★ 22 TAC §573.12

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.12, concerning display of degree, cer-

tificate, or title from approved institutions. This amendment will limit the scope of the regulation to conform with the Veterinary Licensing Act.

Roger D. Shipman, executive secretary, has determined that for the first five-year period the proposed amendment 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 amendment.

Mr. Shipman also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to limit the scope of the regulation to conform with the Veterinary Licensing Act. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Roger D. Shipman, Executive Secretary, Texas Board of Veterinary Medical Examiners, 3810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183.

The amendment is proposed under Texas Civil Statutes, Article 74f 5a, §(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity.

§573.12. Display of Degree, Certificate, or Title from Approved Institutions. A licensed veterinarian shall not use or display any college degree, certificate, or title pertaining to veterinary medicine granted by any institution not approved by the Texas State Board of Veterinary Medical Examiners.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512199 Roger D. Shipman
Executive Secretary
State Board of
Veterinary Medical
Examiners

Earliest possible date of adoption:
February 4, 1986
For further information, please call
(512) 458-1183.

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★ 22 TAC §573.26

The Texas Board of Veterinary Medical Examiners proposes the repeal of §573.26, concerning corporate or assumed names. This section does not reflect current public policy concerning advertising.

Roger D. Shipman, executive secretary, has determined that for the first five-year

period the proposed repeal 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 repeal.

Mr. Shipman also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to reflect changing public policy concerning advertising by the profession. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Roger D. Shipman, Executive Secretary, Texas Board of Veterinary Medical Examiners, 1810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183.

The repeal is proposed under Texas Civil Statutes, Article 7465a, §8(a), which provide the Board of Veterinary Medical Examiners with the authority to adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512234 Roger D. Shipman
Executive Secretary
State Board of
Veterinary Examiners

Earliest possible date of adoption:
February 3, 1986
For further information, please call
(512) 448-1183.

★ ★ ★

★ 22 TAC §573.26

The Texas Board of Veterinary Medical Examiners proposes new §573.26, concerning corporate or assumed names. This new section will reflect changing public policy concerning advertising by the profession.

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

Mr. Shipman also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to reflect changing public policy concerning advertising by the profession. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Roger D. Shipman, Executive

Secretary, Texas Board of Veterinary Medical Examiners, 1810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183.

The repeal is proposed under Texas Civil Statutes, Article 7465a, §8(a), which provide the Board of Veterinary Medical Examiners with the authority to adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity.

§573.26. *Corporate or Assumed Names.* A veterinarian shall not use a corporate or assumed name for his veterinary practice which would be false, deceptive, or misleading to the public.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512235 Roger D. Shipman
Executive Secretary
State Board of
Veterinary Examiners

Earliest possible date of adoption:
February 3, 1986

For further information, please call
(512) 448-1183.

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Chapter 577. General Administration and Duties

★22 TAC §577.14

The Texas Board of Veterinary Medical Examiners proposes new §577.14, concerning embryo transfer. This new section defines embryo transfer.

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

Mr. Shipman also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to protect the public from unqualified personnel performing embryo transfers. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Roger D. Shipman, Executive Secretary, Texas Board of Veterinary Medical Examiners, 3810 Medical Parkway, Suite 119, Austin, Texas 78756, (512) 458-1183.

The new section is proposed under Texas Civil Statutes, Article 7464a, which provides the Texas Board of Veterinary Medical Examiners with the authority to make,

alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of the Act.

§577.14. *Embryo Transfer.* The practice of veterinary medicine under Texas Civil Statutes, Article 7465a, includes removing an ovum or conceptus from a domestic animal in Texas and/or placing a conceptus or ovum in an animal in the State of Texas.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512307 Roger D. Shipman
Executive Secretary
Texas Board of
Veterinary Medical
Examiners

Earliest possible date of adoption:

January 20, 1986
For further information, please call
(512) 458-1183.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 123. Respiratory Care Practitioner Certification

★25 TAC §§123.1-123.14

The Texas Department of Health proposes new §§123.1-123.14, concerning procedures for regulating persons practicing respiratory care and certifying respiratory care practitioners. The new sections are intended to implement the requirements of Senate Bill 1007, 69th Legislature, 1985, concerning the certification of respiratory care practitioners. The new sections cover fees, application qualifications and procedures, types of certificates and permits issued, examinations, certificate renewal, a code of ethics, certifying persons with criminal backgrounds to be respiratory care practitioners and violations, complaints and subsequent actions.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government will be an estimated additional cost of \$313,297 each year for the years 1986 and 1987, \$288,197 for the year 1988, \$288,297 for the year 1989, and \$243,297 for the year 1990. There will be an estimated increase in revenue of \$346,500 for the year 1986, \$334,500 for the year 1987, and \$313,500 each year for the years 1988-1990. There will be no effect on local

government or small business for the first five-year period the sections will be in effect.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be assurance that the regulation of persons practicing respiratory care will identify competent practitioners, and guarantee to the public receiving respiratory care practitioners have met statutorily determined eligibility requirements. The anticipated economic cost to individuals who are required to comply with the proposed sections will be the fees described in §123.4.

Comments on the proposal may be submitted to Donna S. Hardin, Program Administrator, Respiratory Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183. Comments will be received for 30 days from the date of publication of the proposed rules. A public hearing has been scheduled at 1:30 p.m. on January 17, 1986, in the auditorium, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

The new sections are proposed under Texas Civil Statutes, Article 45121, which provide the Texas Board of Health with the authority to adopt rules consistent with the Act relating to the qualifications of applicants issuance of certificates, certificate renewal, continuing education, disciplinary actions, establishment of fees, and other matters, and Texas Civil Statutes, Article 6252-13d, §4, which authorize state agencies to adopt rules covering the eligibility of persons with criminal backgrounds for certain occupations, professions, and licenses.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512186 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Earliest possible date of adoption:
February 3, 1986

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

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Chapter 325. Solid Waste Management

The following proposals submitted by the Texas Department of Health will be serialized in the January 7, 1986, issue of the *Texas Register*. The earliest possible date of adoption for the following documents is March 15, 1986.

Subchapter E. Permit Procedures and Design Criteria
Permits
§§325.55, 325.56, 325.59, 325.61 (amendments)
§325.63 (new)

Proposed date of adoption for the following documents is February 3, 1986.

Subchapter P. Annual Fees and Related Reports
Permitted Facilities
§325.603 (new)
Registered Facilities
§325.613 (new)

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter C. TDMHMR Rulemaking

★ 25 TAC §§401.301-401.308

(Editor's note: A notice appeared in the December 27, 1985, issue of the Texas Register indicating that the following proposed sections would appear in this issue. Effective date of the documents is January 27, 1986.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§401.301-401.308, concerning TDMHMR rulemaking. The new sections are proposed simultaneously with the proposed repeal of the sections they replace, §§403.101-403.108, concerning procedures for the adoption of rules of the Department of Mental Health and Mental Retardation. The proposal of the repeal is also published in this issue of the *Texas Register*.

Pursuant to Senate Bill 217 of the 69th Legislature, 1985, rulemaking power for the Texas Department of Mental Health and Mental Retardation has been vested in its board. The new sections describe the processes by which rules are developed, reviewed, and distributed.

Sue Dillard, director, office of standards and quality assurance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Dillard also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be sections that are consistent with state law. There is no anticipated economic cost to individuals who are re-

quired to comply with the proposed sections.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, TDMHMR, P.O. Box 12668, Austin, Texas 78711, within 30 days of publication.

The new sections are proposed under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rule-making powers.

§401.301. Purpose. The purpose of this subchapter is:

(1) to describe the requirements for departmental rulemaking, including review requirements; and

(2) to provide a procedure and form for any person to use to petition the Texas Board of Mental Health and Mental Retardation to adopt, revise, or repeal a rule.

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

Board—The Texas Board of Mental Health and Mental Retardation.

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation.

Department—The Texas Department of Mental Health and Mental Retardation.

Rule—Any departmental statement filed with the *Texas Register* that implements, interprets, or prescribes law or policy, or describes procedure or practice requirements that are in the public interest. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the department (directives) or required technical operating procedures (manuals) that do not affect private rights or procedures.

Rule change—The amendment or repeal of a rule or part of a rule.

§401.303. Coordination of the Rulemaking Process.

(a) The commissioner is responsible to coordinate the rulemaking process for the department.

(b) Coordination involves formulation of drafts for approval by the board; initiation of the review and comment process; submission of necessary paperwork to the *Texas Register*; response to public comments; and distribution.

§401.304. Petitions for Rules or Changes to Rules.

(a) Any person may petition for a rule or rule change by submitting a request to the commissioner that complies with the following requirements.

(1) The petition shall be typed or legibly printed on white paper, 8½ inches wide by 11 inches long, with an inside mar-

gin of at least one inch, and shall be signed in ink by the petitioner or his authorized agent.

(2) The petition shall:

(A) state its purpose;

(B) contain a concise statement of facts in support of the object; and

(C) include the text of the proposed rule or revision and the proposed effective date.

(b) Upon receipt of the petition, the commissioner shall take the following action.

(1) If the petition does not comply with the form or content requirements of this subchapter, or if there are statutory requirements preventing the promulgation of the rule or rule change, the commissioner shall return to the petitioner by registered mail, return receipt requested, the petition, a statement describing how the petition fails to comply with the requirements of this subchapter.

(2) If the petition complies with the requirements of this subchapter, the commissioner shall prepare the document for presentation to the board.

§403.305. Public Comment on Rules.

(a) Public comment should be expressed:

(1) prior to the initial presentation of the rule or rule change to the board as part of the review and comment process;

(2) after publication of the proposed rule or rule change in the *Texas Register*, which provides a 30-day period for written public comment; or

(3) at a hearing, as provided for in the Administrative Procedure and Texas Register Act, which is requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

(b) Nothing in this subchapter shall preclude the emergency adoption of rules or rule changes necessary to protect the health, safety, or general welfare of the public, pursuant to Texas Civil Statutes, Article 6252-13a.

§401.306. Rule Review Committee. The Texas Board of MHMR may appoint a Rule Review Committee to review proposed rules or rule changes.

§401.307. Distribution.

(a) This rule shall be distributed to all members of the Texas Board of Mental Health and Mental Retardation; director of operations; deputy commissioners and directors in central office; superintendents/directors of all department facilities; the *Texas Register*; and other staff so designated in the distribution notice.

(b) The superintendents/directors of each facility shall disseminate the information contained in this subchapter to all appropriate staff members, including quality assurance and management and program evaluation directors.

(c) A copy of this subchapter shall be maintained for public access in a central location at each facility.

§401.308. References. Reference is made to the following statutes:

- (1) Texas Civil Statutes, Article 5547-202;
- (2) Texas Civil Statutes, Article 6252-13a.

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

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

TRD-8511986 R. Coke Mills
Chairman
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption:
January 27, 1986
For further information, please call
(512) 465-4670.

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Chapter 403. Other Agencies and the Public

Subchapter D. Procedures for Adoption of Rules of the Department of Mental Health and Mental Retardation

★ 25 TAC §403.101-403.108

(Editor's note: A notice appeared in the December 27, 1985, issue of the Texas Register indicating that the following proposal repeal would appear in this issue. Effective date of the document is January 27, 1986.)

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§403.101-403.108, concerning procedures for the adoption of rules of the department. The repeal is proposed simultaneously with the proposal of new §§401.301-401.308, concerning TDMHMR rulemaking, also published in this issue of the *Texas Register*.

Sue Dillard, director, office of standards and quality assurance, has determined that for the first five-year period the proposed repeal 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 repeal.

Ms. Dillard also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the section will be rules that are consistent with revisions in state law. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, TDMHMR, P.O. Box 12668, Austin, Texas 78711, with 30 days of publication.

The repeal is proposed under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

- §403.101. Purpose.
- §403.102. Definitions.
- §403.103. Proposal, Change, and Review of Department Rules, Directives, and Manuals.
- §403.104. Requirements of Petitions for Action on Rules, Directives, and Manuals.
- §403.105. Consideration of Petitions for Action on Rules, Directives, and Manuals.
- §403.106. Coordination of Action on Rules, Directives, and Manuals.
- §403.107. Distribution.
- §403.108. References.

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

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

TRD-8511987 R. Coke Mills
Chairman
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption:
January 27, 1986
For further information, please call
(512) 465-4670.

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TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System

Chapter 67. Hearings on Disputed Claims

★ 34 TAC §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, 67.21

The Employees Retirement System of Texas proposes the repeal of §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, and 67.21, concerning hearings on disputed claims.

James T. Herod, general counsel, has determined that for the first five-year period the proposed repeal 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 repeal.

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

is in effect the public benefit anticipated as a result of enforcing the repeal will be better guidance to persons who appeal cases to the board of trustees concerning procedures followed by the agency in contested cases, as a result of revised procedural sections that will be adopted simultaneously with this repeal. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to James T. Herod, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78701-3207.

The repeal is proposed under Texas Civil Statutes, Title 110B, §25.102, which provide the Board of Trustees of the Employees Retirement System of Texas with the authority to adopt rules for the transaction of any business of the board.

- §67.1. Appeal of Denied Claim.
- §67.3. Subpoenas, Depositions, and Witnesses.
- §67.5. Witness Fees.
- §67.7. Continuances and Postponements.
- §67.9. Failure to Prosecute a Claim.
- §67.11. Rights at a Hearing.
- §67.13. Post-hearing Procedures.
- §67.15. Post-hearing Review.
- §67.17. Motion for Rehearing.
- §67.19. Transcript of the Hearing.
- §67.21. Conflicting Claims to Benefits.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512157 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption:
February 4, 1986
For further information, please call
(512) 476-6431, ext. 178.

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★ 34 TAC §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, 67.21, 67.23, 67.25, 67.27, 67.29, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.59, 67.61, 67.63, 67.65, 67.67, 67.69, 67.71, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.85, 67.87, 67.89, 67.91, 67.93, 67.95, 67.97, 67.99, 67.101, 67.103, 67.105, 67.107, 67.109, 67.111

The Employees Retirement System of Texas proposes new §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, 67.21, 67.23, 67.25, 67.27, 67.29, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43,

67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.59, 67.61, 67.63, 67.65, 67.67, 67.69, 67.71, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.85, 67.87, 67.89, 67.91, 67.93, 67.95, 67.97, 67.99, 67.101, 67.103, 67.105, 67.107, 67.109, and 67.111, concerning hearings on disputed claims.

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

Mr. Herod also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better guidance to persons who appeal cases to the board of trustees concerning procedures followed by the agency in contested cases. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to James T. Herod, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78701-3207.

The new sections are proposed under Texas Civil Statutes, Title 110B, §25.102, which provide the Board of Trustees of the Employees Retirement System of Texas with the authority to adopt rules for the transaction of any business of the board.

§67.1. *Appeal of Denied Claims.*

(a) When the executive director denies a claim, the applicant has 30 days from the date the executive director's letter is mailed by certified mail to file written notice of the appeal. The denial letter will inform the applicant of this right. In most cases, administrative hearing of the appeal will be held in Austin.

(b) As used in this section, the term "applicant" includes any duly authorized representative of such person.

(c) In computing time under this section, the day after any mailing by the executive director shall be counted as the first day of the time period. A document is considered to be filed with the executive director when it is received by the executive director or when it is postmarked, whichever is earlier.

§67.3. *Purpose and Scope.*

(a) Purpose of chapter. The purpose of this chapter is to provide an orderly and efficient system of procedure before the Board of Trustees of the Employees Retirement System of Texas to facilitate the administration of the laws of the state within its jurisdiction. This chapter shall be given a fair and impartial construction to attain these objectives.

(b) Scope of chapter. This chapter shall govern the procedure for the institu-

tion, conduct, and determination of all causes and proceedings before the board of trustees where notice and hearing are required. This chapter's sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the board of trustees or the substantive rights of any person.

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

Agency—Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education) which makes rules or determines contested cases.

Board—The Board of Trustees of the Employees Retirement System of Texas.

Contested case—A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Executive director—The executive director of the Employees Retirement System of Texas.

Examiner (hearings examiner)—Any person appointed by the executive director to conduct hearings.

Insured—A person who is or claims to be entitled to participate in the Uniform Group Insurance Program established by the Texas Employees Uniform Group Insurance Benefits Act, the Insurance Code, Article 3.50-2.

Member—A person who is a member, retiree, or beneficiary of any retirement system administered by the board.

Order—The whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the board in a matter other than rulemaking.

Party—Each person or agency named or admitted as a party in a contested case.

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

Pleading—A written allegation by the parties or the Employees Retirement System of Texas of their or its respective claims. Pleadings may take the form of applications, petitions, appeal letters, complaints, briefs, exceptions, replies, motions, notices, or answers.

Proceeding—Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of an appeal if the matter is a contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Trustee—One of the elected or appointed members of the decision-making body defined as the board.

§67.7. *Filing of Documents.* All documents relating to any proceeding pending or to be instituted before the board shall be filed with the executive director. They shall be deemed filed as provided for in §67.1 and §81.9 of this title (relating to Appeal of Denied Claims and Grievance Procedure).

§67.9. *Computation of Time.*

(a) Counting days. In computing any period of time prescribed or allowed by these sections, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event, or default in question, and it shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any of the documents mentioned in §67.7 of this title (relating to Filing of Documents) may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings which initiate a proceeding or which are made before an examiner has been assigned the matter, the executive director will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after an examiner has been assigned the matter, the examiner will determine whether good cause exists and whether an extension should be granted.

§67.11. *Agreements To Be in Writing.*

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

§67.13. *Conduct and Decorum.*

(a) Comportment. Every party, witness, attorney, or other representative shall comport himself in all board proceedings with dignity, courtesy, and respect for the board, the hearings examiners, and all other

parties and participants. Attorneys shall observe and practice the ethical behavior prescribed for the profession by the "Code of Professional Responsibility" and "Canons of Judicial Ethics."

(b) Compliance. Upon violation of subsection (a) of this section, any party, witness, attorney, or other representative may be excluded by the board or examiner from any hearing for such period and upon such conditions as are just, or may be subject to such other just, reasonable, and lawful disciplinary action as the board or examiner may prescribe.

§67.15. *Classification of Parties.* Parties to proceedings governed by this chapter are classified as appellants, applicants, claimants, insurers, or intervenors.

§67.17. *Parties Defined.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant or Claimant—Any party who has by written petition, including appeals, applied for or seeks an available administrative remedy from the board.

Intervenor—A party other than an applicant or claimant who is permitted to become a party to a proceeding.

Insurer—The insurance carrier who has contracted with the board to provide coverages authorized by the Texas Employees Uniform Group Insurance Benefits Act, the Insurance Code, Article 3.50-2. The insurer shall be considered a party to any proceeding which involves a question of eligibility or coverage under its contract with the board.

§67.19. *Alignment of Parties.* Parties may be aligned according to the nature of the proceeding and their relationship to it.

§67.21. *Intervention.* Any person or agency interested in intervening in any proceeding before the board may appear formally before the board, by filing a motion to intervene at least 15 days in advance of the hearing date; and it may present any relevant, material and proper testimony and evidence bearing upon the issues involved in the particular proceeding. In any proceeding involving notice of less than 30 days, this time for filing may be modified.

§67.23. *Representative Appearances.* Any party may appear and represent himself or appear through any person authorized by that party to make appearance for him except as provided in §67.43(b)(1) of this title (relating to Dismissal Without Hearing).

§67.25. *Classification of Pleadings.* Pleadings filed with the executive director shall be appeal letters, notices, applications, appeals, claims, answers, exceptions, replies, motions, or briefs. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

§67.27. *Form and Content of Pleadings.*

(a) Typewritten or printed. Pleadings and briefs shall be typewritten or printed on paper not to exceed 8½ inches by 11 inches, with an inside margin at least one inch wide, and annexed exhibits shall be folded to the same size. Unless printed, the impression shall be on one side of the paper only and shall be doublespaced, except that footnotes and quotations in excess of a few lines may be singlespaced. Reproductions may be by any process, provided all copies are clear and permanently legible.

(b) Content. Pleadings shall state their object, shall contain a concise statement of the supporting facts, and shall be signed by the applicant or his authorized representative.

(c) Signature and address. The original of every pleading shall be signed in ink by the party filing it or by his authorized representative. Pleadings shall contain the address and phone number of the party filing the document or the name, business address, and telephone number of the representative.

(d) Form for pleadings. All pleadings shall contain the following:

(1) the name of the party supporting or opposing the board action;

(2) a concise statement of the facts relied upon by the pleader;

(3) a prayer stating the type of relief, action, or order desired by the pleader;

(4) any other matter required by statute; and

(5) a certificate of service or other notation showing that a copy of the pleading has been sent to all other parties or their representatives.

(e) Waiver. The executive director may waive any requirement of this section if he determines that application of the requirement to a member or insured would create an unnecessary hardship and that not requiring the member or insured to comply with the section will not adversely affect the rights of any other party.

§67.29. *Service of Pleadings.* A copy of any pleading filed by any party in any proceeding before the board shall be mailed or delivered by the party filing it to the hearings examiner and to every other party of record on the same day it is mailed or delivered to the executive director. If any party is being represented by an attorney or other representative authorized under this chapter to make appearances, service shall be made upon that attorney or representative. The failure of any party to make this service may be grounds for the entry of an order striking the pleading from the record.

§67.31. *Written Motions.* Any motion relating to a pending proceeding, unless made during a hearing, shall be written and shall set forth the relief sought and the specific reasons and grounds for relief. If based upon matters which do not appear of record, it shall be supported by certification

copies of documents relied upon or, in the case of testimony, sworn affidavits. With the exception of motions for continuance, any motion filed before a hearing must be filed not less than three days before the date of the hearing. Any motion not made during a hearing shall be filed with the executive director.

§67.33. *Amended Pleadings.* Any pleading except notices of issues may be amended at any time, provided that it does not act as a surprise to the opposite party. Any amendment to a pleading, which operates as a surprise to any other party, may be granted upon written motion showing that no harm will result.

§67.35. *Incorporation of Board Records by Reference.* Any pleading may adopt and incorporate, by specific reference, any part of any document or entry in the official files and records of the board or of the Employees Retirement System of Texas. This section shall not relieve any party of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

§67.37. *Docketing and Numbering of Causes.* When an appeal, application, or other pleading which is intended to institute a hearing before the board is received, and it complies with these sections as to form and content, it shall be docketed as a pending proceeding, numbered in accordance with the established docket numbering system of the executive director, shall have an examiner assigned, and notice shall be served.

§67.39. *Notice and Service.*

(a) The executive director shall cause the initial notice in a contested case to be given by the hearings examiner. The initial notice shall be given not less than 10 days prior to hearing. In stating the issues and matters asserted in the initial notice, the hearings examiner shall state verbatim the issues and matters as set forth in the letter from the executive director to the hearings examiner referring the case for hearing.

(b) After service of the initial notice, any party wishing to raise issues or matters not set forth in the initial notice must do so by filing a motion which sets forth such issues or matters not less than 10 days before the date set for hearing. If granted, the hearings examiner shall give notice, not less than three days before the date of hearing, of the additional issues and matters to be decided in the contested case.

§67.41. *Contents of Notice.*

(a) All initial notices shall include the following:

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

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

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short, plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than five days before the date set for hearing, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing; and

(5) any other statement required by law.

(b) All other notices in a contested case shall set forth only the additional issues and matters to be decided.

§67.43. *Dismissal Without Hearing.*

(a) The hearings examiner may entertain motions for dismissal without a hearing for any of the following reasons:

- (1) failure to prosecute a claim;
- (2) unnecessary duplication of proceedings or res adjudicata;
- (3) withdrawal or voluntary dismissal of appeal;
- (4) moot questions or obsolete petitions; and
- (5) lack of jurisdiction.

(b) The hearings examiner shall dismiss the appeal of any person who has filed written notice of the appeal but who defaulted by:

- (1) failing to personally appear at a hearing unless such appearance is waived by agreement of all the parties; or
- (2) failing to request a hearing or take some other action specified by the hearings examiner within 30 days after notice is mailed of intention to dismiss the claim.

(c) For good cause, the executive director may permit reinstatement of an appeal.

§67.45. *Prehearing Conference.*

(a) In any proceeding, upon written notice by the board or hearings examiner on its own motion or on the motion of a hearing, the parties, their attorneys or representatives may be directed to appear before the examiner at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering any of the following:

- (1) the simplification of issues;
- (2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by any of the parties of matters of public record, including but not limited to such matters as annual reports, in order to avoid the unnecessary introduction of proof;
- (3) the procedure at a hearing;
- (4) the limitation, where possible, of the number of witnesses; and
- (5) any other matters which may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of such issues as are in dispute.

(b) Action taken at the conference shall be recorded by the examiner, unless the parties enter into a written agreement as to such matters as permitted in §67.11 of this title (relating to Agreements To Be in Writing).

(c) A prehearing conference may be held by means of a conference telephone call.

§67.47. *Postponements or Continuances.*

(a) A motion for postponement or continuance shall be in writing, shall be filed with the executive director prior to the date set for hearing, and shall set forth the specific grounds upon which it is sought. Once a contested case has actually proceeded to a hearing, after notice has been issued, postponement may be granted by the examiner upon either oral or written motion.

(b) The hearings examiner may continue a hearing for good cause upon the motion of any party or the examiner.

(c) Once a date and time for a hearing are set, a request for postponement will be acceptable only if received in writing by the Employees Retirement System of Texas or by the hearings examiner before 5 p.m. on the work day before the date of the hearing.

§67.49. *Motion for Consolidation.*

A motion for consolidation of two or more appeals, applications, petitions, or other proceedings shall be in writing, signed by the movant, his attorney or representative, and filed with the executive director prior to the date set for hearing. No two or more appeals, applications, petitions, or other proceedings shall be consolidated or heard jointly without the consent of all parties to all such proceedings, unless the board or hearings examiner shall find that the two or more appeals, applications, petitions, or other proceedings involve common questions or law or fact, or both, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice. Special hearings on separate issues may also be allowed.

§67.51. *Place and Nature of Hearings.*

All hearings conducted in any proceeding shall be open to the public unless the board or hearings examiner determines that all or a portion of the hearing will relate to matters deemed confidential by law, in which event the hearing will be closed to the public. All hearings shall be held in Austin, unless for good and sufficient cause the executive director shall designate another place of hearing in the interest of the Employees Retirement System of Texas.

§67.53. *Presiding Officer.* Hearings will be conducted by hearings examiners, any and all of whom are at times referred to in this chapter as the examiner. The examiner shall have authority to administer oaths, to examine witnesses, and to rule upon the admissibility of evidence and amendments to pleadings. He shall have the authority to

recess any hearing from day to day. If the examiner is unable to continue presiding over a case at any time before the final decision, another examiner will be appointed who shall perform any function remaining to be performed without the necessity of repeating any previous proceedings.

§67.55. *Order of Procedure.*

(a) The examiner shall open the hearing and make a concise statement of its scope and purposes. Once the hearing has begun, parties or their representatives may be off the record only when the examiner permits. If a discussion off the record is pertinent, the examiner may summarize such discussion for the record. Appearances are to be entered on the record by all parties, their attorneys or representatives, and any persons who may testify during the proceedings. All persons present who may testify will then be placed under oath. Thereafter, parties may make motions or opening statements.

(b) Following opening statements, if any, by both sides, the party with the burden of proof may be directed to proceed with his direct case, after which opposing parties may be allowed to pose clarifying questions, that is, inquiries for fuller explanations or elaboration of points already stated. Questions by way of clarification should not be used as a substitute for cross-examination. The examiner may allow presentation of an entire direct case before cross-examination of the several witnesses.

(c) Where the proceeding is initiated at the executive director's or the board's own call, or where several proceedings are heard on a consolidated record, the examiner shall designate who shall open and close and at what stage intervenors shall be permitted to offer evidence.

(d) Opportunity for cross-examination and presentation of a direct case shall be afforded all parties of record. After all parties have completed the presentation of their evidence and have been afforded the opportunity to ask clarifying questions and to cross-examine the opposition witnesses, closing statements may be allowed. The party with the burden of proof, usually the appellant, petitioner, applicant, or claimant, shall be entitled to open and close.

(e) The examiner may also call upon any party or staff of the board for further material or relevant evidence upon any issue before the issuance of a proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection, cross-examination, and rebuttal by the other interested parties.

§67.57. *Reporters and Transcripts.*

(a) In all proceedings, an official reporter shall make and, when requested by any party in writing, transcribe a stenographic record of the hearing; and the reporter shall provide as many copies of the transcript as may be required for the purposes of the board.

(b) Errors claimed to be in a transcript of a contested hearing shall be noted in writing and suggested corrections may be offered within 10 days after the transcript is filed with the examiner, unless the examiner shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record and the examiner. If not objected to within 12 days after being offered, the examiner will direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the examiner, with the aid of argument and testimony from the parties, shall then determine the manner in which the record shall be changed, if at all.

§67.59. Formal Exceptions. Formal exceptions to rulings of the examiner during a hearing shall be unnecessary. It shall be sufficient that the party, at the time any ruling is made or sought, makes known to the examiner the action which he desires.

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

§67.63. Briefs.

(a) Briefs shall conform, where practicable, to the requirements for form of pleadings set out in this chapter. The points involved shall be concisely stated, the evidence in support of each point shall be summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner.

(b) Briefs may be requested by the examiner both prior to and after the filing of the examiner's proposal for decision set out in §67.81 of this title (relating to Examiner's Report and Proposal for Decision).

§67.65. The Record.

(a) Contents of record. The record in a contested case shall include the following:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on objections;
- (5) proposed findings and exceptions;

(6) any decision, opinion, or report by the examiner presiding at the hearing; and

(7) all staff memoranda or data submitted to the hearing examiner in connection with his consideration of the case.

(b) Findings of fact. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

§67.67. Witnesses To Be Sworn. Oral testimony shall be presented under oath administered by the examiner or court reporter.

§67.69. Rules of Evidence. The rules of evidence as applied on nonjury civil cases in the district courts of this state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under them may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The rules of privilege recognized by law shall be effective in board proceedings. Objections to evidentiary offers may be made and shall be noted in the records. No evidence will be admissible in a proceeding if it is beyond the scope of the notices of issues and matters asserted in the contested case.

§67.71. Official Notice. Official notice may be taken of judicially cognizable facts, and such notice may be taken of generally recognized facts within the area of the specialized knowledge of the Employees Retirement System of Texas. Parties shall be notified of the material noticed, including any staff memoranda or data; and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge, or both, of the Employees Retirement System of Texas and its staff may be utilized in evaluating the evidence.

§67.73. Documentary Evidence.

(a) Documentary evidence may be received in the form of copies or excerpts, upon a showing that the original is not readily available. On request, however, parties shall be given an opportunity to compare the copy with the original.

(b) When a large number of similar documents are offered, the examiner may limit those admitted to a number which are typical and representative, and may, in his discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; however, before making this requirement, the examiner shall see that all parties of record or their representatives are given an opportunity to examine the documents from which the abstracts are made.

§67.75. Admissibility of Prepared Testimony and Exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially,

evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in a narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same as a true and accurate record of what his testimony would be if he were to testify orally. The witness shall be subject to cross-examination, and his prepared testimony shall be subject to being stricken either in whole or in part.

§67.77. Introduction of Exhibits.

(a) Form of exhibits. Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of the board and whenever practicable, shall conform to the requirements of §67.27 of this title (relating to Form and Content of Pleadings). There shall be a brief statement on the first sheet of the exhibit as to what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(b) Tender and service. The original of each exhibit offered shall be tendered to the examiner for identification. One copy shall be furnished to the examiner, and one copy to each party of record or his representative. Written or printed documents received in evidence may not be withdrawn except with the approval of the examiner.

(c) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, the examiner shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the examiner with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) Late exhibits. Unless specifically directed by the examiner, no exhibit shall be filed in any proceeding after the conclusion of the hearing, and then only after a copy of the exhibit has been served on all parties.

§67.79. Limit on the Number of Witnesses.

The examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§67.81. Examiner's Report and Proposal for Decision.

(a) If, in a contested case, a majority of the trustees has not heard the case or read the record, the decision, if adverse to a party to the proceedings other than the board itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded each party adversely affected to file exceptions and present briefs to the trustees. The proposal for decision must contain a statement of the reasons for the proposed decision and of

each finding of fact and conclusion of law necessary to support the proposed decision, prepared by the person who conducted the hearing or by one who has read the record.

(b) The proposal for decision shall be accompanied by an examiner's report. This report shall contain a statement of the nature of the case, a discussion of the issues, the evidence, and the applicable law.

(c) Upon completion of the hearing, the hearings examiner shall forward his report and proposal for decision and the record to the executive director. Ordinarily, a report and the proposal for decision shall be submitted not later than the 60th day after the conclusion of the hearing. Upon review of the record, the executive director may reverse the decision being appealed. When appropriate, the examiner's report and proposal for decision, with all briefs and exceptions, will be submitted to the board for determination and order.

(d) A copy of the hearings examiner's report and proposal for decision shall be sent by certified mail to every party that would receive less than requested.

§67.83. *Filing of Exceptions and Replies.*

(a) Any party of record may, within 20 days of the date of service of the examiner's report and proposal for decision, file exceptions to the report and proposal for decision. Replies to these exceptions shall be filed within 10 days after the date of filing exceptions. The examiner, at his discretion, may grant a reasonable extension of the time for filing of exceptions and replies. A request for extension of time within which to file exceptions or replies shall be filed with the examiner, and a copy of the request shall be served on all parties of record by the party making the request. The examiner shall promptly notify the parties of the executive director's decision with regard to these requests. Additional time shall be allowed only when the interests of justice so require.

(b) Upon the expiration of the time for filing exceptions or replies to exceptions or after the replies and exceptions have actually been filed (if filed before the period for filing has expired), the examiner's report and proposal for decision will be considered, and the board will render its order.

§67.85. *Form of Exceptions and Replies.*

Exceptions and replies to exceptions shall conform as nearly as practicable to the rules provided for pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and that evidence and any arguments relied upon shall be grouped under the exceptions to which they relate.

§67.87. *Oral Argument Before the Board.*

Any party may request oral argument before the Board before the final determination of any contested case, but an oral argument shall be allowed only at the discretion of the board. A request for oral argument may be incorporated in the exceptions, re-

plies to exceptions, petition for reconsideration, or in a separate pleading.

§67.89. *Presentation of Contested Cases to the Board.*

(a) The hearings examiner who prepared the report and proposal for decision shall present the contested case to the board during the board meeting at which the case has been placed on the board's agenda. In presenting the case, the hearings examiner shall:

(1) concisely state the nature of the case;

(2) concisely state the positions of the parties;

(3) concisely state his or her proposal for deciding the case and the basis for that proposal; and

(4) respond to questions concerning the hearing and the proposal directed to him or her from a trustee.

(b) A trustee may question the hearings examiner concerning the hearing, the evidence, the report, the proposal for decision or any other matter within the record of the contested case. In responding to a question, the hearings examiner must advise the chairman of the board if the hearings examiner believes the question involves a matter outside the record of the contested case or is otherwise improper. The chairman of the board may ask the general counsel for his opinion concerning the propriety of a particular question. The decision of the chairman of the board concerning the propriety of a question shall be final.

(c) A trustee may ask the general counsel for his opinion concerning the legality of a particular course of action or decision, the law or rules governing a particular aspect of matters within the jurisdiction of the board, the evaluation of the evidence, or any other legal matter. The general counsel shall advise the chairman of the board if the general counsel is of the opinion that responding to a particular question would be inappropriate. The decision of the chairman of the board concerning the propriety of a question shall be final.

(d) If a party has requested oral argument before the board, the board will decide whether such oral argument will be allowed. If oral argument is allowed, the party will be given time, not to exceed five minutes, to present oral argument to the board.

(e) After the hearings examiner presents his report and proposal for decision, the trustees have been given an opportunity to ask questions, oral argument is presented, and the trustees have been given an opportunity to discuss the case, the board shall act on the case and render a decision.

§67.91. *Form, Content, and Service of Orders.*

All final orders of the board shall be in writing and shall be signed by the chairman of the board. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall

be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his authorized representative.

§67.93. *Administrative Finality.*

(a) Administrative action becomes final in any of the following events:

(1) adoption by the board of a final order and the denial of a motion for rehearing, either expressly or by operation of law; and

(2) adoption by the Board of a final order which includes a statement that no motion for rehearing will be necessary because an imminent peril to the public health, safety, and welfare requires immediate effect to be given to a final decision or order.

(b) The final decision or order must be rendered within 60 days of the date on which the hearing is closed, except that in a contested case heard by other than a majority of the trustees, the executive director may prescribe a longer period of time within which the final order or decision shall be issued. The extension, if so prescribed, shall be announced within 30 days after the date in which the hearing is closed.

§67.95. *Effective Date of Order.* The effective date of a final decision or order, unless otherwise stated, is the date of Board action and it shall be incorporated in the body of the instrument.

§67.97. *Rehearing.* Motions for rehearing must be made within 15 days after the rendition of a final decision or order. Replies to motions for rehearing must be filed with the executive director within 25 days after the rendition of the final decision or order, and board action on the motion shall be taken within 45 days after the rendition of the final decision or order. Copies of these motions and replies shall be served on all parties concurrently with the filing with the executive director. If board action is not taken within this 45-day period, the motion for rehearing shall be overruled by operation of law 45 days after the rendition of the final decision or order. The board may by written order extend the period of time for filing these motions and replies and for taking board action, except that this extension shall not extend the period for board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing shall be overruled by operation of law upon the date fixed by the order, or in the absence of an order, 90 days from the date of the final decision or order.

§67.99. *Emergency Order.* If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite that finding

in the decision or order; and the decision or order shall be final and appealable from the date rendered and no motion for rehearing shall be required as a prerequisite for appeal.

§67.101. Ex Parte Communication. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

§67.103. Subpoenas.

(a) The issuance of subpoenas in any proceeding shall be governed by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §14. Following written request by a party or on its own motion, the board or examiner may issue subpoenas addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding. The subpoena may be issued by the board itself or, during the course of a hearing, the examiner.

(b) Motions for subpoenas to compel the production of books, records, papers, or other objects shall be addressed to the board or examiner, shall be verified, and shall specify as nearly as may be the books, records, papers, or other objects desired and the material and relevant facts to be proven by them.

(c) Subpoenas shall be issued by the board or examiner only after showing of good cause and the deposit of sums sufficient to insure payment of expense incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

§67.105. Depositions. The taking and use of depositions in any proceeding shall be governed by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §14.

§67.107. Discovery Generally. The parties to a contested case may engage in any type of discovery authorized by the Texas Rules of Civil Procedures. The manner and procedure for engaging in such discovery shall be the manner and procedure specified in the Texas Rules of Civil Procedure or the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, whichever is applicable.

§67.109. Witness Fees. Witness fees are as follows:

(1) Mileage and per diem allowances are the same as those provided for

state employees under the General Appropriations Act

(2) A standard appearance fee for each day or part of a day the person is necessarily present as a witness is set at \$50. A witness who gives testimony in a professional capacity may be paid an appearance fee of no more than twice the standard fee.

(3) Fees shall be paid only on presentation of proper vouchers sworn by the witness and approved by the system.

(4) Witness fees will be paid by the system from the funds deposited by the person who requested the witness to appear.

§67.111. Conflicting Claims to Benefits.

(a) Upon being served with official notice that two or more persons have conflicting claims to funds payable from a program administered by the board, the executive director shall require all parties claiming the benefits or funds to give written notice of exactly what they want from the system.

(b) If the executive director determines, from the evidence presented, that a claim for funds or benefits may be valid, he shall determine what portion of the benefits or funds is reasonably in dispute and will cause that amount to be withheld from distribution until a valid agreement by the parties is filed with the system or a final order has been entered and the time for appeal has passed. Upon receipt of the order or agreement, with such safeguards as the executive director requires, the withheld funds shall be disbursed in accordance with the order or agreement.

(c) The portion of funds or benefits not in dispute shall be paid in accordance with customary board procedures.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512158

Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption:

February 4, 1986

For further information, please call
(512) 476-8431, ext. 178.

★ ★ ★

Chapter 81. Insurance

★ 34 TAC §81.5

The Employees Retirement System of Texas proposes an amendment to §81.5, concerning eligibility.

Henry D. Eckert, director of group insurance, has determined that for the first five-year period the proposed amendment 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 amendment.

Mr. Eckert also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to clarify the intent of an existing section and make the options available upon retirement more clear to the retiree. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to James T. Herod, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendment is proposed under the Insurance Code, Article 3.50-2, §4A, which provide the Board of Trustees of the Employees Retirement System of Texas with the authority to provide standards for determining eligibility for participation in the state group insurance program.

§81.5. Eligibility.

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

(d) Dependents of employees and retirees. The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. A newly acquired dependent is eligible for coverage on the date he or she becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before his or her dependents are eligible for that type of coverage. Newborn dependents are covered automatically on date of birth. A retiree's dependents are eligible for dependent life insurance coverage only if that coverage was in effect the day before the retiree became eligible for retiree life insurance; however, where the retiree was precluded from adding dependent life coverage because eligible dependents were either active state employees or covered as dependents of an active state employee, the retiree may add dependent life coverage upon an eligible dependent's termination of state employment other than by retirement. The request to add this coverage must be submitted within 30 days following the date the dependent terminates state employment other than by retirement. A dependent may not be simultaneously covered for basic term life and dependent term life. A retiree whose life insurance coverage is continued for which the premium is waived under the provisions of an insurance contract that provides extended life insurance benefits as a result of disability may not purchase dependent life insurance coverage.

(e)-(i) (No change.)

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512214

Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption:
February 4, 1986

For further information, please call
(512) 476-6431, ext. 178.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 49. Child Protective Services

Subchapter O. Foster and Adoptive Home Development

★ 40 TAC §49.1502

(Editor's note: A notice appeared in the December 27, 1985, issue of the Texas Register indicating that the following proposed amendment would appear in this issue. Effective date of the document is January 27, 1986.)

The Texas Department of Human Services (DHS) proposes an amendment to §49.1502, concerning adoptive home screening and approval. The section is amended to include policy regarding discipline. Enforcement of this policy will ensure uniform screening and approval criteria related to discipline in the adoption program.

Clifton Martin, associate commissioner for programs, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the amendment.

Mr. Martin also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to prevent discipline from becoming abusive and to strengthen parent-child bonding by establishing a uniform statewide discipline policy for adoptive homes. There is no economic cost to individuals who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-749, Texas Department of Human Services, P.O. Box 2960, Austin, Texas 78769, mail code 153-E, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to

administer public assistance programs; Chapter 41, which authorizes the department to enforce laws for the protection of children; and Chapter 47, which authorizes the department to administer a program to promote the adoption of hard-to-place children.

§49.1502. *Adoptive Home Screening.* DHS' [DHR's] policies for screening and approval of adoptive homes are as follows:

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

(3) Length of marriage. Couples must be married at least two years before DHS [DHR] accepts an adoption application. DHS [DHR] may allow exceptions to this policy only to meet the needs of a specific child.

(4) (No change.)

(5) Fertility. Fertility studies are required only if DHS [DHR] believes the couple needs to know more about their fertility before they adopt a child. The couple's fertility is important only in relation to resolution of their feelings about their infertility and their ability to accept and parent a child not born to them.

(6) (No change.)

(7) Residence. Adoptive home studies are started only if the applicants will live in the community long enough for DHS [DHR] to complete a study and make a placement. Exceptions are made in unusual situations which involve a child with special needs if another licensed child placing agency in the new community agrees to complete the adoption services.

(8) Adoption by foster families. Foster families are evaluated using the same criteria applied to any other adoptive applicants. The evaluation focuses on the family's demonstrated skill and ability to parent the children DHS [DHR] has placed in the family's care.

(9) Race/ethnicity. While adoptive parents whose race or ethnicity is the same as a child's are usually best able to help a child develop appropriate racial/ethnic ties [meet the child's psychological needs], consideration may be given to other arrangements to meet the needs of a specific child.

(10) Financial. While there are no specific income requirements [limitations], the applicant's income must be sufficient to meet the applicant's needs and the child's minimum maintenance needs. Income is also evaluated in terms of past and present management.

(11)-(12) (No change.)

(13) Discipline. Applicants are evaluated based on their willingness and ability to individualize discipline, recognize and respect differences in children, and use appropriate discipline methods. Corporal punishment of children in DHS' managing conservatorship is discouraged. If spanking is to be used on a child in DHS' conservatorship, the child may be spanked only with an open hand on the hands or buttocks. All methods of discipline must conform to the requirements contained in the minimum

standards for child placing agencies (24 hour and adoption). Discipline must not result in bruises, welts, burns, fractures, sprains, exposure, or poisoning; nor may it consist of withholding of food, shelter, supervision, or medical or educational care. Provisions of the discipline policy for a particular applicant may be waived only upon the concurrence of the regional director for families and children and the Protective Services for Families and Children Branch.

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

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

TRD-8512100

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption:
January 27, 1986

For further information, please call
(512) 450-3766.

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Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 151. Licensure Standards for First Year Permit

★ 40 TAC §151.313

The Texas Commission on Alcohol and Drug Abuse proposes an amendment to §151.313, concerning licensure standards for environment. This standard was originally proposed for adoption, but through error it was omitted from those standards adopted effective January 1, 1986.

Larry Goodman, director, fiscal services, has determined that for the first five-year period the proposed amendment 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 amendment.

Mr. Goodman also has determined that there will be no public benefit anticipated as a result of enforcing the amendment. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Jane Maxwell, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 5561c-2, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to license all alcohol treatment programs.

§151.313. Environment.

(a) (No change.)

(b) **Building and grounds shall be maintained, repaired, and cleaned so they are not hazardous to health and safety [The facility shall be clean, structurally sound, and not in need of painting. The furnishings shall be in good repair].**

(c)-(i) (No change.)

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

Issued in Austin, Texas, on December 17, 1985.

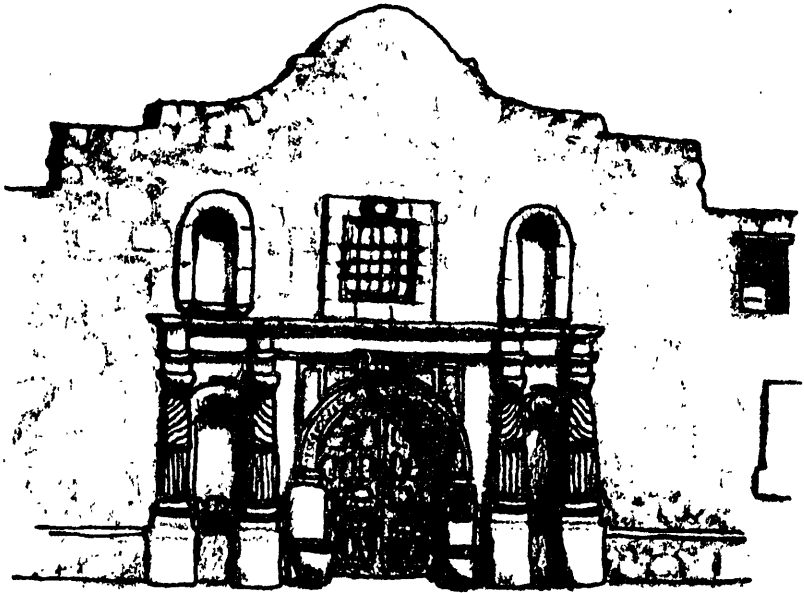
TRD-8512207

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption:

February 4, 1986

For further information, please call
(512) 475-2577.



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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 43.

TRANSPORTATION Part I. State Department of Highways and Public Transportation Chapter 25. Maintenance Division

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

★ 43 TAC §25.91, §25.92

The State Department of Highways and Public Transportation has withdrawn from consideration for permanent adoption the proposed amendments to §25.91 and §25.92, concerning oversize and/or overweight permits for certain oil well related vehicles. The text of the amended sections as proposed appeared in the August 6, 1985, issue of the *Texas Register* (10 TexReg 2506).

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

TRD-8512314

James D. Frasier
General Counsel
State Department of
Highways and Public
Transportation

Filed: December 30, 1985
For further information, please call
(512) 475-2141.

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★ 43 TAC §25.91, §25.92

The State Department of Highways and Public Transportation has withdrawn from consideration for permanent adoption the proposed amendments to §25.91 and §25.92, concerning oversize and/or overweight permits for certain oil well related vehicles. The text of the amended sections as proposed appeared in the August 6, 1985, issue of the *Texas Register* (10 TexReg 2506).

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

TRD-8512316

James D. Frasier
General Counsel
State Department of
Highways and Public
Transportation

Filed: December 30, 1985
For further information, please call
(512) 475-2141.

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★ 43 TAC §25.95

The State Department of Highways and Public Transportation has withdrawn from consideration for permanent adoption the proposed amendments to §25.95, concerning oversize and/or overweight permits for certain oil well related vehicles. The text of the amended section as proposed appeared in the August 6, 1985, issue of the *Texas Register* (10 TexReg 2507).

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

TRD-8512317

James D. Frasier
General Counsel
State Department of
Highways and Public
Transportation

Filed: December 30, 1985
For further information, please call
(512) 475-2141.

Oversize-Overweight Permits for Unladen Lift Equipment Motor Vehicles

★ 43 TAC §25.201, §25.202

The State Department of Highways and Public Transportation has withdrawn from consideration for permanent adoption the proposed amendments to §25.201 and §25.202, concerning oversize overweight permits for unladen lift equipment motor vehicles. The text of the amended sections as proposed appeared in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2383).

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

TRD-8512312

James D. Frasier
General Counsel
State Department of
Highways and Public
Transportation

Filed: December 30, 1985
For further information, please call
(512) 475-2141.

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Adopted

Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Texas 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 1.

ADMINISTRATION

Chapter 97. Business

Opportunity

Fees and General Information

★ 1 TAC §97.21

The Office of the Secretary of State adopts an amendment to §97.21, without changes to the proposed text published in the November 19, 1985, issue of the *Texas Register* (10 TexReg 4463).

The amendment sets out the filing fees for an exemption and voluntary termination, and the fees for copying business opportunity filings and issuing certificates. In addition, the requirement that fees be submitted in the form of a cashier's check or money order has been deleted because of the unfair burden it places on the public.

A revised schedule of fees sets forth what the public must comply with to obtain the services subject to the respective fees.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5069, §16.17, which provide the Secretary of State with the authority to promulgate rules necessary to enforce and administer the Act.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512175 Myra A. McDaniel
Secretary of State

Effective date: January 13, 1986
Proposal publication date: November 19, 1985
For further information, please call
(512) 475-2015.

★ ★ ★

Exemption Statement Form, Voluntary Termination

★ 1 TAC §97.22, §97.23

The Office of the Secretary of State adopts new §97.22 and §97.23, without

changes to the proposed text published in the November 19, 1985, issue of the *Texas Register* (10 TexReg 4464).

The 69th Legislature, 1985, added two provisions to the Business Opportunity Act, §16.06(1)(F), a product/package franchise exemption, and §16.16, a voluntary termination provision. Because of these two additions, a procedure and form needed to be devised to be in compliance with the revised Business Opportunity Act.

The new sections provide a procedure and form for filing an exemption to the Business Opportunity Act, §16.06(1)(F), and to voluntarily terminate a registration under the Business Opportunity Act, §16.16.

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

The sections are adopted under Texas Civil Statutes, Article 5069, §16.06(1)(F), and Article 5069, §16.17, which provide the Secretary of State with the authority to prescribe the form of the notice and to promulgate rules necessary to administer and enforce the Act.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512176 Myra A. McDaniel
Secretary of State

Effective date: January 13, 1986
Proposal publication date: November 19, 1985
For further information, please call
(512) 475-2015.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

Emergency Medical Services

★ 25 TAC §§157.63, 157.64, 157.66-157.69

The Texas Department of Health adopts amendments to §§157.66 and 157.67 with changes, to the proposed text published in the September 6, 1985, issue of the

Texas Register (10 TexReg 3353). Amendments to §§157.63, 157.64, 157.68, and 157.69 are adopted without changes, and will not be republished.

The purpose of the amendments is to establish statewide minimum standards for vehicle design and safety, fees for emergency medical services (EMS) personnel and vehicles, and to require a medical director as a requirement for obtaining a permit for certain EMS vehicles.

The amendments establish fees for applications to take examinations for certification and recertification, fees for vehicle permits, inspections of EMS vehicles for permit purposes, required equipment for basic life support vehicles, and the requirements of a medical director as part of the staff for advanced life support vehicles and mobile intensive care units.

One commenter said that in §157.66 (d)(2) (D)(i) the minimum opening of 56 inches is wider than most manufacturer's specifications and is more stringent than the 44-inch opening in the federal ambulance specifications and should reflect these specifications.

The department agrees with the comment and has changed the clause to read as follows: "patient compartment shall have two door openings in working condition; one door in the rear shall have a minimum opening of 44 inches and one door shall be curb side."

One commenter said that in §157.67 (d)(6), oxygen units do not come with inspection tags but have a stamp attached, and the language should be changed. The department agrees with the comment and has changed the paragraph to read as follows: "one portable medical grade oxygen unit with current inspection stamp attached and adequate tubing and semi-open valveless transparent masks in adult and child sizes."

No groups or associations commented on the adoption of §§157.63, 157.64, 157.66, 157.67, 157.68, and 157.69. However, an individual commented on §157.66, and an individual commented on §157.67 and made recommendations which have been mentioned.

The amendments are adopted under Texas Civil Statutes, Article 4447, §§3.02, 3.03, and 3.04, which provide the Texas Board of Health with the authority to

adopt rules to implement the Emergency Medical Services Act.

§157.66. General Requirements for Vehicle Permits.

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

(c) Fees.

(1) Fees shall be \$100 for each EMS vehicle or a maximum of \$2,000 for a fleet of EMS vehicles during the two-year registration period; except however, EMS volunteer provider vehicles are exempt from the fees.

(2) If a permit is issued for less than a two-year period under subsection (d)(4) of this section, the following fees shall apply:

(A) \$100 if the permit is valid for 19-24 months;

(B) \$75 if the permit is valid for 13-18 months;

(C) \$50 if the permit is valid for 7-12 months; or

(D) \$25 if the permit is valid for six months or less.

(3) If the EMS provider has met the maximum \$2,000 fee for a fleet during a permit period, no fee shall be required for additional vehicles registered during the permit period.

(d) Inspections.

(1) (No change.)

(2) The inspection shall include:

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

(D) Visual inspection of vehicle design, as follows:

(i) patient compartment shall have two door openings in working condition; one door in the rear shall have a minimum opening of 44 inches and one door shall be curb side;

(ii) floor plan of patient compartment shall allow rear loading of one patient on a wheeled elevating stretcher capable of being securely mounted by a crash stable side or center mounting style stretcher fastener of the quick release type and shall have a provision for an additional supine patient capable of being secured to the vehicle;

(iii) all stretchers shall be loaded and secured to position the head(s) of the patient(s) forward in the vehicle;

(iv) a seat, which allows direct access to the primary patient, with safety belt shall be provided for the EMS personnel in the patient area; and

(v) all windows in the patient compartment shall be intact, in working condition, and free from defects.

(E) Visual and mechanical inspection of vehicle physical dimensions, in addition to the vehicle type specifications in §§157.67, 157.68, and 157.69 of this title (relating to Basic Life Support Vehicle Requirements for a Permit, Advanced Life Support Vehicle Requirements for a Permit, and Mobile Intensive Care Unit Requirements for a Permit), as follows:

(i) overall length of the vehicle shall not exceed 22 feet including

bumper, but excluding rear step;

(ii) overall width of the vehicle with single rear wheels shall not exceed 86 inches or 96 inches for vehicles with dual rear wheels, excluding mirrors, spotlights, and running boards.

(iii) overall height of the vehicle shall not exceed 110 inches, including roof mounted equipment, but excluding two-way radio antenna(s);

(iv) lowest part of the vehicle when loaded to the gross vehicle weight (GVW) shall have a minimum of six inches of ground clearance. The vehicle's body components shall provide a minimum of eight inches of running clearance.

(F) Confirmation of yearly carbon monoxide monitoring records maintained by the EMS provider, indicating no more than 50 parts/million; and in addition, the exhaust system shall:

(i) be free of any defects and leaks from any component in the exhaust system; and

(ii) discharge at the side(s) of the vehicle away from fuel tank filler pipe(s) and patient compartment door openings;

(G) Visual inspection of safety equipment as follows:

(i) one five pound ABC fire extinguisher with current inspection tag attached; accessible and securely mounted in the patient compartment and location clearly marked;

(ii) one "No Smoking" sign mounted in patient compartment which is easily visible from each entry way;

(iii) three 30-minute road flares; or three reflective triangle road signs; and

(iv) one functional flashlight (excluding penlight).

(H) Tires, in addition to the requirements of paragraph (2)(B) of this subsection, shall be number and load range equal to or greater than manufacturer's recommended GVW capacity.

(3) A vehicle shall fail the inspection if the requirements in subsection (d)(2) of this section are not met.

(A) (No change.)

(B) A temporary 30-day permit may be issued to a vehicle which is in substantial compliance with the requirements in subsection (d)(2) of this section;

(C)-(D) (No change.)

(4) (No change.)

(e)-(g) (No change.)

§157.67. Basic Life Support Vehicle Requirements for a Permit.

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

(d) Required equipment. The following BLS required equipment must be clean, in working order, and in sufficient quantity to provide safe transport for patients in the individual service areas:

(1)-(5) (No change.)

(6) One portable medical grade oxygen unit with current inspection stamp

attached and adequate tubing and semi-open valveless, transparent masks in adult and child sizes;

(7)-(27) (No change.)

(e) (No change.)

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512187

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

Effective date: January 13, 1986
Proposal publication date: September 8, 1985
For further information, please call
(512) 465-2601.

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Chapter 325. Solid Waste Management

The following adoptions submitted by the Texas Department of Health will be serialized in the January 7, 1986, issue of the *Texas Register*. The effective date for the following documents is January 15, 1986.

Subchapter O. Guidelines for Regional and Local Solid Waste Management Plans
§325.588
(new)

Effective date of the following documents is January 17, 1986.

Subchapter E. Permit Procedures and Design Criteria
Permits
§325.64
(new)

Subchapter L. Hazardous Waste Management
General
§§325.271-327.276
(repeal)

Generators
§325.291-325.299
(repeal)

Transporters
§§325.311-325.316
(repeal)

Facility Siting Criteria
§§325.321-325.324
(repeal)

Special Rule Facilities
§325.371
(repeal)

Forms and Documents
§325.910
(repeal)

Subchapter N. Management of Sludges and Similar Wastes

Transporters
§325.445
(amendment)

Land Application for Beneficial Use
§325.462
(amendment)

Land Disposal
§325.482
(amendment)

Subchapter P. Annual Fees and Related Reports

Permitted Facilities
§325.601, 325.602
(new)

Registered Facilities
§325.611
(new)

Subchapter X. Forms and Documents
§325.911
(new)

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter K. Disclosure of Client-Identifying Information in Records of Clients

★ 25 TAC §§403.291-403.308

(Editor's note: A notice appeared in the December 27, 1985, issue of the Texas Register indicating that the following three adoptions would appear in this issue. Effective date of the documents is January 9, 1986.)

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§403.291-403.308, without changes to the proposed text published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3299). The repeal is adopted simultaneously with the adoption of new §§403.291-403.295, §§403.297-403.303, and §§403.305-403.308, concerning client-identifying information, also published in this issue of the *Texas Register*.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

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

TRD-8511988

R. Coke Mills
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: January 9, 1986
Proposal publication date: September 3, 1985
For further information, please call
(512) 465-4670.

★ ★ ★

★ 25 TAC §§403.291-403.295, 403.297-403.303, 403.305-403.308

The Texas Department of Mental Health and Mental Retardation adopts new §403.299, with changes to the proposed text published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3299). New §§403.291-403.295, 403.297-403.298, 403.300-403.303, and 403.305-403.308, without changes, and will not be republished.

Section 403.299, relating to form of consent: clients other than alcohol and drug abuse clients, is changed to add paragraph (6), which states the consent is subject to revocation at any time, and paragraph (7), which states that the form will indicate the date or condition upon which it will expire, such date or condition lasting no longer than reasonably necessary to serve the purpose for which it was given.

Section 403.296, relating to notice to alcohol and drug abuse clients of federal confidentiality requirements, and §403.304, relating to notice upon disclosure of information concerning alcohol and drug abuse clients, are not adopted at this time. Adoption of both sections is contingent on the adoption of regulations in 42 Code of Federal Regulations Part II, proposed in the August 25, 1983, issue of the *Federal Register*. The new sections are adopted simultaneously with the adoption of the repeal of §§403.291-403.308, concerning disclosure of client-identifying information in records of clients, and §§403.371-403.381, concerning disclosure of client-identifying information contained in records of mentally retarded clients. Both adopted repeals are published in this issue of the *Texas Register*.

Written comments on the proposal were received from the Association for Retarded Citizens, Texas (ARC/Texas) concerning the lack of a specified date of revocation of consent for clients other than drug and alcohol abuse clients. ARC/Texas recommended a one-year period. The department responds that the additional guidelines provided in subsection (a)(6) and (7) of §405.299, relating to form of consent: clients other than drug and alcohol abuse clients, meets the spirit of this suggestion without prescribing a timeline that in some circumstances would be inappropriate, either too long or too short.

The new sections are adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.299. Form of Consent: Clients Other Than Alcohol and Drug Abuse Clients.

(a) Whenever a person who has the authority to do so gives written consent to

the disclosure of client-identifying information, the information can be disclosed in accordance with the consent for disclosure and without the necessity of securing consent from any other person.

(b) Whenever a consent form authorizing the disclosure of client-identifying information concerning a client, other than an alcohol or drug abuse client, is received by a facility, center, or other designated provider, the requested disclosure shall be made if the consent form contains at least the following information:

(1) the name of the client;
(2) a description of the client-identifying information covered by the consent form;

(3) the person or organization to whom the client-identifying information is to be disclosed;

(4) consent for disclosure as evidenced by the signature of a person who has the authority to consent to the disclosure of the client-identifying information;

(5) the date on which the consent form was signed;

(6) a statement that the consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment or services in reliance on a valid consent to disclose information to a third-party payor; and

(7) the date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(c) A copy of a consent form required for use in any disclosure by consent initiated within facilities, centers, or other designated providers is referred to in §403.306 of this title (relating to Exhibits) as Exhibit C.

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

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

TRD-8511988

R. Coke Mills
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: January 9, 1986
Proposal publication date: September 3, 1985
For further information, please call
(512) 465-4670.

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Subchapter N. Disclosure of Client-Identifying Information Contained in Records of Mentally Retarded Clients

★ 25 TAC §§403.371-403.381

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§403.371-403.381, without changes to the proposal published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3304-3305).

The repeal is adopted simultaneously with the adoption of new §§403.291-403.295, §§403.297-403.303, and §§403.305-403.308, concerning client identifying information, which is also published in this issue of the *Texas Register*.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

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

TRD-8511990

R. Coke Mills
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: January 9, 1986

Proposal publication date: September 3, 1985

For further information, please call
(512) 465-4670.

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Subchapter P. Public Responsibility Committees

★ 25 TAC §§403.442-403.444, 403.448, 403.453

The Texas Department of Mental Health and Mental Retardation adopts amendments to §§403.442-403.444, 403.448, and 403.453, without changes to the proposed text published in the August 13, 1985, issue of the *Texas Register* (10 TexReg 3052-3053).

The amendments update language and references and provide for public responsibility committee members to participate in the interdisciplinary team process as the committee deems appropriate, pursuant to Senate Bill 1294, 69th Legislature, 1985.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5547-202,

which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.442. Application. These rules apply to all facilities of the Texas Department of Mental Health and Mental Retardation and community mental health and mental retardation centers.

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

Board—The board of trustees appointed to govern a community mental health and mental retardation center.

Center—A community center for mental health and mental retardation established pursuant to Texas Civil Statutes, Article 5547-203.

Facility—Any hospital, state school for the mentally retarded, state center, or other institution of the Texas Department of Mental Health and Mental Retardation and its respective outreach programs, or any organizational entity that may be hereafter made a part of the department.

Interdisciplinary team—A group of professionals and paraprofessionals who assess the client's treatment, training, and habilitation needs and make recommendations for services.

Legally adequate consent—Consent given by a person or his legally authorized representative when each of the following conditions has been met:

(A) **Legal capacity.** The person giving the consent is 18 years of age or older and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law; is at least 16 years of age but under 18 years of age receiving voluntary mental health services and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law; is the parent of a client under 18 years of age who is not and has not been married or has not had his disabilities of minority removed for general purposes; or is the guardian who, under court order, has been appointed guardian of the person of the client.

(B) **Comprehension of information.** The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedures, and the fact that withholding or withdrawal of consent shall not prejudice any future provision of care and services to the client.

(C) **Voluntariness.** The consent has been given voluntarily and free from coercion and undue influence.

§403.444. Functions of the PRC.

(a) The Public Responsibility Committee (PRC) is an independent, impartial third-party mechanism whose functions shall include, but are not limited to, the following:

(1) Protecting, preserving, promoting, and advocating for the health, safety, welfare, and legal and human rights of clients served by the department or center;

(2) Inquiring into or investigating and responding to comment, suggestions, or complaints made with regard to clients of the department or center;

(3) Ensuring that clients and, when appropriate, their families, are informed of their rights and the means of protecting those rights;

(4) Submitting instances of abuse or denial of rights to the appropriate authorities for action; and

(5) Participating in the client's interdisciplinary team as the PRC deems appropriate.

(b) Members of the PRC should be especially familiar with the facility or center, its policies, the clients' rights handbooks, and Chapter 405 of this title, relating to Client (Patient) Care.

§403.448. Investigator Responsibilities. Each facility or center Public Responsibility Committee (PRC) shall receive, investigate, and report complaints made to it by, or on behalf of, clients and shall make recommendations to appropriate line authorities.

(1) (No change.)

(2) **Investigation of complaints.** In investigating an instance of denial of client rights, the PRC shall initiate an investigation or inquiry within 10 calendar days of receipt of a complaint. In investigating a report of alleged client abuse or neglect, the PRC shall immediately contact the head of the facility or center, whose responsibility it is to ensure that the client abuse investigating authority initiates an investigation. At facilities, the superintendent or director is responsible for reporting results of client abuse investigations to the PRC in accordance with Subchapter O of Chapter 405 of this title (relating to Client Abuse and Neglect in TDMHMR Facilities).

(A) **Authority to interview.** During an investigation, PRC members may interview the following persons, when appropriate:

(i) the complainant;

(ii) the client, if other than the complainant;

(iii) any other client involved in the complaint as participant or observer;

(iv) family members, guardians, and/or other representatives of the client;

(v) staff members; and

(vi) nonstaff members (volunteers).

(B) **Authority to inspect site.** When investigating complaints of abuse or denial of rights, the PRC shall have the authority with or without notice to inspect the facility or center which offers services to the client.

(C) **Authority to inspect records.** When investigating complaints of abuse or

denial of rights, the PRC shall have the authority to inspect records contingent upon:

(i) whether the client has a primary or secondary diagnosis of mental retardation. In such cases, the PRC shall have the authority with or without notice to inspect records relating to the diagnosis, evaluation or treatment of the client, as those records relate to the complaint of abuse or denial of rights.

(ii) whether the client has a diagnosis of mental illness. The PRC shall have access to the facility or center records relating to the treatment of the mentally ill person only under the provision of Texas Civil Statutes, Articles 5547-87 and 5561(h), and §403.297 of this title (relating to When Consent for Disclosure Is Not Required: Clients Other than Alcohol and Drug Abuse Clients), and §403.298 of this title (relating to When Consent for Disclosure Is Not Required: Alcohol and Drug Abuse Clients). Investigations by the PRC are considered bonafide evaluations of the client rights protection component of facility and center programs.

(D) PRC members should observe the facility's or center's established schedules and procedures during the investigation of any complaint.

(3) Reporting of complaints to the advocacy system. The PRC shall report all complaints of client abuse or denial of right of a mentally retarded person to the advocacy system.

§403.453. *References.* Reference is made to the following statutes and rules of the department.

(1) Chapter 405 of this title, relating to Client (Patient) Care. (See especially Subchapter O, relating to Client Abuse and Neglect in TDMHMR Facilities.)

(2) Texas Civil Statutes, Article 5547-87.

(3) Texas Civil Statutes, Article 5561(h).

(4) Texas Civil Statutes, Article 5547-202.

(5) Texas Civil Statutes, Article 5547-203.

(6) Texas Civil Statutes, Article 5547-204, §4.01.

(7) Texas Civil Statutes, Article 5547-300, §§50 and 60.

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

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

TRD-8511991

R. Coke Mills
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: January 9, 1986

Proposal publication date: August 13, 1985

For further information, please call
(512) 465-4670.

TITLE 28. INSURANCE

Part I. State Board of

Insurance

Chapter 5. Property and

Casualty Insurance

Subchapter F. Inland Marine Insurance

★ 28 TAC §5.5002

The State Board of Insurance adopts an amendment to §5.5002 (059.05.53.102), with changes to the proposed text published in the October 11, 1985, issue of the *Texas Register* (10 TexReg 3945).

Section 5.5002 specifies the definition and classification of inland marine insurance. The amendment adds the self service storage customer floater policy as a filed class of inland marine insurance for policy forms and endorsements and for rates makes it subject to fire and extended coverage. Coverage for property located within a self service storage facility is eligible to be insured under the Texas standard policy of the Texas commercial multiperil policy; however, due to the short policy terms required for the insuring of these types of risk, coverage is not available in the insurance market under any of the standard promulgated property policies. The addition of a new inland marine class to the Texas definition of inland marine insurance will produce an available market for insurance coverage for property stored in self service storage facilities.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Insurance Code, Article 5.53, pursuant to which the board may define inland marine insurance and which permits and requires board interpretation of which classes of inland marine insurance are regulated or nonregulated.

§5.5002. *Texas Definition of Inland Marine Insurance.* Inland marine insurance is defined and classified as follows:

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

(5) Other inland marine risks.

(A)-(HH) (No change.)

(I) Self service storage customer floater policy (filed for policy forms and endorsements; fire and E.C. for rates) may be issued to a tenant of a self storage facility and covering property stored at such facility. Coverage is limited to property in storage for the perils set forth in the policies, which must include coverage for property while in transit. Coverage may not be provided for any motor vehicles subject to motor vehicle registration and inspection. It is not intended that this coverage definition will allow coverage of property stored in any facility where the lessor issues a warehouse receipt, bill of lading, or other document of title relating to the stored property, or in facilities other than storage facilities

that have multiple storage units. Accordingly, the terms self-service storage facility and tenant shall have the meaning prescribed by the Texas Property Code, §59.000, i.e., self-service storage facility means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant. Tenant means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility;

(JJ) theatrical floaters, excluding buildings and their improvements and betterments and furniture and fixtures that do not travel about with theatrical troupes (filed);

(KK) tourists' floaters (filed);

(LL) travel baggage (nonregulated);

(MM) valuable papers and records (filed);

(NN) wedding present floaters (nonregulated);

(OO) wool growers and wool buyers floater policies, covering property usual to the conduct of the assured's business while in transit and all other situations customary and incidental thereto (nonregulated).

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

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

TRD-8512247

James W. Norman
State Board of
Insurance

Effective date: January 17, 1986

Proposal publication date: November 12, 1985

For further information, please call
(512) 475-6740.

★ ★ ★

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 3. Energy Resources

Records to be Filed; Commingling of Production Requests

★ 31 TAC §3.22

The General Land Office adopts the repeal of §3.22, without changes to the proposed text published in the November 12, 1985, issue of the *Texas Register* (10 TexReg 4357).

The repeal will further the agency's objective of reorganizing the administrative rules into a more accessible and logical structure.

The repeal will allow the agency to re-order the rule structure. The subject matter of this section is to be contained in new §11.16.

No comments were received regarding the repeal of this section.

The repeal is adopted pursuant to Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

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

TRD-8512142 Garry Mauro
Commissioner
General Land Office

Effective date: January 10, 1986
Proposal publication date: November 12, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

Reporting Oil and Condensate Production

★31 TAC §3.61

The General Land Office adopts an amendment to §3.61, without changes to the proposed text published in the October 4, 1985, issue of the *Texas Register* (10 Tex-Reg 3843).

The admendment is being adopted to bring the administrative rules into conformity with the automated oil and condensate production reporting system implemented by the agency.

References to the previous reporting system will be deleted from the section by the adoption of the amendment.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

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

TRD-8512141 Garry Mauro
Commissioner
General Land Office

Effective date: January 10, 1986
Proposal publication date: October 4, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

★31 TAC §3.62, §3.63

The General Land Office adopts the repeal of §3.62 and §3.63, without changes to the proposed text published in the October 4, 1985, issue of the *Texas Register* (10 TexReg 3843).

These sections are repealed to bring the administrative rules into conformity with the automated oil and condensate production reporting system implemented by the agency.

The repealed sections provided instructions and examples for use of a now obsolete reporting system. References to the former reporting system are removed from the administrative rules by repeal of these sections.

No comments were received regarding adoption of the repeal.

The repeal of these sections are adopted pursuant to the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

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

TRD-8512140 Garry Mauro
Commissioner
General Land Office

Effective date: January 10, 1986
Proposal publication date: October 4, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

Reporting Gas Production

★31 TAC §3.71

The General Land Office adopts an amendment to §3.71, without changes to the proposed text published in the October 4, 1985, issue of the *Texas Register* (10 Tex-Reg 3844).

The amendment is adopted to bring the administrative rules into conformity with the automated gas production reporting system implemented by the agency.

References to the previous reporting system will be deleted by adoption of the amendment.

No comments were received regarding adoption of the amendment.

The amendment to this section is adopted pursuant to the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-8512139 Garry Mauro
Commissioner
General Land Office

Effective date: January 10, 1986
Proposal publication date: October 4, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

★31 TAC §3.72, §3.73

The General Land Office adopts the repeal of §3.72 and §3.73, without changes to the proposed text published in the October 4, 1985, issue of the *Texas Register* (10 TexReg 3844).

These sections are repealed to bring the administrative rules into conformity with the automated gas production reporting system implemented by the agency.

The repealed sections provided instructions and examples for use of a now obsolete reporting system. References to the former reporting system are removed from the administrative rules by repeal of these sections.

No comments were received regarding adoption of the repeal.

The repeal of these sections are adopted pursuant to the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

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

TRD-8512138 Garry Mauro
Commissioner
General Land Office

Effective date: January 10, 1986
Proposal publication date: October 4, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

Chapter 11. Legal Division Oil and Gas Leases, Mineral Classified Lands

★31 TAC §11.12

The General Land Office adopts an amendment to §11.12, without changes to the proposed text published in the Octo-

ber 25, 1985, issue of the *Texas Register* (10 TexReg 4174).

The section is amended to achieve uniformity between the administrative rules and the statutory changes promulgated in Texas Civil Statutes, Chapter 624, §24, 1985.

The section governs assignments of oil and gas leases administered by the General Land Office. The amendment extends the applicability of the section to include leases issued by boards for lease for the Texas Parks and Wildlife Department and the Texas Department of Corrections.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512137 Garry Mauro
Commissioner
General Land Office

Effective date: January 10, 1986
Proposal publication date: October 25, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

★31 TAC §11.13

The General Land Office adopts an amendment to §11.13, (126.17.02.003) with changes to the proposed text published in the October 25, 1985, issue of the *Texas Register* (10 TexReg 4174).

The section is amended to achieve uniformity between the administrative rule and the statutory changes promulgated in Texas Civil Statutes, Chapter 624, §24, 1985. The change to the proposed text occurs in §11.13(b), wherein a textual discrepancy has been corrected. The words "acre assigned" have been changed to "area released."

The section governs releases of oil and gas leases administered by the General Land Office. The amendment extends the applicability of the section to include leases issued by boards for lease for the Texas Parks and Wildlife Department and the Texas Department of Corrections.

A comment in regard to the fee for filing a release was received from Atlantic Richfield Company. That comment suggested that the correct fee was the statutory fee or the fee prescribed by §1.91.

The agency does not completely disagree with the comment received. The fee set by this section is identical to the fee required by the Texas Education Code, §§85.85, 104.84, and 109.74. Thus, the fee required by the section is the statutory fee.

The amendment is adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

§11.13. Releases of Oil and Gas Leases.

(a) Relinquishment Act oil and gas leases, oil and gas leases administered by the School Land Board, and oil and gas leases issued by Boards for Lease for the Texas Parks and Wildlife Department and the Texas Department of Corrections. A lease may be released to the state at any time. The release shall be recorded in each county in which all or part of the lease is located. Within 90 days of its execution, the original or a certified copy of the release shall be filed with the General Land Office along with the filing fee prescribed by §1.91 of this title (relating to Fees). The owner of the lease will then be relieved of any further obligations to the state arising from the lease. The release will not relieve the owner of any obligations or liabilities in existence at the time of its execution.

(b) Oil and gas leases of lands of Texas A&M University, Texas A&I University, and Texas Tech University. A lease may be released in whole or in part at any time. The release instrument shall be filed in each county in which all or part of the lease is located. The release instrument shall then be filed with the General Land Office along with \$1.00 for each area released. The owner or the lease will then be relieved of any further obligations to the state arising from the lease. The release will not relieve the owner of any obligations or liabilities in existence at the time of its execution.

(c) Lease which has expired by its terms. It is not required that a release be filed in the General Land Office. If it is submitted for filing, a copy of a certified copy is acceptable. The release shall be accompanied by the statutory filing fee and relinquishment fee, if any.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512136 Garry Mauro
Commissioner
General Land Office

Effective date: January 10, 1986
Proposal publication date: October 25, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

★31 TAC §11.16

The General Land Office adopts new §11.16, without changes to the proposed text published in the November 12, 1985, issue of the *Texas Register* (10 TexReg 4358).

The new section replaces §3.22, which is being repealed. Section 3.22 dealt with division orders, the subject matter of this section.

This section more fully explains and clarifies the agency's policy in regard to division orders.

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

The new section is adopted pursuant to the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

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

TRD-8512135 Garry Mauro
Commissioner
General Land Office

Effective date: January 10, 1986
Proposal publication date: November 12, 1985
For further information, please call
(512) 475-6740.

★ ★ ★

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter V. Bingo Regulation and Tax

★34 TAC §3.544

The Comptroller of Public Accounts adopts an amendment to §3.544, without changes to the proposed text published in the September 24, 1985, issue of the *Texas Register* (10 TexReg 3680). The amendment is intended to eliminate the possibility of organizations treating as charitable distributions purchases of services or materials relating to the conduct of bingo. The amendment also clarifies the types of organizational and administrative activities which may be treated as charitable purposes.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Texas Civil Statutes, Article 179d, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the

administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512183 Bob Bullock
 Comptroller of Public
 Accounts

Effective date: January 13, 1986
Proposal publication date: September 24, 1985
For further information, please call
(512) 463-4606.

★ ★ ★

★ 34 TAC §3.547

The Comptroller of Public Accounts adopts the repeal of §3.547, without changes to the proposed text published in the October 8, 1985, issue of the *Texas Register* (10 TexReg 3884). The section is repealed concurrent with the adoption of a substantially revised new section. The new section simplifies record-keeping requirements, sets minimum standards for record-keeping, and allows organizations to maintain their records in a format of their own choosing, while still providing the comptroller with adequate information to substantiate the Texas Bingo Operator's Quarterly Report, which provides tax and statistical information on the conduct of bingo.

No comments were received regarding adoption of the repeal.

This amendment is adopted under Texas Civil Statutes, Article 179d, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512179 Bob Bullock
 Comptroller of Public
 Accounts

Effective date: January 13, 1986
Proposal publication date: October 8, 1985
For further information, please call
(512) 463-4606.

★ ★ ★

The Comptroller of Public Accounts adopts new §3.547, without changes to the proposed text published in the October 8, 1985, issue of the *Texas Register* (10 TexReg 3885). The new section simplifies record-keeping requirements, and sets minimum standards for record keeping. It allows organizations to maintain their records in a format of their own

choosing, while still providing the comptroller with adequate information to substantiate the Texas Bingo Operator's Quarterly Report, which provides tax and statistical information on the conduct of bingo.

No comments were received regarding adoption of the new section.

This new section is adopted under Texas Civil Statutes, Article 179d, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512178 Bob Bullock
 Comptroller of Public
 Accounts

Effective date: January 13, 1986
Proposal publication date: October 8, 1985
For further information, please call
(512) 463-4606.

★ ★ ★

Part IV. Employees Retirement System of Texas

Chapter 77. Judicial Retirement

★ 34 TAC §77.1

The Employees Retirement System of Texas adopts an amendment to §77.1, without changes to the proposed text published in the October 4, 1985, issue of the *Texas Register* (10 TexReg 3844).

As a result of Senate Bill 105, as enacted by the 69th Legislature, 1985, factors applicable to the newly created Judicial Retirement System of Texas Plan Two must be developed by the system's trustees and actuary.

Adoption of the amendment to §77.1 will make it clear that the section applies only to the Judicial Retirement System of Texas Plan One.

No comments were received regarding adoption of the amendment.

Texas Civil Statutes, Title 110B, §45.002, provide the Employees Retirement System of Texas with the authority to adopt rules to provide for forms as it finds necessary for the administration of the Judicial Retirement System of Texas Plan One.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 20, 1985.

TRD-8512158 Clayton T. Garrison
 Executive Director
 Employees Retirement
 System of Texas

Effective date: January 10, 1986
Proposal publication date: October 4, 1985
For further information, please call
(512) 476-6431, ext. 178.

★ ★ ★

★ 34 TAC §77.3

The Employees Retirement System of Texas adopts an amendment to §77.3, without changes to the proposed text published in the October 4, 1985, issue of the *Texas Register* (10 TexReg 3844).

Adoption of amendment to §77.3 will clarify when a judicial retirement commences under the Judicial Retirement System of Texas Plan Two.

The amendment's function is to make clear that judicial retirement commences at midnight on the effective retirement date in both the Judicial Retirement System of Texas Plan One, and in the Judicial Retirement System of Texas Plan Two.

No comments were received regarding adoption of the amendment.

Texas Civil Statutes, Title 110B, §45.002, provide the Employees Retirement System of Texas with the authority to adopt rules to provide for forms as it finds necessary for the administration of the Judicial Retirement System of Texas Plan One.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512155 Clayton T. Garrison
 Executive Director
 Employees Retirement
 System of Texas

Effective date: January 10, 1986
Proposal publication date: October 4, 1985
For further information, please call
(512) 476-6431, ext. 178.

★ ★ ★

★ 34 TAC §77.5

The Employees Retirement System of Texas adopts an amendment to §77.5, without changes to the proposed text published in the October 4, 1985, issue of the *Texas Register* (10 TexReg 3845).

Adoption of the amendment provides clarification concerning the recognized periods of organized conflict for which

military service credit may be purchased in the Judicial Retirement System of Texas Plan Two.

By defining the eligible periods of organized armed conflict for which military service may be established, the amended section will clarify for members that those eligible periods apply to credit in both the Judicial Retirement System of Texas Plan One and the newly created Judicial Retirement System of Texas Plan Two.

No comments were received regarding adoption of the amendment.

Texas Civil Statutes, Title 110B, §45.002, provide the Employees Retirement System of Texas with the authority to adopt rules to provide for forms as it finds necessary for the administration of the Judicial Retirement System of Texas Plan One.

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

Issued in Austin, Texas, on December 20, 1985.

TRD-8512154 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: January 10, 1986
Proposal publication date: October 4, 1985
For further information, please call
(512) 476-8431, ext. 178.

★ ★ ★

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
Chapter 10. Family Self-Support Services
Job Training and Work Experience

★ 40 TAC §§10.2501-10.2506

(Editor's note: A notice appeared in the December 27, 1985, issue of the Texas Register indicating that the following adoption would appear in this issue. Effective date of the document is January 8, 1986.)

The Texas Department of Human Services (DHS) adopts amendments to §§10.2501-10.2506, the repeal of §§10.2507-10.2523, and new §§10.2507-10.2526, without changes to the proposed text published in the November 8, 1985, issue of the *Texas Register* (10 TexReg 4323).

The amendments for the Job Training and Work Experience (JTWE) project are changed to reflect changes in the operation of the project. JTWE services in all sites except Dallas and McLennan Coun-

ties have been terminated. The job training component of the project is replaced with a job preparation or job club component. Also, contracting procedures have been simplified.

No comments were received on adoption of the sections.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 31, which authorizes the department to administer financial assistance and related services.

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

Issued in Austin, Texas, on December 17, 1985.

TRD-8511658 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 8, 1986
Proposal publication date: November 8, 1985
For further information, please call
(512) 450-3766.

★ ★ ★

★ 40 TAC §§10.2507-10.2526

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs and Chapter 31, which authorizes the department to administer financial assistance and related services.

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

Issued in Austin, Texas, on December 17, 1985.

TRD-8511960 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 8, 1986
Proposal publication date: November 8, 1985
For further information, please call
(512) 450-3766.

★ ★ ★

★ 40 TAC §§10.2507-10.2523

The repeal is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs and Chapter 31, which authorizes the department to administer financial assistance and related services.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 17, 1985.

TRD-8511959 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 8, 1986
Proposal publication date: November 8, 1985
For further information, please call
(512) 450-3766.

★ ★ ★

Chapter 27. ICF-MR
Subchapter U. Resident Records
★ 40 TAC §§27.2002, 27.2003, 27.2005-27.2009

The Texas Department of Human Services adopts repeals and amendments in its Intermediate Care Facility for the Mentally Retarded (ICF-MR) Program chapter. The amendment to to §27.4506 is adopted with changes to the proposed text published in the July 19, 1985, issue of the *Texas Register* (10 TexReg 2318). The repeal of §§27.2002-27.2003 and 27.2005-27.2009 and the amendment to §27.4505 are adopted without changes to the proposed text and will not be republished.

The repeal of §§27.2002, 27.2003, and 27.2005-27.2009 are justified as the policies within these sections either are obsolete or are transferred to §27.4505 and §27.4506. The amendments to §27.4505 and §27.4506 are justified as they provide a clearer understanding of record-keeping requirements in an ICF-MR.

Section 27.4505 will function by specifying that an ICF-MR must retain records according to the requirements stated in §51.50, Record Retention Requirements, of the department's rules. Section 27.4505 will also function by specifying that financial records must be retained in their original form during the applicable retention period and listing the agencies that may review the ICF-MR's records. Section 27.4506 will function by specifying that the ICF-MR must have a full-time employee responsible for records maintenance if the ICF-MR does not employ a records administrator.

Comments were received from the Association for Retarded Citizens, Texas. The association expressed concerns and recommendations about specific portions of the proposal. The following is a summary of the comments received and the department's response to each comment. The association did not agree with the requirement in §27.4505 that financial records be retained in their original form. The department is retaining this requirement. The requirement is critical to the department's audit functions and complies with generally accepted accounting

principles. The association requested that §27.4505 specify the records that each listed agency must have access to. The department has not changed the text. To comply with state and federal regulations, each of the named agencies has access to all records of the facility if the agency requires them to carry out administrative and regulatory responsibilities for the ICF-MR Program.

The association also requested that the Texas Protection and Advocacy System's ability to access recipient records be addressed in §27.4505. The department does not agree with this request. The Texas Protection and Advocacy System has access to recipient records only under certain, special circumstances. Naming the instances when an ICF-MR may be required to provide another party access to recipient records is beyond the purpose of this section.

Finally, the association suggested that the department clarify §27.4506 to specify that assignment of responsibility for records maintenance to a full-time employee does not have to be the exclusive job duty of that employee. The department agrees with the suggestion and has modified the text to clarify the policy.

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512212 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 27, 1986
Proposal publication date: July 19, 1985
For further information, please call
(512) 450-3766.

★ ★ ★

Subchapter TT. Records

★40 TAC §27.4505, §27.4506

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorize the department to administer public and medical assistance programs.

§27.4506. *Staff and Facilities.* The ICF-MR must have:

(1) enough qualified staff and support personnel to accurately process, check, index, file, and retrieve records and record data promptly;

(2) adequate space, equipment, and supplies to provide efficient and effective record services; and

(3) a full-time employee responsible for records maintenance, if the ICF-MR does not employ a records administrator. This requirement does not prohibit the full-time employee from maintaining other job responsibilities within the ICF-MR.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512213 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: January 13, 1986
Proposal publication date: July 19, 1985
For further information, please call
(512) 450-3766.

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Part XII. Texas Advisory Board

Chapter 361. Statutory Authority and Definitions

★40 TAC §361.2

The Texas Advisory Board of Occupational Therapy adopts an amendment to §361.2, without changes to the proposed text published in the November 22, 1985, issue of the *Texas Register* (10 TexReg 4516).

The Texas Advisory Board of Occupational Therapy adopts this amendment so that the definition of the term "aides/orderlies" will be clarified.

The section will increase protection to public health by clarifying what duties an occupational therapy aide may perform, and under what circumstances.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8851, §5(e), which provide the Texas Advisory Board of Occupational Therapy with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512243 Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Effective date: December 17, 1985
Proposal publication date: November 22, 1985
For further information, please call
(512) 445-8368.

Chapter 365. Functions and Organizations of the Board

★40 TAC §365.1

The Texas Advisory Board of Occupational Therapy adopts an amendment to §365.1, without changes to the proposed text published in the November 22, 1985, issue of the *Texas Register* (10 TexReg 4516).

The Texas Advisory Board of Occupational Therapy adopts the amendment to make it clear that the board will make no decision using a person's race, creed, color, religion, sex, national origin, handicap, or age as a factor.

The section will assure that the advisory board is not involved in discriminatory behaviors.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8851, §5(e), which provide the Texas Advisory Board of Occupational Therapy with the authority to adopt rules consistent with this Act and to carry out its duties in administering this Act.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512242 Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Effective date: January 17, 1986
Proposal publication date: November 22, 1985
For further information, please call
(512) 445-8368.

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Chapter 371. Application for License

★40 TAC §371.1

The Texas Advisory Board of Occupational Therapy adopts an amendment to §371.1, without changes to the proposed text published in the November 22, 1985, issue of the *Texas Register* (10 TexReg 4517).

The Texas Advisory Board of Occupational Therapy adopts the amendment so that the term "proof of good moral character" will be clarified, and for the protection of consumers of occupational therapy services.

The section will increase protection to consumers of occupational therapy services by further defining what behaviors would or could be judged concerning good moral character.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under Texas Civil Statutes, Article 8851, §5(e), which provide the Texas Advisory Board of Occupational Therapy with the authority to adopt rules consistent with this Act and to carry out its duties in administering this Act.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512241 Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Effective date: January 17, 1986
Proposal publication date: November 11, 1985
For further information, please call
(512) 445-8368.

Chapter 374. Continuing Education

★ 40 TAC §374.1

The Texas Advisory Board of Occupational Therapy adopts an amendment to §374.1, without changes to the proposed text published in the November 22, 1985, issue of the *Texas Register* (10 TexReg 4517).

The Texas Advisory Board of Occupational Therapy adopts the amendment so that occupational therapy assistants can be informed of ways in which they may upgrade their competency to be eligible for renewal of their licenses as mandated in Senate Bill 300, 69th Legislature, 1985.

The section will increase consumer protection by defining acceptable ways in which occupational therapists and occupational therapy assistants must maintain continuing competency.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under Texas Civil Statutes, Article 8851, §5(e), which provide the Texas Advisory Board of Occupational Therapy with the authority to adopt rules consistent with this Act and to carry out its duties in administering this Act.

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

Issued in Austin, Texas, on December 27, 1985.

TRD-8512240 Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Effective date: January 17, 1986
Proposal publication date: November 27, 1985
For further information, please call
(512) 445-8368.

Chapter 375. Fees

★ 40 TAC §375.1

The Texas Advisory Board of Occupational Therapy adopts an amendment to §375.1, with changes to the proposed text published in the November 22, 1985, issue of the *Texas Register* (10 TexReg 4518).

The Texas Advisory Board of Occupational Therapy adopts this amendment so that the cost of regular license fees (prorated) and temporary license fees can be reduced.

The amendment will lower fees for occupational therapists and occupational therapy assistants relating to the licensing process.

No comments were received regarding the adoption of the amendment.

A change was made to the proposed text as it was published. The columns in the proposed text were shifted so that the correct fees did not line up with the proper categories. The section is republished to avoid confusion.

The amendment is adopted under Texas Civil Statutes, Article 8851, §5(e), which provide the Texas Advisory Board of Occupational Therapy with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

<u>Application Fees:</u>	<u>OTR</u>	<u>COTA</u>
Regular License	\$10	\$10
Temporary License pending:		
Passage of Examination	\$10	\$10
Endorsement or Unlicensed State Inquiry	\$15	\$15
Active to Inactive Status	\$25	\$25
Inactive to Active Status	\$50	\$25
 <u>License Fees - Regular:</u>		
Prorated	\$7/month	\$5/month
Annual	\$70/year	\$50/year
 <u>License Fees - Temporary:</u>		
Pending passage of examination	\$7/month	\$5/month
Pending endorsement inquiry	\$7/month	\$5/month

License Fees - Renewal:

Regular (on time)

Late - 90 Days or Less

Late - More than 90 Days But
Less Than 2 Years

\$70/year

Regular plus late
fee which is
one-half of
license fee

All unpaid fees
plus late fee
that is equal to
license fee

\$7/month

\$50/year

Regular plus late
fee which is
one-half of
license fee

All unpaid fees
plus late fee
that is equal to
license fee

\$5/month

Practitioners submitting an initial
application will have total cost
prorated to their next birthday

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512239

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Effective date: January 17, 1986

Proposal publication date: November 22, 1985

For further information, please call
(512) 445-8368.

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Chapter 381. Denial,
Suspension, or Revocation
of a License and Guidelines
Pursuant to Texas Civil
Statutes, Article 6252-13c
and 6252-13d

★ 40 TAC §381.1

The Texas Advisory Board of Occupational
Therapy adopts an amendment to §381.1,
with changes to the proposed text pub-
lished in the November 22, 1985, issue of
the *Texas Register* (10 TexReg 4519).

The Texas Advisory Board of Occupational
Therapy adopts this amendment so
that the conditions under which a license
may be denied, suspended, and revoked,
along with the procedures to be followed
in this process, can be clarified.

This section will increase protection to
public health in the regulation and licens-
ing of occupational therapy in Texas by
defining circumstances which would lead
to denial, suspension, and revocation of
a license, and the procedures to follow
in that process.

A change was made to the proposed text
as it was published. In subsection (e)(3),
a typographical error resulted in the sub-

stitution of the word "licensee" for the
word "license". This is corrected in the
adopted amendment.

The amendment is adopted under Texas
Civil Statutes, Article 8851, §5(e), which
provide the Texas Advisory Board of Oc-
cupational Therapy with the authority to
adopt rules consistent with this Act to
carry out its duties in administering this
Act.

§381.1. Denial, Suspension, or Revoca-
tion of a License and Guidelines Pursuant
to Texas Civil Statutes, Article 6252-13c and
13d.

(a) If the board proposes to deny a
license, or to suspend or revoke a license,
or to deny to a person the opportunity to
be examined for a license, or to otherwise
discipline an applicant or licensee, the board
shall grant the applicant or licensee a hear-
ing before the board or the board may order
a hearing before a hearing officer appointed
by the board. All final decisions shall be
made by the board.

(b) (No change.)

(c) The executive director, acting for
the board, may request from the Texas De-
partment of Public Safety or from local law
enforcement agencies the record of any con-
viction of any person applying for or hold-
ing a license issued by or to be issued by the
board.

(d) The board may suspend or revoke
an existing valid license, disqualify a per-
son from receiving a license, or deny to a
person the opportunity to be examined for
a license because of a person's conviction
of a felony or misdemeanor if the crime di-
rectly relates to the duties and responsibil-
ities of the licensed occupation.

(e) In determining whether a criminal
conviction directly relates to an occupation,
the board shall consider:

(1) the nature and seriousness of
the crime;

(2) the relationship of the crime to
the purpose for requiring a license to engage
in the occupation;

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

(4) the relationship of the crime to
the ability, capacity, or fitness required to
perform the duties and discharge the res-
ponsibilities of the licensed occupation.

(f) In addition to the factors that may
be considered under subsection (e) of this
section, the board, in determining the pres-
ent fitness of a person who has been con-
victed of a crime, shall consider the follow-
ing evidence:

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

(2) the age of the person at the time
of the commission of the crime;

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

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

(5) evidence of the person's reha-
bilitation or rehabilitative effort while in-
carcerated or following release;

(6) other evidence of the person's
present fitness, including letters of recom-
mendation from prosecution, law enforce-
ment, and correctional officers who prose-
cuted, arrested, or had custodial responsi-
bility for the person; the sheriff and chief
of police in the community where the per-
son resides; and any other person in con-
tact with the convicted person;

(g) It shall be the responsibility of the
applicant to the extent possible to secure
and provide to the board the recommenda-
tions of the prosecution, law enforcement,
and correctional authorities. The applicant
shall also furnish proof in such form as may
be required by the board that he or she has
maintained a record of steady employment
and has supported his or her dependents
and has otherwise maintained a record of
good conduct and has paid all outstanding
court costs, supervision fees, fines, and

restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(h) If the board proposes to deny, suspend, or revoke a license of an applicant or licensee, or take other disciplinary action, the board shall notify the applicant or licensee in writing by registered or certified mail at the last address provided by the licensee as required by §377.3 of this title (relating to Changes of Name or Address of Licensees):

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

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

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

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

(l) If the board suspends or revokes a valid license or denies a person a license or the opportunity to be examined for a license because of reasons other than a prior conviction or because of the person's prior conviction of a crime and the relationship of the crime to the license, the board shall notify the licensee in writing by registered or certified mail at the last address provided by the licensee as required by §377.3 of this title (relating to Changes of Name or Address of Licensees):

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

(2) of the preview procedure provided by subsection (h) and subsection (i) of this section; and

(3) of the earliest date that the person may appeal.

(m) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to be examined for a license by the board, and who has exhausted administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the board and its decision.

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

(o) The board, or a hearing officer appointed by the board, shall conduct proceedings on a case by case basis. All final decisions shall be made by the board.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 23, 1985.

TRD-8512238

Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Effective date: January 17, 1986

Proposal publication date: November 22, 1985

For further information, please call

(512) 445-8368.

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Chapter 383. Referral Supervision

★40 TAC §383.1

The Texas Advisory Board of Occupational Therapy adopts an amendment to §383.1, with changes to the proposed text published in the November 22, 1985, issue of the *Texas Register* (10 TexReg 4520).

The Texas Advisory Board of Occupational Therapy adopts this amendment to insure that adequate provision is provided to occupational therapy assistants, occupational therapy aides, and some occupational therapists holding temporary licenses.

The section will function to increase the amount of protection for the consumers of occupational therapy by requiring occupational therapy aides, assistants, and some occupational therapists holding temporary licenses to be adequately and appropriately supervised.

No comments were received regarding the adoption of this amendment.

In the adopted amendment a change was made to subsection (f) to delete language which should have been deleted in the proposed amendment. A change was also made to subsection (l). The amendment as submitted indicated that subsection (i) was being reclassified as subsection (l). Subsection (l) was mistakenly published as subsection (k)(1).

The amendment is adopted under Texas Civil Statutes, Article 8851, §5(e), which provide the Texas Advisory Board of Occupational Therapy with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§383.1. Referral and Supervision.

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

(d) It is a violation of the Act for an occupational therapy assistant to provide occupational therapy services without the general supervision of an occupational therapist. An occupational therapist need not be physically present or on the premises at all times in order for general supervision to

be demonstrated. At a minimum, satisfactory general supervision means:

(1) documented approval by the supervising occupational therapist for any initial treatment plan or intervention program and subsequent changes to such a plan or program when the direct care is being provided principally by an occupational therapy assistant; and

(2) documented evidence of regular communication to include a minimum of eight hours per month of clinical observation and supervision of the occupational therapy assistant by the supervising therapist. The mode and frequency of such interaction shall be dependent upon the treatment setting, patient/client caseload, and the competency of the occupational therapy assistant as determined by the supervising occupational therapist.

(e) It is the responsibility of both the occupational therapist and the occupational therapy assistant to ensure that records of all recipients of occupational therapy services reflect dated signatures indicating satisfactory compliance with this rule.

(f) It is the responsibility of the occupational therapist to ensure that satisfactory general supervision is being provided for occupational therapy assistants to whom they are delegating occupational therapy responsibilities. The occupational therapist shall not delegate responsibilities to the occupational therapy assistant that are beyond the scope of his or her training as determined by the 1983 *Essentials for Approved Educational Programs for the Occupational Therapy Assistant*, published by the American Occupational Therapy Association or any subsequent revision to those standards as adopted by the promulgating body.

(g) These rules shall not preclude the occupational therapy assistant from responding to acute changes in the patient's condition that warrant immediate action.

(h) In providing occupational therapy services, aides and orderlies will work under the direct and personal supervision of an occupational therapist or occupational therapy assistant who shall be within the facility. Direct supervision means:

(1) personal instruction and evaluation by a licensed occupational therapist or occupational therapy assistant;

(2) specific delineation of tasks and responsibilities by a licensed occupational therapist who is responsible for personally reviewing and interpreting results of care; and

(3) physical presence within the facility of a licensed occupational therapist or occupational therapy assistant whenever the aide renders care.

(i) Aides and orderlies perform routine departmental tasks and may assist with predetermined segments of patient related activities. Aides and orderlies shall not perform functions of licensed occupational

therapists or occupational therapy assistants.

(j) The occupational therapy aide shall receive on-the-job training within occupational therapy and be employed within an occupational therapy setting.

(k) The occupational therapist or occupational therapy assistant shall not delegate responsibilities to the aide or orderly that are beyond the scope of their duties as determined by the 1977 *Minimal Occupational Therapy Classification Standards for Staff Level Personnel*, published by the American Occupational Therapy Association.

(l) A person issued a temporary occupational therapy license under this chapter who is awaiting the results of his or her first examination may practice occupational therapy until the regular license is issued but only under the continuing supervision of a licensed occupational therapist. (See §373.1(b)(2) of this title (relating to Examinations)). The licensee will certify as to the name, license number, and address of his or her supervisor on a form prescribed by the board.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512237 Vernon H. Newman
Assistant Commissioner
Texas Rehabilitation
Commission

Effective date: January 17, 1986
Proposal publication date: November 22, 1985
For further information, please call
(512) 445-8388.

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TITLE 43.
TRANSPORTATION
Part I. State Department of
Highways and Public
Transportation
Chapter 25. Maintenance
Division
Oversize and/or Overweight
Permits for Certain Oil Well
Related Vehicles

★43 TAC §25.91, §25.92

The State Highway and Public Transportation Commission adopts the repeal of §25.91 and §25.92, without changes to the proposed text published in the August 6, 1985, issue of the *Texas Register* (10 TexReg 2533).

The repeal of these sections and the simultaneous adoption of new §25.91 and §25.92 provides the necessary implementation steps that are required by Texas

Civil Statutes, Article 6701d-16, for the issuance of oversize-overweight permits for the movement of oilwell servicing, clean-out, and drilling vehicles.

No comments were received regarding the repeal of the sections.

The repeal of these sections is adopted pursuant to Texas Civil Statutes, Article 6701d-16, which authorize the State Highway and Public Transportation Commission to promulgate rules, regulations, and fees for the issuance of oversize-overweight permits for the movement of oilwell servicing, clean-out, and drilling vehicles.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512230 Diane L. Northam
Administrative
Technician
State Department of
Highways and Public
Transportation

Effective date: January 13, 1986
Proposal publication date: August 6, 1985
For further information, please call
(512) 475-2141.

★ ★ ★

★43 TAC §25.91, §25.92

The State Highway and Public Transportation Commission adopts new §25.91 and §25.92, with changes to the proposed text published in the August 6, 1985, issue of the *Texas Register* (10 TexReg 2533). These new sections replace repealed §25.91 and §25.92.

The State Highway and Public Transportation Commission is specifically required by Texas Civil Statutes, Article 6701d-16, to establish permit issuance rules, regulations, permit fees, permit time periods, and maximum weight limits for the movement of oversize-overweight oil well servicing, clean-out, and drilling vehicles.

Section 25.91 and §25.92 will function by establishing the specific procedures and methods for issuing permits for oversize-overweight oil well servicing, clean-out, and drilling vehicles. The sections will provide for statewide uniformity in the issuance of these permits. The sections also provide for the safety of the general traveling public and the protection of the public's investment in the state highway system by controlling the size and weight of these vehicles and by regulating their movement routes.

On November 15, 1985, the State Highway and Public Transportation Commission conducted a public hearing pursuant to Texas Civil Statutes, Article 6252-13a, §5.

The purpose of the hearing was to afford concerned parties the opportunity to present comments on the commission's proposed sections, for issuing oversize-overweight permits for certain oil well servicing, clean-out, and drilling equipment and vehicles, prior to their permanent adoption.

John Copeland, representing the Association of Oil Well Servicing Contractors, Steve Pringle, representing the International Association of Drilling Contractors, Bill Weddle, representing the Permian Corporation, and L. D. Burns, representing L. D. Burns Drilling Company, expressed certain comments and desires relative to the issuance of these permits. Their comments and commission responses are discussed in the following paragraphs.

Mr. Burns expressed a desire that the commission increase the maximum tire load limit from 650 pounds to 850 pounds per inch of tire width and provide for annual permits for these oil well servicing vehicles. The commission has reviewed the comments concerning the increase in the maximum tire load limits, and it has determined that the increase can be safely and satisfactorily increased to the requested limit.

Mr. Burns requested that the commission consider annual permits for these vehicles. The commission has previously authorized the issuance of annual permits for oil well servicing vehicles that are legal in size and weight and registered with a permit license plate. Annual permits are also issued to vehicles transporting liquid fracing products and unrefined liquid petroleum products to oil wells not connected to a pipeline. The commission is unable to approve the request for annual permits for oversize-overweight oil well servicing vehicles because this action would be a subterfuge to the law establishing maximum legal size limits for vehicles by legalizing an illegal size vehicle to move on the highway system on a permanent basis. This action could place the state in jeopardy of losing federal funds. Another reason for denying the request for annual permits is centered on the fact that routes change numerous times during an entire year. The route changes result from various reasons, such as highway construction, highway and bridge maintenance programs that cover extended periods of time, and highway and bridge damage resulting from adverse weather and damage due to accidents.

Mr. Pringle expressed support of the percentage figures used in the fee calculation process and the desire to move reasonably dismantled loads weighing up to 80,000 pounds gross on roads load zoned to 58,420 pounds gross weight. The commission has studied the percentage figures and the fee calculation process, which were established by Commission Minute Orders 83169 and

83299, and has determined that they provide for permit fees that are unnecessarily high for single permits when compared to 30-day or 90-day permits. To provide for a reasonable and logical permit fee, the commission has prepared a fee based on mileage traveled with a corresponding rate reduction factor.

Mr. Pringle's request that reasonably dismantled loads related to oil production, such as drill stem and pipe casing, which do not exceed 80,000 pounds gross weight, be permitted to travel on roads that have been load zoned to 58,420 pounds gross weight, cannot be allowed. These roads have been load zoned, due to their manner of construction, to protect them from repeated movement of legal weight loads. Permitting these reasonably dismantled loads on a repetitive daily basis would be detrimental to the life of the load zoned road, and contrary to the principles of load zoning of roads.

Mr. Copeland requested that the commission consider increasing the maximum axle load limit from 25,000 pounds to 33,000 pounds per axle, maintain the present schedule of fees for permits as they presently are for single axles or axle groups up to 25,000 pounds, and that the fees for weights above 25,000 pounds per axle be in the same proportion as those fees in the current fee structure.

The request by Mr. Copeland to increase the axle load limit to 33,000 pounds cannot be approved. Several industry representatives have advised that 30,000 pounds per axle would be sufficient to cover the majority of all oil well servicing rigs in operation. Based on these discussions with industry representatives, and the fact that axle loads in excess of 30,000 pounds would be very damaging to the roadway structure, the axle load limit will be increased to 30,000 pounds per axle. The commission notes that permits for these vehicles with axle weights above 25,000 pounds per axle will have a limited number of routes available, because of the inability of some routes to withstand these extremely heavy loads. It should also be noted that these limited routes will reduce the service area for these very heavy vehicles. The commission also notes that the increased axle weight limit of 30,000 pounds is temporary and will expire on January 1, 1988. The commission believes this amount of time will allow the industry sufficient time to modify its equipment by reducing the axle load limits down to 25,000 pounds. This reduction in weight will lower the permit cost and will be less damaging to the highway system.

Mr. Copeland's request that the commission maintain the present schedule of fees for permits is reasonable; however, the fees for these permits have been modified to simplify calculation and to provide an increasing fee rate for increased time. The fees for axle weights above

25,000 pounds will be on the same methodology provided for in the above modification.

Texas Civil Statutes, Article 6666 and 6701d-16, provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the department, and specifically, to establish rules, regulations, and fees for the issuance of oversize-overweight permits for the movement of oil well servicing, clean-out, and drilling vehicles.

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

(1) Only oil well servicing, oil well clean-out, and/or well drilling machinery or equipment constructed as a machine used solely for servicing, cleaning out, and/or drilling oil wells, and consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purposes shall be eligible for the \$5.00 permit license plate.

(2) All vehicles or equipment of the previously specified classification using the public highways of the State of Texas must be either legally registered in accordance with regular registration procedures for motor vehicles or licensed with a permit license plate before they can obtain the special oversize/overweight permits described in Texas Civil Statutes, Article 6701d-16.

(3) Vehicles or equipment described in paragraph (1) of this section displaying machinery license plates may be issued only single-trip permits under the provisions of Texas Civil Statutes, Article 6701a, and these vehicles shall not be permitted for any weight greater than 25,000 pounds on a single axle, 45,000 pounds on a tandem axle, 60,000 pounds on a triple axle, or 70,000 pounds on a four axle group. These vehicles may exchange their machinery license plate for a permit license plate, and then obtain permits for weights in excess of those listed in this paragraph, at the rates established in this section.

(4) Vehicles or equipment described in paragraph (1) of this section that consist of a combination truck-tractor and trailer shall be provided with regular truck-tractor registration for the truck-tractor portion and a \$5.00 permit license plate for the trailer.

(5) When an applicant desires to move an unregistered oil well servicing, drilling, and/or clean-out vehicle, such vehicle shall be issued a 72-hour temporary registration permit and a single trip oversize-overweight permit issued under provisions of Texas Civil Statutes, Article 6701a, or Article 6701d-16, if the vehicle has a single axle weight in excess of 25,000

pounds, or a tandem axle weight in excess of 60,000 pounds, or a four axle group weight in excess of 70,000 pounds.

(6) A vehicle operating on the public streets or highways of this state with a permit license plate must also have in the vehicle and available for inspection to law enforcement officers, a time or trip permit issued under authority of Texas Civil Statutes, Article 6701d-16. The permit must be in full force and effect and any such vehicle operating without such permit shall be deemed to be operating unregistered and unlicensed and the owner or operator thereof, as provided by applicable statutes, shall be required to purchase regular Texas registration for the full registration year plus 20% penalty as provided by Texas Civil Statutes, Article 6675a-3a. It is further provided that if such vehicle is found to be operating not in accordance with the provisions of the permit it shall also be considered to be operating unregistered and unlicensed and such vehicle shall be required, as provided by applicable statutes, to be registered with regular commercial registration for the full registration year plus 20% penalty.

(7) Owners operating vehicles under a 30-day or 90-day permit, that find it necessary to travel on a route not covered by their permit, may obtain a single-trip permit to travel the route not covered by the 30-day or 90-day permit. The fee for the single-trip permit will be based on the size, weight, and distance fees established herein for single-trip movements.

(8) Vehicles not exceeding nine-foot wide, legal height and/or 65-foot long shall be allowed 24-hour continuous movement.

(9) Vehicles having a width over 12 feet and/or length over 95 feet shall not be eligible for time permits but shall be permitted to move only on single-trip permits issued under the provisions of Texas Civil Statutes, Article 6701d-16.

(10) The maximum weight for any single axle or any axle within an axle group shall not exceed 30,000 pounds; however, after January 1, 1988, the maximum axle weight shall be reduced to 25,000 pounds, and no permits will be issued after January 1, 1988, if any axle weight exceeds 25,000 pounds. The axle weights of either 30,000 pounds or 25,000 pounds shall not exceed 850 pounds per inch of tire width.

(11) The requirements for property damage insurance is cancelled.

(12)-(14) Were deleted.

§25.92 *Fees for Oil Well Vehicles and Equipment.*

(a) Permit fees for these vehicles and equipment shall be calculated to provide for a basic rate per mile fee of \$0.024 per mile for each foot (or fraction thereof) above legal width; \$0.016 per mile for each foot (or fraction thereof) above legal height, and \$0.004 per mile for each foot (or fraction thereof) above legal length of 40 feet on single unit equipment or above 57 feet

length for semi-trailers. The basic rate per mile fee for each axle or axle group shall be determined from the weight ranges and corresponding fees per mile that are listed in the Axle Weight Fee Chart.

AXLE WEIGHT FEE CHART		
<u>Number of Axles</u>	<u>Weight Range (in pounds)</u>	<u>Fee Per Mile</u>
Single	20,001 to 25,000	\$ 0.376
	25,001 to 30,000	0.768
2 Axle Group	34,001 to 40,000	0.328
	40,001 to 45,000	0.538
	45,001 to 50,000	0.830
	50,001 to 55,000	1.237
	55,001 to 60,000	1.694
3 Axle Group	42,001 to 50,000	0.250
	50,001 to 55,000	0.374
	55,001 to 60,000	0.540
	60,001 to 65,000	0.760
	65,001 to 70,000	1.027
	70,001 to 75,000	1.365
	75,001 to 80,000	1.753
	80,001 to 85,000	2.362
85,001 to 90,000	2.797	

<u>Number of Axles</u>	<u>Weight Range (in pounds)</u>	<u>Fee Per Mile</u>
4 Axle Group	50,001 to 55,000	0.187
	55,001 to 60,000	0.212
	60,001 to 65,000	0.359
	65,001 to 70,000	0.410
	70,001 to 75,000	0.577
	75,001 to 80,000	0.718
	80,001 to 85,000	0.915
	85,001 to 90,000	1.168
	90,001 to 95,000	1.461
	95,001 to 100,000	1.786
	100,001 to 105,000	2.193
105,001 to 110,000	2.638	
110,001 to 115,000	3.127	
115,001 to 120,000	3.729	

(b) The basic rate per mile fee for gross weight shall be determined from the weight ranges and corresponding fees per mile that are listed in the Gross Weight Fee Chart.

GROSS WEIGHT FEE CHART	
<u>Weight Range (in pounds)</u>	<u>Fee Per Mile</u>
0 to 80,000	0.04
80,000 to 90,000	0.06
90,001 to 100,000	0.12
100,001 to 110,000	0.18
110,001 to 120,000	0.24
120,001 to 130,000	0.30
130,001 to 140,000	0.36
140,001 to 150,000	0.42
150,001 to 160,000	0.48
160,001 to 170,000	0.54
170,001 to 180,000	0.60
180,001 to 190,000	0.66
190,001 to 200,000	0.72
200,001 to 210,000	0.78
210,001 and above	0.84

(c) Each basic rate per mile fee calculated for exceeding legal width, exceeding legal height, exceeding legal length, and the rates determined for axle, axle group, and gross weight shall be totalled to provide for the total rate per mile.

(d) The rate reduction factor for single-trip permits is 0.4, for 30-day permits it is 0.6, and for 90-day permits it is 0.8.

(e) Actual mileage is used for calculating the basic fee for all types of permits. For single-trip permits, the actual mileage is used in the basic fee calculation process. For 30-day and 90-day permits, the applicant must select the routes to be traveled by indicating the routes on a map. The mileage of the selected routes will be added together to determine the actual mileage.

(f) Permit fees for oil well servicing vehicles and machinery displaying full registration shall receive a registration reduction of 25% in the computation of the basic fee. Vehicles registered with a permit license plate do not receive a registration reduction.

(g) The basic fee shall be determined by the following formula:

$$\text{Actual Mileage} \times \text{Rate Reduction Factor} \times \text{Total Rate Per Mile} \times \text{Registration Reduction} = \text{Basic Fee}$$

(h) The total permit fee for single-trip permits, 30-day permits, 90-day permits, and annual permits shall be the sum of their basic fee plus the issuance fee of \$20.

(i) Permit fees for trailer mounted oil well servicing units shall be based on the vehicle combination gross weight, overall width, overall height, semi-trailer length, and all axle or axle group weights, including the truck-tractor axles.

(j) Vehicles that are within legal size and weight limits and registered with a permit license plate must purchase an annual permit with a basic fee of \$75 per axle. The total permit fee for an annual permit shall be the basic fee plus the issuance fee of \$20.

These permits shall be valid for one year from date of issuance.

(k) Vehicles within legal size and weight limits that are registered with regular commercial registration, that exceed the maximum legal tire load limit of 650 pounds per inch of tire width, must purchase an annual permit. The basic fee for these annual permits shall be based on the number of axles that exceed the legal tire load limit, multiplied by the rate of \$75. These annual permits shall be valid for one year from date of issuance. The issuance fee for these annual permits shall be \$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 December 23, 1985.

TRD-8512227

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

Effective date: January 23, 1986
Proposal publication date: August 6, 1985
For further information, please call
(512) 475-2141.

★ ★ ★

★43 TAC §25.95

The State Highway and Public Transportation Commission adopts an amendment to §25.95, with minor nonsubstantive changes to the proposed text published in the August 6, 1985, issue of the *Texas Register Texas Register* (10 TexReg 2534). The changes to the amendment involve the elimination of some redundant phrases and rephrasing some passages for better clarity.

The State Department of Highways and Public Transportation is required by Texas Civil Statutes, Article 6701d-16, to establish rules and permit fees for permits to transport certain liquid products, relative to the production or oil, to and from oil wells not connected to a pipeline.

The amendment to §25.95 modifies and clarifies the existing section by broadening the scope of the liquid products that can be transported to and from oil wells by permit, eliminates the requirement of property damage insurance in the amount of \$50,000, and establishes specific trailer size limits.

On November 15, 1985, the State Highway and Public Transportation Commission conducted a public hearing pursuant to Texas Civil Statutes, Article 6252-13a, §5. The purpose of the hearing was to afford concerned parties the opportunity to present comments on the commission's proposed sections, for issuing oversize-overweight permits for certain oil well servicing, clean-out, and drilling equipment

and vehicles, prior to their permanent adoption.

Bill Weddle, representing The Permian Corporation, expressed a desire that the permit fees for vehicles obtaining permits under §25.95 be increased 25%. He also expressed a desire that §25.95 be amended to allow the transfer of permits from old trailers being taken out of service, to new replacement trailers for a nominal fee to be collected by the Department.

In response to Mr. Weddle's recommendation that the permit fees stated in §25.95 be increased by 25%, and the request that a permit issued for a trailer that is being taken out of service be transferred to the replacement trailer, provided the permittee pays a nominal fee for the transfer, the Commission finds that these two issues have not been completely researched by the department. The department will delay any new action on either matter until its studies have been completed. Upon completion of the studies, if it has been determined that these changes are necessary, the department will handle the changes under a separate and new section change.

Texas Civil Statutes, Articles 6666 and 6701d-16, provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the department, and specifically, to establish rules, regulations, and fees for the issuance of oversize-overweight permits for the move-

ment of certain liquid products related to the production of oil from oilwells not connected to a pipeline.

§25.95. Permits for Vehicles Transporting Liquid Fracing Products, Liquid Waste Products, and Unrefined Liquid Petroleum Products.

(a) Truck-tractor and semi-trailer tankers, which are legal size and legal weight and registered for maximum legal gross weight, and specifically designed with a tank and pump unit for transporting liquid fracing products to an oil well or for transporting unrefined liquid petroleum products or any liquid waste product from oil wells not connected to a pipeline, may secure annual permits to haul their liquid loads over all state maintained highways. These loads shall not cross any load-zoned bridge. These permits shall run concurrently with the registration year, April 1 through the following March 31, and may be prorated on a monthly basis. The fee for these permits is applied to the axles of the semi-trailer portion only. The fee for these permits is listed as follows.

(1) \$50 per axle—To haul liquid waste products or unrefined liquid petroleum products from oil wells not connected by a pipeline and return empty.

(2) \$50 per axle—To haul liquid fracing products to an oil well and return empty.

(3) \$100 per axle—To haul liquid fracing products to an oil well and return with liquid waste products or unrefined li-

quid petroleum products from an oil well not connected to a pipeline.

(b) Only one semi-trailer can be listed on a permit, and it shall not exceed legal width, legal height, legal weight limits, or 57 feet in length.

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

Issued in Austin, Texas, on December 23, 1985.

TRD-8512229

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

Effective date: January 13, 1986

Proposal publication date: August 6, 1985

For further information, please call

(512) 475-2141.

Oversize-Overweight Permits for Unladen Lift Equipment Motor Vehicles

★43 TAC §25.201, §25.202

The State Highway and Public Transportation Commission adopts new §25.201 and §25.202, with changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2383).

The State Highway and Public Transportation Commission is required by Texas Civil Statutes, Article 6701d-19b, to establish permit issuance rules, regulations, fees, time periods, and maximum weight limits for the movement of oversize-overweight unladen lift equipment motor vehicles (mobile cranes).

Section 25.201 and §25.202 will function by establishing the specific procedures and methods for issuing permits for oversize-overweight oil well servicing, clean-out, and drilling vehicles. The sections will provide for statewide uniformity in the issuance of these permits. The sections also provide for the safety of the general traveling public and the protection of the public's investment in the state highway system by controlling the size and weight of these vehicles and by regulating their movement routes.

On November 15, 1985, the State Highway and Public Transportation Commission conducted a public hearing pursuant to Texas Civil Statutes, Article 6252-13a, §5. The purpose of the hearing was to afford concerned parties the opportunity to present comments on the commission's proposed sections, for issuing oversize-overweight permits for certain unladen lift equipment motor vehicles, prior to their permanent adoption.

Phyllis Schunck, representing the Off Road Equipment Operators Association, and Tom Fisher, representing the Associated General Contractors, expressed certain comments and desires relative to the issuance of these permits. Their com-

ments and commission responses are discussed in the following paragraphs.

The Off Road Equipment Operators Association expressed a desire that the commission increase the maximum tire load limit from 850 pounds to 850 pounds per inch of tire width, increase the maximum axle load limit from 25,000 pounds to 33,000 pounds per axle, provide for issuing annual permits, and modify the fee schedule for time permits. The commission has reviewed the comments concerning an increase to the tire and load limit, and has determined that the maximum tire load limit of 850 pounds per inch of tire width can be safely and satisfactorily increased as recommended by the association.

The request by Ms. Shunck to increase the maximum axle load limit from 25,000 pounds to 33,000 pounds cannot be approved. Axle loads in excess of 30,000 per axle would be extremely damaging to the roadway system, and coupled with the fact that there are numerous bridges that cannot support axle weights in the weight range recommended by Ms. Schunck, the commission is unable to grant their request. The maximum axle load limit can be increased to 30,000 pounds on a temporary basis until January 1, 1988. The commission believes this will allow the industry sufficient time to modify its equipment by reducing the axle load limits to 25,000 pounds. This reduction in weight will lower the permit cost and will be less damaging to the highway system. The commission notes that permits for vehicles with axle weights above 25,000 pounds per axle will have a limited number of routes available, because of the inability of some routes to withstand these extremely heavy loads. It should also be noted that these limited routes will reduce the service areas for these very heavy vehicles.

The request from the Off Road Equipment Operators Association for annual permits cannot be allowed, because this action would be a subterfuge to the law establishing maximum legal size limits for vehicles, by legalizing an illegal size vehicle to move on the highway system on a permanent basis. This action could place the state in jeopardy of losing federal funds. Another reason for denying the request for annual permits is that routes change numerous times during an entire year. The route changes result from various reasons, such as highway construction, highway and bridge maintenance programs that cover extended periods of time, highway and bridge damage resulting from adverse weather and accidents.

The Off Road Equipment Operators Association's request to modify the fee schedule of time permits needs some clarification. The sample permits fees for time permits that were calculated by the association were inordinately high be-

cause they were not properly calculated. However, it should be noted that the reason they did not properly calculate the fees was because the rules were complex, not easily understood, and all of the necessary calculation steps were not explained. The fee calculation process for single-trip permits and time permits has been clarified and simplified to make the fee calculation process easily understood and quickly accomplished. The method of calculating permit fees has been modified to provide for lower fees for certain types of permits.

The Associated General Contractors expressed desires that the equipment needs to move on short notice, and that the adoption of these sections be expedited. Therefore, we have provided for 30-day and 90-day time permits, which will allow an unlimited number of movements over various routes selected by the permit applicant.

O. B. Head, Heldt Brothers Trucks, submitted a written request expressing the desire that the commission consider the load bearing area of the tires when determining the tire-load limit. The load bearing area of the tires cannot be considered in lieu of the weight per inch of tire width without establishing exact parameters for calculating the area. The parameters would need to include such items as tire size, rim diameter, radial ply versus bias ply, and tire pressure. Since there are no established parameters for this request, we are unable to agree to its use as a means for calculating maximum tire load limit.

Texas Civil Statutes, Articles 6666 and 6701d-19b, provide the State Highway and Public Transportation Commission with the authority to establish rules for the conduct of the work of the department, and specifically, to establish rules, regulations, and fees for the issuance of oversize-overweight permits for the movement of unladen lift equipment motor vehicles.

§25.201. *Permits for Unladen Lift Equipment Motor Vehicles.* Oversize-overweight permits may be issued to permit the movement of unladen lift equipment motor vehicles under the following.

(1) Only self propelled unladen mobile cranes constructed as a machine used solely for lifting purposes only, and consisting in general of a boom, an engine for power, and a chassis permanently constructed or assembled for the purpose of lifting shall be considered as unladen lift equipment motor vehicles.

(2) All vehicles of the previously specified classification using the public highways of the State of Texas that are registered with a machinery license plate may obtain the special oversize-overweight permits described in Texas Civil Statutes, Article 6701d-19b.

(3) When an applicant desires to move an unregistered mobile crane, such

vehicle shall be issued a 72-hour temporary registration permit and a single-trip oversize-overweight permit issued under the provisions of Texas Civil Statutes, Article 6701a, or the permit must be issued under Texas Civil Statutes, Article 6701d-19b, if the vehicle has a single axle weight in excess of 25,000 pounds, or a tandem axle weight in excess of 45,000 pounds, or a triple axle weight in excess of 60,000 pounds, or a four axle group weight in excess of 70,000 pounds.

(4) Owners operating vehicles under a 30-day or 90-day permit, that find it necessary to travel on a route not covered by the permit, may obtain a single-trip permit to travel the route not covered by the 30-day or 90-day permit, and the fee for this single-trip permit will be based on the size, weight, and distance fees established herein for single-trip movements.

(5) A vehicle operating under provisions of a permit issued under authority to Texas Civil Statutes, Article 6701d-19b, must have the permit in the vehicle when the vehicle is being moved on the public highways.

(6) Vehicles that do not exceed nine-feet wide, legal height, and/or 65-feet long, shall be allowed 24-hour continuous movement.

(7) Vehicles exceeding 12-feet wide or 95-feet long shall not be eligible for 30-day or 90-day permits, but may be permitted to move only on single-trip permits issued under the provisions of Texas Civil Statutes, Article 6701d-19b.

(8) The maximum weight for any single axle or any axle within an axle group shall not exceed 30,000 pounds; however, after January 1, 1988, the maximum axle weight shall be reduced to 25,000 pounds, and no permits will be issued after January 1, 1988, if any axle weight exceeds 25,000 pounds. The axle weights of either 30,000 pounds or 25,000 pounds shall not exceed 850 pounds per inch of tire width.

(9) Mobile cranes, registered with machinery license plates, that do not exceed legal size limitations or legal weight limitations for axle or gross load, but do exceed the maximum legal tire load limit of 650 pounds per inch of tire width, may obtain an annual permit, provided the tire load limit does not exceed 850 pounds per inch of tire width. The basic fee for these annual permits shall be based on the number of axles that exceed the legal tire load limit, multiplied by the rate of \$75. These annual permits will be valid for one year from date of issuance. The issuance fee for these annual permits is \$20.

§25.202 Fees for Unladen Lift Equipment Motor Vehicles.

(a) Permit fees for these vehicles and equipment shall be calculated to provide for a basic rate per mile fee of \$0.024 per mile for each foot (or fraction thereof) above legal width; \$0.016 per mile for each foot (or fraction thereof) above legal height; and

\$0.004 per mile for each foot (or fraction thereof) above legal length of 45 feet on single unit equipment or above 57 feet length for semi-trailers. The basic rate per mile fee for each axle or axle group shall be determined from the weight ranges and corresponding fees per mile that are listed in the Axle Weight Fee Chart.

AXLE WEIGHT FEE CHART			
Number of Axles	Weight Range (in pounds)		Fee Per Mile
Single	20,001 to	25,000	\$ 0.376
	25,001 to	30,000	0.768
2 Axle Group	34,001 to	40,000	0.328
	40,001 to	45,000	0.538
	45,001 to	50,000	0.830
	50,001 to	55,000	1.237
	55,001 to	60,000	1.694
3 Axle Group	42,001 to	50,000	0.250
	50,001 to	55,000	0.374
	55,001 to	60,000	0.540
	60,001 to	65,000	0.760
	65,001 to	70,000	1.027
	70,001 to	75,000	1.365
	75,001 to	80,000	1.753
	80,001 to	85,000	2.362
	85,001 to	90,000	2.797

Number of Axles	Weight Range (in pounds)		Fee Per Mile
4 Axle Group	50,001 to	55,000	0.187
	55,001 to	60,000	0.212
	60,001 to	65,000	0.359
	65,001 to	70,000	0.410
	70,001 to	75,000	0.577
	75,001 to	80,000	0.718
	80,001 to	85,000	0.915
	85,001 to	90,000	1.168
	90,001 to	95,000	1.461
	95,001 to	100,000	1.786
	100,001 to	105,000	2.193
	105,001 to	110,000	2.638
	110,001 to	115,000	3.127
	115,001 to	120,000	3.729

(b) The basic rate per mile fee for gross weight shall be determined from the weight ranges and corresponding fees per mile that are listed in the Gross Weight Fee Chart.

GROSS WEIGHT FEE CHART

<u>Weight Range (in pounds)</u>	<u>Fee Per Mile</u>
0 to 80,000	0.04
80,000 to 90,000	0.06
90,001 to 100,000	0.12
100,001 to 110,000	0.18
110,001 to 120,000	0.24
120,001 to 130,000	0.30
130,001 to 140,000	0.36
140,001 to 150,000	0.42
150,001 to 160,000	0.48
160,001 to 170,000	0.54
170,001 to 180,000	0.60
180,001 to 190,000	0.66
190,001 to 200,000	0.72
200,001 to 210,000	0.78
210,001 and above	0.84

(c) Each basic rate per mile fee calculated for exceeding legal width, exceeding legal height, exceeding legal length, and the rates determined for axle, axle group, and gross weight shall be totalled to provide for the total rate per mile.

(d) The rate reduction factor for single-trip permits is 0.4, for 30-day permits it is 0.6, and for 90-day permits it is 0.8.

(e) Actual mileage is used for calculating the basic fee for all types of permits. For single-trip permits, the actual mileage is used in the basic fee calculation process.

For 30-day and 90-day permits, the applicant must select the routes to be travelled by indicating the routes on a map. The mileage of the selected routes will be added together to determine the actual mileage.

(f) The basic fee shall be determined by the following formula:

$$\text{Actual Mileage} \times \text{Rate Reduction Factor} \times \text{Total Rate Per Mile} \times \text{Registration Reduction} = \text{Basic Fee}$$

(g) The total permit fee for single-trip permits, 30-day permits, 90-day permits, and annual permits shall be the sum of their basic fee plus the issuance fee of \$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 December 23, 1985.

TRD-8512228

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

Effective date: January 23, 1986
Proposal publication date: July 26, 1985
For further information, please call
(512) 475-2141.

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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 considered a filing by Insured Lloyds, for an Endorse-

ment Form #1 and rates for nonfiling insurance.

Endorsement #1 modifies the insurance coverage that is afforded by the provisions of the approved nonfiling insurance policy.

Modification 1. Paragraph 2 of Conditions - Location of Property - shall be deleted in its entirety and replaced by the following. "Except in the case of a skip by the owner and a diligent effort by the insured to locate the owner and the property, there shall be no liability under this

insurance unless at the time of claim is made under this insurance, the property represented by the instrument has been located by the insured or unless the person, persons, or corporation possessed of the property or the person, persons, or corporation who has title to the property has been located by the insured."

Modification 2. Paragraph 3 of Conditions - Limited of Liability - shall be deleted in its entirety and replaced by the following. "The liability of the company with respect to any one instrument will be the lesser of: (a) the actual cash value of the property that is described in the security instrument and on which claim is made, (b) the replacement cost, (c) the limit of liability stated in the declarations of the policy, or (d) the net balance remaining due on the security instrument.

"The unearned interest, unearned finance charges, and the expenses which would have been filed with the public officer and public office will be excluded.

"The aggregate limit stated in the declarations is the total limit of the company's liability as respects any one policy year."

Modification 3. Paragraph III - Exclusions - Subparagraph (b) is revised to reflect an increase in the permissible loan balance limit from \$5,000 to \$8,000.

The rates for higher limits per loan or sale are:

Limit Per Loan or Sale	Direct Loan or Sale-Banks	All Other Institutions
\$8,000	\$2.00	\$3.00
	Purchased Paper Banks	All Other Institutions
\$8,000	\$2.50	\$3.00

This filing is effective 15 days after it is published in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on December 27, 1985.

TRD-8512250 Pat Wagner
State Board of Insurance

Effective date: January 19, 1986
For further information, please call (512) 463-6327.

★ ★ ★

The State Board of Insurance considered a filing by CUMIS Insurance Society, Inc., of a rating rule for a branch office location charge.

This filing introduces a rating rule which provides for a nominal extra premium charge for credit union branch offices. This rule becomes manual page number 19 of the CUMIS Credit Union Discovery Bond Program.

When coverage is provided on locations in addition to the main office, a charge of 0.2% per location of the bond rates developed under rating rule 1, page 2, of the specific rating rules shall apply, subject to the following.

(1) Branch office is defined as any credit union facility where business is transacted with credit union members.

(2) The maximum number of additional locations for which a charge is applicable is five locations.

(3) These charges are not applicable to automated mechanical devices.

(4) The branch office location charge shall not be applicable if:

(a) credit union has assets less than \$1,000,000; or

(b) loss ratio for bond only was 50% or less (written) premium [bond only] for last rating year and incurred losses (bond only) for 12-month period ending three months prior to the anniversary date.

This filing is effective 15 days after it is published in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on December 27, 1985.

TRD-8512251 James W. Norman
State Board of Insurance

Effective date: January 19, 1986
For further information, please call (512) 463-6327.

★ ★ ★



The State Board of Insurance considered filing by Municipal Bond Insurance Association, of a new endorsement form to be used with the Municipal Bond Insurance Program.

Endorsement (#NY-4) relates to the guarantee of payment to the bond holder in the event of tax exempt status change.

This endorsement is similar to endorsement 11AC which was previously approved and limited to industrial revenue bonds.

There is no premium consideration for this endorsement.

This filing is effective 15 days after it is published in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on December 27, 1985.

TRD-8512252 James W. Norman
State Board of Insurance

Effective date: January 19, 1986
For further information, please call (512) 463-6327.

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *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 Department of Agriculture

Tuesday, January 7, 1986, 10 a.m. The Texas Department of Agriculture will meet in the district courtroom, Dickens County Courthouse, Dickens. According to the agenda, the department will receive public comments regarding special provisions of the Texas Herbicide Law, Chapter 75, Texas Agriculture Code, for Dickens County.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: December 27, 1985, 3:50 p.m.
TRD-8512301

Thursday, January 9, 1986, 1:30 p.m. The Texas Department of Agriculture will meet in the Briscoe County Courthouse, Silverton. According to the agenda, the department will receive public comments regarding proposed special exemptions of the Texas Herbicide Law for Briscoe County.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: December 30, 1985, 4:18 p.m.
TRD-8512337

Friday, January 10, 1986, 9:30 a.m. The Texas Department of Agriculture will meet at Memorial Building, 127 Southwest Second Street, Tulia. According to the agenda, the department will receive comments regarding proposed special exemptions of the Texas Herbicide Law for Swisher County.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: December 30, 1985, 4:18 p.m.
TRD-8512338

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Texas Antiquities Committee

Friday, January 17, 1986, 9:30 a.m. The Texas Antiquities Committee will meet in Room 118, Stephen F. Austin Building, 105 West 16th Street, Austin. Items on the agenda summary include approval of minutes no. 86; nominations for state archeological landmarks including the historical structure of the Marion County Courthouse; designations of state archeological landmarks including the archeological site 41HZ27 (portions on public lands in Alamo Canyon Rock Art District), the historic structure of Fannin School Complex in Mineral Wells, the historic shipwreck 19; and demolition permit request by the El Paso Independent School District for the demolition of Old Bowie High School (SAL).

Contact: Robert J. Mallouf, 105 West 16th Street, Austin, Texas 78701, (512) 475-6328.

Filed: December 30, 1985, 8:54 a.m.
TRD-8512309

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Battleship Texas Advisory Board

Saturday, January 18, 1986, 1 p.m. The Battleship Texas Advisory Board will meet in Suite 601, 3033 Chimney Rock, Houston. Items on the agenda include approval of minutes; up-date from Texas Parks and Wildlife; up-date on fundraising; review and approval of expenses; and report on policy adoption. The board also will meet in executive session.

Contact: Doug Williams, 3033 Chimney Rock, Suite 601, Houston, Texas 77056, (713) 783-8109.

Filed: December 23, 1985, 11:13 a.m.
TRD-8512206

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Texas Education Agency

Saturday, January 4, 1986, 10:30 a.m. The Paperwork Reduction Advisory Committee of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will conduct an organizational meeting and discuss paperwork problems in local school districts.

Contact: Terri Anderson, 1701 North Congress Avenue, Austin, Texas 78711, (512) 463-9000.

Filed: December 27, 1985, 3:50 p.m.
TRD-8512301

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Texas Employment Commission

Tuesday, January 7, 1986, 8:30 a.m. The Texas Employment Commission will meet in Room 644, Texas Employment Commission Building (TEC), 101 East 15th Street, Austin. Items on the agenda summary include prior meeting notes; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 1; and set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: December 30, 1985, 2:54 p.m.
TRD-8512325

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Texas Statewide Health Coordinating Council

Monday, January 6, 1986, 9 a.m. The State Health Plan Development Committee of the Texas Statewide Health Coordinating Council will meet in Room G-209, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary,

the committee will consider the approval of minutes; the revised plan development schedule; task force and related study reports; annual implementation plan; magnetic resonance imaging appendix to 1985 State Health Plan (SHP); recommendation regarding bed projection methodologies for short term institutional care and nursing homes; state health planning prioritization methodology; issues for inclusion in 1987 SHP; health protection; health promotion; prevention, detection and referral; ambulatory care and emergency medical services; short term institutional care; long term care and alternatives; habilitation and rehabilitation; mental health and mental retardation; alcohol and drug abuse; health care costs; health professions; and data needs; alternatives for prioritization; and status of committee member reports on potential means to monitor health care delivery system; and selection of next meeting date.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: December 23, 1985, 2:55 p.m.
TRD-8512220

Monday, January 6, 1986, 4 p.m. The Health Legislation and Program Funding Review Committee of the Texas Statewide Health Coordinating Council will meet in Room T-407, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider approval of minutes; report on proposed rule from Texas Board of Health regarding the medical isolation and restriction of certain individuals diagnosed as having Acquired Immune Deficiency Syndrome (AIDS); and selection of next meeting date.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: December 23, 1985, 2:54 p.m.
TRD-8512219

Tuesday, January 7, 1986, 8:30 a.m. The Data Management and Health Information Systems Committee of the Texas Statewide Health Coordinating Council will meet in Room G-209, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider approval of minutes; status report on the Texas Department of Health Population Data System; county reporting under the Indigent Health Care Act; update on 1985 Cooperative Texas Department of Health/American Hospital Association/Texas Hospital Association annual survey of hospitals; and progress report on the evaluation data collection activities.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: December 23, 1985, 2:56 p.m.
TRD-8512222

Tuesday, January 7, 1986, 10 a.m. The Health Cost Containment Committee of the Texas Statewide Health Coordinating Council

will meet in Room G-209, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider approval of minutes; discuss health care cost issues for State Health Plan 1987; consider an overview of preferred provider organization related activities in Texas; the health cost containment; and decide on the next meeting date.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: December 23, 1985, 2:55 p.m.
TRD-8512221

Tuesday, January 7, 1986, 1 p.m. The Texas Statewide Health Coordinating Council will meet in the Senate Chambers, State Capitol Building, Austin. According to the agenda summary, the council will consider minutes of the November 8, 1985, meeting; an AIDS update; a report by the Department of Health and Human Services project officer; the patient evacuation study update; the report by the bureau chief; Health Legislation and Program Funding Review Committee report; Data Management and Health Information Systems Committee report; Regional Health Planning Coordination Committee report; Health Cost Containment Committee report; State Health Plan Development Committee meeting; and selection of next meeting date.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: December 23, 1985, 2:56 p.m.
TRD-8512224

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Office of the Governor

Monday, January 6, 1986, 10:15 a.m. The Interim Task Force on Border Economic Development of the Office of the Governor will meet in the Senate Chamber, State Capitol, Austin. Items on the agenda include introductory comments by state officials, organizational matters, and general discussion.

Contact: Tom Adams, 201 East 14th Street, Room 412, Austin, Texas 78701, (512) 463-1796.

Filed: December 31, 1985, 9:06 a.m.
TRD-8512353

Thursday, January 16, 1985, 10 a.m. The Task Force on the Advancement of Labor Management Relations of the Governor's Office, will meet in Room 412, Sam Houston Building, Austin. According to the agenda, the task force will approve minutes, discuss task force hearing(s), and consider new business.

Contact: Mimi Purnell, Sam Houston Building, Room 412, Austin, Texas 78705, (512) 463-1796.

Filed: December 23, 1985, 2:53 p.m.
TRD-8512216

Thursday, January 16, 1986, 1 p.m. The Interagency Council on Nutrition and Fitness of the Governor's Office will meet in Room G-209, Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda include adoption of the agenda, approval of minutes, a review of Texas fitness report, a discussion of council's role regarding state fitness, and new business.

Contact: Janie Sieberg, P.O. Box 12668, Austin, Texas 78711, (512) 465-4600.

Filed: December 30, 1985, 10:23 a.m.
TRD-8512315

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Texas Department of Health

Committees of the Texas Department of Health will meet at 1100 West 49th Street, Austin. Days, times, rooms, committees, and agendas follow.

Friday, January 3, 1986, 10 a.m. In Room T-507, the Birthing Center Ad Hoc Committee will conduct a work session to draft regulations for the Texas Birthing Center Licensing Act.

Contact: Juanita Carrell, 1110 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: December 23, 1985, 2:51 p.m.
TRD-8512217

Saturday, January 4, 1986, 1 p.m. In Classroom A, Service Building, the Advisory Council on Massage Therapy will consider approval of September 28 and 29, 1985, minutes; the drawing of terms by lot for the members not present at previous meeting; consideration of goals and time-tables for implementation of Texas Civil Statutes, Article 4512k; reports from each committee; consideration of comments from public hearings; the amendments to rules; discussion on requests for attorney general's opinion; other matters not requiring advisory council action; and next meeting dates. If necessary, the meeting will reconvene on January 5, 1986.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7512.

Filed: December 27, 1985, 3:08 p.m.
TRD-8512299

Monday, January 6, 1986, 9 a.m. In Room G-107, the Ambulatory Surgical Center Ad Hoc Committee will conduct a work session to draft regulations for the Ambulatory Surgical Center Licensing Act.

Contact: Juanity Carrell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: December 23, 1985, 2:51 p.m.
TRD-8512218

Tuesday, January 7, 1986, 6 p.m. The Hospital Licensing Advisory Council of the

Texas Department of Health will meet in the conference room 2, north building, Park Plaza Hospital, 1313 Hermann Drive, Houston. According to the agenda, the council will consider approval of October 11, 1985, minutes; and Hospital Licensing Standards-Chapter 1.

Contact: Gerald Guthrie, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: December 23, 1985, 2:56 p.m.
TRD-8512223

Sunday, January 12, 1986, 9:30 a.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet in the conference room, Bureau of Radiation Control, 1212 East Anderson Lane, Austin. According to the agenda, the board will consider amendments to the Texas Regulations for Control of Radiation parts 11, 12, 21, 22, and 41—recommendation for final adoption.

Contact: David M. Cochran, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7541.

Filed: December 27, 1985, 9:35 a.m.
TRD-8512244

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Texas Industrial Accident Board

Monday, January 6, 1986, 9:30 a.m. The Texas Industrial Accident Board will meet in Room 255, second floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the board will determine the procedures to be used in accordance with recent amendments to Board Rule 28 TAC §53.25 (061.07.00.025) and Board Rule 28 TAC §53.35 (061.07.00.035). The following procedures pertaining to Crime Victims Compensation Act will be discussed to determine eligibility of illegal aliens for the Crime Victims Workers' Compensation Fund, whether interest earned on Crime Victims Fund 964 should be deposited to this fund, and payment of funeral benefits; and a report on public awareness of Crime Victims Compensation program.

Contact: William Treacy, first floor, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: December 23, 1985, 9:13 a.m.
TRD-8512182

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State Board of Insurance

Tuesday, January 7, 1986, 10 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will make a decision on appeal of Group Prepaid Legal Services Plan, Inc.; a decision on appeal of Provident Indemnity Life Insurance Company; a decision on petitions for classification as professionals; proposed amendment to §5.3003 and §5.3004; board orders on several different matters as itemized on the complete agenda; emergency amendment to §5.6104; a discussion of market assistance plan for general liability insurance; replacement of advisory group member for long term insurance feasibility study; the appointment of Mental Health and Mental Retardation Rehabilitative Services Advisory Committee; a response to legislative inquiries; personnel matters; pending and contemplated litigation; a discussion of proposed §§3.901-3.911; and proposed response to Senate Committee questionnaire.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: December 30, 1985, 2:28 p.m.
TRD-8512321

Wednesday, January 8, 1986, 10 a.m. The Title Insurance Division of the State Board of Insurance will meet in the Lt. Governor's Committee Room 220, Capitol Building, Austin. According to the agenda, the division will discuss implications of deregulation of rates for title insurance and will discuss the effect, if any, that controlled business has on title rates and related competitive matters.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: December 30, 1985, 2:29 p.m.
TRD-8512322

Wednesday, January 8, 1986, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9155—merger of Southwest Bancshares Life Insurance Company, Houston, into MPact Life Insurance Company, Dallas.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: December 30, 1985, 1:04 p.m.
TRD-8512319

Friday, January 10, 1986, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9156—application of Louisiana Na-

tional Life Insurance Company, New Orleans, Louisiana, National Savings Life Insurance Company, Murfreesboro, Tennessee, and The Victory Life Insurance Company, Topeka, Kansas, to acquire control of United Fidelity Life Insurance Company, Fort Worth.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: December 30, 1985, 1:04 p.m.
TRD-8512320

Friday, January 17, 1986, 9 a.m. The State Board of Insurance will meet in Room 101, Reagan Building, 15th and Congress, Austin. According to the agenda, the board will consider proposed §§3.3701-3.3705 concerning preferred provider plans, published 10 TexReg 4729.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: December 30, 1985, 2:29 p.m.
TRD-8512323

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State Board of Morticians

Tuesday and Wednesday, January 7 and 8, 1986, 8:30 a.m. and 9 a.m. respectively. The State Board of Morticians will meet in Building B, 8100 Cameron Road, Austin. According to the agenda summary, persons will appear to request credit for apprentice and permission to register as an apprentice; set meeting and embalmer practical dates; discuss conflict of interest involving employment by medical examiner's office; review reciprocal interviews and recommendations; request from apprentice to receive credit on apprentice which was interrupted; investigator, executive secretary and committee reports; and review of complaints. On January 8, 1986, the board will consider consumer brochure and any items not discussed on January 7, 1986.

Contact: John W. Shocklee, 8100 Cameron Road, Building B, Suite 550, Austin, Texas 78753, (512) 834-9992.

Filed: December 27, 1985, 8:38 a.m.
TRD-8512231

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Board of Pardons and Paroles

Tuesday, January 7, 1986, 9:30 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. Items on the agenda summary include review of the minutes; pre-parole transfer; a subsequent review of cases referred to full board; the report on supervision fees; the travel report; Sunset review; the executive director report; contract certification-sex of-

fender treatment; restitution cases; rules update; and personnel matters.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2704.

Filed: December 30, 1985, 3:38 p.m.
TRD-8512334

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Polygraph Examiners Board

Thursday and Friday, January 9 and 10, 9 a.m. daily. The Polygraph Examiners Board will meet at the Department of Public Safety, 5805 North Lamar Boulevard, Austin. Items on the agenda summary include approval of October and December minutes; approval of Los Angeles Polygraph Institute (second vote); approval of applications for original licensing; results of December licensing examination and new licenses issued; presentation of 1985 fiscal year annual financial report; the executive officer's report; the election of 1986 officers; Rule 391.9 (second vote); testimony from members of the Texas Employees Union; administrative hearings on the case numbers C1-004-84, C2-017-85, C2-018-85, C2-019-85, C2-020-85; and discussion of any other polygraph related business that may come before the board.

Contact: Dawn M. Heikkila, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: December 30, 1985, 2:51 p.m.
TRD-8512327

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Texas Board of Private Investigators and Private Security Agencies

Wednesday, January 8, 1986, 9:30 a.m. The Texas Board of Private Investigators and Private Security Agencies will meet in the J. H. Reagan Building, 105 West 15th Street, Austin. Items on the agenda include approval of board meeting minutes of October 9, 1985, board meeting; discussion and possible board action of fingerprint resubmission procedures; new business including approval of staff actions regarding new licenses, suspension orders, reinstatement orders, certificates for replacement managers, license terminations, revocations, denials, reprimands, requests for waiver of board rule, other proposals for decision, and requests for rehearing; discussion and possible board action on attorney general's opinion regarding private investigators; discussion and possible board action on proposed guard dog rules to implement House Bill 773; discussion of possible addition to 30 hour training program for armed guards; discussion of proposed changes in instructors qualifications; discussion and possible board action regarding

budgetary matters; and discussion and possible board action regarding staff performance.

Contact: Clema D. Sanders, P.O. Box 13509, Austin, Texas 78711, (512) 475-3944.

Filed: December 30, 1985, 3:25 p.m.
TRD-8512326

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Texas State Board of Examiners of Professional Counselors

Saturday, January 11, 1986, 9 a.m. The Texas State Board of Examiners of Professional Counselors will meet at the Austin Hilton Inn, 6000 Middle Fiskville Road, IH 35 and U.S. 290 at Highland Mall, Austin. Items on the agenda summary include approval of minutes; consideration of licensure applications and procedures including reviews of disapproved files; the status of pending lawsuits; consideration of budget recommendations to the Texas Department of Health; committee appointments; committee reports; the cancellation of licenses; consideration of examination results; the extension of contract of test consultant; an update on continuing education renewal process; Texas Department of Health Travel Regulations; and setting of next meeting date.

Contact: Daniel L. Boone, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: December 23, 1985, 2:56 p.m.
TRD-8512225

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Texas State Board of Public Accountancy

Thursday, January 9, 1986, 9 a.m. The Committee on Technical Standards Review and the Enforcement Committee will meet in Suite 340, 1033 La Posada, Austin. According to the agenda summary, the committees will consider recommendations regarding specific complaints; discussion items including complaints, substantive rules, the proposed constructive enforcement program-phase I, and other items brought before the committee.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: December 30, 1985, 3:59 p.m.
TRD-8512336, 8512335

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Public Utility Commission of Texas

Tuesday, December 31, 1985, 10 a.m. The Hearings Division of the Public Utility Commission met in emergency session in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division considered Dockets 6477 and 6525—discussion and action regarding consultant services for analysis of Gulf States Utilities Company's construction work in progress case. The emergency status was necessary because of statutory deadlines.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 30, 1985, 4:40 p.m.
TRD-8512339

Tuesday, December 31, 1985, 1 p.m. The Hearings Division of the Public Utility Commission met in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division conducted a prehearing conference in Docket 6560—petition for review of certain ratemaking actions by the City of Austin.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 23, 1985, 1:51 p.m.
TRD-8512211

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Friday, January 3, 1986, 9 a.m. The division will conduct an administrative meeting.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 23, 1985, 1:49 p.m.
TRD-8512208

Monday, January 6, 1986, 10 a.m. A prehearing conference in Docket 6555—application of Southwestern Bell Telephone Company to introduce a customer specific pricing plan for Shell Oil Company. Rescheduled from January 3, 1986.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 27, 1985, 11:47 a.m.
TRD-8512288

Monday, January 6, 1986, 1:30 p.m. A prehearing conference in Docket 6637—application of Carrington Associates, Inc., for a rate increase.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 27, 1985, 11:47 a.m.
TRD-8512289

Wednesday, January 8, 1986, 1:30 p.m. A prehearing conference in Docket 6636—application of General Telephone Company of the Southwest to restructure custom assemblies of equipment rates.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 23, 1985, 1:50 p.m.
TRD-8512210

Monday, January 27, 1986, 1:30 p.m. A prehearing conference in Docket 6415—petition of Contel Celulare of El Paso, Inc., for order barring Southwestern Bell Telephone Company from imposing charges for reservation and use of NXX code.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 30, 1985, 2:48 p.m.
TRD-8512329

Monday, February 3, 1986, 1:30 p.m. A prehearing conference in Docket 6609—request of the Colony for extended area service to Dallas Metro calling area.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 27, 1985, 9:32 a.m.
TRD-8512245

Tuesday, February 20, 1986, 10 a.m. A hearing in Docket 6502—complaint of Betty Smith against Texoma Water Company.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 23, 1985, 1:50 p.m.
TRD-8512209

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Railroad Commission of Texas

Monday, January 6, 1986, 9 a.m. The Railroad Commission of Texas will meet in the first floor auditorium east, William B. Travis Building, 1701 North Congress Avenue, 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) 463-7149.

Filed: December 27, 1985, 10:18 a.m.
TRD-8512253

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: December 27, 1985, 10:22 a.m.
TRD-8512257

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7149.

Filed: December 27, 1985, 10:21 a.m.
TRD-8512259

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 78711-2967, (512) 463-6710.

Filed: December 27, 1985, 10:20 a.m.
TRD-8512262

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 78711-2967, (512) 463-6931.

Filed: December 27, 1985, 10:19 a.m.
TRD-8512263

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: December 27, 1985, 10:19 a.m.
TRD-8512254

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: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: December 27, 1985, 10:23 a.m.
TRD-8512267

Consideration of application of All American Pipeline Company.

Contact: Susan Cory, P.O. Box 12967, Austin, Texas 78711, (512) 463-6923.

Filed: December 27, 1985, 10:19 a.m.
TRD-8512266

The Oil and Gas Division will conduct the statewide oil and gas hearing.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: December 27, 1985, 10:22 a.m.
TRD-8512255

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: December 27, 1985, 10:20 a.m.
TRD-8512261

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, (512) 463-6976.

Filed: December 27, 1985, 10:22 a.m.
TRD-8512256

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lillie, 1124 IH 35 South, Austin, Texas 78704, (512) 463-7149.

Filed: December 27, 1985, 10:21 a.m.
TRD-8512260

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters; acceptance of incremental bonds for the surface coal mining operation of the Sabine Mining Company at its South Hallsville Mine under Permit 13; Docket 21—approval of the permit application of the Lower Colorado River Authority for its Cummins Creek Mine; Docket 21—acceptance of bond and the issuance of the permit for the Cummins Creek Mine to the Lower Colorado River Authority.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: December 27, 1985, 10:21 a.m.
TRD-8512258

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: December 27, 1985, 10:22 a.m.
TRD-8512268

Addition to the previous agenda:

Consideration of a motion for rehearing in the application of Ben J. Fortson for an exception to statewide Rule 37 for its Titan 74 lease, Well no. 1, Apex (Mississippian) Field, Hardeman, County.

Contact: Walter Davis, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6920

Filed: December 27, 1985, 3:48 p.m.
TRD-8512300

Monday, January 6, 1986, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the 12th floor auditorium east, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the division will conduct a rehearing of the application of Hewit and Dougherty for an NGPA category determination under §102(c)(1)(C), new onshore reservoir for the Roche "D"

Well no. 4, Roche West (6300) Field, Refugio County.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: December 27, 1985, 3:48 p.m.
TRD-8512265

Tuesday, January 7, 1986, 9 a.m. The Transportation Division will meet in the 12th floor conference room 12-126, 1701 North Congress Avenue, Austin. According to the agenda, the division will consider an oral argument in Docket 002002A7CP—complaint against Mistletoe Express Service alleging that Mistletoe cannot tack and coordinate authority in certificate 2002 into any other certificate held by same entity and alleging that Mistletoe is providing service to points for which it possesses no authority.

Contact: Mike James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-9620.

Filed: December 27, 1985, 12 p.m.
TRD-8512290

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Texas Southern University

Committees of the Texas Southern University will meet in Room 117, Hannah Hall, Texas Southern University, 3100 Cleburne Avenue, Houston. Days, times, committees, and agendas follow.

Thursday, January 2, 1986, 1:30 p.m. The Building and Grounds Committee will meet in rescheduled session to consider approval of payments for construction change orders; improvements to land; the sale of improvements; report on central plant expansion and renovation; progress report on on-going construction projects; receive bids on construction projects; and consider the purchase of real estate. Rescheduled from Friday, January 3, 1986.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: December 23, 1985, 11:08 a.m.
TRD-8512204

Thursday, January 2, 1986, 3 p.m. The Finance Committee will meet in rescheduled session to consider a bond issue based on proposition 11 funds and to review the monthly fiscal report on university operations. Rescheduled from Friday, January 3, 1986.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: December 23, 1985, 11:08 a.m.
TRD-8512205

Friday, January 3, 1986, 9:30 a.m. The Development Committee will receive reports from the administration on universi-

ty fund raising efforts and receive reports on special funds budget.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (712) 529-8911.

Filed: December 27, 1985, 2:24 p.m.
TRD-8512293

Friday, January 3, 1986, 9:30 a.m. The Finance Committee will consider a bond issue based on proposition 11 funds to review monthly fiscal report on university operations.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: December 27, 1985, 2:23 p.m.
TRD-8512294

Friday, January 3, 1986, 9:30 a.m. The Building and Grounds Committee will consider approval of payments for construction change orders; improvements to land; sale of improvements; report on central plant expansion and renovation; progress report on on-going construction projects; receive bids on construction projects; and purchase of real estate.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: December 27, 1985, 2:23 p.m.
TRD-8512295

Friday, January 3, 1986, 9:30 a.m. The Student Affairs Committee will review university's administration report on impact of tuition installment payments on enrollment; and consider enrollment projections for Spring semester 1986 and Fall semester 1986.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (712) 529-8911.

Filed: December 27, 1985, 2:24 p.m.
TRD-8512296

Friday, January 3, 1986, 9:30 a.m. The Personnel and Academic Affairs Committee will consider the ratification of appointments of instructional personnel for the Fall school term; academic personnel changes; enrollment projections and reports; and a report on academic plans and projections.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: December 27, 1985, 2:24 p.m.
TRD-8512297

Friday, January 3, 1986, 11 a.m. The Board of Regents of Texas Southern University will meet in Room 203, Sterling Student Life Center, 3100 Cleburne Avenue, Houston. According to the agenda, the board will consider reports from the board's standing committees; receive reports from the president; and consider minutes. The board also will meet in executive session to discuss matters related to the employment and evaluation of personnel, the purchase and value of real estate, and to consult with the university attorney regarding contem-

plated and/or pending litigation, Texas Civil Statutes, Article 6252-17, §2(e)-(g).

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: December 23, 1985, 11:08 a.m.
TRD-8512203

Friday, January 3, 1986, 1:30 p.m. The Board of Regents of Texas Southern University will meet in Room 203, Sterling Student Life Center, 3100 Cleburne Avenue, Houston. According to the agenda, the board will consider reports from the board's standing committees to receive reports from the president and consider the minutes. The board also will meet in executive session to discuss matters related to the employment and evaluation of personnel, the purchase and value of real estate, and to consult with the university attorney regarding contemplated and/or pending litigation, Texas Civil Statutes, Article 6252-17, §2(e)-(g).

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (712) 529-8911.

Filed: December 27, 1985, 2:24 p.m.
TRD-8512298

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Texas Water Commission

Wednesday, January 15, 1986, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider amendments to certificates of adjudication 14-2548 and 14-2549 of Charles L. Bengé.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 18, 1985, 2:17 p.m.
TRD-8511947

Tuesday, February 25, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider application 5005 of James F. Dyer, II, James F. Dyer, III, Jamie Dyer Dean for a permit to maintain an existing diversion dam and spreader system located on Wood Canyon, Merrill Canyon, and an unnamed tributary of Merrill Canyon, Closed Basin, and to divert and use 4500 acre-feet of water for irrigation in Jeff Davis County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: December 27, 1985, 1:48 p.m.
TRD-8512291

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Regional Agencies
Meetings Filed December 23

The Education Service Center Region VII, Board of Directors, will meet at the Holiday Inn, Henderson, on January 9, 1985, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas, (214) 984-3071.

The Gray County Appraisal District, Board of Directors, met in Suite 196-A, Hughes Building, 400 West Kingsmill, Pampa, on January 2, 1985, at 5:30 p.m. Information may be obtained from Grace Gibson, 400 West Kingsmill, Suite 196-A, Pampa, Texas 79065.

The Red River Authority, Board of Directors, will meet in Room 216, Activity Center, 1001 Indiana, Wichita Falls, on January 9, 1985, at 10 a.m. Information may be obtained from Ronald J. Glenn, 302 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

The San Patricio County Appraisal District, Board of Directors, will meet in the Courthouse Annex, Sinton, on January 9, 1985, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.
TRD-8512197



Meetings Filed December 27

The Archer County Appraisal District, Board of Directors, will meet at 108 West Main Street, Archer City, on January 8, 1985, at 5 p.m. Information may be obtained from A. G. Reis, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2174.

The Blanco County Appraisal District, Board of Directors, will meet at the Courthouse Annex, Johnson City, on January 13, 1985, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas, (512) 868-4624.

The Callahan County Appraisal District, Board of Directors, will meet on the first floor, Courthouse, Baird, on January 7, 1985, at 7 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 1055, Baird, Texas 79504, (915) 854-1165.

The Canadian River Municipal Water Authority, Board of Directors, will meet at the Plainview Club, Interstate 27, at Southwest Third Street, Plainview, on January 8, 1985, at 10:30 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Sanford, Texas 79078.

The Capital Area Rural Transportation System (CARTS), Board of Directors, will meet in Suite 100, 2520 IH 35 South, Austin, on January 9, 1985, at 9:30 a.m. Infor-

mation may be obtained from Edna Burroughs, 5021 East First Street, Austin, Texas 78702, (512) 478-7433.

The Carson County Appraisal District, Board of Directors, will meet at 102 Main Street, Panhandle, on January 8, 1985, at 9 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068.

The Dawson County Central Appraisal District, Board of Directors, will meet at 611 North Dallas Avenue, Lamesa, on January 8, 1985, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Gillespie County Appraisal District, Board of Directors, will meet in the Assembly Room, City Hall, Fredericksburg, on January 7, 1985, at 9 a.m. Information may be obtained from Gary Neffendorf, P.O. Box 429, Fredericksburg, Texas 78624.

The Hamilton County Appraisal District, will meet at the Courthouse, Hamilton, on January 6, 1985, at 7 p.m. Information may be obtained from Doyle Roberts, P.O. Box 446, Hamilton, Texas 76531, (817) 386-8945.

The Henderson County Appraisal District, Appraisal Review Board, met at 101 East Corsicana, Athens, on December 31, 1985, at 9 a.m. Information may be obtained from Ron Groom, 101 East Corsicana, Athens, Texas, (214) 675-9296.

The Lee County Appraisal District, Board of Directors, met at 218 East Richmond Street, Giddings, on January 2, 1985, at 9 a.m. Information may be obtained from Ron L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942. (409) 542-9618.

The Tyler County Tax Appraisal District, Board of Directors, will meet at 103 Pecan, Woodville, on January 7, 1985, at 4 p.m. The Board of Review will meet at the same location, on January 8, 1985, at 3 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

The Wheeler County Appraisal District, Board of Directors, will meet at Courthouse Square, Wheeler, on January 6, 1985, at 2 p.m. Information may be obtained from Marilyn Copeland, P.O. Box 349, Wheeler, Texas 79096, 826-5900.
TRD-8512246



Meetings Filed December 30

The Brown County Appraisal District, Board of Directors, will meet at 403 Fisk Avenue, on January 6, 1985, at 7 p.m. In-

formation may be obtained from Alvis Se-walt, 403 Fisk Avenue, Brownwood, Texas 77801, (915) 643-5676.

The Deep East Texas Council of Govern-ments-Area Agency on Aging, Regional Ag-ing Advisory Council, will meet at the An-gelina County Senior Center, 2801 Valley Avenue, Lufkin, on January 10, 1985, at 1:30 p.m. Information may be obtained from Martha Jones, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704.

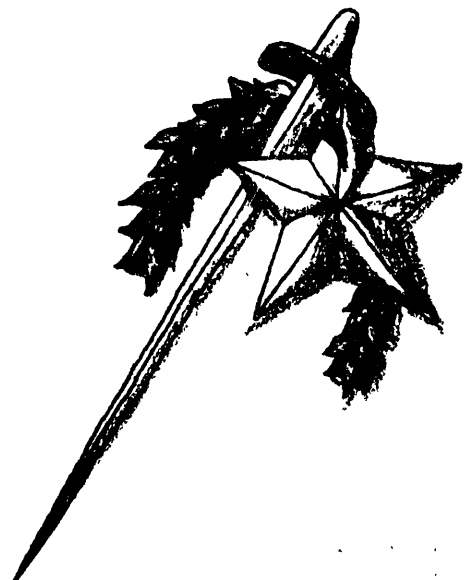
The Central Tax Authority of Taylor Coun-ty, Board of Directors, will meet at 340 Hickory Street, Abilene, on January 8, 1985, at 10 a.m. Information may be ob-tained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.
TRD-8512318



Meetings Filed December 31

The Bexar-Medina-Atascosa Counties Wa-ter Control and Improvement District 1, Board of Directors, will meet at the District Office, Highway 81, Natalia, on January 6, 1985, at 8 a.m. Information may be ob-tained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Hockley County Appraisal District, Board of Directors, will meet at 1103-C Houston Street, Levelland, on January 6, 1985, at 7 p.m. Information may be ob-tained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.
TRD-8512352



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 December 27, 1985, the banking commissioner received an application to acquire control of First State Bank, Colmesneil, by James C. Davis, Colmesneil; Earlene T. Allison, Woodville; James H. Brown, Colmesneil; Robert E. Allison, Jr., Woodville; J. P. Dear, Colmesneil; Evie Louise Faircloth, Colmesneil; Allen W. Fortenberry, Woodville; Charles S. Fortenberry, Beaumont; Iva L. Smith, Tyler; and Sutton and Company, Houston.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on December 27, 1985.

TRD-8512310 William F. Aldridge
Director of Corporate
Activities
Banking Department of
Texas

Filed: December 30, 1985
For further information, please call (512) 475-4451.

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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 ⁽³⁾ Agricul- tural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 12/30/85-01/05/86	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 12/01/85-12/31/85	18.00%	18.00%

Standard Quarterly Rate—Article 1.04(a)(2) 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 01/01/86-03/31/86	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 01/01/86-03/31/86	14.46%	N/A
Standard Annual Rate— Article 1.04(a)(2) ⁽²⁾ 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 01/01/86-03/31/86	18.00%	N/A
Annual Rate Applica- ble to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 01/01/86-03/31/86	18.00%	N/A
Judgment Rate— Article 1.05, §2 01/01/86-01/31/86	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 December 23, 1985.

TRD-8512174 Sam Kelley
Consumer Credit
Commissioner

Filed: December 23, 1985
For further information, please call (512) 479-1299.

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Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ Agricul- tural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 01/06/86-01/12/86	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 01/01/86-01/31/86	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 01/01/86-03/31/86	18.00%	18.00%

Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 01/01/86-03/31/86	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 01/01/86-03/31/86	14.46%	N/A
Standard Annual Rate— Article 1.04(a) ⁽²⁾ 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 01/01/86-03/31/86	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 01/01/86-03/31/86	18.00%	N/A
Judgment Rate— Article 1.05, §2 01/01/86-01/31/86	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 December 30, 1985.

TRD-8512313 Sam Kelley
Consumer Credit
Commissioner

Filed: December 30, 1985
For further information, please call (512) 479-1299.

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Texas Economic Development Commission Private Activity Bond Allocation Report

Private activity bonds (PABs) which were induced on or after June 19, 1984, are subject to a cap, as stipulated in the Federal Deficit Reduction Act of 1984. This cap is equal to \$150 per capita or approximately \$2.3 billion for the State of Texas for calendar year 1985.

House Bill 690 states that the procedure for allocating this cap will be on a first-come, first-served basis, with the Texas Economic Development Commission (TEDC) being the tracking agency for the program. The information that follows is a summary report of the allocation activity for the week of December 9-13, 1985.

Total unallocated principal amount of private activity bonds authorized to be allocated as per the Federal Deficit Reduction Act of 1984 through December 13, 1985:

\$515,060,365.38

Comprehensive listing of bond issues which have received a reservation date as per House Bill 690 during the week of December 9-13, 1985:

<u>Issuer</u>	<u>User</u>	<u>Amount</u>
Capital IDC	Marshall Industries	\$1 million
Trinity River IDA	Marshall Industries	\$3.1 million
TSBIDC	Kopp America International Inc.	\$750,000
TSBIDC	HMW, Ltd. and S&W Products, Inc.	\$340,000
TSBIDC	Norman D. Neeley and Spring Products, Inc.	\$435,000
Waxahachie IDA	Vineland Construction Company	\$3 million
TSBIDC	4007 Telephone Road Partnership	\$750,000
Mesquite IDA	Scotform Corp.	\$2 million
Waco IDC	Univex Southwest Corp.	\$1.5 million
Guadalupe-Blanco River Authority	Wornick Properties, Inc.	\$5.5 million
Brazos Harbor IDC	American Rice	\$13.3 million
McAllen IDC	McAllen Public Cold Storage	\$1.36 million
Laredo Health Facilities Corp.	Carlos Vela, Ltd.	\$580,000
Harris County Municipal Utility District No. 208	Harris County Utility District No. 208	\$615,000
Harris County Municipal Utility District No. 10	Harris County Utility District No. 10	\$549,000
Harris County Municipal Utility District No. 236	Harris County Utility District No. 236	\$314,000
Harris County IDC	W.W. Grainger, Inc.	\$955,000
City of San Antonio IDA	Fairmont Hotel Company, Inc.	\$5.5 million
Sulphur Springs IDA	HON Industries, Inc.	\$8 million
City of San Antonio IDA	Pan American Equities, Inc.	\$5.1 million
Port Development Corporation	Connecticut Bank and Trust	\$10 million
Orange County Navigation and Port District IDC	North Star Steel	\$4.2 million
Allen IDC	Quest Medical, Inc.	\$6.565 million
Galveston IDC	Marine Building, Ltd.	\$2.1 million
City of Houston IDC	Ribelin Sales, Inc.	\$700,000
Beaumont Health Facilities, DC	Park Medical Associates	\$4.2 million
Beaumont IDC	Kyle Preservation, Ltd.	\$4 million
Port Arthur Health Facilities Development Corporation	Willow Lake Health Facility, Ltd.	\$5.1 million
Dimmitt Texas Development Corporation, Inc.	Bob Towler Equipment Company	\$550,000
Waco Health Facilities DC	Hillcrest Medical Tower Partnership	\$5.2 million

Corpus Christi IDC	W.W. Grainger, Inc.	\$900,000	City of DeSoto IDA	D Bank Properties, Ltd.	\$825,000
Grapevine IDC	American Airlines, Inc.	\$59.551 million	Eules IDA	Atlas Match Corporation	\$500,000
Sulphur Springs IDSA	Twin Y Corporation	\$1 million	City of Denton IDC	Michael D. Magers	\$516,000
Cooke County DA	Rubber/Urethanes Texas, Inc.	\$3.06 million	Bell County IDC	NSV Partnership	\$1.31 million
City of Dallas	City of Dallas	\$28 million	Central Waco Development Corporation	Sironia Partnership	\$400,000
City of Dallas	City of Dallas	\$39.34 million	Bell County Health Facility Development Corporation	Temple Medical Center	\$2.85 million
City of El Paso	Alliance Health, Inc.	\$3 million	Bell County IDC	Paul Goode and John Goode	\$2 million
Wharton County IDC	Homeplace Inns #1 JV	\$1.3 million	Central Waco Development Corporation	L & M Enterprises	\$1 million
Cooke County IDC	BLL Investments	\$2.340 million	Walker County IDC	B & T-3 Joint Venture	\$850,000
City of Amarillo IDC	Northside Development JV	\$3 million	Walker County IDC	New Waverly State Bank	\$1.1 million
Bexar County Health Facilities Development Corporation	Center Properties	\$1 million	San Antonio River IDA	Hill Leasing, Inc.	\$2.5 million
Weatherford IDC	Power Services Products	\$3 million	Grand Prairie IDA	C.E. Kaiser Company	\$2 million
City of Dallas Health Facilities Development Corporation	HospHotel-MMC, Ltd.	\$3 million	Longview Health Facilities Development Corporation	Frank Cardenas, Jr.	\$700,000
Gregg County IDC	Southern Plastics, Inc.	\$5 million	Longview Health Facilities Development Corporation	S & B Investments	\$750,000
Orange County Navigation and Port District	Rescar, Inc.	\$1.2 million	Longview Health Facilities Development Corporation	Summer Meadows	\$2.2 million
Eules IDA	Ferguson Enterprises, Inc.	\$4.95 million	Longview IDC	Gibson Properties	\$1.35 million
Carrollton IDC	Booth, Inc.	\$3 million	Round Rock IDC	Weed Instruments	\$1.325 million
Tyler Health Facilities Development Corporation	Park Place, Ltd.	\$6.055 million	Capital Health Facilities DC	Twelve Oaks Medical Clinic	\$2.5 million
North Richland Hills IDC	Tecnol, Inc.	\$5.25 million	Potter County IDC	KKT Properties	\$1 million
McKinney IDC	McKinney Airport Partners	\$8.9 million	City of DeSoto IDA	DeSoto Building Venture	\$6.5 million
City of San Antonio Higher Education Authority	Phase I Dormitory Partnership	\$7.3 million	TSBIDC	Suoro, Inc.	\$750,000
Tomball IDC	Willow Creek Plaza, JV	\$7.3 million	TSBIDC	Big Value Super Market, Inc.	\$660,000
Wharton County Health Facilities Clinics	South Texas Medical Clinics	\$5.5 million	Washington County IDC	Brenham National Bank	\$5 million
Tomball IDC	Prime Venture Development JV	\$3.1 million	City of El Paso IDA	Spokane Equities	\$13.8 million
Capital IDC	W.L. Gore and Associates	\$100,000	Fairfield IDC	Duncan Two, Inc.	\$900,000
Galveston IDC	Historical Jean Lafitte Hotel	\$5.5 million	Wichita County IDC	American Suites Corporation	\$7.9 million
Rotan IDC	Builders Transport, Inc.	\$1.5 million	TSBIDC	S & R Joint Venture	\$750,000
Corpus Christi IDC	Darrill and Williams	\$1.6 million	TSBIDC	Lewisville Realty Venture	\$735,000
Lone Star Airport Investment	American Airlines, Inc.	\$23.084 million	TSBIDC	Bassett Storage Park, Ltd.	\$700,000
Sunbelt IDC	Tab Merchandise Corporation	\$1.5 million	TSBIDC	Autotronic Controls	\$750,000
Sunbelt LIDC	Bar-W Meat Company	\$2 million	TSBIDC	Lambert J. & Jeanett Bodeewes	\$750,000
Fort Bend County IDC	Stephen E. Brice	\$1 million	TSBIDC	Robert F. Herndon	\$650,000
			TSBIDC	G.C.G.G. Joint Venture	\$600,000
			Carrollton IDC	Western Estrusions	\$3,542,032
			Carrollton IDC	Sandy Lake Road Development	\$3.5 million

Garland IDA	Johnson Controls, Inc.	\$900,000
Wichita County IDA	Texoma-Ag Products, Inc.	\$550,000
City of El Paso IDA	R & B Limited	\$1.8 million
TSBIDC	Cecil L. Armstrong & Dorothy Armstrong	\$300,000
TSBIDC	Abox Paperboard Company	\$385,000
City of El Paso IDA	Roberto Okubo	\$1.9 million
City of El Paso IDA	M & Q Plastic Products	\$750,000
City of Midland Health Facilities	ClayDesta Regional Medical Plaza	\$3.6 million
Longview Health Facilities	American Health Facilities	\$2.5 million
TSBIDC	All Tex Plumbing Supply, Inc.	\$750,000
TSBIDC	Max & Greta Spillar	\$750,000
TSBIDC	Data Distribution Service	\$275,000
TSBIDC	BBJ Joint Venture No. 1	\$440,000
TSBIDC	Martin Real Estate J.V.	\$750,000
TSBIDC	Coleman and Coleman	\$1.4 million
TSBIDC	Crockett's Kitchens, Inc.	\$750,000
TSBIDC	Weakley-Watson, Inc.	\$750,000
TSBIDC	B & B Properties	\$610,000
TSBIDC	Tilley Building Systems	\$735,000
TSBIDC	Russell, Turner and Laird	\$750,000
TSBIDC	Willow Creek Plaza J.V.	\$375,000
TSBIDC	Earl J. O'Brien	\$550,000
TSBIDC	Phillip R. Gamble	\$450,000
City of San Antonio IDA	La Plaza Del Rio	\$17 million
Deaf Smith County IDC	Hereford Power Partnership, Ltd.	\$26.2 million
Fort Bend County Health Facilities Development Corporation	Cambridge International Inc.	\$1.5 million
TSBIDC	TIC Corporation	\$2.5 million
TSBIDC	R & M Sanden Joint Venture	\$477,000
West Colombia IDC	Homeplace Inns of America, Inc.	\$1.3 million
Colorado County IDC	Homeplace Inns No. One J.V.	\$1.3 million
Brazos Harbor IDC	Homeplace Inns No. One J.V.	\$1.3 million
City of Alvin IDC	Homeplace Inns No. One J.V.	\$1.3 million
Round Rock IDC	Round Rock Partners	\$4.595 million
Round Rock IDC	Round Rock Partners	\$1.65 million

Brazos County IDC	Aqua Supply Co. of Texas	\$1.765 million
Paris Health Facilities Development Corporation	L.P. McCuistion Sanatarium Foundation	\$730,000
City of San Antonio IDA	Majestic Prince, Ltd.	\$9.5 million
Round Rock Health Facilities Development Corporation	Austin Continued Care Facilities, Inc.	\$9 million
TSBIDC	Ruben Ruiz-Ruiz Management Service	\$546,000
Nueces River Authority	Reynolds Metals Company	\$2.3 million

Total principal amount of private activity bonds issued through December 13, 1985;
\$1,253,752,482.63

Comprehensive listing of bonds issued as per House Bill 690 during the week of December 9-13, 1985:

<u>Issuer</u>	<u>User</u>	<u>Amount</u>
Garland IDA	Sanden International (USA, Inc.)	\$4 million
Nacogdoches IDA, Inc.	Boyetts, Inc.	\$125,000
Nacogdoches IDA, Inc.	ARC Investments, Inc.	\$250,000
City of Desoto IDA	National Service Properties	\$7.15 million
City of San Antonio IDC	Consolidated Produce Company	\$3.7 million
Texas Small Business Industrial Development Corporation (TSBIDC)	James I. Morris	\$675,000
Port Development Corporation	Mitsui and Company, Inc.	\$6.85 million
TSBIDC	Robert Shaw	\$750,000
Richardson IDC	Owens County Sausage, Inc.	\$4 million
Harris County IDC	Stinnes - Texas, Inc.	\$1.5 million
Harris County IDC	Oreck Partnership	\$1.3 million
Gulf Coast IDA	Reynolds Metal Company	\$1.2 million
Hunt County IDC	E - Systems, Inc.	\$2 million
Franklin Health Facilities Development Corporation	Franklin Nursing Home	\$1 million
El Paso IDA, Inc.	Uptown Joint Venture	\$2 million
Central Waco Development Corporation	LaVillage Square Investment Corporation	\$1.48 million
Grand Prairie IDA	Mover Packaging Southwest, Inc.	\$750,000
City of El Paso IDA, Inc.	Rhino III	\$1.25 million
Central Texas Higher Education Authority, Inc.	Central Texas Higher Education Authority, Inc.	\$75 million
Laredo IDC	Mike Jacaman	\$639,350

Laredo IDC	Lucas Galvan	\$576,000
Tom Green County Health Facilities Development Corporation	Universal Health Services	\$7.5 million
Tarrant County IDC	Foxmeyer-TBL, Inc.	\$5.5 million
TSBIDC	Norman D. Neeley and Spring Products, Inc.	\$435,000
TSBIDC	4007 Telephone Road Partnership	\$750,000
Brazos Harbor IDC	American Rice	\$13.3 million
McAllen IDC	McAllen Public Cold Storage	\$1.36 million
Sulphur Springs IDA	HON Industries, Inc.	\$8 million
Allen IDC	Quest Medical, Inc.	\$6.565 million
Round Rock IDC	Weed Instruments Company	\$1.325 million

Issued in Austin, Texas, on December 20, 1985.

TRD-8512233 David V. Brandon
Executive Director
Texas Economic Development
Commission

Filed: December 27, 1985
For further information, please call (512) 472-5059.

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Texas Department of Human Services Public Hearing

The Texas Department of Human Services (TDHS) will conduct a hearing concerning administration of Indigent Health Care and Treatment Act funds reserved for hospitals that provide a disproportionate share of indigent health care. The public hearing will be held to solicit comments on the definition and measurement of disproportionate share, and allocation of the fund. Hospital administrators and other interested persons are invited to testify.

The public hearing will be held on January 28, 1986, at the Texas Department of Human Services, John H. Winters Human Services Center, Public Hearing Room, First Floor, East Tower, 701 West 51st Street, Austin. The hearing will begin at 9 a.m. and be adjourned after all testimony has been given.

Questions or requests for information may be sent to Bryan Sperry, Texas Department of Human Services, Mail Code 508-W, P.O. Box 2960, Austin, Texas, 78769.

Issued in Austin, Texas, on December 17, 1985.

TRD-8511957 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: December 18, 1985
For further information, please call (512) 450-3766.

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Texas State Library and Archives Commission Consultant Proposal Request

The Texas State Library and Archives Commission, under the authority of its enabling Act, Texas Civil Statutes, Article 5436, announces a request for proposals from its Library Development Division. Since proposals may be submitted requiring consultant services, notice is hereby given as required under Texas Civil Statutes, Article 6252-11c.

Description of Program Proposal. The state library is soliciting proposals to implement projects involving cooperation between or among libraries of more than one type. These multitype library cooperative projects may encompass the planning, establishment, expansion, or operation of local, regional, state, or interstate cooperative networks of librarians. The projects should provide for participation among school, public, academic, and special libraries and information centers. Although the proposals may require the delivery of consulting or human services to the participating libraries, some expenditures, especially the purchase of library materials, are not allowed.

Evaluation Process. The process of application review will involve the Library Services and Construction Act Advisory Council and the state library staff. The grant application guidelines detail the weighted criteria and the process to be used to evaluate the applications. The final decisions regarding the awarding of the grants will be made by the Texas State Library and Archives Commission.

Eligible Applicants. Grants may be awarded to the city or county governing authorities of Texas system member public libraries, academic institutions, special libraries, school districts, and incorporated nonprofit organizations or consortia of libraries. Documentation must be included, with the grant application, indicating that two or more types of libraries will significantly participate in and be impacted by the proposed project.

Deadline for Submission of Proposals. Proposal applications must be postmarked no later than April 15, 1986. Proposals may be hand delivered up to this date to the Library Development Division, Lorenzo de Zavala Archives and Library Building, 1201 Brazos Street, Austin, on any weekday between 8 a.m. and 5 p.m.

Duration of Programs and Amount of Funding. Federal Library Services and Construction Act, Title III, funding in the amount of \$462,000 is expected to be available. There is no specific allocation formula and no predetermined limitation on the amount per project. Because only proposals which are deemed to be of sufficient quality will be recommended for funding, some of the funds may remain ungranted. The duration of those projects which are funded is from September 1, 1986, to August 31, 1987. The state library reserves the right to accept or reject any or all proposals submitted and is under no legal requirement to execute any resulting contract on the basis of this advertisement, and provides this information only to fulfill the requirements of notification. Should the Texas State Library and Archives Commission award any contract(s), it will base its choice on the quality of the proposal, as assessed by the Library Services and Construction Act Advisory Council and library staff in accordance with the published grant application guidelines.

Contact. To receive a grant application guidelines packet, contact Jim Scheppke, Title III Project Manager, Library

Development Division, Texas State Library, P. O. Box 12927, Austin, Texas 78711. (512) 463-5532.

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

TRD-8512311 William D. Gooch
Assistant State Librarian
Texas State Library and Archives
Commission

Filed: December 30, 1985
For further information, please call (512) 463-5460.

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Texas Department of Mental Health and Mental Retardation

Notice of Public Hearings

The Texas Department of Mental Health and Mental Retardation (TDMHMR) has established its planning and budget schedule for fiscal years 1987-89. The TDMHMR administers mental health federal block grant funds. Public hearings will be held to solicit comments on the use of these block grant funds and other funds in the development of the department's operating budget for fiscal year 1987, the legislative appropriations request for the 1988-89 biennium, and the department's initial strategic plan, 1986-1991.

Public and private sector representatives, including advisory groups, clients, providers of services, agencies, and other interested persons are invited to testify.

The dates, locations, and times for the hearings are as follows:

Tuesday, January 28, 1986 El Paso
El Paso City Hall, City Council Chamber, 2 Civic Center Plaza, El Paso, Texas, 1-5 p.m.

Wednesday, January 29, 1986 Lubbock
South Plains Association of Governments, 3424 Avenue H, Lubbock, Texas 1-5 p.m.

Monday, February 3, 1986 San Antonio
Alamo Area Council of Governments, Main Conference Room, #420, 118 Broadway, San Antonio, Texas, 3-7 p.m.

Tuesday, February 4, 1986 Harlingen
Harlingen City Hall, 118 E. Tyler, Harlingen, Texas, 1-5 p.m.

Wednesday, February 5, 1986 Waco
Heart of Texas Council of Governments, 320 Franklin Street, (Corner of South Fourth and Franklin Streets), Waco, Texas, 1-5 p.m.

Thursday, February 6, 1986 Arlington
North Central Texas Council of Governments, 616 Six Flags Drive, Centerpoint II Building, Second Floor, Arlington, Texas 3-7 p.m.

Friday, February 7, 1986 Lufkin
Angelina College, Nursing Building, Room #110, Highway 59 South, Lufkin, Texas, 1-5 p.m.

Copies of the preliminary intended use report for the mental health block grant funds and the initial strategic plan 1986-1991 will be available at all departmental facilities, community MHMR centers, all regional councils of government, and at the public hearings.

Comments may be submitted in writing to the TDMHMR, Office of Strategic Planning, P.O. Box

12668, Austin, Texas 78711. Contact Buddy Matthijetz, Director.

Issued in Austin, Texas, on December 23, 1985.

TRD-8512226 Gary E. Miller
Commissioner
Texas Department of Mental Health
and Mental Retardation

Filed: December 23, 1985
For further information, please call (512) 465-4591.

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State Board of Morticians Public Hearing

The State Board of Morticians will hold a public hearing on January 8, 1986, at 8100 Cameron Road, Building B, in Austin to receive comments from interested parties who wish to express an opinion concerning the contents and dissemination of the State Board of Morticians consumer brochure, "Consumer Information About Funerals." Any person or group who wishes to propose changes or make comments should submit such in writing prior to the hearing.

Issued in Austin, Texas, on December 27, 1985.

TRD-8512232 John W. Shocklee
Executive Secretary
State Board of Morticians

Filed: December 27, 1985
For further information, please call (512) 834-9992.

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Loan Office Application

Application to establish and operate a loan office has been filed with the Texas savings and loan commissioner as follows:

Docket Number and Application	Applicant's Agent/Attorney
Number 85-264, Murray Savings Association	Randy Hill, Senior Vice President
8207 Callaghan Road San Antonio, Bexar County	Murray Savings Association
	5580 LBJ Freeway Dallas, Texas 75380-9032

This application is filed pursuant to the Texas Savings and Loan Act, Texas Civil Statutes, Article 852a, §2.13. The applicable rules of the Texas Savings and Loan Department are 53.5-53.7, which are published in the department's book entitled *Texas Laws and Regulations for Savings and Loan Associations*. These rules are also published in Title 7 of the Texas Administrative Code, and they are on file with the Secretary of State's Office, Texas Register Division, Austin, Texas.

The applicant association asserts that there is a need for the proposed office; the association has no serious supervisory problems which would affect its ability to properly operate such office; the applicant association will have

adequate income to support the proposed operation; and a separate enclosed office area will be provided (such enclosure may be counters or railings of less than ceiling height).

Any association that objects to a loan office application must file its objection in writing with the Texas Savings and Loan Commissioner, 2601 North Lamar, Suite 201, Austin, Texas 78705, within 15 days of the date of this notice, that is no later than January 6, 1986.

An objection should include the docket number of the application, and a copy of the objection should be mailed to the applicant's agent or attorney previously listed.

Issued in Austin, Texas, on December 20, 1985.

TRD-8512236 Russell R. Oliver
 General Counsel
 Texas Savings and Loan Department

Filed: December 27, 1985
For further information, please call (512) 475-7991.

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Public Utility Commission of Texas Notice of Contract Awards

In accordance with Texas Civil Statutes, Article 6252-11c, the Public Utility Commission of Texas (PUCT) furnishes this notice of consultant contract awards. The request for proposals was published in the October 22, 1985, issue of the *Texas Register* (10 TexReg 4145).

The contractors will provide on-site energy evaluations for Texas school districts, a service offered through the Energy Resource Center for Texas Schools.

The contractors selected to perform this service are Energy Systems, 11901 Hamrich Court, Austin, Texas 78759, and Estes, McClure and Associates, Inc., P.O. Box 4900, Tyler, Texas 75712.

The total value of each contract is \$92,000; the contract periods extend from December 31, 1985, to August 31, 1986.

Copies of all energy evaluations completed must be submitted to the PUCT on or before August 31, 1986.

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

TRD-8512328 Rhonda Colbert Ryan
 Secretary
 Public Utility Commission of Texas

Filed: December 30, 1985
For further information, please call (512) 458-0100.

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Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of December 16-20, 1985.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 475-2678.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of December 16-20, 1985

RTF Industries, Inc., Marshall; metal finishing facility; adjacent to Jefferson Road, 100 yards north of Bussey Road and 0.3 mile west of U.S. Highway 59, approximately 5 miles north of the City of Marshall in Harrison County; 02815; new permit

Coastal Transport Corporation, Inc., Houston; truck maintenance terminal; on the north side of Wallisville Road, approximately 945 feet east of the intersection of U.S. Highway 90 and Wallisville Road in the City of Houston, Harris County; 01706; renewal

Robroy Industries-Texas, Inc., Gilmer; plant that manufactures plastic coated, corrosion resistant electrical conduit and accessories; on the west side of U.S. Highway 271 at a point approximately 1,000 feet south of its intersection with State Highway 300 in the City of Gilmer, Upshur County; 01502; amendment

Witco Chemical Corporation, Pearshall Division, Deer Park; plant that manufactures aluminum chloride; on the north side of Strand Road about equidistant (1/2 mile) between La Porte Road, State Highway 255, and Miller Cut-Off Road in the City of Deer Park, Harris County; 01785; renewal

Specialty Sand Company, Sealy; sand mine and washing plant; adjacent to the San Bernard River on the south side of State Highway 3013 approximately 9 miles southwest of the City of Sealy, Austin County; 02808; new permit

Deterex Chemical Industries, Inc., Arlington; hazardous commercial/industrial solid waste storage and processing facility; on a .98-acre tract of land north of U.S. 80 and west of Highway 360, at 322 International Parkway in Arlington, Tarrant County; HW50021-01; amendment

Akzona, Inc., doing business as Akzo Chemie America, Pasadena; hazardous, noncommercial industrial solid waste storage facility; at 13000 Baypark Road in the City of Pasadena, Harris County; HW50072-000; amendment

Ashland Chemical Company, Division of Ashland Oil, Inc., Garland; hazardous/commercial industrial solid waste storage facility; on a 5,516-acre tract of land south of West Miller Road and east of Jupiter Road on Wood Drive in the City of Garland; HW50007-001; amendment

Edward K. Mery and Jamil M. Karam doing business as K & M Enterprises, San Antonio; wastewater treatment plant; approximately 4,000 feet east northeast of the intersection of Franz Road and Porter Road, approximately 1 3/8 miles north of the intersection

of IH 10 and Peek Road in Harris County; 13231-01; new permit

Issued in Austin, Texas, on December 20, 1985.

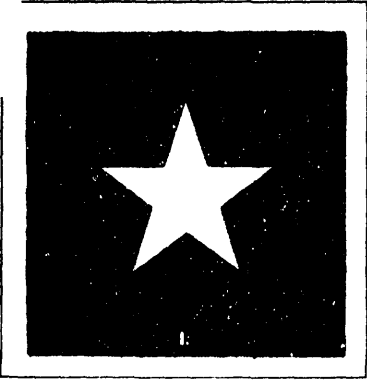
TRD-8512165 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: December 20, 1985
For further information, please call (512) 463-7898.

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