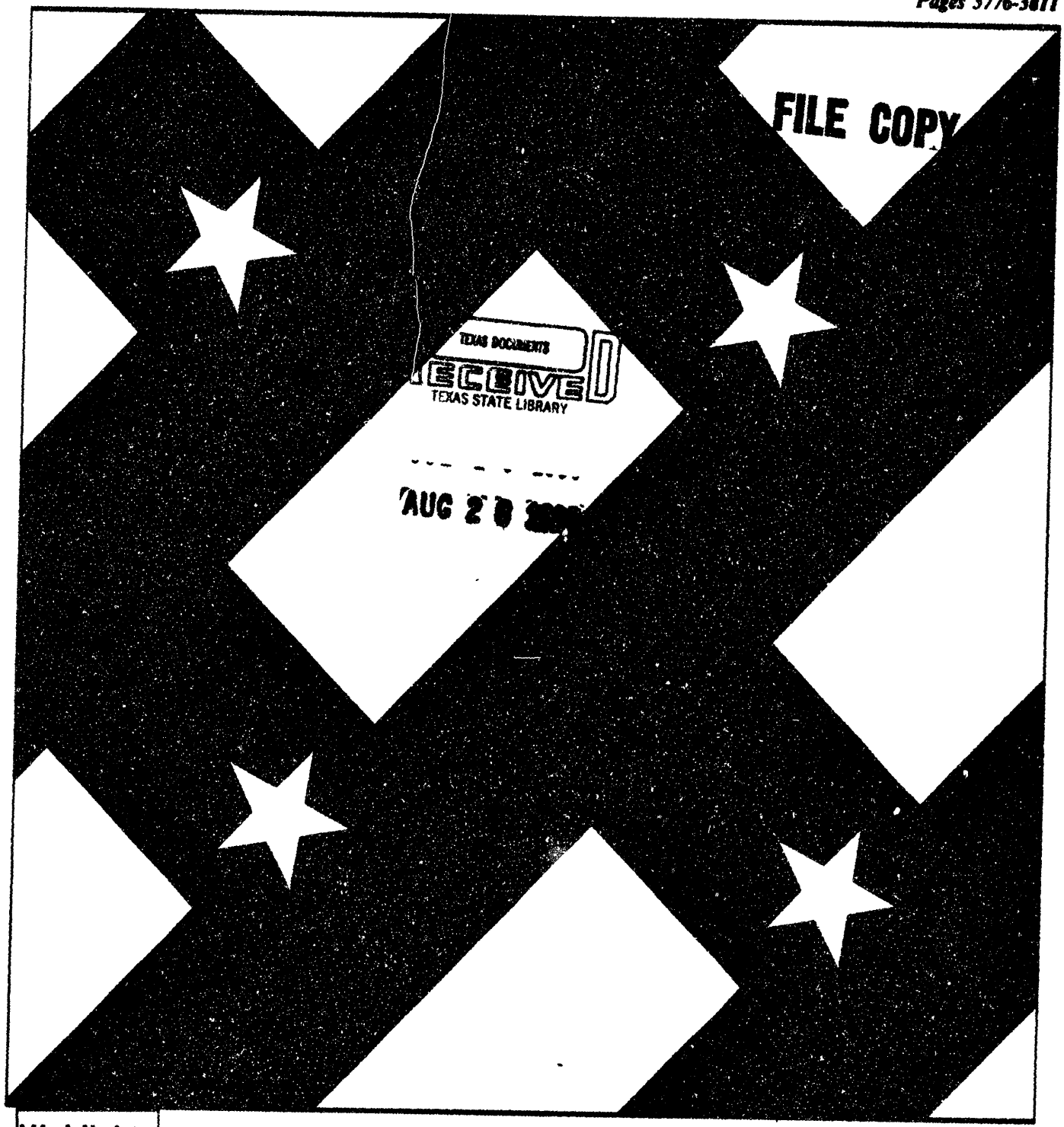


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# Texas Register

Volume 11, Number 64, August 26, 1986

Pages 3776-3811



## Highlights

The **Railroad Commission of Texas** proposes amendments regarding gas nominations and gas to be produced and purchased ratably. Earliest possible date of adoption - September 26 ..... **page 3776**

The **Texas Real Estate Commission** proposes an amendment concerning licensed real estate inspectors and rules relating to

the provisions of the real estate license act. Earliest possible date of adoption - September 26 ..... **page 3779**

The **Texas State Board of Examiners of Professional Counselors** adopts an amendment concerning license and specialty renewal for professional counselors. Effective date - September 8 ..... **page 3793**

**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 1986 with the exception of June 24, September 2, December 2, and December 30 by the Office of the Secretary of State.

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# Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. Also, in the case of substantive rules, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division Conservation Rules and Regulations

##### ★ 16 TAC §3.30, §3.34

The Railroad Commission of Texas proposes amendments to §3.30 and §3.34, concerning gas nominations and gas to be produced and purchased ratably. The Railroad Commission of Texas takes no position on the merits of these proposed amendments. The language shown as existing language was adopted by the Railroad Commission on August 11, 1986, and published in the August 19, 1986, issue of the *Texas Register* (11 TexReg 3680).

Rita E. Percival, systems analyst, Oil and Gas Division, 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 \$3,000 in fiscal year 1987 and \$1,000 in fiscal years 1988-1991. The effect on local government will be minimal. The cost of compliance to small and large businesses will be minimal. No change in the average revenue of either group is expected.

Elizabeth Wilson Davis, legal examiner, Oil and Gas Division, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased understanding of the sections; more fair and accurate nominations; greater prevention of waste of oil and gas; better protection of correlative rights; and increased prevention of discrimination in the production and purchasing of natural gas. 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 Ms. Davis, Legal Section, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

A public hearing on the amendments is scheduled for 9 a.m., Tuesday, September 9, 1986, Room 1-111, William B. Travis Building, 1701 Congress Avenue, Austin. Written comments will be received through September 15, 1986.

These amendments are proposed under the Texas Natural Resources Code, §§81.052, 81.202, 86.041, 86.042, 111.083, 111.090, and 111.133, which provides the Railroad Commission of Texas with the authority to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission of Texas; to prevent waste of oil and gas in drilling and producing operations; to effectuate the provision and purposes of the Natural Resources Code, Chapter 86; to conserve and prevent waste of natural gas; to prevent discrimination in the production and purchasing of natural gas; and to regulate common purchasers of gas to achieve the prior purposes.

##### §3.30. Gas Nominations Required. Rule 30.

(a) For purposes of this section and §3.34 of this title (relating to Gas to be Produced and Purchased Ratably) (Statewide Rule 34), a first purchaser is not discriminating between fields, between operators, or between wells if it is in compliance with §3.34 (f) of this title (relating to Gas to be Produced and Purchased Ratably) (Statewide Rule 34) and it is nominating or purchasing and accepting delivery of an inconsistent percentage of deliverability or allowable because it is nominating or purchasing and accepting delivery pursuant to a special marketing program which is in compliance with §3.34(h) of this title (relating to Gas to be Produced and Purchased Ratably) (Statewide Rule 34). The following words and terms, when used in this section and in §§3.28, 3.31, and 3.34 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Well Allowables; and Gas to be Produced and Purchased Ratably) (Statewide Rules 28, 31, and 34) shall have the following meanings, unless the context clearly indicates otherwise.

(1) First purchaser or initial purchaser—Effective through February 28, 1987, the entity which is the first purchaser in the chain of title of natural gas produced from a well. In addition, on and after March 1,

1987, first purchaser and initial purchaser shall include the entity's parent company, subsidiaries, and affiliates, any of which is a first purchaser in the chain of title of natural gas produced from a well and which transports the purchased gas on the same pipeline system used by the entity of which it is a parent, subsidiary, or affiliate when the entity is transporting its purchased gas. [Initial or first purchaser—The first purchaser of natural gas produced from a well, effective through February 28, 1987. Effective March 1, 1987, initial or first purchaser shall mean the first purchaser of natural gas produced from a well and shall include any subsidiary or affiliate of the purchaser who transports any natural gas it purchases from a well by use of the same pipeline system used by the first purchaser of which it is a subsidiary or affiliate.]

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

(4) Pipeline system—A network of physically connected pipelines which can deliver natural gas to market and are in pressure communication under normal operating conditions. A first purchaser's pipeline system is that physical segment of a pipeline system which the first purchaser owns or controls. If a first purchaser does not own or control a pipeline system, the first purchaser's pipeline system is all wells from which it purchases. [A network of physically connected pipelines with any common ownership in pressure communication under normal operating conditions, with the ability to deliver natural gas to market.]

(b) Purchasers who purchase gas from various gas fields; or who purchase gas at the wellhead of the wells; or who purchase gas at a common purchase point must determine if they are the initial purchaser. If they are the initial purchaser, they shall file gas nominations. An operator using 100% of the gas from a gas well or wells for his own operations, either on leases or in a fuel system, shall file gas nominations. An operator of a plant processing natural gas to extract liquids or an operator of a gathering system whose gas is dedicated entirely to a single purchaser may, with the concurrence of that purchaser, request the director of the Oil and Gas Division (director) or the director's delegate to designate the purchaser as the first purchaser for purposes of this section and §§3.28, 3.31, and 3.34 of this title (relating



**to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Well Allowables; and Gas to be Produced and Purchased Ratably**) (Statewide Rules 28, 31, and 34). In the absence of concurrence, the operator of the plant or gathering system may request a hearing to determine whether the purchaser should be designated as first purchaser because its actions, in relation to the plant or gathering system, have or will prevent ratable production and purchasing. An operator using a portion of the gas produced from a well must notify the initial nominator in writing of the volume or percentage of total volume required, including shrinkage due to liquid separation prior to sale. The initial nominator must include that amount in its nomination. After initial notification, the operator need only inform the initial nominator of changes in the volume or percentage of total volume required.

(c)-(d) (No change.)

(e) Nominations for a field by an initial nominator shall not exceed the deliverability available to that nominator from that field. The initial nominator shall, within a pipeline system, ratably apportion, without unjust or unreasonable discrimination, its nominations among the various fields from which it purchases gas. The nomination for each field shall be a consistent percentage of the total deliverability of all wells from which it purchases [available to the nominator] from all fields on its pipeline system or other apportionment which the nominator can demonstrate will not result in unjust or unreasonable discrimination. The nominator shall include the following on the nomination form:

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

(f)-(g) (No change.)

**§3.34. Gas to be Produced and Purchased Ratably. Rule 34.**

(a) This section is promulgated to promote and maintain ratable production of natural gas and to require production in compliance with priority categories established by the commission for the purposes of preventing waste, including production in excess of market demand, protecting correlative rights, preventing discrimination, and conserving the natural resources of this state. An operator shall not produce in excess of its ratable share of the market demand. An operator shall produce ratably as set out in subsection (b) of this section and shall produce in compliance with subsection (f) of this section, which establishes priority categories of natural gas. Because production is dictated by pipeline capacity and market demand, pipelines are an integral part of production regulation. The requirements imposed on pipelines by §§3.28, 3.30, and 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) (Statewide Rules 28, 30, and 31) and by this section are enforced to assist in the regulation of production and are provid-

ing the most effective method by which such production regulation can be enforced and market demand met as required by statutory law. A first purchaser shall not discriminate between different wells from which it purchases in the same field, nor shall it discriminate unjustly or unreasonably between separate fields. The provisions of this section requiring ratable production and purchasing of gas apply to purchases and production from wells on a first purchaser's pipeline system, as [pipeline system is] defined in §3.30(a)(4) of this title (relating to Gas Nominations Required) (Statewide Rule 30).

(b) An operator shall produce without discrimination between its wells in the same field on the same first purchaser's pipeline system and without unjust or unreasonable discrimination between its wells in separate fields on the same first purchaser's pipeline system. An operator shall apportion a first purchaser's delivery requests ratably to its wells in each field on the same first purchaser's pipeline system without discrimination in the same manner as provided in subsections (a) and (c)-(f) of this section, and shall not produce in excess of market demand or in excess of its ratable share of the market demand. An operator shall produce in compliance with the priority categories of gas production established by the commission in subsection (f) of this section.

(c) In making purchases and accepting deliveries between fields, a first purchaser of natural gas which purchases and accepts delivery of gas from more than one field must accept from each field a consistent percentage of the aggregate deliverability of all wells from which it purchases on its pipeline system [available to that purchaser], unless the purchaser can demonstrate a just and reasonable basis for discriminating between fields.

(d) In making purchases and accepting deliveries within fields, a first purchaser of natural gas which purchases and accepts delivery of gas from different gas wells in the same priority category (see subsection (f) of this section) in the same field, shall purchase and accept from the wells from which it purchases in the field, a consistent percentage of the maximum allowable that a well is entitled to under the field's allocation formula. Purchases and deliveries of casinghead gas shall be based on the well's gas limit (see §3.49 of this title (relating to Gas-Oil Ratio)) (Statewide Rule 49) as provided in subsection (e) of this section. Overproduction and underproduction of gas is administered by the provisions of §3.31 of this title (relating to Gas Well Allowables) (Statewide Rule 31). A first purchaser shall not reduce purchases from a limited well (see §3.31(f)(4) of this title (relating to Gas Well Allowables)) until all prorated gas wells from which it purchases in the field connected to its same [that] pipeline system are reduced to the assigned allowable of the limited well. Below that point, purchases from all prorated wells and limited wells should be reduced ratably by purchas-

ing and accepting delivery of the same percentage of the maximum allowable established by the field's allocation formula. When purchases of gas described in subsection (f)(2) or (5) of this section are to be reduced, they shall be reduced ratably within each priority category. If purchases and deliveries from different wells in the same field become non-ratable, the first purchaser shall consider commission-assigned underproduction and overproduction in establishing an appropriate pattern of purchases or acceptance of deliveries to restore ratability.

(c) (No change.)

(f) First purchasers of gas shall satisfy their pipeline system demand for gas by purchasing and accepting delivery of gas from the following priority categories in ascending numerical order. Lower priority category gas is gas from a higher numerical category. Effective from October 15, 1986, through February 28, 1987, a first purchaser shall not, within its [a] pipeline system, curtail first, second, or third priority category gas if lower priority category gas is being purchased and delivered in the same pipeline system by the purchaser or by the purchaser's parent, subsidiary, or affiliate who uses the same pipeline system in purchasing and accepting delivery of the lower priority category gas. Effective March 1, 1987, a first purchaser shall not, within its pipeline system, curtail first, second, or third priority category gas if the purchaser is purchasing and accepting delivery of lower priority category gas on its same pipeline system. Effective March 1, 1987, a first purchaser shall not within its [a] pipeline system curtail fourth or fifth priority category gas [from a priority category] if the purchaser is purchasing and accepting delivery of lower priority category gas on its [the] same pipeline system, unless the lower priority category gas is being purchased and delivered pursuant to a special marketing program which is in compliance with subsection (h) of this section. A first purchaser shall not within its pipeline system curtail first, second, or third priority category gas which it purchases and accepts for delivery, whether or not as a first purchaser, from the tailgate of a gas processing plant, if the first purchaser is purchasing and accepting delivery of lower priority category gas on its same pipeline system.

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

(g) (No change.)

(h) If a first purchaser must curtail gas in a priority category because of a reduction in its existing downstream purchasers' market demand for gas at the existing contract prices, the parent company, its subsidiary, or its affiliate may, on the same pipeline system, purchase and market natural gas in the same or a lower priority category through special marketing programs, provided:

(1) the same opportunity to sell must be offered without discrimination to include all operators and all wells on the first purchaser's pipeline system from which it has been purchasing and accepting gas as a first

purchaser and all first, second, and third priority category gas which it has been purchasing on the same system from the tailgate of a gas processing plant;

(2) at least 75% of the operators to whom the offer must be made must accept the special marketing offer and the acceptance must cover at least 75% of the wells which the offer must include and at least 75% of the deliverability of all wells which the offer must include;

(3) the first purchaser must continue to nominate, purchase, and accept delivery from all wells for which the offer was made and not accepted, the volume of gas for which it has a market demand at existing contract prices, in compliance with this section and §3.30 of this title (relating to Gas Nominations Required) (Statewide Rule 30);

(4) nominations and purchases from wells covered by the special marketing program must be in compliance with this section and §3.30 of this title (relating to Gas Nominations Required) (Statewide Rule 30).

(b)(h) Any operator who is denied by the first purchaser in violation of this section the opportunity to produce a ratable share of gas or to participate in a special marketing program may file a complaint with the commission and request the commission to direct the first purchaser to end the discriminatory practices. A [The] complainant may request a hearing regarding alleged discriminatory practices or to determine whether a first purchaser is or has, through actions of interrelated entities, denied an operator a reasonable opportunity to market its gas.

(i) If an operator fails to comply with a first purchaser's request to ratably reduce production after reasonable notice by the purchaser, the purchaser may file a complaint with the commission and request the commission to direct the operator to comply with the purchaser's request to ratably reduce production. The complainant may request the commission to take further action, including setting the issue for hearing.

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 August 18, 1986.

TRD-8608075  
Walter E. Lillie  
Special Counsel  
Railroad Commission of  
Texas

Earliest possible date of adoption:  
September 26, 1986  
For further information, please call  
(512) 463-7149.

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## TITLE 22. EXAMINING BOARDS

### Part XI. Board of Nurse Examiners

#### Chapter 213. Practice and Procedure

##### ★ 22 TAC §213.15

The Board of Nurse Examiners proposes new §213.15, concerning hearings before executive secretary. The new section aids in the disposition of those lesser offense violations of the Nurse Practice Act where the public is not in jeopardy or when a nurse has completed treatment in drug related complaints.

Margaret L. Rowland, R.N., 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.

Ms. Rowland 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 expedition of the disposition of cases. Hearings before the executive secretary are scheduled more frequently than the regularly scheduled meetings of the board as a whole. Since more nurses come to the hearings before the executive secretary without legal representation, it saves the respondent that expense. 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 Margaret Rowland, Executive Secretary, Board of Nurse Examiners, 1300 East Anderson Lane, C-225, Austin, Texas 78752.

The new section is proposed under the Nurse Practice Act, Texas Civil Statutes, Article 4514, §1, which provides the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

##### §213.15. *Hearings Before Executive Secretary.*

(a) A hearing before the executive secretary or his/her designate may be conducted after the filing of a sworn complaint but before a formal board hearing is set.

(b) In an effort to bring about an equitable solution to the matter without a formal hearing before the board, the investigator

shall present evidence substantiating the complaint, and the respondent may present his/her evidence at the hearing. Respondent may present evidence through an attorney if he/she so desires.

(c) Disposition may be made in such a proceeding by stipulation, agreed settlement, or consent order, although all dispositions of matter shall not be final and effective until the board members, at a scheduled board meeting, vote to accept the proposed consent order.

(d) If the complaint is not resolved at this hearing, or if the board votes to reject the proposed consent order, then the board has the right to institute a formal hearing governing the same matter.

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 August 19, 1986.

TRD-8608105  
Margaret L. Rowland, R.N.  
Executive Secretary  
Board of Nurse Examiners

Earliest possible date of adoption:  
September 26, 1986  
For further information, please call  
(512) 835-4880.

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## Part XII. Board of Vocational Nurse Examiners

### Chapter 231. Administration Disciplinary Action

##### ★ 22 TAC §231.103

The Board of Vocational Nurse Examiners proposes new §231.103, concerning a peer assistance program. This new section sets out additional criteria necessary for the establishment of a peer assistance program for licensed vocational nurses as provided for in House Bill 900, 69th Legislature, 1985.

Joyce A. Hammer, executive director, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government will be an estimated additional cost of at least \$800 each year in 1987-1991. There will be no effect on local government or small businesses.

Ms. Hammer 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 a peer assistance program, available for licensed vocational nurses who seek early treatment for chemical dependency. The primary goal is to safeguard the welfare of the public of this state by identifying the impaired nurse and assisting him or her to obtain early treatment.

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 Joyce A. Hammer, Executive Director, Board of Vocational Nurse Examiners, 1300 East Anderson Lane, Building C, Suite 285, Austin, Texas 78752.

The new section proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

**§231.103. Peer Assistance Programs.** A peer assistance program for licensed vocational nurses will identify, assist, and monitor colleagues with job-impairing alcohol or drug problems and/or mental health impairment associated with chemical abuse.

(1) Additional criteria.

(A) The program will provide statewide peer advocacy services available to all licensed vocational nurses impaired by alcohol or drug abuse and/or mental illness only to the extent that it manifests itself in conjunction with chemical impairment.

(B) The program shall have a statewide monitoring system that will be able to track the nurse while preserving anonymity.

(C) The program shall provide a network of trained peer intervenors located throughout the state.

(D) The program shall have a written plan for the education and training of intervenors and other program personnel.

(E) The program shall have a written plan for education of licensed vocational nurses, other practitioners, and employers.

(F) The program shall have a mechanism for documenting program compliance, and any noncompliance may be reported to the board within 10 working days.

(G) The program shall demonstrate financial stability and funding sufficient to operate the program.

(H) The program shall collect and make available to the board and/or other appropriate persons data relating to impaired licensed vocational nurses and the success/failure of peer assistance.

(I) The program shall have a written plan for a systematic total program evaluation and shall be subject to evaluation by the board.

(J) The program shall comply with all minimum criteria established by the Texas Commission on Alcohol and Drug Abuse, and if the board determines that the program no longer complies with the established criteria, the program shall have 30 days to attain compliance or the board may revoke its approval of the program.

(K) The program shall establish a plan to verify previous disciplinary action prior to admitting a nurse to the peer assistance program, and the board will provide

the program with a list of all disciplinary actions after each board meeting.

(L) The program may report to the board within 10 working days the impaired nurse who has had a prior disciplinary action or has previously been admitted to a peer assistance program.

(2) Contractual agreement. The approved program(s) will enter into a contractual agreement with the board to provide the services of an impaired professional program. Said contract can be withdrawn for noncompliance and is subject to annual review and renewal.

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

Issued in Austin, Texas, on August 15, 1986.

TRD-8609062

Joyce A. Hammer  
Executive Director  
Board of Vocational  
Nurse Examiners

Earliest possible date of adoption:

September 28, 1986

For further information, please call  
(512) 836-2071.

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## Part XXIII. Texas Real Estate Commission

### Chapter 535. Rules Relating to the Provisions of the Real Estate License Act

#### Licensed Real Estate Inspectors

#### ★ 22 TAC §535.202

The Texas Real Estate Commission proposes an amendment to §535.202, concerning licensed real estate inspectors. Since 1976, many residential real estate transactions conducted in Texas have involved execution of a property condition addendum to the contract of sale, by which the buyer and seller of the property agree for inspections to be performed and for repairs to be made for items, such as plumbing and electrical systems, found to be in need of immediate repair or which are not performing the function for which the items were intended.

The proposed amendment requires a licensed real estate inspector to determine whether a property condition addendum is being used in a transaction. If the addendum is being used, and his client has not instructed him otherwise, the inspector would be required to obtain a copy of the addendum and include in his inspection the items designated in the addendum, reporting to his client those items found to be in need of immediate repair or which are not performing the function for which intended.

The amendment would not prevent the inspector's client from obtaining a more

comprehensive inspection of the property, nor would the amendment prohibit an inspector's report to his client covering items not designated for inspection in the property condition addendum. By requiring items designated for inspection in the addendum to be included in the inspection report, which will be the basis of the client's request for repairs, the proposed amendment should reduce the number of disputes over items to be repaired.

Mark A. Moseley, legal counsel, 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. Moseley 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 a reduction in the number of disputes over inspections and repairs in real estate transactions. 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 Jack Morris, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(e), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

**§535.202. Licensed Real Estate Inspectors.**

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

(d) Prior to performing an inspection of improvements to real property, an inspector shall determine whether a property condition addendum, Form TREC 2-2, is being used in connection with any proposed sale of the property. If the addendum is being used, the inspector shall, unless instructed otherwise by his client, obtain a copy of the addendum, include in his inspection the items designated for inspection in the addendum and indicate in a written report to his client any of such items found to be in need of immediate repair or which are not performing the function for which intended.

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 August 19, 1986.

TRD-8608106

Mark A. Moseley  
Legal Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption:

September 28, 1986

For further information, please call  
(512) 465-3060.

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# TITLE 25. HEALTH SERVICES

## Part I. Texas Department of Health Chapter 91. Cancer

The Texas Department of Health proposes an amendment to §91.1 and new §91.6 and §91.7, concerning the release of cancer data. The Texas Board of Health is authorized to compile and publish statistical and other studies derived from the patient data collected and to provide in an accessible form information useful to physicians, other medical personnel, and the general public. The amendment and new sections establish guidelines for the release of statistical and personal data from the information collected by the Cancer Registry Division.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed amendment and new sections will be in effect there will be fiscal implications for state and local government as a result of enforcing or administering the amendment and new sections. The effect on state government will be an estimated increase in revenue of \$7,500 in 1987-1991. The effect on local government will be a minimal decrease in cost for local governmental hospitals who will be able to utilize the reports furnished by the Cancer Registry Division to assist with patient management and administrative decisions. There will be no effect on small businesses.

Mr. Seale also has determined that for each year of the first five years the amendment and new sections are in effect the public benefit anticipated as a result of enforcing the amendment and new sections will be the promotion of accuracy in the reporting of cancer data for improved epidemiological studies and the strict handling of confidential personal data. There may be some cost to individuals or public entities requesting cancer data, strictly on a cost reimbursement basis according to the fee schedule in the proposed sections.

Comments on the proposal may be submitted to Susan Griffin, Director, Cancer Registry Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7265. Comments will be received for 30 days from the date of publication of the proposed sections.

### Cancer Registry

#### ★ 25 TAC §91.1

The amendment is proposed under the Texas Cancer Control Act, Texas Civil Statutes, Article 4477-40, §5, which provides the Texas Board of Health with the authority to adopt rules concerning the release of cancer data.

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

**Cancer Registry Division**—That part [The Cancer Registry Division] of the Texas Department of Health which gathers, edits, analyzes, and produces aggregate information on the incidence of cancer as the authorized representative of the Texas Board of Health. Also referred to hereafter as the division.

**Personal data**—Information that includes items which may identify an individual.

**Statistical data**—Aggregate presentation of individual records on cancer cases excluding patient identifying information.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8606099

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

Proposed date of adoption: October 25, 1986  
For further information, please call  
(512) 458-7265.

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#### ★ 25 TAC §91.6, §91.7

The new sections are proposed under the Texas Cancer Control Act, Texas Civil Statutes, Article 4477-40, §5, which provides the Texas Board of Health with the authority to adopt rules concerning the release of cancer data.

#### §91.6. Requests for Statistical Cancer Data.

(a) Requests for statistical cancer morbidity and mortality data shall be in writing and directed to the Cancer Registry Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(b) To ensure that the proper data are provided, the written request shall include, but is not limited to the following information:

(1) name and address of the agency, institution, or firm requesting the information;

(2) name, degree(s), title, address, and telephone number of the person requesting the information;

(3) specific purpose of the project utilizing the data and expected results;

(4) type of data needed and for what years (e.g., Brewster County, 1976-1984);

(5) name and address of person(s) to whom data and billings are to be sent; and

(6) signature of the appropriate administrative officer of the agency, institution, or firm requesting the data.

(c) The department's obligation to furnish the requested data is subject to the availability and accuracy of collected data.

(d) The department reserves the right to review and comment on all report drafts utilizing the requested data prior to publishing and release.

(e) All reports utilizing the requested data must credit the department as the source of the data.

(f) The department shall receive a copy of the final product utilizing the requested data.

(g) Requested data requiring a special computer report shall be furnished on a cost reimbursement basis.

(1) The following fee schedule will be utilized:

(A) \$25—minimum charge for up to 10 minutes of computer processing time for a computer printout (report);

(B) \$2.50—each minute over 10 minutes of computer processing time;

(C) \$60—minimum charge for magnetic tape (\$25 if tape is provided by the requesting agency, institution, individual, or firm).

(2) Payment must be received prior to release of the data.

(h) The division may charge for non-certified photographic reproductions of standard size public records or reports on a cost reimbursement basis. Maximum charges, when applicable, shall include a \$.55 charge for the first copy of the first page. Copies of additional pages shall not exceed \$.15 per page.

(i) Publications prepared by the Cancer Registry Division from its data for general distribution may be subject to a set fee per copy to offset in part or entirely the cost of printing.

#### §91.7. Requests for Personal Cancer Data.

(a) Requests for personal cancer data shall be in writing and directed to the Texas Department of Health, Committee for Requests for Personal Data, Bureau of Vital Statistics, 1100 West 49th Street, Austin, Texas 78756.

(b) Written requests for personal data shall include the following information and assurances:

(1) name and address of agency, institution, or firm sponsoring the project;

(2) name, degree(s), title, address, and phone number of person who will direct the project;

(3) name and address of agency, institution, or firm funding the project (if other than that shown in paragraph (1) of this subsection);

(4) names, degree(s), and titles of other persons who will have supervisory responsibilities in the project;

(5) specific purpose of project;

(6) type of data needed and for what years (e.g., mortality, 1975-1979);

(7) action planned;

(8) results expected;

(9) assurances that the following conditions regarding the release of the requested data shall be met:

(A) the data shall be treated as strictly confidential;

(B) the data shall not be used for any purpose other than that specifically set forth in the request as stated in paragraph (5) of this subsection and shall not be used for any secondary purpose;

(C) the data shall not be made available to any other individual, agency, institution, or firm;

(D) appropriate controls shall be maintained to prevent unauthorized access to the data;

(E) no follow back of any type shall be made to any individual, institution, or agency without written authorization by the Texas Department of Health;

(F) any data released by a project shall be restricted to aggregate data and shall not identify any individual or institution;

(G) the Texas Department of Health shall be given credit as the source of the data;

(H) a copy of the results of the project shall be furnished to the Texas Department of Health; and

(I) if computer tapes are requested, such tapes, after serving the purpose set forth in this subsection, shall be returned to the Texas Department of Health unless purchase of the tapes is requested and approved in advance of their preparation. Further, retained work tapes shall be erased unless specific authority is requested and granted for their retention and future use;

(10) name and address of person(s) to whom data and billings are to be sent must be provided;

(11) signature by the appropriate administrative officer of the sponsoring agency, institution, or firm.

(c) If applicable, data will be furnished on a cost reimbursement basis. Payment must be received prior to the release of the data.

(d) The division will provide reports containing personal data back to the respective reporting institutions, physicians, and laboratories for the purposes of case management and administrative studies. These reports will not be released to any other entity.

(e) The division may release personal data to other bureaus of the department without a patient's signed consent provided that the disclosure is required or authorized by law. All communications of this nature shall be clearly labeled "Confidential" and will follow established written protocols and procedures.

(f) The division may release personal data to the Texas Department of Health Cancer Registry Division personnel, headquartered in public health regions to facilitate the collection, editing, and analysis of cancer registry data for that respective geographic area. Public health regions without Cancer Registry Program personnel must follow the standard guidelines for release of personal data as outlined in subsections (a)-(c) of this section.

(g) The division may release personal data to the Texas Department of Health Cancer Registry Division personnel, headquartered in local health departments to facilitate the collection, editing, and analysis of cancer registry data for that respective geographic area. Local health departments without cancer registry program personnel must follow the standard guidelines for release of personal data as outlined in subsection (a)-(c) of this section.

(h) The division shall release personal data as a result of a court order. Such actions must be coordinated through the department's office of general counsel. Orders must specify the information or medical records to be covered by the release, the dates, the reasons or purposes for the release, and the person to whom the information is to be released.

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 August 19, 1986.

TRD-8608088

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

Proposed date of adoption: October 25, 1986  
For further information, please call  
(512) 468-7265.

★ ★ ★

## Chapter 145. Long Term Care Subchapter E. Procedures on Long Term Care Facilities

### ★ 25 TAC §145.93

The Texas Department of Health proposes new §145.93, concerning the charging of fees for the review of construction plans for long term care facilities, for inspections of construction of long term care facilities, and for feasibility inspections of existing buildings to determine construction requirements necessary for licensure or other program participation.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed new section will be in effect there will be fiscal implications for state government and small businesses as a result of enforcing or administering the new section. The effect on state government is an estimated increase in revenue of \$110,000 for 1987 and \$85,000 for each of four subsequent years. The cost of compliance for small businesses will be as shown in the schedule in subsection (k) of the section; a small business normally has a relatively small number of beds, and the costs for plan reviews and inspections are for the most part directly related to the number of beds involved. The costs for small and large businesses are relatively the same, since the costs for

plan reviews and inspections are for the most part directly related to the number of beds involved. There will be no effect on local government.

Mr. Seale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the collection of fees helps defray the cost to the state in carrying out its functions in the regulation of nursing homes and related facilities. 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 Howard C. Allen, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 for 30 days after publication in the *Texas Register*. A public hearing will be conducted on September 18, 1986, at 9:30 a.m. at the Texas Department of Health Auditorium, 1100 West 49th Street, Austin.

The new section is proposed under Texas Civil Statutes, Article 4414c, §2, which provide the Texas Board of Health with the authority to promulgate rules and charge fees to persons who receive public health services from the department.

### §145.93. Fees for Plan Reviews and Building Inspections.

(a) All institutions or facilities licensed by the department under Texas Civil Statutes, Article 4442c, and under Title 6, Human Resources Code, Chapter 103, must comply with minimum licensing standards promulgated for the types of facilities licensed.

(b) Licensing standards, §§145.11-145.24 of this title (relating to Minimum Standards for Nursing Homes), §§145.31-145.43 of this title (relating to Minimum Standards for Custodial Care Homes), §§145.51-145.70 of this title (relating to Minimum Standards for Maternity Homes), §§145.181-145.183 of this title (relating to Minimum Licensing Standards for Personal Care Homes), §§145.231-145.244 of this title (relating to Architectural Manual for Facilities Serving the Mentally Retarded), and §§145.191-145.195 of this title (relating to Minimum Licensing Standards for Adult Day Care and Adult Day Health Care Facilities) require that sponsors of construction projects submit to the department architectural plans for the construction projects. The department provides a service to these sponsors in the review of plans in various stages of development, including schematics, sketches, conceptual drawings, preliminary plans, near-final plans, final plans with specifications, addenda, and change orders. In the review of plans, the department endeavors to assure that if buildings are constructed or renovated in accordance with the plans, the project completion will meet licensure requirements (and Medicare/Medicaid requirements where plan reviews include those requirements also).

(c) During construction of a project, representatives of the department perform

construction inspections to assure that construction is being accomplished in accordance with approved plans, licensing requirements, and other requirements as applicable. Most construction projects require a preliminary inspection and a final inspection.

(d) Representatives of the department provide feasibility inspections of existing buildings to determine construction or renovation requirements for licensure and for meeting other program standards as may be applicable.

(e) Texas Civil Statutes, Article 4414c, authorizes the department to charge fees for providing services mentioned in this section. Pursuant to this authority, the department establishes the fees as shown in the fee schedule in subsection (k) of this section, to cover plan review services, construction inspection services, and feasibility inspection services. The fees are to cover the costs to the department to perform these services.

(f) When the department finds in a licensed facility a violation of standards and when plans are submitted for the purpose of showing how the violation will be corrected, there will be no fee for such plan review. There will similarly be no fee for a construction visit made pursuant thereto.

(g) In determining the costs of additions or remodeling, only the direct construction costs need to be considered, i.e., construction contract amount plus any add-on costs by contractor or owner during construction. Costs do not include land acquisition, architectural/engineering fees, financing, legal fees, fund raising fees, furnishings, or movable equipment.

(h) Fees are due for payment as follows.

(1) When plan development has reached the preliminary plan stage and preliminary plans are submitted for review, 30% of the plan review fee must accompany the plans. Before final plans are reviewed, the

full fee, if preliminary plans were not submitted, or the balance of the plan review fee must be paid.

(2) Construction inspection fees for new facilities and for additions or remodeling of existing licensed facilities are due for payment before the facility is licensed or otherwise accepted by the department under licensure.

(3) Feasibility inspection fees are due for payment prior to the inspection being made.

(i) Payment of fees shall be by check or money order made payable to the Texas Department of Health.

(j) The department will determine the number of inspections necessary to complete all construction projects. If additional inspections are required by the department or requested by the institution or facility, the appropriate additional fee shall be submitted.

(k) The fee schedule is as follows:

### Plan reviews

Nursing homes  
 Custodial care homes  
 Facilities serving the mentally retarded  
 (based on health care occupancy type facility)  
 Personal care homes  
 (based on health care occupancy type facility).

#### All new facilities

Single story	\$ 9 per bed, min. \$450
Multiple story	\$ 11 per bed, min. \$550

#### Major additions or remodeling (\$15,000 or more)

Single story	1% of project cost, or \$9 per bed, whichever is greater, but not to exceed \$1,000
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Multiple story	1% of project cost or \$11 per bed, whichever is greater, but not to exceed \$1,200
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#### Minor additions or remodeling (under \$15,000)

\$125

Personal care homes  
 (based on other than health care occupancy type facility)  
 Facilities serving the mentally retarded  
 (based on other than health care occupancy type facility)  
 Maternity homes.

New facilities  
 Major additions or remodeling  
 (\$8000 or more)

4 - 8 beds	\$ 50
9 - 16 beds	\$100
17 and over beds	\$ 8 per bed, min. \$200

Minor, additions or remodeling  
(under \$8000)

4 - 16 beds	\$ 50
17 and over beds	\$100

Adult day care and adult day health care facilities

New construction, major additions

\$ 10 per licensed person  
capacity, max. \$300

Minor additions or remodeling  
(under \$4000) \$100

Construction inspections

Preliminary inspections, each	\$ 2 per bed, min. \$50
Final inspections, each (including one follow-up if necessary)	\$ 5 per bed, min. \$50

Feasibility inspections

Feasibility inspections, each \$ 3 per bed, min. \$75

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 August 19, 1986.

TRD-8008100

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

Proposed date of adoption: October 25, 1986  
For further information, please call  
(512) 459-7706.

★ ★ ★

**Chapter 289. Occupational  
Health and Radiation Control  
Texas Regulations for Control of  
Radiation**

★25 TAC §§289.111, 289.113,  
289.114, 289.121-289.125

The Texas Department of Health proposes  
amendments to §§289.111, 289.113, 289.114,

and 289.121-289.125, concerning the control of radiation.

Amendments to the parts, which are adopted by reference, are as follows: addition of the licensing state concept to Parts 11, 21, 22, and 41. Naturally occurring and accelerator-produced radioactive material, referred to collectively as NARM, is not comprehensively controlled by any agency of the federal government. The regulation of NARM has been left to the discretion of each state. As such, the degree of regulation of NARM varies from state to state. The Conference of Radiation Control Program Directors, Inc., developed criteria for more uniform regulation of NARM by establishing the licensing state concept. A committee was then assigned to designate those states that qualify and meet the criteria established for becoming a licensing state. Having licensing state status assures that source and device reviews made by that state could be acceptable in another state with reasonable assurance that the source and/or device received adequate scrutiny before it is allowed to be distributed. Also, it gives the states continuity of regulation when granting reciprocity for NARM licenses; clarification

of 11.4 to state in the rules that records must be factual and that falsification of records is a violation; correction of a typographical error in Appendix 11-A; addition to 21.1, 21.101, 21.102, and 22.13 of rules concerning total dose received by a transient worker. The addition is intended to minimize the possibility of overexposure to transient workers who may be employed or work in the restricted areas of more than one licensee/registrant within a single calendar quarter or who may work for more than one licensee/registrant at a time; addition of 21.208(b) as an item of compatibility with the Nuclear Regulatory Commission. The addition addresses the surveillance of licensed material and radiation machines in unrestricted areas; clarification of provisions for exempt quantities and exempt concentrations in 41.4(a) and (b); addition of 41.28(b)(6) to clarify that radioactive gases, gas solutions, and aerosols must be specifically requested for licensure rather than being part of a medical group; removal of industrial radiography licensing provisions, since they are now located in Part 31; addition of newly approved radiopharmaceuticals and uses to groups of medical uses of radioactive materials; addition to Parts 41, 42,



43, 44, and 45 of requirements for licensees and registrants to notify the agency in the event of bankruptcy.

Stephen Seale, chief accountant III, 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.

Edgar D. Bailey, director, Division of Licensing, Registration, and Standards, Bureau of Radiation Control, 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 continuity of regulation of NARM between states, which will prevent the need for increased staff time to regulate NARM; minimization of the possibility of overexposure to transient workers follows the principle of maintaining exposure to radiation as low as reasonably achievable. Also, requiring notification to the agency of a licensee's/registrant's declaration of bankruptcy allows the agency to keep track of the location and disposition of radioactive materials and radiation machines in Texas. 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 the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 30 days following publication of the proposed amendments in the *Texas Register*. In addition, there will be a public hearing on the rules on September 18, 1986, in the auditorium of the Texas Department of Health, 1100 West 49th Street, Austin, Texas, at 10 a.m.

The amendments are proposed under Texas Civil Statutes, Article 4590(f), §4(d)(3), which provide the Texas Department of Health with the authority to formulate, adopt, and promulgate, and repeal rules which provide for licensing and registration relating to control and transport of sources of radiation within the State of Texas.

#### §289.111. General Provisions.

(a) The Texas Department of Health adopts by reference Part 11, General Provisions, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in December [April] 1986.

(b) (No change.)

#### §289.113. Standards for Protection Against Radiation.

(a) The Texas Department of Health adopts by reference Part 21, Standards for Protection Against Radiation, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in December [April] 1986.

(b) (No change.)

#### §289.114. Notices, Instructions, and Reports to Workers; Inspections.

(a) The Texas Department of Health adopts by reference Part 22, Notices, Instructions, and Reports to Workers; Inspections, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in December [April] 1986.

(b) (No change.)

#### §289.121. Licensing of Radioactive Material.

(a) The Texas Department of Health adopts by reference Part 41, Licensing of Radioactive Material, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in December [April] 1986.

(b) (No change.)

#### §289.122. Registration of Radiation Machines and Services.

(a) The Texas Department of Health adopts by reference Part 42, Registration of Radiation Machines and Services, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in December [April] 1986.

(b) (No change.)

#### §289.123. Licensing of Uranium Recovery Facilities.

(a) The Texas Department of Health adopts by reference Part 43, Licensing of Uranium Recovery Facilities, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in December [April] 1986.

(b) (No change.)

#### §289.124. Licensing of Radioactive Waste Processing and Storage Facilities.

(a) The Texas Department of Health adopts by reference Part 44, Licensing of Radioactive Waste Processing and Storage Facilities, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in December [April] 1986.

(b) (No change.)

#### §289.125. Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste.

(a) The Texas Department of Health adopts by reference Part 45, Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste, of the department's document titled *Texas Regulations for Control of Radiation*, as amended in December 1986 [added in October 1983].

(b) (No change.)

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608101

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

Proposed date of adoption: October 25, 1986  
For further information, please call  
(512) 836-7000.

#### ★ 25 TAC §289.126

The Texas Department of Health proposes an amendment to §289.126, concerning the control of radiation. Section 289.126, which adopts by reference Part 12, entitled "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services" will be amended by the revision of the method of determination and the amounts of fees for uranium recovery facilities. A new section has been added which delineates fees for uranium facilities by year and type of operation. Annual fee adjustments for additional noncontiguous sites and for irrigation or surface discharge and one-time fee adjustments for certain major additions to the licenses were also placed into the fee schedule.

Other minor clarifying changes were made to the rule, and interpretive rules and definitions pertaining to the uranium facility fees were added. Rules regarding fees for certificates of registration and radioactive material licenses were amended in April 1986. The revised fees were based on an 83% recovery of the average annual costs of the department to regulate each category of licensee and registrant.

Following the comment period on these rules, the change in fees for uranium facilities was withdrawn because the broad spectrum of facility sizes and activities and the corresponding costs to the department to regulate the facilities did not warrant the proposed average annual fee. Therefore, the fees have been revised to better reflect the actual costs of regulation of a facility for the year in which those costs are incurred. For example, the cost of the initial licensing and environmental assessment on a new application should be reflected in the first year's fee and not spread over a five-year period. Likewise, the appropriate portion of the costs incurred in those years in which a licensee is in restoration or reclamation only should be charged in those specific years.

The following sections in Part 12 will be affected: Section 12.2, Definitions, has been amended to include protection of the environment as a part of the definition of emergency planning and implementation. Additional language was added to 12.11 to clarify that the maximum fee for laser registrations did not include laser light shows.

Section 12.22, Schedule of Fees for Uranium Recovery Facilities, has been added as described above. In addition, references to the new section have been added to 12.11 and 12.21. Section 12.31 has been amended by the addition of the words "per registration" to four radiation machine registration categories to clarify that the fee for these categories is per certificate of registration and is not based on the number of machines possessed.



Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government will be an estimated increase in revenue of \$82,046 in 1987, \$67,248 in 1988, \$11,519 in 1989, \$7,931 in 1990, and \$7,276 in 1991. There will be no effect on local government or small businesses.

Edgar D. Bailey, director, Division of Licensing, Registration, and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an adequate radiation control program to protect the public health and safety and the environment. The proposed fees for uranium facilities will be based on the same percentage of department costs to regulate that category of licensee as that of other licensee and registrant categories. The anticipated economic cost to individuals who are required to comply with the section as proposed will depend upon the category of uranium facility licensee and the operational and licensing activities involved. Individual costs to comply with the proposed changes in Part 12 are listed in the schedule of fees in 12.22 of the proposed rules.

Comments on the proposal may be submitted to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 30 days following publication of this proposed amendment in the *Texas Register*. In addition, there will be a public hearing on the rules on September 18, 1986, in the auditorium of the Texas Department of Health, 1100 West 49th Street, Austin, Texas, at 10 a.m.

The amendment is proposed under Texas Civil Statutes, Article 4590(i), §§4(d)(3), 17, and 18, which provide the Texas Department of Health with the authority to formulate, adopt, and promulgate rules which provide for licensing and registration relating to control, transport, and routing of radioactive material within the State of Texas; to prescribe and collect a fee for each license and registration; and to prescribe and collect annual fees for emergency planning and implementation and environmental surveillance activities from each fixed nuclear facility that utilizes special nuclear material.

**§289.126. Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services.**

(a) The Texas Department of Health adopts by reference Part 12, Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services, of the department's document titled

*Texas Regulations for Control of Radiation, as amended in December [May] 1986.*

(b) (No change.)

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8606102

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

Proposed date of adoption: October 25, 1986  
For further information, please call  
(512) 835-7000.

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## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 5. Funds Management (Fiscal Affairs)

#### Deferred Compensation—Vendor Participation

##### ★34 TAC §5.111

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts, 111 East 17th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The Comptroller of Public Accounts proposes the repeal of §5.111, concerning definitions. This section is being repealed in order that a substantially revised section may be adopted.

John Moore, director of the comptroller's economic analysis center, 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 Moore also has determined that for each year of the first five years the repeal is in effect there will be no public benefit anticipated as a result of enforcing the 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 Wade Anderson, Executive Counsel, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 6252-3b, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the deferred compensation program.

## §5.111. Definitions.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8606143

Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption:  
September 26, 1986  
For further information, please call  
(512) 463-4004.

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) proposes amendments to §§3.303, 3.501, 3.704, 3.1101, 3.1104, 3.2601, 3.2801, and 3.2802, and the repeal of §3.1103, concerning determination of eligibility for Aid to Families with Dependent Children (AFDC) and food stamps. The DHS proposes the amendments and repeal to clarify and reformat existing sections. The proposal involves no policy or procedural changes.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed amendments and 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 amendments and repeal.

Mr. Packard also has determined that for each year of the first five years the amendments and repeal are in effect the public benefit anticipated as a result of enforcing the amendments and repeal will be clearer rules for the AFDC and Food Stamp Programs. There is no anticipated economic cost to individuals who are required to comply with the proposed amendments and repeal.

Comments on the proposal may be submitted to Cathy Rosberg, Administrator, Policy Development Support Division-537, Department of Human Services 153-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

#### Subchapter C. The Application Process

##### ★40 TAC §3.303

The amendment is proposed under the Human Resources Code, Title 2, Chapters

31 and 33, which authorizes the department to administer public assistance programs.

**§3.303. Receipt of Application—Acceptability Factors.**

(a) Aid to families with dependent children. DHS [DHR] must accept an application which contains the applicant's name, address, and signature of the applicant or, if the applicant is incapacitated, the signature of someone acting responsibly for the applicant.

(b) (No change.)

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8008130 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
September 28, 1986  
For further information, please call  
(512) 450-3766.

**Subchapter E. Household Determination**

**★40 TAC §3.501**

The amendment is proposed under the Human Resources Code, Title 2, Chapters 31 and 33, which authorizes the department to administer public assistance programs.

**§3.501. AFDC and Food Stamp Household Determination.**

(a) (No change.)

(b) Aid to families with dependent children. The following persons are not included in an AFDC certified group:

(1)-(5) (No change.)

(6) Strikers. DHS treats households with strikers as stipulated in 45 Code of Federal Regulations §233.106 [DHR does not certify a household for AFDC for any month in which the caretaker is participating in a strike on the last day of that month. DHR does not include the needs of other members who participate in a strike on the last day of a month].

(c)-(e) (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 August 19, 1986.

TRD-8008131 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
September 28, 1986  
For further information, please call  
(512) 450-3766.

**Subchapter G. Resources**

**★40 TAC §3.704**

The amendment is proposed under the Human Resources Code, Title 2, Chapters 31 and 33, which authorizes the department to administer public assistance programs.

**§3.704. Types.**

(a) (No change.)

(b) Aid to families with dependent children. Exclusions from resources in AFDC are:

(1)-(5) (No change.)

(6) prepaid burial insurance. DHS [DHR] exempts one prepaid burial insurance policy, prepaid funeral plan, or prepaid funeral agreement with a cash value of \$1500 or less for each member of the certified group.

(7)-(10) (No change.)

(c) (No change.)

(d) Food stamps. Exclusions from resources for food stamps are those listed in 7 Code of Federal Regulations:

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

(3) §273.8(g) [§273.9(g)];

(4) §273.8(h) [§273.9(h)].

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 August 19, 1986.

TRD-8008132 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
September 28, 1986  
For further information, please call  
(512) 450-3766.

**Subchapter K. Employment Services**

**★40 TAC §3.1101, §3.1104**

The amendments are proposed under the Human Resources Code, Title 2, Chapters 31 and 33, which authorizes the department to administer public assistance programs.

**§3.1101. Participation Requirement.**

[(a)] Each AFDC household member age 16-64 must comply with employment services requirements stipulated in 45 Code of Federal Regulations §224.20(a) and §224.20(b) [Each AFDC applicant who is at least 16 years old but not older than 64 years old, who is not exempt, must register for employment services.] Exempt household members [applicants] may volunteer for employment services at any time. They are eligible for the same services as mandatory registrants.

[(b)] Exemptions. An applicant is not required to register for employment services if he is:

- [(1)] under age 16 or age 65 or older;
- [(2)] receiving AFDC foster care;

[(3)] age 16 or 17 and attending elementary, secondary, vocational, or technical school full time;

[(4)] age 18 and attending secondary, vocational, or technical school full time and will graduate by his 19th birthday;

[(5)] a parent or caretaker of children five years old and under;

[(6)] needed at home to care for an ill or disabled member of the household, even if that person is not a member of the certified group;

[(7)] temporarily or permanently disabled, including clients in the sixth through ninth months of pregnancy, or clients who claim a disability because of pregnancy before the sixth month;

[(8)] employed for 30 hours or more a week;

[(9)] too remote from available employment services.]

**§3.1104. Failure to Comply.** [(f)] An AFDC client who does not comply [cooperate] with WIN or alternate employment services programs [work registration] requirements and cannot establish good cause is sanctioned as stipulated in 45 Code of Federal Regulations §224.51 [he is ineligible for AFDC for three consecutive AFDC payment months. A client who does not cooperate a second time is ineligible for six consecutive AFDC payment months. After the sanction period, a client must accept registration for and agree to participate in employment services before being included in the AFDC grant].

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 August 19, 1986.

TRD-8008133 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
September 28, 1986  
For further information, please call  
(512) 450-3766.

**★40 TAC §3.1103**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)*

The repeal is proposed under the Human Resources Code, Title 2, Chapters 31 and 33, which authorizes the department to administer public assistance programs.

**§3.1103. Failure/Refusal to Register.**

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 August 19, 1986.

TRD-8608129

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
September 26, 1986  
For further information, please call  
(512) 450-3766.

## Subchapter Z. Direct Mail Issuance

### ★ 40 TAC §3.2601

The amendment is proposed under the Human Resources Code, Title 2, Chapters 31 and 33, which authorizes the department to administer public assistance programs.

**§3.2601. Eligibility Requirements.** DHS [DHR] determines that the following households are eligible for direct mail issuance (DMI) according to the requirements of 7 Code of Federal Regulations §274.1(a).

(1) (No change.)

(2) Households that live more than 30 miles from the nearest issuance facility and decide to stop traveling to that facility to get their food stamps.

(3) (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 August 19, 1986.

TRD-8608134

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
September 26, 1986  
For further information, please call  
(512) 450-3766.

## Subchapter BB. Changes

### ★ 40 TAC §3.2801, §3.2802

The amendments are proposed under the Human Resources Code, Title 2, Chapters 31 and 33, which authorizes the department to administer public assistance programs.

**§3.2801. Reporting Requirements.**

(a) (No change.)

(b) Changes that food stamp clients must report include those stipulated in 7 Code of Federal Regulations §273.12(a)(1):

(1) source of income;

(2) changes in the amount of the household's total gross monthly income if the amount of change exceeds \$25;

(3) changes in household composition;

(4) ownership of a licensed vehicle, unless the vehicle is excluded as a resource;

(5) available cash, stocks, bonds, or money in a bank or savings account if the

total is \$1,500 or more or \$3,000 for applicable households;

(6) monthly medical expenses if the amount changes by more than \$25;

(7) change of address and the resulting change in shelter costs.]

**§3.2802. Time Limits for Reporting.**

(a) Aid to families with dependent children. Nonmonthly reporters must report changes within 10 days after the household knows about the change [occurs].

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

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608135

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
September 26, 1986  
For further information, please call  
(512) 450-3766.

## Chapter 48. CCAD

### Shared Attendant Demonstration Project

#### ★ 40 TAC §§48.2601-48.2612

The Texas Department of Human Services (TDHS) proposes new §§48.2601-48.2612, in its community care for aged and disabled chapter. These new sections define the scope and outline the provisions and requirements of a demonstration project in client-managed shared attendant care being undertaken by the department.

This initiative is a result of Rider Number 37 of the department's appropriations bill, passed by the 69th Legislature, 1985, which authorized the department to develop a demonstration project in shared attendant care services. The project was designed with the input of representatives from advocacy groups for the disabled and disabled individuals. The project targets services to physically handicapped adults living in the areas specified in §48.2602, who are mentally and emotionally capable of directing their attendant care. Services may be provided to disabled adults who are incapable of directing their own care if a relative or friend is willing to direct the care without compensation. Service is provided in the client's home or at the client's school or work place, if feasible.

At a minimum, the contractors for this project develop a pool of potential attendants, determine client eligibility and level of need, make payment to the attendant directly or through the client, provide emergency back-up attendant capability, and act as brokers by linking clients interested in shared living arrangements or other special living arrangements. A sliding fee scale allows clients with a monthly net in-

come of \$73 or above to receive services by fulfilling a copayment requirement.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the new sections. The cost to the state is estimated to be: \$1.1 million for fiscal year 1987; \$2,546,700 for fiscal year 1988; \$3,525,600 for fiscal year 1989; \$3,866,624 for fiscal year 1990; and \$3,813,269 for fiscal year 1991. There are no fiscal implications for local government or small businesses as a result of administering or enforcing the sections.

Mr. Packard has also determined that for each year of the first five years the sections are in effect the public benefit will be that personal care assistance will be provided to physically disabled clients who are functionally impaired in the performance of daily activities. 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 Cathy Rossberg, Administrator, Policy Development Support Division-456, Texas Department of Human Services, 153-E, P. O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

**§48.2601. Program Services.**

(a) Eligible clients are entitled to the following attendant services.

(1) Escort. Escort services include arranging for transportation or accompanying the client on trips to obtain health care services and household items.

(2) Home management. Home management services include assistance with activities related to housekeeping that are essential to the client's health and comfort, such as the following:

(A) changing bed linens;

(B) house cleaning;

(C) laundering;

(D) shopping;

(E) storing purchased items;

(F) arranging furniture; or

(G) washing dishes.

(3) Personal care. Personal care services include assistance with activities related to the care of the client's physical health, such as the following:

(A) bathing;

(B) dressing and undressing;

(C) preparing meals;

(D) feeding;

(E) exercising;

(F) grooming;

(G) caring for routine hair and skin needs;

(H) taking self-administered medication;

(I) toileting; or

(J) transfer/ambulation.

(b) The following services are excluded and may not be included in the service plan:

(1) tasks which must be provided by a person with professional training; and

(2) the purchase of additional services and/or supplemental pay which are the result of agreements between the attendant and the client.

**§48.2602. Client Eligibility Criteria.** To be determined eligible for participation in the shared attendant care demonstration project, the applicant must:

(1) be age 18 or older;

(2) have a physician's statement that he is physically disabled, including a description of the disability, and that the disability is permanent or is expected to last for at least six months from the date eligibility is determined. If the disability is not permanent, the physician's statement must specify the expected duration of the disability;

(3) not receive primary home care, family care, supervised living, foster care, emergency care, or residential health care while receiving attendant care services;

(4) need assistance with at least one personal care task;

(5) need at least five hours of attendant care per week;

(6) be mentally and emotionally capable of self-directing attendant care or have a relative or friend who is willing to be responsible for directing the care without compensation; and

(7) reside in one of the following contract areas:

(A) Bexar County;

(B) Hidalgo, Bee, Live Oak, Refugio, Kleburg, Jim Wells, or Willacy County;

(C) Orange, Jefferson, Hardin, Newton, or Jasper County; or

(D) City of Nacogdoches.

**§48.2603. Contractor Responsibilities.** The contractor has the following responsibilities after interviewing the applicant:

(1) determining service eligibility. The applicant must meet each criterion as specified in §48.2606 of this title (relating to Termination of Services);

(2) assessing the service level and developing a service plan:

(A) the number of hours and tasks authorized are negotiated between the applicant and the contract agency;

(B) if the applicant does not agree with the assessment of the service level and service plan, the issue is referred to supervisory staff of the contract agency for resolution. If the outcome is unsatisfactory to both parties, a final determination is made by designated department staff within 30 days of notification;

(C) if the applicant does not agree with the determination of service level and service plan approved by the contract agen-

cy supervisory staff, initiation of services must not be delayed. Contract agency staff, with the client's consent, will initiate services according to their assessment of the service level required and notify the designated department staff of the client's disagreement with the service level;

(D) if an eligible applicant cannot be served because the contractor is operating at full capacity, the applicant is placed on a waiting list. Service is provided as space becomes available and in chronological order according to the date eligibility was established;

(i) determining the client's copayment. Clients are required to enter into copayment agreements based upon nonexcluded monthly net income less allowable deductions. Computation of copayment amounts is outlined in §48.2608 of this title (relating to Client Copayment);

(4) offering the applicant a choice between two methods of paying the attendant. The contractor must offer the following options to the applicant for payment of the attendant:

(A) the contract agency may pay the attendant's salary directly; or

(B) the client may pay the attendant's salary from a block payment provided by the contract agency. Clients receiving Medicaid or other services where eligibility may be wholly or partially based upon income are not allowed to choose this option. The block payment is equal to the amount the agency would pay the attendant for the hours authorized plus the employer's share of social security. Under this option:

(i) the client and the contract agency must sign an agreement detailing the responsibilities of both parties; and

(ii) payment of attendants who provide substitute or emergency services when requested by the client remains the responsibility of the contract agency. The cost of these services is deducted from the client's block payment.

**§48.2604. Applicant/Client Responsibilities.** The applicant/client is responsible for:

(1) obtaining the physician's statement of physical disability as specified in §48.2602 of this title (relating to Client Eligibility Criteria);

(2) choosing the method of payment to the attendant as specified in §48.2603 of this title (relating to Contractor Responsibilities);

(3) providing the contractor the names of potential attendants or choosing the attendant from the contractor's attendant referrals;

(4) hiring and firing the attendant;

(5) training the attendant in the delivery of services, using acceptable and/or necessary procedures;

(6) supervising the attendant in the delivery of services or arranging for a friend or relative to provide direct supervision of the attendant;

(7) arranging to terminate disallowed department services such as primary home care or family care; and

(8) paying any copayment amounts required.

**§48.2605. Suspension of Services.**

(a) The contract agency may suspend services before the end of the service authorization period. The client must be notified of the suspension.

(b) Suspension may occur for one of the following reasons.

(1) The client leaves the state or moves out of the geographical area served by the contract. If the notice of suspension is returned as undeliverable, it must be retained in the casefolder as documentation that notification was attempted.

(2) The client receives primary home care, family care, supervised living services, foster care, emergency care, or residential health care.

(3) The client does not agree with the copayment or does not pay the copayment.

(4) The client is repeatedly abusive to attendants or demands additional hours or tasks not in the service plan.

(5) The client threatens the physical safety of the attendant or others.

(6) The client is admitted to a hospital or other institution.

(c) Services must be reinstated upon resolution of the circumstances that initiated the service suspension. If attempts to resolve the issue are unsuccessful after 30 days of the date of suspension, the contract agency must initiate termination of services.

**§48.2606. Termination of Services.** The contract agency provides the client with written notification that services are being terminated. The following situations result in termination of services.

(1) The client fails to meet eligibility criteria. If the client no longer meets any of the eligibility criteria outlined in §48.2602 of this title (relating to Client Eligibility Criteria), termination is effective 12 days from the date of written notification, except as specified in paragraph (2) of this section.

(2) The physician's statement expires. Services continue only to the last date the physician's statement specifies as the expected duration of the client's disability.

(3) The health or safety of the attendant or others is threatened. Termination is based on nonresolution of issue and may be effective immediately.

(4) The client dies.

(5) The client enters an institution, other than a hospital, for a projected stay of at least 30 days.

(6) Funding for the contract becomes unavailable.

**§48.2607. Client Appeals.** An applicant/client is entitled to appeal the suspension or termination of services according to applicable agency rules.

**§48.2608. Client Copayment.**

(a) The copayment amount is based on the monthly net income of both the client and the client's spouse. Monthly net income is computed according to procedures outlined in §48.2612 of this title (relating to Computation of Net Income). A copayment percentage is then applied according to the following table:

Monthly Net Income	Copayment Requirement	Maximum Monthly Copayment Amount
\$ 0 - \$ 730	0%	---
\$ 731 - \$ 750	10%	\$ 95
\$ 751 - \$1000	25%	\$235
\$1001 - \$1250	50%	\$475
\$1251 - \$1500	75%	\$710
Over \$1500	100%	

(b) The copayment amount is computed using the following steps.

(1) The copayment requirement, expressed in a percentage, that corresponds to the client's monthly net income is multiplied by the contractor's unit rate.

(2) The result of applying the step in paragraph (1) of this subsection is multiplied by the hours of service received in a calendar month. The result is the amount of copayment the client must pay.

**§48.2609. Determination of Monthly Total Income.** The applicant's/client's monthly total income is the total of the following:

(1) the total earnings of the applicant/client and spouse. These earnings include: money, wages, or salary received for work performed as an employee, including wages, salary, armed forces pay (include allotments from any armed forces received by a member of the family from a person not living in the household), commissions, tips, piece-rate payments, and cash bonuses earned after deductions are made for taxes, including Social Security and any other required deductions;

(2) net income from nonfarm self-employment. These earnings include: gross receipts minus business expenses from one's own business, professional enterprise, or partnership which results in the individual's net income. Gross receipts include the value of all goods sold and services given. Expenses include costs of purchased goods, rent, heat, light, power, depreciation charges, wages and salaries paid, business taxes (not personal income taxes or self-employment Social Security tax), and similar costs. The value of saleable merchandise used by the owners of retail stores is not included as part of net income;

(3) net income from farm self-employment. These earnings include: gross receipts minus operating expenses from operation of a farm by the client or the client and his partners. Gross receipts include: the value of products sold; government crop loans; money from the rental of farm equipment to others; and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include: the cost of feed, fertilizer, seed, and other farming supplies;

cash wages paid to farmhands; depreciation charges; cash rent; interest on farm mortgages; farm building repairs; farm taxes (not personal income taxes or self-employment Social Security tax); and similar expenses. The value of fuel, food, or other farm products used for family living is not included as part of net income;

(4) Social Security and railroad retirement benefits. These benefits include: Social Security pensions and survivors' benefits, permanent disability insurance payments made by the Social Security Administration, and railroad retirement insurance checks from the federal government. Gross benefits from these sources are the amounts before deductions for Medicare insurance;

(5) dividends and interest. These earnings include: dividends from stocks or membership in associations, interest on savings or bonds, and periodic receipts from estates or trust funds. These earnings are averaged for a 12-month period;

(6) net income from rental of a house, store, or other property; or rent from boarders or lodgers. These earnings include: net income from rental property which is calculated by subtracting from gross receipts prorated property taxes, insurance payments, bills for repair and upkeep of property, and interest on mortgage payment of the property. Capital expenditures for additions or improvements and depreciation are not deductible;

(7) net income from lease of mineral rights. These earnings include net income which is calculated by subtracting excise taxes and property taxes from gross royalties or early lease payments. Federal windfall profit taxes are not deductible. These earnings are averaged over a 12-month period;

(8) income from mortgages or contracts. These payments include income the buyer promises to pay in fixed amounts over a period of time until the principal of the note is paid;

(9) public assistance or welfare payments. These payments include AFDC, SSI, and general assistance (cash payments from a county or city);

(10) pensions, annuities, and irrevocable trust funds. These payments include pensions or retirement benefits paid to a retired person or his survivors by a former employer or by a union, either directly or through an insurance company. Periodic payments from annuities, insurance, and irrevocable trust funds are also included. Gross benefits from civil service pensions are benefits before deductions for health insurance;

(11) veterans' pensions and compensation checks. These benefits include: money paid periodically by the Veterans Administration to disabled members of the armed forces or to survivors of deceased veterans, subsistence allowances paid to veterans for education and on-the-job training, and refunds paid to ex-servicemen as GI insurance premiums;

(12) educational loans and grants. These payments include money received as scholarships by students for educational purposes and used for current living costs. Include only that part actually used for current living costs;

(13) unemployment compensation. These payments include compensation received from government unemployment insurance agencies or private companies during periods of unemployment, and any strike benefits received from union funds;

(14) worker's compensation and disability payments. These payments include compensation received periodically from private or public insurance companies for injuries incurred at work;

(15) alimony. These payments are support paid to a divorced person by a former spouse;

(16) regular monthly cash support payments from friends or relatives;

(17) net income from the client's share of a life estate;

(18) child support and other cash payments received in the name of a minor child.

**§48.2610. Income Exclusions.** The applicant's/client's monthly total income excludes the following:

(1) per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the court of claims;

(2) any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) loans and grants such as scholarships, obtained and used under conditions that preclude their use for current living costs;

(4) Veterans Administration aid-and-attendance benefits, VA home-bound elderly benefits, and payments to certain eligible veterans for purchase of medications. Although aid-and attendance or home-bound elderly benefits are excluded as income, the department considers these benefits the primary source of funds for in-home provider payment;

(5) in-kind income such as rent subsidies;

(6) infrequent or irregular income if the total does not exceed \$20 a month from all sources:

(A) an infrequent payment is one which may not be considered a recurring factor in determining a client's monthly or quarterly income. Payments which do not exceed \$20 a month (\$60 a quarter) and which occur no more than once a quarter are received too infrequently to count. Infrequent income includes interest on a savings account if the interest is not credited or received more frequently than once a quarter from a single source;

(B) an irregular payment is one made without an agreement of understanding that it is made on a recurring basis;

(7) reimbursement from an insurance company for health insurance claims.

**§48.2611. Allowable Monthly Deductions.** Allowable monthly deductions from the applicant's/client's monthly total income include the following:

(1) the cost of tuition and books when the applicant/client is a student. This amount is prorated over the authorization period to determine a monthly figure;

(2) seventy-five dollars is deducted for the applicant/client, spouse, and each dependent supported by the applicant/client and spouse;

(3) FICA withholding, and any other required deductions from wages or salaries.

**§48.2612. Computation of Net Income.** Net income is computed by subtracting allowable monthly deductions defined in §48.2611 of this title (relating to Allowable

Monthly Deductions) from monthly total income, after income exclusions defined in §48.2610 of this title (relating to Income Exclusions) have been applied.

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

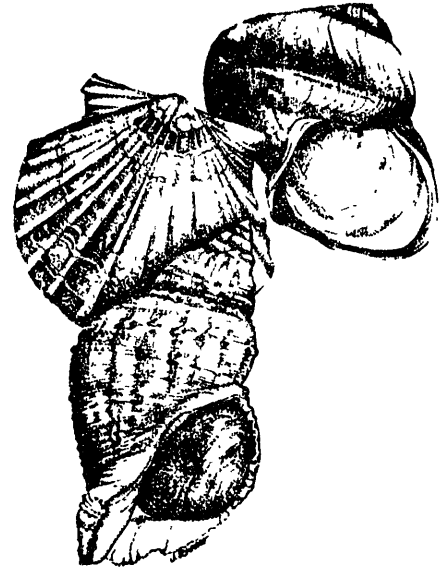
Issued in Austin, Texas, on August 19, 1986.

TRD-8608136

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Earliest possible date of adoption:  
September 26, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★



# 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 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services Chapter 47. Primary Home Care

#### Participation Requirements

★40 TAC §47.2901, §47.2909

The Texas Department of Human Services has withdrawn from consideration proposed amendments to §47.2901 and §47.2909, concerning participation requirements for primary home care services. The text of the proposed amendments appeared in the April 29, 1986, issue of the *Texas Register* (11 TexReg 1969). The effective date of the withdrawal is August 19, 1986.

Issued in Austin, Texas, on August 19, 1986.

TRD-8608137

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Filed: August 19, 1986  
For further information, please call  
(512) 450-3786.

★ ★ ★

### Chapter 48. CCAD Eligibility

★40 TAC §48.2918

The Texas Department of Human Services has withdrawn from consideration a proposed amendment to §48.2918, concerning eligibility for primary home care. The text of the proposed amendment appeared in the April 29, 1986, issue of the *Texas Register* (11 TexReg 1969). The effective date of the withdrawal is August 19, 1986.

Issued in Austin, Texas, on August 19, 1986.

TRD-8608138

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Filed: August 19, 1986  
For further information, please call  
(512) 450-3786.

## Chapter 50. Day Activity and Health Services

### Eligibility Requirements

★40 TAC §50.1901, §50.1902

The Texas Department of Human Services has withdrawn from consideration proposed amendments to §50.1901 and §50.1902, concerning eligibility for day activity and health services. The text of the amendments appeared in the April 29, 1986, issue of the *Texas Register* (11 TexReg 1972). The effective date of the withdrawal is August 19, 1986.

Issued in Austin, Texas, on August 20, 1986.

TRD-8608151

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Filed: August 20, 1986  
For further information, please call  
(512) 450-3786.

★ ★ ★



# Adopted

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

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

## TITLE 7. BANKING AND SECURITIES

### Part VII. State Securities

#### Board

#### Chapter 115. Dealers and Salesmen

##### ★7 TAC §115.2

*(Editor's note: Due to omission of changes to this section when published in the August 15, 1986, issue of the Texas Register (11 Tex-Reg 3641), this section is republished.)*

The State Securities Board adopts an amendment to §115.2, with changes to the proposed text published in the March 25, 1986, issue of the *Texas Register* (11 Tex-Reg 1499). The changes from the proposed amendment are contained in §115.2 (c)(4) and (5), and were made in response to comments received.

The section formalizes the substantive requirements for applicants seeking registration as investment advisers, including financial planners who give advice concerning the offer and sale of securities.

The section, as amended, sets forth specific requirements for each applicant seeking registration as an investment adviser to file with the securities commissioner a copy of its standard advisory contract and to make certain disclosures to clients or prospective clients.

A comment in favor of the section was received from Robert L. Bunnen, Jr., of the Investment Company Institute, Washington, D.C. Comments from Kevin P. Howe of IDS Financial Services, Inc., Minneapolis, Minnesota, were also received. Mr. Howe suggested that the section permit an applicant to furnish its clients or prospective clients with either Part II of Form ADV or a brochure containing the required information. Mr. Howe also suggested that the section set forth the point in time at which certain disclosures must be made. Both of these comments are addressed via changes in the section as adopted.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations may classify securities, per-

sons, and matters within its jurisdiction, and prescribe different requirements for different classes.

##### §115.2. Application.

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

(c) Investment advisers-additional requirements.

(1) In addition to the information required to be submitted by subsection (b) of this section, each applicant for registration as an investment adviser must furnish to the commissioner a copy of its standard advisory contract.

(2) The applicant must also undertake to the commissioner to disclose to each client or prospective client the following:

(A) the applicant's affiliation(s), if any, with other securities dealers or investment advisers, and the nature of such affiliation(s);

(B) the applicant's fee schedule and whether fees are negotiable; and

(C) whether the applicant will also act as a principal or as an agent to execute recommended transactions.

(3) The applicant may satisfy the requirements of paragraph (2)(A)-(C) of this subsection by furnishing to the commissioner a completed copy, as filed with the Securities and Exchange Commission, of Part II of Form ADV (uniform application for investment adviser or to amend such an application under the Investment Advisers Act of 1940, 17 Code of Federal Regulations §279.1) as made effective in Release IA-991 and corrected in Release IA-991A.

(4) The disclosure required by paragraph (2)(A)-(C) of this subsection shall be delivered to a client or prospective client either:

(A) not less than 48 hours prior to entering into any written or oral investment advisory contract with such client or prospective client; or

(B) at the time of entering into any such contract, if the advisory client has the right to terminate the contract without penalty within five business days after entering into the contract.

(5) The required disclosure to a client or prospective client may take the form of a brochure incorporating the information required by paragraph (2)(A)-(C) of this section.

(6) Nothing in this section shall relieve an investment adviser from any obliga-

tion pursuant to any provision of the Investment Advisers Act of 1940 or the rules and regulations thereunder or other federal or state law to disclose any information to its clients not specifically required by this section.

(d) The application for registration of any person or company who fails to meet registration requirements within one year of the filing date of the application will expire and become null and void. A copy of this rule will be mailed to applicants at least 60 days prior to the expiration of this application.

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 August 7, 1986.

TRD-8607740

Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: August 28, 1986  
Proposal publication date: March 18, 1986  
For further information, please call  
(512) 474-2233.

★ ★ ★

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division Conservation Rules and Regulations

##### ★16 TAC §3.14

The Railroad Commission of Texas adopts an amendment to §3.14, with changes to the proposed text published in the July 15, 1986, issue of the *Texas Register* (11 Tex-Reg 3240).

The amendment is adopted to prevent loss of reserves through the premature abandonment of marginal wells. The change in the proposed text as published occurs in subsection (b)(2) to allow for wells which become inactive on or after January 1, 1986, but before January 1, 1988, to have one year instead of 90 days in which to plug the well or bring it into compliance in some other way.



The adopted amendment allows for wells which become inactive on or after January 1, 1986, but before January 1, 1988, to have one year instead of 90 days in which to plug the well or bring it into compliance in some other way. The commission's rules, however, do not allow pollution to occur during the one-year period; any problem well is subject to a plugging order.

Written comments were received from eight associations, companies, and/or individuals. All eight commenters supported the amendment and urged its adoption.

The commenters in favor of the amendment were Texas Independent Producers and Royalty Owners Association; Phyllis Robinson, state representative; Union Oil Company; Don Hanvey Oil Interests, Inc.; David M. Hammer; Mueller Engineering Corporation; Marathon Oil Company; and ARCO Oil and Gas Company.

One commenter who supported the amendment also suggested that the time period be extended to as many as five years if the product prices do not appreciably rise before that time. Due to an increased likelihood of pollution occurring the longer a well is allowed to remain unplugged, the commission rejects extending this time period to five years.

The amendment is adopted under the Texas Natural Resources Code, §§81.052, 85.202, and 91.101, which provides the Railroad Commission of Texas with the authority to adopt and enforce rules relating to the operation, abandonment, and proper plugging of wells.

### §3.14. Plugging.

(a) (No change.)

(b) Plugging report and commencement of operations.

(1) (No change.)

(2) Plugging operations on each dry or inactive well must be commenced within a period of 90 days after drilling or operations have ceased and shall proceed with the due diligence until completed; provided that dry or inactive wells on which drilling or operations ceased on or after January 1, 1986, but before January 1, 1988, must commence such plugging operations within one year of the date on which drilling or operations ceased. For good cause, a reasonable extension of time in which to start the plugging operations may be granted pursuant to the following procedures.

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

(c)-(h) (No change.)

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

Issued in Austin, Texas, on August 18, 1986.

TRD-8608074

Mcck Wallace  
Commissioner  
Railroad Commission  
of Texas

Effective date: September 8, 1986  
Proposal publication date: July 15, 1986  
For further information, please call  
(512) 463-7149.

★ ★ ★

## TITLE 22. EXAMINING BOARDS

### Part XXX. Texas State Board of Examiners of Professional Counselors Chapter 681. Professional Counselors

#### Subchapter J. License and Specialty Renewal

##### ★ 22 TAC §681.204

The Texas State Board of Examiners of Professional Counselors adopts an amendment to §681.204, without changes to the proposed text published in the April 18, 1986, issue of the *Texas Register* (11 Tex-Reg 1805).

The amendment provides that the license of a person who is subject to a formal hearing due to a complaint for ethical or other violations shall not be renewed to practice as a professional counselor until the complaint is resolved.

The amendment provides for the handling of renewals of persons involved in formal license revocation or suspension proceedings. Licenses up for renewal during the hearing process will not be renewed until the licensee is cleared. No fee penalties shall accrue to persons whose licenses are not renewed in a timely manner due to the hearing process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority, subject to the approval of the Texas Board of Health, to adopt rules covering the licensure of professional counselors, and Article 4414b, §1.05, which authorize the Texas Board of Health to adopt rules to implement its statutory duties.

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 August 18, 1986.

TRD-8608054

Robert A. MacLean  
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Health

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## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 49. Oral Health

##### Oral Health Improvement Services Program

##### ★ 25 TAC §§49.1-49.17

The Texas Department of Health adopts new §§49.1-49.17. New §§49.3, 49.4, 49.8, and 49.9 are adopted with changes to the proposed text published in the June 17, 1986, issue of the *Texas Register* (11 Tex-Reg 2796). The rest are adopted without changes and will not be republished.

The new sections provide for more equitable distribution of services because of program standardization.

The new sections cover the purpose; definitions; program priorities; application process; eligibility requirements; denial, modification, suspension, and termination of services; procedure for providing services; providers; emergency selection of providers; payment for services; coordination of benefits and recovery of costs; appeals; confidentiality; gifts and donations; nondiscrimination; technical advisory committee; and income guidelines.

The following is a summary of comments received during the public comment period.

Regarding §49.1, a commenter stated that, except in this section, no mention is made of health education or promotion. This is true; however, the agency does not deem it necessary to describe education and promotion activities. Those activities are permissive, there is no eligibility criteria for participation, and such services do not involve payment to providers.

Regarding §§49.3(b) and (c), 49.4(c)(1) and (3), and 49.9(b), a commenter suggested that all references to the regional dental director should include the phrase "or regional medical director." The agency agrees that in certain situations the references to regional dental director should be followed by the phrase "or in his or her absence the regional medical director." Therefore, the agency changed the language accordingly.

Regarding §49.8, a commenter stated that to her knowledge there are no existing contracts between the Texas Department of Health and dental providers. This is true; however, the agency will execute contracts with providers as required to carry out the provisions of the Texas Oral Health Improvement Act, Texas Civil Statutes, Article 4418g-2.

Regarding §49.9(c), a commenter suggested that there should be a provision by which an eligible person could be approved to receive immediate emergency services in instances when both the regional dental director and the bureau chief are not avail-

able to give verbal approval, such as on weekends or holidays. The agency agrees and changed the language accordingly.

No groups or associations commented on the new sections. Comments made by individuals are addressed in the summary of comments.

The new sections are adopted under the Texas Oral Health Improvement Act, Texas Civil Statutes, Article 4418g-2, §4, which provides the Texas Board of Health with the authority to adopt rules covering an oral health improvement services program.

#### §49.3. Program Priorities.

(a) The provision of all services is subject to the availability of funds.

(b) In order to conform to budgetary limitations, emergency care for persons below age 19 is the first priority of the treatment program. Private providers are bound by the guidelines for participation as set forth in the *State Dental Care Program Manual for Providers of Services*, which lists the emergency dental procedures for which payment will be made. Private providers may provide more comprehensive dental care to persons below age 19 or emergency care to persons age 19 or older only with prior written approval of the regional dental director, or in his or her absence, the regional medical director. More comprehensive dental care may be provided to persons below age 19 or emergency care may be provided to persons age 19 or older by nonprivate providers or directly by the department when the attending dentist or physician believes such care is warranted and when the provision of such services will not preclude eligible individuals under age 19 who need emergency care from receiving services.

(1) The department adopts by reference the department's document entitled *State Dental Care Program Manual for Providers of Services*.

(2) A copy is indexed and filed in the Bureau of Dental Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas, and is available for public inspection during regular business hours.

(c) Occasionally, an individual cannot be treated in a dental office or will require special treatment for aesthetic reasons or to restore mastication. Examples include very young persons with rampant dental caries who must be treated under general anesthesia or children whose front teeth must be extracted and who need partials to prevent serious problems that could be caused by their edentulous appearance. The program allows for such services, subject to budgetary limitations. Approval of such services shall be determined on a case-by-case basis by the bureau chief. The attending dentist or physician shall submit a special handling request form to the regional dental director, or in his or her absence, the regional medical director, which includes a treatment plan, cost estimate of treatment, and a recommendation as to the special dental needs necessi-

tating the request. The regional dental director, or in his or her absence, the regional medical director, will add a recommendation in the appropriate space before forwarding the request to the department for consideration. Payment will not be made for services provided prior to the bureau chief's approval.

(d) Program services are available in every public health region of the state. Program administration is carried out through the department's public health regions. Due to budgetary limitations, each regional dental director establishes the priority areas to be served and the method for serving those areas based on resources and manpower available within the region and the region's demographic data.

#### §49.4. Application Process.

(a) To apply for treatment services, an individual must be referred to the program by a third party nominator who knows the individual's economic condition.

(b) Each individual who applies for treatment services must complete or cause to be completed an application form which will include the following:

(1) patient information, including name, address, birthdate, sex, and race;

(2) a statement from the referring third party nominator that the treatment services are necessary to prevent or reduce the probability of pain, infection, or disease; and

(3) a statement by the individual or the person responsible for the individual's support that services are requested, that the individual is a bona fide resident of Texas, that the family income does not exceed the financial guidelines, that the individual is not eligible for another program providing dental care, and that the individual or the person responsible for the individual's support is financially unable to pay for all or part of the cost of the necessary treatment services.

(c) Each applicant must be preapproved as follows before an individual will be referred to a provider for a dental examination.

(1) For patients who will be referred for treatment to private providers, preapproval is given by the regional dental director, or in his or her absence, the regional medical director.

(2) For patients who will be served by nonprivate providers, preapproval is given by the nonprivate provider's clinic director or his or her designee.

(3) For patients who will be served directly by the department, preapproval is given by the regional dental director, or in his or her absence, the regional medical director, or his or her designee.

(d) The denial of any application will be in writing and will include the reason(s) for such denial. Unless the application is denied because program funds are reduced or curtailed, the individual applying for services has the right to an administrative review and a due process hearing as set out in §49.12 of this title (relating to Appeals).

(e) An individual has the right to re-apply for program coverage at any time when there is a change of situation or condition.

#### §49.8. Providers.

(a) To apply for program participation, a prospective private provider will indicate his or her desire to participate by signing a letter of application and submitting such letter to the bureau office or to a Texas Department of Health regional office. The letter will include the prospective provider's dental or medical license number and Texas vendor identification number.

(1) The regional dental director or the bureau will send the prospective private provider a *State Program Manual for Providers of Services*.

(2) If, after reviewing the *State Program Manual for Providers of Services*, a prospective private provider still wishes to participate in the program and if he or she meets the criteria for participation as set forth in paragraph (3)(A) and (B) of this subsection, a contract will be provided for his or her signature. After the contract is properly executed, the prospective private provider shall be notified in writing that he or she is an approved provider.

(3) Private providers must meet the following criteria in order to participate in the program.

(A) Approved private providers must agree to abide by program rules and regulations, to accept program fees as payment in full, and not to discriminate against patients. Private providers cannot bill recipients or persons legally responsible for recipients for the difference between their regular fees and those paid by the program.

(B) Private providers must be licensed to practice dentistry or medicine in Texas and must be in good standing with the Texas boards of dental or medical examiners. Persons under suspension or probation by their respective licensing boards will not be approved as providers. When such persons have satisfied their conditions of suspension or probation and when all restrictions have been removed by their licensing boards, they may apply to be providers.

(b) By March 1 of each year, nonprivate providers wishing to participate in the program must submit to the bureau a formal request for financial assistance for the subsequent state fiscal year. The request shall include the estimated number of patients to be served, the kinds of services they will receive, and the age categories of the patients to be served. If the nonprivate provider is approved to become or to continue as a program provider, a contract, which includes the scope of work, will be provided to the applying organization or agency for signature. After the contract is properly executed, the nonprivate provider will be notified in writing that it may begin or continue to provide program services. Dentists and/or physicians providing services on behalf of a nonprivate provider must be in good standing with the Texas

State Board of Dental Examiners or the Texas State Board of Medical Examiners and must be licensed to practice dentistry or medicine in Texas.

(c) The department will continue to provide funds to nonprivate dental clinics for state-salaried dental personnel until all such positions are vacated.

(d) Private providers may withdraw from program participation at any time by notifying the department in writing of the desire to do so. Nonprivate providers receiving grants from the department may withdraw from program participation by giving written notice of intent to withdraw at least 30 days prior to the intended withdrawal date. Nonprivate providers receiving assistance in the form of salaries may withdraw from program participation by giving written notice of intent to withdraw at least 90 days prior to the intended withdrawal date.

(e) The program may deny, modify, suspend, or terminate the approval of providers for due cause.

(1) Any provider who submits false or fraudulent claims, who fails to provide and maintain quality services or dentally acceptable standards, whose license is suspended, or who is placed on probation by either the Texas State Board of Dental Examiners or the Texas State Board of Medical Examiners is subject to review and/or administrative sanctions.

(2) An administrative review and a due process hearing are available to any provider for the resolution of conflict between the department and the provider in accordance with §49.12 of this title (relating to Appeals).

(3) The department may not terminate a contract during the pendency of a hearing. The department may withhold payments during the pendency of a hearing, but the department shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(4) Subsection (e)(2) and (3) of this section do not apply if a contract is canceled by the department because of exhaustion of funds, if the contract expires according to its terms, or if the contract is canceled because program services are restricted to conform to budgetary limitations.

#### §49.9. *Emergency Selection of Providers.*

(a) The department may only pay nonapproved providers for emergency care delivered in cases where approved providers are not available or able to provide the emergency care and when delay in providing care would be detrimental to the patient's health. Examples of emergency providers are nonapproved dentists or physicians who provide immediate emergency care when approved providers are not available and nonapproved hospitals or out patient clinics used to provide immediate emergency care which cannot be provided in approved dental offices or clinics.

(b) Nonapproved providers must request authorization to provide immediate emergency services prior to the delivery of services. Such request may be by phone to the regional dental director, or in his or her absence, the regional medical director, who will, after consulting with the bureau chief or his or her designee, approve or disapprove services by phone, to be followed with written confirmation of approval/disapproval. In the event immediate emergency treatment is needed on a non-state workday, a nonapproved provider may provide treatment, with verbal approval to be obtained on the first state workday after services are provided. No payment will be made for services provided before the date verbal approval is given, except in situations when treatment is provided on a non-state workday and the regional dental director, the regional medical director, or the bureau chief cannot be contacted for prior approval.

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 August 18, 1986.

TRD-8608139

Robert A. MacLean  
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Health Services

Effective date: September 9, 1986  
Proposal publication date: June 17, 1986  
For further information, please call  
(512) 458-7236.

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## Chapter 61. Chronic Diseases Kidney Health Care Program Benefits

### ★25 TAC §§61.1, 61.3-61.10

The Texas Department of Health adopts amendments to §§61.1 and 61.3-61.10. Section 61.7 is adopted with changes to the proposed text published in the June 13, 1986, issue of the *Texas Register* (11 Tex-Reg 2701). Sections 61.1, 61.3-61.6, and 61.8-61.10 are adopted without changes and will not be republished.

The amendments provide for a more streamlined, updated and clarified set of procedures concerning the Kidney Health Care Program.

These amendments clarify the drugs covered by the program, streamline the appeals process and the claims process, extend the claims filing deadline for newly approved applicants, provide for residency documentation for parents residing with their adult son/daughter, and generally update and clarify the existing requirements.

Comments were received from the department's Office of General Counsel suggesting that language in §61.7, relating to the

program's appeal process, be changed for clarity and to conform with the department's informal hearing procedures. Changes have been made as suggested.

The amendments are adopted under Texas Civil Statutes, Article 4477-20, §3(13), which provide the Texas Department of Health with the authority to adopt rules to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Texas Kidney Health Care Act.

#### §61.7. *Denial of Application; Modification, Suspension, or Termination of Patient Benefits.*

(a) (No change.)

(b) Procedures for the denial of applications or modification, suspension, or termination of benefits.

(1) Any applicant for program benefits will be notified in writing if their application has been denied. The notification will outline the reasons for denial.

(2) Any recipient of benefits from the program will be notified if their benefits may be modified, suspended, or terminated. Notification will be by certified mail to the most recent address known to the program.

(3) These procedures do not apply to adjustments made by the program in the type of program benefits or the amount of benefits available when such adjustments are necessary to conform to budgetary limitations as provided in §61.3 of this title (relating to Payment of Program Benefits).

(4) Within 30 days after receiving the notice mentioned in this subsection, the applicant/recipient notified or that person's authorized representative must respond to the program's notice with a written response to the program. The response must be by certified mail to the following address: Kidney Health Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Failure to respond will be deemed a waiver of the opportunity to respond to the program and a waiver of the opportunity for a hearing, and the proposed action will become final.

(5) If the applicant/recipient does respond, upon receipt of the applicant's/recipient's response, the program will affirm or reverse its proposed action in writing to the applicant/recipient (by certified mail), giving the reason(s) for the decision.

(c) Program appeals process.

(1) Any applicant/recipient, provider, or facility aggrieved by the program's decision is entitled to appeal the decision through the Texas Department of Health informal hearing procedures, §§1.51-1.55 of this title (relating to Informal Hearing Procedures). The appeal process will be in accordance with the hearing procedures as outlined in paragraph (2) of this subsection. To initiate the appeal process, the applicant/recipient, provider, or facility must notify the department, in writing, that he/she requests a hearing on the decision. The request must be received by the department within 20 days

from the receipt of the program's decision letter. Failure to provide written notice will be deemed a waiver of the opportunity for a hearing and the proposed action will become final. At their option, an applicant/recipient, provider, or facility may choose to appeal the program's decision through the program's informal appeal process as outlined in paragraph (3) of this subsection. When this option is used, an appeal may be a two-step process consisting of an informal appeal panel and, if necessary, an administrative hearing under the department's informal hearing procedures. To initiate the informal appeal panel process, the applicant/recipient, provider, or facility must notify the program, in writing, that he/she desires to appeal a program decision. The request must be received by the program within 30 days from the date of the program's decision letter. If the appellant disagrees with the decision of the panel, he/she may then request an administrative hearing by providing notification as previously outlined.

(2) The hearing will not be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act, but will include the following.

(A)-(G) (No change.)

(3) An informal appeal will consist of a review of the actions taken to date concerning the aggrieved situation. The review will be conducted by a panel consisting of the bureau chief of chronic disease prevention and control, and the director and deputy director of the program or their designated representatives. The panel would have authority to grant exceptions to the rules when extenuating circumstances were involved in the primary reason for the claim or application being rejected/denied. Examples of such extenuating circumstance might include, but are not limited to, emergency illness, extended hospital stays, lost or misdirected mail, disasters, etc. The panel must be unanimous in its decisions before an exception can be granted. The panel's authority is limited to dealing with specific cases involving problems with claims and/or applications and has no authority to create, alter or dictate program or department policy.

(A) The panel will meet as necessary, but not more than once per month.

(B) The panel will review all claims and applications for which an appeal has been requested.

(C) The review will be based primarily on the documentation provided with the request for an appeal, but the party requesting the appeal may appear before the panel, if desired.

(D) Appeals which involve factors that the panel has no authority to deal with will be referred for an administrative hearing.

(E) An appeal which specifically requests an administrative hearing or an appeal of a decision made by the informal appeal panel will be referred for an administrative hearing. An administrative hearing

will be conducted in accordance with the procedures outlined in the department's Informal Hearing Procedures, §1.54 of this title (relating to Conduct of the Hearing).

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 August 19, 1986.

TRD-8608103

Robert A. MacLean  
Deputy Commissioner  
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Health

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For further information, please call  
(512) 465-2654.

## Chapter 73. Laboratories Anthropod-Borne Diseases

### ★25 TAC §73.1

The Texas Department of Health adopts new §73.1, without changes to the proposed text published in the June 17, 1986, issue of the *Texas Register* (11 TexReg 2800).

The new section provides for diagnostic assistance with a disease having chronic manifestations (Lyme disease), such assistance not being previously available from another source, and assistance in a battery of tests for diseases of similar clinical appearance (RMSF and typhus).

The section authorizes the department's laboratory to provide services to detect the presence of *Borrelia burgdorferi*, the spirochete that causes Lyme disease. A panel of arthropod-borne diseases (Lyme disease, Rocky Mountain spotted fever, and typhus fever) will be tested at one time. In addition, the section authorizes the department to charge fees for the testing, depending on the cost of the reagents and personnel time.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4419b-1, §2.02, which authorize the Texas Board of Health to adopt rules concerning the control and prevention of communicable diseases, and Article 4414c, §2, which provides the Texas Board of Health with the authority to charge fees to persons who receive public health services from the department.

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

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TRD-8608057

Robert A. MacLean  
Deputy Commissioner  
Professional Services  
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Health

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Proposal publication date: June 17, 1986  
For further information, please call  
(512) 458-7318.

## Chapter 97. Communicable Diseases Control of Communicable Diseases

### ★25 TAC §97.4

The Texas Department of Health adopts an amendment to §97.4, without changes to the proposed text published in the June 13, 1986, issue of the *Texas Register* (11 TexReg 2704).

The amendment updates the list of communicable diseases of public health concern and deletes diseases for which reporting no longer serves a useful function in protecting the public health.

The amendment adds specific diseases to the list and deletes others.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Communicable Disease Prevention and Control Act, Texas Civil Statutes, Article 4419b-1, §2.02, which provides the Texas Board of Health with the authority to adopt rules concerning a list of reportable diseases.

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 August 18, 1986.

TRD-8608056

Robert A. MacLean  
Deputy Commissioner  
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Health

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Proposal publication date: June 13, 1986  
For further information, please call  
(512) 458-7328.

## Chapter 229. Food and Drug Registration of Manufacturers of Food

### ★25 TAC §229.182

The Texas Department of Health adopts an amendment to §229.182, without changes to the proposed text published in the June 20, 1986, issue of the *Texas Register* (11 TexReg 2873).

The basis for this amendment is to provide reasonable fees for small volume manufacturers of foods.

This amendment establishes two new categories of registration fees for manufac-

turers of food with a gross annual volume of less than \$100,000 per establishment.

There were no comments suggesting either agreement or disagreement with this rule. The Southwestern Ice Association stated that the fees seemed reasonable for small businesses, but questioned the agency's ability to conduct inspections for these reduced fees should funds become available in the future for appropriate levels of inspection and enforcement staff.

The Southwestern Ice Association provided the only comment, and it did not oppose the section.

The amendment is adopted under Texas Civil Statutes, Article 4476-5, §28, as amended by House Bill 1732, 69th Legislature, 1985, which provide the Texas Board of Health with the authority to adopt rules covering fees for the registration of food manufacturers.

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.

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Robert A. MacLean  
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Health

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For further information, please call  
(512) 458-7248.

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## Chapter 289. Occupational Health and Radiation Control Texas Regulations for Control of Radiation

### ★ 25 TAC §289.112

The Texas Department of Health adopts an amendment to §289.112, with changes to the proposed text published in the April 25, 1986, issue of the *Texas Register* (11 TexReg 1907).

The Texas Sunset Commission recommended that the Radiation Control Act, Texas Civil Statutes, Article 4590f, be amended to provide authority for the agency to impose administrative penalties. The 69th Legislature, 1985, through House Bill 2091, amended the Radiation Control Act to include authorization and procedures for imposition of administrative penalties. The law sets out the maximum penalty for each violation, the agency considerations for determination of the amount of penalties, and the procedures for notice, hearing requests, and payment of the penalties. The Texas Sunset Commission has since urged the state agencies for which recommendations had been made to implement the resulting legislative changes as soon as possible.

Section 289.112, which adopts by reference Part 13, entitled "Hearing and Enforcement Procedures," is amended by the addition and revisions of several sections of the rule as follows: Rules concerning procedures for imposition of administrative penalties are stated in 13.9.

Section 13.2, Definitions, has been expanded to include words not previously used in this part, particularly those pertaining to the administrative penalty rules. Clarifying changes have been made to the procedures for licensing actions in 13.3-13.6. Other changes were made in these sections to better define the sequence of events and to make the rules more in line with the Texas Department of Health formal hearing procedures.

The rules in 13.4-13.6 now refer to licenses issued pursuant to specific parts of the *Texas Regulations for Control of Radiation (TRCR)* rather than to sections of the Radiation Control Act. This change clarifies the provisions concerning the environmental analysis for waste processing facilities by referencing Part 44, which describes the generic environmental analysis for Class B waste storage and processing facilities.

Section 13.5, concerning the issuance of waste licenses, has been simplified. The proposed rule now combines the notice provisions of the proposed issuance or renewal of a waste license with notice of the hearing date and place, if requested.

Section 13.8 has been amended to remove unnecessary language. Section 13.9, Administrative Penalties, has been added to meet the provisions of the Act. The penalties are based primarily on the severity of violations and the type of facility (i.e., licensee/registrant or persons not registered or licensed). Other modifying factors for the penalties are also listed.

The previous text of 13.11, Civil and Criminal Sanctions, has been removed. The Radiation Control Act and Part 11 of the *TRCR* state the options of the agency regarding civil and criminal sanctions. Repeating those in this part of the rule is unnecessary.

The effective date stated in §289.112(a) has been changed to October 1, 1986, per staff recommendation. A total of nine comments were received in writing or heard at the hearing on proposed amendments to Part 13 held on May 8, 1986. Some staff comments of an editorial nature were also received. As a result of the comments received, the department has made several minor changes to the proposed rules. The following is a summary of the comments received and the resulting agency responses. Several commenters asked that some of the phrases used in the proposed preamble and the rule be defined or clarified, e.g., "the amount necessary to deter future violations," and "any other matters that justice may require." This terminology is statutory language contained

in Texas Civil Statutes, Article 4590f, and as such, the agency has no authority to change it. The department made no change to the rule as a result of the comment.

Clarification was also requested on the phrase "the possible economic cost to individuals who are requested to comply" from the proposed rule's fiscal note. This terminology is required by the *Texas Register* and as such, the department has no authority to change it and therefore made no change to the rule as a result of the comment.

One commenter thought that rules concerning administrative penalties were not necessary since the statute sets out the criteria to be considered in assessing penalties and does not require rulemaking. The commenter also stated that regulatory guides could be used for expounding on the basic concepts in the law. While the statute does not require rulemaking, the Sunset Commission and the administration of the Texas Department of Health have urged development and implementation of rules regarding the assessment of administrative penalties. The department made no change to the rule as a result of the comment.

Several commenters were concerned that, with the implementation of administrative penalties, the compliance and enforcement philosophy of the department would change toward users of sources of radiation and that the penalties create a mechanism such that substantial abuses are possible without recourse to judicial proceedings. These commenters thought that the administrative penalties were not needed at all or that they should be reduced and imposed equally to all violators of the regulations. Some thought that the present regulations were adequate to punish severe violators through the court system. They asked that the rules be withheld until the agency clearly outlines under what circumstances a fine is imposed and the rights and recourse of the alleged violator. The legislature provided for administrative penalties in the statute, and the agency thinks it is appropriate to have rules which outline a method of implementation for administrative penalties. The enforcement philosophy of the department has not changed. Administrative penalties were proposed to place an economic burden on severe offenders. It is not the intent of the agency to seek penalties for minor violations. The statute provides for mitigation of any administrative penalty. The agency developed the rules to provide a system of checks and balances for implementation of administrative penalties in order to prevent arbitrary assessment. The rules also state the general conditions under which penalties may be imposed but give flexibility to mitigate or adjust those penalties. All licensees and registrants have recourse to judicial review under the statute. The department made no change to the rule as a result of these comments.

Some of the commenters thought that the department would use the administrative penalty system as a method to increase revenue for the radiation control program. All monies collected as a result of the administrative penalties are deposited in the General Revenue Fund, as directed by statute. The department made no change to the rule as a result of the comment.

Several commenters are concerned that inadequate notice of the proposed rule was given to all licensees and registrants. Due to budgetary constraints, the proposed rules were not mailed to all licensees and registrants. The agency met the requirements to publish notification of proposed rules in the *Texas Register*. Copies of the proposed rules were mailed to all individuals on the agency's interested persons mailing list.

Several commenters asked that the administrative penalties not be implemented until revisions and clarifications were made in other parts of the rules. They thought that the vagueness of some of the rules would allow too much latitude on the part of the agency's inspectors and reviewers as to whether a violation has occurred. The agency continues to make an on-going attempt to revise all parts of the rules when necessary. The decision to assess an administrative penalty does not rest with field inspectors or reviewers but is made at a higher level in the organization. The department made no change to the rule as a result of the comment.

One commenter did not approve of the fact that hearing examiners for enforcement action hearings are from the Texas Department of Health. The statutes do not provide for another system of providing hearing examiners from other agencies for these cases. Therefore, the department made no change to the rule as a result of the comment.

One commenter was concerned that the department's enforcement philosophy is based on a punitive system and that no recognition is given to good performance. He also thought that administrative penalties would create negative publicity. While the comments may have merit, the present statute (Texas Civil Statutes, Article 4590f) makes no provision for rewarding "good guys," and provides only for penalizing violators. However, the enforcement procedures do allow the agency to consider previous compliance history as a mitigating factor in penalty considerations. The agency may only address comments that are specific to the proposed rule and are within the authority of the agency to change. The department made no change to the rule as a result of the comment.

Several commenters suggested that the outline for mechanism for requesting a hearing be placed back in the rule rather than the rule referencing the Act. The department agreed, in part, with the suggested change. The department had de-

leted the items in 13.8 that dealt with internal agency procedures only. The agency has modified the previous 13.8(f) and reinserted it in the rule. Copies of the statute and Texas Department of Health formal hearing procedures are available from the agency.

With regard to the specific section of the rule which pertains to assessment of administrative penalties, one commenter asked that the phrase "when the agency determines that monetary penalties are appropriate. . ." be clarified. This terminology is used in an attempt to clarify that the agency will not assess penalties for every violation. *TRCR* 13.9(d)(1) further clarifies this. The department made no change to the rule as a result of the comment.

One commenter suggested that the wording of 13.9(b)(2) be changed to read "previous compliance history" instead of "history of previous violations." The department agreed with the comment and has changed the rule accordingly.

One commenter felt that the description of severity levels of violations was more restrictive and somewhat vague when compared to similar sections of the rules of the U.S. Nuclear Regulatory Commission (NRC) and that the items identified as "Examples of Severity Levels" do not meet the NRC's criteria for establishing severity levels for violations. The criteria set out in the severity levels embody what the Nuclear Regulatory Commission's severity levels contain. The agency expanded the severity levels to include the occupational and/or public health, safety, and the environment. The department made no change to the rule as a result of the comment.

One commenter asked for clarification on the tables describing classes of users and how adjustments to the amounts listed in the tables would be made. Classes of users is defined in *TRCR* 13.9(d)(2), Table I. The wording concerning adjustments allows the agency to adjust the values up or down based upon the factors listed in *TRCR* 13.9(d)(3). The department made no change to the rule as a result of the comments.

One commenter thought that the assessment of penalties should be limited to the period following the date on which the licensee or registrant becomes aware that the practice is a violation. The wording in the proposed rule, "each day a violation continues," was mandated by the legislature and is beyond the agency's authority to change. The department made no change to the rule as a result of the comment.

On the rule appendix containing examples of severity levels, comments were received suggesting wording changes and deletions of duplicative items.

One commenter suggested that examples pertaining to transportation of radioactive material would be duplicating violations

and penalties of the Department of Transportation. The department agreed with the comment and has deleted those examples from the appendix.

One commenter suggested deletion of the items which describe exceeding radiation levels, contamination levels, or release limits specified in a license, since they would be nonuniform in application. The department agreed with the comment and changed the words "a license" to "the rules."

Two commenters were concerned that the Severity I example pertaining to absence or inoperability of a safety system does not take into account circumstances in which the system might be deliberately nonfunctioning, such as during routine maintenance. These types of procedures should be submitted as operating procedures along with the license application. The procedures would then be authorized by license condition and would not be a violation. The department made no change to the rule as a result of the comment.

One commenter suggested that material false statement violations apply only to written or sworn statements. The department agreed with the comment and has changed the word "oral" to "sworn."

Several commenters asked for a wording change in the Severity I example concerning deliberate exposure of individuals. The department agreed with the comments and changed the item to read, "Deliberate exposures of an individual except by or under the supervision of an individual licensed to engage in the healing arts."

One commenter suggested deletion of the example concerning refusal of authorized entry by agency personnel, and several commenters asked that the example on possession of radioactive material without a license be modified. The agency cannot determine the impact of a licensee's/registrant's program on the public health, safety, or the environment unless allowed to inspect that program. The other item has been changed to specify licensable quantities of radioactive material.

Several of the comments concerned disagreement with the categorization of some of the examples because the commenters felt the severity levels were too restrictive. The department disagreed with the comment because the examples were the same or lesser severity level than those categorized by the NRC.

One commenter suggested that the word "unauthorized" be added to the example of violation on disposal, since authorized disposals by licensees are a routine occurrence. The department agreed with the comment and has changed the item to specify unauthorized disposal.

Several commenters asked that the violation pertaining to failure to obtain agency approval before moving to new use or



storage locations be clarified. The department agreed and added the word "appropriate" since the requirements are different between licensees and registrants.

One commenter was concerned that the severity level example regarding fluoroscopy output would preclude the use of a high-level control and suggested that the item be reworded. *TRCA* Part 32 provides for the use of high level controls. The department made no change to the appendix as a result of the comment.

One commenter suggested that the words "due to some lack of diligence on the part of the licensee" be added to the example concerning loss of control of a source of radiation. The department disagreed with the comment because that could be a factor to be taken into consideration when mitigating the violation. The department made no change to the appendix as a result of the comment.

One commenter suggested the deletion of the word "unqualified" from the severity level example regarding the conduct of licensee or registrant activities by an unauthorized or unqualified person, since the term can sometimes be subjective. The agency disagreed with the suggestion because, in some parts of the rules, qualifications are specified. The department made no change to the appendix as a result of the comment.

Two commenters stated that, on the example which described failure to hospitalize patients who have sealed source implants or therapeutic quantities of radioactive material as a Severity III violation, allowance should be made for those with permanent implants and radiopharmaceuticals below 30 millicuries. The department agreed with the comment and clarified the item to read, "quantities of radioactive material in accordance with *TRCA* 41.26(c)..."

Several comments were received on Severity IV and V violations examples that recommended dropping certain items or the entire categories on the basis that they did not warrant a fine. The severity level system is based upon that of the Nuclear Regulatory Commission's. The agency has expanded the system to include the occupational and/or public health, safety, and the environment. The rule allows the agency latitude in assessing administrative penalties and does not a mandate a penalty for every violation. The department made no change to the rule as a result of the comment.

Other comments received from commenters and staff which addressed grammatical and typographical errors were answered. The minor editorial changes as a result of these comments did not affect the substance of the rule.

The following groups or associations made comments on the rule: Hillcrest Baptist Medical Center; Memorial Hospital, Marshall; Texas Radiological Society;

Texas Nuclear; and Texas Low-Level Radioactive Waste Disposal Authority. None of the commenters were against the rules in their entirety. Some of the commenters were opposed to the implementation of certain portions of the rules. Also, questions were raised, concerns expressed, and recommendations made concerning the rules.

The amendment is adopted under Texas Civil Statutes, Article 4590f, §4(d)(3) and §15C, which provide the Texas Department of Health with the authority to formulate, adopt, and promulgate rules which provide for licensing and registration relating to control, transport, and routing of radioactive material within the State of Texas; and assess a civil penalty against a person who violates Texas Civil Statutes, Article 4590f, or a rule or order adopted or license or registration issued under Texas Civil Statutes, Article 4590f.

#### §289.112. Hearing and Enforcement Procedures.

(a) The Texas Department of Health adopts by reference Part 13, Hearing and Enforcement Procedures of the department's document titled *Texas Regulations for Control of Radiation*, as amended in October 1986.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health office, located at 1212 East Anderson Lane, Austin, Texas 78752, and is available for public inspection during regular working hours.

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 August 19, 1986.

TRD-8608104 Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of  
Health

Effective date: October 1, 1986  
Proposal publication date: April 25, 1986  
For further information, please call  
(512) 835-7000.

★ ★ ★

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 5. Funds Management (Fiscal Affairs)

#### Claims Processing—Purchase Vouchers

#### ★34 TAC §5.52

The Comptroller of Public Accounts adopts an amendment to §5.52, without changes

to the proposed text published in the July 25, 1986, issue of the *Texas Register* (11 TexReg 3393).

The amendment clarifies how to reimburse a university revolving fund from state funds. The amendment revises information on vouchers seeking reimbursement to revolving accounts and adds language to clarify information required on other vouchers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4344, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

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 August 20, 1986.

TRD-8608147 Bob Bullock  
Comptroller of Public  
Accounts

Effective date: September 10, 1986  
Proposal publication date: July 25, 1986  
For further information, please call  
(512) 463-4004.

★ ★ ★

#### ★34 TAC §5.53

The Comptroller of Public Accounts adopts an amendment to §5.53, without changes to the proposed text published in the July 25, 1986, issue of the *Texas Register* (11 TexReg 3394).

The amendment clarifies information required on vouchers for the purchase of goods and services between state agencies. The amendment adds a new provision concerning interagency transactions for purchase of goods or services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4344, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

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 August 20, 1986.

TRD-8608148 Bob Bullock  
Comptroller of Public  
Accounts

Effective date: September 10, 1986  
Proposal publication date: July 25, 1986  
For further information, please call  
(512) 463-4004.

★ ★ ★

# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## Part I. Texas Department of Public Safety

### Chapter 19. Breath Alcohol Testing Regulations

#### Breath Alcohol Testing Regulations

★ 37 TAC §§19.1-19.7

The Texas Department of Public Safety adopts amendments to §§19.1, and 19.3-19.7 and new §19.2. The amendment to §19.6 is adopted with changes to the proposed text published in the July 15, 1986, issue of the *Texas Register* (11 TexReg 3243). The rest are adopted without changes and will not be republished.

The amendments and new section clarify in the state courts the intent of these regulations in testimony on contested cases of driving while intoxicated and compliance with legislative changes.

The amendment to §19.1 changes the title and adds and deletes language to comply with the requirement of Texas Civil Statutes, Article 6701i-1 and 6701i-5 as amended by Senate Bill 1, 68th Legislature, 1983, and House Bill 51, 69th Legislature, 1985. Clarification has been made where necessary in response to various motions of discovery in county and district courts.

New §19.2 clarifies the intent and meaning of allied equipment as opposed to certified instrumentation.

Sections 19.2-19.6 are renumbered as §§19.3-19.7.

The amendment to §19.3 changes the title and adds and deletes language to comply with the requirements of Texas Civil Statutes, Article 6701i-1 and 6701i-5 as amended by Senate Bill 1 and House Bill 51, 68th Legislature, 1983, and 69th Legislature, 1985. Subsection (c)(8) is added, subsection (e) is new language, subsections (e)-(g) are changed to (f)-(h), and subsection (i) is added.

The amendment to §19.4 changes the title and adds and deletes language to clarify and reformat. Subsection (c) is removed, subsections (d)-(e) are changed to (c)-(d), and subsections (e)-(f) are added.

The amendment to §19.5 changes the title and adds and deletes language to better define qualifications and responsibilities of technical supervisors. Subsections (a)(5), (b)(3) and (4), and (d) are added.

The amendment to §19.6 is adopted with changes. Upon review, it was determined that subsection (h) is not necessary for the proper administration of the section and is deleted. The amendment adds and deletes language to better define the responsibilities of courses of instruction within the original intention of these regulations. Subsection (e) is new language, subsection (e) is changed to (f), and subsection (g) is added.

The amendment to §19.7 adds, deletes, and expands language to clarify the explanation of the various terms and actions used throughout these regulations. Subsections are alphabetized, which requires renumbering. Subsections (b), (h), and (n) are added to the explanation of terms and actions.

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

The amendments and new section are adopted under Texas Civil Statutes, Article 6701i-5, which authorize the Texas Department of Public Safety to establish rules approving satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct such analysis, and to issue certificates certifying such fact. Breath specimens taken at the request of a peace officer must be taken and analysis made under such conditions as may be prescribed by the Texas Department of Public Safety and by such persons as the Texas Department of Public Safety has certified to be qualified.

#### §19.6. Certification of Courses of Instruction.

(a) Prior to any agency, laboratory, institution, school, or college conducting a course of instruction for operators of breath alcohol testing instruments and allied equipment, it shall submit a course resume and list of instructors to the scientific director for approval. The course of instruction must be approved by the scientific director if participants are to be eligible to apply for operator's initial certification.

(b) The operator course must contain, as a minimum, the subjects, hours of instruction, and laboratory practice set out in §19.4 (a)(1) of this title (relating to Operator Certification). It is strongly recommended that the minimum operator course be 40 hours (including final exam) of pertinent instruction.

(c) (No change.)

(d) Examinations for operator certification after completion of a course will be in accordance with §19.4(a)(2) of this title (relating to Operator Certification), and prior to commencing the course it will be the responsibility of the teaching agency to make arrangements with the office of the scientific director for the administration of such examinations.

(e) Prior to the administration of the examination by the scientific director, it shall be the responsibility of the teaching agency to provide proof that all students attending the course of instruction have been authorized and approved by the technical supervisor responsible for the technical supervision of the operator upon certification. Failure to provide this authorization will delay the administration of the examination and/or certification until such time as proof of authorization can be documented.

(f) Failure to maintain the provisions stated in this section will be cause for with-

drawal of certification of a course of instruction.

(g) Each certified course of instruction shall be coordinated by or under the general direction or supervision of a certified technical supervisor.

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 August 18, 1986.

TRD-8608083

James B. Adams  
Director  
Texas Department of  
Public Safety

Effective date: September 8, 1986  
Proposal publication date: July 15, 1986  
For further information, please call  
(512) 485-2000.

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services

### Chapter 7. Refugee Assistance Program

The Texas Department of Human Services (DHS) adopts the repeal of §§7.901, 7.902, 7.1001-7.1008, 7.1111-7.1117, 7.1201, 7.1401, 7.1901-7.1904, 7.2001-7.2016, 7.2101-7.2103, 7.9601, and 7.9802, and new §§7.101, 7.201-7.213, 7.301-7.307, 7.401-7.405, 7.501, 7.502, and 7.601-7.603, concerning the Refugee Cash Assistance Program (RCA), without changes to the proposed text published in the July 11, 1986, issue of the *Texas Register* (11 TexReg 3206).

The justification for the repeals and new sections is to ensure current program rules that are more consistent with Aid to Families with Dependent Children Program rules and federal regulations.

The repeals and new sections will function by deleting references to the previous Indochinese Refugee Assistance Program (IRAP), revising policies for Refugee Cash Assistance Program eligibility that differ from the IRAP criteria, and making the sections consistent with current DHS program handbook policies and procedures.

No comments were received regarding adoption of the repeals and new sections.

### Background of Refugee Assistance Program

★ 40 TAC §7.901, §7.902

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.



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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608113 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

### Determining Eligibility for Refugee Assistance

★40 TAC §§7.1001-7.1006

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608114 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

### Certification Process

★40 TAC §§7.1111-7.1117

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608115 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

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### Educational Grants

★40 TAC §7.1201

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608116 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

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### Refugee Eligibility

★40 TAC §7.1401

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608117 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

### Refugee Resettlement and Cuban/Haitian Program

★40 TAC §§7.1901-7.1904

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608118 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

### Refugee Resettlement and Cuban/Haitian Entrant Financial and Medical Assistance

★40 TAC §§7.2001-7.2016

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608119 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

### Refugee/Entrant Resettlement Services

★40 TAC §§7.2101-7.2103

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608120 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

### Support Documents

★40 TAC §7.9801, §7.9802

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 19, 1986.

TRD-8608121 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

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## Chapter 7. Refugee Cash Assistance Program

### Subchapter A. Program Purpose and Scope

#### ★40 TAC §7.101

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608122 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

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### Subchapter B. Eligibility Criteria

#### ★40 TAC §§7.201-7.213

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608123 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

## Subchapter C. Eligibility Determination

### ★40 TAC §§7.301-7.307

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608124 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

## Subchapter D. Eligibility for Other Programs

### ★40 TAC §§7.401-7.405

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8607125 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

## Subchapter E. Client Reporting Requirements

### ★40 TAC §7.501, §7.502

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608126

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

## Subchapter F. Penalty Provisions

### ★40 TAC §§7.601-7.603

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on August 19, 1986.

TRD-8608127 Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986  
Proposal publication date: July 11, 1986  
For further information, please call  
(512) 450-3766.

★ ★ ★

## Chapter 48. CCAD Case Management

### ★40 TAC §48.3901

The Texas Department of Human Services (DHS) adopts an amendment to §48.3901, concerning case management, in its community care for aged and disabled chapter, without changes to the proposed text published in the July 4, 1986, issue of the *Texas Register* (11 TexReg 3098).

The amendment clarifies that confidential information about adult protective services cases may not be disclosed, unless the disclosure is necessary to carry out the authority and responsibility of the department as specified in the Human Resources Code, Title 2, Chapter 48.

The amendment results in ensured compliance with confidentiality and disclosure requirements in the Adult Protective Services Program.

No comments were received regarding adoption of the amendment.

The amendment 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 August 19, 1986.

TRD-8608128

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: October 1, 1986

Proposal publication date: July 4, 1986

For further information, please call  
(512) 450-3766.

★ ★ ★

## Chapter 67. Day Care Services Support Documents

### ★40 TAC §67.9801

The Texas Department of Human Services adopts the repeal of §67.9801, without changes to the proposed text published in the June 10, 1986, issue of the *Texas Register* (11 TexReg 2640).

The repeal is justified to delete a reference to an obsolete publication.

The repeal deletes the adoption by reference of the Federal Interagency Day Care Requirements.

No comments were received regarding adoption of the repeal.

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 August 19, 1986.

TRD-8608112

Marlin W. Johnston  
Commissioner  
Texas Department of  
Human Services

Effective date: September 9, 1986

Proposal publication date: June 10, 1986

For further information, please call  
(512) 450-3766.



# 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

**Monday, September 8, 1986, 10 a.m.** The Texas Department of Agriculture will meet in the district office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code §103.001 by John Wallace, Inc. and John Christian Wallace, as petitioned by Don Pepe Farms, Inc.

**Contact:** Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

**Filed:** August 19, 1986, 10:40 a.m.  
TRD-8608089

**Monday, September 8, 1986, 10:30 a.m.** The Texas Department of Agriculture will meet in the district office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code §103.001 by Manuel Cantu, doing business as Green Gold Produce, as petitioned by Raymond Euler.

**Contact:** Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

**Filed:** August 19, 1986, 10:40 a.m.  
TRD-8608090

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## State Ethics Advisory Commission

**Friday, August 29, 1986, 10 a.m.** The State Ethics Advisory Commission will meet in Room 104, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda, the commission will elect a chairperson and vice-chairperson; select an agency liaison and certifying official for the *Texas Register*; approve minutes of the December 14, 1984, meeting; review special session appropriation actions; consider opinion requests and drafts; and set the date for the next meeting.

**Contact:** Patricia I. Russell, 201 East 14th Street, ninth floor, Austin, Texas 78711, (512) 463-5655.

**Filed:** August 20, 1986, 9:43 a.m.  
TRD-8608144

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**Texas Department of Health**

**Friday, September 5, 1986, 10 a.m.** The Ad Hoc Abortion Facility Committee of the Texas Department of Health will meet in Room G-107, 1100 West 49th Street, Austin. According to the agenda, the committee will hold a work session to review public comments and draft regulations for the Texas Abortion Facility Reporting and Licensing Act.

**Contact:** Dr. Juanita Carrell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

**Filed:** August 20, 1986, 1:52 p.m.  
TRD-8608161

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**Texas Department of Highways and Public Transportation**

**Thursday-Friday, August 28-29, 1986, 10 a.m.** The State Highway and Public Transportation Commission of the Texas Department of Highways and Public Transportation will meet on the first floor, Room 101-A, Dewitt C. Greer Building, 11th and Brazos Streets, Austin. According to the agenda, the commission will execute contract awards and routine minute orders; consider presentations from previous public hearing dockets, as necessary; and review staff reports relative to planning and construction programs and projects. The agenda is also available in the second floor office of the minutes clerk, in the Dewitt C. Greer State Highway Building.

**Contact:** Lois Jean Turner, Dewitt C. Greer Building, Room 203, 11th and Brazos Streets, Austin, Texas, (512) 463-8616.

**Filed:** August 20, 1986, 3:16 p.m.  
TRD-8608175

## Texas Housing Agency

**Wednesday, August 27, 1986, 9 a.m.** The Advisory Executive Search Committee for the Texas Housing Agency will meet in the conference room, Suite 700, 411 West 13th Street, Austin. According to the agenda summary, the committee will consider and possibly act on a recommendation to call a special board meeting to select an executive administrator. The committee also will meet in executive session to consider and possibly act on: a development of procedures to select an executive administrator; the Executive Search Committee's progress report; a personnel consultant contract; and a recommendation to consider applications/resumes postmarked by the July 25, 1986, deadline.

**Contact:** Dan A. McNeil, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

**Filed:** August 19, 1986, 4:27 p.m.  
TRD-8608111

**Wednesday, August 27, 1986, 10 a.m.** The Board of Directors for the Texas Housing Agency will meet in Suite 700, 411 West 13th Street, Austin. Items on the agenda include the consideration and possible action on a report from the Programs and Legislation Committee on single family; adjusting Texas' 1986 bond authority for single family mortgage revenue bonds; hear a summary presentation of the quarterly Single Family Program report; view a presentation by the attorney general's office regarding developments financed by the agency; consider and possibly act on a report from the Programs and Legislation Committee on multi-family; hear the summary presentation of the quarterly Multi-Family Program report; consider and possibly act on a report from the Finance and Audit Committee; hear the presentation of quarterly financial reports; consider and possibly act on fiscal year 1987 budget; and consider matters relating to bond issues. The committee also will meet in executive session to hear a report from the Advisory Executive Search Committee.

THE UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D. C. 20535

MEMORANDUM FOR THE ATTORNEY GENERAL  
DATE: 10/15/68

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**Tuesday, September 30, 1986, 10 a.m.** An interim hearing in Docket 5610—Application of General Telephone Company of the Southwest for a rate increase.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** August 20, 1986, 2:38 p.m.  
TRD-8608173

**Tuesday, October 14, 1986, 10 a.m.** A hearing on the merits in Docket 6935—Application of Southwestern Bell Telephone Company to introduce Microlink II-Packet Switching Digital Service.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** August 19, 1986, 3:19 p.m.  
TRD-8608109

**Wednesday, December 10, 1986, 10 a.m.** A hearing on the merits in Docket 6928—Inquiry into the legality of services, practices, and rates of Nueces Electric Cooperative, Inc., relating to switchovers.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** August 20, 1986, 2:38 p.m.  
TRD-8608174

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### **Scurry County Cotton Producers Board**

**Thursday, September 11, 1986, 7 p.m.** The Texas Department of Agriculture, Scurry County Cotton Producers Board will meet at the Chamber of Commerce, 2302 Avenue R, Snyder. According to the agenda summary, the board will swear in new officers, approve the budget, elect officers, and review requests for funding.

**Contact:** Larry Schwarz, P.O. Drawer CC, Snyder, Texas 78549, (915) 573-3558.

**Filed:** August 20, 1986, 1:46 p.m.  
TRD-8608155

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### **Texas Sesquicentennial Commission**

**Wednesday, August 20, 1986, 10 a.m.** The Medallion Subcommittee of the Texas Sesquicentennial Commission held an emergency meeting in Suite 116, 510 South Congress Avenue, Austin. According to the agenda, the subcommittee considered contract negotiations and other related business.

**Contact:** Patrick Terry, P.O. Box 1986, Austin, Texas 78767.

**Filed:** August 19, 1986, 1:09 p.m.  
TRD-8608097

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### **Texas Soybean Producers Board**

**Thursday, September 4, 1986, 11 a.m.** The Texas Department of Agriculture, Texas Soybean Producers Board will meet at the Executive Inn, 3232 West Mockingbird Lane, Dallas. According to the agenda, the board will hear: minutes of the previous meeting; the financial report; a report by the executive secretary; a report on the biennial election; the Texas State Fair booth report; consider the proposed 1986-1987 budget; and discuss old and new business.

**Contact:** Alan Krob, P.O. Box 2182, Dallas, Texas 75221, (800) 558-1305.

**Filed:** August 20, 1986, 1:46 p.m.  
TRD-8608154

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### **Texas Water Commission**

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, and agendas follow.

**Tuesday, September 26, 1986, 10 a.m.** An emergency revised agenda regarding Application 3557A of Whitehead Properties, Inc. for consideration of a motion for rehearing on behalf of W. C. Kile, Jr., et al. The emergency status is necessary inasmuch as the time within which to consider the motion for rehearing will expire on August 31, 1986, and the commission is considering this matter at its next regularly scheduled agenda.

**Contact:** Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** August 20, 1986, 4:14 p.m.  
TRD-8608179

**Wednesday, September 10, 1986, 2 p.m.** A hearing regarding administrative penalties on Solid Waste Registration 31842 of Monier Resources, Inc.; Permit 11283-01 of the City of Anna; and Permit 10584-01 of Memorial Villages Water Authority.

**Contact:** Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** August 20, 1986, 4:14 p.m.  
TRD-8608180

**Wednesday, September 17, 1986, 11 a.m.** Consideration of a report of substantial non-compliance and petition for a commission order for the City of Hamilton, Permit 10492-02.

**Contact:** Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** August 20, 1986, 4:14 p.m.  
TRD-8608181

**Tuesday, September 30, 1986, 3 p.m.** An application by Austin Partners, Inc. for Proposed Permit 02800 to authorize discharge of an average flow of 350,000 gallons per day of treated wastewater from proposed Cottonwood Creek Park Wastewater Treat-

ment Plant, Hays County, Texas, Guadalupe River Basin.

**Contact:** Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** August 20, 1986, 4:13 p.m.  
TRD-8608183

The Office of the Hearings Examiners of the Texas Water Commission will meet in Room 119, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, and agendas follow.

**Tuesday, September 23, 1986, 9 a.m.** A public hearing on an application by the City of Jacksboro for an amendment to Certificate of Adjudication 08-3313.

**Contact:** Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** August 20, 1986, 4:13 p.m.  
TRD-8608182

**Wednesday, October 1, 1986, 9 a.m.** The Uplands Wastewater Company, in care of American Continental Corporation, 2735 East Camelback Road, Phoenix, Arizona 86016, has applied to the Texas Water Commission for Proposed Permit 13274-01 to authorize the disposal by irrigation of treated domestic wastewater effluent at a volume not to exceed an average of 1,416,000 gallons per day. The applicant proposes to construct a wastewater treatment plant to serve residential and commercial/office development. The treated effluent will be used to irrigate 587.8 acres, of which approximately 350 acres will be used for golf courses, the remainder being native grassland. Application rates for the irrigated land shall not exceed 2.7 acre-feet/acre/year.

**Contact:** Marcella Sellers, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** August 20, 1986, 4:12 p.m.  
TRD-8608184

**Tuesday, October 7, 1986, 9 a.m.** The Office of the Hearings Examiner of the Texas Water Commission will meet in Room 215, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, Southland Regional Service Corporation, P.O. Box 201930, Austin, Texas 78720, has applied to the Texas Water Commission for an amendment to Permit 12938-01 to authorize an increase in the discharge of treated domestic wastewater effluent from a volume not to exceed an average flow of 1,300,000 gallons per day to 7,800,000 gallons per day. The proposed amendment would also authorize the permittee to use treated effluent from this facility to irrigate the greenbelt area and unoccupied grass areas within the treatment site. Application rates for the irrigated land shall not exceed 2.7 acre-feet/acre/year.

**Contact:** Douglas Roberts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** August 20, 1986, 4:12 p.m.  
TRD-8608185

## Regional Agencies

### Meetings Filed August 19

**The Alamo Area Council of Governments**, Executive Committee, will meet in Room 420, Atlee B. Ayres Building, San Antonio, on August 27, 1986, at 12:30 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201.

**The Central Texas Council of Governments**, Executive Committee, will meet at 302 East Central, Belton, on August 28, 1986, at noon. Information may be obtained from Walton B. Reedy, P.O. Box 729, Belton, Texas 76513, (817) 939-1803.

**The Edwards Underground Water District**, Board of Directors, will meet in the Clubhouse, Camp Warneke Estates, 371 East Lincoln, New Braunfels, on August 27, 1986, at 9 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's Street, San Antonio, Texas 78215, (512) 222-2204.

**The Golden Crescent Regional Planning Commission**, Board of Directors, will meet in the Americana Room, Interfirst Bank, 1908 North Laurent, Victoria, on August 27, 1986, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

**The Central Appraisal District of Johnson County**, Board of Directors, will meet at 109 North Main, Cleburne, on August 27, 1986, at 7:30 p.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986.

**The Kendall County Appraisal District**, Board of Directors, will meet at 207 East San Antonio Street, Boerne, on August 27, 1986, at 7 p.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

**The Lubbock Regional Mental Health and Mental Retardation Center**, Board of Trustees, met at 3800 Avenue H, Lubbock, on August 25, 1986, at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 763-4213.

**The West Central Texas Council of Governments**, Executive Committee, will meet at 1025 East North 10th Street, Abilene, on August 27, 1986, at 12:45 p.m. and 2 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

TRD-8608091

### Meetings Filed August 20

**The Ark-Tex Council of Governments**, Executive Committee, will meet at the Western Sizzlin' Restaurant, 2424 Ferguson Road, Mt. Pleasant, on August 28, 1986, at 5:30 p.m. Information may be obtained from Susan J. Rice, P.O. Box 5307, Texarkana, Texas 75501, (214) 832-8636.

**The Bexar Appraisal District**, Board of Directors, will meet at 535 South Main, San Antonio, on August 27, 1986, at 3 p.m. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

**The Carson County Appraisal District**, Board of Directors, will meet at 102 Main Street, Panhandle, on August 3, 1986, at 9:15 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068, (806) 537-3569.

**The Eastland County Appraisal District**, Appraisal Review Board, will meet on the second floor, Commissioner's Courtroom, Courthouse, Eastland, on August 28-29, 1986, at 10 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 77448, (817) 629-8597.

**The Education Service Center Region XIV**, Board of Directors, will meet at 1850 Highway 351, Abilene, on August 28, 1986, at 5:30 p.m. Information may be obtained from Taressa Huey, Route 1, P.O. Box 70-A, Abilene, Texas 79601, (915) 676-8201.

**The Lamar County Appraisal District**, Appraisal Review Board, met in emergency session at 1523 Lamar Avenue, Paris, on August 22, 1986, at 4 p.m. Information may be obtained from Rodney Anderson, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785-7822

**The Lampasas County Appraisal District**, Board of Directors, met at 109 East Fifth, Lampasas, on August 25, 1986, at 2 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

**The Lone Star Municipal Power Agency**, met at City Hall, 1212 Avenue M, Huntsville, on August 25, 1986, at 5:30 p.m. Information may be obtained from Cathy Locke, P.O. Box 9960, College Station, Texas 77840, (409) 764-3509.

TRD-8608140

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### Meetings Filed August 21

**The Erath County Appraisal District**, Board of Directors, met in emergency session in the boardroom, 1390 Harbin Drive, Stephenville, on August 22, 1986, at 10 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

**The Central Appraisal District of Johnson County**, Appraisal Review Board, met at 109 North Main, Cleburne, on August 25, 1986, at 9 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986.

**The Lower Rio Grande Valley Development Council**, Board of Directors, will meet at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, on August 28, 1986, at 1:30 p.m. Information may be obtained from Robert A. Chandler, Suite 707, 1701 West Highway 83, McAllen, Texas 78501, (512) 682-3481.

**The North Central Texas Council of Governments**, Executive Board, will meet on the second floor, Centerpoint Two, 616 Six Flags Drive, Arlington, on August 28, 1986, at 12:45 p.m. Information may be obtained from Edwina J. Hicks, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

**The Panhandle Ground Water Conservation District 3**, Board of Directors, met at the district office, 300 South Omohundro, White Deer, on August 25, 1986, at 7 p.m. Information may be obtained from Richard S. Bowers, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

**The Texas Panhandle Mental Health Authority**, Board of Trustees, will meet in the boardroom, 1901 Medi-Park, Amarillo, on August 28, 1986, at 1 p.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

**The Panhandle Regional Planning Commission**, Board of Directors, will meet in the first floor conference room, Southwest Savings Building, 415 West Eighth Street, Amarillo, on August 28, 1986, at 1:30 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381, ext. 17.

TRD-8608187

# 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.

## Texas Department of Agriculture Amendments to Consultant Contract Awards

The Texas Department of Agriculture is amending the terms of the consultant contract awarded to Julie Brody published in the July 25, 1986, issue of the *Texas Register* (11 TexReg 3416). The maximum value of the contract is not to exceed \$41,000, with a beginning date of December 15, 1985, and an ending date of August 31, 1987. This amendment shall be effective September 1, 1986. All other terms of the contract remain the same.

Issued in Austin, Texas, on August 15, 1986

TRD-8608086 Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of Agriculture

Filed: August 19, 1986

For further information, please call (512) 463-7583.

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The Texas Department of Agriculture is amending the terms of the consultant contract awarded to Judy Fleishman published in the June 10, 1986, issue of the *Texas Register* (11 TexReg 2679). The maximum value of the contract is not to exceed \$44,000, with a beginning date of September 1, 1985, and ending date of August 31, 1987. This amendment shall be effective September 1, 1986. All other terms of the contract remain the same.

Issued in Austin, Texas, on August 15, 1986.

TRD-8608087 Dolores Alvarado Hibbs  
Director of Hearings  
Texas Department of Agriculture

Filed: August 19, 1986

For further information, please call (512) 463-7583.

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## Texas Air Control Board Notice of Contested Case Hearing

The examiner has set the hearing to begin at 10:30 a.m., September 16, 1986, at the Texas Air Control Board auditorium, 6330 Highway 290 East, Austin, Texas 78723. Prospective parties to the hearing will be the TACB staff and the company. Any other persons desiring to be made a party to the hearing must specifically apply in writing for party status to Examiner Bill Ehret, TACB, 6300 Highway 290 East, Austin, Texas 78723. No other persons will be admitted as parties unless the request is actually received at the previously listed address by 5 p.m., August 27, 1986. Previous correspondence with the TACB is not effective for this purpose. At the hearing on the merits, only those persons admitted as parties will be permitted to present

evidence and argument and to cross-examine witnesses. Any person who desires to give testimony at the hearing but who does not desire to be a party, may call the Legal Division of the TACB at (512) 451-5711, ext. 350, to determine the names and addresses of all admitted parties. The parties may then be contacted about the possibility of presenting testimony.

Members of the general public who plan to attend the hearing are encouraged to telephone the central office of the TACB in Austin, at (512) 451-5711, ext. 350, a day or two prior to the hearing date in order to confirm the setting since continuances are granted from time to time.

Issued in Austin, Texas, on August 14, 1986.

TRD-8608064 Allen Ell Bell  
Executive Director  
Texas Air Control Board

Filed: August 18, 1986

For further information, please call (512) 451-5711, ext. 354.

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## Texas Commission on Alcohol and Drug Abuse Summary of Public Comments

The Omnibus Budget Reconciliation Act of 1981 requires annual public hearings on the intended use of federal funds allocated under the alcohol, drug abuse and mental health (ADM) block grant. Additionally, the state, through Texas Civil Statutes, Article 6252-13c, mandates that agencies responsible for administering block grant funds must hold public hearings in four locations once every two years as a mechanism for public input on development of the agency's budget request for the next biennium. Consistent with these mandates, the Texas Commission on Alcohol and Drug Abuse conducted public hearings on June 9, 1986, and June 12, 1986.

At these hearings, a preliminary summary of the intended use of funds for federal fiscal year 1987 and relevant appropriations information were provided. Public comments were solicited for use in preparation of the final plans. Written comments were accepted by the commission through June 30, 1986. All written and oral comments have been considered in the preparation of the final fiscal year 1987 intended use report and the commission's legislative appropriations request for the 1988-1989 biennium. A summary of responses to the public comments follows.

Sixty-three individuals or entities submitted either oral or written comments. The majority of these comments (34) addressed the need for additional funds to support new programs. Detoxification services, indigent care, adolescent treatment, prevention services, intervention services, facilities for court commitments, and services for rural areas were specifically mentioned as needing additional



funding. All of these activities are consistent with the intended use report and appropriations request. Several comments expressed support for maintaining or increasing funding to services currently supported by the commission, including prevention, intervention, treatment, regional authorities and the commission's administrative functions. As reflected by the intended use report, it is the commission's intent to maintain the current system of services to the extent possible, given available funds. Additional funds to expand services throughout the continuum of care have been included in the commission's Level 4 legislative appropriations request.

Twenty-seven comments were related to the funding priorities established by the Commission and incorporated into the continuation funding review process for fiscal year 1987. The majority of these comments advocated higher rankings for prevention and intervention services. The service priority rank ordering adopted by the commission is intended to serve as a basis for guiding the agency in implementing anticipated funding cuts. The commission recognizes the value of each of the service types in supporting a coordinated continuum of care. Each service type has been designed to meet the specific needs of a target population in terms of degree or extent of involvement in alcohol and drug abuse or addiction. In ranking these priorities, the commission generally adopted the position that services targeted to those persons having the most chronic problems should be rated above those providing less intensive services or those which serve the general population rather than specific target groups. Although the commission acknowledges that treatment services are generally more expensive than prevention and intervention services, it also considered that some services in the area of prevention have a stronger possibility of garnering financial support from other sources and/or being continued at relatively low cost to local communities. Although the commission will follow the service priority rankings as a general guide for funds distribution, other factors such as performance and compliance with the prevention and women's services set-aside requirements of the ADM block grant will also be considered in the final allocation of funds.

Seventeen comments were received regarding accessibility of drug and alcohol services for the deaf and hearing impaired. Several commenters recommended that the commission budget funds to support interpreter services for deaf or hearing impaired substance abusers in order to facilitate their participation in counseling, DWI education, etc. Other recommendations included captioning educational films and public information materials, conducting special outreach efforts to the deaf and hearing impaired community, and advertising existing teletypewriter numbers to increase awareness and utilization of alcohol and drug services. The commission has budgeted funds for interpreter services for the deaf or hearing impaired in its Level 4 legislative appropriations request for the 1988-1989 biennium. In addition, the commission will be meeting with representatives of the Texas Commission for the Deaf regarding coordination in other areas.

Two comments related to the collection of client fees. The first of these related to the practice of service delivery programs charging higher client fees to those persons residing outside the city or county in which the program is located. With regard to the commission's recent request that treatment service providers actively pursue collection of client fees, a second witness stated that most of the clients served by these programs do not have the resources to pay for services. Most programs traditionally define a catchment area for their service delivery. Furthermore, programs

funded by the commission generally obtain additional operating funds from a variety of other sources, including city and county governments and other local sources. Both of these factors may result in policies of charging higher fees to persons residing outside a particular catchment area. The commission acknowledges that the vast majority of alcohol and drug abuse treatment clients served by its funded programs are unemployed and have no insurance. Although client fees may represent a minimal source of financial support for alcohol and drug services, the commission recognizes this as one of several resources which programs should consider. Most treatment programs funded by the commission have adopted a sliding scale fee schedule. Notwithstanding, it is a provision of the commission's treatment services contract that no client shall be denied services based on inability to pay.

Eight comments related to the state's overall level of funding for substance abuse services, with two witnesses addressing the need for more equity in ADM block grant allocations and funding reductions, five witnesses advocating an increase in appropriations of state funds and one witness suggesting alternative sources of funding such as a dedicated tax. The commission's Level 4 legislative appropriations request for the 1988-1989 biennium will reflect a significant increase in state general revenue funds to expand alcohol and drug abuse services in order to begin impacting the state's rapidly escalating and leading social and economic problem.

The summary of comments and responses pertaining to the alcohol and drug abuse portion of the ADM block grant for fiscal year 1987 and the commission's legislative appropriations request for the 1988-1989 biennium is published in response to Texas Civil Statutes, Article 6252-13c.

Issued in Austin, Texas, on August 12, 1986.

TRD-8608107      Ross Newby  
Executive Director  
Texas Commission on Alcohol and  
Drug Abuse

Filed: August 19, 1986  
For further information, please call (512) 463-5510.

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## Comptroller of Public Accounts Gasoline and Alcohol Mixture Determination of Credits Allowable for October, November, and December 1986

Pursuant to the Tax Code, §153.123, the comptroller of public accounts is required to publish the credit against the gasoline tax allowable for the first sale or use of gasoline and alcohol mixture blended from products produced in a state allowing a reciprocal credit for Texas-produced products.

The comptroller of public accounts has determined that \$.05 per gallon credit for the first sale or use of gasoline and alcohol mixture blended with alcohol produced in Texas or from Texas products will be available for the months of October, November, and December 1986.

The maximum credit allowed to be claimed for the first sale or use in October, November, and December 1986, of a gasoline and alcohol mixture blended from alcohol produced outside Texas and not from Texas-produced products will be \$.03 per gallon if from one of the following states: Alaska, North Dakota, Kansas, Nebraska, North

Carolina, Illinois, Florida, South Dakota, Alabama, Iowa, and Washington.

Based upon the credit allowed by the following states, the maximum allowed by Texas will be Nevada—\$.01 per gallon.

No credit will be allowed for mixtures containing alcohol produced outside the United States, or those states which do not allow credit or exemptions for Texas-produced alcohol.

Inquiries should be directed to Tax Administration Division, Tax Policy Section, Comptroller of Public Accounts, Austin, Texas 78744, or (512) 463-4600, or toll free anywhere in Texas at 1-800-252-5555.

Issued in Austin, Texas, on August 20, 1986

TRD-8808149      Bob Bullock  
Comptroller of Public Accounts

Filed: August 20, 1986  
For further information, please call (512) 463-4004.

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## Texas Department of Corrections Request for Proposals

The Texas Department of Corrections (the department) invites interested persons, partnerships, joint ventures, or corporations to submit proposals regarding entering into a contract with the department to develop, construct, operate, and manage up to four 500-bed pre-release centers within the State of Texas (the facilities). The contracting party will be expected to provide for or arrange for the site selection, site acquisition, facility design, permitting, financing, and construction of all such facilities, each facility to be approved by the department in complete detail.

Sealed proposals shall be submitted in writing to the department at or before 2 p.m., on September 26, 1986, addressed to Alfred D. Hughes, Chairman, Texas Board of Corrections, 515 Congress Avenue, Suite 1800, Austin, Texas 78701.

A copy of the request for proposals may be obtained by contacting J. A. Lynaugh, Deputy Director for Finance, Texas Department of Corrections, P.O. Box 99, Huntsville, Texas 77340, (409) 294-2101.

Upon review of all proposals submitted pursuant to this request for proposals, the department will select the best and most qualified party with whom to negotiate a final definitive contract. Such determination will be solely at the discretion of the department. Once submitted, the proposals may not be withdrawn or modified in any respect. It is anticipated that the department will notify such party of its selection by November 12, 1986. The department reserves the right to reject any or all proposals. The department assumes no responsibility for any costs by any entity submitting a response to this request for proposals nor does submission of any proposal bind the department to select or enter into negotiations with any proposed contractor.

Issued in Huntsville, Texas, on August 15, 1986.

TRD-8808059      James L. Hall  
Assistant General Counsel  
Texas Department of Corrections

Filed: August 18, 1986  
For further information, please call (409) 294-2705.

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## Texas Department of Health Public Hearing

This notice affords an opportunity for public hearing on the following applications for solid waste sites filed with the Texas Department of Health: the City of Fort Worth has filed Application 1664 with the Texas Department of Health for a permit to operate a proposed Type VI municipal solid waste site, for the disposal of wastewater treatment plant sludge only, to be located inside of the city limits of Fort Worth, approximately one mile north of the Village Creek sewage treatment plant, in the southwest quadrant of the intersection of and adjacent to Bedford-Arlington Road and Trammel-Davis Road, in Tarrant County.

The site consists of approximately 156.15 acres of land, and is to daily receive approximately 700 tons of sewage sludge under the regulatory jurisdiction of the Texas Department of Health.

The application is being processed and the final decision will be made by the department pursuant to the provisions of the Texas Solid Waste Disposal Act (Texas Civil Statutes, Article 4477-7), the Texas Department of Health municipal solid waste management regulations, and the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

No public hearing will be held on this application unless a person affected 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, has suffered or will suffer actual injury or economic damage by the granting of the application.

If a hearing is requested by a person affected, notice of such hearing will be provided to the requester and will also be published in a newspaper of general circulation in the area where the site is located at least 30 days prior to the date of such hearing. If no request for a hearing is received within 30 days of the date of publication of the said notice in a newspaper of general circulation, the department will make a decision. If a hearing is requested, it will be conducted, and the final decision will be rendered, in accordance with the applicable rules contained in the department's municipal solid waste management regulations, including all changes in effect as of August 20, 1985.

Requests for a public hearing and/or requests for a copy of the technical summary of the applications prepared by the Bureau of Solid Waste Management shall be submitted in writing to the Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A copy of the complete applications may be reviewed at the Bureau of Solid Waste Management or at the department's Public Health Region 5 headquarters located at 2561 Matlock Road, Arlington, Texas 76014, (817) 460-3032.

Issued in Austin, Texas, on August 14, 1986.

TRD-8808058      Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: August 18, 1986  
For further information, please call (512) 458-7271.

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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 August 11-15, 1986.

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) 463-7905.

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 August 11-15, 1986

Standard Oil Chemical Company, Green Lake, Port Lavaca; industrial solid waste management unit; on a 2,300-acre tract of land owned by Sohio Chemical Company, in Calhoun County adjacent to Highway 185 approximately four miles north of the intersection of Highway 185 and Highway 35 and approximately 15 miles west of Port Lavaca; HW-50143; new permit

Lyondell Petrochemical Company, a Division of Atlantic Richfield Company, Houston; land treatment and disposal demonstration facility; on a 14.6-acre tract of land in Harris County on the south side of Highway 225 east of Allen Genoa and west of Scarborough Street in Houston; HW-50114-01; new permit

Nalco Chemical Company, Sugar Land; solid waste storage and processing facility; on a 30.116-acre tract of land owned by Nalco Chemical Company, just north of U.S. Highway 90-A and the Southern Pacific Railroad crossing and west of Ulrich Street, at 7701 U.S. Highway 90-A in the City of Sugar Land, Fort Bend County; HW-50120-01; new permit

CBB Corporation, Port Arthur; wastewater treatment facilities; approximately one mile north of FM Road 365 and 1.5 miles northeast of the intersection of FM Road 365 and Hillebrandt Bayou in Jefferson County; 13302-01; new permit

Glen C. Anderson, Austin; wastewater treatment facilities; approximately 200 feet north of U.S. Highway 290 and 1.5 miles east of the intersection of U.S. Highway 290 and U.S. Highway 183 in Travis County; 11488-01; renewal

Parkwyck Joint Venture, Houston; wastewater treatment facilities; approximately 2,000 feet north of the intersection of FM Road 518 and County Road 561,

west of the City of Pearland, Brazoria County; 13307-01; new permit

American Norit Company, Inc., Marshall; plant that produces activated carbon from lignite; in the west end of University Avenue on the southwest edge of the City of Marshall, Harrison County; 00703; amendment

Mineral Research and Development Corporation, Freeport; zinc carbonate manufacturing plant; 302 Midway Road in the City of Freeport, Brazoria County; 01878; amendment

City of Eastland, Eastland; wastewater treatment facilities; at the east end of Smith Street in the City of Eastland in Eastland County; 10637-01; renewal

Issued in Austin, Texas, on August 15, 1986.

TRD-8608079 Mary Ann Hefner  
Chief Clerk  
Texas Water Commission

Filed: August 18, 1986  
For further information, please call (512) 463-7898.

### Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to T & N Lone Star Warehouse Company on August 13, 1986, assessing \$5,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Woodward, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 15, 1986.

TRD-8608080 Mary Ann Hefner  
Chief Clerk  
Texas Water Commission

Filed: August 18, 1986  
For further information, please call (512) 463-7898.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to City of Garland on August 14, 1986, assessing \$100,657 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ken Peterson, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 15, 1986.

TRD-8608081 Mary Ann Hefner  
Chief Clerk  
Texas Water Commission

Filed: August 18, 1986  
For further information, please call (512) 463-7898.

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