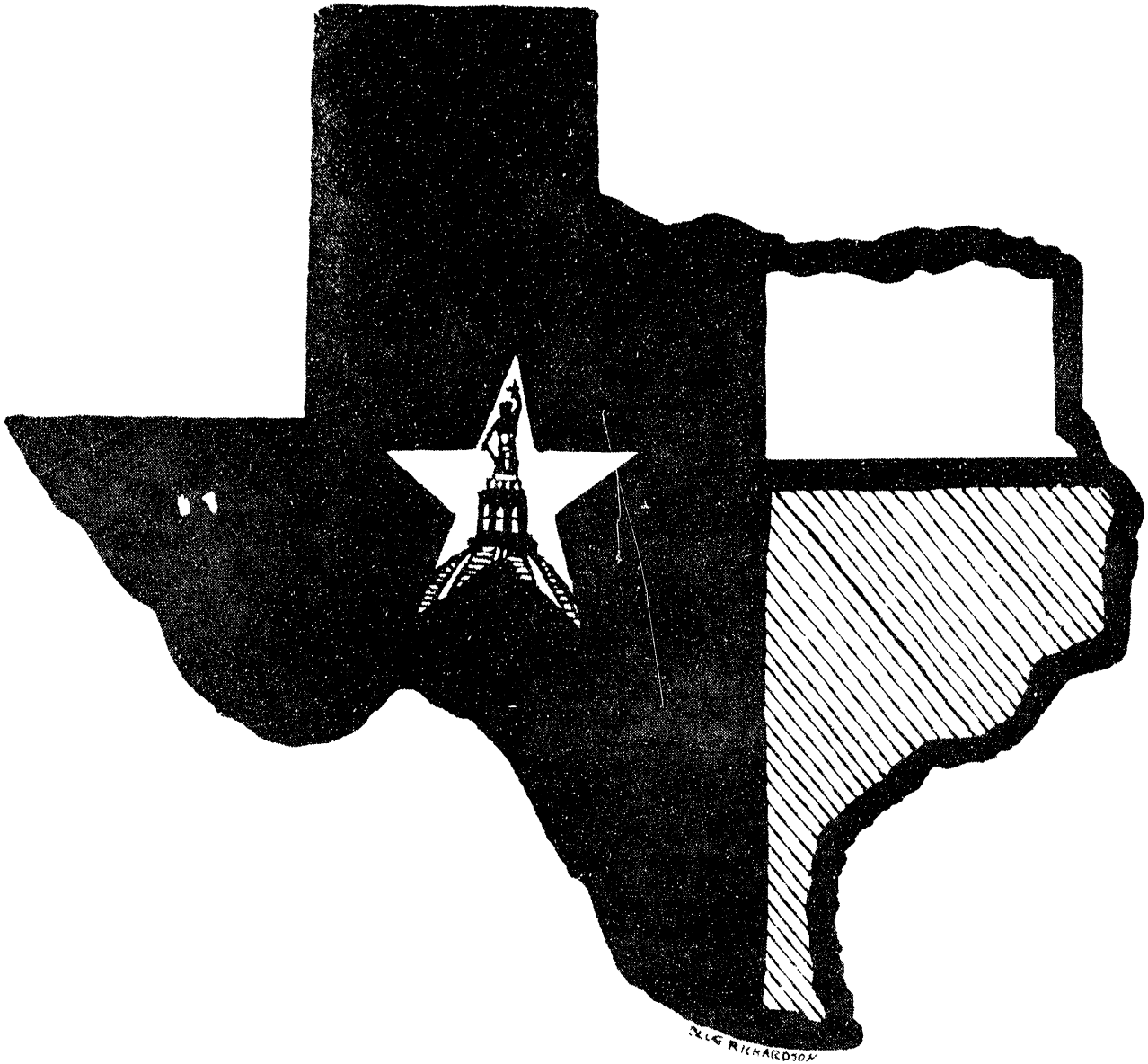


# Texas Register

Volume 12, Number 63, August 21, 1987

Pages 2739-2823



## Highlights

The **Office of the Secretary of State** proposes a new section outlining requirements for annual renewal of certificate of authority to act as an automobile club. Earliest possible date of adoption - September 21, 1987 **page 2766**

The **State Banking Board** proposes amendments concerning purpose and scope of the board's rules and regulations governing bank charter ap-

plications. Earliest possible date of adoption - September 21, 1987 **page 2768**

The **Texas Department of Health** adopts amendments on an emergency basis concerning types of certificates and temporary permits or certificates, eligibility, and examinations. Effective date - August 31, 1987 **page 2746**

**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 1987 with the exception of January 6, September 1, December 1, and December 29 by the Office of the Secretary of State.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person for any purpose whatsoever without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director. The *Register* is published under Texas Civil Statutes, Article 6252-13a. Second class postage is paid at Austin, Texas, and additional entry offices.

POSTMASTER: Please send Form 3579 changes to the *Texas Register*, P.O. Box 13824, Austin, Texas 78711-3824.

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

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

Specific explanations on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

**How To Cite:** Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 TexReg 3."

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

## Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



## Texas Register Publications

a division of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, Texas 78711-3824  
512-463-5561

### Jack M. Rains Secretary of State

Director

Dan Procter

Assistant Director

Dee Wright

Documents Section Supervisor

Cynthia Cooke

Document Editors

Lainie Crease

Karen Olson Muldrow

Document Filing

Roberta Knight

Production Section Supervisor

Craig Howell

Production Editor

Jody Allen

Typographers

Ann Franklin

Victoria Parrish

Circulation/Marketing

Kristine Hopkins Mohajer

Richard Kallus

TAC Editor

Jane Orcutt

Subscriptions—one year (96 regular issues and four index issues), \$80; six months (48 regular issues and two index issues), \$60. Single copies of most issues of the *Texas Register* are available at \$3.00 per copy.

Cover illustration by Blue Richardson, Sam Houston High School, Arlington, as part of the *Texas Register* Student Art Contributions.

---

# Table of Contents

---

## Attorney General

Requests for Opinion  
2744 RQ 1131-1131

Opinions  
2744 JM 762-RQ 317  
2744 JM 763-RQ 1160

## Emergency Rules

State Banking Board  
2745 Miscellaneous  
2745 Procedure for Hearings

Texas Department of Health  
2746 Respiratory Care Practitioner  
Certification  
2746 Milk and Dairy Fees  
2747 Solid Waste Management

Texas Department of Mental Health and  
Mental Retardation  
2761 Other Agencies and the Public  
2761 Protection of Clients and Staff

## Proposed Rules

Office of the Secretary of State  
2766 Automobile Club

State Banking Board  
2768 Miscellaneous  
2768 Procedure for Hearings

Railroad Commission of Texas  
2768 Transportation Division

Board of Vocational Nurse Examiners  
2769 Education

Texas Department of Health  
2769 Respiratory Care Practitioner  
Certification  
2770 Massage Therapists  
2771 Milk and Dairy

Texas Department of Mental Health and  
Mental Retardation  
2772 System Administration  
2779 Client Assessment and Continuity  
Services  
2788 Other Agencies and the Public  
2789 Protection of Clients and Staff  
2791 Client (Patient) Care

Comptroller of Public Accounts  
2793 Tax Administration

## Withdrawn Rules

Texas Department of Health  
2798 Massage Therapy Registration

## Adopted Rules

Office of the Governor  
2799 Criminal Justice Division  
Texas Department of Community Affairs  
2799 Texas Community Development  
Program

Railroad Commission of Texas  
2799 Practice and Procedure

Texas Department of Health  
2800 Abortion Facilities

Texas Department of Mental Health and  
Mental Retardation  
2808 Client (Patient) Care

## Open Meetings

2810 Texas Animal Health Commission  
2810 Texas State Board of Dental Examiners  
2810 East Texas State University  
2810 Employees Retirement System of Texas  
2811 Texas Housing Agency  
2811 Texas Industrial Accident Board  
2811 State Board of Insurance  
2812 Texas Department of Labor and  
Standards  
2812 Texas National Guard Armory Board  
2812 North Texas State University  
2813 Board of Pardons and Paroles  
2813 Texas State Board of Pharmacy  
2813 Texas State Board of Physical Therapy  
Examiners  
2813 Texas State Board of Public  
Accountancy  
2814 Public Utility Commission of Texas  
2814 State Purchasing and General Services  
Commission  
2814 Railroad Commission of Texas  
2815 Board of Regents - Texas A&M University  
System  
2815 University Interscholastic League  
2815 Texas Veterans Memorial Committee  
2815 Texas Water Commission  
2816 Texas Water Development Board  
2816 Regional Agencies

## In Addition

Ark-Tex Council of Governments  
2818 Request for Proposals  
State Banking Board  
2818 Notice of Hearing Cancellation  
Office of Consumer Credit Commissioner  
2819 Notice of Rate Ceiling  
Texas Commission for the Deaf  
2819 Consultant Proposal Request

Texas Education Agency  
2819 - Request for Applications

General Land Office  
2820 - Correction of Error

North Central Texas Council of Governments  
2820 - Request for Proposals

Public Utility Commission of Texas  
2820 - Consultant Contract Award

Texas Water Commission  
2821 - Application for Provisionally-Issued  
Temporary Permits  
2822 - Enforcement Orders  
2822 - Public Hearings

# TAC Titles Affected

## TAC Titles Affected—August

The following is a list of the administrative rules that have been published this month

### TITLE 1 ADMINISTRATION

#### Part I Office of the Governor

1 TAC §3.150	3799
1 TAC §5.167	2566

#### Part IV Office of the Secretary of State

1 TAC §75.1, §75.2	2766
1 TAC §§75.11-75.13	2767
1 TAC §§75.14-75.17	2767
1 TAC §§75.31, 75.32, 75.34	2767
1 TAC §71.41	2565
1 TAC §87.41, §87.43	2534, 2510
1 TAC §§87.47-87.49	2534, 2540

### TITLE 4 AGRICULTURE

#### Part I. Texas Department of Agriculture

4 TAC §9.6	2669
4 TAC §21.31	2669

### TITLE 7 BANKING AND SECURITIES

#### Part I State Finance Commission

7 TAC §3.100	2678
--------------	------

#### Part III. State Banking Board

7 TAC §31.2, §31.3	2745, 2768
7 TAC §§33.2, 33.61, 33.106	2745, 2768

#### Part IV. Texas Savings and Loan Department

7 TAC §51.14	2716
7 TAC §53.3	2716
7 TAC §53.5	2716
7 TAC §53.12	2716
7 TAC §55.3	2717
7 TAC §57.4	2717

#### Part VI. Credit Union Department

7 TAC §91.211	2567
7 TAC §91.402	2567
7 TAC §91.802	2535, 2541
7 TAC §97.112	2567

### TITLE 10. COMMUNITY DEVELOPMENT

#### Part I. Texas Department of Community Affairs

10 TAC §§9.1, 9.2, 9.4-9.7, 9.9, 9.10	2541
10 TAC §9.3	2679
10 TAC §9.8	2799

### TITLE 16 ECONOMIC REGULATION

#### Part I. Railroad Commission of Texas

16 TAC §1.112	2799
16 TAC §3.1	2609
16 TAC §3.8	2610
16 TAC §3.14	2611
16 TAC §3.34	2536
16 TAC §5.623	2768
16 TAC §11.221	2546

### TITLE 19 EDUCATION

#### Part I Texas Higher Education Coordinating Board

19 TAC §25.32	2567
19 TAC §25.33	2547
19 TAC §25.72	2548

### TITLE 22. EXAMINING BOARDS

#### Part IV Texas Cosmetology Commission

22 TAC §83.3	2536
22 TAC §§89.4, 89.10, 89.14, 89.15, 89.20, 89.40, 89.51, 89.52, 89.55, 89.75	2567
22 TAC §§89.28, 89.30, 89.31	2536
22 TAC §89.35	2537

#### Part XII Board of Vocational Nurse Examiners

22 TAC §233.76	2769
----------------	------

#### Part XIV Texas Optometry Board

22 TAC §273.4	2707
---------------	------

#### Part XV Texas State Board of Pharmacy

22 TAC §291.7	2568
22 TAC §291.17	2568
22 TAC §291.39	2570
22 TAC §291.72	2671

#### Part XIX Polygraph Examiners Board

22 TAC §391.1	2636
22 TAC §393.2	2636
22 TAC §395.1, §395.13	2636
22 TAC §397.22	2636
22 TAC §399.1	2637

#### Part XX Texas Board of Private Investigators and Private Security Agencies

22 TAC §435.9	2680
---------------	------

#### Part XXII Texas State Board of Public Accountancy

22 TAC §511.122	2717
22 TAC §513.62	2718

#### Part XXIV State Board of Veterinary Medical Examiners

22 TAC §573.14	2548
22 TAC §573.31	2572
22 TAC §573.32	2548
22 TAC §575.13	2573

#### Part XXV. Structural Pest Control Board

22 TAC §591.21	2611
22 TAC §§593.1-593.21	2613
22 TAC §595.2, §595.3	2613

### TITLE 25 HEALTH SERVICES

#### Part I Texas Department of Health

25 TAC §§61.1-61.4, 61.6-61.10	2613
25 TAC §61.11-61.13	2618
25 TAC §61.11-61.13	2619
25 TAC §61.11-61.14	2619
25 TAC §85.14	2637
25 TAC §123.7, §123.8	2746, 3769
25 TAC §133.21	2620
25 TAC §§139.2, 139.4, 139.13-139.17	2803
25 TAC §§139.21-139.23	2804
25 TAC §139.31, §139.32	2805
25 TAC §§139.41-139.47	2807
25 TAC §§141.2, 141.3, 141.5, 141.6, 141.9, 141.11, 141.15-141.17	2770
25 TAC §141.9	2798
25 TAC §§169.61-169.65	2638
25 TAC §217.81, §217.82	2746, 2771
25 TAC §289.112, §289.115	2707
25 TAC §289.125	2718
25 TAC §§301.21-301.25	2639
25 TAC §325.5	2621, 3748
25 TAC §325.22, §325.25	2621, 3748
25 TAC §325.32	2622, 3749
25 TAC §325.93, §325.94	2623, 3750
25 TAC §325.133, §325.155	2625, 3751
25 TAC §325.222, §325.223	2626, 3752
25 TAC §325.721	2629
25 TAC §§325.912-325.916	2629, 3756

#### Part II Texas Department of Mental Health and Mental Retardation

25 TAC §401.551-401.565	2772
25 TAC §§401.641-401.647, 401.649-401.652	2775
25 TAC §§402.41-402.51	2779
25 TAC §402.71-402.86	2782

25 TAC §§402.241-402.249	2785	34 TAC §3.545	2673
25 TAC §403.74	2761	34 TAC §3.548	2674
25 TAC §§403.551-403.558	2788	34 TAC §3.552	2608
25 TAC §§404.41-404.48	2789	Part III Teacher Retirement System of Texas	
25 TAC §§404.241-404.256	2789	34 TAC §25.9	2556
25 TAC §§404.241-404.256	2763	34 TAC §25.27	2556
25 TAC §§405.51-405.66	2791	34 TAC §25.31	2557
25 TAC §§405.191-405.218	2792	34 TAC §29.32	2557
25 TAC §§405.220, 405.221	2792	34 TAC §31.12	2558
25 TAC §§405.751-405.763	2793	34 TAC §41.1	2558
25 TAC §§405.821-405.828	2808	34 TAC §41.5	2560
25 TAC §§405.821-405.835	2808	34 TAC §41.7	2560
		34 TAC §81.3	2560
TITLE 28 INSURANCE		34 TAC §81.5	2561
Part I State Board of Insurance		34 TAC §81.7	2562
28 TAC §5.2002	2680	Part VII State Property Tax Board	
28 TAC §21.705	2706	34 TAC §153.1	2668, 2674
TITLE 31 NATURAL RESOURCES AND CONSERVATION		Part XI Texas Juvenile Probation Commission	
Part I General Land Office		34 TAC §341.13	2708
31 TAC §§4.161-4.165	2549	TITLE 37 PUBLIC SAFETY AND CORRECTIONS	
31 TAC §§4.161-4.166	2549	37 TAC §81.121	2577
Part II Texas Parks and Wildlife Department		Part XI Texas Juvenile Probation Commission	
31 TAC §53.8, §53.10	2719	37 TAC §341.13	2706
31 TAC §65.33, §65.63	2681	TITLE 40 SOCIAL SERVICES AND ASSISTANCE	
31 TAC §§65.190-65.194, 65.196-65.198, 65.201, 65.202, 65.208, 65.210-65.201, 65.202, 65.208, 65.210-65.212, 65.215, 65.218-65.220, 65.222, 65.224-65.226, 65.229	2719	Part I. Texas Department of Human Services	
31 TAC §65.261	2681	40 TAC §§12.201-12.214	2643
31 TAC §§65.311-65.313	2682	40 TAC §§12.301-12.315	2643
31 TAC §§65.701-65.707	2573	40 TAC §§12.401-12.415	2643
31 TAC §65.701, §65.704	2634	40 TAC §14.1	2675
Part III Texas Air Control Board		40 TAC §14.204, §14.205	2676
31 TAC §101.1	2550	40 TAC §16.1101	2721
31 TAC §§115.162-115.164	2551	40 TAC §16.1504, §16.1507	2723
31 TAC §§115.281-115.285	2552	40 TAC §16.1505, §16.1506	2723
31 TAC §§116.3, 116.7, 116.10	2575	40 TAC §16.1506	2724
31 TAC §§118.1-118.6	2639	40 TAC §16.1508	2724
31 TAC §118.7	2577	40 TAC §16.3011	2724
Part IX. Texas Water Commission		40 TAC §16.3012, §16.3014	2724
31 TAC §303.71	2683	40 TAC §27.2504	2725
31 TAC §§303.71-303.73	2684	40 TAC §27.2505	2725
31 TAC §§325.1, 325.4, 325.6, 325.6, 325.7, 325.9, 325.14	2554	40 TAC §27.2506	2725
31 TAC §335.28	2634	40 TAC §27.2507	2726
31 TAC §335.35	2720	40 TAC §29.606	2676
Part X Texas Water Development Board		40 TAC §29.1112	2577
31 TAC §363.2	2671	40 TAC §29.1125	2578
31 TAC §363.38		40 TAC §47.6901	2565, 2708
31 TAC §363.72	2672	40 TAC §85.1801	2685
31 TAC §367.23	2641	Part III. Texas Commission on Alcohol and Drug Abuse	
TITLE 34. PUBLIC FINANCE		40 TAC §§151.11-151.17, 151.21, 151.22	2711
Part I. Comptroller of Public Accounts		40 TAC §§151.41-151.50	2714
34 TAC §3.175	2793	40 TAC §§151.41-151.48	2714
34 TAC §3.185	2794	40 TAC §§153.4, 153.35-153.38, 153.41	2578
34 TAC §3.191	2795	40 TAC §155.26	2578
34 TAC §3.293	2642	Part VI. Texas Commission on Human Rights	
34 TAC §3.295	2537	40 TAC §327.12	2563
34 TAC §3.299	2795	TITLE 43. TRANSPORTATION	
34 TAC §3.328	2642	Part I. State Department of Highways and Public Transportation	
34 TAC §3.410	2796	43 TAC §§25.801-25.809	2538, 2564
34 TAC §3.411	2796		
34 TAC §3.544	2672		

# Attorney

## General

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

### Requests for Opinion

**RQ-1181.** Request from W. O. Shultz, II, General Counsel, The University of Texas System, Austin; Ted J. Hajovsky, Jr., General Counsel, The Texas A&M University System, College Station; and Pat Campbell, General Counsel, Texas Tech University, Lubbock, concerning whether the Open Records Act, Texas Civil Statutes, Article 6251-17a, §3(a)(14), prohibits a university from disclosing the names of students whose degrees have been rescinded or surrendered.

TRD-8706716



**RQ-1182.** Request from John A. Fairman, Director, Harris County Health Facilities Development Corporation, Houston, concerning whether meetings of the Harris County Health Facilities Development Corporation are subject to the Open Meetings Act, Texas Civil Statutes, Article 6252-17.

TRD-8706717



**RQ-1183.** Request from John H. Ellen, Jr., Public Information Officer, Odessa

Police Department, Odessa, concerning whether the Open Records Act, Texas Civil Statutes, Article 6252-17a, requires disclosure of certain information in peace officer accident reports.

TRD-8706718



**RQ-1184.** Request from John C. West, Jr., General Counsel, Texas Department of Public Safety, Austin, concerning whether the Open Records Act, Texas Civil Statutes, Article 6252-17a, requires disclosure of intoxilyzer cards and logs maintained by the Texas Department of Public Safety.

TRD-8706719



### Opinions

**JM-762 (RQ-812).** Request from Don R. Stiles, Executive Director, Adult Probation Commission, Austin, concerning the constitutional validity of electronic monitoring of probationers.

**Summary of Opinion.** The employment of electronic monitoring devices as a condition

of probation does not violate a constitutionally protected interest of a probationer or a third person residing in the probationer's home, provided the probationer may be subjected to reasonable limitations on his freedom of movement and associations. The attachment of electronic monitoring devices to either a probationer's body or to a telephone in the probationer's home does not violate a constitutionally protected interest of the probationer or a third person residing in the probationer's home.

TRD-8706720



**JM-763 (RQ-1160).** Request from Gary A. Goff, Hockley County Attorney, Levelland, concerning whether a county attorney who is appointed to serve as a special prosecutor for another county may be paid for his services.

**Summary of Opinion.** The Code of Criminal Procedure, Article 2.07(b), prohibits Hockley County from paying the county attorney of Terry County for his service as a special prosecutor pursuant to the Code of Criminal Procedure, Article 2.07(a).

TRD-8706721



# Emergency Rules

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

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

## TITLE 7. BANKING AND SECURITIES

### Part III. State Banking Board

#### Chapter 31. Miscellaneous

##### ★7 TAC §31.2, §31.3

The State Banking Board adopts on an emergency basis amendments to §31.2 and §31.3, concerning purpose and scope. The amendments extend the purpose and scope of the board's rules to include applications for trust company charters in addition to state bank charter applications. Emergency adoption of the amendments is necessary to implement the chartering of trust companies pursuant to the Texas Banking Code, Chapter XI, which became effective May 25, 1987, immediately upon enactment of Senate Bill 916. Implementation of chartering of trust companies under the new statute will afford greater protection of the general public through more detailed review of applicants for charters to engage in the trust business.

The amendments are adopted on an emergency basis under the Texas Banking Code, Articles 342-115 and 342-1106, which provides the State Banking Board with the authority to promulgate and adopt such rules of procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications.

**§31.2. Purpose.** The purpose of this part [chapter] is to provide for a simple and efficient system of procedure before the board to insure uniform standards of practice and a fair and expeditious determination of causes. This part [chapter] shall be liberally construed with a view toward [towards] the purpose for which it was adopted.

**§31.3. Scope.** This part [chapter] shall govern the procedure for the institution, conduct, and determination of all contested cases before the board, **including applications for trust company charters**. It shall not be construed [so as] to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the board or the substantive rights of any person.

Issued in Austin, Texas, on August 10, 1987

TRD-8706722      Jorge A. Gutierrez  
                                 General Counsel  
                                 State Banking Board

Effective date: August 13, 1987  
Expiration date: December 11, 1987  
For further information, please call  
(512) 479-1200.



#### Chapter 33. Procedure for Hearings

##### ★7 TAC §§33.2, 33.61, 33.106

The State Banking Board adopts on an emergency basis amendments to §§33.2, 33.61, and 33.106, concerning form, procedure, and notice of hearing. The amendments clarify the applicability of the board's procedural rules to include applications for trust company charters, as well as applications for state bank charters. Emergency adoption of the amendments is necessary to implement the chartering of trust companies pursuant to the Texas Banking Code, Chapter XI, which became effective May 25, 1987, immediately upon enactment of Senate Bill 916. Implementation of the new statute's chartering provisions will result in greater protection of the general public through closer scrutiny of applicants for charters to engage in the trust business.

The amendments are adopted on an emergency basis under the Texas Banking Code, Articles 342-115 and 342-1106, which provides the State Banking Board with the authority to promulgate and adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications.

##### **§33.2. Form.**

(a) (No change.)

(b) When articles of association for a new bank or trust company are presented to the state banking commissioner, such articles shall be accompanied by an application which conforms to the Texas Banking Code, Chapter III, Article 5B, and states the name of the proposed state bank or trust company, proposed location, powers, and capital structure. There shall also be submitted with the application such additional information as may be required by the application form itself. The articles of association, applications, and all statements of fact tendered to the commissioner shall be properly verified under oath.

(c) In connection with any application for charter, the term "community" shall be considered to mean that geographical area from which the proposed bank or trust company will

draw a majority of its business [the loans and deposits].

(d) (No change.)

**§33.61. Procedure.** A bank or trust company may not change its domicile without prior approval from the State Banking Board in accordance with the Texas Banking Code, Chapter III, Article 14. An application to change domicile shall be in writing and be filed with the banking commissioner. The application shall state the exact proposed new location and shall be supported with statements, exhibits, maps, and other data, properly verified under oath. The application shall also include a statement regarding the estimated cost of the new facility. Each application for a domicile change shall be filed, set for hearing, have notice given, and be ruled upon in the same manner as provided for new charter applications.

##### **§33.106. Notice of Hearing.**

(a) Within seven days after official filing of an application, the commissioner shall mail notice of such application and hearing date to all state and national banks within the proposed community or any adjacent or adjoining area that may be affected by the proposed bank. **In the case of trust company charter applications, the commissioner shall mail notice to all trust companies within the county in which the applicant proposes to locate.**

(b) The commissioner shall forward a public notice of hearing to the applicant, or his agent, who shall cause same to be published in a newspaper of general circulation in the county where the proposed bank or trust company is to be located. The applicant shall cause the notice of hearing to be published on a date not less than 30 days before the date of the hearing.

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

Issued in Austin, Texas, on August 10, 1987.

TRD-8706723      Jorge A. Gutierrez  
                                 General Counsel  
                                 State Banking Board

Effective date: August 13, 1987  
Expiration date: December 11, 1987  
For further information, please call  
(512) 479-1200.





# TITLE 25. HEALTH SERVICES

## Part I. Texas Department of Health

### Chapter 123. Respiratory Care Practitioner Certification

#### ★ 25 TAC §123.7, §123.8

The Texas Department of Health adopts on an emergency basis amendments to §123.7 and §123.8, concerning types of certificates and temporary permits or temporary certificates and applicant eligibility; and examinations.

The emergency adoption updates the examination standards and procedures and the eligibility requirements for a renewable certificate as a respiratory care practitioner. The amendments authorize the department to issue a renewable certificate to those who passed the examination, but did not meet the education requirements. The amendments also allow an additional examination opportunity for temporary certificate holders in November 1987, provided an examination application is postmarked by September 1, 1987, to insure this additional examination opportunity. Additionally, the passing score of 60 is extended from August 31, 1987, to December 31, 1987. Temporary certificate holders who have not passed the examination may take an examination by December 31, 1987. These persons will have to pay an examination fee of \$60 or a reexamination fee of \$40. Persons who have taken and passed an examination since September 1, 1987, are not required to be reexamined.

The amendments are adopted on an emergency basis to meet the requirements of House Bill 97, 70th Legislature, 1987. House Bill 97 states that the Board of Health shall issue a certificate to practice respiratory care to a person who holds a temporary certificate if, not later than September 1, 1987, the person meets the examination requirements established by the board. In order for the board to adopt rules covering the examination requirements, effective September 1, 1987, the board is adopting these sections on an emergency basis.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 6252-13a, §5(d), which provide the Texas Board of Health with the authority to adopt rules on an emergency basis; Texas Civil Statutes, Article 4512i, §3 and §15, which provide the Texas Board of Health with the authority to establish the minimum requirements for certification as a respiratory care practitioner; and House Bill 97, 70th Legislature, 1987, which provides the Texas Department of Health with the authority to issue a certificate to practice respiratory care to a holder of a temporary certificate who meets the examination requirements by September 1, 1987.

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

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

(d) Applicant eligibility.

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

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

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

(D) has completed the education requirements as set out in §123.6 of this title (relating to Application Requirements and Procedures) and who has passed the examination as set out in §123.8 of this title (relating to Examination); or [.]

(E) holds a temporary certificate and who has applied for the examination (as set out in §123.8 of this title (relating to Examination)) by September 1, 1987, and who has passed the examination during the period September 1, 1985, through December 31, 1987.

(4)-(6) (No change.)

#### §123.8. Examination.

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

(d) Standards of acceptable performance. For examinations administered on and after December 31, 1987 [September 1, 1987], the cut-score determined by the NBRC at the time of examination or reexamination shall be the cut-score utilized by the department to determine pass or fail performance. For examinations administered during the [transition] period, September 1, 1985, through December 31, 1987 [August 31, 1987], the cut-score utilized by the department to determine pass or fail performance shall be 60.

(e)-(h) (No change.)

Issued in Austin, Texas, on August 13, 1987.

TRD-8706794

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

Effective date: August 31, 1987

Expiration date: December 29, 1987

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



### Chapter 217. Milk and Dairy Fees

#### ★ 25 TAC §217.81, §217.82

The Texas Department of Health adopts on an emergency basis amendments to §217.81 and §217.82, concerning milk and milk product fees and frozen dessert fees. The amendment to §217.81 expands the title of the section to include milk and milk products fees; specifies time periods for payment of fees; and removes milk or

milk products processed in Texas processing plants which are not offered for sale within Texas from consideration for milk or milk product inspection fees. The amendment to §217.82 removes the \$100 per month inspection fee for out-of-state manufacturers of frozen desserts who offer their product for sale within the State of Texas; requires that all frozen desserts manufactured by frozen dessert manufacturing plants located in the State of Texas, and intended for sale within the State of Texas, shall be assessed a \$.01 per hundredweight inspection fee; and allows the department to fix time periods for collecting fees. These amendments also are being proposed for permanent adoption in this issue of the *Texas Register*.

The amendments are adopted on an emergency basis in order to meet the legislative requirements of House Bill 1179, 70th Legislature, 1987, which becomes effective on August 31, 1987. House Bill 1179 changes the requirements concerning fees collected by the department for milk, milk products, and frozen desserts, and requires the department to adopt rules to implement the changes. Since the bill becomes effective on August 31, 1987, the department is adopting the amendments on an emergency basis, to become effective on August 31, 1987.

The amendments are adopted under Texas Civil Statutes, Article 6252-13a, §5, which provides the Board of Health with the authority to adopt emergency rules; Texas Civil Statutes, Article 165-3, §2A, which provide the board with the authority to adopt rules concerning milk and milk products; Texas Civil Statutes, Article 4476-2a, §8, which provide the board with the authority to adopt rules concerning frozen desserts; and House Bill 1179, 70th Legislature, 1987.

#### §217.81. Milk and Milk Product Fees.

(a) Purpose. The purpose of this section is to provide for the uniform collection of fees covering milk and milk products. Included in this section are requirements covering the issuance and revocation of permits, the prescribing of fees for permits and inspections, and the availability of hearing procedures in the event of proposed revocation of permits.

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

(e) Inspections fees.

(1) All milk or milk products processed, manufactured, or bottled by milk plants located in the State of Texas and offered for sale within the State of Texas shall be assessed a \$.01 per hundredweight inspectional fee. This fee shall be assessed on a monthly, quarterly, semi-annual, or annual basis [and shall be computed by the Texas Department of Health using official United States Department of Agriculture/Milk Market Administrator's monthly accounting figures for each plant]. The milk plants [not regulated by the USDA/Milk Market Administrator] shall submit monthly production

data to the Texas Department of Health no later than 15 days after the end of each reporting period as designated by the department [month] accompanied by the remittance fee required by this subsection. These reports shall be maintained by the Texas Department of Health for a five-year period. Also, each milk plant is required to furnish, upon request from the department, production records for the preceding three years for auditing purposes. This fee shall be considered delinquent if it is not received by the Texas Department of Health 30 days after the end of the reporting period designated by the department [month].

(2) All milk or milk products processed, manufactured, or bottled by milk plants located outside the legal boundaries of the State of Texas that export milk into the State of Texas for sale or distribution shall be assessed a \$.01 per hundredweight inspectional fee [or \$100.00 per month, whichever is greater]. Also, the actual cost of analyzing samples of milk and milk products shall be assessed these out-of-state milk plants [that qualify for the minimum \$100 per month inspectional fee]. This fee shall be assessed on a monthly, quarterly, semi-annual, or annual basis [and shall be computed by the Texas Department of Health using official United States Department of Agriculture/Milk Market Administrator's monthly accounting figures for each plant]. The milk plants [not regulated by the USDA/Milk Market Administrator] shall submit monthly production data to the Texas Department of Health no later than 15 days after the end of each reporting period as designated by the department [month] accompanied by the required remittance fee. These reports shall be maintained by the Texas Department of Health for a five-year period. Also, each plant will be required to furnish, upon request, production records for the preceding three years for auditing purposes. This fee shall be considered delinquent if it is not received by the Texas Department of Health thirty days after the end of the reporting period designated by the department [month].

(f) (No change.)

§217.82. *Frozen Dessert Fees.*

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

(e) Inspectional fees. All frozen desserts manufactured by frozen dessert manufacturing plants located in the State of Texas and intended for sale within the State of Texas shall be assessed a \$.01 per hundredweight inspectional fee. This fee shall be assessed on an a monthly, quarterly, semi-annual, or annual basis. These manufacturers shall submit monthly production data to the Texas Department of Health no later than 15 days after the end of each reporting period designated by the department [month] accompanied by the required remittance fee. These reports shall be maintained by the Texas Department of Health for a five-year period. Also, each plant will be required to furnish, upon request, production records

for the preceding three years for auditing purposes. This fee shall be considered delinquent if it is not received by the Texas Department of Health (30) days after the end of the reporting period designated by the department [month]. All frozen desserts manufactured by frozen desserts manufacturing plants located outside the legal boundaries of the State of Texas that export frozen desserts into the State of Texas for sale or distribution shall be assessed a \$.01 per hundredweight inspectional fee [or \$100 per month, whichever is greater]. Also, the actual cost of laboratory analysis of frozen desserts shall be assessed to out-of-state plants [that qualify for the minimum \$100 per month inspectional fee]. This fee shall be assessed on a monthly, quarterly, semi-annual, or annual basis. These manufacturers shall submit monthly production data to the Texas Department of Health no later than 15 days after the end of each reporting period designated by the department [month] accompanied by the required remittance fee. These reports shall be maintained by the Texas Department of Health for a five-year period. Also, each plant will be required to furnish, upon request, production records for the preceding three years for auditing purposes. This fee shall be considered delinquent if it is not received by the Texas Department of Health 30 days after the end of the reporting period designated by the department [month].

(f) Revocation of permits. The Texas Department of Health may revoke a permit if the permittee is delinquent in the remittance of either the annual permit fee, the [monthly] inspectional fee, or the laboratory analysis fee as is required in subsection (d) and subsection (e) of this section. The procedure for the revocation of a permit shall be governed by Texas Department of Health rules for a contested case hearing in 25 TAC §§1.21-1.32 and by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. Prior to making a final decision denying application for a permit or revoking a permit, the department shall give the applicant or permittee an opportunity for a hearing.

Issued in Austin, Texas, on August 13, 1987.

TRD-8706793

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

Effective date: August 31, 1987

Expiration date: December 29, 1987

For further information, please call  
(512) 458-7281.

## Chapter 325. Solid Waste Management

The Texas Department of Health adopts on an emergency basis amendments to

§§325.5, 325.22, 325.32, 325.133, 325.222, and 325.223, concerning definition of terms and abbreviations; storage requirements; collection and transportation requirements; §325.133 concerning collection and transportation requirements; §325.222 concerning enforcement policy; 325.223 concerning administrative penalty determination, respectively; and new §§325.25, 325.155, and 325.912-325.916, concerning stationary compactor permits; rubbish and/or waste in enclosed containers or enclosed vehicles in Type IV landfills; special permit application for stationary compactor; special permit application for transporter route; special permit application for municipal route; establishment data sheet; and §325.916 concerning transporter trip ticket; respectively.

These amendments and new sections are adopted on an emergency basis in accord with the provisions in Senate Bill 1383, Acts of the 70th Legislature, 1987, regular session. The bill requires the Texas Department of Health to enact regulations which apply to Type IV municipal solid waste landfills. Type IV landfills are only authorized to accept semi-inert materials such as brush and construction/demolition waste and rubbish. Many Type IV landfill operators have accepted types of waste which are not authorized-including household garbage. Generally, these rules increase the restrictions on Type IV landfills, in an effort to prevent putrescible waste from being disposed in these facilities. Specifically, the amendment to §325.5 defines the term "putrescible waste"; the amendment to §325.22 provides for a special permit to be issued to each stationary compactor unit which receives waste that is to be deposited in Type IV landfills; the amendment to §325.32 provides for special permits to be secured by a waste collector for any collection route and each closed collection vehicle if the waste collector utilizes a closed vehicle to deliver waste to a Type IV landfill; the amendment to §325.133 removes the existing controls intended to prevent putrescible wastes from entering Type IV landfills and references the new and additional requirements being added elsewhere in the rules; the amendment to §325.222 adds a description of the penalty which may be assessed against waste transporters or Type IV landfill operators who violate rule provisions; and the amendment to §325.223 adds new violation descriptions and possible penalties, and restructures existing ratings of the seriousness of violations, as affected by the new rule provisions.

New §325.25 contains provisions related to the process which must be followed when application is made to permit a stationary compactor which receives waste that is to be deposited in a Type IV landfill. New §325.155 contains provisions with which Type IV landfill operators must comply if they receive waste within closed trucks or containers, including par-

participation in funding a department inspector, allowing entry only to haulers who are permitted or who use open trucks, allowing entry of closed vehicles or containers only when a department inspector is on-site, and collection of a trip ticket from the hauler of each load arriving on-site in an enclosed container or vehicle. New §325.912 is a form for making application to permit a stationary compactor. New §325.913 is a form for making application to permit a transporter's route. New §325.914 is a form for making application to permit a collection route by a municipality. New §325.915 is a data form which may be utilized for establishments that have a stationary compactor, to establish that the compactor does not receive wastes that are prohibited from entering Type IV landfills. New §325.915 is a trip ticket form to be utilized for each load of waste that a hauler brings to a Type IV landfill in a closed container or truck.

The department is required by Texas Civil Statutes, Article 4477-7, to adopt rules to implement the requirements of Senate Bill 1383. Since Senate Bill 1383 becomes effective on September 1, 1987, the department is adopting these amendments and new rules on an emergency basis to become effective on September 1, 1987.

The department has already proposed these amendments for permanent adoption, and announced a public hearing and public comment period, in a prior issue of the *Texas Register*.

### Subchapter A. General Information

#### ★ 25 TAC §325.5

The amendment is adopted under Senate Bill 1383, Acts of the 70th Legislature, 1987, regular session, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules on the management of municipal solid waste management; and Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

§325.5. *Definitions of Terms and Abbreviations.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections, are contained within the appropriate sections.

Putrescible waste—Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that [which] is capable of being decomposed by **microorganisms** [anaerobic organisms] with sufficient rapidity as to cause [nuisances from]

odors or gases or is capable of providing food for, or attracting, birds, animals, and disease vectors.

Issued in Austin, Texas, on August 13, 1987.

TRD-8706693

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

Effective date. September 1, 1987  
Expiration date. December 30, 1987  
For further information, please call  
(512) 458-7271.



### Subchapter B. Municipal Solid Waste Storage

#### ★ 25 TAC §325.22, §325.25

The amendment and new section are adopted on an emergency basis under Senate Bill 1383, Acts of the 70th Legislature, 1987, regular session, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules on the management of municipal solid waste management; and Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

§325.22. *Storage Requirements.* All solid waste shall be stored in such a manner that it does not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors, and shall be contained or bundled so as not to result in litter. It shall be the responsibility of the occupant of a residence or the owner or manager of an establishment to utilize storage containers of an adequate size and strength, and in sufficient numbers, to contain all solid waste that the residence or other establishment generates in the period of time between collections. **Stationary compactor units may receive a special permit in accordance with procedures and requirements established in §325.25 of this title (relating to Stationary Compactor Permits).**

§325.25. *Stationary Compactor Permits.*

(a) A special permit for a stationary compactor the waste from which is to be disposed of at a Type IV landfill may be obtained through the procedures detailed in this section.

(b) Application shall be made to the division on a form (see §325.912 of this title (relating to Special Permit Application for Stationary Compactors)) provided by the department and shall include all information requested thereon and any additional information considered necessary by the applicant or as may be requested by the department.

(c) The application shall include the information in paragraphs (1)-(10) of this subsection as follows:

- (1) applicant contact person, company name, mailing address, street address, city, state, zip code, and telephone number;
  - (2) establishment contact person, company name, mailing address, street address, city, state, zip code, and telephone number;
  - (3) contract renewal date;
  - (4) compaction capability;
  - (5) container size;
  - (6) complete description of waste stream to enter compactor;
  - (7) disposal facility information, including permit number, facility name, mailing address, street address, city, state, zip code, telephone number, and contact person;
  - (8) disposal information, including frequency of disposal and the estimated day of week and time span of day in which disposal is expected to occur;
  - (9) an alternate disposal contingency plan; and
  - (10) a certificate from the establishment, which must accompany the application, that states: I (name), (title) of (company name), located at (street address) in (city) certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, Class I nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.
- (d) Operational standards for permitted stationary compactors shall be as follows.

(1) Stationary compactors shall be operated and maintained in such a way as not to create a public nuisance through material loss or spillage, odor, or other condition.

(2) The certificate within the application and the provisions of the permit must be adhered to at all times.

(e) Enforcement of the requirements of this section shall be in accordance with applicable rules on administrative penalties, civil penalties, or revocation or a combination thereof. These actions will be taken against the permittee, transporter, and/or the establishment as appropriate.

(f) The permit must be renewed annually prior to the date of expiration by submitting the completed application form. Failure to timely renew a permit eliminates the option of disposal of these wastes at a Type IV landfill until a new or renewed permit is issued or the establishment is included within a special transporter route permit in accordance with the procedures established in §325.32 of this title (relating to Collection and Transportation Requirements).

Issued in Austin, Texas, on August 13, 1987

TRD-8706694

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

## Subchapter C. Municipal Solid Waste Collection and Transportation

### ★25 TAC §325.32

The emergency amendment is adopted under Senate Bill 1383, Acts of the 70th Legislature, 1987, regular session, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules on the management of municipal solid waste management; and Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

#### §325.32. *Collection and Transportation Requirements.*

(a) (No change)

(b) Transporters of municipal solid waste shall be responsible for assuring all solid waste they collect is unloaded only at facilities authorized to accept the type of waste being transported. Off-loading at an unauthorized location or at a facility not authorized to accept such waste is a violation of these sections [and, upon conviction, the violator will be subject to civil penalties of no less than \$100 or more than \$2,000 for each act of violation]. **Allowable wastes at a particular solid waste management facility may be determined by reviewing the following as applicable:**

(1) §325.41 and §325.42 of this title (relating to Classification of Municipal Solid Waste Sites);

(2) §§325.111-325.114, 325.121-325.124, and 325.131-325.154 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites);

(3) §§325.171-325.173 and 325.181-325.190 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites);

(4) §§325.411-325.415, 325.431, 325.432, 325.441-325.447, 325.461-325.465, 325.481-325.484, 325.501-325.504, 325.511-325.514, and 325.531-325.534 of this title (relating to Management of Sludges and Similar Wastes).

(c) All transporters of solid waste shall maintain records for at least one year to document that waste was taken to an authorized solid waste facility. Upon request of the department or of a local government with jurisdiction, a transporter is responsible for providing adequate documentation regarding the destination of all collected waste. Collectors shall maintain on each vehicle a written procedure requiring all drivers to unload only at specifically iden-

tified authorized solid waste facilities and the owner/operator shall maintain] including billing documents to prove that the procedure is being followed.

(d) Each transporter delivering rubbish and/or waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility shall obtain a special route permit for each such route he proposes to take to a Type IV landfill, in accordance with paragraphs (1)-(5) of this subsection [provide a certificate to the operator that he has so arranged his routes to eliminate nonallowable wastes from the loads he transports to that facility. This certificate shall also state that the transporter will remove any nonallowable wastes dumped by him immediately after their discharge or that, at the option of the disposal facility operator, he will pay any applicable surcharges to have the disposal facility operator accomplish the required immediate removal for him. Allowable wastes at a particular solid waste management facility may be determined by reviewing the following as applicable: For the purposes of this subsection, route refers to the business establishments collected from and not the street route.

(1) The application shall be submitted on a form (see §325.913 of this title (relating to Special Permit Application for Transporter Route)) provided by the department and shall include all information requested thereon and any additional information considered necessary by the applicant or additional information as may be requested by the department §325.41 and §325.42 of this title (relating to Classification of Municipal Solid Waste Sites);

(2) The application shall include the information detailed in subparagraphs (A)-(F) of this paragraph as follows: §§325.111-325.114, 325.121-325.124, and 325.131-325.154 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites);

(A) transporter contact person, company name, mailing address, street address, city, state, zip code, and telephone number;

(B) landfill contact person, company name, mailing address, street address, city, state, zip code, and telephone number;

(C) information on the hauling vehicle, including, as a minimum, the license number, vehicle identification number, year model, make, capacity of vehicle in cubic yards, and rated compaction capability in pounds per cubic yard;

(D) route information including, at a minimum, the collection frequency, the day of the week the route is to be collected, the day and time span within which the route is to arrive at the landfill.

(E) establishment information provided on a separate sheet for each establishment on a form (see §325.915 of this title (relating to Establishment Data Sheet)) provided by the department, or a computer

facsimile thereof, including, at a minimum: route order, transporter name, collection frequency, the expected day and time of collection, establishment contact person, establishment name, establishment mailing address, establishment street address, city, state, zip code, telephone number, and a description of activities associated with the business with particular emphasis on food handling and products sold or handled that could end up in the waste stream, landfill information to include the name and permit number, and a notarized certificate from the generator that states: I (name), (title) of (company name), located at (street address) in (city) certify that the wastes to be collected from the establishment stated herein for transport to a Type IV landfill are free of and shall be maintained free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable at a Type IV landfill; and

(F) an alternate contingency disposal plan.

(3) This subsection does not apply if the waste load is from a single collection point that is a stationary compactor permitted in accordance with §325.25 of this title (relating to Stationary Compactor Permits) or municipal vehicles permitted under paragraph (4) of this subsection §§325.171-325.173 and 325.181-325.190 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites);

(4) Municipalities that use enclosed vehicles to collect and transport brush or construction-demolition wastes and rubbish to Type IV landfills may receive a special municipal route permit in accordance with the procedures established in subparagraphs (A)-(B) of this paragraph §§325.411-325.415, 325.431, 325.432, 325.441-325.447, 325.461-325.465, 325.481-325.484, 325.501-325.504, 325.511-325.514, and 325.531-325.534 of this title (relating to Management of Sludges and Similar Wastes).

(A) An application must be submitted to the department for each truck to be used on a form (see §325.914 of this title (relating to Special Permit Application for Municipal Route)) provided by the department and shall include all information requested thereon and any addition of information considered necessary by the applicant or additional information as may be requested by the department.

(B) The application shall include the information detailed in clauses (i)-(vii) of this subparagraph.

(i) The applicant name, responsible person, title, mailing address, street address, city, state, zip code, and telephone number.

(ii) The contact person, title, mailing address, street address, city, state, zip code, and telephone number.

(iii) Information on the hauling vehicle shall include as a minimum the

license number, vehicle identification number, year model, make, capacity of vehicle in cubic yards, and rated compaction capability in pounds per cubic yard.

(iv) Route information shall include as a minimum the collection frequency, the day of the week the route is to be collected, the day and the approximate time span within which the route is to arrive at the landfill.

(v) A description of the wastes to be transported.

(vi) Landfill information to include permit number, name, mailing address, street address, city, state, zip code, telephone number, and contact person.

(vii) A notarized certificate from the city that states: I (name), (title) of the City of (City) in County, certify that the contents of the vehicle described above will not enter a Type IV landfill unless it is free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

(5) Amendment requirements are as follows.

(A) An amendment of a special transporter route or special municipal route permit must be submitted any time any information within the original application is to be changed.

(B) An application to amend an existing special transporter route or special municipal route permit must include all of the same documentation required of an original application.

(C) Amendment applications to add one or more establishments or make any other changes to a special transporter route permit not addressed in subparagraph (D) of this paragraph must be submitted and the permit issued by the department in advance of the change.

(D) Amendment applications to delete one or more establishments from a special transporter route permit must be submitted within seven days of the change.

(e) At any time that nonallowable wastes are discovered in a load of waste being discharged at a municipal solid waste facility, the transporter shall immediately take all necessary steps to determine the origin and alter his routes to assure that in the future such wastes are either not collected by him or are taken to a facility approved to accept such wastes.]

Issued in Austin, Texas, on August 13, 1987.

TRD-8706695 Robert A. MacLean  
Deputy Commissioner,  
Professional Services  
Texas Department of  
Health

Effective date September 1, 1987  
Expiration date December 30, 1987  
For further information, please call  
(512) 458-7271

## Subchapter E. Permit Procedures and Design Criteria Application Review Process

### ★ 25 TAC §325.93, §325.94

The Texas Department of Health adopts on an emergency basis amendments to §325.93 and §325.94, concerning scheduling and preparation for a public hearing; and conduct of the public hearing. Generally, the amendments provide for residents and property owners who live or own real property located within one mile of any proposed landfill to be notified when a public hearing is scheduled for the proposed landfill. Specifically, the amendment to §325.93 covers the responsibilities of an applicant for a landfill permit to publish notice of a hearing in a newspaper and to mail a notice directly to residences and to owners of property located within one mile of the proposed landfill. The amendment to §325.94 covers the public hearing procedures as regards evidence of the notice given, rights and responsibilities of the Texas Air Control Board at the hearing, and the hearing examiner in closing the record or keeping it open.

The amendments are adopted on an emergency basis because of the requirements of House Bills 1869 and 2124, 70th Legislature, 1987, regular session. The two bills require a process for public notification when a public hearing on a proposed landfill is scheduled. Notices are required to be sent to persons who live or own property within one mile of a proposed landfill. The department is required by law to adopt rules to implement these requirements.

Since House Bill 1869 becomes effective on August 31, 1987, and House Bill 2124 becomes effective on September 1, 1987; the department is adopting the amendments on an emergency basis, to become effective on September 1, 1987. The department has already proposed these amendments for permanent adoption, and announced a public hearing and public comment period, in a prior issue of the *Texas Register*.

The amendments are adopted on an emergency basis under House Bills 1869 and 2124, 70th Legislature, 1987, regular session, which cover public hearings on solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules for management of municipal solid waste; and Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.  
§325.93. *Scheduling and Preparation for a Public Hearing.*

(a) The bureau, on its own motion, may request that a hearing be scheduled or that an opportunity for a public hearing be provided, and will make available copies of its draft brief upon request.

(1) The bureau will provide to the applicant, through the Office of General Counsel, the notice advising the public that any person affected, as defined in the Solid Waste Disposal Act, has a right to request a public hearing. The applicant shall be responsible for ensuring that such notice is published at least once each week, for two consecutive weeks, in the newspaper having the largest circulation that is published in the county in which the proposed solid waste site will be located, unless no newspaper is published in the county, in which case the notice must be published in a newspaper of general circulation in the county. [in a newspaper regularly published or circulated in the county in which the solid waste site is located.] The applicant shall be responsible for paying for and publishing the notice. The bureau and/or the Office of General Counsel, at their option in any individual case, may require that publication of the notice be made in additional newspapers in the county or in other adjacent or contiguous counties. The applicant shall provide the Office of General Counsel with proof that the publication was timely by submitting, within five days after the publication of the notice, an affidavit of the publisher which shows the date of publication. The affidavit shall be accompanied by a copy of the published notice. The notice shall provide that a hearing may be requested by any affected person within 30 days after the date of publication.

(2) If the bureau does not receive a written request for a public hearing, from a person deemed to have a justiciable interest [for a public hearing], the chief of the bureau will submit to the department's Office of General Counsel a final brief containing the bureau's technical evaluation of the permit application, analysis, conclusions, and recommendations accompanied by the proposed permit.

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

(b) (No change.)

(c) If the public hearing is for a landfill application, then the applicant is required to mail a notice of the hearing to individuals. The applicant shall notify each residence, each business, and each owner of real property, located within one mile from the property line of the proposed landfill, listed in the real property records of the county(ies) in which the landfill is sought to be permitted as of the date the department rules the application for a permit administratively complete. To provide documentation of this date, a letter of administrative completeness will be forwarded to the applicant by the chief of the bureau or his department representatives stating the date that the application was ruled to be administratively complete. This will allow the applicant time to research the real property records of the county(ies) involved and have a mailing list ready by the date that notices are required to be mailed. The applicant shall also obtain the names and addresses from the tax rolls

of the appropriate county, as of the time of the mailing of notices, of all persons shown to own property within one mile from the property line of the proposed landfill. The information shall be used by the applicant, in conjunction with the list obtained from the real property records, to ensure that each person whose name appears on either list shall be mailed a notice. The notices shall be deposited with the United States postal service not more than 45 days nor less than 30 days before the date of the public hearing. The notices shall be mailed by certified or registered mail, return receipt requested. Presumption of appropriate mailing shall be assumed to have been accomplished upon verification by the applicant to the department, unless it is demonstrated by no less than 35% of the affected persons that proper deposit with the United States postal service not more than 45 days nor less than 30 days before the date of the hearing was not accomplished. Within 20 days after the mailing of notices, the applicant shall cause to be delivered to the department all mail return receipts and copies of the lists of names obtained from the real property records and the tax rolls.

(d)(c) The municipal solid waste management rules in effect at the time that the bureau conducted the technical evaluation shall be the rules under which hearing procedures are conducted, including the final decision regarding the application. The public hearing notice and the opportunity for a public hearing notice shall include a statement that identifies the set of rules under which the hearing will be conducted and the final decision rendered.

§325.94. *Conduct of the Public Hearing.*

(a) The public hearing will be conducted by a hearing examiner designated by the commissioner. The bureau will normally be represented at the hearing by the chief of the bureau, his designated representative, and/or the designated project engineer assisted by appropriate staff members. The bureau representatives may offer pertinent information contained in official records into the hearing record. [All testimony and evidence of the state regarding air quality aspects of the application shall be developed and presented by the Texas Air Control Board. All parties, including the bureau, shall have the right to cross-examine any testifying witnesses of the Texas Air Control Board. At the conclusion of the presentation of testimony, the Texas Air Control Board shall be afforded at least 30 days in which to submit a set of proposed findings of fact and conclusions of law and, if applicable, proposed permit language relating to the air quality aspects of the application which relate to the criteria of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i). They shall be accepted unless the department finds that the recommendations are not supported by a preponderance of the evidence. The Texas

Air Control Board may seek judicial review of the air quality aspects of any final decision by the department.]

(b) The hearing examiner will not hear any testimony until evidence is placed in the record to demonstrate that proper notice regarding the hearing was given to affected persons. If mailed notice to an affected person is required, the bureau's designated representative shall submit to the hearing examiner an affidavit attesting to the fact that notice was mailed to the address of the affected persons included in the appropriate county tax rolls and real property records, as required by §325.93(c) of this title (relating to Scheduling and Preparation for a Public Hearing).

(c)(b) The applicant or his duly authorized representative is required to be present at the public hearing to present the application and answer any questions that may arise during the hearing or to clarify any of the information previously submitted. In view of the possibility that legal questions may arise, the applicant should be accompanied by his legal counsel. The professional engineer who prepared the site development plan for the site and other technical personnel who conducted soils or site investigations should also be present at the hearing to answer any technical questions. Failure of an applicant to be present at the public hearing, or to be properly represented, could result in the denial of a permit.

(d)(c) All hearings held by the department on solid waste permit applications are conducted in accordance with the department's formal hearing procedure rules and the Administrative Procedure and Texas Register Act which requires that evidence submitted be legally admissible (as opposed to hearsay) if such evidence is to be used as a basis for a final decision. Because this statute requires that administrative hearings follow the same rules of evidence as those used in nonjury district court cases, applicants are advised to seek assistance from their legal counsel in preparing for a hearing and, although not required, it is advisable that the applicant's legal counsel actually participate in the hearing, particularly if there is opposition to the permit application.

(d) The hearing record may be closed by the hearing examiner upon conclusion of the public hearing, or he may keep the record open for a specified period of time to receive specific documents or additional information not available during the hearing.]

(e) All testimony and evidence of the state regarding air quality aspects of the application shall be developed and presented by the Texas Air Control Board. All parties, including the bureau, shall have the right to cross-examine any testifying witnesses of the Texas Air Control Board. At the conclusion of the presentation of testimony, the Texas Air Control Board shall be afforded at least 30 days in which to submit a set or proposed findings of fact and conclusions of law and, if applicable, proposed permit language

relating to the air quality aspects of the application which relate to the criteria of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)(A)(i). They shall be accepted unless the department finds that the recommendations are not supported by a preponderance of the evidence. The Texas Air Control Board may seek judicial review of the air quality aspects of any final decision by the department.

(f) The hearing record may be closed by the hearing examiner upon conclusion of the public hearing, or he may keep the record open for a specified period of time to receive specific documents or additional information not available during the hearing.

Issued in Austin, Texas, on August 13, 1987.

TRD-8706699

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

Effective date: September 1, 1987  
Expiration date: December 30, 1987  
For further information, please call  
(512) 458-7271

Subchapter F. Operational  
Standards for Type I, II, III,  
or IV Sites  
General

★25 TAC §325.133, §325.155

The amendments and new section are adopted on an emergency basis under Senate Bill 1383, Acts of the 70th Legislature, 1987, regular session, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules on the management of municipal solid waste management; and Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

§325.133. *Access Control.* Uncontrolled access and dumping of unauthorized materials shall be prevented. Operators or their employees are not required to accept any solid waste which they determine will cause or may cause problems in maintaining full and continuous compliance with these rules. Failure to prevent disposal of unauthorized waste shall be deemed a significant threat to public health or the environment and shall be grounds for the department to initiate permit revocation procedures and/or referral to the attorney general for legal relief.

(1) (No change)

(2) At Type IV sites, only brush and [,] construction-demolition wastes[, and rubbish (trash) that are free of putrescible waste] may be accepted, except in accordance with §325.155 of this title (relating to Rubbish

**and/or Waste in Enclosed Containers or Enclosed Vehicles at Type IV Landfills).**

[(A) Type IV landfill operators shall not accept completely enclosed containers or vehicles which cannot be inspected unless prior approval of a waste stream quality control plan (WSQCP) has been obtained from the department. This plan shall include or provide for the following as a minimum:

[(i) a procedure to ensure that containers with any significant amounts of putrescible wastes are not accepted. This might include or be a combination of a manifest system, surcharges, contractual agreements with transporters, or other acceptable means;

[(ii) a procedure for removal of any significant amounts of putrescible wastes to an approved disposal facility. This procedure must specify the means to be used for removal of putrescible wastes illegally dumped at the site. In all cases, such wastes shall be removed from the working face immediately upon discharge and placed in suitable collection bins or back on the offending transporter's vehicle and shall not be allowed to remain on the site for more than 24 hours. The equipment necessary to meet the alternatives shall be specified and shall be on site and operable during operating hours;

[(iii) a working-face monitor to inspect each load that is dumped at the site. The monitor shall have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges and have the unauthorized material removed by on-site personnel;

[(iv) a procedure whereby the transporter certificates required by §325.32 of this title (relating to Collection and Transportation Requirements) shall be retained at the landfill for a period of one year and be available for inspection by the department's representatives.

[(B) The approved WSQCP shall become a part of the approved Site Development Plan and §325.111 of this title (relating to General Requirements) is applicable.

[(C) Large, conspicuous warning signs shall be placed at the entrance to the site stating that putrescible wastes are not accepted and stating the landfill's requirements on transporters, such as certificates, manifests, and surcharges or other penalties that may be imposed in the event that transporters do not meet the requirements.]

(3)-(4) (No change)

§325.155. *Rubbish and/or Waste in Enclosed Containers or Enclosed Vehicles at Type IV Landfills.* Acceptance of rubbish and/or waste in enclosed containers or enclosed vehicles at Type IV landfills must be in accordance with the following requirements.

(1) No putrescible, infectious, Class I industrial nonhazardous, or hazardous waste is to be accepted at a Type IV landfill.

(2) Rubbish and/or waste in enclosed containers or enclosed vehicles shall not be accepted at a Type IV landfill unless all of the conditions in subparagraphs (A)-(G) of this paragraph have been met.

(A) The landfill to receive the waste must be participating in the funding program to monitor these activities as detailed in paragraph (3) of this section.

(B) Each rubbish and/or waste in enclosed containers or enclosed vehicles must have all required approvals and/or permits from the department in accordance with §325.32 of this title (relating to Collection and Transportation Requirements).

(C) Rubbish and/or waste in enclosed containers or enclosed vehicles may only be accepted at their designated time and on the specified day in accordance with these sections, department permits, or other orders of the department.

(D) A department inspector must be on site and must witness the unloading process.

(E) The Type IV landfill operator shall obtain from each transporter delivering rubbish and/or waste in enclosed containers or enclosed vehicles a Transporter Trip Ticket (see §325.916 of this title (relating to Transporter Trip Ticket)). A copy of each trip ticket obtained by the landfill operator shall be provided to the department inspector on site or the department's appropriate regional office within 24 hours of receipt.

(F) The site must maintain on site the equipment and equipment operator necessary to remove any nonallowable waste from the working face and ample containers to put these materials in.

(G) The landfill operator must have all containers in which nonallowable waste have been placed removed from the site prior to the department inspector's designated time of departure from the site for the day and provide copies of the disposal receipts to the inspector on the next day.

(3) Any waste determined by the department's on-site inspector to be nonallowable shall be removed from the working face and placed in appropriate containers within one hour following its discharge into the working face.

(4) The department shall determine the approximate annual costs of implementing and maintaining the permitting, surveillance, and enforcement of all the activities associated with the acceptance of rubbish and/or waste in enclosed containers or enclosed vehicles at a Type IV landfill.

(A) Notification of these costs shall be provided to each holder of a Type IV landfill permit with notice of public hearing to apportion these costs.

(B) The public hearing shall be held at a location to be determined by the department with 20 days advance notice. Notice shall be provided Type IV landfill operators by written notice in regular and certified mail.

(C) The public hearing shall be for the purpose of establishing the total compensation and expenditures required to administer this program and the apportionment of those costs to the Type IV landfill operators to be reimbursed to the department.

(D) Unless other arrangements are made, the apportioned monthly payments will be due by the 10th day of each month.

(E) The apportioned costs to each Type IV landfill may be altered periodically to add or subtract landfills from the program. A 30-day notice will be provided to each participating Type IV landfill and/or proposed additional landfill and a hearing will be held upon request by one of the affected parties or on the department's own motion.

(5) A Type IV landfill operator that is delinquent in making his monthly payment shall immediately halt acceptance of rubbish and/or waste in enclosed containers or enclosed vehicles and may also be subject to other penalties in accordance with these sections or the SWDA.

Issued in Austin, Texas, on August 13, 1987.

TRD-8706696

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

Effective date: September 1, 1987  
Expiration date: December 30, 1987  
For further information, please call  
(512) 458-7271



## Subchapter H. Surveillance and Enforcement

### ★ 25 TAC §325.222, §325.223

The amendments are adopted on an emergency basis under Senate Bill 1383, Acts of the 70th Legislature, 1987, regular session, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which provide the Board of Health with the authority to adopt rules on the management of municipal solid waste management; and Texas Civil Statutes, Article 6252-13a, §5, which provide the board with the authority to adopt rules on an emergency basis.

§325.222. *Enforcement Policy.*

(a) The department's policy is to gain improvements in solid waste management through voluntary operational compliance by providing the site operator with technical assistance and guidance during routine inspections or upon the operator's request. Appropriate legal action as provided by law will be sought where timely voluntary operational compliance is not accomplished.

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

(b) An operator or transporter who violates any provision of these sections which relates to the acceptance of rubbish and/or waste in enclosed containers or enclosed vehicles at Type IV landfills is subject to Class B misdemeanor penalties in addition to other penalties provided by the SWDA and these sections.

§325.223. Administrative Penalty Determination.

(a) (No change.)  
 (b) The procedure for determining a base penalty (BP) amount will be as follows.

(1) For solid waste disposal sites or facilities (either authorized or unauthorized) the BP will be based on the extent of individual violations for each day of violation.

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

(C) Example ratings are listed in this subparagraph with specific violations noted. The referenced violations may typically be given the noted rating; however, changes from the given number may frequently be varied as much as +/-3 or more based on the extent of violation or other circumstances.

Rating	Relative Violations
2	<p>Failure to provide and/or maintain a sign at the entrance meeting Texas Department of Health (TDH) requirements.</p> <p>Failure to properly handle large or bulky items.</p> <p>Failure to implement and/or maintain the required grid system.</p>
3	<p>Failure to provide or maintain the required markers denoting areas which have had proper soils evaluations accomplished.</p> <p>Failure to properly control windblown materials and/or provide for litter collection.</p> <p>Failure to provide or maintain proper screening.</p>
4	<p>Failure to provide or maintain adequate fire protection.</p> <p>Failure to protect boundary buffer zones or provide or maintain the required markers.</p> <p>Failure to provide or maintain access roads that are all weather.</p> <p>Failure to meet record requirements for sludge disposal or to maintain these records as required.</p>
5	<p>Failure to adequately confine the unloading to as small an area as practical.</p> <p>Failure to operate a site or facility in accordance with an approved site development plan.</p> <p>Failure to provide or maintain access control to prevent the disposal of unauthorized waste.</p> <p>[Acceptance of enclosed containers at a Type IV landfill without an approved waste stream quality control plan (WSQCP) or accepting such containers in other than the approved manner.]</p> <p>Failure to properly control salvaging.</p>
6	<p>Disposal of waste in contact with unconfined waters.</p> <p>Failure to provide or maintain required drainage controls.</p>



Failure to control or clean up material lost from vehicles on access routes.

Failure to provide the required washdown.

Failure to meet safety requirements.

Violation Description	Penalty
Discharging sludge in or on a site not approved to accept the waste.	\$5,000
<b>Acceptance of waste at a site not authorized to accept that waste.</b>	<b>\$5,000</b>
<b>Acceptance of waste at a Type IV landfill from enclosed containers in any manner not in compliance with the department's applicable rules, permits, or other departmental orders.</b>	<b>\$4,000</b>
<b>Failure of a transporter delivering rubbish and/or waste in enclosed containers or enclosed vehicles to have the required permit.</b>	<b>\$3,000</b>
<b>Failure to properly operate a stationary compactor in accordance with applicable rules, permits, or other departmental orders.</b>	<b>\$3,000</b>
Discharging solid waste other than sludge in or on a site not approved to accept the waste.	\$3,000
Hauling sludges without the proper registration from TDH.	\$2,000
Failure of a sludge waste generator to utilize a TDH registered hauler.	\$2,000
Failure of a sludge waste generator to ensure that a waste control record is used.	\$2,000
Failure of a sludge waste generator to retain copies of waste control records for 12 months.	\$2,000
Failure of a municipal wastewater treatment plant operator to properly notify TDH of their sludge disposal activities.	\$2,000
Failure of a sludge transporter to properly mark and identify all collection and transportation equipment.	\$2,000
Failure of a sludge transporter to initiate or maintain a record of each individual collection and deposit.	\$2,500
Failure of a sludge transporter to retain copies of all control records (collection and deposit) for 12 months.	\$2,000
Failure to timely submit a required annual report or fee.	\$2,000

Failure to make timely payment of fees required to fund the administration and inspection of Type IV landfills in accordance with the enclosed container requirements. \$1,000

Failure of a site operator to provide the department required operation records upon request or as specified in these rules or permits or other orders of the department. \$1,000

(2) For violations of requirements involving solid waste activities other than described in paragraph (1) of this subsection, a base penalty amount will be established that considers the seriousness of the violation. Examples of possible violations and a possible base penalty for each violation and each day of violation are as follows. The violations are not limited to this list and the base penalty may vary depending upon the circumstances.

7 [Acceptance of waste at a site not authorized to accept that waste.]

Failure to control overloading.

Failure to meet requirements for water under pressure, the provision of fire-fighting equipment, or a fire plan.

Failure to control sludge application rates.

Failure to meet sludge storage impoundment requirements at land application for beneficial use sites.

8 Failure to meet groundwater protection requirements such as soil and liner evaluation.

[Acceptance of Class I industrial wastes or special wastes without proper approval or in other than the approved manner.]

Failure to provide the required compaction, intermediate cover, final cover, or final cover grades.

Failure to control odors from ponded water.

Failure to adequately control vectors.

9 Failure to operate a site or facility in accordance with permit special provisions.

10 Suffering or allowing disposal of solid waste without a permit or registration as required.

Failure to prevent scavenging.

Failure to render pesticide containers unusable upon receipt.

Failure to adequately cover dead animals upon receipt.

(3) (No change.)  
(c)-(f) (No change.)

Issued in Austin, Texas, on August 13, 1987.

TRD-8706697 Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of  
Health

Effective date: September 1, 1987  
Expiration date: December 30, 1987  
For further information, please call  
(512) 458-7271.

### Subchapter X. Forms and Documents

#### ★25 TAC §§325.912-325.916

The new sections are adopted on an emergency basis under Senate Bill 1383, 70th Texas Legislature, 1987, regular session, which covers restrictions on Type IV municipal solid waste landfills; Texas Civil Statutes, Article 4477-7, §3(a) and §4(c), which authorize the Board of Health to adopt rules on the management of municipal solid waste management; and Article 6252-13a, §5, which authorizes the board to adopt rules on an emergency basis.

§325.912. *Special Permit Application for Stationary Compactors.*



#### Special Permit Application for Stationary Compactors

Permit No. \_\_\_\_\_

New   
Renewal

Applicant: Contact Person: \_\_\_\_\_  
Company: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_

Generator: Contact Person: \_\_\_\_\_  
Company: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_

Contract Period: \_\_\_\_\_  
Compaction capability \_\_\_\_\_ Container Size (CY) \_\_\_\_\_

#### Waste Stream:

1. Describe activities associated with business establishment:

\_\_\_\_\_

2. Is there a food service operation within the establishment? \_\_\_\_\_  
3. Does the establishment sell or handle food products or other potentially putrescible items? \_\_\_\_\_  
4. Does the establishment sell or handle paints, solvents, automobile fuels, aerosol products, cleaning fluids, or other similar or liquid products? \_\_\_\_\_  
Explain any answers to questions 2, 3, or 4 that were yes. (Attach additional sheet if necessary )

\_\_\_\_\_

5. Attach a sketch of the compactor unit and the feed mechanism

#### Disposal:

6. Facility Permit No.: \_\_\_\_\_ Facility Name: \_\_\_\_\_  
Mailing Address, City, State, Zip: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_

7. Frequency of disposal: \_\_\_\_\_  
Requested day of week and time span for disposal at landfill: \_\_\_\_\_

8. Alternate contingency disposal plan: \_\_\_\_\_

#### \*\*\*\*\* Generator Certificate:

I \_\_\_\_\_, (title) \_\_\_\_\_ of (company name) \_\_\_\_\_, located at (street address) \_\_\_\_\_ in (city) \_\_\_\_\_ certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

Signature \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

Notary Public in and for \_\_\_\_\_ County, Texas

\*\*\*\*\*  
Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**§325.913. Special Permit Application for Transporter Route.**

New   
Amendment

Special Permit Application  
for Transporter Route

Permit No. \_\_\_\_\_

Transporter: Applicant: Contact Person: \_\_\_\_\_ Landfill: Contact Person: \_\_\_\_\_  
 Company: \_\_\_\_\_ Company: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_ Mailing Address: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ Street Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_  
 Telephone: ( ) \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_  
 TDH Permit No. \_\_\_\_\_

Vehicle Information:

License No.: \_\_\_\_\_ Year Model: \_\_\_\_\_ Make: \_\_\_\_\_  
 VID No.: \_\_\_\_\_ Capacity (cubic yards): \_\_\_\_\_ Compaction (pounds/cubic yard): \_\_\_\_\_

Route Information: Frequency: \_\_\_\_\_ Day of week to be collected: \_\_\_\_\_  
 Day of Week for Disposal at the landfill and Time Span for Disposal at the landfill: \_\_\_\_\_

Establishment Information: Attach an establishment data sheet for each establishment on the route. This must be on a form provided by the department; however, a computer generated facsimile will be acceptable. It must include as a minimum: route order, transporter name, collection frequency, collection day of week, collection time of day, establishment contact person, establishment name, establishment mailing address, establishment street address, city, state, zip code, telephone number, and a description of activities associated with the business with particular emphasis on food handling and products sold or handled that could end up in the waste stream, landfill information to include the name and permit number, and a notarized certificate from the generator that states I \_\_\_\_\_, (title) \_\_\_\_\_ of (company name) \_\_\_\_\_, located at (street address) \_\_\_\_\_ in (city) \_\_\_\_\_ certify that the contents of the vehicle described above will not enter a Type IV landfill unless it is free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

Alternate Contingency Disposal Plan: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**§325.914. Special Permit Application for Municipal Route.**

New   
Amendment

Special Permit Application  
for Municipal Route

Permit No. \_\_\_\_\_

Applicant Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_  
 Responsible Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Title: \_\_\_\_\_ Mailing Address: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_ Street Address: \_\_\_\_\_  
 Street Address: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_  
 Telephone: ( ) \_\_\_\_\_

Vehicle Information:

License No.: \_\_\_\_\_ Year Model: \_\_\_\_\_ Make: \_\_\_\_\_  
 VID No.: \_\_\_\_\_ Capacity (cubic yards): \_\_\_\_\_ Compaction (pounds/cubic yard): \_\_\_\_\_

Route Information: Frequency: \_\_\_\_\_ Day of Week: \_\_\_\_\_  
 Day of Disposal: \_\_\_\_\_ Approximate Time of Disposal: \_\_\_\_\_

Description of wastes to be transported: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Landfill Information Permit No \_\_\_\_\_ Name \_\_\_\_\_  
Address Mailing \_\_\_\_\_ Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Contact Name \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_

\*\*\*\*\*  
City Certificate:

I \_\_\_\_\_, (title) \_\_\_\_\_ of the City of \_\_\_\_\_ in \_\_\_\_\_ County, certify that the contents of the vehicle described above will not enter a Type IV landfill unless it is free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill

Signature \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_ County, Texas

\*\*\*\*\*

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**§325.915. Establishment Data Sheet.**

Establishment Data Sheet Route Order: \_\_\_\_\_

Transporter Name: \_\_\_\_\_ Permit No.: \_\_\_\_\_

Collection, Frequency: \_\_\_\_\_ Day of Week: \_\_\_\_\_ Estimated Time of Day: \_\_\_\_\_

Establishment Information

Contact Person: \_\_\_\_\_ Company Name: \_\_\_\_\_  
Address: Mailing, \_\_\_\_\_ Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone No.: ( ) \_\_\_\_\_

1. Describe activities associated with business establishment:  
\_\_\_\_\_  
\_\_\_\_\_
2. Is there a food service operation within the establishment? \_\_\_\_\_
3. Does the establishment sell or handle food products or other potentially putrescible items? \_\_\_\_\_
4. Does the establishment sell or handle paints, solvents, automobile fuels, aerosol products, cleaning fluids, or other similar or liquid products? \_\_\_\_\_  
Explain any answers to questions 2, 3, or 4 that were yes. (Attach additional sheet if necessary.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Landfill Information

Name: \_\_\_\_\_ Permit No.: \_\_\_\_\_

\*\*\*\*\*  
Generator Certificate:

I \_\_\_\_\_, (title) \_\_\_\_\_ of (company name) \_\_\_\_\_, located at (street address) \_\_\_\_\_ in (city) \_\_\_\_\_ certify that the wastes to be collected from the establishment stated here for transport to a Type IV landfill are free of and shall be maintained free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

Signature \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

§325.916. *Transporter Trip Ticket.*

TEXAS DEPARTMENT OF HEALTH  
1100 West 49th Street  
Austin, Texas 78756-3199

Transporter Trip Ticket

Name of Transporter \_\_\_\_\_  
(Company Name)

Name of Driver \_\_\_\_\_  
(Print)

Truck License No. \_\_\_\_\_ Truck Capacity \_\_\_\_\_  
(cubic yards)

PART I Generator Information (See reverse side)

PART II Transporter Certification: Transporter Route Permit No.: \_\_\_\_\_

I certify that the information provided above is correct, and that only wastes in Part I of this ticket are contained in this load. I further certify that this load contains no putrescible, hazardous, Class I industrial nonhazardous, infectious or any other waste not allowable in a Type IV landfill. I am aware that falsification of this ticket may result in penalties, possible legal action and/or forfeiture of the privilege of utilizing Type IV municipal solid waste disposal facilities.

Truck Driver's Signature \_\_\_\_\_

PART III Statement of Disposal Site Operator:

Disposal Site Name \_\_\_\_\_ Permit/  
Reg. No. \_\_\_\_\_

I certify that I have been authorized by the Texas Department of Health to accept the above type wastes and that I have disposed of the above-indicated wastes in accordance with the requirements outlined in that authorization.

Site Operator's Name \_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Signature) / (Date)

PART III Generator Information:

Date	Generator's Name	Generator's Address	Waste Quantity



Part II. Texas Department  
of Mental Health  
and Mental Retardation  
Chapter 403. Other Agencies  
and the Public  
Subchapter C. Determination of  
Rates for Support,  
Maintenance, and  
Treatment of Clients

★ 25 TAC §403.74

The Texas Department of Mental Health and Mental Retardation adopts on an emergency basis an amendment to §403.74, concerning determination of rates.

The amendment is adopted on an emergency basis to enact the provisions of Senate Bill 257, 70th Legislature, which provides that the Texas Board of Mental Health and Mental Retardation shall establish by rule a sliding fee schedule for the cost of support, maintenance, and treatment by the parents of a mentally retarded person under 18 years of age who is a client in a residential care facility operated by the department.

The amendment is adopted on an emergency basis pending the appointment of a seven-member fee advisory committee, also required by Senate Bill 257, which will make recommendations to the department concerning the fee schedule.

This amendment is adopted on an emergency basis under Texas Civil Sta-

tutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.74. *Determination of Rates.*

(a) **Assessment of rates against parents of minor clients for mental retardation services. Rates assessed against parents of minor clients for support, maintenance, and treatment provided by department mental retardation facilities will not exceed \$170 per month and will be determined as follows: The parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department shall pay, if able to do so, the portions of the cost of support and maintenance of the mentally retarded person as may be applicable under the following formula:**

If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is:

The monthly payment per child shall not exceed:

Less than \$4,000	\$5
4,000-4,999	10
5,000-5,999	20
6,000-6,999	30
7,000-7,999	40
8,000-8,999	50
9,000-9,999	60
10,000-10,999	70
11,000-11,999	80
12,000-12,999	90
13,000-13,999	100
14,000-14,999	110
15,000-15,999	120
16,000-16,999	130
17,000-17,999	140
18,000-18,999	150
19,000-19,999	160
20,000-up	170

Assessment of rates against parents of minor clients for mental retardation services. Rates assessed against parents of minor clients for support, maintenance, and treatment provided by department mental retardation facilities will not exceed \$170 per month and will be determined in accordance with the provisions of Texas Civil Statutes, Article 5547-300, §61 (referred to in §403.76 of this title (relating to Exhibits) as Exhibit A), and this subchapter.

Issued in Austin, Texas, on August 13, 1987

TRD-8706700

Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date September 1, 1987  
Expiration date December 30, 1987  
For further information, please call  
(512) 465-4670

Chapter 404. Protection of  
Clients and Staff  
Subchapter B. Client Abuse  
and Neglect in Community  
Mental Health and Mental  
Retardation Centers

★ 25 TAC §§404.41-404.48

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis new §§404.41-404.48, concerning client abuse and neglect in community mental health

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

★ ★ ★



and mental retardation centers. The emergency adoption is made contemporaneously with the regular proposal of the same sections. The emergency adoption is necessary to immediately adopt the reporting requirements of Senate Bill 298, 70th Legislature, which requires community centers to report every allegation of abuse or neglect within five working days to the Office of Client Services and Rights Protection, Central Office.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§404.41. Purpose.** The purpose of these sections is to identify and prohibit client abuse and neglect by employees, affiliates, and agents of community mental health and mental retardation centers, and to prescribe principles for its report and prevention.

**§404.42. Application.** These sections apply to all community mental health and mental retardation centers.

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

**Affiliate**—Any school, organization, or entity associated in a working alliance with a center (by contract).

**Agent**—Any individual not employed by the center but working under the auspices of the center, such as volunteers, consultants, students, etc.

**Alleged**—Pertaining to an event about which an assertion or declaration has been made without proof, and which its maker proposes to support with evidence.

**Center**—A community mental health and mental retardation center.

**Child**—A person under 18 years of age who is not and has not been married, or who has not had his disabilities of minority removed for general purposes.

**Client**—Any person receiving services from a community mental health and mental retardation center.

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

**Community mental health and mental retardation center**—A community mental health center; a community mental retardation center; or a community mental health and mental retardation center, administered by a board of trustees appointed pursuant to the Texas Mental Health and Mental Retardation Act (Texas Civil Statutes, Article 5547-201 to 5547-206), offering services which either alone or in conjunction with other service agencies owned or operated by it, or affiliated by contract with such center, provides an effective mental health or mental retardation services program or both to persons residing in its area.

**Confirmation**—The determination

by the executive director that client abuse and neglect has occurred.

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

**Designee**—Any person temporarily appointed to fulfill duties and assume the responsibilities of another.

**Disabled person**—A person with a mental, physical, or developmental disability between 18 and 65 years of age.

**Elderly person**—A person 65 years of age or older.

**Executive director**—The head of a community mental health and mental retardation center.

**Exploitation**—The illegal or improper act or process of an employee using the resources of a client for monetary or personal benefit, profit, or gain.

**Major physical injury**—Any injury determined to be serious by appropriate medical personnel who examine the client. Examples of major physical injury include, but are not limited to, the following: death; fracture; dislocation of any joint; internal injury; nonsuperficial contusion; concussion; first, second, or third degree burn; or any laceration requiring sutures.

**Minor physical injury**—Any injury determined not to be serious by appropriate medical personnel who examine the client. Examples of minor physical injury include, but are not limited to, the following: superficial laceration, contusion, or abrasion.

**Negligence**—The doing of something that a person of ordinary prudence would not have done under the same or similar circumstances, or the failure to do something that a person of ordinary prudence would have done under the same or similar circumstances.

**§404.44. Client Abuse and Neglect Defined.**

(a) Class I abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which causes or may have caused major physical injury to a client. Without regard to injury, any sexual activity between an employee, employee of an affiliate, or agent and a client will be considered to be Class I abuse.

(b) Class II abuse means any act or failure to act done knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused minor physical injury to a client; exploitation.

(c) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a client, or threaten a client with physical or emotional harm, or any act which vilifies, degrades, or threatens a client with physical or emotional harm.

(d) Neglect means the negligence of any employee, affiliate, or agent which causes or may have caused any physical or emotional injury to a client. Examples of neglect shall include, but are not limited to, failure to carry out a prescribed individual program plan or treatment plan; failure to

provide adequate nutrition, clothing, or health care; or failure to provide a safe environment.

(e) Client abuse shall not include:

(1) proper use of restraints or seclusion, the approved application of behavior modification techniques, or other actions taken in accordance with the written policies and procedures of the center;

(2) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to himself, clients, or other persons if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances;

(3) other actions taken in accordance with applicable departmental rules and/or policies and procedures of the community centers.

**§404.45. Administrative Enforcement.** Client abuse or neglect by center employees, employee of affiliates, and agents is prohibited and shall be grounds for disciplinary action. The center shall be responsible for establishing a mechanism for reporting and investigating alleged cases of client abuse and neglect, and initiating appropriate disciplinary or other action in confirmed cases of client abuse and neglect. This mechanism shall include at a minimum:

(1) delineation of the responsibility of each employee, affiliate, or agent to promptly report cases of alleged client abuse or neglect to the executive director or his or her designee;

(2) procedures for the executive director or his or her designee to promptly and objectively investigate each alleged case of client abuse or neglect;

(3) provisions for reporting alleged or suspected cases of client abuse and neglect in accordance with any appropriate laws, as follows:

(A) criminal acts to law enforcement agencies. The executive director shall report alleged or suspected client abuse-related crime to local law enforcement agencies;

(B) child abuse to the Texas Department of Human Services and to the Office of Client Services and Rights Protection, Central Office.

(i) If the executive director believes that a child has been or may be adversely affected by abuse and/or neglect (whether or not by center employees), the executive director or his or her designee shall make a report as required by the Texas Family Code, §34.01 and §34.02, when appropriate. Initial verbal reports can be made to the Texas Department of Human Services child abuse hotline, (800) 252-5400, or the local Texas Department of Human Services field office. A final report concerning the completed investigation of the alleged abuse or neglect will be sent to the Texas Department of Human Services field office.

(ii) Within 10 days of the date the alleged abuse or neglect was reported to

the executive director, the executive director shall submit a final report of suspected child abuse and neglect in a child care facility (Form 1B) to the Office of Client Services and Rights Protection, to be forwarded, as required, to the Governor's Office of Youth Care Investigation. Copies of the forms to be used are herein adopted by reference as Exhibit A and may be obtained from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711;

(C) abuse, neglect, or exploitation of an elderly or disabled client to the Texas Department of Human Services. When the executive director has reason to believe that an elderly or disabled client is in or has been in a state of abuse, exploitation, or neglect, the executive director shall make a report to the Texas Department of Human Services as required by the Human Resources Code, §48.036. During normal working hours, the report should be made to the local DHS Adult Protective Services Office. At night and on weekends, the executive director should call the toll free number, (800) 252-5400;

(4) procedures for implementing prompt, proper, and sufficient disciplinary action when charge of client abuse or neglect is substantiated, based on criteria including but not limited to:

(A) the seriousness of the client abuse and/or neglect;

(B) the circumstances surrounding the event; and

(C) the employee's record;

(5) procedures to be followed if it is determined that a client is responsible for abuse of another client; and

(6) provisions for a written report of findings and action taken (see Exhibit B) and a client abuse/neglect report (see Exhibit C) to be submitted to the Office of Client Services and Rights Protection, Central Office, within 10 days of the initial allegation of abuse or neglect. (Exhibits B and C are herein adopted by reference and may be obtained from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.) If the written report cannot be submitted within 10 days, written justification shall be submitted to the executive director for approval or disapproval.

**§404.46. Training in Prevention of Client Abuse and/or Neglect.**

(a) Within 60 days after the effective date of these sections, all current employees shall be oriented to the contents of these sections by the executive director or by his or her designee. Within 30 days of the date of employment and, when possible, prior to coming into direct contact with clients, new employees shall receive instruction of the contents of these sections. Acknowledgement of this instruction shall be certified by the employee and filed in his or her personnel file.

(b) Documentation shall be maintained and updated for all employees, affiliates, and agents receiving such training.

(c) All current employees in frequent, direct contact with clients shall receive appropriate instructions on the prevention and management of aggressive behavior. Documentation shall be maintained and updated for employees receiving such instruction.

**§404.47. References.** Reference is made to the following statutes, rules of the department, and attorney general opinions:

(1) Texas Civil Statutes, Article 5547-201;

(2) Texas Civil Statutes, Article 5547-202, §2.12;

(3) Texas Civil Statutes, Article 5547-204;

(4) Texas Civil Statutes, Article 5547-87;

(5) Texas Civil Statutes, Article 695c-2, §9;

(6) Texas Penal Code, Chapters 19 and 21, §§22.01, 22.02, 22.04, 22.05, 22.07, 22.08, 22.10;

(7) Texas Family Code, §§11.01, 34.01, and 34.02;

(8) Human Resources Code, Title 2, Chapter 25;

(9) Human Resources Code, Chapter 48;

(10) Attorney General Opinion Numbers H-237 (1974), H-986 (1977), and H-494 (1975); and

(11) Texas Civil Statutes, Article 5547-300.

**§404.48. Distribution.**

(a) The provisions of this subchapter shall be distributed to:

(1) members of the Texas Board of Mental Health and Mental Retardation;

(2) the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office;

(3) superintendents and directors of all TDMHMR facilities;

(4) chairpersons of the boards of trustees of community mental health and mental retardation centers;

(5) directors of community mental health and mental retardation centers;

(6) the Texas Association for Retarded Citizens;

(7) the Texas Association on Mental Deficiency;

(8) the Parent Association for the Retarded of Texas;

(9) the Texas Association for Mental Health;

(10) the attorney general of Texas;

(11) the Governor's Office of Youth Care Investigation;

(12) the Texas Department of Health;

(13) the Texas Department of Human Services;

(14) the Texas Youth Council;

(15) the Alliance for Mental Recovery; and

(16) Advocacy, Incorporated.

(b) The director of each community mental health and mental retardation center shall be responsible for duplicating and disseminating copies of this subchapter to:

(1) appropriate staff; and

(2) any client, employee, or other person desiring a copy.

(c) The director of each community mental health and mental retardation center shall be responsible for ensuring that all employees have access to a copy of this rule.

Issued in Austin, Texas, on August 21, 1987

TRD-8706701 Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date. September 1, 1987

Expiration date. December 30, 1987

For further information, please call  
(512) 465-4670

★ ★ ★

**Subchapter G. Unusual Incidents at TDMHMR Facilities**

**★25 TAC §§404.241—404.256**

The Texas Department of Mental Health and Mental Retardation adopts on an emergency basis §§404.241-404.256, concerning unusual incidents at TDMHMR facilities. The emergency adoption is made contemporaneously with the regular proposal of the new sections. Pursuant to House Bill 272, 70th Legislature, §404.253, requires that facilities report certain clients on unauthorized departure as missing persons to appropriate law enforcement agencies.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§404.241. Purpose.** The purpose of this subchapter is to define unusual incidents at facilities of the Texas Department of Mental Health and Mental Retardation and to establish procedures for reporting and recording such incidents.

**§404.242. Application.** The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation.

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

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

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

Unauthorized departure of a client which might have unusual consequences—The unauthorized departure of a client which causes a reasonably prudent staff person who has knowledge of the client's condition to believe that harm or injury to the client or to others may occur as a result of the unauthorized departure. Examples would be the unauthorized departure of a client who the treatment staff believes to be a danger to himself or to others, and the unauthorized departure of a client who requires maintenance medication such as insulin.

Guest—A person, other than a client, or employee, who is on the premises or in facilities of the Texas Department of Mental Health and Mental Retardation.

Nonserious physical injury—Any injury determined not to be serious by the physician who examines the client. Examples of nonserious injury include but are not limited to the following: superficial laceration, contusion, abrasion.

Serious physical injury—An injury determined to be serious by the physician who examines the client. Examples of serious injury include but are not limited to the following: fracture; dislocation of any joint; internal injury; any contusion larger than two and one half inches in diameter; concussion; first, second or third degree burn; or any laceration requiring sutures.

Unusual incident—Means and includes:

(A) the death of a client resulting from other than natural causes;

(B) the death of an employee, from whatever cause, while on duty;

(C) the death of a guest, from whatever cause;

(D) an injury to a client, from whatever cause;

(E) an injury to an employee, from whatever cause, while on duty;

(F) an injury to a guest, from whatever cause;

(G) an automobile accident involving a vehicle owned by this department or any vehicle operated by an officer or employee of this department while in the performance of official duties;

(H) a fire, theft, or other occurrence which causes property damage or loss in the amount of \$100 or more in facilities of the Texas Department of Mental Health and Mental Retardation;

(I) a criminal act by a client or a criminal act by any person against a client; and

(J) the unauthorized departure of a client who cannot care for his safety and/or is considered to be a danger to himself or to others.

**§404.244. Incidents Which Must be Reported by Telephone to the Deputy Commissioner as Soon as Possible.**

(a) The following incidents shall be reported to the appropriate deputy commissioner by telephone as soon as possible following the incident:

(1) death of client from other than natural cause (except that all client deaths shall be reported in accordance with subsection (f) of §405.264 of this title, relating to Actions Taken upon Death of a Client on Facility Grounds);

(2) death of a guest;

(3) death of an employee while on duty.

(b) Upon receiving a report of serious injury to a client, the head of the facility or his designee shall promptly notify the client's parents, legal guardian, managing conservator, or other close relative unless such notification is prohibited by state law or federal regulation.

**§404.245. Reporting Serious or Nonserious Injury to a Client, Guest, or an Employee.**

(a) All serious and nonserious job-related injuries to an employee shall be recorded by the employee's supervisor on the supervisor's report of employee's injury form, which is referred to as Exhibit A in §404.254 of this title (relating to Exhibits). This reporting form shall also be used to report injuries to a guest. A copy of Exhibit A shall be filed in the personnel record of the employee, or the record established for guests.

(b) The death of an employee, and a job-related illness or injury to an employee which occurs in the course of his official duties, and which causes out of pocket expenses to the employee (i.e., illness or injury other than those treated solely by a physician employed by the facility), or an absence from work for more than one workday, shall be reported by the worker's compensation claims coordinator on the employer's first report of injury or illness form which is referred to as Exhibit B in §404.254 of this title (relating to Exhibits), as required by the State Employees-Workers Compensation Division of the attorney general's office. If the employee suffers a serious illness or injury, or if the illness or injury results in the death of the employee, copies of the report shall be mailed to the legal division of central office and to the appropriate deputy commissioner.

(c) All serious and nonserious injuries to a client shall be reported on Exhibit C, which is referred to in §404.254 of this title (relating to Exhibits). The original client injury form shall be filed in the client's record or maintained as a part of the client's files.

**§404.246. Employee Training Requirements.** An employee who has received a serious injury as a consequence of aggressive client behavior shall receive initial or refresher training or be counseled by his superior in the area of prevention and management of the aggressive behavior that was involved in the incident. The training or counseling shall occur within 30 days following the injury, dependent upon the physical capacity of the employee.

**§404.247. Treatment of Employees Injuries/Illnesses in the Performance of Of-**

**ficial Duties.** Facilities' medical personnel shall offer to render medical treatment within the facilities' fiscal capabilities to employees sustaining injuries or illnesses in the performance of their official duties. Examples of medical treatment include, but are not limited to, suturing, bandaging, injections (immune serum globulin, tetanus, etc.), written prescriptions, X-rays, and laboratory studies (CBC's, cultures, etc.).

**§404.248. Reporting Injury, Death, or Property Damage Which Is the Result of an Automobile Accident Involving the Department.** Injury, without regard to severity, to any person, the death of any person, or any property damage, which is the result of an automobile accident involving a vehicle owned by the department or any vehicle operated by an officer or employee of the department in the course of his official duties shall be reported on the personal injury/damage report—motor vehicle form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit D, in triplicate, as soon as possible. The original report shall be mailed to the maintenance division of central office, one copy shall be mailed to the legal division of central office, and the other copy shall be retained. Such reports are in addition to the reports required by the Texas Department of Public Safety as described in the March 26, 1974, memo from the chief of plant maintenance to all facilities. One copy of the reports made to the Texas Department of Public Safety shall also be mailed to the maintenance division of central office.

**§404.249. Reporting Fire Which Causes Property Damage of \$100 or More.** Fire which causes property damages in the amount of \$100 or more in facilities of the department shall be reported on the property damage report—fire form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit E, in triplicate. The original report shall be mailed to the appropriate deputy commissioner, one copy shall be mailed to the maintenance division of central office, and the other copy shall be retained.

**§404.250. Reporting Theft or Damage, from Causes Other than Fire, Resulting in Property Loss or Damage of \$100 or More.** Theft or damage, from causes other than fire, resulting in property loss or damage in the amount of \$100 or more in facilities of the department shall be reported on the theft/damage report form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit F, in triplicate. The original report shall be mailed to the appropriate deputy commissioner, one copy shall be mailed to the maintenance division of central office, and one copy shall be retained.

**§404.251. Reporting Loss, Destruction, or Damage to State Property.** If it is determined that loss, destruction, or damage to state property, in any amount, occurred

through the negligence or fault of any state official or employee, an immediate report shall be made to the state auditor in accordance with Texas Civil Statutes, Article 601B, §8.06, the property accounting system manual of instruction issued by the State Purchasing and General Services Commission, and the accounting manual of the department.

**§404.252. Reporting a Criminal Act.**

(a) A criminal act by a client, or a criminal act by any person against a client, shall be reported on the criminal occurrence report form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit G, in triplicate. The original report shall be mailed to the appropriate deputy commissioner, one copy shall be mailed to the legal division of central office, and the other copy shall be retained.

(b) The reports required by subsection (a) of this section are in addition to the immediate telephone report of a criminal act which should be made to the appropriate law enforcement agency, including the Texas Department of Public Safety. If the criminal act occurs within the jurisdictional boundaries of a city or town, the local police should also be notified. If the criminal act occurs without the boundaries of a city or town, the county sheriff should also be notified.

**§404.253. Reporting Unauthorized Departure of a Client.**

(a) The unauthorized departure of a client who cannot care for his or her safety or is considered to be a danger to himself or herself or to others shall be reported on the unauthorized departure form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit H. The original report shall be retained in the client record.

(b) When the client on unauthorized departure is receiving court-ordered inpatient or residential services or is voluntarily receiving mental retardation residential services, the superintendent or director shall immediately report the client as a missing person to the appropriate law enforcement agency.

**§404.254. Exhibits.** The following forms are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711:

(1) Exhibit A—supervisor's report of employee's injury. This form is used to describe any injury and all related facts incurred by an employee or guest of a facility of the department. It is designed and published by the department and a copy of it may be obtained at the central office of the department;

(2) Exhibit B—employer's first report of injury or illness. This form gives a description of the employer of the person injured, time and place of the injury, its cause and nature and whether fatal. It is published by and a copy of it may be obtained from the Office of the Attorney General, State Employees-Workers Compensation Division, 314 Highland Mall Boulevard, Suite 350, Austin, Texas 78752;

(3) Exhibit C—client injury report. This form is used to describe any injury incurred by a client and all related facts. It is designed and published by the department, and a copy of it may be obtained from the central office of the department;

(4) Exhibit D—personal injury/damage report—motor. This is an insurance industry form used in all states to claim damages for personal injuries. Copies may be obtained from any insurance form supplier;

(5) Exhibit E—property damage/report—fire. This form is used to report all pertinent facts about a fire. It is designed and published by the department and a copy of it may be obtained at the central office of the department;

(6) Exhibit F—theft/damage report. This form is used to show a property loss at a facility of the department. It is designed and published by the department and a copy of it may be obtained at the central office of the department;

(7) Exhibit G—criminal occurrence report. This form is used to report the oc-

currence of a crime. It is designed and published by the department and a copy of it may be obtained at the central office of the department; and

(8) Exhibit H—unauthorized departure of a client. This form is used to report the unauthorized departure of a client. This form is designed by the department, and a copy of it may be obtained from the central office of the department.

**§404.255. Distribution.**

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office; and superintendents and directors of all department facilities.

(b) The superintendent or director of each facility shall provide a copy of this subchapter to the business manager or administrator of his or her facility.

(c) The superintendent or director of each facility shall be responsible for the dissemination of the information contained in this subchapter to all appropriate staff members.

**§404.256. References.** Reference is made to the following statutes:

(1) Texas Civil Statutes, Article 5547-202, §2.12;

(2) Texas Civil Statutes, Article 6252-6; and

(3) House Bill 272, 70th Legislature.

Issued in Austin, Texas, on August 13, 1987

TRD-8706702

Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date September 21, 1987

Expiration date December 30, 1987

For further information, please call

(512) 465-4670



# 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 1.

#### ADMINISTRATION

#### Part IV. Office of the Secretary of State

#### Chapter 75. Automobile Club

The Office of the Secretary of State proposes amendments to §§75.1, 75.11-75.13, 75.31, 75.32, and 75.34, and new §75.2, concerning application; notification of appointment and application to act as an automobile club salesman or agent; termination of employment; fee and renewal; revocation of certificate of authority; good cause; hearing; and annual renewal fee. The amendments delete references to obsolete forms, delete the form in §75.1 entitled application for certificate of authority (originally adopted by reference), and provide the address to which the public may write to obtain current forms. The new section outlines the requirement for annual renewal of every certificate of authority to act as an automobile club.

Lorna Wassdorf, special assistant, Statutory Filings Division, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Wassdorf also has determined that for each year of the first five years the sections are in effect the public benefit anti-

cipated as a result of enforcing the sections will be the provision of both the public and the Office of the Secretary of State with specific guidelines by which to effect the necessary registrations, renewals, and notice filings under the Automobile Club Services Act. 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 Lorna S. Wassdorf, Special Assistant, Statutory Filings Division, P.O. Box 13697, Austin, Texas 78711-3697.

#### Application for Certificate of Authority

##### ★ 1 TAC §75.1, §75.2

The amendment and new section are proposed under Texas Civil Statutes, Article 6252-13a, §4, and Texas Civil Statutes, Article 1528d, which provide the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

*§75.1. Application [Form].* [Each club making] Application for a certificate of authority to engage in business as an automobile club in the State of Texas shall be **made on forms prescribed by the secretary of state entitled application for certificate of authority. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State,**

**P.O. Box 12887, Austin, Texas 78711.** [complete and submit the following form.]

*§75.2. Annual Renewal Required.* Every certificate of authority to act as an automobile club shall expire annually on August 31, of each year unless sooner revoked or suspended. Application for renewal of such certificate of authority shall be filed upon the forms prescribed by the secretary of state entitled automobile club application for certificate of authority renewal. The annual license fee for renewal of such certificate of authority shall be as prescribed by Texas Civil Statutes, Article 1528d, §5. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

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 14, 1987.

TRD-8706755      Lorna Wassdorf  
Special Assistant  
Statutory Filings  
Division  
Office of the Secretary  
of State

Earliest possible date of adoption.  
September 21, 1987  
For further information, please call  
(512) 463-5701

Registration of Salesmen or Agents

★ 1 TAC §§75.11-75.13

The amendments are proposed under Texas Civil Statutes, Article 6252-13a, §4, and Texas Civil Statutes, Article 1528d, which provide the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

§75.11 [Application for] Notification of Appointment and Application to Act as an Automobile Club Salesman or Agent. Within 30 days of the date of employment of a salesman or agent by [with] an automobile club to sell memberships in the automobile club [to the public], [notification] the automobile club shall [be made to] notify the secretary of state on the form entitled notification of appointment and application to act as an automobile club salesman or agent. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711 [an affidavit application for appointment to act as salesman or agent of an automobile club form to be accompanied by a notification of appointment of automobile club salesman or agent form].

§75.12. Termination of Employment. Upon termination of any salesman's [a salesman] or agent's [agent] employment by an automobile [the] club, such automobile club shall within 30 days thereafter notify the secretary of state of such termination.[:] Such notification shall [to be] made on the prescribed termination notice form. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

§75.13. Fee and Renewal. The annual registration fee for salesmen or agents of automobile clubs shall be as prescribed by Texas Civil Statutes, Article 1528d, §6 [\$3.00 annually], and shall be renewed each 12 months after its issuance [by notification to the secretary of state on the prescribed notification of renewal appointment of automobile club salesmen or agents form]. The renewal shall be made on the form entitled annual renewal of a registered salesman or agent. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

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 14, 1987.

TRD-8706756

Lorna Wassdorf
Special Assistant
Statutory Filings
Division
Office of the Secretary of State

Earliest possible date of adoption
September 21, 1987
For further information, please call
(512) 463-5701.



★ 1 TAC §§75.14-75.17

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

The Office of the Secretary of State proposes the repeal of §§75.14-75.17, concerning application form, notification form, renewal appointment notification form, and termination form. The application to act as an automobile club salesman or agent, provided in §75.14, is abolished as a separate form and is incorporated as part of the notification of appointment of a salesman or agent form, as provided in §75.11. As provided in amendments to other sections of Chapter 75, forms or the specification for forms which may be required to effect filings under the Automobile Club Services Act, Texas Civil Statutes, Article 1528d, may be obtained by writing to the Statutory Filings Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711.

Lorna Wassdorf, special assistant, Statutory Filings Division, has determined that for the first five-year period the repeals 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 repeals.

Ms. Wassdorf also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the elimination of references to obsolete forms used in filings made under the Automobile Club Services Act. There is no anticipated economic cost to individuals who are required to comply with the repeals.

Comments may be submitted to Lorna S. Wassdorf, Special Assistant, Statutory Filings Division, P.O. Box 13697, Austin, Texas 78711-3697.

The repeals are proposed under Texas Civil Statutes, Article 6252-13a, §4, and Texas Civil Statutes, Article 1528d, which provide the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

§75.14. Application Form.

§75.15. Notification Form.

§75.16. Renewal Appointment Notification Form.

§75.17. Termination Notice Form.

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 14, 1987.

TRD-8706757

Lorna Wassdorf
Special Assistant
Statutory Filings
Division
Office of the Secretary of State

Earliest possible date of adoption
September 21, 1987
For further information, please call
(512) 463-5701



Revocation and Suspension of Certificate

★ 1 TAC §§75.31, 75.32, 75.34

The amendments are proposed under Texas Civil Statutes, Article 6252-13a, §4, and Texas Civil Statutes, Article 1528d, which provide the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

§75.31. Revocation of Certificate of Authority. The secretary of state at any time for good cause shown, in accordance with the Administrative Procedure and Texas Register Act and the rules of practice and procedure before the Office of the Secretary of State, may revoke or suspend an automobile club's certificate of authority. Revocation and suspension will be subject to the right of notice, hearing, and adjudication pursuant to the automobile club rules, [and] the Administrative Procedure and Texas Register Act, and the rules of practice and procedure before the Office of the Secretary of State. Such action will be subject to the right of appeal to a district court in the county of the aggrieved person's residence within 60 days after the date of notice by registered mail of such decision, but not thereafter.

§75.32. Good Cause. Good cause as stated in §75.31 of this title (relating to Revocation of Certificate of Authority) shall include, but not be limited to, the following:

- (1) a violation of a provision of Texas Civil Statutes, Article 1528d;[,]
(2) a finding that is not operating an automobile club as defined in the Automobile Club Services Act [in this chapter];[,]
(3) a finding that it is insolvent;[,]
(4) a finding that its assets are less than its liabilities;[.]

(5) a finding that it refuses to submit to an examination by the secretary of state;[;]

(6) a finding that it is transacting business fraudulently;[;]

(7) a finding that any owner, officer, or operating manager is not of good moral character.

§75.34. *Hearing.* All administrative hearings will be held in Austin, Texas. The secretary of state will set the time and hearing room location in the notice as prescribed in §75.33 of this title (relating to Notice) and in accordance with the rules of practice and procedure before the Office of the Secretary of State.

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

Issued in Austin, Texas, on August 14, 1987

TRD-8706758 Lorna Wassdorf  
Special Assistant  
Statutory Filings  
Division  
Office of the Secretary  
of State

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 463-5701



## TITLE 7. BANKING AND SECURITIES

### Part III. State Banking Board

#### Chapter 31. Miscellaneous

##### ★ 7 TAC §31.2, §31.3

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

The State Banking Board proposes amendments to §31.2 and §31.3, concerning purpose and scope of the board's rules and regulations governing bank charter applications. The amendments are intended to extend the applicability of the board's procedural rules to include applications for trust company charters

Jerry T. Maxwell, director of trust examinations, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. Although there will be fiscal implications for state and local government as a result of enforcing or administering the sections, all additional costs will be directly offset by an increase in revenue from application fees and other admin-

istrative costs which charter applicants are required to pay pursuant to the Texas Banking Code. The cost of compliance will be the same for all businesses.

Mr. Maxwell also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the provision of an efficient procedure governing applications for trust company charters to insure uniform standards of practice and impartial adjudication of causes. The possible economic cost to individuals who are required to comply with the proposed sections will be the original charter application fee of \$2,500, plus the actual expenses of the banking department in performing a charter investigation.

Comments may be submitted to Jerry T. Maxwell, Director of Trust Examinations, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

The amendments are proposed under the Banking Code, Articles 342-115 and 342-1106, which provides the State Banking Board with the authority to promulgate and adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications.

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 10, 1987

TRD-8706724 Jorge A. Gutierrez  
General Counsel  
State Banking Board

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 479-1200



#### Chapter 33. Procedure for Hearings

##### ★ 7 TAC §§33.2, 33.61, 33.106

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

The State Banking Board proposes amendments to §§33.2, 33.61, and 33.106, concerning form, procedure, and notice of hearing. The amendments clarify the applicability of the board's procedural rules to applications for trust company charters, as well as state bank charters

Jerry T. Maxwell, director of trust examinations, has determined that for the first five-year period the proposed sections will

be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Maxwell also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be provision of a process for the fair consideration and determination of applications for trust company charter applications. The application process will assure that charter applicants are qualified to engage in the trust business, thereby protecting the public from unscrupulous or unqualified operators. 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 Jerry T. Maxwell, Director of Trust Examinations, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

The amendments are proposed under the Banking Code, Articles 342-115 and 342-1106, which provides the State Banking Board with the authority to promulgate and adopt rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications.

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 10, 1987.

TRD-8706725 Jorge A. Gutierrez  
General Counsel  
State Banking Board

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 479-1200



## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad

#### Commission of Texas Chapter 5. Transportation Division

##### Subchapter AA. Rail Safety

##### ★ 16 TAC §5.623

The Railroad Commission of Texas proposes new §5.623, concerning hazardous materials regulations adopted by reference. The new section enables the Railroad Commission of Texas to supplement current efforts to enforce existing federal hazardous materials regulations.

Mark E. Foster, hearings examiner, Transportation Division, 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. Foster 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 is increased public protection by commission enforcement of the hazardous materials regulations. There is no anticipated economic cost to individuals who are required to comply with the section.

Comments on the proposal may be submitted to Mark E. Foster, Hearings Examiner, Transportation Division, Railroad Commission of Texas, PO Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Articles 6445, 6446, and 6448a, which provide the Railroad Commission of Texas with the authority to adopt regulations to ensure railroad safety.

§5 623 *Hazardous Materials Regulations Adopted by Reference* - 49 Code of Federal Regulations, Parts 171-179, inclusive, as they may from time to time be adopted or amended, are hereby adopted as requirements of the Railroad Commission of Texas to govern all railroads operating within the State of Texas.

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

Issued in Austin, Texas, on August 10, 1987.

TRD 8706754 Walter Earl Lile  
Special Counsel  
Railroad Commission of Texas

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 463-7149



## TITLE 22. EXAMINING BOARDS

### Part XII. Board of Vocational Nurse Examiners

#### Chapter 233. Education Vocational Nursing Education Standards

##### ★ 22 TAC §233.76

The Board of Vocational Nurse Examiners proposes new §233.76, concerning minimum standards/guidelines. The new sec-

tion assists in evaluating vocational nursing programs in accordance with established rules and regulations.

Joyce A. Hammer, executive director, has determined that for the first five-year period the 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. 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 the assurance that rules and regulations are consistently applied in evaluating and reviewing vocational nursing programs in Texas. 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, (512) 835-2071.

The new section is 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.

##### §233.76 *Minimum Standards/Guidelines.*

(a) The staff of the Board of Vocational Nurse Examiners may develop minimum standards/guidelines that may be used in evaluating a nursing curriculum, and in determining compliance with the board's rules relative to vocational nursing programs.

(b) These minimum standards/guidelines are available for purchase at the board office.

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 13, 1987.

TRD 8706760 Joyce A. Hammer  
Executive Director  
Board of Vocational  
Nurse Examiners

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 835-2071



## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 123. Respiratory Care Practitioner Certification

##### ★ 25 TAC §123.7, §123.8

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

The Texas Department of Health proposes amendments to §123.7, and §123.8 concerning types of certificates and temporary permits or temporary certificates and applicant eligibility; and examinations.

The amendments to §123.7 and §123.8 bring the sections into compliance with Texas Civil Statutes, Article 45121, as amended by House Bill 97, 70th Legislature, 1987, by updating the examination standards and procedures and the eligibility requirements for a renewable certificate as a respiratory care practitioner. The amendments authorize the department to issue a renewable certificate to those who passed the examination, but did not meet the education requirements. The amendments also allow an additional examination opportunity for temporary certificate holders in November 1987, provided an examination application is postmarked by September 1, 1987, to insure this additional examination opportunity. Additionally, the passing score of 60 is extended from August 31, 1987, to December 31, 1987.

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 to state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be the assurance that the certification and regulation of respiratory care practitioners continues to identify competent practitioners by examination, and allow such practitioners to continue providing respiratory care services to the citizens of Texas. The anticipated economic cost to individuals who are required to comply with the sections will be a certification fee of \$30 (prorated at \$2.50 a month) for fiscal year 1987, and a renewal fee of \$30 each year deom 1988-1991. Temporary certificate holders who have not passed the examination may take an examination by December 31, 1987. These persons will have to pay an examination fee of \$60 or a reexamination fee of \$40. Persons who have taken and passed an examination



since September 1, 1987, are not required to be reexamined.

Comments may be submitted to Donna S. Hardin, Hospital and Professional Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183. Comments will be received for 30 days from the date of publication of the proposed amendments.

The amendments are proposed under Texas Civil Statutes, Article 4512i, §3 and §15, which provide the Texas Board of Health with the authority to establish examination requirements for a certificate as a respiratory care practitioner and to issue certificates to temporary certificate holders who meet the examination requirements; and House Bill 97, 70th Legislature, 1987, which provides the Texas Department of Health with the authority to issue a certificate to practice respiratory care to a holder of a temporary certificate who meets the examination requirements by September 1, 1987.

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 13, 1987.

TRD-8706791 Robert A. MacLean  
Deputy Commissioner  
Professional Services  
Texas Department of  
Health

Proposed date of adoption:

October 31, 1987.

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

## Chapter 141. Massage Therapists

★ 25 TAC §§141.2, 141.3, 141.5, 141.6, 141.9, 141.11, 141.15-141.17

The Texas Department of Health proposes amendments to §§141.2, 141.3, 141.5, 141.6, 141.9, and 141.11, and new §§141.15-141.17. The amendments and new sections are intended to implement the requirements of House Bill 2466, 70th Legislature, 1987, concerning the registration and regulation of massage therapists. The amendments and new sections expand the list of definitions, modify the procedures of the massage therapy advisory council, reopen the grandfather period until January 1, 1988, and establish criteria and procedures for registration during this period, clarify the materials which applicants for registration are required to submit to the department; allow the use of audiovisual aids as part of classroom instruction in massage therapy schools; modify the procedures concerning complaints about prohibited acts, establish the acts that represent unprofessional conduct by a massage therapist, add requirements concerning crimes or offenses which involve prostitution or sexual offenses, and add a requirement concerning local ordinances.

Stephen Seale, chief accountant III, has determined that for the first five-year period that the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the amendments and new sections. The effect on state government will be no additional cost, but an estimated increase in revenue of \$34,000 for fiscal year 1988, and \$12,000 each year for fiscal years 1989-1992. The cost of compliance with the sections for small businesses will be the fees as set out in the body of the sections. There will be no effect on local government.

Mr. Seale also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of the requirements of House Bill 2466, 70th Legislature, 1987, which becomes effective on September 1, 1987, and which amends the Massage Therapy Act, Texas Civil Statutes, Article 4512k. The anticipated economic cost to individuals who are required to comply with the sections will be the fees as set out in the body of the sections.

Comments may be submitted to Gerald Guthrie, Director, Hospital and Professional Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after the proposal is published in the *Texas Register*.

The amendments and new sections are proposed under Texas Civil Statutes, Article 4512k, §7, which provide the Texas Board of Health with the authority to adopt rules concerning the regulation of massage therapists and massage therapy schools, and House Bill 2466, 70th Legislature, 1987.

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

**Client**--Also known as patron, including any individual receiving therapeutic massage services.

**Supervised**--The physical presence of an appropriately qualified instructor.

**§141.3. The Advisory Council**

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

(c) Meetings

(1)-(7) (No change.)

(8) **The council shall report to the board the attendance records of members at the time of their reappointment.**

(d)-(j) (No change.)

**§141.5. Registration Requirements**

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

(c) **Grandfather period.** The grandfather period begins on the effective date of these sections and expires January 1, 1988. A person who possesses qualifications that would have entitled the person to register under the Act, §15, but who failed to apply for

registration before January 1, 1986, shall be registered if the person:

(1) complies with §141.6 of this title (relating to Application Procedures);

(2) states the reason(s) the applicant failed to register by January 1, 1986;

(3) furnishes the department with one of the following:

(A) a certified copy of his/her birth certificate; or

(B) a certified copy of her marriage certificate; or

(C) a certificate of his/her naturalization; and

(4) pays a late fee of \$120 in addition to the registration fee required in §141.4 of this title (relating to Fees);

(5) has met the following requirements as of September 1, 1985:

(A) the applicant was engaged in the professional practice of massage therapy as defined in §141.2 of this title (relating to Definitions) for not less than 36 hours per month for a total of two years (two years being defined as September 1, 1983 through September 1, 1985);

(B) the applicant must provide proof of such practice with or without compensation by submitting to the department the following:

(i) properly completed official forms as required in §141.6 of this title (relating to Application Procedures); and

(ii) an affidavit certifying to the 36 hours per month;

(C) the applicant must submit two or more of the following to the department:

(i) employer affidavits on department prepared forms;

(ii) client affidavits on department prepared forms. The affidavit shall include the client's address, phone number, and copies of receipt(s) for massage therapy services rendered. This information shall be used for no other purpose than to verify the two-year experience requirement;

(iii) W-2 forms or any other Internal Revenue Service forms issued to the applicant which reflect receipt of payment for massage therapy services;

(iv) affidavit of referral for massage therapy from a licensed health professional; or

(v) any other information which supports the experience verification;

(D) as an alternative to being engaged in the professional practice of massage therapy as described in subparagraphs (A)-(C) of this paragraph, the applicant may:

(i) have a bona-fide diploma from a school of massage therapy approved by a governmental body authorized by law, statutes, or other legally recognized provision, or by the American Massage Therapy Association (diploma must have been issued prior to September 1, 1985); or

(ii) have been an active member of the American Massage Therapy Association on September 1, 1985. Applicant must submit letter from the American Mas-

sage Therapy Association indicating they were a member at that time or be able to furnish the department with a copy of the current year membership card for the year 1985/1986;

(E) no documentation of the practice of massage therapy may be from a business in which any of the floor space is devoted to the offering of materials or services which are characterized by an emphasis on sexual activities. Such businesses include, but are not limited to, nude modeling or nude photographic studios, adult arcades, adult bookstores, adult theatres, adult novelty shops, escort services, and topless bars; and

(6) has previously submitted portions of an application including the application fee, such person will only be required to submit the late fee along with new application forms provided by the department.

§141.6. *Application Procedures.*

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

(c) Required application materials

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

(4) Other documents.

(A) (No change.)

(B) The applicant must furnish the department with one of the following:

(i) a certified copy of his/her birth certificate; or

(ii) a certified copy of her marriage certificate; or

(iii) a certificate of his/her naturalization.

(C)[B] Vitae, resumes, and other documentation of the applicant's qualifications may be submitted but not substituted for the required documentation.

(5) (No change.)

§141.9. *Massage Therapy Schools Recognized By The Department.*

(a) (No change.)

(b) General. After January 1, 1986, the department shall recognize only those establishments or organizations which meet the following criteria as a massage therapy school.

(1) Minimum standards for operation.

(A)-(E) (No change.)

(F) Supervised instruction may include the use of audiovisual aids as part of their classroom instruction for the following purposes:

(i) to add visual clarity;

(ii) to provide the student with a visual review of their work; and

(iii) for classroom makeup up to 10% of the missed instruction with the instructor available for questions.

(G) Audiovisual aids are not to take the place of the physical presence of an instructor in the classroom on any subject required for registration.

(2) (No change.)

(c)-(f) (No change.)

§141.11. *Complaints Concerning Prohibited Acts.*

(a) (No change.)

(b) Complaints

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

(3) If the person has committed a prohibited act [continues the prohibited act after 10 days of being notified by the investigation of the act], the department may [will] request the attorney general of Texas to take appropriate legal action or [and] the department may take [any direct] administrative action against the person which is authorized under the Act and these sections.

(c) (No change.)

§141.15. *Unprofessional Conduct.* A person is engaging in unprofessional conduct that has endangered or is likely to endanger the public health, welfare, and safety, if the person performs any of the following acts:

(1) represents himself/herself as a registered massage therapist but has not been registered under the Act or these sections;

(2) provides false information on the application form for registration as a massage therapist or other material submitted to the department;

(3) continues to practice massage therapy after his or her registration has been suspended or revoked;

(4) uses a work area, equipment, or clothing which is unclean or unsanitary;

(5) during working hours, consumes alcohol or takes controlled substances not prescribed by a physician licensed to practice medicine in the State of Texas;

(6) makes deceptive, untrue, or fraudulent representations in the practice of massage or employing a trick or scheme in the practice of massage, including, but not limited to, warranty of results of such services and false claims of proficiency in any field;

(7) engages in any one of the following types of sexual behavior as they are contained in Chapters 21, 22, and 43 of the Texas Penal Code: sexual conduct; sexual contact; deviate sexual intercourse; prostitution; homosexual conduct; indecent exposure; public lewdness; sexual abuse of a child; and indecency with a child. Such unprofessional conduct in any one of these areas includes exposure of the private parts of the body which are mentioned in the definitions in the Penal Code. If the client initiates any one of the mentioned types of sexual behavior, the massage therapist shall immediately take appropriate action to discontinue either the activity and/or the professional relationship. The reference in this paragraph to the Penal Code does not include the proof requirement in the Code for criminal convictions. Also, the reference to the Penal Code does not preclude separate enforcement of the provisions of the Penal Code by appropriate law enforcement officials;

(8) engages in the practice of massage therapy in a business in which any floor space is devoted to the offering of materials or services which are characterized by an emphasis on sexual activities. Such businesses

include, but are not limited to, nude modeling or nude photographic studios, adult arcades, adult bookstores, adult theatres, adult novelty shops, escort services, and topless bars.

§141.16. *Crimes Or Offenses Involving Prostitution Or Sexual Offenses.*

(a) Notwithstanding any other provisions in these sections, an individual who has been convicted of, entered a plea of nolo contendere to, or received deferred adjudication to crimes or offenses involving prostitution or sexual offenses is ineligible for registration as a massage therapist.

(b) Prior to denying or revoking a registration on the grounds in subsection (a) of this section, the department will offer the individual an opportunity for formal hearing in accordance with §§1.21-1.32 of this title (relating to Formal Hearing Procedures).

§141.17. *Local Ordinances Or Regulations.* Texas Civil Statutes, Article 4512k, §14, provide that the Act supersedes any regulation adopted by a political subdivision of this state relating to the licensing or regulation of massage therapists. Section 1 of the same statute and the definition of massage therapist in §141.2 of this title (relating to Definitions) provide that a massage therapist may administer massage therapy to a patron of either gender for compensation.

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 13, 1987.

TRD-8706767

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

Proposed date of adoption.

October 31, 1987

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

Chapter 217. Milk and Dairy Fees

★ 25 TAC §217.81, §217.82

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

The Texas Department of Health proposes an amendment to §217.81 and §217.82, concerning milk and milk product fees and frozen dessert fees. The amendment to §217.81 expands the title of the section to include milk and milk products fees; specifies time periods for payment of fees; and removes milk or milk products processed in Texas processing plants which are not offered for sale within Texas from consideration for milk or milk pro-

duct inspection fees. The amendment to §217.82 removes the \$100 per month inspection fee for out-of-state manufacturers of frozen desserts who offer their product for sale within the State of Texas, requires that all frozen desserts manufactured by frozen dessert manufacturing plants located in the State of Texas, and intended for sale within the State of Texas shall be assessed a \$.01 per hundred-weight inspection fee, and allows the department to fix time periods for collecting fees.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for §217.81, concerning the milk and milk product fees, will be an additional cost of \$17,500 in fiscal year 1988, and \$15,000 each year for 1989-1992, but an estimated \$200,000 increase in revenue per year will be received. The cost of compliance for small businesses will be the fees described in §217.81. The effect on state government for §217.82, concerning frozen dessert fees, will be no additional enforcement cost for the first five years, but there will be an estimated \$5,000 per year increase in revenue. The cost of compliance for small businesses will be the fees described in §217.82. There will be no effect on local government for the amendments to either §217.81 or §217.82.

Mr. Seale also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as result of enforcing or administering the sections will be that the sections will be in compliance with the requirements of House Bill 1179, 70th Legislature, 1987, which will become effective on August 31, 1987. House Bill 1179 amends Texas Civil Statutes, Articles 165-3 and 4476-a to provide for uniformity in the collection of fees for milk and milk products and fees for frozen desserts. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments may be submitted to Kirmon C. Smith, Director, Division of Milk and Dairy Products, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7281. Comments will be received for 30 days from the date of publication of the proposed sections. In addition, a public hearing will be held at 9 a.m., Wednesday, September 9, 1987, in the Texas Department of Health auditorium located at 1100 West 49th Street, Austin, Texas 78756.

The amendments are proposed under Texas Civil Statutes, Article 165-3, §2A, which provide the Texas Board of Health with the authority to adopt rules covering milk and milk products. Texas Civil Statutes, Article 4476-2a, §5, which provide the board with the authority to adopt rules covering frozen desserts, and House Bill 1179, 70th Legislature, 1987.

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 13, 1987.

TRD-8706792

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

Proposed date of adoption  
October 31, 1987

For further information, please call  
(512) 458-7281

◆   ◆   ◆

## Part II. Texas Department of Mental Health and Mental Retardation

### Chapter 401. System Administration

#### Subchapter I. Certification of Community Residential Programs—Mental Retardation Services

##### ★ 25 TAC §§401.551-401.565

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§401.551-401.565, governing the certification of community residential programs funded by TDMHMR to provide residential services to persons with mental retardation and other developmental disabilities.

The new subchapter is proposed in response to the rapidly increasing numbers of persons with mental retardation who are being served in community residential programs.

The new sections provide a mechanism by which an acceptable standard of care is provided to all clients served in such settings.

The new subchapter is consistent with the intent of the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201, et seq., which requires the department to establish standards of care for community-based services, and which further requires the department to evaluate the performance of community-based service providers. It conforms with provisions of Senate Bill 257, 70th Legislature, 1987, which requires departmental rules and standards regarding community-based services to be applicable to outreach programs as well as community centers, and which mandates the department to annually review all outreach services, including residential programs. The new subchapter is also consonant with the settlement agreement in *Lelsz v Kavanagh*.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for local government as a result of enforcing or administering

the sections. Fiscal implications for state government have been determined to be approximately \$225,000 each year the first five years the sections are in effect. Fiscal implications for small businesses will depend on the extent to which each is currently providing services consistent with the proposed standard of care.

Ms. Dillard also has determined that for each year of the first five years the sections are in effect, the public benefit will be the use of procedures that ensure that clients placed in community residential programs are provided care that meets minimum standards for life, health, and safety. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rule-making powers.

**§401.551. Purpose.** The purpose of this subchapter is to provide the procedures by which community residential programs serving persons with mental retardation and other developmental disabilities are certified by the Texas Department of Mental Health and Mental Retardation.

**§401.552. Application.** This subchapter applies to all community residential programs which receive funding through the Texas Department of Mental Health or Mental Retardation for the provision of residential services to persons with mental retardation and other developmental disabilities.

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

**Applicant** -- A person or organization who is seeking certification from the department, and who has complied with all requirements with respect to the execution and completion of the application form.

**Assistant deputy commissioner** -- The assistant deputy commissioner for mental retardation services with responsibility for the region in which a community residential program is to be operated.

**Care provider** -- A person who provides direct client care in a residential setting.

**Certification officer** -- The staff person designated by the mental retardation authority to assist the department in the certification of community residential programs in the local service area.

**Community center** -- A community mental health and mental retardation center as established in the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203.

**Community residential program** -- Any

noninstitutional residential program in the community providing supervision, treatment, and training for one to 15 clients, and which is funded by the Texas Department of Mental Health and Mental Retardation.

**Contract**—The written agreement containing the elements referred to in §401.563 of this title (relating to Exhibits) as Exhibit A, between the department and/or its designee and a community residential program, in which the department agrees to pay a designated fee in consideration for the provision of specified residential services by a community residential program for one to 15 clients with mental retardation or other developmental disabilities.

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

**Designee**—The entity or entities designated by the department to perform the monitoring and evaluation requirements of this subchapter.

**Facility**—Any state school or state center providing mental retardation services under the jurisdiction of the Texas Department of Mental Health and Mental Retardation.

**Mental retardation authority (MRA)**—The entity designated by the department to direct, operate, facilitate, or coordinate such services to mentally retarded persons as are required to be performed at the local level by state law and by the department.

#### §401.554. *General Provisions Governing Certification of Community Residential Programs.*

(a) To be eligible to receive funds from the Texas Department of Mental Health and Mental Retardation for the provision of residential services to persons with mental retardation, each community residential program provider must obtain and maintain certification as described in this subchapter.

(b) A separate certification must be obtained for each service location when the applicant operates programs at more than one site.

(c) Certification issued by the department is not transferable or assignable.

(d) Certification remains in effect, pending annual renewal, until suspended or revoked by the department or surrendered by the community residential program.

(e) The department may maintain an action in the name of the State of Texas for injunction or any other process against any person, organization, or political subdivision to restrain the uncertified operation of a community residential program.

#### §401.555. *Requirements for Certification.*

(a) To be certified to provide mental retardation residential services to clients, the applicant must be able to meet the basic care requirements in the application packet referred to in §401.563 of this title (relating to Exhibits) as Exhibit C and demonstrate compliance with the following standards and

rules:

(1) applicable provisions of the IDMHMR Community Standards for Community Mental Health and Mental Retardation Centers and Community Service Programs of IDMHMR, 1985;

(2) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(3) Chapter 403, Subchapter T of this title (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), or Chapter 405, Subchapter O of this title (relating to Client Abuse and Neglect in IDMHMR Facilities), as appropriate;

(4) Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion—Mental Health Facilities);

(5) rules governing client deaths;

(6) Chapter 405, Subchapter Y of this title (relating to Rights of Clients—Mental Retardation Services);

(7) applicable provisions of the National Fire Protection Association's Life Safety Code, 1985 edition; and

(8) the Mentally Retarded Persons' Act of 1977, Texas Civil Statutes, Article 5547-300.

(b) Programs that are not directly operated by the Texas Department of Mental Health and Mental Retardation must also execute a contract containing the elements referred to in §401.563 of this title (relating to Exhibits) as Exhibit A.

§401.556. *Application Process.* All correspondence with reference to certification to operate a community residential program for persons with mental retardation should be directed to the Certification Section, Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711.

(1) New community residential programs. All applicants for new community residential programs shall make preliminary application for certification using the form referred to in §401.563 of this title (relating to Exhibits) as Exhibit B. Application should be made at the earliest time feasible, but in no case later than 60 days prior to the date on which the program begins serving clients.

(A) Upon receipt of the preliminary application for certification, the department shall send the applicant the application packet referred to in §401.563 of this title (relating to Exhibits) as Exhibit C.

(B) Upon completing the requirements described in the application packet, and no later than 30 days prior to serving clients in the program, the applicant shall submit the fully completed application packet to the certification officer of the MRA serving the local service area and to the department.

(C) After receiving the fully completed application for certification, the department shall require such program review as it deems necessary. If the certification of

the premises are suitable and the applicant is qualified to operate a community residential program in accordance with the requirements of this subchapter, the certification officer shall recommend provisional certification. A recommendation by the certification officer must include the signature endorsement of the director of quality assurance of the MRA that the program meets certification requirements.

(i) If provisional certification is recommended, the department shall issue to the applicant a provisional certificate meeting the requirements of §401.557(a)(1) of this title (relating to Certification Decision and Notification) for a period not to exceed six months. A copy of the provisional certificate shall be sent to the certification officer and the assistant deputy commissioner.

(ii) If provisional certification is not recommended or provisional certification is recommended but not granted, the department shall send the applicant a letter, return receipt requested, stating the reason(s) that the application has been denied. A copy of the letter shall be sent to the certification officer of the MRA and the assistant deputy commissioner.

(D) During the six-month period of provisional certification, the department or its designee shall make an onsite, unannounced visit to the premises to determine whether certification in full should be granted.

(2) Community residential programs currently in operation on the effective date of this subchapter. The certification officer of each MRA shall ensure that each community residential program in operation in its local service area shall receive the application packet referred to in §401.563 of this title (relating to Exhibits) as Exhibit C within 30 days of the effective date of this subchapter. Community residential programs currently in operation will be phased in with statewide training by region. Within 60 days of completing regional training, the community residential program applicant shall submit a fully completed application packet to the certification officer of the MRA and to the department.

§401.557. *Certification Decision and Notification.* Following receipt of the fully completed application for certification and onsite certification program review, as appropriate, the department shall take the following action:

(1) If the department determines that the community residential program substantially complies with the requirements for certification, the department shall certify the program and send a letter to the applicant, the certification officer of the MRA, and the assistant deputy commissioner, which stipulates certification as follows:

(A) the name and location of the community residential program;

(B) the name of the owner;

(C) the name of the operator;

(D) the maximum bed capacity;  
(E) the type of residential program to be provided as follows:

- (i) structured residential program, medically fragile;
- (ii) structured residential program, supervised family living;
- (iii) structured residential program, intensive residential group home;
- (iv) intermediate residential program, small group home;
- (v) intermediate residential program, supervised family living foster care, or
- (vi) semi-independent living, supervised apartments;
- (F) the intellectual level and adaptive behavior level of clients to be served; and

(G) any special restrictions on the operation of the program.

(2) If the department determines that the community residential program does not substantially comply with requirements for certification, the department shall notify the applicant by letter, return receipt requested, of the reason(s) that certification has been denied. A copy of the letter shall be sent to the certification officer of the MRA and the assistant deputy commissioner.

#### §401.558. *Deemed Certification Status.*

(a) Community residential programs which are certified, licensed, or accredited by other bodies may be deemed to be certified by the department at its discretion. Such certification, licensure, or accreditation includes, but is not limited to:

(1) licensure by the Texas Department of Human Services as a foster care home for children;

(2) certification by the Texas Department of Health as an ICF/MR program, when operated under the auspices of a TDMHMR facility or a community mental health and mental retardation center;

(3) certification by the Texas Department of Mental Health and Mental Retardation as an Intermediate Care Services 1915(c) waiver program when operated under the auspices of a TDMHMR facility or a community mental health and mental retardation center, or

(4) accreditation by the Accreditation Council on Services for People with Developmental Disabilities.

(b) Community residential programs certified, licensed, or accredited by agencies described in subsection (a) of this section must follow the regular certification application process described in §401.556 of this title (relating to Application Process).

(c) The community residential program provider must notify the certification officer within two working days of any changes in the licensure or certification status on which the TDMHMR deemed certification status is based. Upon notification of the change, the certification officer shall be responsible for reporting the change to the department within two working days.

#### §401.559. *Certification Renewal.*

(a) Following the period of initial certification, the applicant must renew certification annually on or within 30 days prior to the anniversary date of certification.

(b) To renew certification, each applicant shall submit a fully completed application, referred to in §401.563 of this title (relating to Exhibits) as Exhibit B, which updates the information on the previous application. The renewal application must include the signature endorsement of the certification officer and the quality assurance director of the MRA.

(c) Following receipt of the fully completed renewal application, the department shall take whatever action it deems necessary to determine whether certification should be renewed, including onsite, unannounced reviews of the premises.

(1) If the department determines that the community residential program substantially complies with the requirements for certification, the department shall recertify the program for a period not to exceed one year. A letter of recertification shall be sent to the applicant, the certification officer, and the assistant deputy commissioner.

(2) If the department determines that the community residential program does not substantially comply with requirements for certification, the department shall notify the applicant by letter, return receipt requested, of the reasons that certification has not been renewed. A copy of the letter shall be sent to the certification officer of the MRA and the assistant deputy commissioner.

#### §401.560. *Change in Certification.*

(a) A new application for certification is required when:

(1) the location of the community residential program is moved;

(2) the physical premises of a program are substantially altered, i.e., the physical plant undergoes structural renovation, construction, or modification;

(3) the maximum bed capacity is to be increased;

(4) the type of residential program to be provided changes.

(b) Within 30 days prior to implementation of such a change in program, the applicant shall meet the requirements as outlined in §401.556 of this title (relating to Application Process).

(c) An application for change in certification shall be processed as described in §401.557 of this title (relating to Certification Decision and Notification).

#### §401.561. *Denial, Suspension, and Revocation of Certification.*

(a) The department shall have the authority to deny, suspend, or revoke the certification of a community residential program if the department or its designee finds that the program:

(1) violates applicable laws, rules, or standards;

(2) operates the program in a way

that is inimical to the health, rights, welfare, or safety of one or more clients; or

(3) fails to maintain the licensure or certification status on which TDMHMR deemed certification status is based.

(b) The denial, suspension, or revocation of a certification may be appealed following the procedures described in Chapter 403, Subchapter O of this title (relating to Administrative Hearings of the Department in Contested Cases).

#### §401.562. *Inspection Authority and Reporting Responsibilities.*

(a) The department or its designee may make such investigations as it deems necessary and proper to obtain compliance with the provisions of the subchapter.

(b) Any duly authorized agent of the department may at any reasonable time enter upon the premises of any community residential program to inspect the facilities and conditions, to observe the program for care and treatment, to question care providers of the program, and to gain access for the purpose of examination and transcription to such records and documents as are relevant to the investigation. Duly authorized agents include, but are not limited to, staff of the Certification Section, Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation; staff of the MRA serving the local service area; and TDMHMR regional monitors.

(c) If a regional monitor visits a community residential program, documentation of the visit must be submitted to the Certification Section, Office of Standards and Quality Assurance, Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711. The regional monitor must also provide to the Certification Section a list of community residential programs that have not been visited.

§401.563. *Exhibits.* The following exhibits referred to in this subchapter are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711:

(1) Exhibit A -- Contract Requirements;

(2) Exhibit B -- Application for Certification;

(3) Exhibit C -- Application Packet.

§401.564. *References.* The following laws, rules, and standards are referred to in this subchapter:

(1) applicable provisions of the TDMHMR Community Standards for Community Mental Health and Mental Retardation Centers and Community Service Programs of TDMHMR, 1985;

(2) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(3) Chapter 403, Subchapter O of this title (relating to Administrative Hearings of the Department in Contested Cases);

(4) Chapter 403, Subchapter T of this title (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), or Chapter 405, Subchapter O of this title (relating to Client Abuse and Neglect in TDMHMR Facilities), as appropriate;

(5) Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion—Mental Health Facilities);

(6) rules governing client deaths;

(7) Chapter 405, Subchapter Y of this title (relating to Rights of Clients—Mental Retardation Services);

(8) applicable provisions of the National Fire Protection Association's Life Safety Code, 1985 edition; and

(9) the Mentally Retarded Persons' Act of 1977, Texas Civil Statutes, Article 5547-300.

**§401.565 Distribution.**

(a) This subchapter shall be distributed to the members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office; superintendents/directors of all TDMHMR facilities; executive directors and chairpersons, boards of trustees, all community mental health and mental retardation centers.

(b) The superintendent/director or executive director is responsible for distributing this subchapter to all community residential program providers in the local service area.

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 13, 1987.

TRD 8706703 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption:  
September 21, 1987.  
For further information, please call  
(512) 465-4670.



**Subchapter K. Licensure of Crisis Stabilization Units**

**\* 25 TAC §§401.641-401.647, 401.649-401.652**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§401.641-401.647 and 401.649-401.652 concerning licensure of crisis stabilization units. The new subchapter is proposed pursuant to Senate Bill 257, 70th Legislature, 1987, which requires the Texas Board of Mental Health and Mental Retardation to adopt rules governing licensure of all crisis residential services provided by mental health

authorities (other than licensed hospitals) to which clients are court-committed for inpatient services.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Costs to small businesses operating crisis stabilization units would be \$125 for initial application, \$150 for each site inspection required, and \$125 for annual licensure renewal.

Ms Dillard also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be insurance, through licensure, of a minimum standard of care for clients court-ordered to receive mental health services. 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 Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§401.641. Purpose** The purpose of this subchapter is to ensure proper care and treatment of clients receiving crisis stabilization unit services.

**§401.642. Application** The provisions of this subchapter apply to each crisis stabilization unit provided directly or by contract by a mental health authority.

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

**Crisis stabilization unit (CSU)**—A program provided directly or via contract by a mental health authority which offers 24-hour residential services which are usually short-term in nature and are offered to clients who are demonstrating psychiatric crises (i.e., clients who are unable to cope successfully in the community or in less restrictive residential programs and in whom pending or current acute decompensation is apparent and is expected to respond to rapid stabilization), in which medical and nursing components are always present and include 24-hour on-duty licensed nursing staff and 24-hour on-call medical coverage, and in which clients may be served on a voluntary or involuntary basis per mental health authority court agreements. When the mental health authority provides a crisis stabilization service through a contract with an independent entity, such service by the independent

entity is in a distinct crisis stabilization unit whose sole function is serving clients of the mental health authority and the licensee is the mental health authority.

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

**Hospital**—An inpatient facility licensed either by the Texas Department of Health as a general hospital or by the Texas Department of Mental Health and Mental Retardation as a private psychiatric hospital.

**Independent entity**—A firm, partnership, joint stock company, joint venture, association, corporation, or an individual provider, owner, or operator providing a crisis stabilization unit service.

**License**—The permission granted to a mental health authority to provide, directly or by contract, a crisis stabilization unit which substantially conforms to all of the rules, standards, and laws contained or referenced within this subchapter.

**Licensee**—The mental health authority which has been granted a license by the Texas Department of Mental Health and Mental Retardation and which has not had such license suspended or revoked.

**Mental health authority (MHA)**—The entity designated by the department to direct, operate, facilitate, or coordinate such services to mentally ill persons as are required to be performed at the local level by state law and by the department.

**§401.644. Application for Crisis Stabilization Unit Licensure.**

(a) Each mental health authority (MHA) providing a crisis stabilization unit (CSU) shall seek licensure of such a unit. CSUs may be provided by an MHA either directly or via contract with an independent entity. In either manner of CSU provision, the MHA is the licensee. When an MHA provides a CSU via contract with an independent entity, the MHA maintains legal accountability for ensuring that the CSU complies with all laws, rules, and standards described or referenced in this subchapter. In such cases, the MHA shall require laws, rules, and standards compliance as a condition of the service contract, shall conduct regular monitoring activities to ensure contract compliance, and shall notify the department of any substantial failure of the independent entity to comply with the conditions of the service contract.

(b) By November 1, 1987, each MHA providing a CSU, directly or by contract, shall submit an application to the department which is herein adopted by reference as Exhibit A and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668. The licensure process of CSUs developed after November 1, 1987, shall be the same as that described in subsections (c)-(p) of this section, except that submission of building plans and specifications and construction inspections will be required as described in §401.646 of this subchapter.

(relating to Submission of Building Plans and Specifications and Construction Inspections)

(c) The original and one copy of the application must be submitted to the department. Written material relating to the application must also be submitted in duplicate. An application fee of \$125 must accompany the application. The annual license renewal fee payable each year thereafter is \$125.

(d) Each application for a license to provide a CSU shall be reviewed and a determination made within 10 working days after the date of receipt as to whether the application is complete and complies with all applicable laws, rules, and standards.

(e) If the application contains all requested information and complies with all applicable laws, rules, and standards, the department shall notify the MHA in writing of the formal acceptance of the application.

(f) If the application does not contain all requested information or does not comply with all applicable laws, rules, and standards, the department shall notify the MHA in writing of the rejection of the application and shall provide a list of deficiencies for correction. Failure of the MHA to submit corrections to the stated deficiencies within 60 days from the date of the letter of notification will result in the administrative withdrawal of the application.

(g) After formal acceptance of proper application for license, the department shall make such investigation as it deems necessary. If the department finds that the premises are suitable and that the MHA is able to provide a CSU in accordance with the laws, rules, and standards described or referenced within §401.647 of this title (relating to Crisis Stabilization Unit Licensure Requirements), the department shall issue a provisional license authorizing the MHA to provide a CSU on the premises described and for the bed capacity specified on the license. No provisional license shall be granted to an existing or newly established CSU which is not in substantial compliance with applicable sections of the 1985 edition of the National Fire Protection Association's Life Safety Code.

(h) Within 90 days of issuance of a provisional license, the department shall review the quality and appropriateness of the overall operation and services provided by the CSU. The department may determine the scope of such reviews on a case-by-case basis.

(i) If it is determined after a quality and appropriateness review that the CSU is in substantial compliance with laws, rules, and standards described or referenced within §401.647 of this title (relating to Crisis Stabilization Unit Licensure Requirements), the provisional license will be replaced with a permanent license which will remain in effect until suspended or revoked by the department or surrendered by the MHA. An annual license renewal will be required thereafter.

(j) The CSU license must be posted in a conspicuous place on the licensed premises.

(k) Under no circumstance will a provisional license be granted for a period longer than six months. An MHA providing a CSU granted a provisional license, but which is unable to demonstrate substantial compliance to laws, rules, or standards described or referenced in §401.647 of this title (relating to Crisis Stabilization Unit Licensure Requirements) will not be awarded a permanent license or an extension of a provisional license.

(l) Once a permanent license has been granted by the department, any duly authorized agent of the department may at any reasonable time enter the premises of the CSU to inspect the facility and conditions, to observe the services and treatment provided, to question employees of the CSU, and may have access for the purpose of examination and transcription to such records and documents as are relevant to an investigation or review.

(m) The department may require every licensee to make annual, periodical, and special reports and to keep such records as it considers necessary to ensure compliance with the provisions of this subchapter.

(n) The department may make such investigations and/or quality assurance reviews as it deems necessary and proper to ensure compliance with the provisions of this subchapter.

(o) The license issued by the department is for a specific CSU provided directly or by contract and is not transferable or assignable.

(p) The department may maintain an action in the name of the State of Texas for injunction or any other process against any person or political subdivision to restrain the unlicensed operation of a CSU.

#### §401.645. Exclusions from Crisis Stabilization Unit Licensure

(a) The following licensed facilities are excluded from licensure by the department as crisis stabilization units:

(1) any licensed hospital operated by an MHA,

(2) any licensed hospital providing crisis stabilization services by contract to an MHA, and

(3) structured supervised family living crisis stabilization foster care programs provided by MHAs within foster homes to clients who are demonstrating psychiatric crises of moderate proportion.

(b) Crisis stabilization services for children and adolescents demonstrating significant psychiatric crises must be provided by an MHA in a licensed private psychiatric hospital.

(c) Crisis stabilization services for children and adolescents demonstrating moderate psychiatric crises must be provided by an MHA in a licensed psychiatric hospital or in a structured supervised family living crisis stabilization foster care pro-

gram licensed by the Texas Department of Human Services.

#### §401.646. Submission of Building Plans and Specifications and Construction Inspections.

(a) Prior to construction, all plans and specifications for new or replacement buildings and facilities to be licensed as CSUs, additions to existing CSUs, or renovation or conversion of existing structures, must be submitted to the department for review and approval. If the CSU is provided by contract, the MHA maintains responsibility for negotiations related to submission of building plans and specifications and construction inspections.

(b) Plans and specifications must be submitted in stages in accordance with established guidelines.

(c) The first stage submittal of such plans and specifications must be accompanied by a letter of intent to apply for license to operate a CSU and a fee of \$150. The letter of intent should indicate the proposed name, MHA, address, and number of beds at the proposed CSU. If the CSU is to be provided by contract, the letter of intent must also include the name, address, and telephone number of the independent entity.

(d) All final stage plans and specifications must be appropriately sealed and signed by a registered architect and professional engineer licensed by the State of Texas.

(e) Upon approval of final (third stage) plans and specifications, the department will issue a letter granting approval to begin construction. Any contract modifications which affect or change the function, design, or designated use of an area must be submitted to the department for approval prior to authorization of the modifications.

(f) Adequate provision must be made for the safety and comfort of clients whenever an approved construction or renovation project takes place in or near occupied areas.

(g) After construction has commenced, progress reports must be submitted as required by the department to monitor the construction work. The submission of progress reports is the responsibility of the MHA.

(h) Two or more construction progress and/or final inspections of the facility will be scheduled for the purpose of verifying compliance with licensing requirements, plans, and specifications. The department shall determine the number of required inspections necessary to complete all proposed construction projects.

(i) A fee of \$150 per each inspection shall be submitted to the Texas Department of Mental Health and Mental Retardation prior to any inspections conducted by the staff of the department. All fees shall be paid by check or money order made payable to Texas Department of Mental Health and Mental Retardation.

(j) No CSU shall occupy any new structure, or building addition, or renova-

tion space until the appropriate permission has been received from the local building and fire authorities and the department.

#### §401.647 Crisis Stabilization Unit Licensure Requirements

(a) With regard to the adequacy and safety of the physical plant of a CSU and the quality and appropriateness of the overall operation and services of a CSU, the department shall ensure that such are provided in accordance with the following requirements:

(1) applicable sections of the 1985 edition of the National Fire Protection Association's Life Safety Code;

(2) the Protection and Advocacy for Mentally Ill Individuals Act of 1986;

(3) the Texas Mental Health Code;

(4) for mentally retarded or dually diagnosed persons, the Mentally Retarded Persons Act; and

(5) all applicable chapters of the TDMHMR Community Standards For Community Mental Health and Mental Retardation Centers and Community Service Programs of TDMHMR (TDMHMR Community Standards) except current sections of Chapter 13, Structured Residential Programs, specific to CSUs, which are henceforth nullified and replaced with standards as delineated in subsection (b) of this section.

(b) The overall operation and services of a CSU are provided in accordance with the following standards:

(1) With regard to staffing requirements:

(A) a physician employed by the MHA, either directly or by contract, is designated, in writing, as the chief physician of the CSU;

(B) the medical responsibility for each client is vested in a physician employed by the MHA, either directly or by contract;

(C) policies, procedures, and documentation exist which reflect that the physician is responsible for the overall direction of treatment and services provided by the CSU;

(D) the physician assigned physician regularly visits the CSU, assesses the client, and oversees the overall client treatment provided by the CSU;

(E) a physician employed by the MHA, either directly or by contract, is on call 24 hours per day, available with psychiatric background and physician is not a physician who is licensed as procedures, documented through the physician coverage schedule;

(F) the CSU shall employ at least a registered nurse who is designated as the primary nurse supervisor and who is an employee of the CSU and is assigned on a full-time basis to the CSU;

(G) the registered nurse supervisor's primary duty is the supervision of nursing staff and ongoing coordination of physicians' orders on the CSU, which includes implementation of treatment plans;

(H) other nursing staff of the

CSU include, at a minimum, a licensed vocational nurse on duty on the premises 24 hours per day and other ancillary staff (e.g., aides, technicians, etc.) as required, under the supervision of a registered nurse;

(I) the registered nurse supervisor or his/her registered nurse designee is on call 24 hours per day to the CSU;

(J) each physician, registered nurse, and licensed vocational nurse providing services in the CSU is licensed by the State of Texas and a copy of each person's current license is maintained by the CSU;

(K) the nursing staff of the CSU is knowledgeable in problems of mentally dysfunctional clients and have training and experience in psychiatric nursing;

(L) while the CSU may utilize outside agencies, registries, or other sources of temporary nursing personnel, in order to ensure continuity and consistency of services, the majority of the nursing staff of the CSU are employees of the CSU;

(M) when the CSU utilizes outside agencies, registries, or other sources of temporary nursing personnel, the CSU ensures that such nursing personnel receive all required staff development training, including that which is required prior to assuming duty on the CSU;

(N) a sufficient staff-to-client ratio is provided to ensure a safe environment and appropriate programming according to client needs;

(O) there are no less than two awake staff assigned exclusively to the CSU on duty at all times, at least one of whom must be a licensed vocational nurse or registered nurse;

(P) staff coverage provided on all shifts and by all disciplines is documented;

(Q) adequate staffing or consultation is available to provide services which the treating physician and/or interdisciplinary team determines, through the treatment planning process, to be clinically indicated. Such services which may be provided by the MHA, directly, by contract, or in some instances by referral, include, but are not limited to, general medical services, psychological services, and other types of specialized evaluations and services.

(2) With regard to admission, assessment, and diagnostic services requirements:

(A) a physician employed by the MHA, either directly or by contract, assesses prior to admission whether the client's level of dysfunction can be safely and potentially effectively treated in the CSU as an alternative to hospitalization and gives an order for admission to the CSU. Such preliminary determination and physician order may occur by telephone if necessary, with such determination and order documented in the client record by the CSU licensed staff and authenticated by the responsible physician's dated and timed signature within 24 hours or within the first normal working day if admission occurs on the weekend;

(B) prior to or upon admission of a client to the CSU, a physician employed by the MHA, either directly or by contract, performs an assessment of the client's psychiatric condition and suicide and homicide potential and the environment is controlled accordingly. The preliminary assessment may occur by telephone if necessary, with such assessment results documented in the client record by the CSU licensed staff and authenticated by the responsible physician's dated and timed signature within 24 hours or within the first normal working day if admission occurs on the weekend;

(C) a face-to-face psychiatric assessment of all clients admitted to the CSU is performed by the responsible physician and placed in the client record within 24 hours of admission or within the first normal working day if admission occurs on the weekend;

(D) a physical examination is completed and documented for all clients admitted to the CSU within 24 hours of admission or within the first normal working day if admission occurs on the weekend, unless a physical examination has been done within 72 hours prior to admission and findings are available, have been reviewed by the responsible physician, and such review is authenticated by the physician's dated and timed signature;

(E) a comprehensive medical history is obtained and documented for all clients admitted to the CSU within 24 hours of admission or within the first normal working day if admission occurs on the weekend, unless a comprehensive medical history has been done within 72 hours prior to admission and findings are available, have been reviewed by the responsible physician, and such review is authenticated by the physician's dated and timed signature;

(F) an intake assessment is performed and documented for all clients admitted to the CSU within five working days of admission by a qualified professional staff member;

(G) intake assessments include a description and analysis of current living situation and development of social, ethnic, cultural, economical, emotional, and behavioral factors significant to the CSU admission;

(3) With regard to the provision of active treatment and a therapeutic milieu:

(A) the required treatment program plan is developed and placed within the client record within five working days of admission to the CSU;

(B) no less frequently than weekly for the first month after admission to the CSU and no less frequently than every two weeks thereafter, a review of the client's treatment program plan is accomplished and documented to include a review of the client's readiness for a less restrictive environment;

(C) the responsible physician approves, signs, and dates treatment program



plans and treatment/program plan reviews of all clients in the CSU;

(D) the CSU provides, directly or by referral to a psychosocial rehabilitation program or day treatment/partial hospitalization services of the MHA, an active treatment program designed to meet the needs of clients served;

(E) when the CSU provides active treatment to clients by referral to a psychosocial rehabilitation program or day treatment/partial hospitalization service of the MHA, those clients whose acuity levels are such that referral is precluded are provided an active treatment program on the CSU;

(F) the CSU utilizes a written program schedule;

(G) the CSU written program schedule is posted prominently at the program site;

(H) each client's assigned activity schedule provides the number of clinically appropriate hours of scheduled, meaningful activity outside the client's sleeping area;

(I) the client record documents the client's assigned program schedule and the client's actual program participation. This record is completed daily and filed in the client record no less frequently than weekly;

(J) each therapeutic/training/educational program comprising the overall active treatment program has for each program a curriculum or plan which includes behavioral objectives of the activities; methods to be used; activity schedule; person(s) responsible for conducting the activities; and clinically appropriate data to be collected to assess progress toward the objectives;

(K) all curricula used on the CSU are approved, in writing, by the CSU director;

(L) each therapeutic/training/educational program provided utilizes methods and materials that are culturally normative and appropriate to the developmental level and chronological age of the client;

(M) any use of non-normative or non-age appropriate methods and materials is justified in the client's treatment program plan;

(N) the CSU provides or coordinates available transportation to prescribed services and appointments, as indicated;

(O) when clothing is provided, it is properly fitted and appropriate to the season, the client's age, and generally accepted community norms;

(P) the CSU develops and implements written policies and procedures regulating the use of PRN (pro re nata or as occasion arises) medication orders and standing order medications which are approved by the chief physician of the CSU;

(Q) the CSU develops and implements written policies and procedures for suicide and homicide precautions which in-

clude written criteria for placing a client on suicide and homicide precaution status and which are approved by the chief physician of the CSU.

(R) all staff providing services on the CSU are trained in the application of suicide and homicide precaution procedures prior to assuming duty on the CSU;

(S) if a rapid neuroleptization regimen is utilized, a psychiatrist is in continuous physical presence on the CSU during the administration of the medication regimen;

(T) if rapid neuroleptization is utilized, the CSU stocks standard emergency medications and medical equipment which would be needed in response to any life-threatening crisis during a period prior to client transfer to a medical facility;

(U) the CSU develops and implements policies and procedures to ensure that clients are provided adequate personal space to ensure privacy of person and security of property;

(V) the CSU develops and implements policies and procedures to ensure that personal possessions of clients are readily available to them unless clinically contraindicated in client records;

(W) there is evidence of communication and coordination of staff members between shifts, such as shift reports or meetings.

(4) With regard to CSU dietary services:

(A) three meals are served daily at normal meal hours and there will be no more than 14 hours between the evening meal and following breakfast meal except in cases of weekend and/or holiday brunches. Evening snacks are available except if precluded by special dietary needs;

(B) menus are written to provide the Recommended Daily Allowance (RDA) for appropriate sex and age group, and include cultural preferences as much as possible. It is approved by one of the following: qualified dietician, dietetic technician, or degreed home economist (teaching or extension services);

(C) menus are written to include individual portion size and posted at least one week in advance in a prominent place.

(D) special dietary needs for a client are prescribed, in writing, by a physician;

(E) menus for clients with prescribed dietary needs are written by a qualified dietician who will also supply any special recipes required;

(F) menus and itemized receipts of foods purchased are kept on file for at least 30 days after serving date.

(G) clients are encouraged but not forced to eat all food served.

(H) the withholding of meals as punishment is not allowed.

(I) clients are weighed on admission and then monthly. Any client showing a weight change of plus or minus 10 pounds

in a month is presented to the interdisciplinary treatment team for appropriate dietary counseling, intervention, and documentation in client's record

#### *§401.649. Licensed Crisis Stabilization Unit Reporting Requirements.*

(a) Each MHA shall report to the department, within one working day, any client death on a CSU and any fire occurring on a CSU.

(b) Each MHA shall make any required reports relating to client abuse or neglect occurring on a CSU, as specified in Chapter 405, Subchapter O of this title (relating to Client Abuse and Neglect in TDMHMR Facilities), and Chapter 404, Subchapter B of this title (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers), as appropriate.

(c) Each MHA shall make a written request to the department for permission to increase bed capacity of a CSU and/or to relocate all or part of a CSU. Any building construction, renovation, or conversion must be reviewed and approved as delineated in §401.646 of this title (relating to Submission of Building Plans and Specifications and Construction Inspections).

#### *§401.650. Denial, Suspension, or Revocation of Licensure.*

(a) The department shall deny, suspend, or revoke an MHA's license to provide a CSU if the department finds that there has been a substantial failure by the applicant or licensee to comply with the rules of the department or the provisions of the Texas Mental Health Code, Texas Civil Statutes, Article 5547-1, et seq.

(b) If the department determines that an application should be denied or a license should be revoked, the department shall notify the applicant or licensee of its determination and shall advise the applicant or licensee of the right to a hearing before the department. Such notification by the department shall be sent to the applicant or licensee by certified or registered mail.

(c) To secure the right to a hearing before the department, the applicant or licensee shall send, within 30 days of the date of notification by the department of its determination, a letter of protest in conformity with the requirements of §403.401 of this title (relating to Form and Content of Pleadings) to the commissioner, protesting the department's determination and requesting a hearing pursuant to the provisions of Chapter 403, Subchapter O of this title (relating to Practice and Procedure With Respect to Administrative Hearings of the Department contested cases).

(d) If the applicant or licensee timely sends a proper letter of protest to the commissioner within 30 days after notification by the department of its determination, as provided in subsection (c) of this section, the commissioner will treat the matter as a contested case, and the provisions of Chapter

403, Subchapter O of this title (relating to Practice and Procedure With Respect to Administrative Hearings of the Department in Contested Cases) shall apply

(e) After giving the applicant or licensee an opportunity to demonstrate or achieve compliance, and after notice and opportunity for hearing, the department may deny the application or suspend or revoke the license if it finds substantial failure by the applicant or licensee to comply with the rules of the department or the provisions of the Texas Mental Health Code, Texas Civil Statutes, Article 5547-1, et seq.

(f) No revocation or suspension of a license is effective unless, prior to the institution of department proceedings, the department gave notice by personal service or by registered or certified mail to the licensee of the facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license.

(g) If the department finds that there is immediate threat to health or safety of clients or employees of a CSU, the department may temporarily suspend a license for 10 days pending a hearing or the suspension order, and may issue orders necessary for the welfare of the clients.

**§401.651. References.** Reference is made in this subchapter to the following laws, rules, and standards:

(1) Texas Civil Statutes, Article 5547-1, et seq.;

(2) Texas Civil Statutes, Article 5547-200;

(3) The Protection and Advocacy for Mentally Ill Individuals Act of 1986;

(4) Chapter 403, Subchapter O of this title, relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases;

(5) Chapter 404, Subchapter B of this title, relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers;

(6) Chapter 405, Subchapter O of this title, relating to Client Abuse and Neglect in TDMHMR Facilities;

(7) Texas Department of Mental Health and Mental Retardation, TDMHMR Community Standards for Community Mental Health and Mental Retardation Centers and Community Service Programs of TDMHMR, 1985, and

(8) National Fire Protection Association, Fire Safety Code, 1985

**§401.652. Distribution**

(a) Copies of this subchapter shall be distributed to members of the Texas Board of MHMR, the medical director, deputy commissioners, and directors of central office, and superintendents directors, all TDMHMR mental health facilities; and executive directors and chairpersons, boards of trustees, all MHAs

(b) The superintendent director or ex-

ecutive director shall ensure the distribution of this subchapter to all appropriate staff and contract agencies

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 14, 1987

TRD-8706735

Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 465-4670



## Chapter 402. Client Assessment and Continuity of Services

### Subchapter B. Continuity of Services—Mental Health

#### ★ 25 TAC §§402.41-402.51

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§402.41-402.51, concerning continuity of services—mental health. The new subchapter is proposed contemporaneously with the repeal of the subchapter it replaces, which is Chapter 405, Subchapter DD, concerning continuity of care: procedures for preadmission screening, community support plan development, and client program coordination.

The new subchapter incorporates by reference the key provisions governing continuity of services in the TDMHMR community standards for community mental health and mental retardation centers and community services programs of TDMHMR. Consistent with provisions of the RAJ v. Miller settlement agreement addendum, it places responsibility for planning community services for the client with the mental health authority (MHA), rather than requiring responsibility to be shared by the facility from which the client is discharged and the community provider

Also in response to RAJ v. Miller, the new subchapter requires the department to enter into an interagency agreement with each MHA which requires the MHA to make a good faith effort to provide the services specified in the aftercare plan, including the arrangement of nonclinical support such as food, clothing, and shelter as the department determines necessary in cases in which no other resources are available

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the pro-

posed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Dillard also has determined that for each year of the first five years the sections are in effect, the public benefit will be use of procedures that ensure continuity of services for mental health clients. 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 Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

These new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§402.41. Purpose.** The purpose of this subchapter is to outline uniform procedures to ensure continuity of services for mental health clients who:

(1) are admitted to mental health facilities of the Texas Department of Mental Health and Mental Retardation (TDMHMR); or

(2) who are furloughed or discharged from TDMHMR mental health facilities to community-based mental health services.

**§402.42. Application.** The provisions of this subchapter apply to all mental health facilities of the Texas Department of Mental Health and Mental Retardation, to mental health authorities, and to mental retardation authorities serving dually diagnosed clients.

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

**Aftercare plan**—A plan which is developed by the mental health authority within three weeks of the client's discharge/furlough from a state facility. The aftercare plan becomes the individualized comprehensive treatment plan for the client in the community

**Community support plan**—A plan which is developed jointly by the facility and mental health authority prior to the client's discharge from a state facility to ensure that clients are linked to an appropriate service delivery system

**Community-based service (CBS)**—Refers to services provided through community programs under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, by community mental health and mental retardation centers, and by independent contract providers established pursuant to Texas Civil Statutes, Article 5547-20, et seq.

**Continuity of services**—The activities

designed to ensure coordination of services to the client, particularly between services within the TDMHMR system, to include joint discharge planning, development of a community support plan, development of an aftercare plan, implementation of the aftercare plan treatment recommendations and revisions, obtaining adequate resources to meet the client's needs, and other activities as outlined in Chapter 7 of the TDMHMR Community Standards.

**Continuity of services staff person**—A staff person specifically designated by the mental health authority to conduct continuity of services activities, e.g., caseworker, case manager, liaison worker.

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

**Discharge**—The termination of a client's treatment by a facility or a CBS which denotes the end of active treatment by the facility or CBS.

**Furlough**—An authorized leave status in which the residential client is away from the facility for more than three days in anticipation of discharge, such as in trial alternate placement.

**Local service area**—A geographic area made up of one or more counties which serves to define and delimit the population of citizens residing in the area, including the subpopulation of mentally ill and mentally retarded citizens, and the extent of the responsibilities of the local mental health and mental retardation authorities for the area.

**Mental health authority (MHA)**—The entity designated by the department to direct, operate, facilitate, or coordinate such services to mentally ill persons as are required to be performed at the local level by state law and by the department.

**Mental health facility**—All state hospitals and state centers providing mental health services and any other agency which is now or may hereafter be a facility of the Texas Department of Mental Health and Mental Retardation.

**Mental retardation authority (MRA)**—The entity designated by the department to direct, operate, facilitate, or coordinate such services to mentally retarded persons as are required to be performed at the local level by state law and by the department.

**Screening**—A procedure to determine appropriateness and eligibility for admission to state mental health facilities or community-based services.

**State facility**—Any state hospital, state school, state center, or other agency which is now or may hereafter be a facility of the Texas Department of Mental Health and Mental Retardation.

**TDMHMR service system**—All state facilities and all community mental health and mental retardation centers.

#### **§402.44 Areas of Responsibility**

(a) The department has designated mental health authorities (MHAs) within

each of the local service areas as responsible for effecting continuity of services procedures with the mental health facilities, delivery of continuity of services activities/case management services, and other community-based programs being provided to clients who have been discharged or furloughed from state hospitals.

(b) The department shall have a contract with each MHA which requires that the MHA provide the following:

(1) good faith effort to provide those services specified in the aftercare plans of those clients being discharged or furloughed to the MHA;

(2) documentation in client records to reflect the MHA's efforts to extend services specified in the aftercare plan and to document the client's rejection if such occurs;

(3) documentation of personal or telephone contact within 10 days and the scheduling of follow-up appointments for persons referred for aftercare, and documentation of the MHA's efforts to have clients meet those appointments;

(4) a good faith effort to make available case management services to those clients who qualify according to TDMHMR criteria, with documentation of any exceptions; and

(5) a good faith effort to arrange for nonclinical support such as food, clothing, and shelter in cases in which the department's assessment indicates that long-term hospitalization and chronicity of mental illness justify such action. This provision will apply only in situations in which no other resources are available.

(c) The client and/or a legal representative, the client's family as appropriate, the mental health facility, and the MHA representative shall jointly develop a community support plan prior to the client's leaving the facility.

(d) After the client has been furloughed or discharged, the MHA shall develop an aftercare plan based on the community support plan in order to sustain and further the gains made by the client during hospitalization.

(e) The MHA will ensure continuity of services activities, including the assignment of a continuity of services staff person to each client at admission to any TDMHMR service and at all times, regardless of transfer, until discharge from the TDMHMR service system.

(f) Each MHA is required to register boarding homes in its local service area and visit and inspect at least annually to ensure that the home has been inspected, is in good standing with the local health and safety authorities, and is providing the personal and financial services that are appropriate for the residents' needs.

(g) The local MHA for each client will be determined by the county of residence from which the client originates except in the following situations:

(1) In cases in which dually diagnosed clients are receiving services from both an MHA and an MRA, the local authority with responsibility for the client will be the one at which the client receives the majority of services. The MHA and the MRA must document the arrangement for provision of continuity of services responsibilities in the form of a written agreement.

(2) At its discretion, the MHA may have a CBS or facility assume responsibility for continuity of services. In such instances, a continuity of services staff person must be designated by the director of the CBS or facility accepting the responsibility. If the MHA delegates continuity of services responsibilities to a CBS or facility, a written agreement between the two entities shall address each of the areas listed in subsection (b) of this section.

(h) If a client who requires MHA aftercare services is discharged/furloughed from a facility into a private service system outside the MHA's local service area, the MHA shall coordinate with the MHA serving the receiving local service area and determine whether transfer of MHA responsibilities is in the client's best interest. Provisions of §402.49 of this title (relating to Client's Entry into Private Treatment Program) are to be followed.

(i) Non-MHAs which contract with the department to provide community-based extended, transitional, or geriatric care must sign a memorandum of agreement with the local MHA outlining the responsibilities for continuity of services and monitoring §402.45. *Preadmission Screening, Referral, and Determination of the Least Restrictive Environment.*

(a) Prior to the admission of a client to a mental health facility, the appropriate MHA will be responsible for screening the client to determine the most appropriate placement in the least restrictive environment.

(b) Persons admitted to a mental health facility which is not designated as the MHA for the local service area must receive a preadmission screening by the MHA, except in situations in which:

(1) there is a referral to the mental health facility by a physician.

(2) there is a memorandum of understanding between the mental health facility and the MHA where it is stated that the facility will perform the screening.

(3) there is an emergency admission, or

(4) a client is physically present at the mental health facility and contact with the MHA determines that appropriate community-based services are not readily available.

(c) The MHA must communicate information necessary for optimum treatment to the state facility prior to or at the time of admission, to include:

(1) client-identifying data, including address;

- (2) client legal status;
- (3) pertinent medical and medication information.
- (4) behavioral data; and
- (5) other pertinent treatment information.

(d) If a person seeks voluntary admission to a mental health facility without having been properly screened by the MHA, facility staff should follow the procedures provided in §405.451 of this title (relating to Admissions. Voluntary).

**§402.46. Periodic Reevaluation of Facility Treatment.**

(a) The client's treatment team shall review the individual treatment plan at regular intervals in accord with relevant law and departmental standards in order to make necessary revisions in the plan and to determine whether continued mental health facility treatment is in the client's best interest. Mental health facility staff shall notify the MHA of the scheduled time for individual treatment plan reviews.

(b) The MHA will assign a continuity of services staff person, whose function will be:

(1) to assist the facility in updating information on available community resources; and

(2) to participate in and document planning-linking conferences with facility staff and the client, and to the degree appropriate and practical, with the parent/guardian, at admission to the mental health facility, treatment plan review, furlough for community/alternate placement from the facility, and discharge from the facility; and

(3) to communicate with the client and/or facility staff to ascertain the client's status and progress, share this information with appropriate MHA staff, and document status and progress in the client record maintained by the MHA.

**§402.47. Development of Community Support Plan.**

(a) It is the responsibility of the mental health facility and the MHA to develop the community support plan. Prior to the client's furlough or discharge from a mental health facility, the client or legal representative if the client is a minor or has been adjudicated incompetent, the client's family when appropriate, the facility, and the MHA representative shall jointly develop a community support plan. This plan must contain at least a discharge eligibility staffing, referral instructions, discharge summary, and copies of all current clinical assessments. Such a plan is not necessary for clients on unauthorized departures from facilities.

(b) The community support plan will identify a safe and appropriate living situation that will be available to the client upon furlough/discharge. A progress note in the client record will reflect the discussion of the placement with the client and indicate client reaction (acceptance or refusal) to the pro-

posed placement. Medications prescribed at the time of furlough/discharge will be fully detailed in the plan and timeliness set forth for MHA assumption of medication review and refill responsibilities.

(c) Staff of the MHA shall meet with the mental health facility treatment team or the facility treatment coordinator to develop this plan. If circumstances preclude joint meetings, the facility and the MHA should achieve consensus on the plan via telephone prior to furlough or discharge. Such consensus between the facility and the MHA shall be documented in the client record by the MHA and documented in the community support plan by the facility. Such documentation shall include the names of the staff who developed the plan.

(d) The client or legal representative, as appropriate, shall sign the community support plan, or documentation of the reason for failure to sign shall be made. The plan shall include a statement that persons signing the plan understand that it and supporting documents will be sent to the MHA.

(e) The decision to furlough or discharge a client from a mental health facility is the professional responsibility of the facility treatment team. Criteria for discharge have been outlined in Chapter 405, Subchapter S of this title (relating to Admissions, Transfers, Furloughs, and Discharges—State Mental Health Facilities)

**§402.48. Furlough/Discharge and Development of Aftercare Plan and Services**

(a) No later than 24 hours prior to a furlough or discharge, the facility will notify the MHA by telephone or written document of:

- (1) client-identifying data, including address;
- (2) client legal status;
- (3) when and where the client will be furloughed or discharged;
- (4) pertinent medical information;
- (5) current medications;
- (6) behavioral data; and
- (7) other pertinent treatment information

(b) The MHA, through its assigned continuity of services staff person, is responsible for implementing community-based aspects of the community support plan from the time that furlough or discharge from the facility begins

(c) An aftercare plan must be developed by the MHA within three weeks after the client is furloughed or discharged from the facility. The aftercare plan becomes the comprehensive treatment plan of the client and requires the participation of the client or his legal representative if the client is a minor or has been adjudicated incompetent, the client's family when appropriate, and the MHA representative

(d) The aftercare plan will be tailored according to treatment plan standards in the TDMHMR community standards and other applicable references.

(e) Mental health and other health care services provided in the mental health facility which are needed in the community by individual clients will be included in the aftercare plan. The plan will also identify residential, vocational, educational, social, financial, and other supportive services available to enhance or sustain the capacity of the client to function in the community. Involvement of family and/or community resources as support systems will be addressed.

(f) The aftercare plan will contain the client's admission date and a description of any needs the client may have that cannot be addressed by present treatment.

(g) Should the client implicitly or explicitly refuse services, full documentation of this refusal must be made in the client record to include staff actions to overcome the refusal and client response.

(h) A 30-day follow-up review of aftercare plans will be performed. This review must include a summary of contacts, interventions implemented, and client response to problems/goals/objectives. Subsequent reviews are to follow TDMHMR community standards and other applicable standards.

**§402.49. Client's Entry into Private Treatment Program.**

When a client is furloughed or discharged to a private service system such as private inpatient care, private psychiatric services, private residential facility, or private intermediate care facility (e.g., nursing, ICF/MR), the MHA and facility staff shall develop the community support plan prior to the client's entry into the private treatment program. The community support plan should also be developed with the private provider whenever practicable. After the client is discharged from the facility and enters the private treatment program, the MHA relinquishes its responsibility for aftercare services unless such services (e.g., outpatient services, psychosocial rehabilitation, etc.) are required in the community support plan. If so, an aftercare plan shall be developed in accord with §402.48 of this title (relating to Furlough/Discharge and Development of Aftercare Plan and Services).

**§402.50. References.** Reference is made to the following

- (1) Texas Civil Statutes, Article 5547-1, et seq.
- (2) Texas Civil Statutes, Article 5547-201, et seq.
- (3) Texas Civil Statutes, Article 5547-300;
- (4) Texas Civil Statutes, Article 5561h;
- (5) 42 Code of Federal Regulations Part 2,
- (6) Chapter 405, Subchapter S of this title (relating to Admissions, Transfers, Furloughs, and Discharges—Mental Health Facilities);
- (7) Chapter 403, Subchapter K of

this title (relating to Client-Identifying Information).

(8) Texas Department of Mental Health and Mental Retardation Manual 10-- The Problem-Oriented Recordkeeping System for Mental Health Facilities;

(9) TDMHMR Community Standards for Community Mental Health and Mental Retardation Centers and Community Services Programs of TDMHMR, May 1985;

(10) Texas Department of Mental Health and Mental Retardation memo from Gary E. Miller, M.D., on designation of local mental health and mental retardation authorities and local service areas, February 1, 1984;

(11) RAJ v. Miller, Order, October 21, 1986.

**§402.51. Distribution.**

(a) The provisions of this subchapter shall be distributed to members, Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office; superintendents/directors, all TDMHMR facilities; and executive directors and chairpersons, board of trustees, all community mental health and mental retardation centers.

(b) The superintendent/director or executive director is responsible for distributing this subchapter to appropriate staff.

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

Issued in Austin, Texas, on August 13, 1987

TRD-8706704 Roger Bateman  
Chairman  
Texas Board of Mental  
and Mental  
Retardation

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 465-4670



**Subchapter C. Transfer to  
Vernon Maximum Security  
Unit**

**★ 25 TAC §§402.71-407.86**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§402.71-402.86, concerning transfer of clients to the Vernon Maximum Security Unit. The new sections are proposed contemporaneously with the proposed repeal of the two subchapters they replace. Chapter 405, Subchapter I, and Chapter 405, Subchapter N

The new subchapter is proposed pursuant to House Bill 1503, 70th Legislature, 1987, which provides for the transfer the

TDMHMR maximum security unit from Rusk State Hospital to Vernon State Hospital

As required by House Bill 1503, the new subchapter adopts by reference TDMHMR's memorandum of understanding with the Texas Department of Corrections. The new subchapter incorporates in large part the substance of the subchapters it replaces. Principle modifications include the deletion of extensive reference to standard legal procedure, e.g., motions, depositions, cross-examination; the addition of the requirement that review board members who fail to disqualify themselves as appropriate will be dismissed from the board; the requirement that clients found not manifestly dangerous must be returned to a nonsecurity facility within 30 days, rather than 60 days; the stipulation that reasonable notice of the hearing must be afforded the client; the deletion of the requirement for a mandatory personal interview with the client by the review board; the deletion of a mandatory 60-day time limit on the board's rendering of a decision; the requirement for the facility review board determination of manifest dangerousness to be unanimous, the provision that the review board psychiatrist determines whether portions of the client's record could be harmful if viewed by him; and the deletion of provisions that enable the review board to offer advice and recommendations regarding matters other than the determination of manifest dangerousness. The sections additionally make provision for the seclusion of clients immediately prior to transfer to the maximum security unit, if necessary

Sue Dillard, Office of Standards and Quality Assurance director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the proposed sections.

Ms. Dillard also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be sections that are in compliance with state law and that better protect the rights of clients for whom a determination of manifest dangerousness must be made. There is no anticipated economic cost to individuals who are required to comply with the proposed sections

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

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

**§402.71. Purpose.** The purpose of this subchapter is

(1) to establish review boards at state mental health facilities and the maximum security unit at Vernon State Hospital for the purpose of determining whether a client is manifestly dangerous;

(2) to provide procedures for the transfer of a manifestly dangerous client to the maximum security unit at Vernon State Hospital;

(3) to enumerate the rights of clients with respect to the determination of manifest dangerousness and transfer to the maximum security unit at Vernon State Hospital; and

(4) to adopt by reference the memorandum of understanding required by House Bill 1503 of the 70th Legislature.

**§402.72. Application.** The provisions of this subchapter apply to the mental health facilities of the Texas Department of Mental Health and Mental Retardation

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

**Client**--Any person under commitment in a state mental health facility.

**Client's counsel**--A lawyer representing the client or a person requested by the client to act as his representative

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

**Department**--The Texas Department of Mental Health and Mental Retardation.

**Deputy commissioner**--The deputy commissioner for mental health services of the Texas Department of Mental Health and Mental Retardation.

**Facility review board**--The board established pursuant to §402.74(a) of this title (relating to Membership and Meetings of Review Boards)

**Manifestly dangerous**--The term used to describe an individual who has engaged, is presently engaging, or will likely engage in violent behavior that is likely to endanger another person or persons, and who, if not confined in a maximum security environment, will most likely engage in such behavior

**Maximum security unit review board**--The board established pursuant to §402.74(b) of this title (relating to Membership and Meetings of Review Boards)

**Mental health facility**--State hospitals and state centers providing mental health services under the jurisdiction of the Texas Department of Mental Health and Mental Retardation

**Mental health professional**--Professional staff attending to the needs of clients, to include licensed physicians, psychologists, psychiatric social workers or caseworkers, and registered or licensed vocational nurses

**Psychiatrist**--A physician licensed to practice medicine in the State of Texas who is a graduate of an accredited professional college and has completed at least two years of residency in psychiatry

... review boards. The deputy commissioner for mental health services shall designate a facility review board at each mental health facility of the department.

(b) *Membership.* Each board shall consist of three mental health professionals, with no more than two members who are psychiatrists. The deputy commissioner for mental health services shall designate the chairperson of the board. In the event that the chairperson of the facility review board is unable to attend a hearing, the chairperson shall designate another mental health professional to act in the place of the absent chairperson.

(c) *Terms.* The term of each member of a facility review board shall be two years. If a vacancy occurs for any reason, the deputy commissioner for mental health services shall appoint a qualified person from the facility to serve the remainder of the vacant member's term.

(d) *Disqualification.* No members of a client's treatment team shall serve on the facility review board. A member of the facility review board who is also a member of the treatment team of the client being determined manifestly dangerous shall be disqualified. In the event participating in the proceedings, the chairperson shall appoint another mental health professional to serve in the place of the disqualified member.

(e) *Meetings.* A facility review board shall convene at the facility where the client resides at the call of the superintendent. The superintendent shall provide the chairperson with a list of clients to be considered by the facility review board.

(f) *Maximum security unit review board.* The commissioner shall appoint one review board at the maximum security unit of the Vernon State Hospital. The composition of all review board members shall be in the form of a letter to the superintendent, the superintendent of the hospital, the chairperson, the deputy commissioner for mental health and the superintendent, and the superintendent of the facility. The member is employed by the facility.

(g) *Membership.* Each board shall consist of three members, one of whom shall be a psychiatrist, and two of whom must work at the facility. The commissioner shall designate the chairperson of the board. The chairperson shall appoint such alternate chairperson as may be necessary when regular chairperson is unable to serve for any reason.

(h) *Meetings.* The commissioner shall designate the chairperson of the board with new members. No action shall be taken on any recommendation made by a review board unless all members are present and the chairperson shall be the duty of the chairperson to advise in advance whether any regular members are available to serve and to arrange for alternate members to be present. In the

event the chairperson is unable to serve on a review board for any reason, he shall appoint another member of the review board to act in his place. If the chairperson is unable to appoint such person, the deputy commissioner for mental health services shall make the appointment.

(4) *Disqualification.* A member of a review board shall be disqualified from making a determination concerning a client when that member has served on the client's treatment team, has served on a facility review board which heard the client's case, or has personal knowledge of the behavior which precipitated the transfer of the client to the maximum security unit at the Vernon State Hospital. A review board member who does not disqualify him/herself will be dismissed from the review board by the chairperson and replaced by the commissioner.

(5) *Meetings.* A review board shall convene at the maximum security unit of the Vernon State Hospital each month or at such other times as may be determined by the chairperson; provided, however, that no more than 45 days shall elapse between meetings. The superintendent shall provide the chairperson with a list of clients to be considered by the review board and the approximate dates on which the board should meet. The superintendent may request a meeting of a review board by so notifying the chairperson.

§402.75. *Information and Records To Be Furnished to the Review Board by the Superintendent.*

(a) The superintendent shall provide all necessary information and records regarding the client to the review board, including:

- (1) name of client, date of admission, and age,
- (2) date and full description of the alleged incident or incidents of behavior believed to indicate that the client is manifestly dangerous;
- (3) complete current medical record, with past medical record available on request;
- (4) complete social history;
- (5) all psychological test materials and findings;
- (6) observational reports of nursing service, security guards, and other staff members;
- (7) physical and neurological examination results,
- (8) mental status at admission and as last recorded; and
- (9) current chemotherapy.

(b) If the client's treatment team is of the opinion that there are portions of the client's records which would be harmful to the client if viewed by him, then the treatment team shall advise the review board psychiatrist or physicians of the existence of such records. If the review board psychiatrist or physicians concur with the treatment team's opinion that portions of the client's records would be harmful to the client if viewed by him, the review board psychiatrist

or physician may withhold such harmful portions and shall document the reasons for doing so. However, the client retains the right to select a mental health professional of similar qualifications who may exercise his professional judgment in choosing to disclose the portions so designated as harmful.

§402.76. *Procedures for the Determination of Manifest Dangerousness by Facility Review Boards.*

(a) The facility review board shall review the information available on each client and shall conduct a hearing to determine whether the client is manifestly dangerous as required by §402.77 of this title (relating to Transfer of Clients Who Are Determined To Be Manifestly Dangerous to the Maximum Security Unit at the Vernon State Hospital).

(b) The facility review board may, before rendering its decision, conduct a personal interview of each client in such manner as shall be determined by the facility review board.

(c) No member of the client's treatment team shall be present during the interview of the client or hearing unless:

- (1) the presence of a treatment team member is requested by the facility review board;
- (2) the client desires to have a member of the treatment team present; or
- (3) the treatment team member is called as a witness by the client or his counsel or representative.

(d) The facility review board shall determine whether or not each client is manifestly dangerous by unanimous vote and shall prepare a written decision specifying the reasons for the determination. The written decision by the facility review board shall comply in all respects with §402.82 of this title (relating to Decision and Request for New Hearing by Superintendent or Client).

(e) The written report of each decision of the facility review board shall be filed in the permanent clinical record of the client. A copy of the decision shall also be sent to the deputy commissioner for mental health.

(f) In the event that any decision of the facility review board is not unanimous, any member of the facility review board may prepare a written dissent, stating the reason for such dissent. Such dissent shall also be filed in the client's permanent clinical record and a copy shall be provided to the superintendent and the chairperson. A copy of the written dissent shall also be sent to the deputy commissioner for mental health.

§402.77. *Transfer of Clients Who are Determined To Be Manifestly Dangerous to the Maximum Security Unit at the Vernon State Hospital.*

(a) A client may be transferred from a state mental health facility to the maximum security unit at the Vernon State Hospital only if determined to be manifestly dangerous by the facility review board of the transferring facility pursuant to subsections (b) or (c) of this section.

(b) When the superintendent is of the opinion that the client is manifestly dangerous and requires transfer to the maximum security unit at the Vernon State Hospital, he will inform the facility review board, which will give notice and hold a hearing in accordance with the procedures specified and the rights granted by this subchapter.

(c) When a client is transferred to the maximum security unit at the Vernon State Hospital, he may not be held there without a determination of manifest dangerousness by the maximum security unit review board after notice (in accordance with §402.79 of this title (relating to Notice of Hearing)) and hearing in accordance with the procedures specified in and rights granted by the rules under which the review board conducting the hearing was organized.

(d) The maximum security unit review boards shall conduct new hearings in accordance with §402.82 of this title (relating to Decision and Request for New Hearing by Superintendent or Client) for all clients transferred to the maximum security unit at the Vernon State Hospital pursuant to subsection (b) of this section. Clients transferred pursuant to this subchapter shall have a hearing before the maximum security unit review board within 60 days of their arrival at the maximum security unit at the Vernon State Hospital. Upon a finding that the client is not manifestly dangerous, he shall be returned to the transferring facility. Such transfer shall occur no later than 30 days after the client is determined to be not manifestly dangerous.

(e) If a client is returned to the transferring facility pursuant to subsections (c) or (d) of this section, he may not be made subject to another hearing under this section unless the superintendent has cause to believe that a change in the client's condition is sufficient to warrant a new hearing.

(f) In order for a client to be transferred to the maximum security unit at the Vernon State Hospital under subsection (b) of this section, there must be evidence submitted to the facility review board that all available treatment programs have been attempted with no significant results.

(g) The facility from which the client was transferred under subsection (b) of this section shall be responsible for all transportation of that client required by this section.

(1) Clients found to be manifestly dangerous through the hearing procedure may be secluded with a physician's order as provided in Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion in Mental Health Facilities).

(2) In these unique cases, the finding of manifest dangerousness is in itself the rationale for seclusion. Seclusion orders should, whenever possible, be written by a physician serving on the review board that found the client manifestly dangerous. The physician should note on the order the clinical justification for seclusion and instructions for transportation.

(h) No person who is voluntarily admitted to a facility of the department shall be transferred to the maximum security unit at the Vernon State Hospital under these procedures.

**§402.78. Procedure for the Determination of Manifest Dangerousness by a Review Board at the Maximum Security Unit at Vernon State Hospital.**

(a) A review board shall review the information available on each client and shall conduct a hearing to determine whether the client is manifestly dangerous, as required by the Texas Code of Criminal Procedure, Article 46.02, §8(a); and Article 46.03, §4(b).

(b) A review board may, before rendering its decision, conduct a personal interview of each client in such manner as shall be determined by the review board.

(c) No member of the staff of the maximum security unit at the Vernon State Hospital shall be present during the hearing, unless requested by a review board or the client being reviewed.

(d) No member of the staff of the maximum security unit at the Vernon State Hospital shall be present during the interview of the client unless requested by a review board or the client being reviewed.

(e) No member of the staff of the maximum security unit at the Vernon State Hospital shall be present during the deliberations of the review board following the client interview, unless requested by a review board.

(f) A review board shall determine whether or not each client interviewed is manifestly dangerous. In order for a client to be declared not manifestly dangerous, the decision of the review board must be unanimous. A review board shall prepare a written decision specifying the reason for the determination.

(g) The written report of each decision of a review board shall be filed in the permanent clinical record of the client. A copy of the decision shall also be sent to the deputy commissioner for mental health.

(h) In the event that any decision of a review board is not unanimous, any member of the review board may prepare a written dissent, stating the reason for such dissent. Such dissent shall also be filed in the client's permanent clinical record and a copy shall be provided to the superintendent and the chairperson. A copy of the written dissent shall also be sent to the deputy commissioner for mental health.

(i) A review board shall conduct new hearings on clients at intervals required or authorized by §402.82 of this title (relating to Decision and Request for New Hearing by Superintendent or by Client).

(j) A client who is determined to be not manifestly dangerous and who has or had charges of capital murder, murder, or attempted murder pending against him shall be transferred to the nonsecurity facility designated by the commissioner.

**§402.79. Notice of Hearing.**

(a) Hearings shall be held by a review board after reasonable notice to the client.

(b) A copy of the notice of hearing shall be filed in the client's clinical records.

(c) The form to be used by a facility review board for notice of the hearing is herein adopted by reference as Exhibit A, and is available from the Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Capitol Station, Austin, Texas 78711.

(d) The form to be used by a maximum security unit review board for notice of hearing is herein adopted by reference as Exhibit B, and is available from the Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Capitol Station, Austin, Texas 78711.

**§402.80. Conduct and Decorum.** Every party, witness, attorney, or other representative shall comport himself/herself in all proceedings governed by this subchapter with proper dignity, courtesy, and respect for the department, the review board, and members of the review board. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

**§402.81. Right to Present Evidence and Argument; Swearing of Witnesses and Testimony Under Oath; Assistance of Counsel.**

(a) The client and his representative, if any, shall be afforded the opportunity to respond and present evidence and argument on all issues involved, and to be present at all stages of a proceeding instituted under this subchapter except during deliberations of the facility review board.

(b) In connection with any hearing or proceeding held before the facility review board, the facility review board may swear witnesses and take their testimony under oath.

(c) In any hearing or proceeding held before the facility review board, all parties are entitled to the assistance of their counsel. If the client is not represented by counsel, the superintendent may appoint a lay person on the staff of the mental health facility not directly connected with the client's treatment team to assist the client at the hearing. At the request of the client, the superintendent shall appoint such a representative.

**§402.82. Decision and Request for New Hearing by Superintendent or Client.**

(a) Facility review board. The facility review board shall render a written decision.

(1) In the event the superintendent or the client disagrees with the decision of the facility review board, he may appeal to the deputy commissioner for a final decision. The transfer, if ordered, does not have to be stayed pending appeal.

(2) A client transferred to the maximum security unit at the Vernon State Hos-

pital under the provisions of this subchapter may have a hearing before the maximum security unit review board at any time upon recommendation of the staff of the maximum security unit.

(3) A client transferred to the maximum security unit at the Vernon State Hospital under the provisions of this subchapter shall have a hearing before the maximum security unit review board within 60 days of transfer and shall have a hearing every six months thereafter.

(b) Maximum security unit review board. The review board shall render a written decision.

(1) In the event the superintendent disagrees with the determination of the review board, he may then refer the matter to the commissioner who will make the determination of whether the client is manifestly dangerous.

(2) If a client who has or had charges of capital murder, murder, or attempted murder pending against him is determined by a review board to be not manifestly dangerous, the superintendent shall refer the matter to the commissioner who will make the determination of whether the client is manifestly dangerous.

(3) The superintendent may request a new hearing by a review board at any time, provided that the superintendent has cause to believe that a change in the client's condition is sufficient to warrant a new hearing.

(4) The client may request a new hearing by a review board and shall be afforded a new hearing upon a showing of good cause therefor.

(5) A review board may grant a new hearing at any time upon request of the superintendent or upon its own motion.

(6) If a client has initially been found to be manifestly dangerous and is subsequently found to be not manifestly dangerous, the client shall be transferred to a nonsecurity unit within 30 days of the decision of the review board.

**§402.83. Research Concerning Standards for Manifest Dangerousness.** The deputy commissioner for mental health services shall, as appropriate, provide to review boards reports of scientific research or literature which will provide information useful to the board in specifying standards as to manifest dangerousness.

**§402.84. Memorandum of Understanding.** The Texas Department of Mental Health and Mental Retardation herein adopts by reference as Exhibit C the memorandum of understanding with the Texas Department of Correction that provides for the relocation of the TDMHMR maximum security unit from Rusk State Hospital to Vernon State Hospital and related matters. Copies of Exhibit C are available on request from the Texas Department of Mental Health and Mental Retardation, P. O. Box 12668, Capitol Station, Austin, Texas 78711.

**§402.85. Distribution.**

(a) The provisions of this subchapter shall be distributed to all members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office; superintendents and directors of all department facilities; and members of review boards.

(b) The superintendent shall be responsible for the distribution of copies of this subchapter to all appropriate staff members.

(c) The superintendent of Vernon State Hospital shall be responsible for ensuring that the provisions of this subchapter shall be explained and copies made available upon request to all staff members of the maximum security unit of Vernon State Hospital.

(d) A copy of this subchapter shall be provided upon request to a client subject to the provisions of this subchapter and to a client's counsel.

**§402.86. References.** Reference is made to the following statutes and rules:

(1) Texas Code of Criminal Procedure, Article 46.02;

(2) Texas Code of Criminal Procedure, Article 46.03;

(3) Texas Civil Statutes, Article 6252-13a;

(4) Texas Civil Statutes, Article 5547-73;

(5) House Bill 1503, 70th Legislature, 1987; and

(6) Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion in Mental Health Facilities).

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 13, 1987.

TRD-8706705

Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 465-4670



**Subchapter G. Determination of Least Restrictive Environment—Mental Retardation Services**

**★ 25 TAC §§402.241-402.249**

The Texas Department of Mental Health and Mental Retardation proposes new §§402.241-402.249, concerning determination of the least restrictive environment for persons receiving mental retardation services. The new sections provide guidance to members of interdisciplinary

teams in the determination of the least restrictive environment for clients with mental retardation. Emphasis would be placed on assessing restrictiveness in terms of the individual client's particular circumstances, including age, degree of retardation, and handicapping condition. The new sections require the determination that the current placement is not the least restrictive environment to be made if the interdisciplinary team found that the client was significantly restricted or inhibited and that moving the client would offer a better opportunity for personal development in a more suitable environment. The new subchapter also emphasizes that significant weight should be given the views and preferences of the client, members of the client's family, or legal guardian.

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

Ms. Dillard also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the sections that are responsive to the concerns of clients and their families and sections that are in consonance with the Lelsz vs. Kavanagh settlement agreement. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

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

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

**§402.241. Purpose.**

(a) The purpose of this subchapter is to assist interdisciplinary team members (members of the D & E team or the team that develops the client's individual program plan) in determining whether a client is now in the least restrictive environment and in defining the qualities of the residential environment that would be least restrictive for the client in the event it has been determined that the present environment is not the least restrictive. The sections also set forth criteria which shall have been met prior to the actual move of a client from one residential environment to another.

(b) These sections are provided for the use of professionals; direct care staff; volunteers, including members of the public responsibility committee serving on the interdisciplinary team as they so deem appropriate; family members; guardians; and cli-



ents when considering whether to recommend that a mentally retarded client in the TDMHMR service system be moved from one residential environment to another

**§402.242. Application.**

(a) The provisions of this subchapter apply to all mental retardation facilities under the jurisdiction of the Texas Department of Mental Health and Mental Retardation, to community mental health and mental retardation centers providing mental retardation services, and to other designated providers that contract with the department to provide community-based mental retardation services.

(b) These sections shall be utilized by all TDMHMR service system personnel in determining the least restrictive environment for each client, consistent with the person's particular circumstances, including age, degree of retardation, and handicapping condition.

(c) These sections are applicable in all instances when a move is considered. This includes:

(1) movement from a dormitory or cottage on the campus of a state facility to another on the same campus;

(2) movement from a residence on the campus of a state facility to one in the community;

(3) movement from one community residence to another;

(4) movement from a residence in the community to one on the campus of a state facility; and

(5) movement from a residence on the campus of a state facility to one on the campus of another state facility

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

**Client**—A person, who voluntarily or involuntarily, is seeking, receiving, or who has received mental retardation services from a component of the TDMHMR service system.

**Community center**—A community mental health and mental retardation center established pursuant to Texas Civil Statutes, Article 5547-203.

**Designated provider**—An agency or organization that contracts with the Texas Department of Mental Health and Mental Retardation to provide community-based mental retardation services.

**Habilitation**—The education, training, and care intended to improve a person's level of social and intellectual functioning, maximize the person's skills and development, and enhance the person's ability to control and/or cope with the environment.

**Least restrictive environment**—

(A) **Least**—As used in least restrictive environment, the word "least" must be interpreted in absolute terms—an environment is the least restrictive for a client or it is not. This determination, however,

shall be made only after a thorough professional interdisciplinary team assessment of the client and the environment as outlined in this subchapter. The decision of whether an environment is least restrictive shall always be based on the present—the environment and the person as they are now. When assessing the present status of the individual, the interdisciplinary team should consider not only the individual's current level of skills and competencies, but also the individual's potential for mastering new skills for which training has not yet been presented in the current environment.

(B) **Restrictive**—Restrictiveness refers to certain qualities of the environment when viewed in relation to a person's particular circumstances, including age, degree of retardation, and handicapping conditions. These qualities, when viewed in relation to the person's particular circumstances, including age, degree of retardation, and handicapping condition, are those which significantly restrict or inhibit one or more of the following:

(i) the person's ability to remain safe, protected from harm, and free from restraints as defined in Chapter 405, Subchapter HH of this title (relating to Restraint and Seclusion in Mental Retardation Facilities);

(ii) freedom of physical movement of the person;

(iii) the quality or extent of prescribed medical or specialized therapies, including psychiatric treatment;

(iv) the quality and extent of the person's habilitation, including development of self-care, independent living, and social skills; opportunities to interact with a variety of other people, including people who are not disabled; and safe participation in experiences common to nondisabled persons;

(v) development or maintenance of bonds of affection and support between the person and others in the human environment; and

(vi) the person's quality and enjoyment of life.

(C) **Environment**—The environment is the aggregate of surrounding things, conditions, or influences that affect the development and quality of life of the person. The environment has two elements: human and nonhuman. Both human and nonhuman environments must be viewed in 24-hour terms. The person's environment consists not only of the human and nonhuman surroundings in the residence, but also of those of the community in which the residence is located, day programs, vocational settings, and settings in which the person carries out recreational and leisure time activities.

(i) **Human**—The human environment consists of those other people (clients, staff members, neighbors, etc.) who surround the person, whom he or she sees, hears, touches, and converses with at various times during the day and night. The human

element of the environment is highly variable as are people in general. The number of people in the human environment, their distribution over the 24 hours of each day of the person's life, their ages, training, education, behaviors, and attitudes toward the person are all characteristics of the human environment.

(ii) **Nonhuman**—The nonhuman environment consists of the person's physical surroundings, for example, the characteristics of the rooms, corridors, buildings, and outdoor areas in which the person spends the 24 hours of each day. Residential buildings are an important part of the nonhuman environment. Residences can be small or large, homelike or institutional, comfortable or sterile, under or not under the direct influence of the person, safe or unsafe, etc. In considering the nonhuman environment of a resident, it is important to take into account the physical characteristics of the residence's interior, exterior, and immediate surroundings, as well as the nature, size, and distance of adjacent physical structures.

**TDMHMR service system**—The facilities of the TDMHMR, community mental health and mental retardation centers, and other designated providers that contract with the department to provide community-based mental health and mental retardation services.

**§402.244. General Principles.** An analysis of least restrictive environment criteria should be grounded in an abiding concern for what is best for the client. The potential benefits to the client should be placed ahead of all other considerations in deliberations of an interdisciplinary team as it makes its determinations and formulates its recommendation in the manner outlined in these sections. The movement of a client from one environment to a totally new one should not be taken lightly by the interdisciplinary team. The least restrictive environment analysis is premised on the assumption that the present environment is the least restrictive unless the client is significantly restricted or inhibited in one or more of the six dimensions of restrictiveness set out in the definition of restrictive (see §402.243 of this title (relating to Definitions)). Under no circumstances should it be recommended that a client be relocated from one residential environment to another unless such program will offer the individual a better opportunity for personal development in a more suitable living environment as determined by an analysis of the client's characteristics and current environment.

(1) The analysis of the current residential environment by the interdisciplinary team shall give significant weight to the views and preferences of the client and of members of the client's immediate family (or legal guardian).

(2) A finding by an interdisciplinary team that a client is not residing in the least restrictive environment should always be ac-

accompanied by a description of the environment that would be the least restrictive for the client.

(3) Assessment of whether a person is or is not in the least restrictive environment involves consideration of a large number of factors that are complex and interactional, e.g., a client's attitudes and behaviors affect the environment which in turn can affect the client. These factors fall into the following general categories:

(A) client needs and characteristics, including the presence of an emotional disturbance or mental illness that may require ongoing treatment;

(B) desires and preferences of the client and family members (or the legal guardian), and

(C) characteristics of the environment in which the client presently resides.

(4) IDMHMR system professionals and members of interdisciplinary teams, together with the client, parents and/or legal guardian(s) of the client, are the proper individuals to evaluate, weigh, and balance these many factors.

(5) In making the determination whether a client's habilitation, education, or employment is significantly inhibited or inhibited by the present environment, the interdisciplinary team shall take into account the individual's particular circumstances, including age, degree of retardation, and handicapping conditions. Interdisciplinary teams should recognize that, to the extent that such individual circumstances permit, retarded persons can achieve the maximum personal and social growth and development in a residential environment which is as much as possible like that of persons who are not retarded. Care should be taken by interdisciplinary team members to tailor recommendations to the unique circumstances of the individual client and to consider the multiple characteristics of residential environments.

(6) Levels of restrictiveness are a function of the individual and the complex ways in which he or she is affected by the multiple characteristics of a particular environment. For any individual, therefore, living environments with a range of levels of restrictiveness can be found in communities and on the campuses of state schools and state centers. Individual descriptors of residential environments such as governance (state government vs. community agency, public vs. private, nonprofit vs. profit) and number of beds of the individual residence or of the residential building comprising a campus or cluster of residences can assist the interdisciplinary team in making its determination about the appropriate residential environment for a client, but are not sufficient in themselves to determine the level of restrictiveness of a residence. It should not be assumed, for example, that all residential environments on the campus of state facilities are necessarily more restrictive than those located elsewhere.

(7) In making the determination,

formulating the recommendation and/or achieving the placement, staff at state facilities and community centers shall engage in joint planning efforts to the extent necessary and appropriate to best serve the client's needs. This determination must be made at every comprehensive diagnosis and evaluation in accord with Chapter 405, Subchapter Z of this title (relating to Comprehensive Diagnostic and Evaluation Centers) and may be determined whenever a change of residence is contemplated without implementing the full D & E procedure. The possibility of such a move should be considered as part of formal staffings by interdisciplinary teams and other professional groups, including service planning conferences called by a client's case manager.

#### *§402.245 Procedure for Developing a Placement Recommendation*

(a) Placement recommendations should be based on the following factors, assessment of which should be documented along with the recommendation:

(1) review of the person's particular characteristics, particular circumstances, and handicapping conditions. This review by the interdisciplinary team of the following critical factors shall proceed in the following manner:

(A) the client's progress in the present environment shall be evaluated in the light of the individual program plan. The degree to which service needs are met, partially met, or unmet in the present environment, in relation to the client's age, degree of retardation, and handicapping conditions shall be reviewed and documented;

(B) the client's desire to move or remain in his or her current residential environment—to the extent that such desire is expressed or discernible to staff—shall be reviewed and documented, together with the reasons for the client's preference; and

(C) the preference of members of the client's immediate family (or the legal guardian) with respect to the current or proposed future residential environments shall be reviewed, together with reasons given for such preferences;

(2) review of environment in relation to client characteristics, circumstances, and service needs. The interdisciplinary team shall analyze each of the six dimensions of restrictiveness of the client's present environment to determine whether the client is significantly inhibited or restricted in one or more of these dimensions (see §402.243 of this title (relating to Definitions)) in light of the person's characteristics, particular circumstances, and service needs (see paragraph (1) of this subsection);

(3) determination of restrictiveness of present environment. Upon determining the degree to which the individual is significantly restricted or inhibited by the present environment with respect to the individual's characteristics, particular circumstances, and handicapping conditions,

the interdisciplinary team shall make a professional determination as to whether:

(A) the person's environment is the least restrictive for the person at the time of the determination. If the interdisciplinary team determines that the present environment is the least restrictive for the person, the team shall recommend that the person remain in the current residential environment, noting such recommendation and the reasons therefor in the person's individual program plan; or

(B) the person's present environment is not the least restrictive environment for the person at the time of the determination. If the interdisciplinary team determines that the present environment is not the least restrictive for the person, the team shall specify the characteristics of an environment which would be least restrictive for the person, whether or not the team knows of the existence of such an environment. The team shall include with such specification a recommendation as to which dormitory on the state school campus is an appropriate placement for the person or, in the case of a community center, the community placement, the appropriate geographic location or locations in which the residential placement should be sought. These steps are outlined in paragraph (5) of this subsection,

(4) analysis of restrictiveness. Interdisciplinary teams shall document in the written summary of the staffing in a section titled least restrictive environment determination, the team's rationale for concluding that a client is or is not significantly inhibited or restricted in each of the six dimensions of restrictiveness (see §402.243 of this title (relating to Definitions)) in light of the person's characteristics, particular circumstances, and service needs (see paragraph (1) of this subsection). The least restrictive environment determination section shall also include a description of the interdisciplinary team's reasoning in cases in which:

(A) the team finds that a client is not significantly inhibited or restricted in one or more of the six dimensions of restrictiveness and yet recommends that the client move to a new environment; or

(B) the team finds that the client is significantly inhibited or restricted in one or more of the six dimensions of restrictiveness and yet recommends that the client remain in the present environment;

(5) specification of least restrictive environment. The least restrictive environment shall be specified as follows:

(A) residential placement. The least restrictive environment recommended by the team shall be an environment whose characteristics are specified by the team in direct relationship to the team's analysis of the degree of restrictiveness of the person's present environment. The characteristics of the proposed new placement shall be those which will make it the least restrictive for the person at the present time based on an individual assessment of each of the six dimen-

sions of restrictiveness as defined in §402.243 of this title (relating to Definitions) that led to the professional determination that the person's present environment is not the least restrictive;

(B) geographic location. The team shall include with its specification of the least restrictive environment for a person a recommendation as to the appropriate geographic location or locations in which the residential placement shall be sought. Such recommendations shall fall into one of the following categories:

(i) remain in present local service area—may specify preferred location within the area;

(ii) move to another service area—specify the service area or areas deemed appropriate and, if more than one area is listed, rank them in priority order;

(iii) move to any service area other than the one in which the person is now residing;

(iv) move to any service area,

or  
(v) move to any service area which has certain characteristics—specify characteristics (for example, urban, rural, an area with specialized services, and area with a certain climate);

(C) needs and desires of client and family or legal guardian. The recommendation shall be based on a review by the team of the needs and desires of the person and the person's family, including consideration of whether the person has a particular community that is home. The team shall recommend placement in service areas that will afford the person the greatest opportunity to maintain supportive relationships with family members and friends;

(6) specification of benefits to the client. Interdisciplinary teams shall document in the written summary of the staffing the potential benefits to the client which are expected as a result of placing the client in a new residential environment.

(b) It is recognized that under certain circumstances a move to a more restrictive environment may be necessary for the safety of the client and/or others; or for special treatment, such as medical procedures or behavior therapy programs. When this is necessary, the interdisciplinary team shall document the following:

(1) the nature of the environment from which the client is being referred;

(2) the reasons why the environment from which the client is being referred is no longer appropriate;

(3) the specific restrictions (i.e., programs, levels of supervision, environmental factors, etc.) deemed necessary to enhance the rights, safety, and/or habilitation of the client;

(4) the recommended length of time the client should remain in the more restrictive setting; and

(5) identification of the least restrictive setting which provides the recommend-

ed level of restrictions

§402.246. *Criteria for Placement Recommendations.* Prior to placing a person, the following shall be present:

(1) a recommendation for placement by the interdisciplinary team based upon the procedures outlined in §402.245 of this title (relating to Procedure for Developing a Placement Recommendation) of this section;

(2) the immediate availability of a placement that will offer the individual a better opportunity for personal development and a more suitable environment, and which possesses the characteristics determined by the interdisciplinary team to be least restrictive for the person (including geographic location);

(3) evidence that the proposed placement meets or will meet TDMHMR facility or community standards or other applicable standards;

(4) for a person placed from a state school to a community residence, the immediate availability of a case manager who has a caseload of no more than 29 other clients, unless the deputy commissioner for mental retardation services waives the case management requirement for the individual;

(5) the immediate availability of a capacity to respond to behavioral and medical emergencies; and

(6) the immediate availability of a departmentally prescribed monitoring system for the client and the placement which has the following components:

(A) monitoring for the quality and appropriateness of services being provided to the person;

(B) monitoring of the safety of the environment of the person;

(C) a procedure by which the person or a representative of the person may file a complaint or objection about the type or quality of services received; and

(D) a procedure to report and respond to allegations of abuse and neglect.

§402.247. *The Placement Recommendation.* When the interdisciplinary team has made a professional determination that the person's present placement is not the least restrictive environment, and has specified the characteristics of a new placement which will be least restrictive for the person, the team shall recommend placement of the person to such new placement, regardless of whether the placement exists or whether there are available resources to establish or finance it.

§402.248. *Distribution.*

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation, deputy commissioners, assistant deputy commissioners, directors and section chiefs of central office, superintendents and directors of all department facilities, and board chairpersons and executive directors of all community mental health and mental retardation centers.

(b) The superintendent, director, or executive director shall ensure distribution of this subchapter to appropriate staff.

(c) A copy of this subchapter shall be made available upon request to any staff member; client, parent, or legal guardian; counsel of record of any client; or to any interested party.

§402.249. *References.* The following departmental sections are referenced in the subchapter:

(1) Chapter 405, Subchapter Z of this title (relating to Comprehensive Diagnostic and Evaluation Centers);

(2) Chapter 405, Subchapter HH of this title (relating to Restraint and Seclusion in Mental Retardation Facilities).

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 13, 1987

TRD 8706706

Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption

September 21, 1987

For further information, please call  
(512) 465-4670

## Chapter 403. Other Agencies and the Public

### Subchapter T. Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers

#### ★ 25 TAC §§403.551—403.558

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§403.551-403.558, concerning client abuse and neglect in community mental health and mental retardation centers. Pursuant to the reorganization of TDMHMR's rules into topical chapters, the subchapter is contemporaneously proposed with the proposal of new Chapter 404, Subchapter B, concerning client abuse and neglect in community mental health and mental retardation centers.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the proposed repeals 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 repeals.

Ms. Dillard also has determined that for each year of the first five years the repeals

are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be the reorganization of the department's rules. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711

The repeals are proposed under Texas Civil Statutes, Article 5547-202, §211, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.551. *Purpose*

§403.552. *Application*

§403.553. *Definitions.*

§403.554. *Client Abuse and Neglect Defined.*

§403.555. *Administrative Enforcement*

§403.556. *Training in Prevention of Client Abuse and/or Neglect*

§403.557. *References*

§403.558. *Distribution*

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 13, 1987

TRD-8706707

Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 465-4670

## Chapter 404. Protection of Clients and Staff

### Subchapter B. Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers

#### ★25 TAC §§404.41—404.48

*(Editor's note: The Texas Department of Mental Health and Mental Retardation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is published in the Emergency Rules section of this issue.)*

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§404.41-404.48, concerning client abuse and neglect in community mental health and mental retardation centers. The new subchapter is proposed contemporaneously with the proposed

repeal of Chapter 403, Subchapter T of this title, concerning client abuse and neglect in community mental health and mental retardation centers. The changes are proposed as part of the reorganization of all TDMHMR sections.

The new subchapter incorporates the substantive matters of the subchapter it would replace, with the following modifications

Pursuant to Senate Bill 298, 70th Texas Legislature, §404.45(6) contains provisions which require community centers to report every allegation of abuse or neglect within five working days to the Office of Client Services and Rights Protection, Central Office. In the same paragraph, an additional form for reporting abuse or neglect (Form AN-1A) is adopted by reference. The former requirement for community centers to submit quarterly summaries to central office has been deleted.

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

Ms. Dillard also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be the use of procedures that ensure that client abuse is closely monitored on a statewide basis. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711. The new sections are proposed under Texas Civil Statutes, Article 5547-202, §211, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 13, 1987

TRD-8706708

Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 465-4670

### Subchapter H. Unusual Incidents at TDMHMR Facilities

#### ★25 TAC §§404.241-404.256

The Texas Department of Mental Health and Mental Retardation proposes new §§404.241-404.256, concerning unusual in-

cidents at TDMHMR facilities. The new subchapter is proposed contemporaneously with the proposed repeal of Chapter 405, Subchapter C.

The new subchapter incorporates the substance of the subchapter it replaces. The definition of nonserious physical injury is modified to exclude minor burns, which are defined under serious physical injury, consistent with other departmental rules. Pursuant to House Bill 272, the new subchapter also adds the requirement that facilities report certain clients on unauthorized departure as missing persons to appropriate law enforcement agencies.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the proposed sections.

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

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

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

§404.241. *Purpose*—The purpose of this subchapter is to define unusual incidents at facilities of the Texas Department of Mental Health and Mental Retardation and to establish procedures for reporting and recording such incidents.

§404.242. *Application*—The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation.

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

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

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

Guest—A person, other than a client or employee, who is on the premises or in facilities of the Texas Department of Mental Health and Mental Retardation.

Nonserious physical injury—Any injury determined not to be serious by the physician who examines the client. Examples of nonserious injury include, but are not limited to, the following: superficial laceration, contusion, abrasion.

serious or nonserious injuries. An injury is considered serious if reported by the physician as such. Examples of serious injury include, but are not limited to, the following: fracture, dislocation of any joint; internal injury; any contusion larger than two and one-half inches in diameter, concussion, first, second, or third degree burn, or any laceration requiring sutures.

The unauthorized departure of a client which might have unusual consequences. The unauthorized departure of a client which causes a reasonably prudent staff person who has knowledge of the client's condition to believe that harm is likely to the client or to others may occur as a result of the unauthorized departure. Examples would be the unauthorized departure of a client who the treatment staff believes to be a danger to himself or to others, and the unauthorized departure of a client who requires maintenance medical or such as insulin.

Unusual incident. Includes:

- (A) the death of a client resulting from other than natural causes;
- (B) the death of an employee, from whatever cause, while on duty;
- (C) the death of a guest, from whatever cause;
- (D) an injury to a client, from whatever cause;
- (E) an injury to an employee, from whatever cause, while on duty;
- (F) an injury to a guest, from whatever cause;
- (G) an automobile accident involving a vehicle owned by this department or any vehicle operated by an officer or employee of this department while in the performance of official duties;
- (H) a fire, theft, or other occurrence which causes property damage or loss in the amount of \$100 or more in facilities of the Texas Department of Mental Health and Mental Retardation;
- (I) a criminal act by a client or a criminal act by any person against a client; and
- (J) the unauthorized departure of a client who cannot care for his safety and or is considered to be a danger to himself or to others.

**§404.244. Incidents Which Must be Reported by Telephone to the Deputy Commissioner as Soon as Possible.**

- (a) The following incidents shall be reported to the appropriate deputy commissioner by telephone as soon as possible following the incident:
  - (1) death of client from other than natural cause (except that all client deaths shall be reported in accordance with §405.264(f) of this title (relating to Actions Taken upon Death of a Client on Facility Grounds));
  - (2) death of a guest;
  - (3) death of an employee while on duty.
- (b) Upon receiving a report of serious injury to a client, the head of the facility or

his designee shall promptly notify the client's parents, legal guardian, managing conservator, or other close relative, unless such notification is prohibited by state law or federal regulation.

**§404.245. Reporting Serious or Nonserious Injury to a Client, Guest, or an Employee.**

(a) All serious and nonserious job-related injuries to an employee shall be recorded by the employee's supervisor on the supervisor's report of employee's injury form, which is referred to as Exhibit A in §404.254 of this title (relating to Exhibits). This reporting form shall also be used to report injuries to a guest. A copy of Exhibit A shall be filed in the personnel record of the employee, or the record established for guests.

(b) The death of an employee, and a job-related illness or injury to an employee which occurs in the course of his official duties, and which causes out of pocket expenses to the employee (i.e., illness or injury other than those treated solely by a physician employed by the facility), or an absence from work for more than one workday, shall be reported by the worker's compensation claims coordinator on the employer's first report of injury or illness form which is referred to as Exhibit B in §404.254 of this title (relating to Exhibits), as required by the State Employees-Workers' Compensation Division of the Attorney General's Office. If the employee suffers a serious illness or injury, or if the illness or injury results in the death of the employee, copies of the report shall be mailed to the legal division of central office and to the appropriate deputy commissioner.

(c) All serious and nonserious injuries to a client shall be reported on Exhibit C, which is referred to in §404.254 of this title (relating to Exhibits). The original client injury form shall be filed in the client's record or maintained as a part of the client's files.

**§404.246. Employee Training Requirements.** An employee who has received a serious injury as a consequence of aggressive client behavior shall receive initial or refresher training or be counseled by his superior in the area of prevention and management of the aggressive behavior that was involved in the incident. The training or counseling shall occur within 30 days following the injury, dependent upon the physical capacity of the employee.

**§404.247. Treatment of Employees Injuries/Illnesses in the Performance of Official Duties.** Facilities' medical personnel shall offer to render medical treatment within the facilities' fiscal capabilities to employees sustaining injuries or illnesses in the performance of their official duties. Examples of medical treatment include, but are not limited to, the following: suturing, bandaging, injections (immune serum globulin, tetanus, etc.), written prescriptions, X-rays, and laboratory studies (CBC's, cultures, etc.).

**§404.248. Reporting Injury, Death, or Property Damage Which Is the Result of an Automobile Accident Involving the Department.** Injury, without regard to severity, to any person, the death of any person, or any property damage, which is the result of an automobile accident involving a vehicle owned by the department or any vehicle operated by an officer or employee of the department in the course of his official duties shall be reported on the personal injury/damage report—motor vehicle form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit D, in triplicate, as soon as possible. The original report shall be mailed to the maintenance division of central office, one copy shall be mailed to the legal division of central office, and the other copy shall be retained. Such reports are in addition to the reports required by the Texas Department of Public Safety as described in the March 26, 1974, memo from the chief of plant maintenance to all facilities. One copy of the reports made to the Texas Department of Public Safety shall also be mailed to the maintenance division of central office.

**§404.249. Reporting Fire Which Causes Property Damage of \$100 or More.** Fire which causes property damages in the amount of \$100 or more in facilities of the department shall be reported on the property damage report—fire form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit E, in triplicate. The original report shall be mailed to the appropriate deputy commissioner, one copy shall be mailed to the maintenance division of central office, and the other copy shall be retained.

**§404.250. Reporting Theft or Damage, from Causes Other than Fire, Resulting in Property Loss or Damage of \$100 or More.** Theft or damage, from causes other than fire, resulting in property loss or damage in the amount of \$100 or more in facilities of the department shall be reported on the theft/damage report form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit F, in triplicate. The original report shall be mailed to the appropriate deputy commissioner, one copy shall be mailed to the maintenance division of central office, and one copy shall be retained.

**§404.251. Reporting Loss, Destruction, or Damage to State Property.** If it is determined that loss, destruction, or damage to state property, in any amount, occurred through the negligence or fault of any state official or employee, an immediate report shall be made to the state auditor in accordance with Texas Civil Statutes, Article 601B, §8.06, the Property Accounting System Manual of Instruction, issued by the State Purchasing and General Services Commission, and the Accounting Manual of the department.

§404.252 *Reporting a Criminal Act*

(a) A criminal act by a client, or a criminal act by any person against a client, shall be reported on the criminal occurrence report form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit G, in triplicate. The original report shall be mailed to the appropriate deputy commissioner, one copy shall be mailed to the legal division of central office, and the other copy shall be retained.

(b) The reports required by subsection (a) of this section are in addition to the immediate telephone report of a criminal act which should be made to the appropriate law enforcement agency, including the Texas Department of Public Safety. If the criminal act occurs within the jurisdictional boundaries of a city or town, the local police should also be notified. If the criminal act occurs without the boundaries of a city or town, the county sheriff should also be notified.

§404.253 *Reporting Unauthorized Departure of a Client*

(a) The unauthorized departure of a client who cannot care for his or her safety or is considered to be a danger to himself or herself or to others shall be reported on the unauthorized departure form, which is referred to in §404.254 of this title (relating to Exhibits) as Exhibit H. The original report shall be retained in the client record.

(b) When the client on unauthorized departure is receiving court-ordered inpatient or residential services or is voluntarily receiving mental retardation residential services, the superintendent or director shall immediately report the client as a missing person to the appropriate law enforcement agency.

§404.254. *Exhibits.* The following forms are herein adopted by reference and are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711.

(1) Exhibit A—supervisor's report of employee's injury. This form is used to describe any injury and all related facts incurred by an employee or guest of a facility of the department. It is designed and published by the department and a copy of it may be obtained at the central office of the department.

(2) Exhibit B—employer's first report of injury or illness. This form gives a description of the employer of the person injured, time and place of the injury, its cause and nature, and whether fatal. It is published by and a copy of it may be obtained from the Office of the Attorney General, State Employees-Workers Compensation Division, 314 Highland Mall Boulevard, Suite 350, Austin, Texas 78752.

(3) Exhibit C—client injury report. This form is used to describe any injury incurred by a client and all related facts. It is designed and published by the department, and a copy of it may be obtained from the

central office of the department

(4) Exhibit D—personal injury damage report—motor. This is an insurance industry form used in all states to claim damages for personal injuries. Copies may be obtained from any insurance form supplier.

(5) Exhibit E—property damage report—fire. This form is used to report all pertinent facts about a fire. It is designed and published by the department and a copy of it may be obtained at the central office of the department.

(6) Exhibit F— theft damage report. This form is used to show a property loss at a facility of the department. It is designed and published by the department and a copy of it may be obtained at the central office of the department.

(7) Exhibit G—criminal occurrence report. This form is used to report the occurrence of a crime. It is designed and published by the department and a copy of it may be obtained at the central office of the department.

(8) Exhibit H—unauthorized departure of a client. This form is used to report the unauthorized departure of a client. This form is designed by the department, and a copy of it may be obtained from the central office of the department.

§404.255. *Distribution.*

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office; and superintendents and directors of all department facilities.

(b) The superintendent or director of each facility shall provide a copy of this subchapter to the business manager or administrator of his or her facility.

(c) The superintendent or director of each facility shall be responsible for the dissemination of the information contained in this subchapter to all appropriate staff members.

§404.256. *References.* Reference is made to the following statutes:

- (1) Texas Civil Statutes, Article 5547-202, §2.12;
- (2) Texas Civil Statutes, Article 6252-6;
- (3) House Bill 272, 70th Legislature, 1987.

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 13, 1987

TRD-8706709 Roger Bateman  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption  
September 21, 1987  
For further information, please call  
(512) 465-4670

Chapter 405. Client (Patient) Care

Subchapter C. Unusual Incidents at Institutions

★ 25 TAC §§405.51—405.66

The Texas Department of Mental Health and Mental Retardation proposes the repeal of §§405.51-405.66, concerning unusual incidents at institutions. The repeals are proposed contemporaneously with the proposal of new Chapter 404, Subchapter G of this title, governing unusual incidents at TDMHMR facilities.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

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

Written comments may be submitted to Linda Logan, Rules Coordinator, TDMHMR, P.O. Box 12668, Austin, Texas 78711, within 30 days of publication.

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

§405.51. *Purpose.*

§405.52. *Application.*

§405.53. *Definitions.*

§405.54. *Reporting Requirements: Incidents Which Must be Reported by Telephone to the Deputy Commissioner as Soon as Possible.*

§405.55. *Reporting Requirements: Serious or Nonserious Injury to a Resident, Guest, or an Employee.*

§405.56. *Employee Training Requirements.*

§405.57. *Treatment of Employee Injuries/Illnesses in the Performance of Official Duties.*

§405.58. *Reporting Requirements: Injury, Death, or Property Damage Which Is the Result of an Automobile Accident Involving a Vehicle Owned by the Department or Operated by an Officer or Employee of the*

Department in the Course of His Official Duties

§405.59 Reporting Requirements. Fire Which Causes Property Damage of \$100 or More.

§405.60. Reporting Requirements: Theft or Damage, from Causes Other than Fire, Resulting in Property Loss or Damage of \$100 or More

§405.61 Reporting Requirements. Loss, Destruction, or Damage to State Property

§405.62 Reporting Requirements. A Criminal Act

§405.63 Reporting Requirements. Unauthorized Departure of a Patient or Resident Who Cannot Care for His or Her Safety or Is Considered to Be a Danger to Himself or Herself or to Others

§405.64 Exhibits

§405.65 Distribution

§405.66 References

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

Issued in Austin, Texas, on August 21, 1987

TRD-8706710 Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 465 4670



**Subchapter I. Review Boards  
(Skyview Maximum Security  
Unit at Rusk State Hospital)  
for Making a Determination  
of Manifest Dangerousness  
★ 25 TAC §§405.191-405.218,  
405.220, 405.221**

The Texas Department of Mental Health and Mental Retardation proposes the repeal of §§405.191-405.218, 405.220, and 405.221, concerning review boards for making a determination of manifest dangerousness of clients at the Rusk State Hospital Skyview Maximum Security Unit. The repeals are proposed contemporaneously with the proposal of new Chapter 402, Subchapter C, concerning transfer to Vernon Maximum Security Unit, pursuant to the provisions of House Bill 1503, 70th Legislature.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implications for state or local

government or small businesses as a result of enforcing or administering the repeals

Ms. Dillard also has determined that for each year of the first five years the repeals were in effect, the anticipated public benefit will be compliance with state law, and better protection of the rights of clients for whom a determination of manifest dangerousness must be made. There is no anticipated cost to individuals who must comply with the repeals

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

The repeals are proposed under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers

§405.191 Purpose

§405.192 Application

§405.193 Function of Review Boards

§405.194 Definitions

§405.195 Appointment of Review Boards, When a Review Board May Act, Appointment of Alternate Member, Appointment of New Members, Notice of Appointment

§405.196 Meetings and Minutes of the Review Board

§405.197 Research Concerning Standards for Manifest Dangerousness

§405.198. Information and Records to be Furnished Review Boards by the Superintendent.

§405.199. Advice from a Review Board as to Matters Other than Manifest Dangerousness.

§405.200. Filing of Papers.

§405.201. Procedure for the Determination of Manifest Dangerousness by a Review Board.

§405.202. Computation of Time, Extensions.

§405.203 Motions.

§405.204. Notice of Hearing; Waiver of Notice.

§405.205. Depositions.

§405.206. Subpoenas

§405.207 Prepared Testimony

§405.208 Conduct and Decorum

§405.209. Rules of Evidence.

§405.210. Documentary Evidence and Official Notice.

§405.211. Formal Exceptions.

§405.212 Limitations on Number of Witnesses

§405.213. Offer of Proof.

§405.214. Right to Present Evidence and Argument, Swearing of Witnesses and Testimony Under Oath; Right to Cross-Examination, Assistance of Counsel.

§405.215. Ex Parte Consultations.

§405.216 Effects of Review Board Decisions

§405.217 Final Decisions and Orders; Request for Rehearing by Superintendent, Request for New Hearing by Superintendent or by Patient, Motions for Rehearing

§405.218 The Record

§405.220 Distribution

§405.221 References

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

Issued in Austin, Texas, on August 21, 1987

TRD 8706710 Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption  
September 21, 1987

For further information, please call  
(512) 465 4670



**Subchapter N. Transfer of  
Court-Committed Patients to  
the Skyview Unit at the  
Rusk State Hospital**

**★ 25 TAC §§405.321-405.326,  
405.328-405.350**

The Texas Department of Mental Health and Mental Retardation proposes the repeal of §§405.321-405.326 and 405.328-405.350, concerning transfer of court-committed patients to the Skyview Maximum Security Unit at the Rusk State Hospital. The repeal is proposed contemporaneously with the proposal of new Chapter 402, Subchapter C, concerning transfer to Vernon Maximum Security Unit, pursuant to the provisions of House Bill 1503, 70th Legislature.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for each year of the first five years that the repeals are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules as proposed repeals.

Ms Dillard also has determined that for each year of the first five years that the repeals are in effect, the anticipated public benefit will be in compliance with state law, and better protection of the rights of clients for whom a determination of manifest dangerousness must be made. There is no anticipated cost to individuals who must comply with the proposed repeals

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

The repeals are proposed under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers

§405.321 Purpose

§405.322 Application

§405.323 Definitions

§405.324 Transfer of Patients to the Skyview Maximum Security Unit at the Rusk State Hospital Who Are Determined To Be Manifestly Dangerous

§405.325 Appointment of Institutional Review Board.

§405.326 Meetings and Minutes of the Institutional Review Board.

§405.337 Prepared Testimony

§405.328. Information and Records To Be Furnished to the Institutional Review Board by the Superintendent.

§405.329. Advice from the Institutional Review Board as to Matters Other Than Manifest Dangerousness.

§405.330. Procedure for the Determination of Manifest Dangerousness by the Institutional Review Board.

§405.331. Filing of Papers.

§405.332. Computation of Time; Extensions.

§405.333 Motions.

§405.334. Notice of Hearing; Waiver of Notice.

§405.335. Depositions.

§405.336. Subpoenas.

§405.337. Prepared Testimony.

§405.338. Conduct and Decorum.

§405.339 Rules of Evidence.

§405.340. Documentary Evidence and Official Notice.

§405.341. Formal Exceptions.

§405.342. Limitations on Number of Witnesses.

§405.343. Offer of Proof.

§405.344. Right to Present Evidence and

*Argument; Swearing of Witnesses and Testimony Under Oath; Right to Cross-Examination, Assistance of Counsel*

§405.345. *Ex Parte Consultations.*

§405.346. *Effects of Institutional Review Board Decisions.*

§405.347 *Final Decisions and Orders; Request for Rehearing by Superintendent or Patient, Request for New Hearing by Superintendent or Patient; Motions for Rehearing.*

§405.348 *The Record*

§405.349 *Distribution*

§405.350 *References.*

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

Issued in Austin, Texas on August 13, 1987

TRD 8706711 Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption  
September 21, 1987  
For further information, please call  
(512) 465-4670



### Subchapter DD. Continuity of Care; Procedures for Preadmission Screening, Community Support Plan Development, and Client Program Coordination

#### ★ 25 TAC §§405.751-405.763

The Texas Department of Mental Health and Mental Retardation proposes the repeal of §§405.751-405.763, concerning continuity of care procedures in TDMHMR facilities. The repeal is proposed contemporaneously with the proposal of new sections governing the same matters, contained in Chapter 402, Subchapter B.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the proposed repeals 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 repeals.

Ms. Dillard also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing or administering the repeals will be the deletion of unnecessary repeals. There is no anticipated economic cost to individuals who are re-

quired to comply with the proposed repeals.

Comments may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers

§405.751. *Purpose*

§405.752. *Application*

§405.753 *Definitions.*

§405.754 *Areas of Service Responsibility.*

§405.755 *Screening, Referral, and Admission*

§405.756. *Periodic Reevaluation of Institutional Placement*

§405.757 *Development of Community Support Plan*

§405.758 *Community Support Services and Client Program Coordination.*

§405.759 *Client's Entry into Private Treatment Program*

§405.760. *Disclosure of Confidential Information.*

§405.761. *Joint Program Planning Between Facilities and Centers.*

§405.762. *Distribution.*

§405.763. *References.*

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

Issued in Austin, Texas, on August 13, 1987

TRD-8706772 Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption:  
September 21, 1987  
For further information, please call  
(512) 465-4670



## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration Subchapter L. Motor Fuels Tax

#### ★ 34 TAC §3.175

The Comptroller of Public Accounts proposes an amendment to §3.175, concerning liquefied gas tax decals. The amend-



ment updates the rate schedule for vehicles using liquefied gas as a fuel. The cost of decals was changed by legislation.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for local government or small businesses as a result of enforcing or administering the section. There will be an estimated increase in revenue to the state as a result of the increase in the permit fee by the legislature. The effect of the adoption of the

amendment will be an insignificant increase in revenue to the state.

Mr. Moore 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 notification to the public regarding how to comply with the increased price of the liquefied gas tax decal. The cost to individuals purchasing the decal will be an increase of 50% reflected by recent legislation mandating the tax increase.

Comments on the proposal may be submitted to Don Lawrence, Supervisor of

Petroleum and Miscellaneous Tax, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.175 Liquefied Gas Tax Decal.

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

(c) Rate schedule

(d) The following rate schedule (based on mileage driven the previous year) applies.

Registered Gross Weight	Less Than	5,000 to	10,000 Miles
	5,000 Miles	9,999 Miles	And Over
Class A: Less than 4,000 pounds	[\$ 48] \$ 72	[\$ 96] \$144	[\$144] \$216
Class B: 4,000 to 10,000 pounds	[ 54] 81	[108] 162	[168] 252
Class C: 10,001 to 15,000 pounds	[ 78] 117	[156] 234	[240] 360
Class D: 15,001 to 27,500 pounds	[ 84] 126	[168] 252	[336] 504
Class E: 27,501 to 43,500 pounds	[114] 171	[228] 342	[456] 684
Class F: 43,501 and over	[120] 180	[240] 360	[600] 900

(2) A special use liquefied gas tax decal and tax is required for the following types of vehicles described as follows.

[(A)] Class T: transit carrier vehicles operated by a transit company—[\$660] \$990

[(B)] Class Y: Motor vehicles designed for carrying fewer than 10 passengers and used for the transportation of persons for compensation—\$408]

(d)-(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 17, 1987.

TRD-8706796 Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption.

September 21, 1987  
For further information, please call  
(512) 463-4004

★ 34 TAC §3.185

The Comptroller of Public Accounts proposes an amendment to §3.185, concerning diesel tax prepaid user permits. This amendment updates the tax rate schedule for certain diesel-powered vehicles. The tax rates were changed by legislation.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for local government or small businesses as a result of enforcing or administering the section. There will be an estimated increase in revenue to the state as a result of the increase in the permit fee by the legislature. The effect of the adoption of the amendment will be an insignificant increase in revenue to the state.

Mr. Moore 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 notification to the public regarding how to comply with the increased cost of the diesel tax prepaid user permit. The cost to individuals purchasing the permit will be an increase of 50% reflected by recent legislation mandating the tax increase.

Comments on the proposal may be submitted to Don Lawrence, Supervisor of Petroleum and Miscellaneous Tax, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.185. Diesel Tax Prepaid User Permit.

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

(d) The following schedule determines permit cost:

VEHICLE CLASS	REGISTERED GROSS WEIGHT	PERMIT COST
A	Less than 2,500 lbs.	\$ 46.50 [\$31]
B	2,500 to 3,500 lbs.	82.50 [55]
C	3,501 to 4,500 lbs.	103.50 [69]
D	4,501 to 7,000 lbs.	124.50 [83]
E	7,001 to 10,000 lbs.	145.50 [97]

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 17, 1987

TRD-8706797      Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption

September 21, 1987

For further information, please call  
(512) 463 4004



### ★ 34 TAC §3.191

The Comptroller of Public Accounts proposes an amendment to §3.191, concerning the gasoline and alcohol mixture credit. The amendment is needed to make this section conform to recent legislative changes.

John Moore, director of the comptroller's economic analysis center, 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. Moore also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. 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 Don Lawrence, Supervisor of Petroleum and Miscellaneous Tax, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

#### §3.191. Gasoline and Alcohol Mixture Credit.

(a) Definition. First sale or use—The first taxable sale or use made by permitted distributors in accordance with the Texas Tax Code, §153.101 and §153.104.

(b) Tax credit claim.

(1) • (No change.)

(2) A gasoline-alcohol mixture that contains alcohol **fermented and** [produced or] distilled in another state is eligible for a credit on its first sale or use in Texas only if it is **fermented and distilled** [produced] in a state which allows a credit for Texas-produced alcohol or gasoline-alcohol mixtures as provided in the Texas Tax Code, §153.123.

(3)-(5) (No change.)

(c) (No change.)

(d) Records required. A permitted distributor taking the tax credit on a gasoline and alcohol mixture will be responsible for maintaining records substantiating that the alcohol was **fermented and distilled** [produced] in Texas or in a state that allows a tax credit, exemption, or refund on alcohol or on a gasoline and alcohol mixture **fermented and distilled** [produced] in Texas.

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

Issued in Austin, Texas, on August 17, 1987

TRD 8706795      Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption

September 21, 1987

For further information, please call  
(512) 463 4004



### Subchapter O. State Sales and Use Tax

#### ★ 34 TAC §3.299

The Comptroller of Public Accounts proposes an amendment to §3.299, concerning newspapers, magazines, publishers, sacred writings, broadcasters. During the 70th Legislature, §151.319 and §151.320 were amended to restore exemptions for newspapers and certain magazine sales. Section 151.319(a) exempts newspapers whether sold by individual copy or by subscription. Section 151.320 exempts subscriptions to magazines entered as second class mail and sold for a semi-annual or longer period of time. Section 151.326, which provided exemptions for television and radio broadcasting stations, was repealed. The amendment to §3.299 is proposed to conform with these changes, which become effective October 1, 1987.

John Moore, director of the comptroller's economic analysis center, 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. Moore 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 clarification of the section regarding allocation of local tax revenue. 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 Mona Ezell Shoemate, Tax Policy, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002 which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.299. Newspapers, Magazines, Publishers, Sacred Writings[, Broadcasters] (Texas Tax Code §151.005, §151.319, §151.320, §151.312[, §151.326])

(a) Newspapers

(1) (3) (No change.)

(4) The sale, lease, or rental in this state of newspapers **whether sold or distributed by individual copy or subscription is exempt** [taxable].

(5) For the purposes of this section, nonsubscription newspapers means newspapers paid for by advertisers rather than by recipients of the newspapers. The advertising rates for nonsubscription newspapers are the same or higher than subscription newspapers purchased by recipients.

(6) For the purposes of this section, freely distributed newspapers means newspapers paid for by advertisers rather than recipients of the newspapers but whose advertising rates are lower than subscription newspapers.

(7) The sale, lease, or rental in this state of newspapers is taxable. This includes subscription, nonsubscription, and over-the-counter sales. The sales price of nonsubscription newspapers must be separately stated from the charge for advertising and must be a reasonable amount for such publication. The sales price will be considered reasonable if the sales price equals the sales price of comparable subscription newspapers or equals the incremental difference between the advertising rates in nonsubscription newspapers and the advertising rates in subscription newspapers.

(8) Sales tax is not due on the transfer of freely distributed newspapers.]

(b) Magazines.

(1) (No change.)

(2) The sale, lease, rental, or other consumption in this state of **subscriptions to magazines entered as second class mail and sold for a semi-annual or longer period of time are exempt from the sales tax** [is taxable]. **Other sales of magazines are taxable.**

(3) (No change.)

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

(e) Broadcasting stations

(1) Broadcasting stations—radio and television stations licensed by the Federal Communications Commission.

(2) Broadcasting stations are exempt from payment of the sales and use tax on purchases or sales of film, records, tapes, photographs, transparencies, graphic art materials (e.g., weather board, magnetic symbols, art board), and program services, if directly used or consumed during any phase of broadcasting operations.

(3) Broadcasting stations are exempt from payment of the sales and use tax.

on machinery, equipment, accessories, and replacement parts having a useful life, when new, of less than six months. An item will be exempt only if the item is entirely consumed or without value within six months after the date it was purchased new. The machinery, equipment, accessories, and replacement parts must be used or consumed directly in the broadcasting operations and not in incidental activities such as sales or accounting operations.

{(4) Broadcasting stations should see § 3.309 of this title (relating to Electrical Transcriptions, Recording Studios, Producers) and § 3.350 of this title (relating to Audiovisual Works) }

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 17, 1987

TRD-8706678

Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption

September 21, 1987

For further information, please call

(512) 463-4004



## Subchapter Q. Franchise Tax

### ★ 34 TAC § 3.410

The Comptroller of Public Accounts proposes an amendment to § 3.410, concerning extensions for annual reports. The amendment reflects the increase in tax rate and minimum tax for the 1988 and 1989 annual franchise tax reports, 70th Legislature, 1987, second called session.

John Moore, director of the comptroller's economic analysis center, 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. Moore 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 is provision of new information regarding tax responsibilities under changes made by the legislature. 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 Teresa Van De Walle, Supervisor of Franchise Tax Policy, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Texas Tax Code, § 111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the ad-

ministration and enforcement of the provisions of the Tax Code, Title 2

### § 3.410. Extensions for Annual Reports.

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

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

(3) remits with the extension request

(A) (B) (No change.)

(C) in either case, at least **\$150 [\$68] for the 1988 and 1989 reports and \$68 for all years thereafter.**

(b) If the last report due for which a corporation paid a tax in the previous calendar year was an initial report, the payment provided in subsection (a)(3)(B) of this section must equal an amount produced by multiplying the Texas portion of taxable capital and surplus, as required to be shown on the initial report, by **\$6.70 [\$4.25] per \$1,000 for the 1988 [1985] and 1989 reports [report]** and by **\$5.25 per \$1,000 for [1986 and] later reports.**

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

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

(3) If a corporation timely requests an extension and pays at least **\$150 [\$68] for the 1988 and 1989 report, and \$68 for all years thereafter** but does not qualify for an extension under paragraphs (1) or [paragraph] (2) of this subsection, then March 15 is the due date for 90% of the tax finally determined to be due and June 15 is the due date for 10% of the tax finally determined to be due.

(d) (No 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 17, 1987

TRD-8706798

Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption

September 21, 1987

For further information, please call

(512) 463-4004



### ★ 34 TAC § 3.411

The Comptroller of Public Accounts proposes an amendment to § 3.411, concerning banking corporations. The amendment incorporates changes made to Article 4366e (Local Government Corporate Banking Franchise Tax Fund) by Senate Bill 938, 70th Legislature, and changes made to the Franchise Tax Act by House Bill 61, 70th Legislature.

John Moore, director of the comptroller's economic analysis center, 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. Moore 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 clarification of tax responsibilities. 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 Teresa Van De Walle, Supervisor of Franchise Tax Policy, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Texas Tax Code, § 111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2

### § 3.411. Banking Corporations.

(a) (c) (No change.)

(d) Dividends and interest, including interest on loans to the federal government, received by a corporation with its commercial domicile in this state

shall be included in the corporation's Texas gross receipts. If the corporation's commercial domicile is not in this state, all dividends and interest received by the corporation shall be considered Texas gross receipts. This includes all dividends and interest received on all gross receipts everywhere.

(e) (No change.)

(f) Allocation of tax due. Notwithstanding any other provisions of this section, for the tax periods from May 1, 1988, April 30, 1990, **\$1.45 per \$1,000 of net taxable capital each year will be allocated to the state's general revenue fund. Only \$5.25 per \$1,000 of net taxable capital per year will be allocated to the bank's principal office and qualified branch facilities in accordance with this subsection.**

(1) The entire amount of tax shall be allocated to the principal office in Texas unless the banking corporation has, on January 1 of the report year, one or more qualified branch facilities operating in the state.

(2) In order to be a qualified branch facility, the branch must have been allocated tax in the preceding calendar year as either a principal office or a branch facility.

(3) Allocation of tax among the principal office and qualified branch facilities is not required when the taxing units for the principal office and all of the qualified branch facilities are identical.

(4) In allocating the tax due among the principal office and each qualified branch facility, the tax shall be allocated:

(A) to the principal office and each qualified branch in proportion to the amount of tax allocated to the principal office and each qualified branch facility in the preceding year; or

(B) if the principal office was not allocated tax in the preceding year, to each

qualified branch facility in an amount equal to the tax allocated to that branch in the preceding year:

(j) If the tax due in the current year is greater than the tax allocated in the preceding year, any remainder shall be allocated to the principal office.

(k) If the tax due in the current year is less than the tax allocated in the preceding year, the tax shall be apportioned among the qualified branch facilities in proportion to the amount of tax allocated to the facilities in the preceding year.

(5) An allocation of zero tax is not considered an allocation.

(6) Tax allocated in the preceding year means the amount of tax considered as due in the preceding calendar year, ignoring extensions, by the comptroller as of January 1 of the current report year. Adjusted amounts due to amended reports, audits, or any other adjustments after January 1 of the current report year, with the exception of mergers, will not be considered.

(g) Allocation report. Each time a bank, whose tax must be allocated in accordance with subsection (f)(4) of this section, files an initial report or an annual report, it must also file an allocation report showing:

(1) the name of the principal office in Texas;

(2) the name of each qualified branch facility operating in Texas on January 1, of the report year;

(3) the amount of franchise tax allocated to the principal office and each branch facility in the preceding year; and

(4) the amount of the current year's tax to be allocated to the principal office and each branch facility.

(h)(i) Supplemental report.

(1) Each time a bank files an initial report or an annual report, it must also file a supplemental report for the principal Texas

office and each qualified branch facility allocated tax under subsection (f) of this section. Each report must show [showing]

(A) the name of each taxing unit in which the bank's principal Texas office or qualified branch facility was located as of January 1 of the report year,

(B) (C) (No change.)

(D) for each taxing unit, the percentage in subparagraph (C) of this paragraph [subsection (f)(1)(C) of this section] multiplied by the [banks' total] franchise tax liability allocated to the principal office or qualified branch facility in subsection (g)(4).

(2) On or before the due date for the filing of the initial or annual franchise tax report, each bank must file a copy of the franchise tax report and each [the] supplemental report with the comptroller and with each taxing unit required to be listed on each [the] supplemental report

(i)(i) Comptroller

(1) Apportionment [Allocation] to taxing unit

(A) The comptroller will transmit to each taxing unit its share of the tax, penalty, and interest as soon as possible after it is collected. The comptroller will deduct 2% of the amount collected as a fee for its services and 5% of the amount collected to make refunds of overpayments, adjustments to apportionments [allocations], and to redeem dishonored checks

(B) (No change.)

(2) Comptroller's report. Before October 1 of each year, the comptroller will make a report to each taxing unit within which a bank reported having its principal office or qualified branch facility. The report will contain:

(A) the name, address, and account number of each banking corporation having its principal office or qualified branch

facility within the taxing unit;

(B)-(D) (No change.)

(j)(h) Taxing units

(1) (No change.)

(2) Comptroller's report. A taxing unit has through September 30 of the year after the year in which a comptroller's report is due within which to notify the comptroller of the name and address of a bank whose principal office or qualified branch facility was within the taxing unit and which was not included in the comptroller's report. The comptroller has 60 days after receipt of the notification within which to respond to the taxing unit. The taxing unit has 30 days after receipt of the comptroller's response within which to notify the comptroller that the taxing unit is not satisfied with the comptroller's response. The taxing unit must notify the comptroller in writing by setting forth each specific ground in which the taxing unit believes the response to be in error. If timely notification is not given to the comptroller, any determination set forth in the comptroller's response becomes final 30 days after receipt of the response by the taxing unit

(k)(i) Enforcement.

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

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

Issued in Austin, Texas, on August 12, 1987

TRD-8706679

Bob Bullock  
Comptroller of Public  
Accounts

Earliest possible date of adoption  
September 21, 1987  
For further information, please call  
(512) 463-4004



# 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 or 20 days after 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 25. HEALTH SERVICES

#### Part 1. Texas Department of Health

#### Chapter 141. Massage Therapy Registration

##### ★ 25 TAC §141.9

The Texas Department of Health has withdrawn from consideration for permanent adoption the proposed amendment to §141.9, concerning massage therapy schools recognized by the department. The text of the proposed amendment appeared in the March 27, 1987, issue of the *Texas Register* (12 TexReg 1023). The effective date of this withdrawal is August 13, 1987. The amendment is being re-proposed with modifications in this issue of the *Texas Register*.

Issued in Austin, Texas, on August 13, 1987.

TRD-8706768

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

Filed August 14, 1987

For further information, please call  
(512) 458-7245



# 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 1. ADMINISTRATION

### Part I. Office of the Governor

#### Chapter 3. Criminal Justice Division

##### Subchapter A. Criminal Justice Audits of Criminal Justice Division Projects and Audit Report Exceptions

###### ★ 1 TAC §3.105

The Criminal Justice Division (CJD) of the Office of the Governor adopts an amendment to §3.105, without changes to the proposed text published in the March 31, 1987, issue of the *Texas Register* (12 TexReg 1052).

The amendment clarifies which CJD staff members constitute the audit review board for the purpose of reviewing the documentation presented in response to audit exceptions for legal, financial, and program acceptability under the state rules, regulations, and guidelines.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(32a), §6(a)(ii), which provide the Criminal Justice Division with the authority to adopt rules, regulations, and procedures as may be necessary to carry out the provisions of the Act.

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

Issued in Austin, Texas, on August 6, 1987

TRD-870668 † Rider Scott  
Executive Director  
Criminal Justice Division  
Office of the Governor

Effective date: September 3, 1987

Proposal publication date: March 31, 1987

For further information, please call  
(512) 463-1919

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Community Affairs

#### Chapter 9. Texas Community Development Program

##### Subchapter A. Allocation of Program Funds

###### ★ 10 TAC §9.8

The Texas Department of Community Affairs (TDCA) adopts the repeal of §9.8, without changes to the proposed text published in the July 14, 1987, issue of the *Texas Register* (12 TexReg 2281).

The repeal concerns the statewide area revitalization fund under which a portion of federal fiscal years 1985 and 1986 community development block grant (CDBG) nonentitlement area funds were allocated to units of general local government.

In accordance with the TDCA's federal fiscal year 1987 final statement submitted to the United States Department of Housing and Urban Development, the repeal deletes statewide area revitalization as a separate source of funding under the Texas Community Development Program.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4413(201), §4A, which provide the Texas Department of Community Affairs with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities in accordance with rules and regulations adopted by the TDCA.

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 14, 1987

TRD-8706781 † Bruce W. Anderson  
General Counsel  
Texas Department of  
Community Affairs

Effective date: September 4, 1987

Proposal publication date: July 14, 1987

For further information, please call  
(512) 834-6060.

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 1. Practice and Procedure

###### ★ 16 TAC §1.112

The Railroad Commission of Texas adopts an amendment to §1.112, without changes to the proposed text published in the May 12, 1987, issue of the *Texas Register* (12 TexReg 1535).

The amendment allows for the expeditious processing of certain contested cases as may be reasonable. The amendment also allows for the shortening or extending of the time for filing exceptions and replies as may be reasonable.

Written comments regarding adoption of the amendment were received from two companies. One comment suggested that a party to a case would not receive adequate notification in order to effectively respond or prepare for a hearing if the time period were shortened. The amendment, however, does not change the notice of hearing procedure, but concerns the procedure for filing exceptions and replies in response to a proposal for decision circulated to the parties after a hearing. The amendment specifically requires the examiner to promptly notify the parties of the decision with regard to the request to shorten or lengthen the time period for filing.

One comment argued that the amendment is violative of the Administrative Procedure and Texas Register Act, §15, in that it does not give the parties a reasonable time in which to exercise the right to file exceptions and replies. The controlling language, however, is that the time period for filing may only be shortened or extended as may be reasonable. The amendment requires that a request to shorten or extend the time period for filing must be served on all parties of record; that the examiner must promptly notify the parties of the decision with regard to the request; and that the time period may be shortened or extended as may be reasonable.

Comments against the amendment were filed by Lone Star Gas Company. Panhandle Eastern Pipe Line Company filed com-



ments concerning §1112, but did not express specific support or opposition to the amendment.

The amendment is adopted under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provides each agency with the authority to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

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 10, 1987

TRD-8706677

Mack Wallace  
Chairman  
Railroad Commission of  
Texas

Effective date: September 2, 1987

Proposal publication date: May 12, 1987

For further information, please call  
(512) 463-7149.



## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 139. Abortion Facilities

The Texas Department of Health adopts amendments to §139.2 and §139.4, and new §§139.13-139.17, 139.21-139.23, 139.31, 139.32, and 139.41-139.47.

Sections 139.14, 139.15, 139.17, 139.23, 139.31, 139.41, and the titles to Sub-chapters C and D, are adopted with changes to the proposed text published in the May 26, 1987, issue of the *Texas Register* (12 TexReg 1688). Sections 139.2, 139.4, 139.13, 139.16, 139.21, 139.22, 139.32, and 139.42-139.47, are adopted without changes and will not be republished.

The sections set minimum standards for clinical, fire and building safety of abortion facilities providing general anesthesia services.

The sections provide definitions, standards for licensed abortion facilities, clinical and equipment standards for general and local anesthesia, exemption provisions, life safety and maintenance for exempt facilities, standards for non-exempt facilities, construction, and design and fire safety of new and existing facilities administering general anesthesia.

Numerous comments were received regarding adoption of the amendments and new sections. One commenter said the definitions in §139.2 should clarify whether the counselor is or is not a registered nurse. The agency disagrees with the commenter. The current definition allows abortion facilities to use professional and/or non-professional personnel. Professional personnel are defined as licensed or certified patient care personnel. Both definitions include the registered nurse, who may be used as a counselor.

One commenter said the definition of general anesthesia in §139.2 excludes nitrous oxide administered for analgesia purpose only, and was concerned that the nitrous oxide might be administered on top of an IV sedation. The commenter recommended modification of the definition to exclude the administration of nitrous oxide only if administered for analgesia purposes, and only if not administered on top of an IV sedation. The agency disagrees with the commenter. The definition would include or exclude any type of anesthesia or analgesia. The agency considers the current definition appropriate.

One commenter referenced §139.4(10)(B), saying that licensed personnel should show evidence of CPR training within a previous 12 month period. The agency agrees with the commenter. The current section requires the facility to maintain personnel records with copies of current CPR certification cards; therefore, the agency considers the current section appropriate.

One commenter requested clarification with regard to §139.4(12)(B), in that preparation of the patient for surgery may include physical preparation as well as psychological preparation. In that regard, it is unlikely that a counselor, who is not a registered nurse, would have the skills and abilities necessary to prepare a patient in terms of physical preparation for surgery. The agency disagrees with the commenter. The physical preparation of a patient for surgery will be done by the registered nurse and/or physician, not by a counselor, who is not a registered nurse.

One commenter said that under §139.4(17), it is not necessary to have a signed copy of aftercare, post-op instructions, as part of the patient record. This information according to the commenter is already given to the patient. The agency disagrees with the commenter. This requirement is included for the protection of the patient and the facility to insure that all patients are given and acknowledge receipt of aftercare, post-op instructions.

In §139.4(30), one commenter said the complaint mechanism was too negative. The commenter suggested including the complaint information with written material given to the patient. Another

commenter recommended placing the complaint information in the discharge summary. A copy of the signed discharge summary including verification that the patient has received information about where to report complaints would become part of the permanent record. The agency disagrees with both commenters. The purpose of the section is to inform and provide all patients in writing of the identity of the agency responsible for complaint investigations. The written information should be taken by the patient when she leaves the facility, not filed in the patient record. The mechanism should be uniform with all licensed abortion facilities.

Another commenter recommended that patient complaint information in §139.4(30) be made available by the abortion facility in the manner the facility deemed appropriate. The agency disagrees with the commenter. It is the agency's responsibility to insure that all patients receive the same information regarding complaint information. This mechanism should be uniform with all licensed abortion facilities.

One commenter said that in §139.14(a)(3)(B), requires discharge be by a physician order only after the patient is evaluated by the physician. Section 139.14(e) requires that the physician's discharge order may be based on patient assessment by a licensed nurse based upon discharge criteria set by the physician. The commenter said the section reads in such a way that §139.14(a)(3) and §139.14(e) be read together, but felt some ambiguity existed. The commenter recommended the following language for §139.14(a)(3): "Post-anesthetic requirements. Post-anesthetic requirements shall include the following.

(A) The patient's record must include a post-anesthetic evaluation note by the anesthetist or anesthesiologist before the patient is discharged.

(B) Patients can be discharged by a physician order only after the patient is evaluated by the physician. Patient discharge must be by physician order based upon:

(1) physician observation at time of discharge; or

(2) patient assessment by a licensed nurse based upon discharge criteria set by the physician.

(C) All patients are discharged in the company of a designated individual. The patient's record contains the name of the person to whom the patient was discharged."

The agency agrees with the commenter and has adopted the proposed language with minor clarification changes. The new language would provide adequate measures for discharge from an abortion facility.

One commenter recommended the statement in §139.14(e)(2) be deleted in order to provide congruency with §139.4(16) and

§139.14(a)(3)(B), both of which address the necessity of physician evaluation of the patient prior to written physician order for discharge. The agency agrees with the commenter. The language in §139.14(e) (1) and (2) has been deleted. New language has been included into §139.14(a)(3)(A), (B) and (C).

Two commenters said that §139.14(a)(3)(C) requires that general anesthesia patients be discharged in the company of a designated individual and that the patient's record state the name of the person to whom the patient was discharged. The commenters believe it is unreasonable and an infringement upon the patient's privacy to require that such an individual be named in the patient's record. The proposed section exceeds the Medicare rule and unconstitutionally impacts on the patient's exercise of her right to have an abortion. The commenter considers this a departure from acceptable medical practice. The difference between this proposed requirement and the generally accepted medical practice (which does not include recording the escort's name in patient record) cannot be shown to be necessitated by any particular characteristic of the abortion procedure. The commenter concluded that the Board of Health would be exceeding the Medicare regulations; therefore, violating its statutory authority which departs from acceptable medical practice. The commenter recommended to eliminate §139.14(a)(3)(C). The agency agrees with the commenter. The requirement of recording the name of the person to whom the patient was discharged has been deleted. The new language requires that the patient be discharged in the company of an adult. The new language does not exceed Medicare regulations and is written to protect the health and safety of patients receiving general anesthesia. The new language does not unconstitutionally impact a patient's right to have an abortion.

One commenter recommended in §139.14(a)(5)(A) to omit the last two sentences concerning the duties of licensed vocational nurses and surgical technicians performing circulatory duties. The commenter referred the agency the delegation rules promulgated by the Board of Nurse Examiners. These rules specify by way of example the tasks that are not within the scope of sound professional judgement for a registered nurse to delegate. The agency disagrees with the commenter. The staffing requirements do not exceed Medicare regulations. Persons other than a registered nurse can assist in circulatory duties if they are under the supervision of a qualified registered nurse.

One commenter said that §139.14(a)(5)(A) requires a registered nurse to be in or immediately available to the procedure room when general anesthesia is being administered. This proposed regulation is unreasonable and contravenes Texas Civil Statutes, Article 4495b, §1.02(12)(d)(L),

which provides physicians with the authority to delegate medical duties. Implementation of the section would be costly to those facilities which currently use a combination of physicians, certified registered nurse anesthetists, and licensed vocational nurses. The commenter concluded that the board would be exceeding Medicare regulations and violating its statutory authority by adopting this section which departs from acceptable medical practice. The commenter recommended that §139.14(a)(5)(A) be eliminated. The agency disagrees with the commenter. The current language does not exceed Medicare standards and would not create an undue requirement for facilities to have a registered nurse employed. The current language would not be in violation of Texas Civil Statutes, Article 4459b; §1.02(12)(d)(L), as the physician may still be authorized to delegate medical duties. This requirement is for the protection of patient health and safety in licensed abortion facilities providing general anesthesia.

One commenter said that §139.14(a)(5)(B) is not consistent with §139.4(14). The commenter asked the agency to clarify that a registered nurse must be physically present in the recovery room to supervise the licensed vocational nurse. Both registered nurse and licensed vocational nurse may participate in patient care. The agency disagrees with the commenter. The registered nurse need only be immediately available and not physically present to the operating room or procedure room. To require the physical presence of a registered nurse would be too costly for the facilities. This requirement is for the protection of patient health and safety in licensed abortion facilities providing general anesthesia.

One commenter recommended that the language in §139.14(a)(5)(D)(iii) be changed to require that a certified registered nurse anesthetist has been approved by the Texas Board of Nurse Examiners as an advanced nurse practitioner. The agency agrees and has changed the language to include approval by the Texas Board of Nurse Examiners as an advanced nurse practitioner.

One commenter said that §139.14(a)(6)(H) would require clinics using general anesthesia to procure and maintain chest tubes and water seal bottles for no apparent purpose. The proposed section exceeds the strongest Medicare regulations. The proposed section exceeds Medicare requirements in 42 Code of Federal Regulations 416.44(c) and departs from accepted medical practice; therefore, it is unconstitutional. The commenter recommended that §139.14(a)(6)(H) be eliminated. The agency disagrees with the commenter. This requirement is commensurate with Medicare regulations for ambulatory surgical centers. This regulation is not an unreasonable requirement for licensed facilities providing general

anesthesia. The statute allows the department to set standards for equipment essential for the health and welfare of patients. It is not unconstitutional for the agency to require licensed abortion facilities to maintain equipment.

One commenter said the list of equipment in §139.14(a)(6) for facilities administering general anesthesia does not include a pulse oximeter. Since this equipment is normally available when general anesthesia is administered, the commenter recommended adding it to the list of required equipment. The agency disagrees with the commenter that oximetry should be an absolute requirement at this time for outpatient facilities. The agency does not believe the requirement for oximetry on every anesthetized patient is an emergency standard of care. The use of oximetry will probably be an accepted standard of care within two years. At this time, the cost and availability of this equipment would be prohibitive. In addition, it is not a Medicare requirement at this time.

One commenter said that the proposed §139.14 does not address who can administer local anesthesia, including nitrous oxide and IV sedation. The commenter felt it is in the patient's best interest that only qualified persons administer nitrous oxide and IV sedation. Although IV sedation is defined as not resulting in a state of unconsciousness, unconsciousness can occur while IV sedations are being administered and it is important that the person administering the sedation be qualified to handle the patient if this occurs.

The commenter requested that the rules address the qualifications of personnel administering local anesthesia and whether they should be the same as for general anesthesia. The agency agrees with the commenter and has added language to §139.14(5)(D), specifying the individuals who may administer general and local anesthesia.

One commenter said §139.15 and all sections following in Chapter 139 of this title (relating to Abortion Facilities) would prevent clinics from performing abortions under general anesthesia. The proposed sections exceed the legislative authority of the Texas Department of Health, Texas Civil Statutes, Article 4512.8. The statute does not provide the department with the authority to promulgate building standards. In a comparison of the Texas Ambulatory Surgical Center Licensing Act, Texas Civil Statutes, Article 4437 f-2, and the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, the authority to set minimum standards for construction and design is conspicuously absent from Texas Civil Statutes, Article 4512.8. The commenter said the ambulatory surgical center Medicare regulations specify that ASC's are limited to surgical procedures that do not exceed 90 minutes of general anes-



thetia and that the regulations do not apply to medical procedures of a type that are commonly performed, or that may be safely performed, in physicians' offices.

Abortion patients under general anesthesia are rarely rendered unconscious for more than eight minutes. In addition, abortion procedures under general anesthesia are and may be safely performed in physician's offices. The commenter said the proposed regulations represent a departure from accepted medical standards and are unconstitutional. The agency agrees with the commenter that a legal argument can be made that the construction standards may exceed the statutory requirements and may be unconstitutional; however, the agency believes the sections are necessary to protect patient health and safety in licensed abortion facilities providing general anesthesia.

Three commenters objected to the review process in §139.15(f) by stating the same person should not be allowed to both deny a request and be the reviewer of the denial. The agency disagrees with the commenter. The current appeal process is acceptable as all appeals are processed through the agency's office of general counsel in concert with agency staff.

One commenter questioned the provision in §139.15, whereby abortion facilities can be exempt from certain requirements, if the anesthetic used does not meet the definition for general anesthetic, with the exception that the patient may not be able to respond to verbal command for a period of no longer than five to 15 minutes.

The commenter said this definition emphasizing duration of the agent does not appear to be standard terminology for phases of general anesthesia appropriate for outpatient surgery. The commenter recommended that any definition be consistent with the standards of the American Society of Anesthesiology or the guidelines promulgated by the Harvard teaching hospitals.

The agency disagrees with the commenter. The proposed definitions and language meet the needs of the section. The definitions and language allow special provisions for the type of anesthesia used in licensed abortion facilities.

The agency has changed the language in §139.15(d)(1) to be consistent with current terminology. The word "blueprint" has been changed to construction drawings.

The agency has added language to §139.15(h) to allow a facility to modify its existing building.

One commenter said §139.16(f)(1) should specify the frequency with which employees shall have documented evidence of participation in fire protection and evacuation plan practice. The agency agrees with the commenter. Section 139.16(3)(B)

requires that fire drills and evacuation practice be held quarterly. These drills are to be documented to substantiate the occurrence.

Employees are to participate in the drills. The agency considers the current language appropriate. One commenter said §139.16(f)(3)(B) should specify the frequency with which personnel should have documented evidence of attendance/participation in fire drills. The agency agrees with the commenter. Section §139.16(2) and (3)(A) and (B) address annual training of employees and quarterly fire drills and evacuation practice. This information must be documented to substantiate the occurrence. The agency considers the current language appropriate.

One commenter said that in §139.16(n), the word "national" should be deleted and "Standard Plumbing Code" left. The word "National" is not part of the code name. The same would apply in §139.31(i), and in §139.31(i)(6). The agency disagrees with the commenter. The codes as referenced in the sections are the required codes the agency intends to enforce.

The agency has added language in §139.17 to clarify that licensed abortion facilities which provide general anesthesia and have not been granted an exemption are required to meet specific licensure sections.

One commenter said that in §139.23(4) B, the reference should be to the 1985 Standard Code. Also, the name of the publisher should read "The Southern Building Code Congress International, Inc.", 900 Montclair Road, Birmingham, Alabama 35213-1206. The agency agrees with the commenter and has changed the language. The agency has changed, for clarification purposes, the Subchapter C heading to Requirements for Existing Abortion Facilities. The agency has corrected language in §139.31(i)(4) from condenses to condensation. The agency has changed, for clarification purposes, the Subchapter D heading to Construction Requirements for New Abortion Facilities. The agency added language in §139.41(a) to clarify that the section applies to abortion facilities providing general anesthesia. The agency changed the language in §139.44(a)(1)(B) from Chapter 12.6 NFPA to §12-6 of NFPA.

One commenter said that in §139.45, the department should include and refer to the Standard Mechanical Code for mechanical installation. The standard Mechanical Code is presently being used as a reference by the Texas Department of Labor and Standards, Boiler Division. The agency disagrees with the commenter. The codes as referenced in the sections are the required codes the agency intends to enforce.

One commenter said that in §139.45(e), reference is made to PHCC National Standard Plumbing Code, Chapter 14, Medical

Care Facilities Plumbing Equipment. PHCC is part of the National Association of Plumbing-Heating-Cooling Contractors and not a part of the Standard Plumbing Code. The commenter recommended to delete the reference to PHCC. The agency disagrees with the commenter. The codes that are referenced in the sections are the required codes the agency intends to enforce.

General comments covering all sections are as follows. Eleven commenters said the proposed requirements for general anesthesia generally would result in an increase cost for abortion services. The agency agrees with the commenters regarding an increase cost for the abortion services, however, the sections are considered necessary to protect the health and safety of patients receiving general anesthesia in licensed abortion facilities.

Eleven commenters said that the proposed requirements generally would result in a barrier to women seeking abortion services. This would be due to the increase in cost to comply with the proposed requirements for general anesthesia. The agency disagrees with the commenters. The sections set minimum standards for health and safety under that statute. The use of general anesthesia and the standards for general anesthesia would not create an undue burden on a woman seeking an abortion.

Eleven commenters said that the proposed sections for general anesthesia were unconstitutional and illegal. The agency disagrees with the commenters. The commenters did not provide any constitutional citations to support their opinion. The agency's position is that the use of general anesthesia is authorized by the statute and is not unconstitutional.

Ten commenters said that the agency has no factual basis or clinical history or statistics to support the necessity of the proposed sections regarding general anesthesia. The agency disagrees with the commenters. The agency is required by statute to set standards for medical treatment, medical services provided, and equipment essential for the health and welfare of patients in licensed abortion facilities.

Three commenters recommended that the agency not propose new sections for a period of two years unless there was a medical emergency. One commenter suggested any existing sections have a specific duration prior to future revisions. The agency disagrees with the commenters. The agency may propose sections to promulgate the statute as it deems necessary.

One commenter said the implementation of the proposed sections would cost far more than has been estimated by the agency's accountant. The commenter said owners and directors of clinics have estimated the cost of compliance at between \$100,000 to \$600,000 for an existing

facility. The agency's accountant has been unable to arrive at a figure for construction of a new facility. The agency disagrees with the commenter. The figures obtained by the agency for existing facilities is based upon prior experience with existing ambulatory surgical centers renovating their facilities to meet construction standards. The agency was unable to arrive at a figure for construction of a new facility. It is difficult to determine how much a provider is willing to spend for the construction of a new facility in addition to the cost of meeting life safety code standards.

One commenter recommended any new sections implemented should have a grandfather clause. The clause would give facilities in compliance with current procedures time to make any necessary revisions for new requirements, or to provide certain exceptions for pre-existing facilities where warranted. The agency agrees with the commenter. Licensed facilities affected by the regulations will be given time to make necessary revisions to meet the new requirements. The time allowed will be based upon an acceptable plan of correction provided by the licensed abortion facility. The agency considers the language in the current sections to be appropriate.

One commenter said the proposed sections provide for site visits, and call for revisions that could be costly. The commenter recommended that the sections be specific and uniform enough that facilities not be subjected to varying standards for enforcement, depending on who is inspecting a facility. The agency disagrees with the commenter. The sections are written to be specific and uniform for licensed abortion facilities. It is the agency's intent to consistently implement the sections for licensed abortion facilities.

The following groups or associations were against the adoption of the sections in their entirety: Trinity Valley Women's Clinic, Ft. Worth; Texas Routh Street Women's Clinic, Dallas; Texas National Abortion Federation, Washington D.C. The following groups or associations were not against the adoption of the sections in their entirety, but had concerns and questions about specific provisions and made recommendations for changes: Nova Health Systems, San Antonio; Texas Southern Building Code Congress International, Inc., Birmingham, Alabama; Board of Nurse Examiners, Austin, Texas; Texas Association of Nurse Anesthetists, Inc., Austin, Texas. Many individuals submitted written comments in opposition to the proposed regulations.

The amendments and new sections are adopted under the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, §3, which provides the Texas Board of Health with the authority to adopt rules covering abortion facilities.

*§139.14. Clinical and Equipment Standards for Licensed Facilities Administering General Anesthesia.*

(a) General. All licensed facilities, exempt and non-exempt that administer general anesthesia as defined in these regulations shall comply with the following additional requirements for patient health and safety.

(1) Quality Assurance Program. The abortion facility must have a written and ongoing quality assurance plan that includes all health and safety aspects relating to general anesthesia. The program must include a review of the quality and appropriateness of care as they relate to general anesthesia. The quality assurance program must include but is not limited to:

(A) review of the physical exam, history, laboratory work, and other pertinent clinical data;

(B) risk assessment criteria to evaluate and identify patients that are at risk for general anesthesia;

(C) preventive maintenance program for all equipment used for general anesthesia and all emergency equipment;

(D) review of all post-operative complications and review of postoperative infections;

(E) quarterly assessment of the anesthesia services in order to identify and resolve important problems in patient care.

(2) Pre-anesthetic requirements. Pre-anesthetic requirements shall include documentation of:

(A) patient's drug usage history;

(B) past anesthesia experiences;

(C) complete history and a physical examination by a physician immediately prior to surgery to evaluate the risks of the procedure and general anesthesia;

(D) review of pre-operative laboratory and x-ray studies;

(E) a signed informed consent that includes the risks of anesthesia, type of anesthesia to be administered and the name of the anesthetist or anesthesiologist, and any risk factors specific for each patient.

(3) Post-anesthetic requirements. Post-anesthetic requirements shall include the following.

(A) The patient's record must include a post-anesthetic evaluation note by the anesthetist or anesthesiologist before the patient is discharged.

(B) Patients can be discharged by a physician order only after the patient is evaluated by the physician. Patient discharge must be by physician order based upon:

(i) physician observation at time of discharge; or

(ii) patient assessment by a licensed nurse based upon discharge criteria set by the physician.

(C) All patients are discharged in the company of an adult.

(4) Laboratory and radiology services. The facility must have a procedure for obtaining routine and emergency laboratory and radiological services to meet the needs of the patients. Results of laboratory and radiological tests must be available in the facility. If any laboratory or radiological services are provided in the facility, these services must be included in the quality assurance program.

(5) Staffing requirements. Staffing requirements shall include the following.

(A) A registered nurse must be in or immediately available to the operating room or procedure room during a procedure when general anesthesia is administered. Licensed vocational nurses (LVN) and surgical technicians may assist in circulatory duties under the supervision of a qualified registered nurse (RN). If a anesthetist is administering anesthesia he or she cannot assume this staffing requirement.

(B) An RN or LVN must be in the recovery area to supervise and provide patient care during the recovery period.

(C) A person qualified to administer general anesthesia must be in the facility or immediately available during the recovery period.

(D) Administration of general and local anesthesia shall be limited to:

(i) board certified or board eligible anesthesiologist;

(ii) a physician approved by the governing body; and

(iii) certified registered nurse anesthetist approved by the Texas Board of Nurse Examiners as an Advanced Nurse Practitioner.

(6) Equipment. The facility must have the following equipment and supplies:

(A) cardiac monitor;

(B) defibrillator;

(C) ventilator;

(D) anesthesia machine;

(E) emergency drugs and supplies as specified by the attending physician(s) and approved by the governing body;

(F) tracheostomy set;

(G) laryngoscopes and endotracheal tubes; and

(H) chest tubes and water seal



Subchapter A. Abortion Facility Reporting and Licensing

★ 25 TAC §§139.2, 139.4, 139.13-139.17

bottles.

(7) Clinical record. The clinical record shall include:

(A) pre and postanesthesia evaluation by anesthetist or anesthesiologist;

(B) informed consent for general anesthesia;

(C) record of anesthesia administration; and

(D) laboratory and radiological studies if ordered.

(b) Personnel. Personnel trained in the use of all emergency equipment must be present on the premises of the facility when there is a patient in the operating room or recovery room.

(c) Policy and procedure. The facility must have an effective policy and procedure for inspection and maintenance of emergency equipment, supplies, and drugs.

(d) Clinical records. The patient's record must indicate a negative or positive response to drugs, i.e., allergic reaction, prescribed and used before, during, or after the procedure.

**§139.15. Standards for Licensed Facilities Requesting Exemption From Construction Standards.**

(a) Abortion facilities that use a type of anesthesia other than local infiltration of the cervix and pre-operative sedation may request an exemption or waiver from meeting the construction requirements for facilities that provide general anesthesia.

(b) If a person or facility desires to request an exemption from the construction standards described in §§139.21-139.23, 139.31, 139.32, 139.41-139.47 of this title (relating to General Construction Requirements for Abortion Facilities, Existing Abortion Facilities, and New Construction Requirements for Abortion Facilities) a written claim for exemption including supporting documentation may be submitted to the department. The documentation must include a notarized affidavit attesting to the fact that:

(1) the anesthesia administered in this facility does not meet the definition of general anesthesia as defined in these regulations with one exception; the patient may not be able to respond to verbal command for a period of no longer than five to 15 minutes; and

(2) that the patient can be quickly evacuated from the premises in case of fire or other disaster without hazard to their health and safety.

(c) Upon request by a facility, the affidavit form will be provided by the department.

(d) Documentation supporting the following considerations are to be submitted to the department in conjunction with the affidavit:

(1) the type of physical plant the abortion facility is located; single or multi-story. What is the accessibility to stairways and fire exits from the procedure and recovery room(s) of the abortion facility?

Documentation submitted may include construction drawings;

(2) the number of patients anesthetized at the same time and the number of patients in the recovery room(s) at the same time;

(3) the length of the anesthesia;

(4) the length of time for recovery from the anesthesia;

(5) the patient's ability to ambulate with or without assistance immediately following the anesthesia;

(6) number of staff on duty to assist with evacuation of patients.

(e) The director shall evaluate the claim for exemption and notify the person or facility in writing of the proposed decision within 90 days following the receipt of the exemption. The department may conduct an on-site inspection to investigate the claims filed by the facility for exemption. Periodic inspections may be conducted to substantiate that claims for exemption previously granted remain in effect.

(f) If the proposed decision is to grant the claim for exemption, the department will provide the written notice according to subsection (e) of this section. If the claim for exemption is denied, the person or facility shall have the right to appeal the determination to the director by written letter with the additional reasons for the exemption within 10 days following the receipt of the proposed denial. If necessary, in order to make a decision on the appeal, an on-site visit may be made to the facility by the director or a qualified member of the department staff.

(g) If the person or facility does not request an appeal as provided in this subsection, the right to appeal is deemed to be waived and the denial of exemption becomes final within 30 days following the person or facility's receipt of the proposed denial.

(h) The person or facility must cease using general anesthetics as defined in these regulations, move to a building that meets the construction requirements, or modify the existing building within 30 days after the denial becomes final.

(i) In the event that a person or facility does not comply as required by this section, the provision of §139.12(e) and (g) of this title (relating to License, Denial, Suspension, and Revocation) will govern.

**§139.17. Standards for Nonexempt Licensed Facilities Administering General Anesthesia.** In addition to the requirements in §139.4 of this title (relating to Standards for all Licensed Abortion Facilities), licensed abortion facilities that provide general anesthesia services as defined in §139.2 of this title (relating to Definitions) and have not been granted an exemption must also meet all the requirements of §§139.21-139.23, 139.31, 139.32, and 139.41-139.47 of this title (relating to General Construction Requirements for Abortion Facilities, Existing Abortion Facilities, and New Construction Requirements for Abortion Facilities).

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 13, 1987.

TRD-8706773

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

Effective date: September 4, 1987  
Proposal publication date: May 26, 1987  
For further information, please call  
(512) 458-7245.



**Subchapter B. General  
Construction Requirements for  
Abortion Facilities**

**★25 TAC §§139.21-139.23**

The new sections are proposed under the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, §3, which provide the Texas Board of Health with the authority to adopt rules covering abortion facilities.

**§139.23. Codes and Standards.**

(a) Generally, the following codes and standards are part of §139.31 and §139.32 of this title (relating to Requirements for Existing Abortion Facilities) and §§139.41-139.47 of this title (relating to New Construction Requirements for Abortion Facilities) only when referenced in the sections. Existing facilities which do not comply with the codes and standards may not continue to provide service, until replaced or renovated to prevent posing a serious hazard to the patients.

(1) National Fire Protection Association standards:

(A) NFPA 10—1981, Standard for Portable Fire Extinguishers;

(B) NFPA 13—1980, Standard for the Installation of Sprinkler Systems;

(C) NFPA 13 A—1981, Care and Maintenance of Sprinkler Systems;

(D) NFPA 54—1980, National Fuel Gas Code;

(E) NFPA 56 A—1978, Standard for the Use of Inhalation Anesthetics;

(F) NFPA 56 F—1983, Standard for Fire Extinguishing Systems;

(G) NFPA 56 K—1980, Standard for Medical Surgical Vacuum Systems;

(H) NFPA 70—1984, National Electric Code;

(I) NFPA 72 A—1979, Standard for the Installation, Maintenance, and Use of Local Protective Signaling Systems for Guard's Tour, Fire Alarm, and Supervisory Service;

(J) NFPA 72 B—1979, Standard for Installation, Maintenance, and Use of

Auxiliary Protective Signaling Systems for Fire Alarm Services;

(K) NFPA 72 C—1982, Standard for the Installation, Maintenance, and Use of Remote Station Protective Signaling Systems;

(L) NFPA 72 D—1979, Standard for the Installation, Maintenance, and Use of Proprietary Protection Signaling Systems;

(M) NFPA 76 A—1977, Essential Electrical Systems for Health Care Facilities;

(N) NFPA 80—1983, Standard for Fire Doors and Windows;

(O) NFPA 82—1983, Standard on Incinerators Waste and Linen Handling Systems and Equipment;

(P) NFPA 90 A—1981, Installation of Air-Conditioning and Ventilating Systems;

(Q) NFPA 91—1981, Standard for the Installation of Blower and Exhaust Systems;

(R) NFPA 99—1984, Standard for Health Care Facilities;

(S) NFPA 101—1981, Code for Safety to Life from Fire in Buildings and Structures;

(T) NFPA 220—1979, Standard for Types of Building Construction and Materials;

(U) NFPA 255—1979, Method of Test of Surface Burning Characteristics of Building Materials;

(V) NFPA 325 M—1977, Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids;

(W) NFPA 701—1977, Standard Methods of Fire Test for Flame-Resistant Textiles and Films.

(2) Other referenced standards and codes:

(A) National Association of Plumbing Heating Cooling Contractors (PHCC)—National Standard Plumbing Code, 1983;

(B) ANSI A 17.1, 1978—Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks; and Supplement ANSI A 17.1a, 1979;

(C) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHREA)—Standard Number 52-76—Methods of Testing Air Cleaning Devices Used in General Ventilation for Removing Particulate Matter;

(D) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHREA)—Handbook of Applications, 1978;

(E) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHREA)—Handbook of Fundamentals, 1977;

(F) American Society for Testing and Materials (ASTM)—Standard Number E 84-1977A—Method of Text for Surface Burning Characteristic of Building Materials;

(G) Hydronics Institute (Boiler

Ratings)—I = B = R Cast iron and SBI Steel Boilers;

(H) National Council on Radiation Protection (NCRP)—Report Number 49, 1976—Medical X-ray and Gamma Ray Protection for Energies up to 10 MeV Structural Shielding Design and Evaluation;

(I) Underwriters' Laboratories, Inc. (UL)—Standard Number 181, 1974—Factory Made Air Duct Material and Air Duct Connectors.

(3) Standards of the Texas State Purchasing and General Services Commission. These standards are found in 1 TAC §§115.51-115.62 (relating to Elimination of Architectural Barriers).

(4) Other state, county, and local codes and standards. In addition to complying with the codes and standards described in paragraphs (1)-(3) of this subsection, abortion facilities shall comply with any applicable building codes, ordinances, and rules or regulations adopted by any city, county, or other state agency. Compliance with local codes is a prerequisite for licensing of an abortion facility. In areas not subject of local building codes, an abortion facility shall comply with one of the following model building codes:

(A) Uniform Building Code—1982: International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601;

(B) Standard Building Code—1985: The Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206.

(5) The NFPA material is reprinted under authority of NFPA 101-1985, Life Safety Code, Copyright 1985, National Fire Protection Association, Quincy, Massachusetts 02269. This reprinted material is not the complete and official position of the NFPA on the referenced subject which is represented only by the standard in its entirety. Life Safety Code and NFPA 101 are registered trademarks of the National Fire Protection Association, Inc., Quincy, Massachusetts.

(b) The availability of codes and standards as referenced in subsection (a)(1)-(4) of this section may be reviewed in the offices of the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas. Copies may be purchased from the various agencies listed as follows:

(1) Air Conditioning and Refrigeration Institute, 1815 North Ft. Myer Drive, Arlington, Virginia 22209;

(2) American National Standards Institute, 1430 Broadway, New York, New York 10018;

(3) American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103;

(4) American Society of Heating, Refrigerating, and Air-Conditioning, United Engineering Center, 345 East 47th Street, New York, New York 10017;

(5) Compressed Gas Association, 500 Fifth Avenue, New York, New York 10036;

(6) GSA Specification Consumer Information Distribution Branch, Building 197, Washington Navy Yard, Washington DC 20407;

(7) Hydronics Institute, 35 Russo Place, Berkeley Heights, New Jersey 07922;

(8) National Association of Plumbing-Heating-Cooling Contractors, 1016 20th Street, Northwest, Washington DC 20036;

(9) National Council on Radiation Protection and Measurement, P.O. Box 30175, Washington, DC 20014;

(10) National Fire Protection Association, Inc., Batterymarch Park, Quincy, Massachusetts 02210;

(11) Superintendent of Documents, United States Government Printing Office, Washington DC 20407;

(12) Underwriters' Laboratories, Inc., 353 Princeton Road, Northbrook, Illinois 60062;

(13) State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711;

(14) United States Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, Bureau of Health Maintenance Organizations and Resources Development, Office of Health Facilities, Division of Facilities Conversion and Utilization, Rockville, Maryland 20857.

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 14, 1987.

TRD-8706774

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

Effective date, September 4, 1987  
Proposal publication date, May 26, 1987  
For further information, please call  
(512) 458-7245

### Subchapter C. Requirements for Existing Abortion Facilities

#### ★ 25 TAC §139.31, §139.32

The new sections are proposed under the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, §3, which provide the Texas Board of Health with the authority to adopt rules covering abortion facilities.

#### §139.31. General.

(a) Minimum standards. All existing buildings which provide abortion services utilizing general anesthetics on an outpatient basis and are licensed by this agency shall

comply with these minimum requirements.

(1) An existing building shall meet the requirements for abortion facilities, NFPA 101 (12-6) and §§139.41-139.47 of this title (relating to New Construction Requirements for Abortion Facilities) for other applicable requirements for abortion facilities.

(2) Structural requirements include all building components, exitways, corridors, stairways, doors, windows, floor, and wall finishes.

(3) Handrails shall be kept in good repair and provided on both sides of all stairways over three risers.

(4) All hallways, stairs, and other means of egress shall be adequately lighted and kept free of obstruction at all times in accordance with NFPA 101, Life Safety Code.

(b) Fire prevention and protection.

(1) Safety. The abortion facility shall have written plans for the timely care of casualties arising from both external and internal disasters, and shall document the rehearsal of these plans.

(2) Fire protection. Fire protection shall be provided in accordance with the requirements of NFPA 101 and paragraph (6) of this subsection. Approval of the fire protection of an abortion facility by the local fire department shall be a prerequisite for licensure.

(3) Smoking regulations.

(A) Each abortion facility shall establish and regulate a policy for smoking and it shall include the minimal provisions of NFPA 101 (31-4.4.).

(B) "No Smoking" signs shall be posted in the corridors of operating, recovery room suites, and in all other areas where inhalation therapy may be in use. In addition, "No Smoking" signs shall be prominently displayed in areas where flammable liquids or gases are stored and in areas of combustible storage.

(4) Fire extinguisher systems.

(A) All standpipes, sprinkler systems, and other fire-fighting equipment shall be inspected and tested at least once each year and more often if necessary to maintain it in serviceable condition.

(B) Sprinkler systems shall be installed and maintained in accordance with NFPA 13 and 13A.

(5) Portable fire extinguishers. Every portable fire extinguisher maintained in or upon abortion facility property shall be installed and maintained in accordance with NFPA 10 and NFPA 101. Travel distance to a fire extinguisher shall not exceed 75 feet.

(6) Fire protection and evacuation plan.

(A) Written plan. An approved plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated. This plan shall be reduced to writing with an evacuation floor plan posted in places conspicuous to patients and staff. All

employees shall be instructed and kept informed regarding their duties under the fire protection and evacuation plan.

(B) Annual training. Each abortion facility shall formulate an annual training program for instruction of all personnel in the use of fire-fighting equipment.

(C) Fire drills.

(i) All personnel shall be familiar with the locations of fire-fighting equipment. There shall be a fire drill of personnel as required by NFPA 101, including the turning on of alarms, simulated evacuation of patients and other occupants, and the use of equipment.

(ii) Fire drills shall be held quarterly.

(D) Fire alarm system.

(i) Every abortion facility shall have an approved manual fire alarm system.

(ii) A dedicated telephone line or other suitable alarm-sending device shall be provided as a means of automatically communicating an alarm of fire to the fire department (or other approved off-site 24-hour monitoring service).

(iii) All fire alarms shall be installed and tested as required by NFPA 101. The fire alarm system shall be installed in accordance with provisions of NFPA 72.

(E) Fire department access. Every abortion facility shall meet local fire department access requirements.

(c) Storage and housekeeping.

(1) All storage space shall be kept clean and orderly at all times. No storage shall extend higher than 18 inches below the bottom of ceiling, structure, or sprinkler heads.

(2) When basements, storerooms, or attics are used for combustible storage, they shall meet the applicable requirements listed in §139.44 of this title (relating to Design Requirements).

(3) Local supplies of paints, oils, and highly volatile combustible liquids shall be kept in metal cabinets having tight closing doors and drip pans. These cabinets must be well-ventilated at top and bottom.

(4) The entire premises shall be kept free from accumulations of combustible materials not necessary for immediate operation of the building.

(d) Testing and maintenance.

(1) The abortion facility structure, its component parts, and facilities shall be kept in good repair and maintained with consideration for the safety of the occupants of the building. Mechanical, plumbing, and electrical equipment shall be maintained in good repair and operating condition at all times. Physical plant equipment, medical and surgical equipment shall be tested and maintained under a formal preventive maintenance and testing program and documentation kept for annual reviews and/or inspections.

(2) All air-conditioning and ventilating systems and all ductwork shall meet the requirements of NFPA 90A.

(3) All elevator equipment must be tested as required by §139.44(o) of this title (relating to Design Requirements).

(e) Gas appliances.

(1) The installation, use, and maintenance of gas fired cooking appliances, heating equipment, and gas piping, including venting, shall comply with the National Fire Protection Association's Pamphlet Number 54, National Fuel Gas Code. The use of portable gas heaters is prohibited.

(2) The use of unvented open flame heaters is specifically prohibited.

(3) Where gas-fired equipment is used, a fresh air inlet vent shall be provided directly to the outside of the building.

(4) All hot water heaters shall be equipped with an approved temperature pressure relief valve.

(5) All direct-fired heating units shall be designed to permit the discharge of the products of combustion into a flue or vent and all such units shall be properly vented to a vertical flue or chimney leading to the outer air above the high point on the roof. Direct-fired heating units shall not be permitted in any operating room, or in any other room where combustible vapors may be present.

(f) Heating, cooling, and ventilating systems.

(1) Heating shall be provided for all areas of the abortion facility to meet prevailing weather conditions and shall have the capability of maintaining a minimum temperature of 72°F. All heating units and systems shall meet local and state regulations.

(2) All heating, cooling, and ventilating systems shall conform to the requirements of §139.45 of this title (relating to Mechanical Requirements).

(g) Wiring and electrical appliances.

(1) New installations, corrections of defects, and system maintenance shall follow the recommendations of the National Electrical Code, NFPA 70.

(2) Electric lamps and other appliances in closets or other confined locations shall be protected by wire guards if near woodwork, paper, clothing, or other combustible materials, or if subject to breakage.

(3) All fixtures, switches, sockets, and other pieces of apparatus shall be maintained in a safe and workable condition.

(4) All cord-connected equipment shall be plugged directly into a wall receptacle using the cord furnished with the equipment. The use of extension cords is prohibited.

(5) All electrical outlets shall be simplex or duplex outlets or UL approved multiple outlet assemblies. The use of a plug-in multiple outlet assemblies is prohibited.

(6) Wire supports shall be noncombustible insulated knobs and cleats, or wire staples, or in metal or metallic raceways.

(7) Surface mounted wiring installed on walls or partitions should be protected from mechanical injury to a height of seven

feet above the floor.

(8) All wires through walls, floors, partitions, and building members shall be installed in approved metal sleeves or in approved conduit.

(9) All electrical heating devices shall be equipped with a pilot light to indicate when the device is in service, unless equipped with a temperature limiting device integral with the heater.

(10) Emergency nurses' call systems are required in all abortion facilities. See §139.46(i) of this title (relating to Electrical Requirements).

(11) All equipment, fixtures, and appliances shall be properly grounded in accordance with NFPA 70, National Electrical Code.

(12) Abortion facilities shall have an approved stand-by essential electrical system, as referenced in NFPA 70, NFPA 76A, and §139.46(g) of this title (relating to Electrical Requirements). The emergency generator shall be exercised weekly and tested under load conditions at least once every 30 days for a minimum of 30 minutes. Written logs will be maintained on site.

(h) Lighting. There shall be adequate illumination of the operative field as well as general illumination. All means of egress such as hallways, corridors, stairways, exterior exit doors, inclines, ramps, and entrances shall be well lighted in order to prevent accidents. Every room, including storerooms and attic shall have sufficient artificial lighting facilities so that all parts shall be clearly visible under such artificial lighting, as referenced in NFPA 101.

(i) Plumbing.

(1) New installations, correction of defects, and system maintenance shall all follow the recommendations of the National Standard Plumbing Code. The Uniform Plumbing Code may be used in lieu of National Standard Plumbing Code in municipalities or jurisdictions where it has been adopted.

(2) Bathroom and lavatory facilities shall be provided in number ample for use according to number of patients of both sexes and personnel. A minimum requirement is one toilet and lavatory for patient use and one toilet and lavatory for staff use.

(3) When a municipal water supply is not available, the water shall be tested at monthly intervals in accordance with the standards promulgated by state regulations.

(4) The plumbing system shall be free from cross-connections and interconnections between a safe water supply and one which is subject to contamination, or between a safe water supply and sewage, waste water, drainage, condensation, previously used water, contents of plumbing fixtures, or any other contaminated material.

(5) All plumbing fixtures and equipment shall be so designed and installed as to prevent the back-flow or back-siphonage of any material into the water supply.

The over-the-rim type water inlet shall be used wherever possible. Vacuum-breaking devices shall be properly installed when an over-the-rim type water inlet cannot be utilized.

(6) The National Standard Plumbing Code shall be used to determine satisfactory compliance of individual plumbing fixture installations.

(7) The disposal of all radioactive wastes shall conform to the regulations of the Texas Department of Health, Bureau of Radiation Control, §§289.111-289.126 of this title (relating to Texas Regulations for Control of Radiation).

(j) Waste and waste disposal.

(1) Disposal of garbage and waste shall be approved by the state and the local authorities.

(2) All containers for garbage used in or outside the building shall be a suitable watertight container, have tight-fitting covers, and be rodent proof.

(3) Facilities shall be provided for sanitary storage and disposal of waste by incineration, mechanical destruction, compacting, containerization, removal, or by a combination of these techniques. Tissue and infectious waste shall be disposed of by incineration.

(4) The design and construction of incinerators and trash chutes shall be in accordance with NFPA 82. The facility may contract out for incineration services with a facility operating an incinerator which meets these standards.

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 13, 1987.

TRD-8706775

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

Effective date: September 4, 1987

Proposal publication date: May 26, 1987

For further information, please call

(512) 458-7245.



### Subchapter D. Construction Requirements for New Abortion Facilities

#### ★ 25 TAC §§139.41-139.47

The new sections are proposed under the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, §3, which provides the Texas Board of Health with the authority to adopt rules covering abortion facilities.

#### §139.41. Application of Standards.

(a) General. Every abortion facility building hereafter constructed, every building hereafter converted for use as an abor-

tion facility, every building herein after applying for state licensure as an abortion facility providing general anesthesia and every addition and/or alteration hereafter made to an abortion facility building providing general anesthesia shall comply with the requirements of these standards. These standards comprise an addition to the requirements for existing construction.

(1) Compliance with these standards does not constitute release from the requirements of other applicable state and local codes and ordinances. These standards must be followed where they exceed other codes and ordinances.

(2) In accordance with state law covering the handicapped as administered by the State Purchasing and General Services Commission, Austin, special design features for the handicapped shall be provided for all abortion facilities.

(3) No building may be converted for use as a licensed abortion facility which, because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patient who would be treated in such a building. Any facility which has been vacated over a period of one year or used for occupancy other than for an abortion facility will be classified as a new facility. Prior to licensure by this agency, the facility must meet all requirements of these standards for new construction.

(b) Provisions in excess of code requirements. Nothing in these standards shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified in these standards.

(1) Nothing in these standards is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by these standards, providing technical documentation is submitted to the licensing agency to demonstrate equivalency and the system, method, or device is approved for the intended purpose.

(2) The specific requirements of these standards for existing buildings may be modified by the licensing agency to allow alternate arrangements that will secure as nearly equivalent safety to life from fire as practical, but in no case shall the modification afford less safety to life than compliance with the corresponding provisions contained in these standards for existing buildings.

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 14, 1987.

TRD-8706776

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

Effective date: September 4, 1987  
Proposal publication date: May 26, 1987  
For further information, please call  
(512) 458-7245.



## Part II. Texas Department of Mental Health and Mental Retardation Chapter 405. Client (Patient) Care

### Subchapter GG. Prescribing of Psychoactive Drugs

#### ★25 TAC §§405.821—405.828

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts without changes the repeal of §§405.821-405.828 (comprising Subchapter GG), concerning prescribing of psychoactive drugs. The repeals are adopted contemporaneously with the adoption of new §§405.821-405.835 (comprising Subchapter GG), which incorporates the basic concepts of the sections that are being repealed.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas, on August 13, 1987.

TRD-8706771 Roger Bateman  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: September 2, 1987  
Proposal publication date: March 17, 1987  
For further information, please call  
(512) 465-4670.



#### ★25 TAC §§405.821—405.835

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new Chapter 405, Subchapter GG, §§405.821-405.835. Section 405.834, is adopted with changes to the proposed text published in the March 17, 1987 issue of the *Texas Register* (12 TexReg 885). Sections 405.821-405.833 and 405.835 are adopted without changes and will not be republished. The new subchapter is adopted contemporaneously with the repeal of existing Subchapter GG.

The new subchapter provides guidelines to department physicians for the prescribing of psychoactive drugs for TDMHMR clients. The new subchapter updates the terminology and practice guidelines contained in the rule it would replace. It incorporates monitoring mechanisms in keeping with the suggestions of the court-appointed RAJ Review Panel. In addition to retaining the type of information contained in the existing section, the new subchapter includes specific provisions for prescribing psychoactive drugs to nonresidential and residential outreach and respite clients.

Section 405.834, concerning distribution, has been changed to include the medical director position created pursuant to Senate Bill 257, 70th Legislature, and assistant deputy commissioners.

Comments were received regarding the adoption of the new subchapter. Advocacy, Inc., Austin, commented that §405.827(B) fails to address what would happen if the pharmacist were to find an adverse drug interaction but was unable to locate the physician or chief physician. The department responds that a physician is always on call should an adverse drug interaction be noted.

Advocacy, Inc., commented that §405.828(A)(5) fails to specify a time period for review of clients suspected to be refractory to neuroleptic drugs, and that this should be done on a quarterly basis. The department responds that §405.828(a)(1)-(3) requires clients to be assessed quarterly or more often to determine whether the medication regimen should be adjusted.

Advocacy, Inc., commented that the §405.826(b)(1) should loosen restrictions to suggest that medications may be used for other than their FDA or executive formulary committee indications with consultation or approval by the chief physician. The department responds that this matter will be considered by the executive formulary committee and the section amended on its recommendation, as appropriate.

Advocacy, Inc., commented that §405.826(c)(2) should be amended to state that medication can be stopped if side effects occur, rather than requiring an adequate trial period before a drug is changed. The department responds that the guideline concerning adequate trial period is intentionally general and would not impede the exercise of professional medical judgment.

Advocacy, Inc., suggested that language be added relating to the purpose of the sections. The department responds that the sections are clear in its intent that psychoactive medication must only be used when appropriate and effective for clinically indicated reasons.

Advocacy, Inc., made several suggestions regarding the process for obtaining in-

formed consent to treatment with psychoactive drugs, including distributing written information about the psychoactive drug. The department responds that this aspect of prescribing of psychoactive drugs is addressed in Subchapter FF. Changes in the form and process for obtaining consent that would include the mandatory distribution of patient medication instruction sheets are being prepared.

The Texas Legal Services Center, Austin, commented that an explicit statement should be added authorizing institutions and organizations which may have an interest in the medication profile committee reports and minutes to access these documents. The department responds that release of documents is governed by Chapter 403, Subchapter K.

The Texas Legal Services Center commented that the sections fail to obtain meaningful management data because they do not require an analysis of prescription drug levels by physicians. The department responds that dosage ranges are a criterion in the protocol used by the medication profile committee in its review of cases. Although the degree of specificity requested is not a part of the committee's format for summarizing compliance, the committee minutes would address the issue of dosage level specifically.

The Texas Legal Services Center commented that the subchapter fails to address several issues related to consent to treatment with psychoactive medication. The department responds that the purpose of the subchapter does not include providing procedures for consent, which are addressed in Subchapter FF.

The Texas Legal Services Center noted that the subchapter does not apply to community centers and that clients served in these settings should be provided equal protection. The department responds that TDMHMR community standards address the major issues of polypharmacy, dosage levels, laboratory screening, review of the appropriateness of medication regimen, and others in a manner that ensures appropriate equivalency.

The new sections are adopted under Texas Civil Statutes, Article 5547-204, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

#### §405.834. *Distribution.*

(a) The provisions of this subchapter shall be distributed to all members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, assistant deputy commissioners, and directors of central office; superintendents and directors of all department facilities; and RAJ vs. Miller panel members.

(b) The superintendent or director of each department facility shall provide a copy of this subchapter to each physician who provides medical care to clients of the facility and to other appropriate staff members.

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 13, 1987.

TRD-8706712      Roger Bateman  
                          Chairman  
                          Texas Department of  
                          Mental Health and  
                          Mental Retardation

Effective date: September 2, 1987  
Proposal publication date: March 17, 1987  
For further information, please call  
(512) 465-4670.





# 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 Animal Health Commission

**Friday, August 14, 1987, 1 p.m.** The Ad Hoc Committee of the Texas Animal Health Commission met in emergency session at 210 Barton Springs Road, Austin. According to the agenda, the commission discussed changes which may be required to the calfhood vaccination program as a result of the reduction in funds appropriated for calfhood vaccination beginning September 1, 1987. The emergency status was necessary because practicing veterinarians in the state must have notice prior to September 1, 1987, of any changes in fee schedule for calfhood vaccination.

**Contact:** Ken Welch, 210 Barton Springs Road, Austin, Texas 78704, (512) 479-6697.

**Filed:** August 14, 1987, 10:21 a.m.  
TRD-8706734



## Texas State Board of Dental Examiners

**Friday, August 28, 1987, 5 p.m.** The Texas State Board of Dental Examiners will meet with a revised agenda at the UT Dental Branch, 6516 John Freeman, Houston. According to the agenda, the board will consider the appointment of Dental Laboratory Certification Council; discuss Senate Bill 1439; and discuss upcoming meetings.

**Contact:** William S. Nail, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754, (512) 834-6021.

**Filed:** August 18, 1987, 8:59 a.m.  
TRD-8706878



## East Texas State University

**Wednesday, August 19, 1987.** The Board of Regents for East Texas State University, met in the Metroplex Commuter Facility, 2625 Anita Drive, Garland. Committees, times, and agendas follow.

**9 a.m.** The Academic Affairs Committee discussed faculty workload report, under-sized class report, and faculty promotions, for ETSU-Commerce and Texarkana branches. The board also met in executive session to discuss personnel matters.

**Contact:** Dayton Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

**Filed:** August 13, 1987, 11:09 a.m.  
TRD-8706685

**9:15 a.m.** The Executive Committee met in executive session to consult with the board's attorney and discuss potential real property transactions; considered Athletic Hall of Fame; fiscal year 1988 holiday schedules for ETSU-Commerce and Texarkana; and determined dates and locations of board meetings for 1987-1988.

**Contact:** Dayton Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

**Filed:** August 13, 1987, 11:53 a.m.  
TRD-8706686

**9:30 a.m.** The Campus Planning and Finance Committee considered credit card agreement proposal; depository contracts; tuition and fee rates for ETSU-Texarkana and Commerce; fiscal year 1988 operating budget for ETSU-Texarkana and Commerce; and adjustments in the operating budget for fiscal year 1987 for ETSU-Commerce. The committee also met in executive session to discuss personnel matters.

**Contact:** Dayton Cole, ETSU, Commerce, Texas 78428, (214) 886-5539.

**Filed:** August 13, 1987, 11:54 a.m.  
TRD-8706687

**10 a.m.** The Board of Regents approved agenda and minutes of the May 8, 1987, meeting and considered motions from the Academic Affairs Committee, Campus Planning and Finance Committee, and Executive Committee. The board also met in executive session to consult with the attorney, discuss real property transactions and personnel matters.

**Contact:** Dayton Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

**Filed:** August 13, 1987, 11:54 a.m.  
TRD-8706688



## Employees Retirement System of Texas

**Tuesday, August 25, 1987, 9 a.m.** The Board of Trustees of the Employees Retirement System of Texas will meet in the ERS Building, 18th and Brazos Streets, Austin. According to the agenda, the board will review and approve minutes; set interest rates and approve interest amount transferred from the interest fund to the benefit increase reserve fund; discuss and act on actuarial services proposal; discuss and act on investment counseling services proposals; certify to comptroller and treasurer estimated amounts of state contributions for retirement and insurance; approve transfers from interest fund to employees saving fund, retirement annuity reserve fund, and state accumulation fund; consider and act on appointment to Investment Advisory Committee; elect board chairman and vice-chairman; certify results of election and appointment of members to Group Insurance Advisory Committee; hear appeal of Cesar J. Molina (retirement); consider status report on state auditor's management letters; and hear the executive director's report. The board also will meet in executive session to discuss and act on proposed operating budget; and confirm the next trustee meeting date.

**Contact:** James T. Herod, 18th and Brazos Streets, Austin, Texas 78711-3207, (512) 476-6431, ext. 178.

**Filed:** August 14, 1987, 10:52 a.m.  
TRD-8706736

**Tuesday, August 25, 1987, 9 a.m.** The Board of Trustees of the Employees Retirement System of Texas will meet with a revised agenda at the ERS Building, 18th and Brazos Streets, Austin. According to the agenda

summary, the board will review and approve minutes of the previous meeting; set rates of interest and approve interest amount transferred from the interest account to benefit increase reserve account; discuss and act on actuarial services proposal; discuss and act on investment counseling services proposals; certify to comptroller and treasurer estimated amounts of state contributions for retirement and insurance; approve transfers from interest account to employees saving account, retirement annuity reserve account, and state accumulation account; consider and act on appointment to investment advisory committee; elect board chairman and vice-chairman; certify results of election and appointment of members to group insurance advisory committee; consider appeal of Cesar J. Molina (retirement); hear status report on state auditor's management letters; hear executive director's report; discuss and act on proposed operating budget; and confirm next trustee meeting date. The board will also meet in executive session.

**Contact:** James T. Herod, 18th and Brazos Streets, Austin, Texas 78711-3207, (512) 476-6431, ext. 178.

**Filed:** August 17, 1987, 10:53 a.m.  
TRD-8706819



### Texas Housing Agency

**Tuesday, August 25, 1987, 11:30 a.m.** The Single Family Committee Meeting of the Texas Housing Agency will meet in Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will meet to discuss the quarterly report of the Mortgage Credit Certificate Program; the quarterly report on the Single Family Mortgage Purchase Programs; quarterly report on the Single Family Mortgage Portfolio; quarterly report on delinquencies, foreclosures, and the acquired property (REO) inventory; consider and possibly take action on the resolution authorizing the issuance, sale, and delivery of of the Texas Housing Agency Single Family Mortgage Revenue Bonds, Series 1987C; consider and possibly take action on resolutions authorizing requests for allocation under the 1987 State Private Activity Bond Ceiling for mortgage revenue bonds and/or conversion to Mortgage Credit Certificates; and hear the status report on the Bond Review Board.

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

**Filed:** August 17, 1987, 4:42 p.m.  
TRD-8706863

**Tuesday, August 25, 1987, 3 p.m.** The Finance and Audit Committee Meeting of the Texas Housing Agency will meet in Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will meet to consider and possibly take action on the report from the finance and

audit meeting; discuss quarterly financial information; special cash analysis report; hear the report on the Harris County Housing Finance Corporation and local issues; hear the revised fiscal year 1987 budgets; select trustee and auditor; request for proposals for investment bankers and bond counsel; financing alternatives for South Texas; financing proposal and issuance of Mortgage Revenue Bonds, Series 1987C; carry over vacation for staff; direct loan proposals; hear report on GAO visit; housing incentives to support factory relocations; hear presentations from investment bankers; Texas inner city revitalization approaches in conjunction with banks and CRA; hear report on the computer system; hear report on the Series 1987B bonds; hear report on the new Bond Review Board; and discuss personnel matters.

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

**Filed:** August 17, 1987, 4:42 p.m.  
TRD-8706864



### Texas Industrial Accident Board

**Monday, August 17, 1987, 9:30 a.m.** The Texas Industrial Accident Board met in Room 107, first floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board discussed acquisition to new data processing equipment; compromise settlement agreement reviewing procedures; structured settlement agreement reviewing procedures; promptness of payment report procedures; changes to IAB Form 9 (cancellation notices); presented and discussed position evaluation system; considered prehearing examiners staffing; reviewed and discussed board activities; legal examiners; and reviewed board files (this portion closed pursuant to worker's compensation statute). The board also met in executive session to discuss personnel: legal examiner.

**Contact:** Inez "Tippy" Foster, 200 East Riverside Drive, first floor, Austin, Texas 78704, (512) 448-7960.

**Filed:** August 13, 1987, 3:29 p.m.  
TRD-8706726



### State Board of Insurance

**Tuesday, August 18, 1987, 2 p.m.** The State Board of Insurance met for a revised agenda in Room 414, 1110 San Jacinto Street, Austin. The board considered an amendment to emergency adoption and proposal for permanent adoption of 28 TAC §21.705, concerning rules on non-discriminatory testing for human immuno-deficiency virus. The revision was necessary to clarify standards and to inform regulated insurers and the insurance consuming public as rapidly as possi-

ble of clarification of standards concerning non-discriminatory testing for human immuno-deficiency virus.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

**Filed:** August 17, 1987, 4:10 p.m.  
TRD-8706861

The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Rooms, times, dates, and agendas follow.

**Tuesday, August 25, 1987, 9 a.m.** In Room 342, the section will conduct a public hearing to consider the Total Assumption Reinsurance Agreement whereby Virginia Life Insurance Company, Fort Worth, will be reinsured by National Foundation Life Insurance Company, Fort Worth.

**Contact:** O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

**Filed:** August 17, 1987, 2:32 p.m.  
TRD-8706832

**Tuesday, August 25, 1987, 10 a.m.** In Room 414, the section will adopt on an emergency basis revisions to the Simplified "Occurrence" Commercial General Liability Program and to the manual rules and rates for that program. Final adoption of 28 TAC §§19.901-19.906; proposed amendment to 28 TAC §23.5; board orders on several different matters as itemized on the complete agenda; fire marshal: personnel; research and information services: personnel; commissioner: personnel; and litigation.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

**Filed:** August 17, 1987, 4:10 p.m.  
TRD-8706862

**Tuesday, August 25, 1987, 1:30 p.m.** In Room 342, the section will reopen Docket 9495—Whether Virginia Life Insurance Company, Fort Worth, has complied with Commissioner's Order 87-0177, dated February 24, 1987.

**Contact:** O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

**Filed:** August 17, 1987, 2:32 p.m.  
TRD-8706833

**Wednesday, August 26, 1987, 9 a.m.** In Room 342, the section will consider Docket 9650—a bulk Reinsurance and Assumption agreement between United Fidelity Life Insurance Company, Fort Worth, and Financial Assurance Incorporated, Denver, Colorado, pursuant to the provisions of the Texas Insurance Code, Articles 3.10 and 21.49-1, §4(d)(2)(ii); and to consider a transfer by United Fidelity Life Insurance Company, Fort Worth, of 100% of the outstanding common capital stock of Financial

Assurance Incorporated, Denver, Colorado, to Financial Holding Corporation, a Missouri Corporation, pursuant to the Texas Insurance Code, Article 21.49-1, §4(d).

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

**Filed:** August 17, 1987, 2:32 p.m.  
TRD-8706834

**Wednesday, August 26, 1987, 9 a.m.** In Room 342, the section will consider Docket 9644—Application for amendments to the Articles of Incorporation of Hochheim Prairie Insurance Company, Yoakum, increasing the authorized capital.

**Contact:** O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

**Filed:** August 17, 1987, 2:32 p.m.  
TRD-8706835

**Wednesday, August 26, 1987, 1:30 p.m.** In Room 342, the section will consider Docket 9651—Application of Vantage Insurance Company for an exemption from the filing requirements of Article 21.49-1 pursuant to §5(g) of Article 21.49-1, and Vantage Insurance Company's investment in 100% of the outstanding common capital stock of New English Life Insurance Company pursuant to the Texas Insurance Code, Article 21.49-1, §(b) and to consider reinsurance agreement whereby New English Life Insurance Company, Mineola, will be reinsured by Vantage Insurance Company, Dallas.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

**Filed:** August 17, 1987, 2:32 p.m.  
TRD-8706836

**Wednesday, August 26, 1987, 1:30 p.m.** In Room 342, the section will consider Docket 9645—Approval of the Articles of Agreement of Windsor Lloyds, Dallas.

**Contact:** O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

**Filed:** August 17, 1987, 2:33 p.m.  
TRD-8706837

**Friday, August 28, 1987, 9 a.m.** In Room 342, the section will consider Docket 9618—Application of Robert Dale Massey, for a Group I, legal reserve life insurance agent's license, a Group II, life, health, and accident insurance agent's license, and a local recording agent's license.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

**Filed:** August 17, 1987, 2:33 p.m.  
TRD-8706838

**Friday, August 28, 1987, 1:30 p.m.** In Room 342, the section will consider Docket 9646—

Application of Jose L. Dovalina, Eagle Pass, for a solicitor for local recording agent license.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

**Filed:** August 17, 1987, 2:33 p.m.  
TRD-8706839

**Monday, August 31, 1987, 1:30 p.m.** In Room 342, the section will consider Docket 9649—Application of Jesus Diaz, Jr., Richmond, for renewal of his Group I, legal reserve life insurance agent's license.

**Contact:** J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

**Filed:** August 17, 1987, 2:33 p.m.  
TRD-8706840

### Texas Department of Labor and Standards

The Labor/Licensing and Enforcement Division of the Texas Department of Labor and Standards will meet in Room 105, E.O. Thompson Building, 920 Colorado Street, Austin. Dates, times, and agendas follow.

**Tuesday, August 25, 1987, 9 a.m.** The division will cover proceedings regarding the boxer/manager contract of Matthew Brooks.

**Contact:** Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

**Filed:** August 14, 1987, 3:31 p.m.  
TRD-8706778

**Tuesday, August 25, 1987, 10 a.m.** The division will include proceedings that consider a decision rendered at a boxing match (Stoner) regarding the department's accidental head butt rule.

**Contact:** Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

**Filed:** August 14, 1987, 3:30 p.m.  
TRD-8706779

**Thursday, August 27, 1987, 9 a.m.** The division will include proceedings that consider a decision rendered at a boxing match (Boyd/Lupkin) regarding the department's accidental head butt rule.

**Contact:** Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

**Filed:** August 14, 1987, 3:31 p.m.  
TRD-8706777

**Friday, August 28, 1987, 11:30 a.m.** The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E.O. Thompson Building, 920 Colorado, Austin. According to the agenda, the department will consider whether or not to grant a salesperson registration to Mr. Gene Leroy Cunningham because of his prior criminal record.

**Contact:** Craig Sandling, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

**Filed:** August 13, 1987, 3:35 p.m.  
TRD-8706727

**Thursday-Friday, September 3-4, 1987, 1 p.m. and 9 a.m.** The Boiler Division, Board of Boiler Rules of the Texas Department of Labor and Standards will meet in Room 103, 920 Colorado, E. O. Thompson Building, Austin. According to the agenda, the division will meet to consider approval of the agenda; approval of the minutes of the March 5 and 6, 1987, meetings; discuss the membership report; hear the Task Force reports; and discuss new business.

**Contact:** Steven M. Matthews, P.O. Box 12157, Austin, Texas 78711, (512) 463-2904.

**Filed:** August 17, 1987, 3:52 p.m.  
TRD-8706860

### Texas National Guard Armory Board

**Sunday, August 23, 1987, 10 a.m.** The Texas National Guard Armory Board will meet in the Conference Room, Building 64, Camp Mabry, Austin. According to the agenda, the board will discuss administrative matters; fiscal matters; facility construction, remodeling, and renovation; facility maintenance; and property and leases.

**Contact:** Sandra Hille, P.O. Box 5218, Austin, Texas 78763-5218, (512) 451-6394.

**Filed:** August 14, 1987, 12:01 p.m.  
TRD-8706770

### North Texas State University

**Thursday, August 20, 1987, 10 a.m.** The Facilities Committee, Board of Regents of North Texas State University met in the Boardroom, North Texas State University, Denton. According to the agenda, the committee discussed facilities overview, academic consideration, large classrooms, and tour of five buildings.

**Contact:** Jan Dobbs, P.O. Box 13737, North Texas State University, Denton, Texas 76203, (817) 565-2198.

**Filed:** August 14, 1987, 9:11 a.m.  
TRD-8706761

**Thursday, August 20, 1987, 2 p.m.** The Texas College of Osteopathic Medicine/North Texas State University Board of Regents, Role and Scope Committee, met in 201 Administration Building, North Texas State University, Denton. According to the agenda, the committee of NTSU discussed personnel, small class report, end of semester enrollment, faculty leaves, 1987-1988 holidays, policy manual, distinguished enterprise professorships, promotion and tenure recommendation, establishment of university press, employee insurance program, and

athletic program. The committee of TCOM discussed personnel, holiday schedule, TCOM advisory council appointments, policy manuals, smoking policy, status of incoming class, and minority applications.

**Contact:** Jan Dobbs, P.O. Box 13737, North Texas State University, Denton, Texas 76203, (817) 565-2198.

**Filed:** August 14, 1987, 9:12 a.m.  
TRD-8706762

**Thursday, August 20, 1987, 2:30 p.m.** The Texas College of Osteopathic Medicine/North Texas State University Facilities Committee, Board of Regents, met in 201 Administration Building, North Texas State University, Denton. According to the agenda, the committee of NTSU discussed the women's gym renovation; Chilton Hall renovation/addition; Matthews Hall renovation; College of Business large classroom addition; roof repairs; master plan update; project status report; cogeneration; Sheraton Hotel and Conference Center. The committee of TCOM discussed long range space plan and project status report.

**Contact:** Jan Dobbs, P.O. Box 13737, North Texas State University, Denton, Texas 76203, (817) 565-2198.

**Filed:** August 14, 1987, 9:11 a.m.  
TRD-8706763

**Thursday, August 20, 1987, 4 p.m.** The Texas College of Osteopathic Medicine/North Texas State University Budget and Finance Committee, Board of Regents, met in 213 Administration Building, North Texas State University, Denton. According to the agenda, the committee of NTSU discussed gift report; signature authority; student service fee; increase in union fee; 1987-1988 budget; interest earnings report; Proposition II transactions; and employee insurance program. The committee of TCOM discussed the 1987-1988 budget; student fee schedule; policy manuals; gift report; interest earnings report; Proposition II transactions.

**Contact:** Jan Dobbs, P.O. Box 13737, North Texas State University, Denton, Texas 76203, (817) 565-2198.

**Filed:** August 14, 1987, 9:11 a.m.  
TRD-8706764

**Friday, August 21, 1987, 7:30 a.m.** The Texas College of Osteopathic Medicine/North Texas State University Advancement Committee, Board of Regents will meet in the Sheraton Hotel Restaurant, Denton. According to the agenda, the board will discuss NTSU gift totals to date; alumni records report; report on advancement council; planned gift report; annual fund report; report on NTSU foundation; progress of funding for academy of mathematics and science. The TCOM will discuss the update on gifts and introduce of new director of development.

**Contact:** Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2198.

**Filed:** August 14, 1987, 9:11 a.m.  
TRD-8706765

**Friday, August 21, 1987, 9 a.m.** The Texas College of Osteopathic Medicine/North Texas State University Board of Regents will meet in the Boardroom, North Texas State University, Denton. According to the agenda, the board will discuss NTSU approval of minutes; personnel; small class report; enrollment report; faculty leaves; holiday schedule; policy manual; distinguished enterprise professorships; promotion and tenure recommendation; establishment of university press; gift report; signature authority; student service fee; union fee; 1987-1988 budget; women's gym renovation; Chilton Hall renovation/addition; Matthews Hall renovation; large classroom addition; roof repairs; status of fundraising efforts; objectives for 1986-1987 and 1987-1988. The NTSU board will also meet in executive session. The TCOM board will approve minutes; personnel transactions; holiday schedule; advisory council appointments; policy manuals; gift report; student fee schedule; 1987-1988 budget; and election of officers.

**Contact:** Jan Dobbs, P.O. Box 13737, North Texas State University, Denton, Texas 76203, (817) 565-2198.

**Filed:** August 14, 1987, 9:11 a.m.  
TRD-8706766



### Board of Pardons and Paroles

**Monday-Friday, August 24-28, 1987, 1:30 p.m. daily, except 11 a.m. Friday.** A panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

**Contact:** Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

**Filed:** August 14, 1987, 10:16 a.m.  
TRD-8706732

**Tuesday, August 25, 1987, 1:30 p.m.** The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; other reprieves, remissions, and executive clemency actions.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

**Filed:** August 14, 1987, 10:16 a.m.  
TRD-8706733



### Texas State Board of Pharmacy

**Tuesday-Thursday, August 25-27, 1987, 8:30 a.m.** The Texas State Board of Pharmacy will meet at the Marriott Airport Hotel, 6121 IH 35 North at U.S. Highway 290, Austin. According to the agenda, the board will hear testimony and review evidence of alleged violations of those laws in which persons are subject to administrative sanctions and what form the sanctions are to take; and consider proposed rule and amendment to Chapter 283, and simultaneous emergency adoption of licensing requirements for pharmacist's expired license.

**Contact:** Fred S. Brinkley, Jr., 8505 Cross Park Drive, Suite 110, Austin, Texas 78754, (512) 832-0661.

**Filed:** August 14, 1987, 11:17 a.m.  
TRD-8706759



### Texas State Board of Physical Therapy Examiners

**Tuesday, September 1, 1987, 9:30 a.m.** The Texas State Board of Physical Therapy Examiners will meet in Suite 260, 1300-C East Anderson Lane, Austin. According to the agenda, the board will approve past meeting minutes; discuss rule proposals relating to mandates passed in the 70th Legislature; hear administrative, personnel, budget, education, investigation, legislative affairs, rules/parliamentary procedures, and information/news release committee reports; and consider miscellaneous board business.

**Contact:** Lois M. Smith, 1300-C East Anderson Lane, Suite 260, Austin, Texas 78752, (512) 835-1846.

**Filed:** August 17, 1987, 2:45 p.m.  
TRD-8706841



### Texas State Board of Public Accountancy

**Friday, August 21, 1987, 10 a.m.** The full board of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the board will approve minutes of the July 30-31, 1987, meeting; review status of fiscal year 1987 operating budget, cash flow update, and progress of expenditures; review status of fiscal year 1988-1989 appropriation request and adoption of the fiscal year 1988

operating budget; review proposed expansion to office lease space; discuss Enforcement Committee items tabled at July 30-31, 1987, board meeting, conduct public hearing on proposed substantive rules; and discuss NASBA matters—AICPA meeting in Washington and NASBA annual meeting.

**Contact:** Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

**Filed:** August 13, 1987, 4:29 p.m.  
TRD-8706730



### Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

**Wednesday, August 26, 1987, 10 a.m.** The Hearings Division will meet to consider Docket 7614—Application of Southwestern Bell Telephone Company to implement rates and regulations for intrastate interim 800 service.

**Contact:** Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** August 13, 1987, 2:50 p.m.  
TRD-8706715

**Wednesday, October 14, 1987, 10 a.m.** The Hearings Division will meet to consider Docket 7598—Application of Tri-County Telephone Company, Inc., to implement mandatory service upgrade, unbundle service connection charges, detariff CPE and inside wire, and effect miscellaneous tariff revisions.

**Contact:** Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** August 17, 1987, 2:56 p.m.  
TRD-8706842



### State Purchasing and General Services Commission

**Tuesday, August 25, 1987, 10:30 a.m.** The State Purchasing and General Services Commission will meet in Room 916, LBJ State Office Building, 111 East 17th Street, Austin. According to the agenda summary, the commission will consider special recognition of state employees; the status of STS request for proposal and TPBA projects; adoption of amendment to Uniform General Conditions; amendments to §§113.2, 113.6, 113.10, 113.72, 113.73, and 113.74 on an emergency basis and as proposed permanent

amendments; new §§111.61, 111.62, and 111.63 on an emergency basis and as proposed permanent rules; repeal of existing §111.3 and new §111.3 on an emergency basis and as a proposed permanent rule; continuing actions for refinancing of certain capital equipment lease/purchase contracts; and set date and time of next meeting. The commission will also meet in executive session to consider reports, advice, and potential settlement of litigation.

**Contact:** John R. Neel, LBJ Building, 111 East 17th Street, Room 914, Austin, Texas 78711, (512) 463-3446.

**Filed:** August 17, 1987, 9:16 a.m.  
TRD-8706827



### Railroad Commission of Texas

**Monday, August 17, 1987, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas met in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The division met on an emergency agenda revision to consider Docket 5-89,755—Railroad Commission District 5 for review temporary field rules for the Alabama Ferry (Woodbine-Dexter) Field, Leon County; Docket 5-90,079—Application of Basin Operating Company, Ltd., per well mer special field rules for the Alabama Ferry (Woodbine-Dexter) Field, Leon County. The emergency status was necessary because the items must be taken on less than seven days notice as a matter of public necessity.

**Contact:** Doug Johnson, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6923.

**Filed:** August 14, 1987, 10:49 a.m.  
TRD-8706738

**Monday, August 24, 1987, 9 a.m.** The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

**Filed:** August 14, 1987, 10:54 a.m.  
TRD-8706739

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

**Contact:** Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

**Filed:** August 14, 1987, 10:53 a.m.  
TRD-8706740

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

**Filed:** August 14, 1987, 10:55 a.m.  
TRD-8706741

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

**Contact:** Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

**Filed:** August 14, 1987, 10:50 a.m.  
TRD-8706742

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

**Filed:** August 14, 1987, 10:53 a.m.  
TRD-8706743

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters; various matters falling within the LP-Gas regulatory jurisdiction.

**Contact:** Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

**Filed:** August 14, 1987, 10:53 a.m.  
TRD-8706744

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

**Contact:** Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

**Filed:** August 14, 1987, 10:53 a.m.  
TRD-8706745

Additions to the previous agenda:

Consideration of a staff recommendation to file a grant application with the U.S. Environmental Protection Agency for the Underground Injection Control Program for fiscal year 1988 in the amount of \$713,900.

**Contact:** Jerry Mullican, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6790.

**Filed:** August 14, 1987, 10:50 a.m.  
TRD-8706746

Investigation of cementing practices of Western Company of North America.

**Contact:** Tim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

**Filed:** August 14, 1987, 10:51 a.m.  
TRD-8706747

Consideration of category determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

**Contact:** Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

**Filed:** August 14, 1987, 10:53 a.m.  
TRD-8706748

The personnel director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

**Filed:** August 14, 1987, 10:54 a.m.  
TRD-8706749

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

**Filed:** August 14, 1987, 10:54 a.m.  
TRD-8706750

The Office of the Special Counsel director's report relating to proposed and pending litigation, state and federal legislation, and other budget, administrative, and personnel matters; discussion of Hugo Oils, et al v. Railroad Commission, C-5937 in the Supreme Court of Texas; Walker Operating Corp., et al v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698 et al; Lone Star Gas Company, et al v. Railroad Commission of Texas and Jim Mattox, in his official capacity as Attorney General of the State of Texas, 414,357, 299th District Court; FERC Docket GP86-27-000 (formerly RM79-76-250) Travis Peak Formation; FERC Docket RM 87-31-000 et al, 18 Code of Federal Regulations Part 271, Tight Gas Formation.

**Contact:** Walter Earl Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

**Filed:** August 14, 1987, 10:53 a.m.  
TRD-8706751

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

**Filed:** August 14, 1987, 10:50 a.m.  
TRD-8706752

Various matters falling within the Transportation Division's regulatory jurisdiction.

**Contact:** C. Tom Clowe, Jr., P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

**Filed:** August 14, 1987, 10:51 a.m.  
TRD-8706753



## Board of Regents, Texas A&M University System

**Monday, August 17, 1987, 9:30 a.m.** The Executive Committee of the Board of Regents, Texas A&M University System met at the Doctor's Club, Texas Medical Center, 406 Jesse Jones Library Building, Houston. According to the agenda, the committee toured Texas Medical Center and the Houston Area Research Center, Suite 200, 2202 Timberlake, The Woodlands.

**Contact:** Vickie Burt, Texas A&M University, College Station, Texas 77843, (409) 845-9603.

**Filed:** August 13, 1987, 2:32 p.m.  
TRD-8796714



## University Interscholastic League

**Wednesday, August 19, 1987, 10 a.m.** The Waiver Review Board of the University Interscholastic League met in Room 1.122, Thompson Conference Center, 26th and Red River Streets, UT Campus, Austin. According to the agenda, the league appealed a waiver of decision to determine student eligibility.

**Contact:** Bob Young, Box 8028, University Station, Austin, Texas 78713, (512) 471-5883.

**Filed:** August 13, 1987, 4:21 p.m.  
TRD-8706729



## Texas Veterans' Memorial Committee

**Tuesday, September 1, 1987, 10 a.m.** The Texas Veterans' Memorial Committee will hold an organizational meeting in Room 106, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the committee will discuss a general update on project; hear financial report; hear a presentation from TSTI; and have a general discussion.

**Contact:** C.J. Parham, P.O. Box 2910, Austin, Texas 78769, (512) 463-0494.

**Filed:** August 17, 1987, 11:01 a.m.  
TRD-8706826



## Texas Water Commission

**Monday, August 17, 1987, 3:30 p.m.** The Texas Water Commission met in emergency meeting in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission discussed whether to postpone, reschedule, and/or consider other action that might be appropriate for matters

already scheduled for commission consideration during the week of August 24-28, 1987.

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

**Filed:** August 17, 1987, 1:30 p.m.  
TRD-8706823

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

**Tuesday, August 25, 1987, 10 a.m.** The commission will consider water district bond issues; release from escrow; use of surplus funds; certificates of convenience; rate complaint; application for increase in rate; water quality proposed permits; amendments and renewals; extension of time applications; weather modification matters; creation and appointment of committee for Hill Country Critical Area Ground-Water Study; adoption of TAC §291.116, as amended concerning corrections of certificates of convenience and necessity; and authorization for executive director to enter into biennial agreements and contracts with other agencies and entities and resolution authorizing executive director to negotiate and enter into contracts or other agreements without formal commission consent.

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

**Filed:** August 13, 1987, 11:39 a.m.  
TRD-8706691

**Tuesday, August 25, 1987, 2 p.m.** The commission will consider substantial noncompliance and petition for order requiring certain actions of Countrywide Partnership Investments, Inc. (Permit 12218-01); administrative penalties of Groff's of Texas, Inc. (Permit 02816); application by Bastrop West Water Systems for certificate of convenience and necessity (Docket 7047-C); and motion filed by Aqua Water Supply Corporation for a cease and desist order against Bastrop West Water System.

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

**Filed:** August 14, 1987, 4:02 p.m.  
TRD-8706782

**Wednesday, August 26, 1987, 2 p.m.** The commission will consider an order requiring certain actions of Hatheway Patterson Corporation (Solid Waste Registration 30239); noncompliance order requiring certain actions of Harris County FWSD No. 1A (Permit 11195-01); adoption of 31 TAC §§321.91-321.97, Subchapter F, Shrimp Industry; and consideration of adoption of Emergency Rules, 31 TAC Chapter 334—new §§334.1-334.5 and 334.21-334.23.

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

**Filed:** August 14, 1987, 4:02 p.m.  
TRD-8706783

**Tuesday, September 1, 1987, 2 p.m.** The commission will consider a report of substantial noncompliance and petition for order requiring certain actions of The Village of Jamaica Beach (Permit 11033-01); and application of Twin Creek Park, Inc., for rate increase (Docket 7134-G).

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

**Filed:** August 14, 1987, 4:02 p.m.  
TRD-8706784

**Wednesday, September 2, 1987, 10 a.m.** The commission will consider noncompliance and petition for order and requiring certain actions of the City of Kilgore (Permit 10201-01); H. B. Zachry Company (Permit 02042); and Parker County Utility District (Permit 10847-01).

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

**Filed:** August 14, 1987, 4:03 p.m.  
TRD-8706785

**Wednesday, September 2, 1987, 2 p.m.** The commission will consider substantial non-compliance and petition for an order for the City of Henderson (Permit 10187-01); The United States Department of the Navy (Permit 02335); the Town of Flower Mound (Permit 11321-01); and application by William F. St. Clair for renewal of water quality Permit 11745-01.

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

**Filed:** August 14, 1987, 4:03 p.m.  
TRD-8706786

**Tuesday, September 8, 1987, 2 p.m.** The commission will consider substantial non-compliance and requiring certain actions of the City of Ladonia (Permit 10740-01); the City of Natalia (Permit 11806-01); the J.M. Huber Corporation (Permit 00814); and application by the City of Copperas Cove for renewal of water quality Permit 10045-03.

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

**Filed:** August 14, 1987, 4:03 p.m.  
TRD-8706787

**Friday, September 11, 1987, 10 a.m.** The Office of Hearings Examiner of the Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the examiner will consider applications for water certificate of convenience and necessity and rate increase filed by T. M. Wolfe and Associates, Inc., doing business as Glenlake Water System, Dockets 7205-C and 7259-G.

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

**Filed:** August 13, 1987, 11:39 a.m.  
TRD-8706692

## **Texas Water Development Board**

**Thursday, August 20, 1987, 8:30 a.m.** The Texas Water Development Board met for an emergency agenda revision in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board considered authorizing the executive administrator to sign an interagency contract with the Employees Retirement System of Texas for office space. The emergency status was necessary because the contract was only recently received from the Employee Retirement System of Texas and must be signed to provide office space for fiscal year 1988-89.

**Contact:** M. Reginald Arnold II, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

**Filed:** August 17, 1987, 11:36 a.m.  
TRD-8706825

## **Regional Agencies**

### **Meetings Filed August 13**

**The Gonzales County Appraisal District,** Appraisal Review Board, will meet at 928 St. Paul Street, Gonzales, on August 24-27, 1987, at 4 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

**The Lamar County Appraisal District,** Board of Directors, met at 1523 Lamar Avenue, Paris, on August 17, 1987, at 4 p.m. Information may be obtained from Rodney Anderson, 1523 Lamar Avenue, Paris, Texas 75260, (214) 785-7822.

**The Limestone County Appraisal District,** Board of Directors, met in the Appraisal District Office, Limestone County Courthouse, Groesbeck, on August 19, 1987, at 5 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

**The Mills County Appraisal District,** Board of Directors, met in the Jury Room, Mills County Courthouse, Goldthwaite, on August 20, 1987, at 6:30 p.m. Information may be obtained from Doran E. Lemke, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253.

**The Scurry County Appraisal District,** Appraisal Review Board, met at 2612 College Avenue, Snyder, on August 18, 1987, at 9 a.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

**The West Central Texas Municipal Water District,** will meet in Suite 300, First National West Building, 501 Cypress Street, Abilene, on August 26, 1987, at 9:30 a.m. Information may be obtained from Virginia Duncan,

P.O. Box 2362, Abilene, Texas 79601, (915) 673-8254.

**The Wood County Appraisal District,** Board of Directors, met in the Conference Room, 217 North Main, Wood County Appraisal District, Quitman, on August 20, 1987, at 1:30 p.m. Information may be obtained from W. Carson Wages or Teresa Poston, P.O. Box 951, Quitman, Texas 75783, (214) 763-4891.

TRD-8706689



### **Meetings Filed August 14**

**The Atascosa County Appraisal District,** Board of Directors, met at 1010 Zanderson Avenue, Jourdanton, on August 20, 1987, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson Avenue, Jourdanton, Texas 78026, (512) 769-2730.

**The Region X Education Service Center,** Board of Directors, met at the Prestonwood Country Club, 15909 Preston Road, Dallas, on August 19, 1987, at 1:15 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley, Richardson, Texas 75083-1300, (214) 231-6301.

**The Region XII Education Service Center,** Board of Directors, met at 401 IH 35, Waco, on August 20, 1987, at 2 p.m. Information may be obtained from Weldon O. Mills, P.O. Box 1249, Waco, Texas 76703, (817) 756-7494.

**The Region XV Education Service Center,** Board of Directors, met at 612 South Irene Street, San Angelo, on August 20, 1987, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571.

**The Hale County Appraisal District,** Board of Directors, met at 302 West Eighth Street, Plainview, on August 20, 1987, at 8:30 p.m. Information may be obtained from Linda Jaynes, 302 West Eighth Street, Plainview, Texas 79072, (806) 293-4226.

**The Hays County Central Appraisal District,** Appraisal Review Board, met and will meet on the First Floor, Courthouse Annex, San Marcos, on August 20 and 27, 1987, respectively, at 9 a.m. Information may be obtained from Lynnell Sedlar, 102 LBJ Courthouse Annex, Third Floor, San Marcos, Texas 78666, (512) 396-4777.

**The North Texas Municipal Water District,** Board of Directors, will meet at 505 East Brown Street, Wylie, on August 27, 1987, at 4 p.m. Information may be obtained from Carl W. Riehn, P.O. Drawer C, Wylie, Texas 75098, (214) 442-5405.

**The Tarrant Appraisal District,** Board of

Directors, met in Suite 709, 1701 River Run, Fort Worth, on August 20, 1987, at 10 a.m. Information may be obtained from Olive Miller, 1701 River Run, Suite 709, Fort Worth, Texas 76107, (817) 332-3151.

**The West Texas Council of Governments, Board of Directors**, will meet on the Second Floor, Conference Room, 123 Pioneer Plaza, El Paso, on August 21, 1987, at 9:30 a.m. Information may be obtained from Cecile C. Gamez, 123 Pioneer Plaza, Suite 210, El Paso, Texas 79901, (915) 533-0998. TRD-8706731



#### Meetings Filed August 17

**The Austin-Travis County Mental Health and Mental Retardation Center, Operation and Planning Committee**, will meet in Room 501, 611 South Congress Avenue, Austin, on August 21, 1987, at 7:30 a.m. Information may be obtained from Sharon Taylor, 611 South Congress Avenue, Room 501, Austin, Texas 78704, (512) 447-4141.

**The Bastrop County Appraisal District, Board of Directors**, met at 1200 Cedar Street, Bastrop, on August 20, 1987, at 7:30 p.m.; and the Appraisal Review Board will meet on August 26, 1987, at 7 p.m. Information may be obtained from Lorraine Perry, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925.

**The Bexar Appraisal District, Board of Directors**, will meet at 535 South Main, San Antonio, on August 24, 1987, at 5 p.m. In-

formation may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

**The East Texas Council of Governments, Private Industry Council**, met at 3800 Stone Road, Kilgore, on August 20, 1987, at 9:30 a.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

**The High Plains Underground Water Conservation District No. 1, Board of Directors**, met at 2930 Avenue Q, Lubbock, on August 20, 1987, at 6 p.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

**The Mental Health and Mental Retardation Authority of Brazos Valley, Board of Trustees**, met in emergency session at the College Station Community Center, 1300 Jersey, College Station, on August 20, 1987, at 1:30 p.m. Information may be obtained from Leon Bawcom, 302 East 24th Street, Bryan, Texas 77803, (409) 776-2277.

**The Nueces River Authority, Board of Directors**, will meet at the Staghorn Inn, Three Rivers, on August 27, 1987, at 1:15 p.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (512) 278-6810. TRD-8706822



#### Meetings Filed August 18

**The Burnet County Appraisal District,**

Board of Directors, met at 215 South Pierce Street, Burnet, on August 20, 1987, at 6:30 p.m. Information may be obtained from Alvin C. Williams, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

**The Eastland County Appraisal District, Appraisal Review Board**, will meet in the Commissioners' Courtroom, Eastland County Courthouse, Second Floor, Eastland, on September 2, 1987, at 10 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597.

**The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees**, will meet at 3801 Avenue J, Lubbock, on August 24, 1987, at 11:30 a.m. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

**The Northeast Texas Municipal Water District, Board of Directors**, will meet at Highway 250 South, Hughes Springs, on August 24, 1987, at 7 p.m. Information may be obtained from Homer Tanner, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538.

**The Upper Leon River Municipal Water District, Board of Directors**, will meet at the General Office of the Filter Plant, Proctor Lake, on August 27, 1987, at 6:30 p.m. Information may be obtained from Garry W. Godfrey, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-8706877





# 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.

## Ark-Tex Council of Governments Request for Proposals

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the development and delivery of job search training. The training shall be provided to approximately 210 Title III participants in the Northeast Texas Service Delivery Area (NETSDA). The NETSDA is made up of Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus Counties.

The primary goal of this project is to provide job search training to Title III participants. Such training shall include the acquisition of skills necessary to find and retain permanent employment in the workforce. The training will be offered through small classes and workshops. The primary objectives to be addressed by the bidders are development of a job search workshop to include the following structured phases for a minimum of 20 contact hours, which include the ability to present oneself on paper, i.e., resume preparation, completing job applications, letter writing, the ability to present oneself in person, i.e., by telephone and in an interview. A resume will be developed for each participant and become part of the participant file; developing and maintaining a positive, assertive attitude; dealing with rejection. The workshop will include instruction in communication and interpersonal techniques; employment seeking skills, including where and how to develop job leads, scheduling and follow-through, personal appearance and grooming hints. Emphasis is on the full-time pursuit of employment; stress management and financial counseling; and a realistic appraisal of the present status of the employment market.

Development and delivery of job search assistance shall emphasize personal and social skills as well as enhancement of job related skills. Participants must meet at least once per week for a minimum of three weeks. Activities shall include continued update of labor market information; an effective, coordinated support and guidance system in which to apply employment seeking techniques; a regularly scheduled weekly program where attendance is required; and access to the most recent data on employment opportunities such as newspaper and job bank listings.

The proposal must include sufficient information for the selection committee to evaluate all proposals. The proposal must also include information reflecting qualification of persons to be assigned to provide services; information indicating specialized experience and technical competence of the offeror and its personnel as relates to the services required; identification of the number and title of staff to be assigned to provide services and their availability relative to current workload; the setting out of cost and pricing data which indicates the maximum fees to be charged for the various tasks to be provided, specifying

the basis for the fee compensation request and the setting out of a proposed work plan indicating methods and schedule for accomplishing each phase of the work.

**Proposal Evaluation Review Factors.** Proposals will be reviewed by ATCOG using the following evaluation review factors and scope of work. ATCOG will assign points to each criterion based on the content of the proposal only: qualifications—20 maximum points; technical competency/experience—30 maximum points; capacity for performance (work force)—20 maximum points; estimated costs—20 maximum points; methodology—10 maximum points.

**Contract Type.** The contract type is performance based.

**Award of Contract.** Bidders may be requested to present their proposals to the selection committee. After the close of negotiations, ATCOG will award the contract and notify the selected bidder, as well as those bidders not selected. Questions concerning this request for proposals should be addressed to Ermer Pondexter, Ark-Tex Council of Governments, (214) 832-8636. Proposals must be received no later than 5 p.m., September 18, 1987, at Ark-Tex Council of Governments, P.O. Box 5307, Building A, Centre West, 911 Loop 151, Texarkana, Texas 75501.

Issued in Austin, Texas, on August 13, 1987.

TRD-8706816 James D. Goerke  
Executive Director  
Ark-Tex Council of Governments

Filed: August 17, 1987  
For further information, please call (512) 832-8636.



## State Banking Board Notice of Hearing Cancellation

As no opposition has been noted in the application for City Bank, N.A., Lubbock, to convert to a state charter under the name of City Bank, the hearing previously scheduled for Monday, August 17, 1987, has been cancelled.

Issued in Austin, Texas, on August 12, 1987.

TRD-8706690 William F. Aldridge  
Director of Corporate Activities  
State Banking Board

Filed: August 13, 1987  
For further information, please call (512) 479-1200.



**Office of Consumer Credit  
Commissioner**

**Notice of Rate Ceilings**

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer <sup>(3)</sup> Agricultural/Commercial <sup>(4)</sup> thru \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 08/17/87-08/23/87	18.00%	18.00%
Monthly Rate— Article 1.04(c) <sup>(1)</sup> 08/01/87-08/31/87	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 07/01/87-09/30/87	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 <sup>(3)</sup> 07/01/87-09/30/87	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) <sup>(3)</sup> 07/01/87-09/30/87	14.00%	N/A
Standard Annual Rate—Article 1.04(a)(2) <sup>(2)</sup> 07/01/87-09/30/87	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 <sup>(3)</sup> 07/01/87-09/30/87	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 07/01/87-09/30/87	18.00%	N/A
Judgment Rate—Article 1.05, §2 08/01/87-08/31/87	10.00%	10.00%

(1) For variable rate commercial transactions only  
(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)  
(3) Credit for personal, family, or household use  
(4) Credit for business, commercial, investment, or other similar purpose

Issued in Austin, Texas, on August 10, 1987.

TRD-8706669 Al Endsley  
Consumer Credit  
Commissioner

Filed: August 12, 1987  
For further information, please call (512) 479-1280.



**Texas Commission for the Deaf  
Consultant Proposal Request**

Pursuant to the interagency cooperation agreement between the Texas Commission for the Deaf (TCD) and the Texas Department of Corrections (TDC), TCD will im-

plement counseling services and program development involved with the deaf persons incarcerated in Huntsville. In compliance with Texas Civil Statutes, Article 6252-11c, TCD invites proposals for development and implementation of counseling services and mental health program development for the TDC. TDC will provide counseling services and mental health program development for deaf inmates incarcerated in Huntsville, that use sign language as a primary mode of communication.

This program is funded through the Texas Department of Corrections in cooperative efforts provided by the Texas Commission for the Deaf, and will be monitored by TCD. The contract will be for a period between September 16, 1987, and August 31, 1989. Consultants applying for mental health services will need to include plans for setting up a counseling service and mental health program to meet the needs of inmates who are deaf. A total cost for counseling services and mental health program development is not to exceed \$14,000 per fiscal year.

The deadline for receipt of proposals is September 15, 1987. Proposals may be hand delivered to the Texas Commission for the Deaf, 510 South Congress, Suite 300, Austin, Texas 78704, or mailed to the Texas Commission for the Deaf, P.O. Box 12904, Austin, Texas 78711.

The proposal found by a review panel to possess the following will be selected for contract negotiations: knowledge, experience, and education required for the project; capacity to complete the project willingly and timely; reputation for excellence of performance; budget; evaluation procedures; and a quality application. The right is reserved to reject any or all proposals.

For additional information regarding the request for proposal, contact William F. Eckstein, Coordinator of Administrative Procedures/Services or Mark W. Seeger, Program Specialist for Direct Services for the Deaf, Texas Commission for the Deaf, 510 South Congress Avenue, Suite 300, Austin, Texas 78704, (512) 469-9891.

Issued in Austin, Texas, on August 12, 1987.

TRD-8706728 Larry D. Evans  
Executive Director  
Texas Commission for the Deaf

Filed: August 13, 1987  
For further information, please call (512) 469-9891.



**Texas Education Agency  
Request for Applications**

The Texas Education Agency is requesting proposals for the establishment by school districts of school-community guidance centers in areas reflecting high concentration of adjudicated persons. The purpose of the centers is to decrease the incidence of disruptive student behavior and decrease student contacts with the criminal justice system.

School districts, cooperatives of school districts, and cooperatives of school districts with an educational service center that have an average daily attendance of at least 6,000 students are eligible to apply. The program begins October 1, 1987, and terminates August 31, 1988. The 70th Legislature, 1987, appropriated in Article III of the State Appropriations Bill \$1,500,000 per year, \$3,000,000 for the 1987-1989 biennium. Approximately 21 projects will be funded. Currently funded first-year applicants must apply for the second year of funding. The second year of

funding is contingent upon the program's achieving its first-year objectives and the quality of implementation. Selection of the contractor will be based on the contractor's capacity to develop a school-community guidance center, administer and manage the project, related experience, management and staffing plans, budget, and evaluation procedures.

A copy of the complete request for applications may be obtained by calling or writing the Document Control Center, Room 6-108, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Applications may be delivered by mail or in person to the Texas Education Agency Document Control Center. Applications received after 5 p.m. on Wednesday, September 16, 1987, will not be considered for funding.

Issued in Austin, Texas, on August 17, 1987.

TRD-8706818 W. N. Kirby  
Commissioner of Education

Filed, August 17, 1987  
For further information, please call (512) 463-9212.



## General Land Office Correction of Error

A proposed new subsection submitted by the General Land Office contained an error as published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2549).

The title to Chapter 4, subchapter K should read: "Subchapter K. Commissioner's Orders".



## North Central Texas Council of Governments

### Request for Proposals

The North Central Texas Council of Governments (NCTCOG) requests proposals from qualified consultants to conduct an analysis of the impacts of aviation on the local economy. NCTCOG will work with the selected consultant and coordinate the study with a similar effort currently underway at the Dallas-Fort Worth International Airport. The project should include a survey of several general aviation/reliever airport facilities in the North Central Texas area to assemble both current and forecast Year 2010 airport employment and expenditure data. A regional economic impact model, developed for the Dallas-Fort Worth International Airport work, should be used to calculate existing and forecast economic impacts.

The firm selected to perform the analysis of the economic impacts of aviation on North Central Texas will be recommended by a consultant selection committee. The selection committee will use evaluation criteria and methodology consistent with the scope of services contained in the request for proposals. The executive board of the North Central Texas Council of Governments will render the consultant selection committee's recommendation, and if it is acceptable, will issue an award of contract. The contract will not be awarded, however, prior to receipt of the supplemental FAA planning grant applied for by NCTCOG.

The North Central Texas Council of Governments, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 United States Code 2000d to 2000d-4, and 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, non-discrimination in federally assisted programs of the Department of Transportation issued pursuant to each Act, hereby notifies all bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration of an award.

Respondents must be willing to abide by all the applicable regulations of the Federal Aviation Administration and the United States Department of Transportation, including inspection and audit.

The contractor will comply with all federal and state laws and regulations applicable to subcontractors including, but not limited to, equal employment opportunity, Davis-Bacon Act, and records management.

Replies must be submitted no later than noon, September 9, 1987, to Julie Dunbar, Senior Transportation Planner, North Central Texas Council of Governments, P.O. Drawer COG, Arlington, Texas 76011.

Issued in Austin, Texas, on August 12, 1987

TRD-8706817 William J. Pitstick  
Executive Director  
North Central Texas Council of  
Governments

Filed: August 17, 1987  
For further information, please call (512) 640-3300.



## Public Utility Commission of Texas Consultant Contract Award

This notice of consultant contract award is filed under Texas Civil Statutes, Article 6252-11c. The consultant proposal request was published in the June 5, 1987, issue of the *Texas Register* (12 TexReg 1847).

The selected contractor will provide on-site energy evaluations for Texas school districts under the current program offered by the Energy Resource Center for Texas Schools. The program sends a professional energy evaluator to a requesting school district to assess energy-related operational practices for individual schools, and to identify and analyze lower cost energy saving options.

The firm selected to provide the on-site service is Estes, McClure and Associates, Inc., 3608 West Way, Tyler, Texas 75703.

The total value of the contract is \$40,000. The contract period extends from the date of execution through December 31, 1987.

This service is a program of the Energy Resource Center for Texas Schools, housed in the Public Utility Commission, Energy Efficiency Division, and funded by the petroleum violation escrow (PVE) monies. The energy resource center was established by the legislature to provide Texas school districts with energy management information, training, technical assistance, and energy education materials.

Issued in Austin, Texas, on August 13, 1987  
TRD-8706780 Phillip Holder  
Secretary  
Public Utility Commission of Texas

Filed: August 14, 1987  
For further information, please call (512) 458-0313.



## Texas Water Commission Application for Provisionally- Issued Temporary Permits

Notice is given by the Texas Water Commission of provisionally issued temporary permits issued during the period of July 9-August 10, 1987.

These permits were issued without notice and hearing pursuant to the Texas Water Code, §11.138, and commission rules 31 TAC §§303.91-303.93.

The executive director has reviewed each application and found that sufficient water was available at the proposed point of diversion to satisfy the requirements of the applications as well as all existing water rights. It is further noted that these diversions are for not more than 10 acre-feet of water and for a period of not more than one year. If a complaint is received before or after diversions are commenced, a preliminary investigation shall be made by the executive director to determine whether there is a reasonable basis for such complaint. Should the investigation indicate that there is a probability that diversions could result in injury to the complainant, the permit will be canceled, and the application will revert to the status of a pending application and no further diversions may be made until a public hearing is held. Notice of the hearing shall then be sent to the complaining person.

Information concerning any aspect of these permits may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8218.

Listed are the names of the permittees, diversion point, watercourse, amount of water authorized, period of time of the permit, permit number, and the date issued/administratively-complete.

Kokosing Construction Company, Inc.; from the stream crossing of U.S. 183, approximately one mile south of Gonzales, Gonzales County; Guadalupe River; two acre-feet; one-year period; TP-5735; July 9, 1987

Olmos Construction Company; from the stream crossing near U.S. 90, approximately 3½ miles east of Hondo, Medina County; Hondo Creek, tributary Frio River, tributary Nueces River; 10 acre-feet; one-year period; TP-5731; July 17, 1987

Adams Brothers, Inc.; from the stream crossing of U.S. 175, approximately 3½ miles northwest of Athens, Henderson County; Caney Creek, tributary Cedar Creek, tributary Trinity River; three acre-feet; one-year period; TP-5734; July 17, 1987

A. C. Brooks Construction Company, Inc.; from the stream crossing of FM 3459, approximately 19 miles northwest of Livingston, Polk County; unnamed tributary of the Trinity River; two acre-feet; six-month period; TP-5737; July 27, 1987

Stockton Bridge Company; from the stream crossing near U.S. 90A, approximately 25 miles southeast of Hempstead, Waller County; Willow Fork, tributary Buffalo

Bayou, tributary Houston Ship Channel, tributary San Jacinto River; three acre-feet; one-year period; TP-5738; July 27, 1987

Stockton Bridge Company; from the stream crossing of FM 1093, approximately 12 miles northeast of Richmond, Fort Bend County; Bessies Creek, tributary Brazos River; three acre-feet; one-year period; TP-5739; July 27, 1987

A. K. Gillis & Sons, Inc.; from the stream crossing of U.S. 259, approximately 17 miles north of Dangerfield, Morris County; White Oak Creek, tributary Sulphur River; five acre-feet; one-year period; TP-5740; July 27, 1987

Dean Word Company; from the stream crossing of FM 112, approximately 29 miles east of Georgetown, Williamson County; Brushy Creek, tributary San Gabriel River, tributary Little River, tributary Brazos River; three acre-feet; one-year period; TP-5741; July 27, 1987

Texas Water Development Board; from the stream crossing of U.S. 87/377, approximately 11 miles southeast of Brady, McCulloch County; San Saba River; tributary Colorado River; one acre-foot; three-month period; TP-5742; July 27, 1987

Florida Gas Transmission; from the Nueces River crossing of the pipeline r.o.w., approximately 14 miles northwest of Corpus Christi, Nueces county; Nueces; nine acre-feet; one-year period; TP-5749; July 24, 1987

Transamerican Natural Gas Corporation; from the stream crossing of FM 3459, approximately 19 miles northwest of Zapata, Zapata County; Rio Grande; 10 acre-feet; one-year period; TP-5750; July 27, 1987

Arco Oil and Gas Company; from Falcon Reservoir near U.S. 83, approximately 19 miles northwest of Zapata, Zapata County; Rio Grande; 10 acre-feet; one-year period; TP-5751; July 27, 1987

R. E. Hable Company; from a stream crossing of IH 20, approximately 10 miles west of Canton, Van Zandt County; Canyon Creek, tributary Neches River; two acre-feet; six-month period; TP-5753; July 28, 1987

Colglazier Construction Company; from a stream crossing of FM Road 2790, approximately 14 miles south of San Antonio, Bexar County; Medina River, tributary San Antonio River; three acre-feet; six-month period; TP-5754; July 28, 1987

Young Brothers, Inc.; from a stream crossing of State Highway 6, approximately 16 miles south of Bryan, Brazos County; Peach Creek, tributary Navasota River, tributary Brazos River; two acre-feet; one-year period; TP-5755; July 28, 1987

Young Brothers, Inc.; from a stream crossing of FM Road 2818, approximately four miles north of Bryan, Brazos County; Thompson Creek, tributary Still Creek, tributary Brazos River; two acre-feet; one-year period; TP-5756; July 28, 1987

Haile & Haile, Inc.; from a stream crossing of FM Road 127, approximately 21 miles northeast of Uvalde, Uvalde County; Sabinal River, tributary Nueces River; three acre-feet; six-month period; TP-5757; July 28, 1987

City of Irving; from the stream near Loop 12, approximately seven miles west of the Dallas County Courthouse, Dallas County; West Fork Trinity River, tributary Trinity River; 10 acre-feet; three-month period; TP-5758; July 28, 1987

City of Irving; from the stream near Loop 12, approximately seven miles west of the Dallas County Courthouse, Dallas County; West Fork Trinity River, tributary Trinity River; 10 acre-feet; three-month period; TP-5759; July 28, 1987

City of Irving; from the stream near Loop 12, approximately seven miles west of the Dallas County Courthouse, Dallas County; West Fork Trinity River, tributary Trinity

River; 10 acre-feet; three-month period; TP-5760; July 29, 1987

City of Irving; from the stream near Loop 12, approximately seven miles west of the Dallas County Courthouse, Dallas County; West Fork Trinity River, tributary Trinity River; 10 acre-feet; three-month period; TP-5761; July 29, 1987

City of Irving; from the stream near Loop 12, approximately seven miles west of the Dallas County Courthouse; Dallas County; West Fork Trinity River; tributary Trinity River; 10 acre-feet; three-month period; TP-5762; July 29, 1987

City of Irving; from the stream near Loop 12, approximately seven miles west of the Dallas County Courthouse, Dallas County; West Fork Trinity River, tributary Trinity River; 10 acre-feet; three-month period; TP-5763; July 29, 1987

Allan Construction Company, Inc.; from the stream crossing of U.S. 377, approximately one mile north of the Kimble County Courthouse, Kimble County; North Llano River; tributary Llano River, tributary Colorado River; two acre-feet; one-year period; TP-5765; August 10, 1987

Heidenfels Brothers, Inc; from the stream crossing of FM Road 2678, approximately eight miles south of Refugio County; Mission River, tributary Mission Bay, tributary Copano Bay, tributary Aransas Bay; 10 acre-feet; one-year period; TP-5766; August 10, 1987

Goldsberry Operating Systems Company, Inc.; from the stream crossing of a dirt road, approximately 12 miles southeast of Linden, Cass county; Pete Baugus Branch, tributary Black Cypress Creek, tributary Cypress Creek; one acre-foot; one-month period; TP-5767; August 10, 1987

Milbar Hydro-Test, Inc.; from the stream crossing of the pipeline, approximately eight miles southeast of Richmond, Fort Bend County; Brazos River; 9.5 acre-feet; three-month period; TP-5768; August 10, 1987

Issued in Austin, Texas, on August 14, 1987.

TRD-8706790 Mary Ann Hefner  
Chief Clerk  
Texas Water Commission

Filed: August 14, 1987  
For further information, please call (512) 463-7898.



## Enforcement Orders

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 Standard Industries, Inc., on August 11, 1987, assessing \$16,400 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 12, 1987.

TRD-8706670 Mary Ann Hefner  
Chief Clerk  
Texas Water Commission

Filed: August 12, 1987



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 Greenwood Utility District, on August 13, 1987, assessing \$7,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle McFaddin, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 13, 1987.

TRD-8706789 Mary Ann Hefner  
Chief Clerk  
Texas Water Commission

Filed: August 14, 1987  
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 Rosenberg, on August 11, 1987, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Ramon Dasch, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 13, 1987.

TRD-8706788 Mary Ann Hefner  
Chief Clerk  
Texas Water Commission

Filed: August 14, 1987  
For further information, please call (512) 463-7898.



## Public Hearings

The Texas Water Commission will conduct a public hearing at 10 a.m., September 17, 1987, in Room 119 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, in order to receive testimony concerning the waste load evaluation for Bosque River System in the Brazos River Basin (Segments 1226 and 1246). The public hearing shall be conducted in accordance with the Texas Water Code, §26.011 and §26.037.

The primary purpose of a waste load evaluation is to define treatment levels for wastewater discharges to a segment and specify other program actions that need to be taken in order to attain and maintain the water quality standards, describe nonpoint source pollution from areas tributary to a segment, and identify treatment level alternatives using

receiving stream waste quality simulations. A section containing recommended treatment levels and other recommended actions that are proposed to be taken is also included.

The public is encouraged to attend the hearing and to present relevant evidence of opinions concerning the waste load evaluation. Written testimony which is submitted prior to or during the public hearing will be included in the record. The commission would appreciate receiving a copy of all written testimony at least five days before the hearing. Copies of written testimony and questions concerning the public hearing should be addressed to Daniel E. Beckett, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8452.

A limited number of copies of the draft waste load evaluation are available for review in the Texas Water Commission Library, Room 511, Stephen F. Austin Building, 1700 North Congress Avenue, Austin; and at the Texas Water Commission District 3 Office, 3221 Franklin, Waco; or may be obtained by writing to Dale White, P.O. Box 13087, Austin, Texas 78711-3087, or calling (512) 463-8452. There are no charges for the pre-hearing draft copies of the waste load evaluation; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 30 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas, on August 12, 1987.

TRD-8706820      J. D. Head  
                         Director  
                         Legal Division  
                         Texas Water Commission

Filed: August 17, 1987

For further information, please call (512) 463-8069.



The Texas Water Commission will conduct a public hearing at 2 p.m., October 7, 1987, in Room 201, City Council Chambers, 120 West Third Street, Mt. Pleasant, in order to receive testimony concerning the waste load evaluation for Big Cypress Creek in the Cypress Creek Basin (Segment 0404). The public hearing shall be conducted in

accordance with the Texas Water Code, §26.011 and §26.037.

The primary purpose of a waste load evaluation is to define treatment levels for wastewater dischargers to a segment and specify other program actions that need to be taken in order to attain and maintain the water quality standards, describe nonpoint source pollution from areas tributary to a segment, and identify treatment level alternatives using receiving stream water quality simulations. A section containing recommended treatment levels and other recommended actions that are proposed to be taken is also included.

The public is encouraged to attend the hearing and to present relevant evidence of opinions concerning the waste load evaluation. Written testimony which is submitted prior to or during the public hearing will be included in the record. The commission would appreciate receiving a copy of all written testimony at least five days before the hearing. Copies of written testimony and questions concerning the public hearing should be addressed to Daniel E. Beckett, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8452.

A limited number of copies of the draft waste load evaluation are available for review in the Texas Water Commission Library, Room 511, Stephen F. Austin Building, 1700 North Congress Avenue, Austin; and at the Mount Pleasant Municipal Library, 213 North Madison, Mount Pleasant; or may be obtained by writing to Dale White, P.O. Box 13087, Austin, Texas 78711-3087, or calling (512) 463-8452. There are no charges for the pre-hearing draft copies of the waste load evaluation; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 45 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas, on August 12, 1987.

TRD-8706821      J. D. Head  
                         Director  
                         Legal Division  
                         Texas Water Commission

Filed: August 17, 1987

For further information, please call (512) 463-8069.



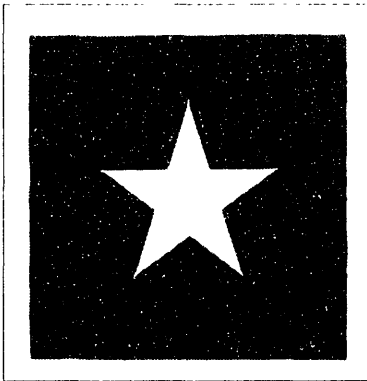


Second Class Postage

**PAID**

Austin, Texas

and additional entry offices



To order a new subscription, or to indicate a change of address, please use this form. When notifying us of an address change, please attach the mailing label from the back of a current issue. Questions concerning existing subscriptions should also include the subscription number from the mailing label.

You may also use this form to request back issues of the *Texas Register*. Please specify the exact dates and quantities of the issues requested. Each copy of a back issue is \$3.00.

Please enter my subscription to the *Texas Register* as indicated below. (I will look for my first issue in about two weeks.)

- ★ 1 year (100 issues) \$80
- ★ 6 months (50 issues) \$60
- ★ Payment enclosed
- ★ Bill me

For information concerning the *Texas Register*, please call (512) 463-5561, or write to P.O. Box 13824, Austin, Texas 78711-3824.

Please make checks payable to the Secretary of State. Subscription fees are not refundable.

★ Change of Address  
(Please attach mailing label)

★ Back issues requested  
(Please specify dates)

-----  
Name

-----  
Organization

-----  
Occupation

-----  
Telephone

-----  
Address

-----  
City

-----  
State

-----  
Zip Code

-----  
For office use only