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Volume 6, Number 90, December 4, 1981  
Pages 4409 - 4492

# TEXAS REGISTER

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Office of the Secretary of State

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TEXAS DOCUMENTS

The *Texas Register* is currently in the process of converting to the numbering system found in the *Texas Administrative Code* (TAC). To aid the reader in this conversion, both the 10-digit *Register* number and the new TAC number will be listed for agencies whose rules have been published in the TAC. Emergency, proposed, and adopted rules sections of the *Register* are divided into two classifications: codified and noncodified. Codified rules appear in title number order. Non-codified rules appear in alphabetical order as they have in the past. An "Index of TAC Titles Affected" appears at the end of this issue.

Titles 1, 4, 7, 10, 13, 16, 19, 22, 25, 31, 34, 37, and 43 only of the TAC have now been published. Documents classified in the *Texas Register* to titles not yet published and certain documents affecting titles of the code have been accepted in the non-TAC format and may be renumbered or revised, or both, when initially codified in the TAC.

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

- 1 is the title (agencies grouped together by subject title which are arranged alphabetically)
- TAC is the *Texas Administrative Code*
- §27.15 is the section number (27 represents the chapter number and 15 represents the individual rule within the chapter)

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Latest Texas Code Reporter  
(Master Transmittal Sheet): No. 6, July 81

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*Cover illustration represents Elisabet Ney's statue of Stephen F. Austin, which stands in the foyer of the State Capitol.*

# TEXAS REGISTER

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*David A. Dean*  
Secretary of State

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Texas Civil Statutes, Article 4399, requires the Attorney General of Texas to give written opinions to certain public officials. The Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §7, requires that a governmental body which receives a request for release of records seek a decision of the attorney general if the governmental body determines that the information may be withheld from public disclosure. Opinions and open records decisions issued under the authority of these two statutes, as well as the request for opinions and decisions, are required to be summarized in the *Texas Register*.

Copies of opinion requests may be obtained from the Opinion Committee, Attorney General's Office, Supreme Court Building, Austin, Texas 78711, telephone (512) 475-5445. Published opinions and open records decisions may be obtained by addressing a letter to the File Room, Fourth Floor, P.O. Box 12548, Austin, Texas 78711-2548, or by telephoning (512) 475-3744. A single opinion is free; additional opinions are \$1.00 a copy.

## Requests for Opinions

### Summary of Request for Opinion RQ-752

Request from Lloyd Doggett, chairman, Subcommittee on Consumer Affairs, Texas Senate, Austin.

#### *Summary of Request:*

(1) Which standards apply to nonphysician professionals as defined in Texas Civil Statutes, Article 5561h, who are supervised by physicians, those of §5.08 of the Medical Practice Act, Senate Bill 5, or those of Texas Civil Statutes, Article 5561h?

(2) Which standards apply to nonphysician professionals as defined in Texas Civil Statutes, Article 5561h, who are not supervised by physicians, those of §5.08 of the Medical Practice Act, Senate Bill 5, or those of Texas Civil Statutes, Article 5561h?

Issued in Austin, Texas, on November 23, 1981.

Doc. No. 818570 Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

### Summary of Request for Opinion RQ-753

Request from Lloyd Doggett, chairman, Subcommittee on Consumer Affairs, Texas Senate, Austin.

*Summary of Request:* How should nominations be made for the district judgeships created in Travis County by House Bill 958 of the 67th Legislature?

Issued in Austin, Texas, on November 23, 1981.

Doc. No. 818571 Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

### Summary of Request for Opinion RQ-754

Request from Lawrence J. Souza, attorney for San Antonio Independent School District, San Antonio.

#### *Summary of Request:*

(1) Does a request for release of information and appointment of a "representative" under the Open Records Act release information in a personnel file pertaining to the employee's mental health?

(2) Does Exhibit (A) constitute a release of the privilege of confidentiality as such confidentiality is contemplated by the Mental Health Code?

(3) Where a person's mental health has been brought into question by examination before competent psychiatrists, and where the evidence of at least "diminished capacity" exists and is in the possession of the holder of files and personnel records which contain information otherwise privilege, can such person who may be suffering under a diminished mental capacity, deliver a valid "consent" to release of personnel files including mental health records?

Issued in Austin, Texas, on November 23, 1981.

Doc. No. 818572 Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

## Opinions

### Summary of Opinion MW-391 (RQ-528)

Request from Roy Blake, chairman, Committee on Administration, Texas Senate, Austin, concerning whether residences owned by the Texas Department of Corrections and used by its employees are taxable.

*Summary of Opinion:* The use of residential property owned by the Department of Corrections to provide housing as compensation to its employees constitutes a public use of the property. The property is not subject to ad valorem taxation.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818651 Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

### Summary of Opinion MW-392 (RQ-686)

Request from Henry Wade, criminal district attorney, Dallas County, concerning representation of corporations by nonattorneys in small claims court.

*Summary of Opinion:* A corporation must be represented by an attorney in county court or county court at law in cases involving an appeal to that court from the small claims court. Section 13 of Article 2460a, Texas Civil Statutes, does not require a contrary result.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818652 Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

## Open Records Decisions

### Summary of Open Records Decision ORD-285 (RQ-607)

Request from Wade Adkins, city attorney, El Paso, concerning whether investigative report regarding misconduct in city tax office is available under the Open Records Act.

**Summary of Decision:** The City of El Paso received a request under the Open Records Act for an investigative report on misconduct in the city tax office. The report was compiled by the police department at the request of the mayor. The synopses of witness interviews are excepted from disclosure by the informer's privilege pursuant to §3(a)(1). As to the report itself, the opinions and recommendations of the investigator are excepted from disclosure by §3(a)(11), the interagency memorandum exception.

Issued in Austin, Texas, on November 20, 1981.

Doc. No. 818495      Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

### Summary of Open Records Decision ORD-286 (RQ-650)

Request from Robert V. Shattuck, Jr., city attorney, Galveston, concerning availability of records maintained by city fire marshal under Open Records Act.

**Summary of Decision:** The City of Galveston received a request under the Open Records Act for the report of an arson investigation by the city fire marshal. Certain basic information was made available to the requestor in accordance with the guidelines delineated in Open Records Decision 127 (1976). Since the matter is still under investigation and no decision to prosecute has been made, the rest of the file may be withheld from disclosure under §3(a)(8), the law enforcement exception.

Issued in Austin, Texas, on November 20, 1981.

Doc. No. 818496      Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(d), allows an agency to take emergency action on a rule after determining what it considers to be an imminent peril to the public health, safety, or welfare. The rule may become effective immediately on filing with the Texas Register Division, or on a stated date less than 20 days after filing, for no more than 120 days, renewable once for no more than 60 days. An agency must submit written reasons, published in the *Register*, for emergency action on a rule. The notice of emergency action must also include a statement of the legal authority under which the emergency action is promulgated and the text of the emergency action, in compliance with the rules of the Texas Register Division. The certification information, which includes the effective date of the emergency action and the expiration date, follows each published submission of emergency action. A telephone number for further information is also published.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Noncodified."

**Symbology**—Changes to existing material are indicated in **bold italics**. [Brackets] indicate deletion of existing material.

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## CODIFIED

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### TITLE 22. EXAMINING BOARDS

#### Part X. State Board of Morticians

##### Chapter 203. Licensing and Enforcement— Specific Substantive Rules

The State Board of Morticians adopted on an emergency basis new §203.17 (387.02.00.017) concerning procedures for petitioning for adoption of rules. The board finds that an imminent peril to the public health, safety, or welfare requires adoption of this rule on fewer than 30 days' notice because this rule provides the procedures for any citizen to submit a petition to the board for adoption, amendment, or repeal of a rule concerning, among other things, the public health, safety, or welfare.

The following section was adopted under the authority of Texas Civil Statutes, Article 6252-13a, §11.

**§203.17 (387.02.00.017). Procedures for the Petition for Adoption of Rules.**

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

- (1) Board—State Board of Morticians.
- (2) Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
- (3) Rule—Any board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the board. The term includes the amendment or repeal of a prior rule. It does not include statements concerning only the internal management or organization of the board not affecting private rights or procedures.
  - (b) Submission of petitions. Any interested person may submit a petition to the board requesting the adoption, amendment, or repeal of a rule. Petitions will be deemed submitted only when actually received in printed or typewritten form by the executive secretary.
  - (c) Contents of petitions. Each petition will clearly state:
    - (1) the proposed rule(s), including the specific language recommended;
    - (2) a brief explanation of the proposed rule;
    - (3) the statutory or other authority under which the rule is proposed to be promulgated, included a concise explanation of the particular statutory or other provisions under which the rule is proposed;
    - (4) the rationale or justification for the adoption, amendment, or repeal of the rule, including the public benefit to be expected.
  - (d) Board advised. The executive secretary will advise the board of all requests submitted by interested persons for the adoption, amendment, or repeal of a rule when submitted in accord with this procedure.
  - (e) Consideration and disposition. The board will consider within 60 days after the submission of a petition and may either deny the petition or instruct the executive secretary to initiate rulemaking proceedings in accordance with §5 of the Administrative Procedure and Texas Register Act. In the event a petition is denied, the executive secretary will advise the interested person in writing of the denial and will state the reason for the denial of the board.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818602      John W. Shocklee  
Executive Secretary  
State Board of Morticians

Effective Date: November 25, 1981

Expiration Date: March 15, 1982

For further information, please call (512) 442-6721.



# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part II. Texas Parks and Wildlife Department

### Chapter 57. Fisheries

#### Final Destination

The Texas Parks and Wildlife Commission in a public hearing held November 5, 1981, adopted on an emergency basis new §57.391 relating to the definition of final destination as it applies to Texas Parks and Wildlife Code, §66.216(a). The section, adopted to comply with the provisions of House Bill 1000, became effective November 24.

Since the definition of final destination is not included in §6 of House Bill 1000 (codified as §66.216 of the Texas Parks and Wildlife Code), this section provides an administrative definition to inform the public of its meaning and allow for its proper enforcement.

The commission finds that imminent peril to the public welfare requires the adoption of §57.391 on an emergency basis to allow for the proper enforcement of §66.216 of the Code and to prevent the waste of finfish caught in coastal waters during transportation to the fisherman's permanent residence.

Section 57.391 was adopted on an emergency basis under the authority of Texas Parks and Wildlife Code, Chapter 66.

*§57.391. Definition of Final Destination.* Final destination means a place either on the mainland, a peninsula, or a barrier island where a fisherman finally lands his catch and does not further transport his fish by boat. Final destination does not include jetties or piers.

Issued in Austin, Texas, on November 24, 1981.

Doc. No. 818536      Maurine Ray  
   Administrative Assistant  
   Texas Parks and Wildlife Department

Effective Date: November 24, 1981

Expiration Date: March 14, 1982

For further information, please call (512) 479-4862.



Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, an agency must give at least 30 days notice of its intention to promulgate certain action on a rule. The purpose of proposing rule action is to give interested persons an opportunity to review the proposal and make oral or written comments. "Opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members." Proposed action is effective as notice on the date published in the *Register*. Unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice, the proposed date of adoption is 30 days after publication. The notice must include a brief explanation of the proposed action; a fiscal impact statement; a request for comments on the proposed action from any interested person; the text of the proposed action, in compliance with the rules of the Texas Register Division; and a statement of the legal authority under which the proposed action is to be promulgated. The certification information, which includes the earliest possible date that the agency may file notice to adopt the proposal, follows each published submission of proposed action. A telephone number for further information is also published.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Noncodified."

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## CODIFIED

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### TITLE 4. AGRICULTURE

#### Part II. Texas Animal Health Commission

#### Chapter 35. Brucellosis

#### Subchapter A. Eradication of Brucellosis in Cattle

The Texas Animal Health Commission proposes amendments to §§35.1, 35.2, 35.4, and 35.5 (177.03.01.020, .021, .023, and .024) concerning brucellosis. These amendments require official calfhood vaccination of all heifers born after January 1, 1982, which are being moved into the state; being moved from one control area to the other; or changing ownership unless the heifers are consigned to slaughter, quarantined

feedlot, quarantined pasture or "S" branded and consigned to a "special regulated pasture." A definition has been added to the newly designated "special regulated pasture" describing it as a grazing facility receiving nonvaccinated heifers under 18 months of age. In addition, the requirement for official calfhood vaccination of heifers in an infected herd is added to the provision of a herd plan.

Robert Mikeska, director of administration, has determined that for the first five-year period the rules will be in effect there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Mikeska has also determined that for each year of the first five years the rule is in effect that:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be higher prices for vaccinated heifers versus nonvaccinated heifers; free movement for vaccinated heifers versus nonvaccinated heifers; producing immunity with vaccinations; and semipermanent individual identification.

(B) The possible economic cost to individuals who are required to comply with the rule as proposed will be a market charge to the producer. This charge would be from \$1.00 to \$2.00 per head vaccinated. However, this cost would be offset by higher market price per head. This increase in market price could be greater than the cost per vaccination.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, 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.

Peter Nolan  
November 25, 1981

The amendments are proposed under Texas Civil Statutes, Article 7014f-1, which provides this agency with the authority to adopt rules relating to the control and eradication of disease in livestock.

§35.1 (177.03.01.020). *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

*Special regulated pasture*—A designated premise in either Class A or B control areas for the purpose of receiving, identifying, and grazing nonvaccinated heifers under the age of 18 months. A signed agreement between the owner or operator and the commission shall be required to establish the special regulated pasture. Cattle moving from this pasture shall move direct to slaughter, quarantined feedlot, quarantined pasture, or another special regulated pasture accompanied by an "S" permit.

§35.2 (177.03.01.021). *General Requirements.*

(a)-(j) (No change.)

(k) Requirements following classification of cattle as reactors or suspects—

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

(3) All cattle in the affected herd, except steers and spayed heifers over six months of age, shall be confined to the premise until the herd plan is completed or the herd is sold for slaughter, except calves under six months of age that are

nursed by brucellosis-exposed cows may move from the premise within 10 days after a negative brucellosis test on the dam; or calves under six months of age that are nursed by reactor or exposed cows may move from the premise provided they have been weaned for not less than 30 days prior to movement; however, officially vaccinated calves under 12 months of age and steers of any age in a herd known to be affected, but which is following an approved individual herd plan, may move from any area into any area until January 1, 1982. The individual herd plan for these herds shall include:

(A) the provision for negative herd tests with the first negative herd test occurring not less than 30 days after the removal and slaughter of all previous reactors and the second test not less than 120 days following removal of the last reactor.

(B) *the provision that all female cattle between 120 and 365 days of age that are part of the herd shall be officially calfhood vaccinated.* Also, it is provided that the provision for official vaccinates positive on the card test or having a titer between +2 at 1:10 or +4 at 1:20 on the CF test in AV herds on an otherwise negative second test shall be classified as suspects and be held as an individual herd until they are card negative and less than +2 at 1:10 on the CF test. Movement of cattle from the herd following the second negative test will be permitted, except that following movement, adult vaccinated cattle shall be subject to a retest at destination between 120 and 180 days after arrival. Dairy herds shall be negative to the last milk ring test prior to completion of a herd plan. Individual adult vaccinated dairy cattle require less than a 1:16 titer on individual samples of all quarters for movement other than to slaughter. For all affected beef and dairy herds an additional herd test not less than 10 months nor more than 16 months from removal of the last reactor will be included in the test provision.

(1)-(v) (No change.)

**§35.4 (177.03.01.023). Class A Brucellosis Control.**

(a) (No change.)

(b) Control area. Area to include the following counties: Andrews, Archer, Armstrong, Bailey, Bandera, Baylor, Bell, Blanco, Borden, Bosque, Brewster, Briscoe, Brown, Burnet, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Eastland, Ector, Edwards, El Paso, Erath, Fisher, Floyd, Foard, Gaines, Garza, Gillespie, Glasscock, Gray, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, *Johnson*, Jones, Kendall, Kent, Kerr, Kimble, Kinney, King, Knox, Lamb, Lampasas, Lipscomb, Llano, Loving, Lubbock, Lynn, McCulloch, Martin, Mason, Maverick, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Sterling, Stephens, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Wheeler, Wichita, Wilbarger, Williamson, Winkler, Yoakum, Young, and Zavala.

(c) Entry requirements for cattle from an area of different classification—

(1) To farm, ranch, or feedlot.

(A) *All heifers born after January 1, 1982, entering the area from any other state or area consigned to any destination other than direct to a livestock market, slaughter, quarantined feedlot, or quarantined pasture shall be officially calfhood vaccinated prior to entry and accompanied by proof of vaccination, unless all such heifers are "S" branded and consigned to a "special regulated pasture."*

(B) All nonexempt cattle over 18 months of age (age determined by the loss of the central pair of temporary incisors) except cattle from certified free states or herds are required to have an "E" permit and a negative brucellosis test within 30 days prior to entry. Such cattle shall be held as an individual herd and shall be confined on the premise of destination and be retested in not less than 45 days nor more than 120 days after arrival. Cattle which originate from commuter herds shall be exempt from testing within 30 days prior to entry and will further be exempt from follow-up testing 45-120 days after arrival as long as movement is limited between commuter herds.

(2) To livestock markets.

(A) *All heifers born after January 1, 1982, included in a consignment shall be officially calfhood vaccinated either prior to entry or prior to movement from the market if sold for movement to a destination other than slaughter, quarantined feedlot, or quarantined pasture. In lieu of vaccination, heifers may be "S" branded prior to movement from the market and consigned to a "special regulated pasture."*

(B) All cattle in a consignment over 18 months of age (age determined by the loss of the central pair of temporary incisors) may enter into a market without an "E" permit and without a brucellosis test, but shall be tested unless all such cattle are "S" branded prior to sale, except cattle tested within 30 days prior to entry, exempt cattle and those from certified free states or herds. All cattle from the same herd shall be considered as one consignment. All such cattle moving to farm or ranch shall be held as an individual herd and confined to the premise of destination and be retested in not less than 45 days nor more than 120 days after arrival. Cattle identified as being affected are required to have an "S" or "B" permit.

(3)-(5) (No change.)

(d) Requirements for change of ownership within the Class A control area—

(1) Farm and ranch to farm and ranch

(A) *All heifers born after January 1, 1982, in all consignments other than direct to a livestock market, slaughter, quarantined feedlot, or quarantined pasture shall be officially calfhood vaccinated prior to movement from the premise of origin and accompanied by proof of vaccination, unless all such heifers are "S" branded and consigned to a "special regulated pasture."*

(B) All nonexempt cattle over 18 months of age (age determined by the loss of the central pair of temporary incisors), except cattle from certified free herds, shall have a negative brucellosis test within 30 days prior to movement.

(2) Through livestock markets.

(A) *All heifers born after January 1, 1982, included in a consignment shall be officially calfhood vaccinated either prior to entering a market or prior to movement from the market if sold for movement to a destination other than slaughter, quarantined feedlot, or quarantined pasture. In lieu of vaccination, heifers may*

be "S" branded prior to movement from the market and consigned to a "special regulated pasture."

(B) All cattle in a consignment over 18 months of age (age determined by the loss of the central pair of temporary incisors) may enter into a market without an "E" permit and without a brucellosis test, but shall be tested prior to sale, except cattle tested within 30 days prior to entry, exempt cattle, and those from certified free states or herds. All cattle from the same herd shall be considered as one consignment.

(3)-(5) (No change.)

§35.5 (177.03.01.024). *Class B Brucellosis Control Area.*

(a) (No change.)

(b) Control area. Area to include the following counties: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Bowie, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Cooke, Dallas, Delta, Denton, DeWitt, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, [Johnson,] Karnes, Kaufman, Kenedy, Kleberg, Lamar, LaSalle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, McLennan, McMullen, Madison, Marion, Matagorda, Medina, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Starr, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Wise, Wood, and Zapata.

(c) Entry requirements for cattle—

(1) To farm, ranch, or feedlot.

(A) *All heifers born after January 1, 1982, entering the area from any other state or area consigned to any destination other than direct to a livestock market, slaughter, quarantined feedlot, or quarantined pasture shall be officially calfhood vaccinated prior to entry and accompanied by proof of vaccination, unless all such heifers are "S" branded and consigned to a "special regulated pasture."*

(B) All nonexempt cattle over 18 months of age (age determined by the loss of the central pair of temporary incisors) except cattle from certified free states or herds are required to have an "E" permit and a negative brucellosis test within 30 days prior to entry. Such cattle shall be held as an individual herd and shall be confined on the premise of destination and be retested in not less than 45 days nor more than 120 days after arrival. Cattle from the Class A control area are exempt from the "E" permit and retest requirements. Cattle which originate from commuter herds shall be exempt from testing within 30 days prior to entry and will further be exempt from follow-up testing 45-120 days after arrival as long as movement is limited between commuter herds.

(2) To livestock markets.

(A) *All heifers born after January 1, 1982, included in a consignment shall be officially calfhood*

*vaccinated either prior to entry or prior to movement from the market if sold for movement to a destination other than slaughter, quarantined feedlot, or quarantined pasture. In lieu of vaccination, heifers may be "S" branded prior to movement from the market and consigned to a "special regulated pasture."*

(B) All cattle in a consignment over 18 months of age (age determined by the loss of the central pair of temporary incisors) may enter into a market without an "E" permit and without a brucellosis test, but shall be tested unless all such cattle are "S" branded prior to sale, except cattle tested within 30 days prior to entry, exempt cattle, and those from certified free states or herds. All cattle from the same herd shall be considered as one consignment. Such cattle moving to farm or ranch shall be held as an individual herd and shall be confined on the premise of destination and be retested in not less than 45 days nor more than 120 days after arrival. Cattle from the Class A control area are exempt from the retest requirement. Cattle identified as being affected are required to have an "S" or "B" permit.

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

(d) Requirements for change of ownership within the Class B control area—

(1) Farm and ranch to farm and ranch or feedlot.

(A) *All heifers born after January 1, 1982, in all consignments other than direct to a livestock market, slaughter, quarantined feedlot, or quarantined pasture shall be officially calfhood vaccinated prior to movement from the premise of origin and accompanied by proof of vaccination, unless all such heifers are "S" branded and consigned to a "special regulated pasture."*

(B) All nonexempt cattle over 18 months of age (age determined by the loss of the central pair of temporary incisors), except cattle from certified free herds, shall have a negative brucellosis test within 30 days prior to movement.

(2) Through livestock markets.

(A) *All heifers born after January 1, 1982, included in a consignment shall be officially calfhood vaccinated either prior to entering a market or prior to movement from the market if sold for movement to a destination other than slaughter, quarantined feedlot, or quarantined pasture. In lieu of vaccination, heifers may be "S" branded prior to movement from the market and consigned to a "special regulated pasture."*

(B) All cattle in a consignment over 18 months of age (age determined by the loss of the central pair of temporary incisors) may enter into a market without an "E" permit and without a brucellosis test, but shall be tested unless all such cattle are "S" branded prior to sale, except cattle tested within 30 days prior to entry, exempt cattle, and those from certified free states or herds. All cattle from the same herd shall be considered as one consignment.

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

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818643

John W. Holcombe, DVM

Executive Director

Texas Animal Health Commission

Proposed Date of Adoption: January 4, 1982

For further information, please call (512) 475-4111.

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 9. Liquefied Petroleum-Gas Division

##### Subchapter A. General Applicability and Requirements

The Railroad Commission of Texas proposes new §9.30 (051.05.03.310) concerning submission of drawings, plans, reports, and specifications. This action is instituted to fill the void that currently exists in the Liquefied Petroleum-Gas Division safety rules regarding submission of drawings. Adoption of this rule will enable the division to determine if the subject of the submission complies with safety rules before it is operated or used in this state. The rule also provides for a hearing, should the submission be denied administrative approval.

Hugh F. Keepers, Liquefied Petroleum-Gas Division, director, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Keepers has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be providing an opportunity for hearings when administrative approval of plans, etc. is denied.

(B) There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Hugh F. Keepers, director, Liquefied Petroleum-Gas Division, Railroad Commission of Texas, P. O. Drawer 12967, 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.

Walter Earl Lilie  
November 23, 1981

The new section is proposed under Texas Civil Statutes, Texas Natural Resources Code, Article 113.051, which provides the Railroad Commission of Texas with the authority to promulgate and adopt safety rules and standards for the liquefied petroleum-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

*§9.30 (051.05.03.310) Submission of Drawings, Plans, Reports, and Specifications* The division director or his delegate shall examine all drawings, plans, reports, and specifications required by statute or commission regulation to be submitted for approval. The director shall determine whether the design, manufacture, construction, or use of the depicted item, system, operation, procedure, laboratory, or installation complies with division rules. The director shall also determine whether the subject of the submission poses a threat to the health, welfare, and safety of the general public. If the director declines administratively to approve the submission, he shall notify the applicant in writing of the deficiencies. The applicant may modify the submission and resubmit it for

approval, or may request a hearing on the matter in accordance with §9.21(d)-(h) of this title (relating to Exception to Safety Rules). The subject of the submission shall not be operated or used in liquefied petroleum-gas service in this state until approved by the director or by the commission following a hearing.

Issued in Austin, Texas, on November 23, 1981.

Doc. No. 818521      Hugh F. Keepers, Director  
Liquefied Petroleum-Gas Division  
Railroad Commission of Texas

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 445-1186.

## TITLE 22. EXAMINING BOARDS

### Part X. State Board of Morticians

#### Chapter 203. Licensing and Enforcement— Specific Substantive Rules

(Editor's note: The State Board of Morticians proposes for permanent adoption the rule it adopts on an emergency basis in this issue. The text of the rule appears in the Emergency Rules section.)

The State Board of Morticians proposes new §203.17 (387.02.00.017) concerning procedures for petitioning for the adoption of rules.

John W. Shocklee, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Shocklee has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be a mechanism in which the general public can petition the board to adopt, amend, or repeal rules.

(B) There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John W. Shocklee, executive secretary, 1513 IH 35 South, Austin, Texas 78741.

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

John W. Shocklee  
November 25, 1981

The new section is proposed under Texas Civil Statutes, Article 6252-13a, §11, which provides the State Board of Morticians with the authority to prescribe by rule the form for petitions for adoption of rules.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818603      John W. Shocklee  
Executive Secretary  
State Board of Morticians

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 442-6721.

## Part XXI. Texas State Board of Examiners of Psychologists

### Chapter 463. Applications

(Editor's note. The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas State Board of Examiners of Psychologists, 5555 North Lamar, Suite H-126, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Texas State Board of Examiners of Psychologists proposes the repeal of §463.2 and §463.4 (400.02.00.002 and .004), concerning requirements for certification and licensure, and fees.

Patti Bizzell, executive secretary, has determined that for the first five-year period the repeal will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the repeal.

The executive secretary has also determined that for each year of the first five years the repeal as proposed is in effect:

(A) There are no public benefits anticipated as a result of enforcing the repeal as proposed

(B) There is no economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Patti Bizzell, Texas State Board of Examiners of Psychologists, 5555 North Lamar, Suite H-126, Austin, Texas 78757.

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

Patti Bizzell  
November 24, 1981

The repeal is proposed under Texas Civil Statutes, Article 4512c, §8(a), which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the constitution and laws of this state which are reasonably necessary for the proper performance of its duties.

§463.2 (400.02.00.002). *Requirements for Certification and Licensure.*

§463.4 (400.02.00.004). *Fees.*

Issued in Austin, Texas, November 24, 1981.

Doc. No. 818561      Patti Bizzell  
                                 Executive Secretary  
                                 Texas State Board of Examiners  
                                 of Psychologists

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 458-3295.

### Chapter 465. Rules of Practice

The Texas State Board of Examiners of Psychologists proposes to amend and renumber existing §§465.2-465.7 (400.03.00.002-.007) and §§465.9-465.18 (400.03.00.009-.018), and to add new §465.17 and §465.18.

Patti Bizzell, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

The executive secretary has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be purging the rules for renumbering and clarifying the board's procedure and position on rules of practice for the profession of psychology.

(B) There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Patti Bizzell, Texas State Board of Examiners of Psychologists, 5555 North Lamar, Suite H-126, Austin, Texas 78757.

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

Patti Bizzell  
November 25, 1981

The amendments and new sections are proposed under Texas Civil Statutes, Article 4512c, §8(a), which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state, which are reasonably necessary for the proper performance of its duties.

§465.1 [§465.2 (400.03.00.002)] *Consultants.* Consultants may be listed on letterhead only if there is a contractual arrangement with the licensed psychologist and if the consultant's status is indicated on that letterhead.

§465.2 [§465.3 (400.03.00.003)]. *Release of Patient or Client Information.* A psychologist may not intentionally reveal information about a patient or client without written authorization by the patient, client, or guardian, or without a proper court order, or unless a state or federal statute requires it. **A psychologist is responsible for knowing and observing laws regarding confidentiality.**

§465.3 [§465.4 (400.03.00.004)] *Psychological Associates Listings and Reports.* A psychological associate may be listed on letterhead if the following format is used: Name, Ph.D., Psychologist, followed by name, degree, psychological associate. Any time the psychological associate is listed, the psychologist must be listed as well. Reports written by a psychological associate must be signed by the supervising psychologist.

§465.4 [§465.5 (400.03.00.005)]. *Areas of Practice.* The board's code of ethics requires that a psychologist practice only within those areas in which he *or she* is competent by reason of his *or her* training *and/or* experience [or both].

§465.5 [§465.6 (400.03.00.006)]. *Individual/Corporate Practice.* A psychologist may incorporate. If he or she incorporates, this must be accomplished under the Professional Corporation Act. All members of the professional corporation must be licensed by the board. For any practice of psychology, when an assumed name is used, the name of at least one psychologist must also be listed in conjunction with the assumed name (for example, Psychology Clinic of West Buffalo—A.B. See, Ph.D.). Any assumed name used must not be false, deceptive, or misleading.

**§465.6** [§465.7 (400.03.00.007)]. *Employment by Psychologists.* Where a psychologist employs a person to perform psychological functions, the contract between the psychologist and the employee must be on file with the board for each situation. A certified psychologist may perform psychological services as the employee of a licensed psychologist or within the confines of an organization or corporation only if an approved contract of employment, specifying the nature and extent of supervision by a licensed psychologist, is on file with the board.

**§465.7** [§465.9 (400.03.00.009)]. *Status of Psychological Associates [Associate].* A psychological associate may not practice independently. A psychological associate may offer psychological services only as the employee of an exempt agency or a licensed psychologist, or in an employment situation where a psychological associate and a licensed psychologist who is the supervisor are both employed full time by an agency or institution approved by the board, or in a supervisory relationship specifically approved by the board. A legally binding supervisory contract among the psychologist, the psychological associate, and the employer (if other than the psychologist) must be on file with the board at all times.

**§465.8** [§465.10 (400.03.00.010)]. *Wages of Psychological Associates.* Psychological associates **must** [may] be employed [only] on a **salaried** [salary] basis, even if it is salary by the hours. **All appropriate taxes must be withheld by the employing psychologist. Payment to the psychological associate may not be contingent upon collections by the psychologist/supervisor.**

**§465.9** [§465.11 (400.03.00.011)]. *Supervision Responsibility.* Adequate supervision is the responsibility of the supervising licensed psychologist and includes an adequate number of hours for effective supervision. The supervising psychologist recognizes that full professional responsibility for the psychological activities of persons supervised rests with the licensed psychologist

**§465.10** [§465.12 (400.03.00.012)]. *Applicability of the Act and Rules of the Board* Irrespective of any training other than that which is primarily psychological which the psychologist or psychological associate may have completed, or any other certification or licensure which the psychologist or psychological associate may possess, or any other professional title or label he or she may claim, anyone certified as a psychologist or psychological associate is bound by the provisions of the Act and the rules of the board in rendering psychological services for compensation.

**§465.11** [§465.13 (400.03.00.013)]. *Termination of Employment.* On termination of employment in an agency, the psychologist should cooperate in facilitating the transfer of the agency's patients or clients to other staff members of the agency. Upon termination of the psychologist's employment, patient or client files remain the property of the employing agency. This section is not intended to infringe on the right of individual patients or clients to choose their own therapist.

**§465.12** [§465.14 (400.03.00.014)]. *Qualification of Supervisor* Documented experience offered to meet the licensing requirement of one year under the supervision of a **licensed** psychologist [licensed under the provisions of this Act] will be accepted by the board only if the supervisor's area of competence was appropriate for the experience offered. Licensed psychologists who offer supervision outside their area of com-

petence will be considered by the board to be in violation of the code of ethics.

**§465.13** [§465.15 (400.03.00.015)]. *Disposition of Practice by a Psychologist or by the Estate of a Psychologist.* A psychologist or the estate of a psychologist has the right to sell a practice to another licensed psychologist. The psychologist or the administrator or executor of the estate should be informed that he or she is to notify the patients/clients that on a given date (reasonable time) the patient's/client's records will be transferred to the referent unless another referent has been named by the patient/client. The psychologist who assumes the practice may state his willingness to work with the patient/client and must offer to effect an appropriate referral in the event the patient/client wishes to see another professional. If the patient/client so elects, the psychologist who assumes the practice is obligated to forward the selling psychologist's or the deceased psychologist's file on the patient/client to the new referent. Arrangements regarding accounts receivable and other financial involvements of the practice being transferred must be resolved by negotiation.

**§465.14** [§465.16 (400.03.00.016)]. *Display of License and Renewal Notice.* Each licensee must display the original license or an official duplicate issued by the board and the current renewal notice in a conspicuous place in the principle office where the psychologist practices. Any reproduction displayed in lieu of the above is unauthorized by the board.

**§465.15** [§465.17 (400.03.00.017)]. *Use of Specialty Designations.* A psychologist may not use a specialty designation to describe his or her practice without adequate demonstrated training and experience in that specialty area.

**§465.16** [§465.18 (400.03.00.018)]. *Use of Statements Regarding Services.* A psychologist may not make any false, deceptive, or misleading statements regarding any psychological services.

**§465.17.** *Continuity of Care.* A psychologist must cooperate in the continuity of care of clients by providing appropriate information to succeeding licensed professionals. Compliance with confidentiality statutes is required.

**§465.18.** *Definition of Supervision.* Supervision is defined as an individual session between a psychologist and a supervisee.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818653      Patti Bizzell  
Executive Secretary  
Texas State Board of Examiners  
of Psychologists

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 458-3295.

## Chapter 467. Announcements

The Texas State Board of Examiners of Psychologists proposes amendments to §467.5 (400.04.00.005) concerning announcements.

Patti Bizzell, executive secretary, has determined that for the first five-year period the rule will be in effect, there will

be no fiscal implications to state or local government as a result of enforcing or administering the rule.

The executive secretary has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be renumbering the rules to be consistent with the *Texas Administrative Code*

(B) There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Patti Bizzell, Texas State Board of Examiners of Psychologists, 5555 North Lamar, Suite H-126, Austin, 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.

Patti Bizzell  
November 25, 1981

The amendments are proposed under Texas Civil Statutes, Article 4512c, §8(a), which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the constitution and laws of this state which are reasonably necessary for the proper performance of its duties.

**§467.1 [467 5 (400.04.00.005)]. Local Professional Societies Listing in Yellow Pages** Local professional societies whose membership is open to all licensed psychologists in good standing, and whose purpose, in the determination of the board, is public service and information, and whose request has been received and approved by the board, may list the society's name, address, and telephone number in the yellow pages for the purpose of referral to a licensed psychologist.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818654 Patti Bizzell  
Executive Secretary  
Texas State Board of Examiners  
of Psychologists

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 458-3295.

**Chapter 471. Renewal**

The Texas State Board of Examiners of Psychologists proposes to amend §471.2 concerning renewals.

Patti Bizzell, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government, as a result of enforcing or administering the rule.

The executive secretary has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be renumbering the rules to be consistent with the *Texas Administrative Code*.

(B) There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Patti Bizzell, Texas State Board of Examiners of Psychologists, 5555 North Lamar, Suite H-126, Austin, 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.

Patti Bizzell  
November 25, 1981

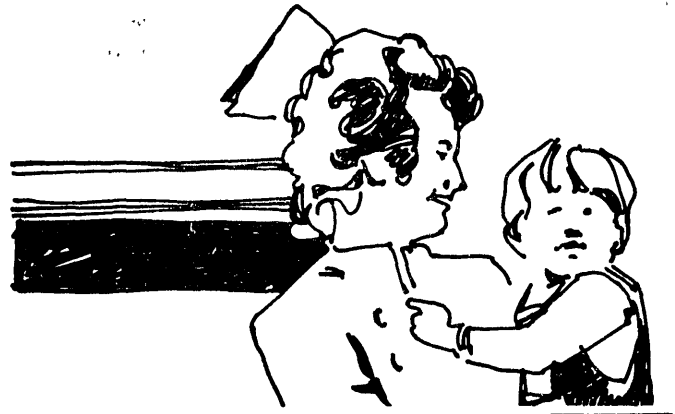
The amendment is proposed under Texas Civil Statutes, Article 4512c, §8(a), which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the constitution and laws of this state which are reasonably necessary for the proper performance of its duties.

**§471.2. Renewal Forms for Psychological Associates.** Psychological associate renewal forms shall contain a space for indication of current supervisor. This must be in accord with the contract on file with the board. Renewal will be granted only when there is on file with the board a contract covering the current work situation including the current supervisor's signature.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818656 Patti Bizzell  
Executive Secretary  
Texas State Board of Examiners  
of Psychologists

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 459-3295.



**TITLE 25. HEALTH SERVICES**  
**Part II. Texas Department of Mental Health and Mental Retardation**  
**Chapter 405. Client (Patient) Care**  
**Subchapter C. Unusual Incidents at Institutions**

The Texas Department of Mental Health and Mental Retardation proposes new §405.56 and §405.57 (302.04.03.006 and .007), and amendments to §§405.53-405.55, 405.61, 405.63, and 405.64 (302.04.03.003-.005, .011, .013, .014, .016, and .017) concerning unusual incidents at institutions.

Section 405.53 (302.04.03.003), which governs definitions used in this subchapter, would be amended so that

the terms "serious" and "nonserious" injury would be redefined. The term "escape" used in the definitions would be replaced with the term "unauthorized departure."

Section 405.54 (302.04.03.004), governing incidents which must be reported to the deputy commissioner by telephone, would be amended by deleting the requirement that the head of a facility make an immediate telephone report on each serious injury.

Section 405.55 (302.04.03.005) would be extensively revised so that it would incorporate the contents of §405.56 and §405.57 (302.04.03.006 and .007). That section as amended would require the reporting of all serious and nonserious job-related employee injuries and illnesses.

New §405.56 and §405.57 (302.04.03.017 and .018) are proposed to govern required training for employees in management of aggressive client behavior and treatment of employees who become ill or who are injured in the course of their employment respectively. Contemporaneously with the filing of these amendments and new sections, the department is proposing the repeal of existing §405.56 and §405.57 (302.04.03.006 and .007) which now govern various reporting requirements.

Section 405.61 (302.04.03.011) would be amended by deleting subsection (b). The amendments would clarify that reporting of lost, damaged, or destroyed state property is to be reported 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 manual of accounting of the department.

Section 405.63 (302.04.03.013) would be amended so that the term "escape" could be replaced by the term "unauthorized departure."

Section 405.64 (302.04.03.014) which lists the various exhibits referenced throughout this subchapter would be amended by adding a revised Exhibit A. New Exhibit A would be used for reporting employee injuries. Exhibit F would be used to report client injuries. Exhibit G would be used to report any unauthorized departures of clients. The existing forms that are currently referred to as Exhibits F and G would be deleted.

Pamela Carley, director of safety and health, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Carley has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be an improved system for reporting and investigating unusual incidents as defined by this subchapter which might occur in the department. In addition, the training requirements for employees required by these revisions to this subchapter should reduce the incidence of employee injuries.

(B) There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to James A. Adkins, acting commissioner, Texas Department of Mental

Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, no later than 30 days after publication.

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

Harry Deckard  
November 25, 1981

The amendments and new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11(b), which provides the commissioner with the authority to promulgate rules of the department subject to the basic and general policies formulated by the Texas Board of Mental Health and Mental Retardation.

**§405.53 (302.04.03.003). Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

**Nonserious physical injury**—Any injury *determined not to be serious by the attending physician, dentist, registered nurse, or licensed vocational nurse. Examples of nonserious injury include but are not limited to the following: superficial laceration, contusion, abrasion, incomplete fracture, dislocation of any minor joint, or first degree burn* [which is not a serious injury].

**Serious physical injury**—An injury *determined to be serious by the attending physician, dentist, registered nurse, or licensed vocational nurse. Examples of serious injury include but are not limited to the following: death, complete fracture, dislocation of any major joint, internal injury, any contusion larger than 2-1/2 inches in diameter, concussion, second or third degree burn, or any laceration beyond the first layer of skin* [which results or should result in the admission of the injured person to the facility's medical and surgical unit or infirmary or his admission to a hospital (other than the facility) as an inpatient].

**Unusual incident**—Means and includes:

(A)-(I) (No change.)

(J) the *unauthorized departure* [escape] of a resident *who cannot care for his safety and/or is considered to be a danger to himself or to others* [which might have unusual consequences].

**§405.54 (302.04.03.004). Reporting Requirements: 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 a resident from other than natural cause *(except that all resident deaths shall be reported in accordance with subsection (f) of §405.264 (302.04.14.004) of Subchapter K governing client deaths).*

(2) *death of a guest* [serious injury to a resident].

(3) *death of an employee while on duty* [or serious injury to a guest]

(4) *death or serious injury to an employee while on duty.*

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



section may also serve as the telephone report required by the rules of the commissioner concerning client abuse].

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

**§405.55 (302.04.03.005) Reporting Requirements: [Death or] Serious or Nonserious Injury to a Resident, [or] Guest, [Which Is Not the Result of an Automobile Accident Involving a Vehicle Owned by the Department or Operated by an Officer or Employee of the Department] or an Employee [in the Course of His Official Duties].**

(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 attached to these rules as Exhibit A. This reporting form shall also be used to report injuries to a guest. A copy of Exhibit A-1 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 (in-house physician), or an absence from work for more than one workday, shall be reported by the worker's compensation claims coordinator on the employee's first report of injury or illness form which is attached to these rules as Exhibit B, 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 resident shall be reported on Exhibit F. The original resident injury form shall be filed in the resident's record or maintained as a part of the resident's files. If the resident suffers a serious injury, a copy of this reporting form shall be mailed to the appropriate deputy commissioner within 15 days of the injury.**

[The death or serious injury to a resident or guest which is required to be reported under §405.54 (302.04.03.004) of this title (relating to Reporting Requirements: Incidents Which Must Be Reported by Telephone to the Deputy Commissioner as Soon as Possible), and which is not 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 as soon as possible on the personal injury report/resident or guest form, which are available from the department and are part of these as Exhibit A, in triplicate. The original of the report shall be mailed to the appropriate deputy commissioner, one copy shall be mailed to the legal division of the central office, and the other copy shall be retained.]

**§405.56 (302.04.03.017) Employee Training Requirements.** An employee who has received an injury as a consequence of aggressive client behavior shall receive initial or refresher training or be counseled by his supervisor in the area of prevention and management of 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.

**§405.57 (302.04.03.008) Treatment of Employees Injuries/Illnesses in the Performance of Official Duties.** Facilities medical and nursing 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.).

**§405.61 (302.04.03.011). Reporting Requirements: Loss, Destruction, or Damage to State Property.**

(a) 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 procedures manual of accounting of the department.**

(b) In addition to the reporting requirements contained in subsection (a) of this section, lost or stolen state property, without regard to value, shall be reported to the Texas Department of Public Safety, the local police or sheriff, and the state auditor on Form IR-94, Exhibit F. If such property is to be deleted from the property inventory, a request shall be made to the state auditor on the inventory deletion request for C.I.-I.B., which is attached to these rules as Exhibit G.]

**§405.63 (302.04.03.013). Reporting Requirements: Unauthorized Departure [Escape] 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 [Which Might Have Unusual Consequences].** The unauthorized departure [escape] 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** [which might have unusual consequences] shall be reported on the **unauthorized departure** [resident escape report] form, which is referred to in §405.64(a)(9) (302.04.03.014(a)(9)) of this title (relating to Exhibits) as Exhibit G [I] in triplicate. The original of said report shall be mailed to the appropriate deputy commissioner; one copy shall be mailed to the legal division of central office; and one copy shall be retained.

**§405.64 (302.04.03.014). Exhibits.**

(a) The following forms are referred to in this subsection:

(1) Exhibit A—**supervisor's report of employee's injury** [personal injury report/resident, employee, or guest]. This form **is used to describe** [describes] any injury and all related facts incurred by [a patient, resident] **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)-(5) (No change.)

(6) Exhibit F—**client injury report** [IR-94]. This form is used to **describe any injury incurred by a patient or resident and all related facts** [report lost or stolen property to the Department of Public Safety]. It is designed and published by the **department** [Texas Department of Public

Safety], and a copy of it may be obtained from *the central office of the* [that] department.

(7) Exhibit G—*unauthorized departure of a resident* [inventory deletion request]. This form is used to *report the unauthorized departure of a resident or patient* [by state agencies to request the Comptroller of Public Accounts to remove property from his inventory]. The form is designed by the *department* [Comptroller of Public Accounts], and a copy of it may be obtained from the *central office of the department* [Comptroller's Internal Audits Division].

(8) (No change.)

[(9) Exhibit I—resident escape report. This form is used to report the escape of a patient or resident from 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.]

(b) (No change.)

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818635 James A. Adkins  
Acting Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 465-4591.

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Texas Department of Mental Health and Mental Retardation proposes the repeal of §405.56 and §405.57 (302.04.03.006 and .007) concerning various reporting requirements within Subchapter C, Unusual Incidents at Institutions. Simultaneously with the proposed repeal of these sections the department is proposing replacements to these sections within the same subchapter. The other proposal amends §405.55 to incorporate the contents of existing §405.56 and §405.57. Section 405.55 as amended would require the reporting of all serious and nonserious job-related employee injuries and illnesses. New §405.56 and §405.57 (302.04.03.017 and .018) would govern required training for employees in management of aggressive client behavior and treatment of employees who become ill or who are injured in the course of their employment respectively. Once adopted, these sections would replace the contents of existing §405.56 and §405.57 (302.04.03.006 and .007).

Pamela Carley, director of safety and health, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications as a result of enforcing or administering the rule.

Ms. Carley has also determined that for each year of the first five years the repeal as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the repeal as proposed will be an improved system for reporting and investigating unusual incidents as defined by this subchapter which might occur in the department. In ad-

dition, the training requirements for employees required by these revisions to this subchapter should reduce the incidence of employee injuries.

There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to James A. Adkins, acting commissioner, P.O. Box 12668, Austin, Texas 78711, no later than 30 days after publication.

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

Harry Deckard  
November 25, 1981

The repeal is proposed under Texas Civil Statutes, Article 5547-202, §2.11(b), which provides the commissioner with the authority to promulgate rules of the department subject to the basic and general policies formulated by the Texas Board of Mental Health and Mental Retardation.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818636 James A. Adkins  
Acting Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 465-4591.

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part V. Board of Pardons and Paroles

#### Chapter 145. Parole

#### Revocation of Administrative Release (Parole and Mandatory Supervision)

The Board of Pardons and Paroles proposes to amend §§145.41, 145.45, 145.47, 145.53 (205.03.03.001, .005, .014 and .020) concerning revocation of administrative release (parole and mandatory supervision). These amendments would allow the board to revoke the releases of persons who have new felony convictions (with prison sentences) for offenses committed while on release without the necessity of a hearing. This would codify in rules the board's existing policy in such cases. Judicial reversal of a conviction forming the basis for such a revocation would entitle the releasee to immediate reinstatement.

Al Hagedorn, budget officer, has determined that for the first five-year period the rule will be in effect, there will be fiscal implications as a result of enforcing or administering the rule.

(A) Effect on state government: There will be no additional cost or loss/increase in revenue to state government. The estimated reduction in cost is \$33,500 in 1982, \$36,200 in 1983, \$39,100 in 1984, \$42,200 in 1985, and \$45,600 in 1986.

(B) Effect on local government: There will be no additional cost or loss/increase in revenue to local government. The estimated reduction in cost is \$27,000 in 1982, \$29,200 in 1983, \$31,500 in 1984, \$34,000 in 1985, and \$36,700 in 1986. (Calculations based on estimated costs of keeping 72 persons per year in county jails 15 days longer than necessary at \$25 per day).

Hugh Dismukes, parole analyst, has determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be that an administrative policy of the board is put into written form, reducing public uncertainty; public safety will be increased by quicker and more effective action on incarceration of recidivists.

(B) There will be no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Harry Green, staff attorney and Hearing Section coordinator, Board of Pardons and Paroles, P. O. Box 13401, Austin, Texas 78711, (512) 475-8441.

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

Charls E. Walker, Jr.  
November 30, 1981

The amendments are proposed under the following legal authorities: Texas Constitution, Article IV, §11 and Article 42.12, §22, Texas Code of Criminal Procedure, which provide the Board of Pardons and Paroles with the authority to make rules and regulations concerning revocation hearings.

**§145.41 (205.03.03.001). Allegation of Violation: Review and Initial Disposition.**

(a) (No change.)

(b) A parole panel shall review the information and make an initial determination to:

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

(3) continue the release of the alleged violator pending disposition of any charges; [or]

(4) make final disposition of the matter by continuation of release under the same or modified conditions; **or**

(5) **recommend revocation and request the governor to issue a revocation warrant, provided that this action shall be taken only when the releasee has committed a felony offense during the time of his or her release and has been convicted at the trial court level and sentenced to penal incarceration for the offense, whether said conviction is appealed or not.**

(A) **Revocation of administrative release under paragraph (5) of this subsection shall be accomplished administratively and a releasee proceeded against hereunder shall not be entitled to an administrative release revocation hearing.**

(B) **After the panel has acted under paragraph (5) of this subsection, further proceedings shall be in accord with §145.53 (205.03.03.020) of this title (relating to Revocation of Administrative Release (Parole, Mandatory Supervision) Recommendation; Proclamation; Warrant).**

(C) **Should the releasee's conviction be reversed by a court of competent jurisdiction then he or she shall be entitled to reinstatement of the administrative release previously revoked hereunder, upon notification of the**

**board of said judicial action and provision to the board of a certified copy of the judicial order effectuating the reversal; provided, however, that the board may proceed against a releasee reinstated under the subsection on the basis of any of the allegation(s) of violation previously filed against the releasee but not yet disposed of.**

**§145.45 (205.03.03.005). Procedure after Request for Hearing; Time; Schedule; Notice; Location; Hearing Officer.**

(a)-(f) (No change.)

(g) The administrative release revocation hearing shall be held at or near the location of the alleged violations or arrest unless:

(1) (No change.)

(2) the releasee is arrested and/or detained on the authority of the prerevocation warrant in a state other than the state in which he or she is under supervision; **or**

(3) the releasee is convicted of a felony offense committed during the time of his or her administrative release].

(h) In the case of an administrative releasee situated as described in subsection (g)(1) **or** (2) [or (3)] of this section, the revocation hearing may be held either at the unit of the Department of Corrections to which the releasee is assigned upon his or her return thereto, or any other unit of the Department of Corrections, or at or near the place of the alleged violations or arrest in the discretion of the board. A releasee assigned to supervision in a state other than Texas (subsection (g)(1) of this section) is subject to the sections and laws respecting revocation which apply in said other state and/or these sections, as applicable.

(i) (No change.)

**§145.47 (205.03.03.014). Rights of the Administrative Releasee in the Revocation Process.** The administrative releasee shall be entitled to the following rights in the revocation process (**except for releasees revoked without a hearing in accord with §145.41(b)(5) (205.03.03.001(b)(5)) of this title (relating to Allegation of Violation: Review and Initial Disposition))**:

(1)-(8) (No change.)

**§145.53 (205.03.03.020). Revocation of Administrative Release (Parole, Mandatory Supervision) Recommendation; Proclamation; Warrant.**

(a) After the time limits for a request for reopening under §145.51 (205.03.03.018) of this title (relating to Releasee's Motion to Reopen Hearing) have expired, or any such request thereunder has been finally acted upon, **or a request to revoke has been made under §145.41(b)(5) (205.03.03.001(b)(5)) of this title (relating to Allegation of Violation: Review and Initial Disposition)**, the board's recommendation to revoke the administrative release shall be transmitted, together with the record of the case, to the Office of the Governor.

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

Issued in Austin, Texas on November 23, 1981.

Doc. No. 818657      Ruben M. Torres  
Chairman  
Board of Pardons and Paroles

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 475-4525.

The Board of Pardons and Paroles proposes to amend §145.71(a) (205.03.05.001(a)) concerning reinstatement of administrative release (parole and mandatory supervision) after revocation. The rule would be amended to conform to the primary rule amendments proposed this date on a separate submission for proposed amendments to §§145.41, 145.45, 145.47, and 145.53 (205.03.03.001, .005, .014, and .020).

Al Hagedorn, budget officer, has determined that for the first five-year period the rule will be in effect, there will not be fiscal implications to state or local government as a result of enforcing or administering the rule.

Hugh Dismukes, parole analyst, has determined that for each year of the first five years the rule as proposed is in effect there will be no significant public benefits. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Harry Green, staff attorney and Hearing Section coordinator, Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711, (512) 475-8441.

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

Charls Walker, Jr.  
November 30, 1981

This amendment is proposed under the Texas Constitution, Article IV, §11, and Texas Code of Criminal Procedure, Article 42.12, §22, which provide the Board of Pardons and Paroles with the authority to make rules and regulations concerning revocation hearings.

**§145.71 (205.03.05.001). Reinstatement; Exceptional Circumstances; Hearing.**

(a) **Except for releasees revoked and reinstated in accord with the provisions of §145.41(b)(5) (205.03.03.001(b)(5)) of this title (relating to Allegation of Violation: Review and Initial Disposition), there is no entitlement to consideration for reinstatement of a revoked administrative release.**

(b)-(h) (No change.)

Issued in Austin, Texas, on November 23, 1981.

Doc. No. 818658      Ruben M. Torres  
                                 Chairman  
                                 Board of Pardons and Paroles

Proposed Date of Adoption: January 4, 1982

For further information, please call (512) 475-4525.



## NONCODIFIED

### Texas Department of Human Resources

#### ICF/SNF

(Proposals submitted by the Texas Department of Human Resources will be serialized in this issue and the December 8 issue. Affected subchapters, and the rules contained within them, are listed below. Proposed date of adoption for all submissions is January 4, 1982.)

#### Proposals Contained in this Issue

- Purpose  
Rule 326.29.10.001
- Definitions  
Rules 326.029.12.001-.029
- Compliance with Federal Laws  
Rules 326.29.14.001-.004
- Compliance with State and Local Laws  
Rules 326.29.16.001-.009
- Governing Body and Management  
Rules 326.29.20.001-.019
- Physician Services  
Rules 326.29.30.001-.008
- Nursing Services  
Rules 326.29.31.001-.017
- Food and Nutrition Services  
Rules 326.29.32.001-.007
- Pharmacy Services  
Rules 326.29.33.001-.012
- Laboratory and Radiology Services  
Rules 326.29.34.001-.004

#### Proposals To Appear in December 8 Issue

- Social Services  
Rules 326.29.35.001-.005
- Rehabilitation Services/Goal-Directed Therapy  
Rules 326.29.36.001-.007
- Services and Supplies Included in the Vendor Payment  
Rules 326.29.39.001-.006
- Medical Records  
Rules 326.29.40.001-.003
- Medical Direction  
Rules 326.29.42.001-.003
- Physical Environment  
Rules 326.29.50.001-.010
- Safety  
Rules 326.29.52.001-.002
- Recipient-Patient Activities  
Rules 326.29.60.001-.005
- Recipient-Patient Rights  
Rules 326.29.62.001-.017
- Medical Review and Re-Evaluation  
Rules 326.29.72.001-.004

The Texas Department of Human Resources proposes to add a new chapter of rules regarding long-term care, entitled Intermediate Care Facility/Skilled Nursing Facility (ICF/SNF). The new chapter will combine ICF and SNF requirements based on federal regulations. The combining of the SNF and ICF requirements will necessitate the repeal of the department's current ICF II, ICF III, and SNF rules.

The Department of Human Resources proposed similar rules in the January 13, 1981, issue of the *Texas Register* (6 TexReg 90) based on a review of current Title XIX state standards for skilled nursing facilities (SNFs) and intermediate care facilities (ICFs), in conjunction with an advisory committee comprised of representatives of the Texas Department of Health, Texas Association of Homes for the Aged, and Texas Nursing Home Association. In addition, revised federal regulations proposed by the Health Care Financing Administration (HCFA) of the Department of Health and Human Services were included. Public hearings were held on the proposed rules. The rules proposed by HCFA were subsequently placed on indefinite hold, which caused the department to withdraw from consideration the previously proposed ICF/SNF rules.

In the following proposals, ICF and SNF standards have been consolidated into one set of rules and rewritten based on current federal and state regulations. The advisory committee recommendations concerning clarification or revision of state requirements have also been incorporated. The committee agreed to delete the requirement for examination rooms in nursing facilities since concern was expressed about cost of maintaining an area which may be infrequently used. The department requests public comment about this deletion to obtain additional information about the need for examination rooms.

The proposed rules have been expanded to include:

- (1) a requirement for a quarterly accounting of recipient-patients' personal funds in ICFs and SNFs;
- (2) a more precise definition of normal transportation for clarification;
- (3) a requirement that non-1861(j)(1) designated facilities use Title XVIII as a third party resource to pay for durable and consumable medical equipment;
- (4) a requirement that facilities post information about services provided and current charges;
- (5) a clarification about the qualifications for activities directors and social services directors;
- (6) a requirement to allow ombudsman access to the recipient-patient at all times;
- (7) a requirement that facilities give three days' notice of involuntary transfers and 10 days' notice of voluntary transfers; and
- (8) payment to facilities of an administrative fee for processing claims for goal-directed therapy services.

The department proposed the repeal of agency rules concerning standards for Intermediate Care II facilities, standards for Intermediate Care III facilities, and standards for skilled nursing facilities in the January 13, 1981, issue of the *Texas Register*. The repeal of these rules will be adopted at the same time the new rules are adopted.

David Hawes, director of programs budget and rate setting, has determined that for the first five-year period the rules will be in effect, there will be fiscal implications as a result of enforcing or administering the rules.

(A) Effect on state government:

Estimated additional cost	Fiscal year
\$78,384	1982
\$83,431	1983
\$95,327	1984
\$101,020	1985
\$112,609	1986

There is no anticipated reduction in cost or anticipated reduction or increase in revenue.

(B) There will be no effect on local government.

Mr. Hawes has determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rules will be:

- (1) clarification of the standards which nursing facilities must meet to participate in Medicaid, based on current state and federal regulations;
- (2) elimination of duplicate information and resolution of inconsistencies in requirements for skilled nursing facilities and intermediate care facilities;
- (3) consolidation of requirements for skilled nursing facilities and intermediate care facilities into one set of standards;
- (4) ensuring that facilities protect recipient-patients' rights such as accounting procedures for recipient-patients' personal funds, timely inventory of personal property, timely notice of transfers, and access to an ombudsman at all times.

There will be no economic cost to individuals who are required to comply with the rules as proposed.

A hearing to accept public comment on the ICF/SNF rules and standards will be held at 9 a.m. on December 29, 1981, in the DHR board room, 706 Banister Lane, Austin. Written comments are also invited and may be sent to Susan L. Johnson, administrator, Policy Development Support Division—152, Texas Department of Human Resources, P. O. Box 2960, Austin, Texas 78769 within 30 days of publication in this *Register*.

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

J. B. McReynolds  
November 25, 1981

**Purpose 326.29.10**

New Rule 326.29.10.001 is proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which, authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

.001. Introduction.

(a) These rules specify requirements of federal and state laws and regulations governing the Title XIX Nursing Facilities Vendor Program, administered by the Texas Department of Human Resources in cooperation with other federal and state agencies.

(b) Each rule was established to ensure compliance under the law, equity among those served, provision of all authorized services, and proper fund disbursement.

(c) If there is a conflict between material in these rules

and the laws or regulations governing the program, the latter are controlling.

(d) These rules will help the nursing facility fulfill its vendor contract of participation with this agency. Each facility is required to keep the standards for participation, from which these rules are derived, current. The standards are the basis for surveys by federal and state surveyors, are part of the vendor contract, and are necessary for the facility to remain in compliance with federal and state laws.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818615      Marlin W. Johnston  
                                  Commissioner  
                                  Texas Department of Human Resources

Proposed Date of Adoption: January 4, 1982  
 For further information, please call (512) 441-3355, ext. 2037.

## Definitions 326.29.12

New Rules 326.29.12.001-029 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

**.001. Attending Physician.** The attending physician, currently licensed by the Texas State Board of Medical Examiners, who is designated by the recipient-patient or responsible party as responsible for the direction of the recipient-patient's overall medical care.

**.002. Chemical Restraints.** Chemical restraints are medications used primarily to modify recipient-patient behavior.

**.003. Drug Administration Error.** Drug administration error means a drug was:

- (1) given in the wrong amount;
- (2) given in the wrong strength;
- (3) given at the wrong time (more than 60 minutes from the ordered time of administration);
- (4) given by the wrong route of administration;
- (5) given to the wrong recipient-patient;
- (6) ordered and not administered and the reason and justification for the omission were not recorded;
- (7) the wrong drug.

**.004. Facility.** Facility means a skilled nursing facility (SNF) or an intermediate care facility (ICF). Except where otherwise specified, "facility" refers to both SNF and ICF.

**.005. Intermediate Care Facility.** An intermediate care facility (ICF) is an institution, or a distinct part of an institution, licensed as a nursing home facility by the Texas Department of Health. It is constructed, equipped, maintained, and operated in compliance with applicable state and local laws. An ICF is in substantial compliance with federal and state standards for participation.

**.006. Intermediate Care Facility Distinct Part.** An intermediate care facility distinct part is not a separate facility, but a separate part of a facility. It must be defined by identifiable consecutive patient bedrooms. A separate professional nursing and related direct patient service staff must be maintained for each distinct part. The accounting system

must separate, for cost accounting purposes, each distinct part as if it were an independent facility. If an ICF is a distinct part of a licensed SNF, it is not necessary for a separate license to be issued. It is necessary for each part to be approved individually for Title XIX participation by the Texas Department of Human Resources. An ICF with a multiple building complex may have one license and one authorization for Title XIX participation, but would be assigned an institution vendor number with a suffix identifying each independent building used as patient bedroom areas.

**.007. Involuntary Transfer.** Involuntary transfer means the recipient-patient is moved, removed, or transferred without the recipient-patient's consent.

**.008. Licensed Administrator.** A licensed administrator is a person currently licensed by the Texas Board of License for Nursing Home Administrators.

**.009. Licensed Vocational Nurse.** A licensed vocational nurse is:

- (1) a graduate of a state-approved school of vocational nursing who is currently licensed as a vocational nurse by the Texas State Board of Vocational Nurse Examiners, or
- (2) a nongraduate of a state-approved school of vocational nursing who is currently licensed by waiver as a vocational nurse by the Texas State Board of Vocational Nurse Examiners.

**.010. Long-Term Care Unit.** A long-term care unit (LTCU) is a team of Texas Department of Health, health care professionals responsible for utilization review functions in Title XIX nursing facilities, determination of ICF or SNF levels of care for Medicaid recipients, and survey and certification of nursing facilities for Title XIX.

**.011. Medication Aide.** A medication aide is a person who has successfully completed the state-approved course in medication administration.

**.012. Medical Director.** A medical director is a physician, licensed in Texas, who directs and coordinates medical care in the facility.

**.013. Nursing Personnel.** Nursing personnel are persons assigned to give direct personal and nursing services to recipient-patients. They include registered nurses, licensed vocational nurses, nurses aides, and orderlies.

**.014. Non-nursing Personnel.** Non-nursing personnel are persons not assigned to give direct personal care to recipient-patients. They include administrators, secretaries, activity directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

**.015. Patient.** A patient is any person who is admitted to a facility to receive care, services, and treatment.

**.016. Patient Status.** Patient status means the level of medical and nursing care established by the Texas Department of Health long-term care unit.

**.017. Physician.** A physician is a doctor of medicine or osteopathy currently licensed by the Texas State Board of Medical Examiners.

**.018. Physical Restraint.** Physical restraint means confinement or the use of an article, device, or garment that prevents freedom of movement.

**.019. Provider.** A provider is an individual or entity giving Medicaid services under an agreement with the Texas Department of Human Resources.

**.020. Recipient-Patient.** A recipient-patient is a person who is eligible for and receiving Title XIX nursing facility care (ICF or SNF).

**.021. Registered Nurse.** A registered nurse is a nurse currently registered by the Board of Nurse Examiners.

**.022. Representative Payee.** A representative payee is a person designated by SSI to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

**.023. Responsible Party.** A responsible party is a person authorized by the recipient-patient to act for him as an official delegate or agent.

**.024. Single State Agency.** Single state agency means the Texas Department of Human Resources, which is designated as the single state agency for the administration of the Texas Medical Assistance Program (Title XIX).

**.025. Skilled Nursing Facility.** A skilled nursing facility (SNF) is a facility or distinct part of facility licensed as a nursing home by the Texas Department of Health. It must be constructed, equipped, maintained, and operated in compliance with federal, state, and local laws affecting the health and safety of patients. To participate in the Texas Medical Assistance Program, it must meet all federal conditions of participation and be in substantial compliance with the state standards.

**.026. Skilled Nursing Facility Distinct Part.** A skilled nursing facility distinct part is not a separate facility but a separate part of a facility. It must be defined by identifiable consecutive patient bedrooms. A separate professional nursing and related direct patient service staff must be maintained for each distinct part. The accounting system must be separate, for cost accounting purposes, each distinct part as if it were an independent facility.

**.027. State Survey Agency.** State survey agency means the Texas Department of Health which, through contractual agreement with the single state agency, is designated as the agency responsible for Title XIX survey and certification of nursing facilities, utilization review in Title XIX nursing facilities, and determination of ICF or SNF levels of care for Medicaid recipient-patients.

**.028. Supervision.** Supervision is authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere or competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Unless otherwise stated in these rules, the supervisor must be on the premises if the person being supervised does not meet assistant-level qualifications specified in these rules.

**.029. 1861(j)(1) Facility.** An 1861(j)(1) facility is a skilled nursing facility, as defined the Social Security Act, §1861(j)(1). This type of facility should not be confused with the SNF defined in these rules. An SNF or ICF participating in Medicaid may or may not be an 1861(j)(1) facility depending on the ratio of medical personnel to licensed beds. Any facility with a ratio of one medical care employee to less than 15 licensed beds on a 24-hour basis meets the definition of an

1861(j)(1) facility. The determination is started by the state survey agency during the annual survey. Final determination is made by the Department of Health and Human Services. The ratio is calculated for a two-week period just before the recertification date or during the initial survey.

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### Compliance with Federal Laws 326.29.14

New Rules 326.29.14.001-.004 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

**.001. Section 504 of the Rehabilitation Act of 1973.** The facility must be in compliance with all applicable federal laws including §504 of the Rehabilitation Act of 1973. To comply with this law, the facility must:

- (1) conduct an evaluation of its policies and practices and the effects of those that do not or may not meet the requirements of §504;
- (2) execute the provisions of nondiscrimination in employment practices and reasonable accommodation;
- (3) develop a transition plan, if warranted, outlining the steps necessary to complete structural changes to ensure program accessibility;
- (4) apply requirements for new construction to facilities constructed after June 1977.

**.002. Civil Rights Act of 1964.** Facilities must be in compliance with Title VI of the Civil Rights Act. Compliance with Title VI includes:

- (1) Even when an open admissions policy is announced, additional steps may be necessary to desegregate the facility, particularly when it has excluded or primarily served recipient-patients of one race, color, or national origin. Nursing facilities that serve recipient-patients of one race exclusively must take corrective action unless they can show that this pattern has not been caused by discriminatory practices.
- (2) If a nursing facility is owned or operated by a private organization, its services may be restricted to members of the organization without losing the facility's eligibility as long as membership in the organization and admission to the facility is not denied because of anyone's race, color, or national origin.
- (3) Recipient-patients must be housed without regard to race, color, or national origin. Biracial occupancy of multibed rooms and wards on a nondiscriminatory basis would be the result.
- (4) Recipient-patients must not be asked if they will share a room with a person of another race, color, or national origin. The transfer of recipient-patients is not to be used to evade compliance with Title VI.

(5) Recipient-patients must be provided services by all personnel; medical, nonmedical, and volunteer; without regard to race, color, or national origin.

(6) Attending physicians must be permitted to provide services without regard to the physician's or the recipient-patient's race, color, or national origin. Other medical, paramedical, or nonmedical persons, whether engaged in a contractual or consultant capacity, must be selected and employed in a nondiscriminatory manner. The same opportunities must not be denied qualified persons on the basis of race, color, or national origin. Dismissal of persons from nursing facilities may not be based on race, color, or national origin.

(7) Services rendered by employees, vendors, or others in nursing facilities must be provided without regard to race, color, or national origin. These must include but are not limited to:

(A) administrative services (admission requirements, medical records, fiscal referral systems, and deposits);

(B) recipient-patient privileges and care services (nursing, medical, physical and occupational-recreational therapy, social services, waiting lists, courtesy titles, visiting hours, dietary, dental, pharmacy, diagnostic and laboratory services, and trainee and volunteer programs);

(C) facilities (laundry, maintenance, gift shops, lounges, cafeterias, beauty salons and barber shops, dining rooms, lavatories, and ambulances).

(8) Nursing facilities must adopt and implement effective written policies for compliance with Title VI of the Civil Rights Act. Employees, physicians, and paramedical personnel, who provide recipient-patient care services, must be notified in writing of these policies.

(9) Contracts between the nursing facility and providers or subcontractors of recipient-patient services must contain written assurance that services will be provided without discrimination. This includes transfer agreements.

(10) Nursing facilities must let the community know that admission to the facility, patient care services, and other activities are operating without regard to race, color, or national origin. Notice to the community may be given by letters to and meetings with physicians, local health and welfare agencies, paramedical personnel, and public and private organizations which have an interest in equal opportunity. Notices to newspapers and signs in nursing facilities also may be used to inform the public.

(11) Nursing facilities and services must be used without regard to race, color, or national origin. Facilities which have had dual accommodations to effect racial segregation must have ended this practice.

**.003. Age Discrimination Act of 1975.** Facilities must be in compliance with the Age Discrimination Act of 1975.

**.004. Title VIII of the Civil Rights Act of 1964.** Facilities must be in compliance with Title VII of the Civil Rights Act of 1964.

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## Compliance with State and Local Laws 326.29.16

New Rules 326.29.16.001-.009 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

**.001. Introduction to Compliance.** The facility must comply with all state and local laws, ordinances, and regulations which relate to health and safety including, but not limited to, fire, sanitation, communicable and reportable diseases, and postmortem procedures.

**.002. Licensure.** The facility may be approved by DHR for participation in the Title XIX Texas Medical Assistance Program and be eligible for state and federal reimbursement for services to Title XIX recipient-patients when the following conditions are met.

(1) The facility is currently licensed by the Texas Department of Health as a nursing facility.

(2) The facility has filed an application for participation with the Texas Department of Human Resources as a nursing facility in the Title XIX Texas Medical Assistance Program.

(3) The Texas Department of Human Resources has been furnished a valid certification by the Texas Department of Health.

(4) The owner or authorized representative has a written contract with the Texas Department of Human Resources to participate as a provider of services to eligible recipient-patients.

### **.003. Participation Requirements.**

(a) These rules apply to nursing facilities which have been certified as eligible for participation under Title XIX.

(b) Each nursing facility is required to comply with the state standards of participation and the facility's contract on a continuing basis. If the facility fails to meet any of the standards or the contract, the facility will be considered to be in breach of contract. The facility may be given not more than 30 days to correct deficiencies. Deficiencies affecting the health and safety of recipient-patients must be corrected immediately if the facility is to continue participating. Failure to correct deficiencies under the contract or the standards within the specified period is cause for immediate suspension of vendor payment and may result in contract cancellation, suspension, or other action. Action may include, but is not limited to:

(1) payment of damages for breach of contract;

(2) request for payment of valid audit exceptions;

(3) request for the facility to take necessary action to ensure contract compliance by a specified date.

(c) A facility may not participate in the Texas Medical Assistance Program if it has restrictive policies or practices, such as:

(1) the recipient-patient is required to make a will, with the facility named as legatee or devisee;

(2) the recipient-patient is required to assign his life insurance to the facility;

(3) the recipient-patient is required to transfer property to the facility;

(4) the recipient-patient is required to pay a lump sum entrance fee or make any other payment or concession to the facility beyond the recognized rate for board, room, and care as a condition for entry, departure, or continued stay;



(5) the facility controls or restricts the recipient-patient, the recipient-patient's guardian, or responsible party in the use of the recipient-patient's personal needs allowances;

(6) the recipient-patient is restricted from leaving the facility at will except as provided by state law.

(d) If the Texas Department of Human Resources has documentation showing good cause, it reserves the right to reject the facility's participation or to cancel an existing contract if the facility charges the Title XIX recipient-patient, any member of his family, or any other source for supplementation or for any item except as allowed within department policies and regulations.

(e) State statutes and Title XIX nursing facility contracts provide for appeal procedures for aggrieved providers whose vendor payments may be or have been suspended or whose contracts have been canceled by the Texas Department of Human Resources. A provider must send a written request for a contract appeals hearing within 10 calendar days of the receipt of a department letter notifying the provider of the proposed action. Any request for a hearing must be sent to the general counsel, Texas Department of Human Resources, P. O. Box 2960, Austin, Texas 78769. The hearings will be held in Austin, Texas.

(f) The department's interpretations of the standards for participation or the contract may not be appealed to the department's contract appeals hearing committee unless the interpretation has caused an adverse action on the facility.

(g) Representatives of the Texas Department of Human Resources, the Texas Department of Health, the Medicaid Fraud Control Unit, and the Department of Health and Human Services may enter the premises of the participating nursing facility at any time to make inspections or privately interview the recipient-patients receiving any type of assistance from the Department of Human Resources. For visits after 7 p.m., all reasonable efforts must be made to avoid disturbing recipient-patients' rest.

(h) Each facility must be in compliance with the rules of the Texas Health Facilities Commission.

(i) Participating facilities must supply the Texas Department of Human Resources complete information according to federal and state requirements about the identity of:

(1) each person having direct or indirect ownership interest of 5.0% or more in the nursing facility;

(2) each owner (in whole or in part) or any property, assets, mortgage, deed of trust, note, or other obligation secured by the facility;

(3) each officer and director, when the facility is organized as a corporation;

(4) each partner, when the facility is organized as a partnership (A copy of the partnership agreement is required, but the dollar amount of capital contributions of the partners may be omitted);

(5) any director, officer, agent, or managing employee of the institution, agency, or organization, who has ever been convicted of a criminal offense related to the person's involvement in programs established by Titles XVIII, XIX, or XX (Effective dates for disclosure of any convictions are July 1, 1966, for Medicare, and January 1, 1969, for Medicaid).

(j) If a profit-making corporation operates the facility, a copy of the following material is required:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between the Texas Department of Human Resources and the corporation.

(4) any management contract for the facility;

(5) if no stockholder owns, directly or beneficially, 5.0% or more of the corporate stock, the president and secretary of the corporation should state this on the department form.

(k) Nonprofit corporations must furnish a copy of:

(1) certificate of incorporation (for Texas corporations only);

(2) certificate of authority to do business in Texas (for out-of-state corporations only);

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between the department and the corporation;

(4) a copy of any management contract for the facility.

(l) If the facility is a type other than those described in subsections (j) and (k), a copy of the following material is required:

(1) charter or other legal basis for the organization owning the facility;

(2) any management contract or agreement for the facility;

(3) bylaws of the organization (where applicable);

(4) other information required by the department to determine the status of the legal entity owning the facility.

(m) Providers must disclose business transaction information. A provider must submit to the Texas Department of Human Resources, within 35 days after the date of a written request, full and complete information on:

(1) the ownership of a subcontractor with whom the provider has had, during the previous 12 months, business transactions totaling more than \$25,000; and

(2) any business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor during the five-year period ending on the date of the request.

(n) Any change in the required information must be promptly reported by the facility to the Texas Department of Human Resources.

(o) Failure to provide this information may result in suspension, termination, or other contract action including, but not limited to, holding vendor funds. In addition, payment will be denied beginning on the day after the date information was due, and ending on the day before the date the information is received by the department.

#### .004. Contract Requirements.

(a) The Texas Department of Human Resources may only enter into time-limited contracts with the facility. The terms of any contract must not extend beyond one year. Three types of contracts are permitted.

(1) Twelve-month agreement when no deficiencies are involved.

(2) An agreement for a period related to the time required to correct deficiencies, plus 60 days, but not to exceed 12 months.

(3) Twelve-month agreement subject to a provision for automatic cancellation 60 days following final scheduled date for corrections, unless the state survey agency determines and has notified the Texas Department of Human

Resources that all required corrections have been satisfactorily completed.

(b) SNFs and ICFs must be in substantial compliance with the state standards for participation, and SNFs must meet all of the federal conditions of participation.

(c) Existing contracts for ICF II facilities or distinct parts will be continued during the three-year period of the Department of Health and Human Services' waiver granted January 1, 1980. Effective January 1, 1983, contracts with all ICF II providers will be terminated. On that date ICF II facilities or distinct parts must meet nursing facility licensure requirements and be contracted as ICF facilities to continue participating as a Title XIX nursing facility.

**.005. Effective Dates of Provider Agreements.**

(a) The provider agreement must be effective on the date the on-site survey is completed (or on the day following expiration of a current agreement) if, on the date of the survey, the provider meets:

(1) all federal health and safety standards, and

(2) any other requirements imposed by the single state agency.

(b) If the provider does not meet any of the requirements specified, the agreement must be effective on the earlier of the following dates:

(1) the day the provider meets all requirements, or

(2) the day the provider submits a correction plan acceptable to the state official of the survey agency authorized to make certification decisions or an approvable waiver request, or both.

**.006 Change of Ownership.** An ownership change is any change in the business organization which changes the legal entity responsible for the operation of the facility.

(1) **Obligation of the seller.** The seller is obligated to notify, in writing, the Texas Department of Human Resources 10 days before any proposed change in ownership.

(2) **Obligations of the purchaser.** The contract for participation for a Title XIX nursing facility allows for issuance of a new contract to the new owner. When there is a change of ownership, the single state agency will assign the provider contract to the new owner by issuing a new contract to the new owner effective on the date of ownership transfer unless the new owner has not met the requirements in these rules. The new agreement is subject to applicable statutes and regulations and may be subject to the terms and conditions under which the previous owner's agreement was issued; including, but not limited to, the following:

(A) any plan of correction,

(B) an expiration date,

(C) compliance with health and safety standards,

(D) compliance with the ownership and financial interest disclosure requirements of 42 Code of Federal Regulations 455.104 and 455.105,

(E) compliance with civil rights requirements in 45 Code of Federal Regulations Parts 80, 84, and 90,

(F) compliance with additional requirements imposed by the single state agency.

**.007. Nursing Facility Ceases To Participate.** A nursing facility may lose its status as a participating facility because of one or more of the following.

(1) The facility withdraws voluntarily from the program. The owner and administrator must request withdrawal from the Texas Department of Human Resources in writing at least 10 days before the withdrawal date.

(2) The Texas Department of Health does not recertify the facility for a new time-limited provider agreement.

(3) The Texas Department of Human Resources may invoke the cancellation clause if the deficiencies are not corrected.

(4) The Texas Department of Health decertifies if it documents conditions posing a threat to patient health and safety.

(5) A nursing facility's license expires.

(6) The Texas Department of Health revokes the facility's license for failure to comply with the licensure standards. The Texas Department of Health notifies the Texas Department of Human Resources of the action taken, and the Texas Department of Human Resources assumes responsibility for canceling the facility's status as a participating facility.

(7) The SNF is a Title XIX/XVIII provider of services, and Medicare (Title XVIII) terminates the contract because of contract violation.

(8) The Texas Department of Human Resources can cancel the contract if and when the department determines that the nursing facility is in material breach of the contract.

**.008. Surety Bonds or Letters of Credit.**

(a) When there is a change in ownership or termination of a contract (voluntary or involuntary), the Texas Department of Human Resources may place a hold on the facility's vendor payments.

(b) The seller, if he chooses, may obtain a surety bond or an irrevocable letter of credit to cover the adjustments or exceptions involved. Normally, the surety bond will equal the average monthly vendor payments paid to the facility. Providers terminating a contract for long-term care services can furnish a surety bond only when all required long-term care facility cost reports have been filed with the Texas Department of Human Resources. If an acceptable surety bond or letter of credit is presented to the Texas Department of Human Resources, the vendor payments may be released.

**.009. Licensure, Registration, or Certification of Personnel.** All facility personnel and consultants must be licensed, registered, or certified as required by state or local law. In addition, they must meet requirements in these rules.

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Commissioner

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## Governing Body and Management 326.29.20

New Rules 326.29.20.001-.009 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

**.001. Purpose of Governing Body.** The facility must have a governing body to assume legal responsibility for the determination and implementation of policy, management, operation, and finances of the facility.

**.002. Governing Body.** The governing body must have written policies and procedures that are formally adopted, dated, updated periodically, and available to all of its members, staff, recipient-patients, family, or legal representatives of the recipient-patients and the public. The policies and procedures govern all services provided and include types of services offered. The governing body must:

- (1) designate officers, their terms of office and duties, and appoint committees and individuals to discharge responsibilities of the governing body;
- (2) schedule meetings, attendance requirements, and record minutes;
- (3) appoint a qualified nursing facility administrator as the official representative of the governing body, and designate the administrator's responsibilities and authority; and
- (4) specify any delegations of responsibility for direction, supervision, and evaluation of administrative practices, and the methods the governing body will use to hold those individuals accountable.

**.003. Recipient-Patient Admission.** The facility must admit only recipient-patients whose health care needs can be met through services from the facility staff, in cooperation with community resources, or in cooperation with other providers under contract with the facility. There must be reciprocal agreements stating the degree of care the facility is staffed and equipped to provide and the kind of recipient-patient the facility will accept. Admission must be ordered by a physician. Admitting policies must be written, dated, revised when necessary, and approved by the governing body. The facility must not discriminate against any individual in its admission policies or basic services if the discrimination is based on that individual's race, color, national origin, age, or handicap.

**.004. Institutional Plan.** The governing body of a skilled nursing facility must prepare an institutional plan which is reviewed and updated annually. The plan must include:

- (1) an annual operating budget using generally accepted accounting principles; and
- (2) a capital expenditures plan for three years.

**.005. Administration.**

(a) The facility must be operated under the supervision of a nursing facility administrator licensed by the Texas Board of Nursing Home Administrators. The administrator, as a professional, must work at least 40 hours per week on administrative duties. The administrator must show his established work pattern on the staffing pattern report which must be available to representatives of the Texas Department of Human Resources and the Texas Department of Health. The administrator must be accountable to the governing body for overall management of the facility. The administrator's authority and responsibilities must be clearly outlined and must include:

- (1) maintaining liaison with the governing body, medical and nursing staff, and other professional and supervisory staff, through regular meetings and periodic reporting;
- (2) adopting and enforcing rules and regulations for the health care and safety of recipient-patients and others and the protection of their personal property and civil rights;
- (3) establishing standard operating procedures for physician practices in an ICF, in coordination with the director of nursing;
- (4) evaluating, implementing, and documenting dis-

position of recommendations from the facility's committees and consultants;

(5) managing the facility through employment of professional and ancillary personnel and through proper delegation of duties;

(6) naming a responsible employee to act in the administrator's absence so the facility has administrative direction at all times; and

(7) ensuring that any volunteer program is planned and supervised by a designated employee.

(b) The Texas Department of Health must be notified immediately when a facility does not have an administrator. The Texas Department of Health allows 30 days for the facility to secure a replacement administrator before it is considered out of compliance. Another 30 days must elapse before penalties begin.

**.006. Operating Policies and Procedures.**

(a) The facility must have an administrative manual that outlines the general operating policies and procedures of the facility. The manual must include policies and procedures relating to admission and admission agreements, recipient-patient care services, charges, payments, refunds, transfer, discharges, and procedures for receiving and responding to complaints and recommendations.

(b) The facility must have written procedures for moving, transferring, and discharging recipient-patients.

(c) The facility must have written personnel policies and procedures that are explained to employees when first employed and always available to them. They must include application procedures, job assignment, working hours, overtime, payment, payroll deductions, paydays, insurance, fringe benefits, time off, educational programs, holidays, vacations, sick leave, resignations and terminations, breaks, probation, leaves of absence, dress, and conduct.

(d) Direct patient staff must not include:

- (1) persons who are mentally, physically, or emotionally unable to perform assigned duties;
- (2) persons whose behavior or health appears to endanger the health, safety, and well-being of patients;
- (3) persons unable to read and write English;
- (4) persons who have been convicted within the pre-

ceding 10 years of a felony classified as an offense against the person, of public indecency, or a violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or of public indecency, unless the assistant commissioner of institutional services for the Texas Department of Human Resources has ruled that proof of rehabilitation has been established.

(e) Information in personnel records must be current, contain sufficient information to support placement in the assigned position, (including resume of training and experience) and be available for employees' inspection.

(f) The facility must have written policies for control of communicable diseases in employees, provision of safe and sanitary environment for recipient-patients, and personnel, and reporting and review of accidents involving patients and personnel. Employees must receive periodic health examinations to ensure the absence of communicable disease. Employees must have a health card or other evidence of compliance with local health codes.

**.007. Incident or Accident Reporting.**

(a) Every accident or incident including allegations of mistreatment of recipient-patients by facility staff, medica-

tion errors, and drug reactions must be detailed in the clinical record.

(b) An incident report will be completed. It must contain the name of the recipient-patient; witnesses (if present); date, time and extent of the accident or incident; circumstances under which it occurred; action taken; and final disposition.

(c) The detailed incident report will be kept in the nursing facility administrative office. Accidents or incidents that endanger the mental or physical health and safety of the recipient-patient and cases of abuse must be reported immediately to the attending physician, the responsible party and the family. The facility must document the notification in the recipient-patient's clinical record.

(d) Incident reports must be available for review, upon request and without prior notice, by representatives of the U.S. Department of Health and Human Services, the Texas Department of Health, and the Texas Department of Human Resources.

#### .008. Staff Development.

(a) Each employee must receive orientation to his position, and to the facility, and its policies.

(b) The facility must provide continuing education and training to develop the skills of its staff. An in-service educational program must be developed as required by the Texas Department of Health Nursing Home Licensure Standards.

(c) The facility must document the content of and the employee's attendance at the in-service training.

#### .009. Transfer Agreement.

(a) The facility must have a written transfer agreement with one or more participating hospitals to ensure continuity of care. The transfer agreement must:

(1) provide for prompt diagnostic and other medical services;

(2) ensure accountability for a recipient-patient's personal effects that are left in the facility's control;

(3) specify the steps needed to transfer a recipient-patient in a prompt, safe, and efficient manner;

(4) provide for supplying, at the time of transfer, a summary of administrative, social, medical, and nursing information to the facility to which the recipient-patient is transferred. This summary must either be a transcript of the recipient-patient's medical record, an interagency referral form, or a copy of the admission sheet and summary.

(5) ensure that provisions of Title VI of the Civil Rights Act of 1964 are met.

(b) If a hospital and long-term care facility share a common governing body and administration, a written agreement is not necessary.

(c) The facility is considered to have met this standard if the state survey agency determines that the facility tried to enter into an agreement but could not, and if it is in the public interest not to enforce this requirement. The facility must document in writing its good faith effort to enter into an agreement.

.010. Use of Outside Resources. If the facility does not employ a person qualified to furnish a specific service, it must have arrangements with outside resources. An outside resource must be a qualified person or agency, including temporary personnel agencies, that will provide the service directly to recipient-patients or act as a consultant to the facility.

(1) If the facility enters into an agreement with any outside resources, the agreement must state the responsibilities, functions, objectives, and terms of the agreement, including financial arrangements and charges.

(2) The agreement must be signed by the administrator or his representative and by the qualified professional.

(3) The facility must ensure that outside resources meet the same qualifications that would apply if such services were provided by facility employees.

(4) The outside resource, when acting as a consultant, must prepare written, signed, and dated reports to apprise the administrator of progress, plans for implementation, evaluation of performance, and recommendations. The reports must be retained by the administrator for the same time as other recipient-patient's records. Deviations from physician's orders must be reported immediately to the director of nursing, who notifies the attending physician and the administrator. The nurse must also document the deviation in a separate administrative report. If the owner or controlling entity of the facility supplies consultants to the facility, the service is not considered an outside resource.

.011. Consultant Services. The qualified consultant must make regular visits of sufficient duration and frequency to ensure that services are rendered in accordance with requirements in 42 Code of Federal Regulations 405.1132, 405.1130, 405.1131, 405.1127, 405.1125, 442.333, 442.332, 442.344, and 442.345.

#### .012. Recipient-Patient Care Policies.

(a) The facility must have written policies to govern the nursing care and related medical or other services provided. They should contain plans for promoting self-care and independence and should include the following:

(1) admission, transfer, and discharge policies (including categories of recipient-patients accepted and not excluded);

(2) physician services;

(3) nursing services;

(4) dietary services;

(5) restorative services;

(6) pharmacy services;

(7) ancillary diagnostic services;

(8) care of recipient-patients in an emergency, during a communicable disease episode, and when critically ill or mentally disturbed;

(9) a disaster plan;

(10) dental service (An advisory dentist participates in the staff development program for nursing and other appropriate personnel and recommends oral hygiene policies and practices for the care of recipient-patients. Professional judgment by the facility management and the advisory dentist will dictate the amount of time and the length of each visit to the facility. The facility should have a cooperative agreement with a dental service, and maintain a list of local dentists for recipient-patients who do not have a private dentist.);

(11) social services;

(12) recipient-patient activities;

(13) clinical records;

(14) hospital agreements;

(15) utilization review.

(b) The recipient-patient care policies are developed by the medical director or the medical staff with the advice of professional personnel, including one or more physicians and

registered nurses, and a registered pharmacist. The policies must be reviewed by the advisory group at least annual.

(c) The medical director or a registered nurse is designated, in writing, to be responsible for the execution of recipient-patient care policies. If the responsibility for day-to-day execution of these policies has been assigned to a registered nurse, the medical director serves as the advisory physician from whom the nurse receives medical guidance.

*.013. Recipient-Patient Transfer or Discharge.* Except in an emergency, recipient-patients are not transferred or discharged without prior consultation with the responsible party and attending physician. The long-term care unit will be notified of significant change in the recipient-patient's status.

*.014. Financial Records.*

(a) The nursing facility staff must maintain current financial records in accordance with recognized fiscal and accounting procedures. Records must clearly identify each charge and payment made on behalf of each recipient-patient residing in the facility. The records must clearly state to whom charges were made and for whom payment was received.

(b) Financial records and supporting documents must be available for review by the Department of Health and Human Services, the Texas Department of Human Resources, and the Texas Department of Health at any time within working hours and without prior notification. The financial records must be kept in the nursing facility until audited by the department and all exceptions are resolved. Supporting fiscal documents and other records necessary to ensure claims for federal matching funds must be retained for the same period of time.

*.015. Financial Audits.*

(a) The Texas Department of Human Resources will audit all facilities periodically. A facility will be notified of the audit plans and will be given a report of the final audit findings. If vendor payment problems are found, the Nursing Home Billing Services Section, Provider Services Division, will work with the facility to reconcile the discrepancies. If the findings show that refunds are due recipient-patients or their responsible parties, the regional staff will assist the facility in reconciling the audit findings. Upon receipt of an audit exception, the facility must provide additional documentation, reach a final agreement, or make restitution within 60 days, or request a hearing within 10 days.

(b) If payment due the recipient-patient is not made within the specified time frame, beginning on the 60th day, the department may withhold other funds due the facility without providing advance notice. Funds will be released when the facility produces documentation that it has refunded the proper amount to the recipient-patient or responsible party.

(c) The department may require the facility to pay the recipient-patient refund amount to the department plus any anticipated cost (including personnel salaries) which would be incurred by the department in making the refund to the proper party.

(d) On change of ownership, the facility will be audited prior to final settlement with the previous owner.

*.016. Medical Transportation.*

(a) The nursing facility is responsible for providing normal transportation for the recipient-patient to medical

services outside the facility. The medical services must have been ordered by the attending physician.

(b) Normal transportation is to and from the medical care provider of the recipient-patient's choice, who is generally available and used by residents of the locality for medical care included under the Texas Medical Assistance Program. If a Title XIX provider is not in the locality, transportation will be to and from the nearest appropriate Title XIX provider. The term "locality" means the service area surrounding the nursing facility from which individuals ordinarily come or are expected to come for inpatient or outpatient services which the recipient-patient requires.

(c) Transportation charges (which also include non-emergency, routine ambulance services) involved in certification or recertification of a recipient-patient are the responsibility of the nursing facility.

(d) The facility may not charge Medicaid, the recipient-patient, the family, or responsible party for transportation. Transportation charges mentioned above are covered in the monthly vendor rate. The facility may not use the department's community-based Title XIX medical transportation program.

(e) Charges for the following medically necessary ambulance services are not the responsibility of the nursing facility, but are payable by the department's health insuring agent as a Medicaid benefit. They must be properly documented with a physician's authorization and in accordance with the department's health insuring agent's guidelines for payment of ambulance services.

(1) Emergency ambulance services.

(2) Nonemergency ambulance services (except for certification or recertification) for recipient-patients who must be transported by litter or who must have a life-sustaining support system. This group includes the severely disabled who must be transported in such a fashion, and those who are unable to ride in other means of transportation for stated medical reasons.

(f) When ambulance services are reimbursable by the department's health-insuring agent, they are not the responsibility of the recipient-patient, the family, or responsible party.

(g) Nursing homes are encouraged to use family, friends, sponsors, civic groups, or charitable organizations as resources for transportation services. When transportation is not obtainable from these sources, the facility must provide or purchase the appropriate services.

*.017. Collection of Applied Income.*

(a) Nursing facilities may collect from a recipient-patient only the applied income that is specified on the recipient-patient's payment plan forms.

(b) If a payment plan appears incorrect, the facility administrator should contact the local DHR worker to correct the plan. Even if a recipient-patient's income increases, the administrator may not collect an increased payment until the plan is changed. Nor should the administrator collect an increased payment in anticipation of a payment plan increase, since the department does not make retroactive increases.

(c) If an admission has no payment plan, the administrator should contact the local worker for help in determining how much applied income is owed. If the forthcoming forms indicate a lesser payment, the administrator should refund the excess immediately and notify the worker.

(d) Facilities that collect payments (part applied income, part Medicaid) in excess of the vendor rate are in viola-

tion of department regulation and of Public Law 95-142 which makes "solicitation of supplementation" a felony.

(e) Regional DHR staff must report any violations. If an investigation shows that the facility has violated this rule, a recommendation for withholding vendor payments, contract termination, referral to the courts, or other contract action may be made.

**.018. Computation of Daily Reimbursement Rate for Recipients.**

(a) Reimbursement is computed by multiplying the established daily rate by the number of days in the month. The recipient-patient's applied income is then subtracted and the result is divided by the number of days in the month.

(b) This method of computation allows an increase in the daily rate for 31-day months and a decrease for February.

(c) A facility may not collect more than the applied income reported on the payment plan form in a 31-day month.

**.019. Grandfathered ICF-II, ICF-III, and Skilled Recipient-Patient Requirements.**

(a) ICF-II level of care determinations are limited to Title XIX recipient-patients who had an ICF-II, ICF-III, or skilled level of care determination and were residing in a nursing facility on March 1, 1980.

(b) ICF-II level of care determinations are also available to persons who have filed an application for long-term care benefits with the department, and were residing in a long-term care facility on March 1, 1980.

(c) ICF-II level of care determinations are available to persons who had an ICF-II, ICF-III, or skilled level of care on March 1, 1980, and leave the nursing facility for a hospital stay, therapeutic home visit, or other Title XIX service, and return to a nursing facility with no break in Medicaid eligibility. These recipient-patients retain their benefits regardless of subsequent level of care determinations, with the exception of a denial of level of care.

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Doc. No. 818619      Marlin W. Johnston  
    Commissioner  
    Texas Department of Human Resources

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

## Physician Services 326.29.30

New Rules 326.29.30.001-.008 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

**.001. Introduction.** Recipient-patients are admitted to a facility only upon the recommendation of a physician. The medical care of each recipient-patient must be supervised by a physician. Each recipient-patient or responsible party will have, to the extent possible, freedom of choice of physicians.

**.002. Admission Information.** At admission, the facility must obtain recipient-patient information from a physician, including current medical findings, diagnosis, orders for immediate care, and the recipient-patient's discharge and

rehabilitation potential. If medical orders are unobtainable on admission, the medical director in a SNF or an emergency physician may give temporary orders until the attending physician fulfills this responsibility.

**.003. Physician Supervision.**

(a) The health care of every recipient-patient must be supervised by a physician who:

(1) Evaluates the recipient-patient's immediate and long-term needs. The evaluation is based on the recipient-patient's medical history and physical examination, which is conducted within 48 hours of admission and entered in the recipient-patient's record. A comparable examination, completed within five days before admission for a SNF and 14 days before admission for an ICF, and available at the time of admission, is acceptable.

(2) Prescribes a regimen of medical care based on the medical evaluation.

(3) Reviews the recipient-patient's medical plan of care, updates the medical regimen, and makes written comments about the recipient-patient's condition.

(b) The attending physician must:

(1) follow facility policies governing physician practices;

(2) record results in the recipient-patient's medical record of each visit to a recipient-patient;

(3) give telephone orders only to physicians, pharmacists, and licensed nurses;

(4) make arrangements for the recipient-patient's care in the attending physician's absence.

**.004. Visit Schedules in SNFs.**

(a) In SNFs, the attending physician must visit the recipient-patient at least once every 30 days for the first 90 days following admission.

(b) At these visits, the attending physician must review the recipient-patient's total plan of care (including medications and treatments) and revise the plan if necessary.

(c) At the time of each visit, the attending physician must complete and sign a progress note in each recipient-patient's medical record. The physician must sign all his orders.

(d) After the 90th day following admission, the attending physician may determine and justify in the recipient-patient's medical record that the recipient-patient's condition does not require visits at 30-day intervals. An alternate schedule may be adopted if:

(1) the schedule does not exceed 60 days between visits;

(2) the facility has notified the Texas Department of Health, long-term care unit of the visit schedule and has provided justification;

(3) the Texas Department of Health, long-term care unit has evaluated the recipient-patient's need for monthly physician visits as well as the recipient-patient's need for skilled nursing facility services; and

(4) the Texas Department of Health, long-term care unit has concurred with the alternate schedule.

**.005. Visit Schedule in ICFs.** In ICFs, the attending physician must see the recipient-patient whenever necessary, but at least once every 60 days, unless the physician decides that this frequency is unnecessary, records the reason, and provides an alternate plan for visits.

**.006. Recertification Requirements.** Physicians' 60-day recertification statements documenting the need for continued health care services is placed in each recipient-patient's medical record and reviewed on a regular basis by the Texas Department of Health long-term care unit staff. The recertification should state, "I hereby certify that this patient continues to require nursing facility care."

**.007. Availability for Emergency Recipient-Patient Care**

(a) The facility must have written procedures, at each nursing station, for obtaining emergency physician services at all times.

(b) A qualified physician must furnish emergency medical care to a recipient-patient when the attending physician is not immediately available.

(1) A schedule of names, telephone numbers, and duty days of physicians on call must be posted at each nursing station.

(2) Emergency procedures must include the immediate care of the recipient-patient, names of persons to be notified, and a list of reports to be prepared.

**.008. Dental Services.** The facility must have a written plan to assist recipient-patients in obtaining routine and emergency dental care. The facility must:

(1) maintain a list of local dentists for recipient-patients who do not have a private dentist;

(2) assist the recipient-patient, if necessary, in arranging for transportation to and from the dentist's office;

(3) ensure that a dentist or dental hygienist participates at least annually in the facility's staff development program. He should recommend oral hygiene policies and practices for the care of recipient-patients.

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## Nursing Services 326.29.31

New Rules 326.29.31.001-.017 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

**.001. Twenty-Four Hour Service.** Facilities must have 24-hour nursing service from enough qualified nursing personnel to meet the total nursing needs of the recipient-patient. Nursing personnel include registered and licensed vocational nurses, nurses aides, and orderlies. It is not a deficiency if the facility has documentation that a nurse has a current temporary work permit from the Texas State Board of Vocational Nurse Examiners or the Texas State Board of Nurse Examiners.

(1) Nursing personnel must be assigned duties consistent with their education and experience, and based on the characteristics of the patient load and the nursing skills needed to provide care to the recipient-patients.

(2) The facility must maintain weekly time schedules showing the number and classification of nursing personnel, including relief personnel, who will work on each unit during each tour of duty.

(3) A graduate vocational nurse who has a temporary work permit must work under the direction of a licensed vocational nurse, registered nurse, or licensed physician who is physically present in the facility.

(4) If the facility uses licensed temporary nursing personnel, they must have the same qualifications that permanent facility employees do. Temporary personnel may not serve as day shift charge nurses or as the director of nursing. If temporary personnel are used for afternoon or night shifts, a full-time, currently licensed nurse must be on call and immediately available by telephone. In an SNF, the on-call nurse must be a registered nurse.

**.002. ICF-II Staff Requirements.** ICF-II facilities must have a licensed nurse on the day shift. In addition, the attendant ratio for ICF-II facilities must be a minimum of one attendant for each 20 patients during a 24-hour period. Consideration will be given to the nurse requirements in facilities with multiple nursing stations or depending on the design of the facility.

**.003. ICF Staff Requirements.**

(a) An ICF must have a registered or licensed vocational nurse full-time, seven days a week on the day shift. For the purposes of this rule, the starting time for the day shift may be between 6 a.m. and 9 a.m., provided the facility specifies in writing the schedule that is followed.

(b) The charge nurse on the afternoon shift must be at least a license vocational nurse.

(c) The licensed nurse ratio for each 24-hour period must be a minimum of one nurse to every 30 patients. A licensed nurse is not required for the night shift. Consideration will be given to the nurse requirement in facilities with multiple nursing stations or depending on the design of the facility.

**.004. SNF Staff Requirements.**

(a) An SNF must have a registered nurse full-time, seven days a week on the day shift. For the purposes of this rule, the starting time for the day shift may be between 6 a.m. and 9 a.m. The facility must specify in writing the schedule that is followed.

(b) The ratio of licensed nurses (including director of nurses) for every 24-hour period must be one nurse to every 15 patients in the facility or unit certified to provide skilled care. Consideration will be given to the nurse requirements in facilities with multiple nursing stations or depending on the design of the facility.

**.005. Other Staff Requirements.** The administrator is responsible for always maintaining as many nurses' aides and orderlies as needed to meet the needs of the recipient-patients. The primary duties of aides and orderlies consist of direct patient care and services rather than routine house-keeping, laundry, and dietary functions. Nursing time devoted solely to patient care is included in computing nursing requirements. There must be enough nursing personnel to provide 24-hour nursing service. The number will be increased if necessary to ensure that each recipient-patient:

(1) receives prescribed treatment, medication, and diet;

(2) receives proper care for the prevention of contractures and decubiti;

- (3) is kept comfortable, clean, and well-groomed;
- (4) is protected from accidental injury;
- (5) is treated with kindness and respect.

**.006. Waiver of SNF Seven-Day Registered Nurse Requirement.** The secretary of the Department of Health and Human Services may waive the seven-day registered nurse requirement for SNFs for appropriate periods if, based upon documented findings of the state survey agency, the secretary determines that:

(1) the facility is in a rural area, and there are not enough registered nurses to meet the needs of the individual recipient-patients;

(2) the facility has at least one full-time registered nurse who is regularly on duty at the facility at least 40 hours a week;

(3) the facility:

(A) has only recipient-patients whose attending physicians have documented (through physicians' orders or admission notes) that recipient-patients do not require a registered nurse for a 48-hour period; or

(B) has made arrangements for a registered nurse or a physician to spend as much time at the facility as the recipient-patient's attending physician determines is necessary, and who will provide services on days when the full-time registered nurse is not on duty.

(4) The facility has made and continues to make a good faith effort to comply with the seven-day registered nurse requirement, but compliance is impeded by the lack of available registered nurses in that area.

**.007. Request for Waiver.**

(a) The facility may request a waiver through the local Texas Department of Health long-term care unit. Requests may be initiated at any time.

(b) Approved waivers are valid throughout the facility certification period unless waiver approval is withdrawn. During the recertification survey, determination is made for approval or denial for the next facility certification period. The facility requests a determination for a waiver from the Texas Department of Health long-term care unit at the time the recertification study is scheduled. At other times when a request is made, the long-term care unit will schedule a visit for waiver determination. Recommendation for approval or denial of a waiver is initially made by the surveyor. Further recommendation is made at the Texas Department of Health state office and information is submitted to the secretary of the Department of Health and Human Services for final approval or denial.

(c) To be approved for a waiver, the skilled nursing facility must meet all requirements stated in Rule 326.29.31.006. Also, the skilled nursing facility must be in continuing compliance with these rules. In some instances, the survey agency may require additional conditions or arrangements such as:

- (1) an additional LVN on day-shift duty in the skilled distinct part when the registered nurse is absent;
- (2) modification of nursing service operations;
- (3) modification of physical environment relating to nursing service.

(d) Denial or withdrawal of a waiver may be made at any time if any of the following conditions exist:

- (1) federal requirements for a waiver are not met on a continuing basis;
- (2) the level of recipient-patient care is not acceptable;

(3) justified complaints are found in areas affecting recipient-patient care.

(e) Skilled nursing facilities must be in a rural area for waiver consideration. Rural is any area outside boundaries of standard metropolitan statistical areas (SMSAs). SMSAs are defined and designated by the Federal Office of Management and Budget. SMSAs are determined by population, economic, and social requirements, and are subject to revisions.

**.008. ICF Director of Nursing.**

(a) An ICF must have a registered nurse or a licensed vocational nurse to supervise and direct nursing services.

(b) If an ICF employs a licensed vocational nurse to supervise and direct nursing services, the ICF must have a contract with a registered nurse who must provide the vocational nurse at least four hours of consultation in the facility per week. The registered nurse will not assume director of nursing duties, but will act as a consultant to solve problems involving patient care, conduct in-service training, and maintain proper medical records.

(c) The director of nursing may be the charge nurse on the day shift.

(d) If the director of nursing has general administrative responsibilities for the operation and management of the facility, he must have a licensed nurse assistant so that there is the equivalent of a full-time director of nursing.

**.009. SNF Director of Nursing.**

(a) An SNF must have a qualified full-time registered nurse as the director of nursing.

(b) If the director of nursing has general administrative responsibilities for the operation and management of the facility, he must have a registered nurse assistant so there is the equivalent of a full-time director of nursing.

(c) The director of nursing must have one year of additional education or experience in nursing services administration, as well as additional education or experience in such areas as rehabilitative or geriatric nursing.

(d) A facility providing more than one level of care may have only one director of nursing but he is not counted in the nursing ratio. If the director of nursing in a single level-of-care facility has administrative duties, not totally related to nursing administration, he is not counted in the nursing ratio.

**.010. Responsibilities of the Director of Nursing.**

(a) The director of nursing must have written administrative responsibility and accountability for the activities and training of nursing personnel, and may serve only one facility in this capacity. The director of nursing works during the day (defined as starting any time between 6 a.m. and 9 a.m.) and devotes a minimum of 40 hours each week to the nursing service of the facility.

(b) Responsibilities must include but are not limited to:

(1) Developing and maintaining nursing service objectives, standards of nursing practice, nursing policy and procedure manuals, and written job descriptions for each level of nursing personnel.

(2) Scheduling of and participating in daily rounds of all nursing units under his direction which have Title XIX contracted beds.

(3) Coordinating nursing service with other reci-



patient-patient services. This includes meeting with the consultant dietitian about recipient-patient menus and meal service when medically indicated.

(4) Recommending the number and levels of nursing personnel to be employed; participating in their recruitment and selection; and recommending termination of employment when necessary.

(5) Participating in nursing staff development.

(6) Ensuring that nursing personnel:

(A) provide treatments, medications, and diets to recipient-patients as prescribed;

(B) provide rehabilitative nursing care to recipient-patients as needed;

(C) keep recipient-patients comfortable, clean, and well-groomed;

(D) protect recipient-patients from accident, injury, and infection; and

(E) assist and train recipient-patients in self-care and encourage them to participate in group activities.

(7) Participating in planning and budgeting for nursing care.

(8) Participating in the development and implementation of recipient-patient care policies;

(9) Developing work schedules to provide optimum recipient-patient care using available personnel.

(10) Ensuring that licensed personnel accompany physicians on rounds.

(11) Ensuring that a nursing care plan is established, reviewed, and modified as necessary for each recipient-patient. The director of nurses may assign a ward clerk, on each shift, to be responsible for charting. This must be done under the direction of the charge nurse or, in ICFs, the individual in charge of the shift. Each chart must be approved and signed by the responsible individual on each shift.

(12) Ensuring that drugs covered by the Controlled Substances Act of 1970 are verifiable by inventory.

(13) Ensuring that a registered nurse screens recipient-patients at admission or readmission to determine the need for goal-directed therapy, unless the attending physician has ordered therapy on admission. When an evaluation by a therapist(s) is indicated during the screening process, the registered nurse contacts the attending physician to discuss the findings.

#### .011. Charge Nurse Requirements.

(a) In an SNF, the director of nursing must designate a charge nurse to supervise all nursing activities on all shifts. Except in emergencies, the director of nursing in an SNF or ICF may not be the charge nurse if a facility has an average daily occupancy of 60 or more patients. In an ICF, the director of nursing must designate a charge nurse for the day and afternoon shifts. The charge nurse may delegate responsibility to nursing personnel for the direct nursing care of specific recipient-patients during each tour of duty on the basis of staff qualifications, size and physical layout of the facility, characteristics of the patient load, and the emotional, social, and nursing care needs of recipient-patients.

(b) A charge nurse must be a registered nurse or a licensed vocational nurse.

#### .012. Charge Nurse Responsibilities. The charge nurse:

(1) is responsible during the shift, for the total nursing care of recipient-patients in his assigned unit;

(2) is able to recognize significant changes in the

conditions of recipient-patients and take necessary action;

(3) supervises direct patient care personnel in the unit;

(4) ensures that the individual nursing care plan is followed;

(5) administers or supervises the preparation and administration of prescribed medications;

(6) administers or supervises prescribed treatments;

(7) supervises serving of prescribed diets and fluid intake (It is acceptable to document only deviations from normal, and report persistent unresolved problems to the physician and the director of nursing);

(8) ensures that all medications and treatments are charted "after the fact" on his assigned shift;

(9) supervises the preparation of incident and accident reports;

(10) directs charting on his shift;

(11) approves and signs each chart when observations are made and at least daily for ICFs and at the end of each shift for SNFs;

(12) ensures that clinical records or an abstract of them are forwarded with the transfer of recipient-patients;

(13) ensures that drugs covered by the Controlled Substances Act of 1970 are verifiable by inventory;

(14) participates in regular staff meetings;

(15) ensures the detection and correction of situations that could cause recipient-patient accidents or injuries.

.013. *Rehabilitative Nursing Care.* The facility must have a program of rehabilitative nursing care that is an integral part of nursing service and is directed toward helping each recipient-patient to achieve and maintain an optimal level of self-care and independence. Nursing personnel must be trained in rehabilitative nursing, and services must be provided daily for recipient-patients who require such care. Services must be routinely recorded in the recipient-patient's medical record. Rehabilitative nursing services include:

(1) maintaining good body alignment and proper positioning of bedfast recipient-patients;

(2) encouraging and helping bedfast recipient-patients to change positions at least every two hours, day and night, or as prescribed by the attending physician, to stimulate circulation and discourage decubiti and deformities;

(3) keeping recipient-patients active and out of bed for reasonable periods of time (except when otherwise indicated by physicians' orders) and helping them learn self-care, transfer skills, and walking skills;

(4) helping recipient-patients adjust to disabilities, and to use their prosthetic, orthotic, or other adaptive equipment;

(5) helping recipient-patients carry out prescribed restorative procedures and exercises.

#### .014. General Nursing Care.

(a) All nursing care must be given according to the instructions of the charge nurse.

(b) Complete baths must be given at least every second day for helpless or chairfast recipient-patients unless an alternative plan is recommended by the physician. Partial baths must be given on the intervening days unless contraindicated. The frequency of bathing should depend on the condition of the recipient-patient, his skin condition, and nature of the impairment.

(c) Ambulatory recipient-patients must receive a complete bath at least once a week.

(d) Incontinent recipient-patients must have daily baths and must be appropriately cleaned after each incontinent episode. Adequate nursing procedures must be used to keep the bedding dry and the recipient-patient comfortable. If the skin is irritated, soothing and healing lotions or creams must be applied, subject to the physician's orders.

(e) Skin care must be given to all recipient-patients.

(f) Changes in recipient-patients' conditions, diagnoses, and progress shall be recorded as nurses' notes.

(g) Apparent death must be reported immediately to the attending physician and the relatives or guardians of the deceased. The body must not be removed from the facility without physician's authorization (telephone authorization is acceptable if not in conflict with local regulations). The authorization by a justice of the peace, acting as coroner, is sufficient when the attending or consulting physician is not available.

**.015. Supervision of Nutrition.** Nursing personnel must be aware of the nutritional needs of the recipient-patients and:

(1) encourage recipient-patients to eat in the dining area unless medically contraindicated;

(2) ensure that recipient-patients who do not eat in the dining area are provided their own trays;

(3) assist in the feeding of recipient-patients, when necessary, so that food is served at the proper temperature;

(4) observe food and fluid intake of recipient-patients, record deviations from normal in the patient's medical record, and report them to the attending physician or the dietetic service supervisor;

(5) ensure that drinking water is available to recipient-patients at all times unless medically contraindicated.

**.016. Administration of Drugs.** Drugs and biologicals must be administered only by a physician, licensed nurse, or an individual who has successfully completed a state-approved training program in medication administration. Proper administration of a drug means that the individual dose must be removed from a previously dispensed, properly labeled container (including a unit dose container), verified with the physician's orders, and administered to the proper recipient-patient at the proper time.

**.017. Conformance with Physician Orders.**

(a) Drugs and biologicals must be administered in accordance with the written orders of the attending physician.

(b) The facility must have written policies and procedures that are followed when stopping the administration of drugs. If the amount of medication or the time for discontinuance is not specified, the stop order procedure in the Texas Department of Health nursing home licensure standards will apply.

(c) Physician's verbal orders for drugs may be given only to a licensed nurse, pharmacist, or physician, and must be immediately recorded and signed by the person receiving the order.

(1) The facility may permit verbal orders for Schedule II drugs only in an emergency.

(2) Verbal orders must be countersigned by the attending physician within 72 hours and returned to the chart within five days.

(d) The facility must notify the attending physician of an automatic stop order before the last dose is administered.

(e) The issuing pharmacist must be notified at least 72 hours before to the administration of recipient-patient's last

dose of medicine. (This does not mean that replacement medications must be in house in this period.)

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## Food and Nutrition Services 326.29.32

New Rules 326.29.32.001-.007 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

**.001. Introduction.** The facility must have written, implemented procedures which ensure that the food and nutrition service is operating in a safe, sanitary, and efficient manner. The facility must provide daily meals which are adequate in amount, palatable, prepared and transported in a sanitary manner, and served in accordance with accepted professional practices. Daily meals must meet the regular and therapeutic diet needs of the recipient-patients. The facility must have a plan for obtaining, preparing, and serving meals in case of emergencies which might delay or interrupt supplies or contracted food service.

**.002. Staff and Qualifications.**

(a) A full-time dietetic service supervisor is responsible for the overall operation of the dietetic service. If the supervisor is not a qualified dietitian, he must receive consultation from a qualified dietitian. The dietetic service supervisor must participate in regular conferences with the administrator and supervisors of recipient-patient services in the development of the recipient-patient's plan of care. The dietetic service supervisor should make recommendations and assist in developing personnel policies.

(b) A dietetic service supervisor must be a qualified dietitian or:

(1) an associate of arts graduate in nutrition and food management (dietary technician);

(2) a graduate of a dietetic technician or dietetic assistant training program (correspondence or classroom), approved by the American Dietetic Association;

(3) a person who has completed a state agency approved 90-hour course in food service supervision;

(4) a person with a bachelor's degree with major studies in food and nutrition, dietetics, or food service management; or

(5) a person with the military training and experience to qualify for any of the educational requirements set out in paragraphs (1)-(4) of the subsection. Persons with qualifications listed in paragraphs (1) through (5) must have frequently scheduled consultation, as defined by the state survey agency, from a qualified dietary consultant.

(c) The facility must employ enough support personnel, trained in the preparation and service of food, to provide food and nutrition service.

(1) The food service department must be staffed at least 12 hours daily.

(2) Food service employees must be trained to perform assigned duties and participate in selected in-service education programs.

(3) Weekly staffing schedules must be posted.

**.003. Dietary Consultant Requirements.**

(a) A dietary consultant is a qualified dietitian who:

(1) is eligible for registration by the American Dietetic Association under its current requirements, has at least one year supervisory experience in dietetic service of a health care institution, and participates annually in continuing dietetic education; or

(2) has a baccalaureate degree with major studies in food and nutrition dietetics or food service management, as determined by the state survey agency; has at least one year supervisory experience in dietetic service of a health care institution; and participates annually in continuing dietetic education.

(b) To meet the annual dietetic educational requirement, each nonregistered consultant must complete a minimum of 15 clock hours of state-approved dietetic courses. Attendance must be reported to the Texas Department of Health, Bureau of Long-Term Care.

(c) Dietary consultant hours will be provided as follows:

Dietary Consultant Hours Per Month			
SNF	ICF	ICF II	Facility Population
8 hrs.	8 hrs.		60 patients or under
4 hrs.	2 hrs.		each additional 30 patients or fraction thereof
		4 hrs.	any number of patients

(d) To meet the consultant hour requirement, time can be accrued and counted exactly as rendered. The needs of the facility must be met. By mutual agreement between the administrator and the consultant, the consultant hours may be reduced as long as a minimum of eight hours per month is provided in SNFs and ICFs. The Texas Department of Health must concur with this agreement.

(e) Consultant services must be outlined by a signed contract. This does not apply to facilities which have a full-time registered dietitian or qualified dietitian on their staff.

(f) If consultant services are used, the consultant's visits must be long enough to allow:

(1) continuing liaison with medical and nursing staffs;

(2) nutritional assessment and recipient-patient counseling;

(3) guidance to the food and nutrition service supervisor and staff;

(4) approval of all menus;

(5) participation in the development or revision of dietetic policies and procedures;

(6) planning and conducting in-service education programs.

**.004. Documentation Requirements for Dietary Consultant.**

(a) Documentation reflecting consultation with a dietitian must be maintained. It must be available for review by federal and state representatives. It must include, but not be restricted to the following:

(1) name of consultant dietitian;

(2) dates of consultant's visits;

(3) assessment of food service, including all special diets ordered;

(4) review of fluids for nutritional and hydrational purposes according to physician's orders.

(b) Documentation must be revised according to each recipient-patient's needs. Documentation of the consultation must be dated and signed at each visit.

**.005. Hygiene.**

(a) Food service personnel must be in good health and practice hygienic food-handling techniques.

(b) Food service personnel must wear clean, washable garments, hair coverings or clean caps, and have clean hands and fingernails.

(c) In addition to the requirements stated in Rule 326.29.20.006, routine health examinations must meet any local, state, or federal codes for food service personnel.

(d) When food handlers' permits are required, they must be current.

(e) Persons with symptoms of communicable diseases or open infectious wounds may not work.

**.006. Menus and Nutritional Adequacy.**

(a) Menus must be written at least one week in advance and designed to meet nutritional and special dietary needs of recipient-patients in accordance with the attending physician's orders. To the extent medically possible, the menu should meet the recommended dietary allowances of the Food and Nutrition Board, National Research Council, National Academy of Sciences.

(b) A current diet manual recommended by the state survey agency must be readily available to food service personnel and the supervisor of nursing service.

(c) For survey purposes, the facility must retain, for 30 days, records of menus served and food purchased.

(d) At least three meals or their equivalent must be served daily with no more than 14 hours between a substantial evening meal and breakfast. Nourishing between meal or bedtime snacks should be offered.

(e) The current week's menu must be posted in the dietary department so that employees responsible for purchasing, preparing, and serving foods can use it.

(f) Menus must be varied from week to week. Food must be served in adequate amounts, and be adjusted for seasonal changes. Substitutions need not be noted on the menu but must be recorded after service and kept on file for 30 days.

(g) Consideration must be given to the general age group in planning the menus.

(h) A list of recipient-patients receiving special diets and a record of their diets will be kept in the dietary area for at least 30 days.

(i) A file of tested recipes, adjusted to proper yield, should be kept in the dietary area.

(j) The dietary department must keep a three-day supply of staple foods at all times. The facility is allowed the flexibility to use food on hand to make substitutions at any intervals as long as comparable nutritional value is maintained. The substitute must be documented on the day of use.

(k) Food preference of recipient-patients must be considered when not in conflict with physician's orders. Food must be ground or chopped to meet individual needs. If a recipient-patient refuses the food served, reasonable substitutions of comparable nutritional content are to be offered.

(l) There must be equipment and procedures to keep food at proper temperature during service.

(m) There must be table service for all who can and will eat at the table, including wheelchair recipient-patients. Recipient-patients who need help eating must be assisted promptly.

(n) Trays for bedfast recipient-patients must rest on firm supports, such as over-bed tables. Sturdy tray stands of proper height must be provided recipient-patients able to be out of bed for their meals. Adaptive self-help devices, prescribed by the attending physician, must be provided to contribute to the recipient-patients' independence in eating.

(o) Therapeutic diets, additive or restrictive, must be prepared and served as prescribed by the attending physician. Any deviation from the physician's orders must be reported immediately to the director of nursing who must notify the physician and the administrator, and must document the deviation in a separate administrative record.

(1) Therapeutic diet orders must be planned, prepared, and served with supervision or consultation from a qualified dietitian.

(2) Persons responsible for the therapeutic diets must have sufficient knowledge of food value to make suitable substitutions if necessary.

**.007. Food Storage and Preparation.** All foods must be stored, prepared, and distributed under hygienic and sanitary conditions.

(1) Written inspections by state and local health authorities must be on file at the facility. Action taken to comply with any recommendations must be included.

(2) Personnel not involved with food operations must not be permitted to pass routinely through the kitchen.

(3) Dry or staple food items must be stored off the floor in a ventilated room not subject to sewage, wastewater backflow, contamination by condensation, leakage, rodents, or vermin.

(4) Dishwashing must be carried out in compliance with the state and local health codes.

(5) Waste, not disposed of by mechanical means, must be kept in leakproof, nonabsorbent containers with close-fitting covers. It must be disposed of daily in a manner that will prevent its being a nuisance, transmitting disease, providing a breeding place for flies, or a feeding place for rodents. Containers must be cleaned thoroughly inside and out at least daily.

(6) Effective procedures for cleaning all equipment and work areas must be followed.

(7) Handwashing facilities with hot and cold water, soap, and individual towels (preferably paper towels) must be in kitchen areas.

(8) Foods must be prepared by methods that conserve nutritive value, flavor, and appearance; and served at the proper temperature and in a form to meet individual recipient-patient needs.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818622      Marlin W. Johnston  
 Commissioner  
 Texas Department of Human Resources

Proposed Date of Adoption: January 4, 1982  
 For further information, please call (512) 441-3355, ext. 2037.

## Pharmacy Services 326.29.33

New Rules 326.29.33.001-.012 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the Medical Assistance Program.

### .001. General Requirements.

(a) The facility must provide appropriate methods and procedures for obtaining and administering drugs and biologicals.

(b) The facility must ensure safe and accurate acquisition, storage, distribution, administration, review, and recording of all drugs and biologicals upon receipt.

(c) The recipient-patient or responsible party has the right to choose and change the pharmacy he uses at any time. The nursing facility must not interfere with or limit this right, except when free choice creates a noncompliance situation. Changes must be recorded on all appropriate forms maintained by the nursing facility.

(d) If the facility has a licensed pharmacy, a licensed pharmacist must administer it. If it does not have a pharmacy, it must be able to obtain prescribed drugs and biologicals from a pharmacy within a reasonable time.

**.002. Supervision.** The facility must provide pharmaceutical services under the responsibility and direction of a pharmacist consultant and the director of nursing.

**.003. Pharmacy Services Committee.** An SNF must have a pharmacy services committee comprised of at least the pharmacist consultant, the director of nursing, the nursing facility administrator, and one physician. The committee must:

(1) ensure that the objectives of the pharmacy services Rules 326.29.33.001-.012 are met;

(2) meet at least quarterly;

(3) document its activities, findings, and recommendations;

(4) develop written policies and procedures for safe and effective drug therapy, distribution, control, and use.

### .004. Pharmacist Consultant.

(a) A pharmacist, currently licensed by the state of Texas and in good standing, will act as a consultant to the facility. The consultant reviews the drug regimen of each recipient-patient at least monthly, and reports any irregularities to the director of nursing who reports to the attending physician. Notes on these monthly visits must be entered in a record kept separate from the recipient-patient's medical record. The consultant must prepare a written report for quarterly review. This report may be the monthly summaries.

(b) Consultant hours must be provided as follows:

Pharmacy Consultant Hours Per Month			
SNF	ICF	ICF-II	Facility Population
4 hrs.	3 hrs.	2 hrs.	less than 60 patients
5 hrs.	4 hrs.	3 hrs.	61-150 patients
6 hrs.	5 hrs.	5 hrs.	over 150 patients

(c) The needs of the facility must be met. Consultant time may be reduced if the administrator and consultant agree and if the Texas Department of Health concurs.

(d) The consultant must comply with all department requirements for administration of the Texas Medical Assis-

tance Program. In addition to the consultant's usual pharmaceutical duties, he will advise and educate professional staff on pharmacy matters.

(e) The consultant must keep at the facility a record of service, consultation, and recommendations for pharmacy procedure.

**.005. Drug Security.** The facility must establish procedures for storing and disposing of drugs and biologicals in accordance with federal, state, and local laws.

(1) Medications must be properly labeled and stored in a locked medication room, cabinet, or cart at the nursing station. Only authorized personnel have access to the keys. The label of each recipient-patient's individual drug container must clearly show:

- (A) recipient-patient's full name;
- (B) prescribing physician's name;
- (C) pharmacy prescription file number;
- (D) name, strength, and amount of the drug dispensed;
- (E) expiration date of all time-dated drugs;
- (F) date of issuance (date the prescription was filled or refilled);
- (G) warning labels if needed;
- (H) if the label is on the container of a Controlled Substances Act drug, the label must contain the following warning: "Caution: federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed;"

(I) physician's directions for use;

(J) name, address, and telephone number of issuing pharmacy.

(2) Containers with illegible, incomplete, or missing labels must be returned to the pharmacist for relabeling.

(3) The drugs of each recipient-patient must be stored in their original containers.

(4) Separately locked, permanently affixed compartments must be used for storage of controlled drugs classified in Schedule II of the Controlled Substance Act of 1970.

(5) The director of nursing or the charge nurse must call the consulting or issuing pharmacist to report any errors, such as improper labeling.

(6) Drugs requiring refrigeration must be stored in the medication room in a refrigerator. Only food and beverage items for recipient-patient use may be stored in that medication refrigerator, but they must be kept separate from the recipient-patients' drugs. Drugs also may be kept in a separate, permanently attached, locked medication storage box in a refrigerator near the nursing station.

(7) Poisons and drugs used externally must be stored separately from internal drugs.

(8) The administrator is responsible for disposing of discontinued or expired drugs or drugs of deceased recipient-patients. These drugs must be disposed of within 90 days, in accordance with federal and state laws.

**.006. Drug Records.** The facility must maintain detailed records of the receipt and disposition of all drugs subject to the Controlled Substances Act of 1970. The facility must also maintain an individual drug administration record for each recipient-patient.

**.007. Drug Orders.**

(a) All drugs must be ordered in writing by the recipient-patient's physician. If drug orders are verbal, they must be taken by a licensed nurse, pharmacist, or a physi-

cian, and immediately recorded and signed by the person receiving the order. Such orders must be countersigned by the physician and returned to the chart within five days.

(b) The issuing pharmacist must be notified at least 72 hours before the administration of a recipient-patient's last dose of medicine. Replacement medicine does not have to be in the facility at that time, but it must be available by the time the recipient-patient has taken his last dose.

(c) If the amount of drug or the time for discontinuance is not specified, the stop order procedure as detailed in the Texas Department of Health Nursing Home Licensure Standards will apply.

**.008. Drug Release.**

(a) Drugs must be released to the recipient-patient, responsible party, or family when the recipient-patient is discharged or furloughed, unless otherwise requested by the physician.

(b) When a recipient-patient is leaving the facility on a pass, legend drugs in their original containers must be released. Schedules II, III, and IV drugs must be inventoried in and out. Nonscheduled drugs may be listed by name. Any division of the legend prescription must be handled by the pharmacist and all information on the original prescription label must appear on the furlough medication supply.

**.009. Drug Administration.** Drugs and biologicals are to be administered only by physicians, licensed nursing personnel, or by other personnel who have completed a state-approved training program in drug administration.

(1) The facility must use only the drug administration procedures established by the pharmacy services committee to ensure that:

(A) drugs to be administered are checked against physician's orders;

(B) the recipient-patient is identified prior to the administration of a drug;

(C) each recipient-patient has an individual medication record and that the dose of drug administered is properly recorded after administration in that record by the person who administered the drug.

(2) Drugs and biologicals must be prepared and administered by the same person during a shift, except under unit of use package distribution systems.

(3) Drugs prescribed for one recipient-patient must not be administered to any other person.

(4) The recipient-patient must not possess or administer legend and nonlegend drugs, except for emergency drugs on special order of the recipient-patient's physician or in a predischarge program under the supervision of a licensed nurse.

(5) Drug errors and adverse drug reactions must be reported immediately to the recipient-patient's physician. An entry of the incident and the reporting must be made in the recipient-patient's record.

(6) Nursing facilities must have current medication reference texts or sources.

**.010. Controlled Substances.** The facility must adhere to the Texas Department of Health Nursing Home Licensure Standards concerning procedures governing the use of drugs covered by the Controlled Substances Act of 1970.

**.011. Emergency Drug Kit.**

(a) An emergency drug kit, approved by the facility's pharmacy services committee, must be kept readily availa-

ble. It is the property of the pharmacy, and placed in the facility through authorization of the physician.

(b) The attending physician or the emergency physician may keep a stock of emergency drugs in a nursing facility in a sealed kit with the physician's name on it. It is the physician's responsibility to ask the nurse to administer a dose from the drug container to the recipient-patient.

(c) The attending physician or emergency physician may give other treating physicians written permission to use his emergency drugs.

(d) If a physician orders the use of any drug from the emergency kit or the seal on the kit is broken, the director of nursing or the charge nurse must notify the pharmacist consultant. When drugs are received from the pharmacy, the consultant pharmacist may authorize the director of nursing or the charge nurse to replace the drugs in the kit and reseal it.

**.012. Drug Monitoring.**

(a) The pharmacist consultant's monthly review of the drug regimen of each recipient-patient must be conducted in the facility. Any irregularities detected must be reported to the director of nursing who reports to the attending physician. A record of drug regimen reviews must be prepared by the pharmacist and maintained in the facility. Drug regimen review activities must be integrated, as necessary, into recipient-patient care planning.

(b) The physician must review the recipient-patient's medication at least monthly in an SNF and every 60 days in an ICF.

(c) In an ICF, a pharmacist must review medications monthly for each recipient-patient and notify the physician if changes are appropriate.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818623      Marlin W. Johnston,  
Commissioner  
Texas Department of Human Resources

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 441-3355, ext. 2037.

## Laboratory and Radiology Services 326.29.34

New Rules 326.29.34.001-.004 are proposed under the authority of the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 32, which authorizes the department to administer the medical assistance program.

**.001. Written Policies.** The facility must have written policies for routine and emergency laboratory and radiology services to meet the needs of the recipient-patients.

**.002. Provision of Services.**

(a) The facility may furnish laboratory and radiology services or have written agreements and procedures for referring recipient-patients to qualified outside resources.

(b) If the facility provides its own laboratory or radiology services, it must meet the applicable conditions established for certification of hospitals that are contained in 42 Code of Federal Regulations 405.1028 and 405.1029.

**.003. Availability of Results.** Laboratory and radiology services, performed on a recipient-patient, must be noted in the recipient-patient's medical record by the physician who orders the service. The facility must ensure that the physician receives prompt notification of test results. Test results must be authenticated, dated, and made a part of the recipient-patient's medical record.

**.004. Blood and Blood Products.** If the facility stores and transfuses blood or blood products, the facility must meet the conditions established for certification of hospitals that are contained in 42 Code of Federal Regulations 405.1028(j), (k), and (l).

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818624      Marlin W. Johnston,  
Commissioner  
Texas Department of Human Resources

Proposed Date of Adoption: January 4, 1982  
For further information, please call (512) 441-3355.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, an agency may take final action on a rule 30 days after publication of the proposed action in the *Register*. Upon adoption of the action, "the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption." The action is effective 20 days after filing of the notice of final action with the Texas Register Division unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice. The notice includes whether the action is promulgated with or without changes to the action proposed; a statement of the legal authority under which the final action is promulgated; and the text of the final action, in compliance with the rules of the Texas Register Division. If an agency takes final action on a rule with no changes made to the text as proposed, only the preamble of the notice and statement of legal authority will be published. The text, as appropriate, will be published only if final action is taken with changes made to the proposed action. The certification information, which includes the effective date of the final action, follows each published submission of final action. A telephone number for further information is also published.

An agency may withdraw proposed action or the remaining effectiveness of emergency action by filing a notice of withdrawal with the Texas Register Division. The notice will appear in this section of the *Register* and is generally effective immediately upon filing with the Texas Register Division.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Non-codified."

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## CODIFIED

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### TITLE 1. ADMINISTRATION

#### Part I. Office of the Governor

##### Chapter 3. Criminal Justice Division

##### Subchapter B. Crime Stoppers Advisory Council

##### Membership and Organization of the Council

The Crime Stoppers Advisory Council adopts new §§3.701-3.706 without changes to the proposed text published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3897).

The sections provide the Crime Stoppers Advisory Council with operating rules regarding organization, members of the council, selection and election of officers, meetings, selection of a director, powers and duties of the chairman, and amendments to rules. The sections implement new legislation which establishes the council within the Criminal Justice Division of the Governor's Office of General Counsel and Criminal Justice.

No comments were received regarding adoption of the sections.

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

Willis Whatley  
November 25, 1981

These sections are adopted under House Bill 1681, which provides the Crime Stoppers Advisory Council with the authority to promulgate rules to carry out its function pursuant to this Act.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818573 Robert C. Flowers, Deputy Director  
Criminal Justice Division  
Office of the Governor

Effective Date: January 4, 1982  
Proposal Publication Date: October 23, 1981  
For further information, please call (512) 475-3021.

### Local Crime Stoppers Programs

The Crime Stoppers Advisory Council adopts new §§3.721-3.725 without changes to the proposed text published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3897).

The sections enable the Crime Stoppers Advisory Council to adopt a policy toward assistance provided local crime stoppers programs, relationship of state crime feature to local crime features, availability of grant funds to local crime stoppers programs, and relationship of state rewards to local rewards. The sections implement new legislation which establishes the council within the Criminal Justice Division of the Governor's Office of General Counsel and Criminal Justice.

No comments were received regarding adoption of the sections.

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

Willis Whatley  
November 25, 1981

These sections are adopted under House Bill 1681, which provides the Crime Stoppers Advisory Council with the authority to promulgate rules to carry out its function pursuant to this Act.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818574 Robert C. Flowers, Deputy Director  
Criminal Justice Division  
Office of the Governor

Effective Date: January 4, 1982  
Proposal Publication Date: October 23, 1981  
For further information, please call (512) 475-3021.

## Reward Program

The Crime Stoppers Advisory Council adopts new §§3.741-3.744 with changes to the proposed text published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3897).

These sections enable the Crime Stoppers Advisory Council to offer rewards to persons providing information on the "state crime" features which leads to arrest and indictment or recovery of contraband in trafficking amounts. The sections set forth the council's general policy concerning the state reward program, eligibility for state reward, amount of rewards-payment, and selection of state crime feature. These sections implement new legislation which establishes the Crime Stoppers Advisory Council within the Criminal Justice Division of the Governor's Office of General Counsel and Criminal Justice.

No comments were received regarding adoption of these sections.

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.

Willis Whatley  
November 25, 1981

These sections are adopted under House Bill 1681, which provides the council with the authority to promulgate rules to carry out its functions pursuant to this Act.

### §3.741. General Policy.

(a) The governor has statutory authority to offer a reward for the apprehension of a person accused of a felony in Texas who is evading arrest. Further, the reward is to be paid from the state treasury. The governor must certify and recite the facts which entitle such person to receive it. (Code of Criminal Procedure, Act, 1965, 59th Legislature, Chapter 722, §1, effective January 1, and Act, 1966, Article 51.11.)

(b) The Crime Stoppers Advisory Council Reward Program is established for the purpose of obtaining information, which might not otherwise be obtained, about criminal activity and fugitive felons throughout the state. It is designed to promote priority crimes of the state and assist local crime stoppers programs and law enforcement agencies. Care will be taken to preclude an informant from obtaining more than one reward for the same information from different programs, and to discourage "shopping" among reward programs in an effort to obtain a higher reward.

(c) The council recognizes that, under ideal conditions, all citizens would report information about crimes to the proper authorities. It also recognizes, that for a variety of reasons—fear of involvement and apathy being paramount among them—many citizens do not come forth with such information. Programs which preserve the anonymity of the caller and also provide financial rewards go far to counteract these reasons. Since obtaining this information is one of the council's primary purposes, it has adopted this reward program.

### §3.742. Eligibility for State Reward.

(a) Informants providing information to the council resulting in arrest and indictment or recovery of contraband in trafficking amounts on the publicized state crime features will only be eligible for a state reward under this program. State rewards under this program will not be made available

to informants providing information on other felony crimes for which a state reward has not been offered.

(b) In determining eligibility for a state reward under this program, the counsel of local law enforcement will be solicited. Council staff will then recommend an appropriate amount for the state reward on a case-by-case basis to the governor. The decision of the governor as to the amount of the state reward shall be final.

(c) Any person, except as restricted below, who directly and initially contacts the Crime Stoppers Advisory Council and gives information which leads to an arrest and indictment or recovery of contraband in trafficking amounts in the cases publicized in the state crime feature will be eligible for a state reward under this program.

(d) Commissioned law enforcement officers and members of their immediate families, the victim of the crime, and the fugitive felon are not eligible for a state reward under this program.

(e) Members and staff of the Crime Stoppers Advisory Council are not eligible for a state reward under this program.

(f) If two or more persons have furnished information relative to the same crime, the governor shall determine whether a state reward shall be paid to one or more persons, based on the relative merits of the information received.

### §3.743. Amount of Rewards—Payment.

(a) Council staff shall develop a state reward schedule subject to the approval of the governor. Council staff, on a case-by-case basis, shall recommend to the governor an appropriate amount for a state reward based on the reward schedule.

(b) The governor shall determine the exact amount of each state reward and his decision shall be final.

(c) Payment of state rewards shall be made in such manner as the governor shall direct.

(d) Payment of state rewards to informants for information leading to arrest and indictment or recovery of contraband in trafficking amounts on state crime features will be eligible until withdrawn.

### §3.744. Selection of State Crime Features.

(a) State crime features will be determined by the director.

(b) On intervals selected by the director, a specific offense, type of criminal activity, or fugitive felon will be targeted for the state reward program and circulation in the media.

(c) The state crime feature will be distributed by council staff and widely publicized statewide through the various participating media services.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818575 Robert C. Flowers, Deputy Director  
Criminal Justice Division  
Office of the Governor

Effective Date: January 4, 1982

Proposal Publication Date: October 23, 1981

For further information, please call (512) 475-3021.

## Hotline Program

The Crime Stoppers Advisory Council adopts new §§3.761-3.763 without changes to the proposed text published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3897).



The sections enable the Crime Stoppers Advisory Council to operate a hotline program by setting forth general policies on the hotline program, hours of operation, and record keeping. The sections implement new legislation which establishes the council within the Criminal Justice Division of the Governor's Office of General Counsel and Criminal Justice.

No comments were received regarding adoption of the sections.

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.

Willis Whatley  
November 25, 1981

These sections are adopted under House Bill 1681, which provides the Crime Stoppers Advisory Council with the authority to promulgate rules to carry out its function pursuant to this Act.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818576 Robert C. Flowers, Deputy Director  
Criminal Justice Division  
Office of the Governor

Effective Date: January 4, 1982  
Proposal Publication Date: October 23, 1981  
For further information, please call (512) 475-3021.



## Part IV. Office of the Secretary of State Chapter 73. Statutory Documents

### Session Laws

The office of the Secretary of State adopts amendments to §73.11 (004.05.02.001) without changes to the proposed text published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3902).

The rule clarifies the statutory authority of the secretary of state's office concerning the publication and distribution of the *General and Special Laws of Texas*. Under the amended section, the secretary of state will no longer sell copies of the bound volumes of the *General and Special Laws of Texas*;

however, the name of the publisher will be provided upon request.

No comments were received regarding adoption of the amendments.

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.

David A. Dean  
November 24, 1981

The amendments are adopted under authority of Texas Civil Statutes, Article 4337, which provides that the secretary of state is not required to sell copies of the bound volumes of session laws, but will provide complimentary copies as required by statute and notify the public of the name of the publisher from whom copies may be purchased.

Issued in Austin, Texas, on November 24, 1981.

Doc. No. 818565 David A. Dean  
Secretary of State

Effective Date: December 15, 1981  
Proposal Publication Date: October 23, 1981  
For further information, please call (512) 475-2015.

### Public Utility Reports

The Office of the Secretary of State adopts the repeal of §§73.21-73.24 (004.05.03.001-.004) without changes to the proposed notice of repeal published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3902).

The secretary of state is no longer authorized to file public utility reports since House Bill 509, as passed by the 67th Legislature, 1981, repealed the statutory requirement to do so under Texas Civil Statutes, Articles 1441-1446. The repeal of these rules will eliminate the requirement to file these reports.

No comments were received regarding adoption of the repeal.

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

David A. Dean  
November 24, 1981

The repeal is adopted under authority of House Bill 509, which repealed Texas Civil Statutes, Articles 1441-1446. The statutes previously required the secretary of state to file public utility reports.

Issued in Austin, Texas, on November 24, 1981.

Doc. No. 818566 David A. Dean  
Secretary of State

Effective Date: December 15, 1981  
Proposal Publication Date: October 23, 1981  
For further information, please call (512) 475-2015.

### Commissions

The Office of the Secretary of State adopts new §73.71 without changes to the proposed text published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3902).

The rule clarifies present procedures concerning the issuance of a commission to elected or appointed officers, and specifies that an executed oath of office and a \$2.00 fee be received from the appointed or elected officer before a commission is issued.

No comments were received regarding adoption of the section.

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.

David A. Dean  
November 24, 1981

The section is adopted under Texas Civil Statutes, Article 4331, §5, which authorizes the secretary of state to commission appointed and elected officers, and Texas Civil Statutes, Article 3914, which authorizes the secretary to collect a \$2.00 fee for each commission issued.

Issued in Austin, Texas, on November 24, 1981.

Doc. No. 818567      David A. Dean  
Secretary of State

Effective Date: December 15, 1981  
Proposal Publication Date: October 23, 1981  
For further information, please call (512) 475-2015.

## Chapter 89. Public Weigher

The office of the Secretary of State adopts the repeal of §§89.1-89.4 (004.55.00.001-.004) without changes to the proposed notice of repeal published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3903).

The secretary of state no longer has the authority to appoint public weighers since House Bill 275, as passed by the 67th Legislature, 1981, transferred the authority to the commissioner of agriculture. The repeal of these sections will eliminate the requirement to appoint public weighers.

No comments were received regarding adoption of the section.

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.

David A. Dean  
November 24, 1981

The repeal is adopted under House Bill 275, which authorizes the commissioner of agriculture to appoint public weighers, previously the responsibility of the secretary of state under Texas Civil Statutes, Article 5681.

Issued in Austin, Texas, on November 24, 1981.

Doc. No. 818568      David A. Dean  
Secretary of State

Effective Date: December 15, 1981  
Proposal Publication Date: October 23, 1981  
For further information, please call (512) 475-2015.

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 5. Quarantines

##### Mediterranean Fruit Fly Quarantine

The Texas Department of Agriculture adopts new §5.211 with changes to the proposed text published in the October 20, 1981, issue of the *Texas Register* (6 TexReg 3863).

The following changes have been made to §5.211 at the instance of the Texas Department of Agriculture:

(1) The list of regulated articles in subsection(e) has been alphabetized.

(2) Spelling corrections have been made as follows: Mediterranean fruit fly, *Ceratitits capitata* (Wiedemann) in subsection (a); trimedlure in subsection (c); Pyriform guajava (*Psidium guajava pyriform*) in subsection (e); rose apple (*Syzygium jambos (Eugenia jambos)*) in subsection (e); and Spanish cherry (Brazilian plum) (*Eugenia dombeyi (E. brasiliensis)*) in subsection (e).

The proposed section is justified by the recent infestations of the Mediterranean fruit fly, *Ceratitits capitata*, (Weidemann), in both California and Florida, and because of the continuing threat of a spread of the infestation into Texas. The medfly is one of the world's most potentially destructive pests, known to lay eggs in 200 varieties of fruits and vegetables, many of which are grown in Texas. An infestation of the fly could cause catastrophic losses to Texas fruits and vegetables, an \$800 million-a-year industry. The medfly's short life cycle permits rapid development of serious outbreaks. The advances of the pest are often geometric as one fertile female medfly can produce over 500 progeny. The monetary threat from a medfly infestation is very real and immediate. The insect has already done millions of dollars of damage to the nation's leading agricultural state, California. State officials there have spent an estimated \$50 million in a year-long eradication program that as yet failed to stem the medfly's spread. Despite aerial spraying and sterile fly release programs, the USDA Mediterranean fruit fly quarantine in force in California now contains five times its original area.

Continual expansion of the infestation has been due largely to vehicular transportation of infested produce harboring medfly larvae, and it is this agency of infestation which the Texas Department of Agriculture seeks to forestall with its proposed adoption of Mediterranean fruit fly quarantine, §5.211, as a permanent quarantine. It is hoped that the effect of the rule will be to preclude the spread of the medfly into Texas which will not only save Texas agricultural producers from potential losses, but will save the state from the potentially burdensome costs associated with combatting an established infestation.

Section 5.211 will impose a quarantine upon any state or portion thereof which has been quarantined by the U. S. Department of Agriculture or deemed possibly infested with the Mediterranean fruit fly, *Ceratitits capitata* (Wiedemann), by the Texas Department of Agriculture commissioner.

Such quarantine shall prohibit the movement into this state of enumerated regulated articles of fruits, vegetables, produce, plants, nursery products, plant products, soil, and other host materials unless the materials have been treated in a

manner to assure eradication of viable medfly larvae, pupae, or adult flies. Treatment procedures for host materials are specified in the section and vary with each variety of host material. These include fumigation, cold storage, or a combination thereof to be conducted at the point of origin of the shipment of host material or at the Texas border.

Provision is made in the section for certifying areas free of the medfly for the purposes of the quarantine if recommended trapping procedures have been applied without discovery of the medfly. Further, certain regulated articles may be exempt from the quarantine if they have been processed in a manner inconsistent with viable medfly presence in the product. Inspection authority is granted the commissioner under the section, and the penalties to be imposed upon those convicted of violating the quarantine are established.

No comments were received regarding adoption of this section.

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.

Steve Haley  
November 24, 1981

The section is adopted under Texas Agriculture Code, §71.001 and §71.007 (1981), which provides the Texas Department of Agriculture with the authority to establish a quarantine against a plant disease or pest if the department determines that a dangerous insect pest or plant disease new to and not widely distributed in this state exists in an area outside the state and threatens to spread within the confines of this state. Further, the Department of Agriculture is authorized to adopt quarantine rules that prevent the selling, moving, or transporting of any plant, plant product, or substance from a quarantined area, provide for the destruction of trees or fruit, and provide for methods of storage.

#### §5.211. Quarantine Regulations.

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

**Certificate**—An official document stipulating compliance with the requirements of the Texas Department of Agriculture.

**Common carrier**—An individual or corporation licensed to transport persons, goods, or messages for compensation.

**Host plant**—A plant or part thereof known or suspected of harboring or transporting Mediterranean fruit fly in any of its stages.

**Infested**—Actually harboring Mediterranean fruit fly in any of its stages or so exposed to infestation by Mediterranean fruit fly that it is reasonable to believe that an infestation could exist.

**Mediterranean fruit fly**—The insect known as the Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), in any state of its development.

**Movement (movement, move)**—Shipped, deposited for transmission in the mail, otherwise offered for shipment, received for transportation, carried or otherwise transported, or moved or allowed to be moved by mail or otherwise.

**Person**—Any individual, partnership, corporation, company, society, association, or other organized group.

**Regulated area**—Any state or portion thereof designated by the Texas Department of Agriculture, the USDA, or

the affected state as an area infested with or regulated due to the presence of Mediterranean fruit fly.

**Regulated articles**—Any article, including soil, capable of transporting or harboring Mediterranean fruit fly.

**Shipment or shipments**—The act or process of transferring or moving products from one point to another, or the products being transferred or moved.

**USDA**—United States Department of Agriculture, Animal and Plant Health Inspection Service (APHIS).

(b) **Quarantined area**. Any state or portion thereof either quarantined by the USDA or possibly infested with the Mediterranean fruit fly in the determination of the commissioner of agriculture, Texas Department of Agriculture.

(c) **Shipping requirements**. All movements of regulated articles including host fruit and soil from a designated regulated area or from any infested area are prohibited entry into Texas unless accompanied by an official certificate of inspection or treatment issued by or under the authority of USDA or the appropriate official of the state of origin. Such certificates shall denote compliance with the regulations of the Texas Department of Agriculture

(1) **Free areas**.

(A) Any county of California not quarantined by USDA or not infested in the determination of the commissioner of agriculture, may be declared free of Mediterranean fruit fly for certification purposes when traps of the Jackson or Steiner types baited with trimedlure, and placed in host plants have been operated, inspected for Mediterranean fruit fly, and properly maintained by state or county quarantine officials for a 30-day period prior to certification. These traps should be at a minimum density of five traps per square mile.

(B) Each shipment to Texas locations of regulated articles originating in an area designated as free may enter Texas if accompanied by a certificate of origin issued by the USDA, the California Department of Food and Agriculture, or the county agriculture commissioner in the county where the articles originated.

(C) Shipments to Texas locations of regulated articles from these free areas that do not have the appropriate origin certificate must be treated and certified in accordance with the treatment schedule in this quarantine before entry will be allowed. Shipments of regulated articles from these free areas to destinations other than Texas may pass through Texas without treatment, provided the shipment is accompanied by a certificate of origin from a state, county, or federal agricultural official in California and documentation that there will be no deliveries in Texas. At the point of entry into Texas, trucks must be sealed by a Texas Department of Agriculture official.

(D) Fumigation in Texas will be permitted at facilities approved by the commissioner.

(2) **Required certification**. Regulated articles originating from the areas under quarantine by USDA or infested in the determination of the commissioner of agriculture, must be treated and certified as required by the USDA quarantine before entry into this state. Included are commercial shipments, shipment by common carrier, personal cargo in private vehicles and aircraft, and personal possessions of persons being transported by common carrier.

(d) **Regulated articles**. Any fruit, berries, or vegetables of the host plant included in the following host list and soil, both separate from or attached to plants or plant parts. The purpose of the list is to provide information as to the pre-

ferred hosts of Mediterranean fruit fly; however, it is not to be considered as all inclusive.

(e) Host list.

(1) All fruits, vegetables, or berries of the following plants:

Almond (*Prunus dulcis* (*P. amygdalus*))

Apples (*Malus sylvestris*)

Apricot (*Prunus armeniaca*)

Avocado (*Persea americana*)

Calamondin orange (*Citrus mitis*)

Cherries (sweet and sour)

(*Prunus avium*, *Prunus cerasus*)

Citrus citron (*Citrus medica*)

Date (*Phoenix dactylifera*)

Fig (*Ficus carica*)

Grape (*Vitis vinifera*)

Grapefruit (*Citrus paradisi*)

Guava (*Psidium guajava*)

Japanese persimmon (*Diospyros kaka*)

Kumquat (*Fortunella japonica*)

Lemon (*Citrus limon*)

Lime (*Citrus aurantiifolia*)

Loquat (*Eriobotrya japonica*)

Mandarin orange (tangerine)

(*Citrus reticulata*)

Mock orange (*Murraya exotica*)

Mountain apple (*Syzygium mallaccense*)

(*Eugenia mallaccensis*)

Natal plum (*Carissa macrocarpa* and

*Terminalia chebula*)

Nectarine (*Prunus persica*)

Olive (*Olea europea*)

Opuntia cactus (*Opuntia* spp.)

Peach (*Prunus persica*)

Pear (*Pyrus communis*)

Pepper (*Capsicum annuum* and

*Capsicum frutescens*)

Pineapple guava (*Feijoa sellowiana*)

Plum (*Prunus americana*)

Pomiform guajava (*Psidium guajava*

"pomiform")

Prune (*Prunus domestica*)

Pummelo (shaddock) (*Citrus grandis*)

Pyriform quajava (*Psidium quajava*

"pyriform")

Quince (*Cydonia oblonga*)

Rose apple (*Syzygium jambos*)

(*Eugenia jambos*)

Sour orange (*Citrus aurantium*)

Spanish cherry (Brazilian plum)

(*Eugenia dombeyi* (*E. brasiliensis*))

Strawberry guava (*Psidium cattleianum*)

Surinam cherry (*Eugenia uniflora*)

Sweet orange (*Citrus sinensis*)

Tomato (pink and red ripe)

(*Lycopersicon esculentum*)

White sapote (*Casimiroa edulis*)

Yellow Oleander (bestill) (*Thevetia*

*peruviana*)

All others included in any USDA quarantine.

(2) Except that the list does not include any fruits, vegetables, or berries which have been canned or frozen below -17.8°C (0°F).

(3) Soil within the drip area of plants which produce the fruits, vegetables, or berries listed in paragraph (1) of this subsection.

(4) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs in this subsection, when it is determined by an inspector that it presents a risk of spread of the Mediterranean fruit fly and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this section.

(f) Certification treatment.

(1) Treatment for regulated articles shall be as follows.

(A) Avocado. Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m<sup>3</sup> for 2-1/2 hours at 21°C (70°F) or above followed by refrigeration for seven days at 7.22°C (45°F) or below. The seven-day period may include up to 24 hours precooling time. Time between fumigation and start of cooling not to exceed 24 hours, but must include at least 30 minutes aeration.

(B) Calamondin orange, citrus citron, grapefruit, kumquat, lemon, lime, mandarin orange, tangerine, orange, and pomelo. Fumigation with ethylene dibromide (EDB) at normal atmospheric pressure. Dosage as follows:

Fruit in Chamber	Dosage of EDB in g/m <sup>3</sup> for two hours	
	15.5°-20.5°C (60°-69°F)	21°C or above (70°F or above)
25% or less	10 g	8 g
More than 25% but less than 50%	12 g	10 g
50% or more	14 g	12 g

Required post treatment aeration: Forced circulation in the fumigation chamber for 1/2 hour following treatment and then placed in a well-ventilated area.

(C) Tomato. Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m<sup>3</sup> for 3-1/2 hours at 21°C (70°F) or above.

(D) Bell pepper, tomato, and zucchini squash. Heat the article by saturated water vapor at 44.44°C (112°F) until approximate center of article reaches 44.44°C (112°F) and maintain at 44.44°C (112°F) for 8-3/4 hours, then immediately cool.

Note: Commodities should be tested by shipper at the 44.44°C (112°F) temperature to determine each commodity's tolerance to the treatment before commercial treatments are attempted. Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and would be conducted in accordance with procedures the shipper believes necessary. It is common to perform pretreatment conditioning. For example, it is the practice to condition eggplant at 43.3°C (110°F) at 40% relative humidity for six to eight hours.

(E) Apple, apricot, cherry, grape, peach, pear, and plum.

(i) Fumigation with 32 g/m<sup>3</sup>, methyl bromide at 21°C (70°F) or above (chamber load not to exceed 80% of volume), and at normal atmospheric pressure, followed by refrigeration, as set forth as follows:

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55°-2.7°C (33°-37°F) or 11 days at 3.33°-8.3°C (38°-47°F)
2-1/2 hours	4 days at 1.11°-4.44°C (38°-40°F) or 6 days at 5.0°-8.33°C (41°-47°F) or 10 days at 8.88°-13.33°C (48°-56°F)
3 hours	3 days at 6.11°-8.33°C (43°-47°F) or 6 days at 8.88°-13.33°C (48°-56°F)

(ii) Minimum concentration for fumigation set out in this subparagraph; (25 g minimum gas concentration at first 1/2 hour); (18 g minimum gas concentration at two or 2-1/2 hours); (17 g minimum gas concentration at three hours).

(iii) Aerate all fruit at least two hours following fumigation. Time lapse between fumigation and start of cooling not to exceed 24 hours.

Note: Some varieties of fruit may be injured by the three-hour exposure. Shippers should test treat before making commercial shipments.

(F) Bell peppers. Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m<sup>3</sup> for 2-1/2 hours at 21°C (70°F) or above.

Note: Bell peppers have been found marginally tolerant to methyl bromide fumigation. Shelf life after treatment is reduced to between five to seven days. Injury may appear as pitting on the skin of the pepper, darkening of the seed and placental material, and internal decay resulting from killing of the stem and calyx.

(G) Apple, apricot, Calamondin orange, cherry, citrus citron, grape, grapefruit, mandarin orange, nectarine, peach, pear, plum, prune, sour orange, and sweet orange. Cold treat the article according to one of the following:

- (i) 10 days at 0°C (32°F) or below;
- (ii) 11 days at 0.55°C (33°F) or below;
- (iii) 12 days at 1.11°C (34°F) or below;
- (iv) 14 days at 1.66°C (35°F) or below; and
- (v) 16 days at 2.22°C (36°F) or below.

(H) Other related articles. Accepted treatments for regulated articles not listed in this subsection will be those methods published in the USDA-APHIS treatment manual.

(2) Soil and plants with soil attached.

(A) Soil and plants with soil attached may be certified by the state of origin if upon inspection it is determined they are not under the drip line of a host plant and if the plant to be certified is not a host plant bearing fruit or which has borne fruit in the previous 60 days.

(B) Soil and plants with soil attached may be certified under the following treatment schedule:

(i) Hosts and nonhosts without fruit under the drip line of a host and hosts which are bearing or have borne fruit within the previous 60 days.

(ii) Remove all host fruit.

(iii) Treat soil with Baytex as follows. Four and one-half ounces of Baytex formulation, 50% emulsifiable concentrate, mixed with 20 gallons of water per 1,000 square feet of soil surface. Spray the above mix evenly on the surface of the soil or on the soil around container-grown or balled plants.

(g) Inspection authority. The commissioner or his

agent may enter upon the premises of any person who distributes, receives for distribution, processes, transports, or stores any regulated articles for the purpose of inspection for compliance of this order. The inspection will include examination of commodities, shipping and receiving records, and collection of samples when necessary.

(h) Penalties.

(1) Any regulated article from the quarantined area that is found in Texas without proof of proper treatment or certification may be required to be treated at the owner's expense, to be returned to the original shipper, or to be destroyed at the discretion of the commissioner of agriculture.

(2) Under provisions issued under authority of Texas Agriculture Code, Title 5, Subtitle B, Chapter 71, Subchapter A, Acts of the 67th Legislature, House Bill 1436, 1981, any person who shall violate any provision of this order shall be guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not more than \$100 and each thing sold or transported and each act in violation hereof shall be considered a separate offense.

Issued in Austin, Texas, on November 24, 1981.

Doc. No. 816543      Reagan V. Brown  
Commissioner  
Texas Department of Agriculture

Effective Date: December 15, 1981

Proposal Publication Date: October 20, 1981

For further information, please call (512) 475-6346.

## Chapter 15. Consumer Services Division

### Alcohol Fuels and Fuel Alcohol Equipment

The Texas Department of Agriculture adopts new §15.121 and §15.122, with changes to the proposed text published in the October 20, 1981, issue of the *Texas Register* (6 TexReg 3866).

In response to comments received from the Texas Agricultural Extension Service, the following section has been changed as indicated.

Section 15.222—an additional phrase "(if based on a specific recipe or process, this should be specified)" has been added to paragraphs (2)(B), (3), and (4)(A) of subsection (a).

Section 15.122—an additional phrase "at the claimed distillation rate" has been added to subsection (a)(4)(b).

The adopted sections are justified by Senate Bill 228, 67th Legislature, which has directed the commissioner of agriculture, Texas Department of Agriculture, to develop and by rule adopt procedures for the registration of fuel alcohol equipment. The rules provide for the registration of fuel alcohol distillation equipment offered for sale or lease within this state.

A brief summary of the sections follows.

Section 15.121—provides definitions pertaining to this subchapter.

Section 15.122—provides for the registration of fuel alcohol equipment that is offered for sale or lease and

has an annual alcohol production of one million gallons or less. The rule sets out the information required to be contained in an application for registration of such equipment with the department. The informational requirements of the rule are in addition to those found in §4 of the Act and relate to background information on the manufacturer and applicant, any representations as to the quality of the equipment claimed by the manufacturer, and details of the design and testing of the equipment. Further, the rule directs that each model or prototype of equipment produced by the manufacturer be individually registered. Fees for initial and annual renewal registration are also set out.

Written and oral comments were received from Henry O'Neal, agricultural engineer, Texas Agricultural Extension Service. His comments and the agency's responses follow.

Section 15.122 should require a registrant to state the distillation capacity of fuel alcohol equipment in relation to the specific recipe or process upon which the calculation is based. This proposal was adopted by changes made to §15.122 (a)(2)(B), (a)(3), and (a)(4)(A).

Subsection (a)(2)(G) should be eliminated from §15.122. This proposal was rejected. A statement of whether the distillation equipment is of the continuous flow or batch distillation type is considered by the department to be essential to the proper registration of such equipment.

The phrase "at the claimed distillation rate" should be added to §15.122 (a)(4)(B). This proposal was adopted through changes made to §15.122.

Section 15.122 (a)(2)(A) should require a registrant to specify the energy requirements of the distillation equipment per gallon of alcohol fuel produced. The department proposes to adopt this suggestion by amendment to the section herein adopted after due allowance for public comment upon the amendment.

Section 15.122 should require a registrant to state whether start-up instructions or personnel will be provided to the buyer of the fuel alcohol equipment by the registrant in order to assist in the installation of such equipment. This proposal was rejected. In the determination of the department, §15.122 (a)(4)(D) as presently constituted is adequate to protect consumers from hidden installation costs.

Section 15.122 (a)(4)(E) should require a registrant to list specifically the elements of the costs of production of the distillation equipment. The department proposes to adopt this suggestion by amendment to the sections herein adopted after due allowance for public comment upon the amendment.

Section 15.122 (a)(4) should require a registrant to specify any claims made to the public or potential buyers regarding the quantity and/or value of any production byproducts produced by the distillation equipment. The department proposes to adopt this suggestion by amendment to the sections herein adopted after due allowance for public comment upon the amendment.

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

Steve Haley  
November 25, 1981

The new sections are adopted under Texas Civil Statutes, Article 165-10 (1981), which provides the Texas Department of Agriculture with the authority to develop and by rule adopt procedures for the registration of fuel alcohol equipment that is offered for sale or lease and has an annual production capacity of one million gallons or less.

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

Act—Alcohol Fuels and Fuel Alcohol Equipment Act, Texas Civil Statutes, Article 165-10 (1981).

Commissioner—Commissioner of agriculture, Texas Department of Agriculture.

Fuel alcohol equipment—Equipment capable of producing alcohol.

Regulated fuel alcohol equipment—Fuel alcohol equipment offered for sale or lease that has an annual alcohol production capacity of one million gallons or less.

§15.122. *Registration of Fuel Alcohol Equipment.*

(a) In addition to the requirements contained in §4 of the Act, each application for registration of regulated fuel alcohol equipment submitted to the commissioner shall contain:

- (1) the telephone number of the manufacturer;
- (2) a description of the design of the equipment, including but not limited to
  - (A) a statement of the energy source used to power the equipment, whether electric, gas, coal, wood, biomass, or other,
  - (B) the number of gallons of alcohol fuel per hour the equipment is capable of producing, (if based on a specific recipe or process, this should be specified),
  - (C) a statement detailing the materials used in constructing the equipment.
  - (D) the safety features of the equipment,
  - (E) a statement detailing the degree of automation employed in the equipment,
  - (F) a statement of whether the equipment is designed for vacuum or atmospheric distillation of alcohol fuels,
  - (G) a statement of whether the equipment is of the continuous flow or batch production type,
  - (H) a statement of the feed stocks to be employed in the use of the equipment,
  - (I) a statement of whether the equipment is of skid-mounted, modular, or component unit construction,
  - (J) any special design features of the equipment, and
  - (K) such other design features as the commissioner may deem necessary for the proper registration of fuel alcohol equipment;

(3) a statement of the quantity of alcohol the equipment is capable of producing annually stated in a manner which discloses the number of hours per day the equipment must be operated in order to achieve such production (if based on a specific recipe or process, this should be specified);

(4) a statement of any claims made to the public or potential purchasers by the manufacturer, or any agent of

the manufacturer, relating to the quality of the equipment or quality and quantity of alcohol the equipment is capable of producing including, but not limited to

(A) the gallons of fuel produced per hour of operation (if based on a specific recipe or process, this should be specified),

(B) the maximum proof of alcohol produced at the claimed distillation rate,

(C) the feed stocks employed,

(D) the degree of installation required,

(E) the costs of operation, and

(F) any warranties, expressed or implied, given by the manufacturer in conjunction with a sale of the equipment;

(5) a list of information relating to any certification of the equipment or its component parts by a reputable testing entity including but not limited to

(A) the name and address of the testing entity,

(B) the date(s) of testing,

(C) the name and professional credentials of the person(s) responsible for conducting such testing; and

(D) the equipment or component part(s) tested;

(6) a notarized oath, signed by applicant or the applicant's agent, attesting to the verity of all information contained in the application; and

(7) the name and authority of the applicant or applicant's agent executing the application.

(b) Applications for registration of regulated fuel alcohol equipment shall be submitted on forms prescribed by the commissioner.

(c) Manufacturers of regulated fuel alcohol equipment shall secure a separate registration for each distinct model or prototype of regulated equipment produced.

(d) Each application for registration of regulated fuel alcohol equipment submitted to the commissioner pursuant to §4 of the Act must be accompanied by an initial registration fee of \$100.

(e) Each registration of fuel alcohol equipment must be renewed annually on a form prescribed by the commissioner. A renewal fee of \$100 must accompany each renewal application submitted to the commissioner.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818577     Reagan V. Brown  
                                 Commissioner  
                                 Texas Department of Agriculture

Effective Date: December 16, 1981

Proposal Publication Date: October 20, 1981

For further information, please call (512) 475-6346.

1981, issue of the *Texas Register* (6 TexReg 2009), and in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3225).

The age for required identification at a livestock market was lowered from 24 months to 18 months and was necessitated by the fact that blood is being collected for test from cattle down to 18 months of age at slaughter plants. This change simply makes the age requirements for identification and testing coincide. In addition, Johnson County has been included into the Class A Brucellosis Control Area

No comments were received regarding the proposed amendments.

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.

Peter A. Nolan  
November 25, 1981

The amendments are adopted under Texas Civil Statutes, Article 7014f-1, which grants rulemaking authority to be proclaimed by the governor. This law also sets forth the duty of the commission to protect all domestic animals of this state from exposure to infectious and contagious disease.

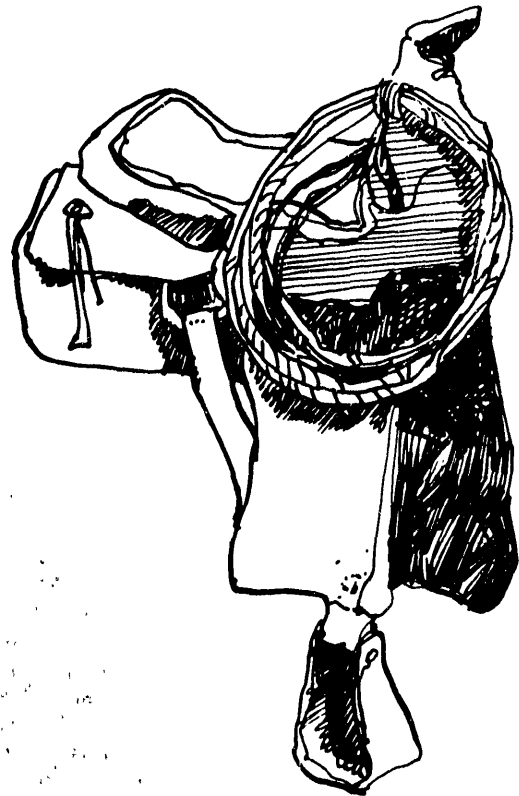
Issued in Austin, Texas, on November 23, 1981

Doc. No. 818588     John W. Holcombe, DVM  
                                 Executive Director  
                                 Texas Animal Health Commission

Effective Date: December 16, 1981

Proposal Publication Date: June 5 and September 4, 1981

For further information, please call (512) 475-4111.



## Part II. Texas Animal Health Commission

### Chapter 35. Brucellosis

#### Subchapter A. Eradication of Brucellosis in Cattle

The Texas Animal Health Commission adopts amendments to §§35.2, 35.4, and 35.5 (177.03.01.021, .023, and .024), without changes to the proposed text published in the June 5,

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 77. Comprehensive Instruction

#### Subchapter R. Bilingual Education

The Texas Education Agency adopts the repeal of §§77.351-77.371 (226.32.52.001-.050) concerning bilingual education, without changes to the proposed notice of repeal published in the July 24, 1981, issue of the *Texas Register* (6 TexReg 2627).

Sections 77.351-77.371 (226.32.52.001-.050) are repealed and replaced by new §§77.351-77.365 which implement the provisions of Senate Bill 477, 67th Legislature, concerning bilingual education. These new sections concerning bilingual education are being simultaneously adopted as a result of Senate Bill 477.

The legislation amended the Texas Education Code, Chapter 21, Subchapter L, extensively so that §§77.351-77.371 no longer reflect current requirements under the law.

No comments were received regarding adoption of the repeal.

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.

Raymon L. Bynum  
November 20, 1981

The repeal is adopted under the authority of Texas Education Code, Chapter 21, Subchapter L, as amended by Senate Bill 477, 67th Legislature, which directs the State Board of Education to adopt rules for the implementation of state required bilingual education and other special language programs.

Issued in Austin, Texas, on November 20, 1981.

Doc. No. 818428 Raymon L. Bynum  
Commissioner of Education

Effective Date: December 11, 1981

Proposal Publication Date: July 24, 1981

For further information, please call (512) 475-7077.

#### Subchapter R. Bilingual Education and Other Special Language Programs

The Texas Education Agency adopts new §§77.351-77.365 with changes to the proposed text published in the July 24, 1981, issue of the *Texas Register* (6 TexReg 2627). The sections set out a general policy statement concerning bilingual education, establish rules for required bilingual education and other special language programs, and describe program content and methods of instruction for bilingual education and for English as a second language programs. Other provisions address the following:

- (1) home language survey, which must be accomplished within four weeks of a student's enrollment in school;
- (2) testing and classification of students;
- (3) the establishment of local district language proficiency assessment committees;
- (4) parental authority and responsibility;
- (5) staffing and staff development;
- (6) allocations for operational expenses;
- (7) preschool, summer school, and extended time programs; and
- (8) monitoring and enforcement provisions.

The new sections implement Senate Bill 477, 67th Legislature, concerning bilingual education and other special language programs. Each school district which has an enrollment of 20 or more students of limited English proficiency in any language classification in the same grade level is required to offer a bilingual education or special language program. Bilingual education will be offered in kindergarten through the elementary grades. Bilingual education, instruction in English as a second language, or other transitional language instruction will be offered in post-elementary grades through grade eight. Instruction in English as a second language will be offered in grades nine through 12. Districts unable to offer the program required by the rules must request approval from the commissioner of education to offer an alternative program. Such approval shall be effective for one school year only.

(1) In §77.353, subsection (c) was deleted and subsequent sections were relettered. Subsection (c) concerned the placement of bilingual education students in classes with other students of approximately the same age and level of educational attainment. This requirement was moved to §77.359.

(2) In §77.355, subsection (a), the word "decisions" was changed to "recommendations." Subsection (b) was amended to clarify that the language proficiency assessment committee must be established by local board policy.

A new subsection (d) was added to clarify that members of the language proficiency assessment committee are acting for the school district and must observe all laws and rules concerning confidentiality of individual student information.

Subsection (e) was amended to clarify that the job classifications referred to are school job classifications. Subsection (f) was amended to clarify that school districts are responsible for orientation for members of the language proficiency assessment committee. A new section (j) was added cross-referencing the sections of this subchapter and of the Texas Education Code which address the placement of students in a program.

(3) In §77.356(a), the IDEA oral language proficiency test was added to the list of approved tests of language proficiency as another option.

Also in subsection (a), the scores indicating limited English proficiency on the Language Assessment Battery (LAB) test were changed to 18 for kindergarten and 19 for grade one. The scores in the proposed rule were based on norms for a test of reading, as well as



listening and speaking skills. The new scores are based only on the listening and speaking portions of the test, which are the only parts in kindergarten and grade one. The word "percentile" has been deleted from the list of LAB test scores, since the figures listed in the rule are raw scores, not percentiles.

In subsection (b), a new item (15), the Sequential Tests of Educational Progress (STEP III, Circus), has been added to the list of approved achievement tests.

Subsection (e)(4) has been amended to clarify that the language proficiency assessment committee must consider alternative bilingual programs designed to strengthen a student's language proficiency for students who have shown no significant improvement after having been enrolled for two years in a bilingual education program.

(4) In §77.359, a new subsection (b) has been added concerning the placement of bilingual education students in classes with other students of approximately the same age and level of educational attainment. This requirement was addressed in §77.353 of the proposed rules.

(5) In §77.360(c), reference was added to the statutory requirement that the notice to parents concerning a student's classification as limited English proficient must include information about the benefits of the bilingual education or special language program and that it is an integral part of the school program.

(6) Section 77.361(a) has been amended to clarify that the phrase "endorsed bilingual teachers" as used in Texas Education Code §21.453(f) means certified teachers with bilingual specialization or endorsement.

(7) In §77.362(c), a new item (3) has been added to clarify that the operational expenses allocation may be used for supplemental staff expenses, including salaries, as approved by the Texas Education Agency. Subsequent items in that subsection were renumbered.

The following parties submitted comments regarding the sections. A summary of those comments and the agency's responses follows.

Riverside Publishing Company, publisher of the Language Assessment Battery (LAB) test listed in §77.356 commented that the word "percentile" should not be used for the LAB scores, since the scores listed are raw scores rather than percentiles. The company also indicated that the scores shown for kindergarten and grade one inappropriately included a reading portion of the test.

The word "percentile" has been deleted and the scores in the adopted rule for kindergarten and grade one are those for the listening and speaking portions of the test only.

Some school districts inquired whether funds allocated under §77.362 could be used for supplemental staff salaries.

The section was changed to clarify that such funds may be used for supplemental staff expenses, including salaries, as approved by the Texas Education Agency.

Some individuals commented that the wording of §77.356(e) left the impression that pupils who had made no significant progress after two years in a bilingual education program might simply be placed in a regular all-English program.

The rule was changed to clarify that for such students the Language Proficiency Assessment Committee must consider alternative bilingual programs or placements designed to strengthen and improve the student's language proficiency.

The Sequential Tests of Education Progress (STEP III, Circus) were added to the list of achievement tests in §77.356 in response to public comment.

Texas Association of Bilingual Educators submitted comments against §77.356. This group, as well as several individuals, was concerned about the entry and exit criteria in §77.356, particularly the use of the 23rd and 40th percentiles in that section.

The rules provide that students who score above the 23rd percentile on one of the approved achievement tests may be classified as English proficient by the Language Proficiency Assessment Committee based on other factors listed in the rule including grades, written recommendations from teachers, and parental recommendation. The agency believes that discretion concerning the placement of such students is appropriately placed in the hands of the Language Proficiency Assessment Committee which works at the local level. The legal counsel has determined that a change in the exit and entrance criteria would be substantive and would require the proposal of revised rules. The agency will continue to review the criteria for entrance and exit. If there is a need to change them, revised rules will be proposed.

The agency had some inquiries from school districts concerning the requirement in §77.359(b) that "the student-teacher ratio shall not exceed those limits set in Texas Education Code, §16.102(k) with those limits applicable to grades two through three being expanded to apply to all elementary grades two and above." The districts were concerned that the rule would mandate the same pupil-teacher ratios for grades kindergarten through three and four through six.

The rule requires districts to assign 80% of the personnel units earned at grades four through six to instructional programs provided at that level. Since personnel units are earned at the rate of one for each 18.5 students in average daily attendance (ADA) in kindergarten through third grade and one for each 21 students in ADA in fourth through sixth grades, the resulting pupil-teacher ratios required will not be the same. This has been explained to all districts which inquired. No change was made in the text of the rule.

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.

Raymon L. Bynum  
November 20, 1981

These sections are adopted under Texas Education Code, Chapter 21, Subchapter L, as amended by Senate Bill 477, 67th Legislature, which directs the State Board of Education to adopt rules for the imple-

mentation of state required bilingual education and other special language programs.

**§77.351. Policy.**

(a) It is the policy of the State Board of Education that every student in the state who has a home language other than English and who is identified as limited English proficient shall be provided a full opportunity to participate in a special language program. Each school district shall be responsible for identifying limited English proficient students based on criteria established by the State Board of Education, for providing special language programs and for actively seeking qualified teaching personnel.

(b) The goal of bilingual education and other special language programs shall be to enable students of limited English proficiency to become competent in speaking, reading, writing, and comprehending the English language. Such programs shall emphasize the mastery of basic English language skills in order for students to be able to participate effectively in the regular program as soon as practicable.

(c) Bilingual education and other special language programs shall be integral parts of the total school program. Such programs shall use instructional methodologies designed to meet the special needs of limited English proficient students. The basic curriculum content of the programs shall be the same as for the regular school program.

**§77.352. Required Bilingual Education and Special Language Programs.**

(a) Each school district which has an enrollment of 20 or more students of limited English proficiency in any language classification in the same grade level shall offer a bilingual or special language program in accordance with Texas Education Code §21.453.

(1) Bilingual education, as defined in §77.353 of this title (relating to Program Content; Method of Instruction) shall be offered in kindergarten through those grades designated as "elementary grades" as certified to the Texas Education Agency for the Texas Public School Directory. Such designation shall include at least kindergarten through grade five.

(2) Bilingual education or instruction in English as a second language or other transitional language instruction, as defined in §77.353 of this title (relating to Program Content; Method of Instruction) shall be offered in those grades designated as "post-elementary" in each school district through grade eight.

(3) Instruction in English as a second language shall be offered in grades nine through 12.

(b) Districts which are unable to offer bilingual education as required by subsection (a)(1) of this section shall request approval from the commissioner of education to offer an alternative program. Such approval shall be effective for one school year only. The request for approval for an alternative program shall be submitted by August 15 of each year and shall include the following:

(1) a statement of the reasons why the dis-

trict is unable to offer bilingual education, with supporting documentation;

(2) a description of the proposed alternative program to meet the needs of the district's students of limited English proficiency; and

(3) a description of the actions the district will take to ensure that the program required under subsection (a) of this section will be provided the subsequent year.

(c) The commissioner of education may authorize the establishment of a bilingual education program in districts not required to provide such a program under subsection (a) of this section. Districts wishing to establish such a program shall request authorization from the commissioner of education.

(d) School districts not required to provide a bilingual education or other special language program under Texas Education Code §21.453, shall provide an English as a second language program to all students of limited English proficiency in grades kindergarten through 12. Such English as a second language programs shall be provided in accordance with the requirements in this subchapter.

**§77.353. Program Content; Method of Instruction.**

(a) Bilingual education is a methodology of dual language instruction. Bilingual education programs provided under this subchapter shall include the following six components.

(1) Basic concepts starting the student in the school environment shall be taught in the student's primary language.

(2) Basic skills of comprehending, speaking, reading, and writing shall be developed in the student's primary language.

(3) Basic skills of comprehending, speaking, reading, and writing shall be developed in the English language.

(4) Subject matter and concepts shall be taught in the student's primary language.

(5) Subject matter and concepts shall be taught in the English language.

(6) Attention shall be given to instilling in the student confidence, self-assurance, and a positive identity with his or her cultural heritage.

(b) The degree of emphasis in each component shall depend on the language proficiency, social, emotional, and achievement levels of the student. Such determinations regarding the instructional program shall be made by school district personnel based on all available information about the students in the program.

(1) The amount of time and treatment accorded to the two languages shall be based on the student's proficiency in each. The program shall provide for a carefully structured and sequenced mastery of English language skills.

(2) The amount of subject matter and the concepts to be taught in each language shall be planned based on the student's relative proficiency in the two languages. The content and objectives in mathematics, science, and social studies shall be the same regardless of the language of instruction.

(3) The cultural component shall be an in-

tegral part of the total curriculum and not a separate subject area. It shall address the history and culture associated with the primary language of the student and the history and culture of the United States.

(c) In subjects such as art, music, and physical education, the students shall participate fully with their English-speaking peers in regular classes provided in the subjects. The district shall ensure that students enrolled in the program have a meaningful opportunity to participate fully with other students in all extracurricular activities.

(d) The board of trustees of a district may designate courses, in addition to those required to be taught bilingually under law, to be taught in a language other than English.

(e) English as a second language shall be an intensive program of instruction with the purpose of developing competence in English. The district shall offer a developmental sequence of English instruction in the four language skills—listening, speaking, reading, and writing. The cultural aspects of the student's background and his or her previous learning experiences shall be an integral part of the program. Pertinent cultural patterns of the United States shall be included. The district shall ensure that planning and communication occur between the English as a second language teacher and those who may have the student for other subject areas.

(f) The time allotted to each student for English as a second language instruction shall be based on the English language competency of the student. Such instruction may vary from a minimum of one class period per day to total immersion for the entire day. At the elementary level, the district shall implement an English language development program structure that best addresses the needs of the students. It may be taught in a regular classroom, a resource room, or a tutorial arrangement. It may be a part of the 260 clock hours in English which are required in grades seven and eight. A maximum of two of the three units in English required for high school graduation may be in English as a second language (or English for speakers of other languages).

(g) Any district that desires to implement a transitional language instructional program other than bilingual education or English as a second language for grades post-elementary through eight shall submit a description to the agency. The commissioner shall approve or disapprove such a proposal based on its educational appropriateness.

#### *§77.354. Home Language Survey.*

(a) Districts shall conduct a home language survey for each student who enrolls in a Texas public school for the first time. Districts shall require that the survey be signed by the student's parent or guardian for grades kindergarten through eight or the student for grades nine through 12. The survey shall be kept with each student's permanent record.

(b) The survey shall be printed in English and the home language of the student and shall contain the following questions.

(1) "What language is spoken in your home most of the time?"

(2) "What language does your child (do you) speak most of the time?"

(c) The commissioner of education shall distribute to each district a survey form setting out the minimum information required. Additional information may be collected by the district and recorded on the document. If the survey is not completed and returned within 10 days of the student's registration, the district must contact the parent or guardian in order to complete the document. The survey shall be completed within four weeks of the student's enrollment.

(d) The survey will be used to identify and classify students who normally use a language other than English. An answer of a language other than English to either or both of the required questions identifies the student for language proficiency assessment.

#### *§77.355. Language Proficiency Assessment Committee.*

(a) The purpose of the Language Proficiency Assessment Committee shall be to allow professional education personnel and parents to be responsible for recommendations regarding the identification, instructional placement, and reclassification of limited English proficient students.

(b) Districts required to establish a bilingual education or special language program under this subchapter shall by local board policy establish and operate a Language Proficiency Assessment Committee. Districts not required to establish a bilingual education program under this subchapter shall designate one or more professional personnel to carry out the duties assigned to the committees under this subchapter.

(c) The Language Proficiency Assessment Committee shall consist of the following:

- (1) a campus administrator;
- (2) one appropriately certified teacher assigned to the bilingual education program;
- (3) one appropriately certified teacher assigned to an English as a second language program; and
- (4) the parent of a limited English proficient student.

(d) All members of the Language Proficiency Assessment Committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students.

(e) If the district does not have an individual in one or more of the school job classifications listed in subsection (c) of this section, the district may select another staff member to serve on the Language Proficiency Assessment Committee if desired. The district shall have discretion to add members to the committee.

(f) A Language Proficiency Assessment Committee may be established for each campus of the district or one committee may serve multiple campuses. The district shall be responsible for orientation of all members of the committee.

(g) For each student who normally uses a language other than English and who has been administered appropriate language proficiency tests, the committee shall make determination whether the student is to be classified as limited English proficient based upon the criteria in §77.356 of this title (relating to Testing and Classification of Students). It shall recommend appropriate placement of each limited English proficient student in bilingual education, English as a second language or other special program. The committee may also recommend participation in a summer, extended day or extended week program which may be provided by the school district.

(h) For each participant in a bilingual education or special language program, the committee shall annually determine whether the student is English proficient using the criteria in §77.356 of this title (relating to Testing and Classification of Students). It shall recommend reclassification and placement into an all-English curriculum of those students who are determined to be English proficient.

(i) For each student exited from the bilingual program, the committee shall conduct follow-up studies for two years. It shall review achievement and criterion referenced test scores, grades in all subjects or courses, written and oral teachers' evaluations, parental opinion, and other information as appropriate. For those students who are not performing as desired in the all-English curriculum, the

committee may prescribe participation in compensatory, bilingual education, English as a second language, or other program that addresses the needs of the student.

(j) The actual placement of a student into a program as defined in §77.353 of this title (relating to Program Content; Method of Instruction) shall be done in accordance with §77.360 of this title (relating to Parental Authority and Responsibility) and Texas Education Code, §21.074 and §21.075.

*§77.356. Testing and Classification of Students.*

(a) Districts shall administer an English oral language proficiency test to each student in grades kindergarten through 12 who has a language other than English as identified on the home language survey. Districts shall select one or more of the tests adopted by the State Board of Education. For students whose home language is Spanish, the Spanish section of the oral language proficiency tests selected by a district shall also be administered. An English-speaking professional or paraprofessional trained in language proficiency testing shall administer the English portion of the test. A Spanish-speaking professional or paraprofessional trained in language proficiency testing shall administer the Spanish portion of the test. For languages other than Spanish, informal oral assessment measures in the home language shall be used. The tests, grade levels, and the scores on each which shall identify a student as limited English proficient are as follows:

(Editor's note: See table page 4461)

<u>Test</u>	<u>Grade Levels</u>	<u>Score on English Portion of Test Indicating LEP</u>
Primary Acquisition of Language (PAL): Oral Language Dominance Measure (OLDM)	K 1-3	Below 4.5 Below 5
Primary Acquisition of Language (PAL): Oral Language Proficiency Measure (OLPM)	4-6	Below 5
Bilingual Syntax Measure (BSM) Level I Level II	K-2 3-12	Below 4 Below 5
Basic Inventory of Natural Language (BINL)	K-2 3-8 9-12	Below 50 Below 75 Below 100
Language Assessment Scales (LAS) Level I Level II	K-5 6-12	Below 75 Below 82
Shutt Primary Language Indicator Test (SPLIT)--Listening and Verbal Fluency	K 1 2-3 4 5-6	Listening Comprehension Verbal Fluency Either Below 10 or 6 14 or 7 15 or 9 16 or 9 17 or 9
Language Assessment Battery (LAB) Level I  Level II  Level III	K 1 2 3 4 5 6 7 8 9-10 11 12	18 19 36 56 67 77 79 67 72 77 79 80
IDEA Oral Language Proficiency Test	K-1 2-8	Below level C Below level D

(b) Districts shall administer the English reading and English language arts sections of a standardized achievement test to each student in grades two through 12 who has a home language other than English as identified on the home language survey. Districts shall use one or more of the tests adopted by the State Board of Education as follows:

- (1) California Achievement Test (CAT), 1977—CTB/McGraw Hill;
- (2) Comprehensive Test of Basic Skills, (CTBS), 1973—CTB/McGraw Hill;
- (3) Comprehensive Test of Basic Skills, (CTBS), 1981—CTB/McGraw Hill;
- (4) Iowa Test of Basic Skill (ITBS) and Test of Achievement and Proficiency (TAP), 1978—Riverside Publishing Company;
- (5) Iowa Test of Basic Skills (ITBS), 1971—Riverside Publishing Company;
- (6) Metropolitan Achievement Tests, Survey Battery (MAT), 1978—The Psychological Corporation;
- (7) Metropolitan Achievement Test (MAT), 1970—The Psychological Corporation;
- (8) The Metropolitan Instructional Series, reading tests, 1978—The Psychological Corporation;
- (9) The Metropolitan Instructional Series, language tests, 1978—The Psychological Corporation;
- (10) Science Research Associates (SRA), 1978—Science Research Associates;
- (11) Science Research Associates (SRA)/Iowa Test of Educational Development (ITED), 1971—Science Research Associates;
- (12) Scott Foresman Achievement Series, 1980—Scott Foresman;
- (13) The Stanford Achievement Test (SAT) and Test of Academic Skills (TASK), 1972-73—The Psychological Corporation;
- (14) Stanford Diagnostic Reading Test (SDRT), 1976—The Psychological Corporation.
- (15) Sequential Tests of Education Progress (STEP III, Circus), 1979—Addison-Wesley Publishing Company.

(c) All oral and written proficiency testing of students who enroll within five class days of the first day of school shall be completed no later than four weeks after the first day of school.

(d) Districts shall use the following criteria for classification of students for program entry purposes.

(1) A student shall be identified as limited English proficient if one or more of the following criteria are met.

(A) Ability in English is so limited that the English proficiency tests cannot be administered.

(B) The score on the English oral language proficiency test for a student in grades kindergarten through 12 is below the level designated for indicating limited English proficiency in subsection (a) of this section.

(C) The score on the reading and English language arts sections of the standardized achievement test for a student in grades two through 12 is below the 23rd percentile.

(2) If the oral English language proficiency test score of a student in grades two through 12 is above the levels designated for indicating limited English proficiency in subsection (a) of this section and he or she scores between the 23rd and the 40th percentile on the written standardized test, the Language Proficiency Assessment Committee shall determine whether or not the student is limited English proficient based on other factors which may include:

(A) written recommendation and observation by current and previous teachers;

(B) grades from the current or previous years;

(C) written or oral recommendation of the parent concerning program placement;

(D) data regarding emotional and maturational levels;

(E) criterion referenced test results and progress on continuum of skills or informal assessment measures;

(F) student interview; and

(G) other student information.

(3) A student in grades two through 12 shall not be classified as limited English proficient if he or she scores at or above the 40th percentile on the reading and English language arts sections of the standardized achievement test.

(e) Annually, districts shall administer an English oral language proficiency test selected from the list in subsection (a) of this section to each limited English proficient student in grades kindergarten through 12. Districts shall also administer the reading and English language arts sections of a standardized achievement test selected from the list in subsection (b) of this section to each limited English proficient student in grades two through 12. The criteria in paragraphs (1)-(4) of this subsection shall be used for reclassification of students for program exit purposes.

(1) The student in grades kindergarten through one shall be classified as English proficient if his or her score on the oral English proficiency test is above the levels designated for indicating limited English proficiency in subsection (a) of this section.

(2) The student in grades two through 12 shall be classified as English proficient if his or her score on the oral English proficiency test is above the levels designated for indicating limited English proficiency in subsection (a) of this section; and the score on the reading and English language arts sections of the standardized achievement tests is between the 23rd and the 40th percentile; and the Language Proficiency Assessment Committee determines the student has sufficient English proficiency based on other factors listed in subsection (d)(2) of this section; and

(3) The student in grades two through 12 shall be classified as English proficient if he or she scores at or above the 40th percentile on the reading and English language arts sections of the standardized achievement test.

(4) For the student in grades two through 12 who has been enrolled in a bilingual education pro-

gram for at least two years and has not achieved the 23rd percentile and has shown no significant improvement in relative English proficiency (relative to the primary language), the Language Proficiency Assessment Committee shall consider alternative bilingual programs or placements designed to strengthen and improve the student's language proficiency. Such an alternative program or placement may be in addition to the student's placement or a new placement.

(f) Students who have been transferred out of the program who are later determined to have inadequate English proficiency may be re-enrolled in the program in accordance with Texas Education Code, §21.455(i) and this subchapter.

(g) All records pertaining to identification and assessment of students for program participation purposes shall be maintained for documentation. The Language Proficiency Assessment Committee shall be responsible for such records.

**§77.357. Eligible Handicapped Students.**

(a) Districts shall identify and serve students eligible for programs provided under this subchapter in accordance with Texas Education Code §21.455(f).

(b) Districts shall ensure adequate coordination between bilingual or other special language personnel and special education personnel.

**§77.358. Participation of Nonlimited English Proficiency Students.** Districts may enroll students who do not have limited English proficiency in programs offered under this subchapter in accordance with Texas Education Code §21.455(g).

**§77.359. Facilities; Classes.**

(a) Bilingual education and special language programs shall be located in the regular public schools of the district rather than in separate facilities in accordance with Texas Education Code §21.456.

(b) Students shall be placed in classes in accordance with Texas Education Code, §21.456, and given instruction appropriate to their grade level.

(c) Districts shall ensure that the student-teacher ratio in bilingual education and special language programs reflects the special needs of the students enrolled in the program. The student-teacher ratio shall not exceed those limits set in Texas Education Code §16.102(k) with those limits applicable to grades two through three being expanded to apply to all elementary grades two and above.

**§77.360. Parental Authority and Responsibility.**

(a) The home language survey conducted in accordance with §77.354 of this title (relating to Home Language Survey) must be signed by the parent of students in kindergarten through grade eight.

(b) The Language Proficiency Assessment Committee shall consider the opinion of a student's parent in determining the student's primary language proficiency and English language proficiency.

(c) Within 10 days after a student's classification as limited English proficiency, the Language

Proficiency Assessment Committee shall give written notice to the student's parent advising that the student has been so classified and requesting approval to place the student in a bilingual education or special language program. In accordance with Texas Education Code, §21.455(d), the notice shall include information about the benefits of the bilingual education or special language program and that it is an integral part of the school program. A student's entry into or placement within a bilingual education or special language program must be approved by the student's parent.

(d) In accordance with Texas Education Code §21.455(h), a school district shall obtain the parent's evaluation of a student's progress and shall consider that evaluation in determining whether a student should be transferred out of a bilingual education or special language program.

(e) Parental approval shall be obtained before a student is re-enrolled in a bilingual education or special language program.

(f) The parent of a limited English proficient student shall be appointed to the Language Proficiency Assessment Committee.

(g) Parental approval shall be obtained before a student who does not have limited English proficiency is enrolled in a bilingual education program.

(h) The parent of a student enrolled in a district which is required to offer bilingual education or special language programs may appeal to the commissioner of education if the district fails to comply with the law or the rules of the State Board of Education. Appeals shall be filed in accordance with Chapter 157 of this title (relating to Hearings and Appeals).

(i) A parent who disagrees with the placement of a student in a bilingual education or special language program may appeal the decision to the local board of trustees as provided in Texas Education Code §21.463.

**§77.361. Staffing and Staff Development.**

(a) School districts shall take all reasonable affirmative steps to secure fully certified bilingual education teachers. The phrase "endorsed bilingual teachers," as used in Texas Education Code, §21.453(f) shall be interpreted to mean certified teachers with bilingual specialization or endorsement.

(b) Districts which are unable to secure fully certified bilingual education teachers shall request emergency teaching permits or special assignment permits, as appropriate, in accordance with Subchapter N of Chapter 141 of this title (relating to Emergency Teaching Permits, Special Assignment Permits, and Temporary Classroom Assignment Permits).

(c) Teachers assigned to an English as a second language program or other special language program must meet the requirements for assignment as set out in §97.117 (226.37.15.370) of this title (relating to Requirements for Assignment of Teachers).

(d) Districts may compensate bilingual education and special language program teachers for par-

participation in continuing education programs designed to increase their skills or to lead to bilingual or special language certification in accordance with Texas Education Code §21.459(f).

(e) The commissioner of education shall coordinate the development of a comprehensive plan for meeting teacher supply needs in accordance with Texas Education Code §21.459(g). The plan shall include provision for the development and phase-in of certification programs and requirements for teachers of English as a second language.

*§77.362. Allotments for Operational Expenses.*

(a) School districts approved by the Texas Education Agency shall receive funds in the amount provided by law for each limited English proficient student enrolled in a bilingual education program and in an English as a second language or other special language program. To be eligible to receive funds, school districts shall submit an application for operational expenses allocation and be approved annually by the Texas Education Agency.

(b) After distribution of funds to districts required to operate bilingual education, English as a second language, or other special language programs pursuant to Texas Education Code §21.453, the commissioner of education may distribute available funds to districts not required to offer bilingual education. Districts operating such programs shall submit an application for operational expenses allocation. The priority order for distributing funds under this subsection shall be as follows:

(1) bilingual education programs in kindergarten through elementary, or English as a second language programs in grades kindergarten through 12; and

(2) bilingual education programs at grades post-elementary through 12.

(c) Operational expenses allocated for an approved bilingual education, English as a second language, or other special language program may be used for the following.

(1) Program and pupil evaluation, and equipment necessary to administer required tests to students.

(A) Allowable expenditures for pupil assessment include the cost of purchasing and scoring tests for identifying limited English proficient students, determining primary language proficiency or for prescribing instruction.

(B) Allowable expenditures for program evaluation include the cost of planning and designing program evaluations; purchasing standardized achievement tests for basic skills; collection, analysis and interpretation of data; and preparation of reports.

(2) Instructional materials and equipment as well as other supplies required for quality instruction.

(A) Allowable expenditures include the cost of any apparatus, including three-dimensional manipulative materials and equipment, which conveys information to the student or otherwise contributes to the learning process, such as cassette players, language masters, listening stations, and

(A) Teacher certification. First priority activities shall include formal preparation programs designed to meet bilingual or English as a second language certification requirements for professional and paraprofessional instructional staff.

(i) tuition and fees;

(ii) textbooks for college and university course work;

(iii) travel and per diem for trainees receiving tuition and fees;

(iv) stipends for receiving training after working hours such as evenings and weekends; and

(v) extended 10-, 11-, or 12-month contracts for persons participating in continuing education.

pupil workbooks, or other consumable materials that are special materials for the instructional program.

(B) The following items will not be considered as allowable expenditures from the per pupil allotments: room furnishings including desks, tables, chairs, filing cabinets, or any other item which is usually attributed to capital outlay.

(3) Supplemental staff expenses, including salaries, as approved by the Texas Education Agency.

(4) A minimum of 25% of the total amount for which each district is eligible shall be used for staff development and supplemental staff expense as follows.

(B) Other staff development. Other staff development may include planned activity designed to improve performance of staff assigned to serve limited English proficient students. Such activity must address specific training objectives and include procedures for evaluating outcomes in terms of skill or competency gains. Staff development plans including qualifications of trainers shall be subject to approval by the agency.

(C) Expenditures not allowable. Training expenditures which are not allowable are the following:

(i) training costs for personnel not assigned to the program;

(ii) costs for formal preparation programs at colleges or universities for professional instructional staff who have certificates and endorsements for bilingual education and English as a second language.

(D) Statewide personnel training plan. The commissioner of education shall develop and implement a plan for training of personnel statewide. Such plan shall provide school district personnel with reasonable opportunities to be properly certified for their assignment. School district staff development requests must be consistent with this plan to be approved. The commissioner of education may authorize a district to use less than 25% for staff development and supplemental staff expense if the training and certification needs of the personnel assigned to the program do not require such a level of expenditure.

(5) The special allowance for the operation of an approved program must supplement, not



replace, local funds normally budgeted for the total instructional program.

(6) Since unused funds will be applied against the operational expenses allocation for the ensuing school year, the school district shall maintain records that specifically identify or otherwise account for itemized expenditures from the operational expenses allocation and shall retain documents as necessary for audit purposes.

**§77.363. Preschool, Summer School, and Extended Time Programs.**

(a) A district may operate a preschool, summer school, and extended time program for limited English proficient students for the purpose of improving the students' proficiency in English. Districts have the option to provide bilingual education, English as a second language, and other type of program at any grade level. Such programs shall not substitute for bilingual education or English as a second language programs required to be provided during the regular school year.

(b) Preschool programs may be operated during the regular school year or during the summer on a part-time or full-time basis. Such programs shall be for children who will be eligible for kindergarten the following school year.

(c) Summer programs may be provided for students at any grade levels selected by the district. The number of days and hours per day the program operates shall be determined by the district.

(d) Extended day or week programs may be provided before or after the regular school day or on Saturday.

(e) Districts may use funds allocated under §77.362 of this title (relating to Allotments for Operational Expenses) for operation of the program. Additional bilingual education funds will not be available to provide for such programs and students participating in such programs shall not be counted in determining the district's allocation. Funds may be used to provide salaries of instructional personnel, materials, transportation, or other instructional related costs. Such funds may not be used to provide recreational or other noninstructional activities. Districts that intend to use state funds to operate preschool, summer school, extended day or week programs shall complete the appropriate description and budget sections of the application for bilingual education funds submitted to the Texas Education Agency.

(f) Districts may join with other districts to provide programs or may contract with regional education service centers to serve as management agents to assist in providing cooperative programs among several districts.

**§77.364. Pilot Programs.**

(a) The commissioner of education shall establish from a minimum of 10 to a maximum of 20 structured pilot programs which operate and evaluate alternative types of special language programs. The purpose of these pilot programs shall be to identify approaches that are the most effective for developing English proficiency for limited English proficient

students. The programs may be authorized for one, two, or more years based on the program to be piloted.

(b) The commissioner shall develop and disseminate information which sets out the specific approaches to be tested. The approaches may include, but need not be limited to, the following:

(1) concentrated English as a second language in varying time allotments and organizational structures;

(2) variations and refinements of language use in dual language programs at varying grade levels;

(3) English as a second language or bilingual education programs within regular classrooms;

(4) varying English as a second language structures for the elementary and secondary levels;

(5) tutoring in English; and

(6) parental participation in learning English.

(c) Programs approved shall include districts with varying characteristics such as the following:

(1) small, medium, and large concentrations of limited English proficient students;

(2) location in the various regions of the state; and

(3) districts that have difficulty employing sufficient numbers of bilingual education teachers.

(d) Each pilot program shall have a comprehensive evaluation design. Information to be gathered shall include the following:

(1) the degree of student progress in attaining English proficiency;

(2) achievement in English reading and English language arts and other academic subjects;

(3) indicators of social integration in the total school community; and

(4) others.

(e) A district applying for a pilot program shall submit an application on forms developed by the agency containing a description of the program, a budget, and an evaluation design. The budget may request funds based on the number of students in the program times the amount provided by law. Such funds may be expended on salaries for instructional personnel, materials or equipment, and related costs.

(f) Based on the results of the evaluation of pilot programs, the commissioner shall submit a report to the State Board of Education identifying the most successful approaches that are appropriate to be implemented in other school districts.

**§77.365. Monitoring of Programs and Enforcing Law and State Board of Education Rules.**

(a) Texas Education Agency staff who are trained in assessing bilingual education, English as a second language, and other special language programs shall monitor on site each school district in the state every three years. The commissioner of education shall develop a schedule annually which identifies the districts to be monitored. The commissioner may modify the schedule as necessary.

(b) A standard monitoring instrument shall be used as basis for each on-site visit. The instrument shall identify each requirement of law and State

Board of Education rules. Indicators, such as required documentation or conditions to be observed, shall be specified as a basis for determining whether the district is fulfilling each requirement.

(c) The Texas Education Agency shall determine through on-site monitoring whether the bilingual education, English as a second language or other special language program operates according to law and State Board of Education policy.

(1) The staff shall conduct campus and classroom visits to determine if the programs are being implemented in the grade levels required.

(2) The staff shall review the identification procedures used to establish if the district has:

(A) determined the home language of all students enrolled;

(B) determined the level of oral English proficiency of students in kindergarten through grade 12 and level of achievement in English on standardized tests for students in grades two through 12 who have a primary language other than English;

(C) determined the level of oral primary language proficiency for students kindergarten through grade 12; and

(D) maintained adequate records for subparagraphs (A)-(C) of this paragraph.

(3) The staff shall determine by examination of records if the district has appropriately classified students of limited English proficiency according to comparative language abilities in English and the primary language. Districts shall maintain records of the classification of each student of limited English proficiency.

(4) The staff shall determine the adequacy of staffing assignments and ensure that the teacher-pupil ratios in the programs are comparable to that of the regular school program.

(A) The staff shall determine through on-site monitoring if personnel assigned to the program are properly certified for the assignment.

(B) The staff shall determine the adequacy of the district's efforts to employ and assign appropriately certified personnel to implement the program.

(5) The staff shall determine whether learning materials provided each limited English proficient student are appropriate to the student's level of educational attainment. The materials used in the bilingual education programs shall allow the student to learn basic skills in his primary language and also provide for carefully structured and sequenced mastery of English language skills. The materials used in the English as a second language programs shall demonstrate a sequenced approach to listening, speaking, reading, and writing the English language.

(6) The staff shall determine the appropriateness and accuracy of the districts' use of tests and other assessment procedures.

(7) The staff shall determine if the procedures used for reclassification of students as English proficient and procedures used for reassessment of students exited from the program to identify

students who may need to re-enter bilingual and special language programs are consistent with State Board of Education rules.

(8) The staff shall determine, through examination of records and interviews with members of the Language Proficiency Assessment Committee, the qualifications and training provided members of the committee. The district shall have on file policy and procedures for the selection, appointment, and training of members of the campus Language Proficiency Assessment Committee.

(d) The preliminary monitoring report shall identify each discrepancy noted between the requirements of law and State Board of Education rules and the program operation. For each discrepancy, a recommended corrective action and date for completion shall be described. Reports shall be mailed from the agency within 30 calendar days following the last day of the monitoring visit. Districts shall be instructed to prepare specific corrective action responses and negotiate any problem areas directly with personnel of the Division of Bilingual Education. A copy of the report shall be filed with the Division of School Accreditation.

(e) Districts shall be instructed to respond describing the corrective actions that will be taken within 30 calendar days of the date the report is mailed by the agency. If the district has evidence that is contrary to any of the preliminary findings reported by the monitoring team, such information shall be submitted within the 30 days provided. Should the preponderance of the evidence indicate that the identified discrepancy is invalid, the report shall be revised accordingly. At the end of the 30-calendar-day period, the report shall become final.

(f) If a school district has been cited as being in noncompliance, and has failed to proceed to remove variations or discrepancies within the time period specified, the commissioner of education may initiate steps to modify that district's accreditation status on a temporary basis until procedures for modifying the district's status can be applied. Such actions taken by the commissioner shall be reported to the State Board of Education at the earliest subsequent meeting. The process outlined in §97.74 of this title (relating to Establishment and Modification of a District's Accreditation Status) shall be effected in not more than 120 calendar days. If no acceptable solution has been reached by this time, the commissioner shall make a recommendation to the State Board of Education regarding the accreditation status of the district. All action shall be in compliance with Subchapter D of Chapter 97 of this title (relating to Principles, Standards, and Procedures for Accreditation of School Districts).

Issued in Austin, Texas, on November 20, 1981.

Doc. No. 818429      Raymon L. Bynum  
Commissioner of Education

Effective Date: December 11, 1981  
Proposal Publication Date: July 24, 1981  
For further information, please call (512) 475-7077.

## TITLE 22. EXAMINING BOARDS

### Part XVI. Texas Board of Physical Therapy Examiners

#### Chapter 323. Powers and Duties of the Board

The Texas Board of Physical Therapy Examiners adopts new §323.1 and §323.2 with changes to the proposed text published in the October 23, 1981, issue of the *Texas Register* (6 TexReg 3906).

The public and regulated licensees need to be fully informed of all procedures implemented by the board in the administration of examinations and in the investigation of complaints of violation of the Physical Therapy Practice Act. This rule provides interested persons with information relating to the board's examination and board investigation procedures.

Favorable comments were received by the board concerning the new sections, indicating the rules will serve the public and meet the requirements of the Physical Therapy Act, the Administrative Procedure and Texas Register Act, and case law. The following persons made comments in favor of the rules: Tom Forbes, legal counsel to the Texas Physical Therapy Association, and Diane Feaster, president of the Texas Physical Therapy Association.

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.

Lois M. Smith  
November 23, 1981

The new sections are adopted under Texas Civil Statutes, Article 4512e, as amended by Senate Bill 750 in the 67th Legislature, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

**§323.1. Types of Examination.** It shall be the duty of the board to pass on qualifications of applicants for registration and to conduct examinations that measure qualifications of the individual; the examination for physical therapists and physical therapist assistants prepared by the Professional Examination Service and, at the discretion of the board, oral and practical examinations may be given. Applicants will be given a 60-day notice of the date and place of examination.

**§323.2. Investigation Procedure.**

(a) Complaints must be made to a member of the Investigation Committee or to the executive director.

(b) The complaint will be forwarded to the chairman of the Investigation Committee, which is composed of two board members appointed by the board's chairman with the approval of the board.

(c) If the review leads the Investigation Committee to determine that no violation of the Act has occurred, the person making the complaint will be so notified and the case closed.

(d) If the Investigation Committee determines that a possible violation of the Act has occurred, it will do the following:

- (1) seek legal recourse as provided for in §18 of the Act; or
- (2) notify the person being complained about of the complaint, specifying the sections of the Act which are

alleged to have been violated, and schedule an informal conference to discuss the alleged violation with the person being complained about.

(e) If the complaint is not resolved as a result of the informal conference, the Investigation Committee will recommend that the complaint be presented to the board.

(f) The board will conduct a formal hearing as provided for in §20 of the Act. Members of the Investigation Committee shall not participate or vote at the hearing.

Issued in Austin, Texas, on November 23, 1981.

Doc. No. 818534      Lois M. Smith  
Executive Director  
Texas Board of Physical  
Therapy Examiners

Effective Date: December 15, 1981

Proposal Publication Date: October 23, 1981

For further information, please call (512) 475-7956.

## TITLE 25. HEALTH SERVICES

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

#### Chapter 403. Other Agencies and the Public

##### Subchapter L. Tax Sheltered Annuity Program for Department Employees

The Texas Department of Mental Health and Mental Retardation adopts amendments to §403.324 (302.03.16.004) without changes to the proposed text published in the October 13, 1981, issue of the *Texas Register* (6 TexReg 3796).

The revisions to this subchapter are for the purpose of improving the internal management of the Tax Sheltered Annuity Program of the department. The amendments eliminate the provisions in this section for the appointment of agents of record for the Tax Sheltered Annuity Program offered to employees of the department. The amendments make several changes concerning the Tax Sheltered Annuity Committee of the department. Under the amended rule, each member of the committee will serve a term not to exceed three years. The committee is required to review annually the rules of the department governing the Tax Sheltered Annuity Program. The amendments also add a provision requiring the chairperson to designate members of the committee to monitor the selection and performance of insurance agents assigned to the program, handle inquiries from facility staff concerning the program, monitor compliance with federal requirements and department rules, prepare annual reports on participation in the program, and analyze bids submitted by companies desiring to participate in the program.

No comments were received concerning adoption of the amendments.

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.

Harry Deckard  
November 24, 1981

The amendments are adopted under Texas Civil Statutes, Article 5547-202 §2.11(b), which provides the commissioner with the authority to promulgate rules of the department subject to the basic and general policies formulated by the Texas Board of Mental Health and Mental Retardation.

Issued in Austin, Texas, on November 24, 1981.

Doc. No. 818564 James A. Adkins  
Acting Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Effective Date: December 15, 1981

Proposal Publication Date: October 13, 1981

For further information, please call (512) 465-4591.

## Chapter 405. Client (Patient) Care

### Subchapter K. Client Deaths

The Texas Department of Mental Health and Mental Retardation adopts amendments to §405.267 (302.04.14.007), with changes to the proposed text published in the March 18, 1980, issue of the *Texas Register* (5 TexReg 1020).

The amendments clarify which parts of subsection (e) are mandatory and which parts are permissive. Subsection (e) is amended by deleting the word "should" wherever it appears in the subsection and substituting either "shall" or "may" in its place. The effect of the amendment is that the person from whom a consent for autopsy is sought shall be given an explanation of what an autopsy is and why an autopsy is needed; that when consent for autopsy is obtained by telephone, there shall be at least one witness to the telephone conversation and the contents of the conversation shall be documented, signed, and witnessed; that a facility may but is not required to request permission to tape a telephone conversation during which consent for autopsy is to be obtained, and if permission to tape is granted, may tape the telephone conversation; and that, when possible, a follow-up consent for autopsy by telegram shall be obtained from the person who has given consent for autopsy over the telephone. The proposed text has been changed by eliminating the phrase "when consent for autopsy is requested" so that this section will comply with other adopted revisions to this subchapter.

No comments were received regarding adoption of the amendments.

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.

Harry W. Deckard  
November 25, 1981

The amendments are adopted under Texas Civil Statutes, Article 5547-202, §2.11(b), which provides the commissioner with the authority to promulgate rules of the department subject to the basic and general policies of the Texas Board of Mental Health and Mental Retardation.

§405.267 (302.04.14.007). *Autopsy.*

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

(e) The person from whom consent for autopsy is sought shall be given an explanation of what an autopsy is and why an autopsy is needed. When a consent for autopsy is

obtained by telephone, there shall be at least one witness listening to the telephone conversation and the contents of the telephone conversation shall be documented, signed, and witnessed. Also, a facility may request permission to tape a telephone conversation during which consent for autopsy is to be obtained, and if permission to tape is granted, may tape the telephone conversation. When possible, a follow-up consent for autopsy by telegram shall be obtained from the person who has given consent for autopsy over the telephone. The purpose of this procedure is to substantiate and document a consent for autopsy obtained by telephone.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818637 James A. Adkins  
Acting Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Effective Date: December 16, 1981

Proposal Publication Date: March 18, 1980

For further information, please call (512) 454-3761, ext. 241.

### Subchapter Q. Departmental Procedures for the Protection of the Rights of Humans Involved in Research

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §§405.401-405.414 (302.04.21.001-.014) without changes to the proposed notice of repeal published in the October 13, 1981, issue of the *Texas Register* (6 Tex Reg 3797).

The repeal of this subchapter is necessary in order to adopt a new subchapter which brings the department into full compliance with federal regulations promulgated by the U.S. Department of Health and Human Services pursuant to the provisions of 5 United States Code 301, §474(a), 88 Statutes 352 (42 United States Code 2891-3(a)). The provisions of Subchapter Q are based on proposed federal regulations relating to the protection of human subjects involved in research. The Department of Health and Human Services has adopted final regulations relating to this subject and substantive provisions of this subchapter.

The repeal of this subchapter deletes all previous regulations of the department governing the protection of the rights of humans involved in research. An entirely new set of regulations has been adopted simultaneously to replace the repealed subchapter.

No comments were received regarding adoption of the repeal.

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.

Harry W. Deckard  
November 25, 1981

The repeal is adopted under Texas Civil Statutes, Article 5547-202, §2.11(b), which provides the commissioner of the Texas Department of Mental Health and Mental Retardation with the authority to effectively administer the programs and services of the department and to promulgate rules to ensure

such administration, and authorizes the department to engage in research activities that support the development and expansion of mental health and mental retardation services in this state.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818638 James A. Adkins  
Acting Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Effective Date: December 16, 1981

Proposal Publication Date: October 13, 1981

For further information, please call (512) 465-4591.

### Subchapter Q. Departmental Procedures for the Protection of Human Subjects Involved in Research

The Texas Department of Mental Health and Mental Retardation adopts new §§405.401-405.411 (302.04.21.101-.111) without changes to the proposed text published in the October 13, 1981, issue of the *Texas Register* (6 TexReg 3797).

The adoption of this new subchapter is necessary to bring the department into full compliance with federal regulations promulgated by the United States Department of Health and Human Services pursuant to the provisions of 5 United States Code 30, §474(a). The above noted federal regulations relate to the protection of human subjects involved in research. The Texas Department of Mental Health and Mental Retardation operates an extensive program involving human subjects. The adopted new subchapter brings this program into substantive and procedural compliance with the federal regulations.

No comments were received regarding adoption of the sections.

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.

Harry W. Deckard  
November 25, 1981

The new sections are adopted under Texas Civil Statutes, Article 5547-202, §§2.11(b), 2.12(a), and 2.18, which provide the commissioner of the Texas Department of Mental Health and Mental Retardation with the authority to effectively administer the programs and services of the department and to promulgate rules to ensure such administration and authorizes the department to engage in research activities that support the development and expansion of mental health and mental retardation services in this state.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818639 James A. Adkins  
Acting Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Effective Date: December 16, 1981

Proposal Publication Date: October 13, 1981

For further information, please call (512) 465-4591.

### Subchapter R. General Procedures for Approval of Research

The Texas Department of Mental Health and Mental Retardation adopts amendments to §§405.421, 405.423, 405.424, 405.426-405.428 (302.04.22.001, .003, .004, .006-.008) without changes to the proposed text published in the October 13, 1981, issue of the *Texas Register* (6 TexReg 3805). Proposals submitted by the Texas Department of Mental Health and Mental Retardation were published serially in the October 9 and 13, 1981, issues of the *Texas Register*.

Pursuant to the authority found in 5 United States Code 301, §474(a), 88 Statutes 352 (42 United States Code 2891-3(a)), the U.S. Department of Health and Human Services has promulgated final rules relating to the protection of human subjects involved in research. As a result, the Texas Department of Mental Health and Mental Retardation has repealed the provisions of Subchapter Q of Chapter 405 of this title and has adopted a new Subchapter Q. The changes in federal regulations and Subchapter Q require that the department also revise these sections in Subchapter R. The amendments to these sections of Subchapter R will bring the sections into compliance with the language of federal regulations relating to the protection of human subjects involved in research and the newly adopted Subchapter Q.

No comments were received regarding adoption of the amendments.

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

Harry W. Deckard  
November 25, 1981

The new amendments are adopted under Texas Civil Statutes, Article 5547-202, §§2.11(b), 2.12(a), and 2.18, which provide the commissioner of the Texas Department of Mental Health and Mental Retardation with the authority to effectively administer the programs and services of the department and to promulgate rules to ensure such administration, and authorizes the department to engage in research activities that support the development and expansion of mental health and mental retardation services in this state.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818640 James A. Adkins  
Acting Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Effective Date: December 16, 1981

Proposal Publication Date: October 9, 1981

For further information, please call (512) 465-4591.

The Texas Department of Mental Health and Mental Retardation adopts the repeal of §405.425 (302.04.22.005) without changes to the proposed notice of repeal published in the October 13, 1981, issue of the *Texas Register* (6 TexReg 3807). Proposals submitted by the Texas Department of Mental Health and Mental Retardation were published serially in the October 9 and 13, 1981, issues of the *Texas Register*.

The provisions of this section are based upon proposed federal regulations regarding human subjects involved in research.

Pursuant to the authority found in 5 United States Code 301, §474(a), 88 Statutes 352 (42 United States Code 2891-3(a)), the U.S. Department of Health and Human Services has adopted final regulations regarding this subject. Accordingly, the Texas Department of Mental Health and Mental Retardation has repealed Subchapter Q of Chapter 405, and adopted a new Subchapter Q, regarding human subjects involved in research. This adoption makes the provisions of §405.425 unnecessary.

The repeal of this section brings the provisions of Subchapter R into compliance with new Subchapter Q and the federal regulations.

No comments were received regarding adoption of the repeal.

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.

Harry W. Deckard  
November 25, 1981

The repeal is adopted under Texas Civil Statutes, Article 5547-202, §2.11(b), which provides the commissioner of the Texas Department of Mental Health and Mental Retardation with the authority to effectively administer the programs and services of the department and to promulgate rules to ensure such administration, and authorizes the department to engage in research activities that support the development of mental health and mental retardation services in this state.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818641 James A. Adkins  
Acting Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Effective Date: December 16, 1981  
Proposal Publication Date: October 9, 1981  
For further information, please call (512) 465-4591.

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department

#### Chapter 65. Wildlife

##### Subchapter A. Statewide Hunting and Fishing

The Texas Parks and Wildlife Commission adopts amendments to §§65.6, 65.16, 65.17, 65.24, 65.33-65.35, 65.38, 65.45, 65.46, 65.62, 65.63, and 65.91 without changes to the proposed text published in the September 18, 1981, issue of the *Texas Register* (6 TexReg 3494). The rules were adopted by the commission in a regularly scheduled public hearing held November 5, 1981.

The amendments incorporate legislation proposed by the 67th Texas Legislature which provides additional authority to the Texas Parks and Wildlife Commission to regulate wildlife resources in counties to which the Uniform Wildlife Regulatory Act applies. The amendments also restrict the taking of bass in two new reservoirs in order to prolong the

quality of the fishery. The amendments provide hunting and fishing regulations which allow proper management of the resource consistent with established wildlife management principles.

No comments were received regarding adoption of the amendments.

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.

Boyd M. Johnson  
November 17, 1981

The amendments are adopted under the Uniform Wildlife Regulatory Act, Texas Parks and Wildlife Code, Chapter 61, which provides the Texas Parks and Wildlife Commission with authority to adopt flexible regulations to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

Issued in Austin, Texas, on November 20, 1981.

Doc. No. 818498 Maurine Ray  
Administrative Assistant  
Texas Parks and Wildlife Department

Effective Date: February 15, 1982  
Proposal Publication Date: September 18, 1981  
For further information, please call (512) 479-4974 or  
1-(800) 792-1112.

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## NONCODIFIED

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### State Board of Insurance

#### Rating and Policy Forms

##### Fixing Rate of Automobile Insurance

059.05.01.002

The State Board of Insurance adopts the repeal of Rule 059.05.01.002 without changes to the proposed notice of repeal published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3247). The effective date of the proposed repeal was given as November 1, 1981, and has been changed to January 1, 1982, in the adoption of the repeal to coincide with the effective date for amendments to the Texas Automobile Manual.

The Physical Damage Fleet Rating Plan is obsolete and such plans have been eliminated in other states. As optional, the plan was contrary to the concept of standard rates in Texas. Experience data on fleet-rated risks was not usable for rate-making purposes.

Since the physical damage fleet rating plans are repealed, insurance companies and insureds will have to utilize other rating approaches, such as the composite rating plan, specified car basis, and use of dividends or rate deviations for physical damage coverage premium determination. The provisions of

the physical damage composite rating plan, which previously was a part of the Fleet Rating Plan Supplement, has been moved to the Composite Rating Plan Rule in the Texas Automobile Manual.

Proponents of the repeal stated in their comments that the Fleet Rating Plan is optional which is contrary to the concept of the one-rate law in Texas. To the extent that the plan is used only when a credit will result, overall balancing is never achieved. Experience data on fleet-rated risks is not usable for rate-making purposes. Fleet rating plans have been withdrawn in all states but Texas. There are no rate implications with respect to altering overall rate levels. The number of ratings under the plans have been declining. The current fleet rating plans are obsolete and produce unusual and inappropriate results. Deviations may partially offset any premium effects on individual risks.

An opponent of the repeal commented that there would be direct effects on individual insureds who may be receiving a credit under the plan.

Those persons making comments in favor of the proposal included Richard S. Geiger and David B. Irons, attorneys representing the Texas Automobile Insurance Service Office, and D. E. O'Brien, staff, State Board of Insurance.

Hubert Laney, an agent, submitted comments against the proposal.

The board disagreed with the opponent's argument and felt that the obsolescence of the plan and its overall inappropriate results outweighed the possible detrimental effects of increased premiums some individual risks may have to bear. The board also felt that those detrimental effects could be partially offset by rate deviations or dividends.

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.

James W. Norman  
November 30, 1981

The repeal is adopted under Texas Insurance Code, Articles 5.01 and 5.77, which empower the State Board of Insurance to make, approve, and promulgate premium rating plans for motor vehicle insurance.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818669 Pat Wagner  
Deputy Chief Clerk  
State Board of Insurance

Effective Date: January 1, 1982  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 475-2950.

### 059.05.01.005

The State Board of Insurance adopts amendments to Rule 059.05.01.005, which adopts by reference the Rules Governing the Insuring of Automobiles and Standard Endorsements II (Texas Automobile Manual), without changes to the proposed text published in the October 2, 1981, issue of the *Texas Register* (6 TexReg 3657). However, the text of the manual as adopted includes the following change. The Private Passen-

ger Comprehensive Coverage deductibles factors set out in (C)(1)(b) of Rule 17 for \$200, \$500, and \$1,000 deductibles were adopted as 73%, 53%, and 38% respectively.

The justification for elimination of all rule references to the "Fleet Rating Plan," "Fleet Rating Supplement," "Automobile Collision Fleet Rating Plan," or "Fleet Plan Rule" is that the Fleet Rating Supplement—Physical Damage Coverages is being repealed separately and deletion of such references in the Texas Automobile Manual is necessary to prevent confusion. The additional comprehensive coverage deductibles will allow policyholders to select from a broader range of deductibles. The elimination of the \$25, \$75, and \$150 collision deductibles will make statistical reporting easier and help simplify the manual by eliminating rarely used options. The expanded symbol table for 1982 and subsequent model year private passenger autos will be more responsive to the range of present and anticipated future car prices and more equitably relate premium rates to expected losses.

The adoption of the vehicle series rating program will more equitably relate premiums for physical damage coverage to expected losses in that physical damage premium rates will partially reflect damagability and repairability of the automobiles.

All of the adopted amendments will appear in the Texas Automobile Manual for use by agents and insurance companies. These changes will more equitably relate premium rates to expected losses for physical damage coverages.

A summary of comments submitted for and against portions of the amendments follows.

Deletion of "Fleet Rating Plan" references—Proponents commented that the Fleet Rating Plan is optional and, therefore, contrary to the concept of the one-rate law in Texas. To the extent that the plan is used only when a credit will result, overall balancing is never achieved. Experience data on fleet-rated risks is not usable for rate-making purposes. Fleet rating plans have been withdrawn in all states but Texas. There are no rate implications in respect to altering overall rate levels. The number of ratings under the plans have been declining. The current fleet rating plans are obsolete and produce unusual and inappropriate results. Deviations may partially offset any premium effects on individual risks. Opponents commented that there would be direct effects on individual insureds who may be receiving a credit under the plan.

Additional comprehensive deductibles and deletion of certain collision deductibles—Proponents commented that the additional comprehensive deductibles will allow an insured to choose to bear more of the risk of loss with a commensurate reduction in premium. The collision deductibles to be eliminated are very rarely purchased, and there is very little price difference between the \$25 and \$50 deductibles, between \$100 and \$150 deductibles, or between \$50 and \$75 deductibles. Sixty percent of the private passenger automobiles on which collision coverage is purchased have \$200 deductible and 20% have \$250 deductible. The current collision coverage deductible relativities were last adjusted on August 1, 1959. Many insureds want higher comprehensive deductibles due to substantially increased car prices. Opponents of this idea commented that in-

creasing the deductible relativities for the higher collision deductibles will discourage people from purchasing higher deductibles because cost savings will be reduced.

**Expansion of the physical damage symbol table**—Proponents commented that currently all automobiles which exceed \$20,000 original cost new are rated alike, regardless of how much they exceed \$20,000. The increase in the number of symbol groups will be more responsive to the range of present and future unit prices and more equitably relate premium rates to expected losses. More automobiles that exceed \$20,000 original cost new are expected for 1982, and subsequent years. Currently an automobile with an original cost new of \$46,000 to \$55,000 would have the same premium as a unit that was priced at \$21,000. The increase in symbol groups is intended to achieve a more equitable distribution of premium dollars among the premium payers. There were no comments submitted against this portion of the amendments.

**Vehicle series rating**—Those parties submitting comments in favor of this rating stated that the present private passenger physical damage rating system uses the F.O.B. price new of a car and four different age groups. Vehicle Series Rating adds one additional category or measure to those two items—repairability and damagability of cars.

The vehicle series rating approach is partially in response to the National Association of Insurance Commissioners suggestion in June 1978 to the industry to determine some way to take into account repairability and damagability of vehicles in determining physical damage premiums. Vehicle series rating should encourage, first, the manufacturers to produce less damagable cars; second, it should encourage the consumer to purchase automobiles which will have a lower insurance premium. The vehicle series rating program is presently being used in approximately 43 states.

The Highway Loss Data Institute is a non-profit agency; its purpose is primarily to collect insurance data and through analysis to identify significant differences in insurance loss experience by make and model. The institute's data show that there are significant differences in the insurance experience by make and model of vehicle and even between vehicles currently falling into the same physical damage symbol group. Under vehicle series rating, if a vehicle has substantially better experience than other vehicles in its symbol group, it is placed in a lower symbol group. If a vehicle has substantially worse experience than other vehicles, the symbol of the vehicle is raised. If the rating is adopted in Texas, it will lead to greater equity in rates. The goal is to make sure that the right premium is charged for the particular vehicle. The second reason for its adoption is that use of the rating system should encourage automobile manufacturers to take into account repairability considerations in the design of their vehicles.

The vehicle series rating will start with 1982 models. The system has incorporated within it the concept of possibly altering the symbol twice. A symbol could

be changed—it could start out at 6, and if experience is good the next year, instead of remaining a 6, which it must under the current system, it could go down to 5; and if it has good experience, even with the premium in symbol group 5, it is possible that it could even be dropped down to symbol group 4. Or conversely, if it has very poor experience, it could start at 6 during the first year, then be moved up to symbol group 7; and, if it has very poor experience even in symbol group 7, it could then be moved up to symbol group 8. In other words, the symbol is originally assigned when the car comes out; then, after additional experience data is available, there is an opportunity to resymbol it after the first year. After the next year, it can be resymboled again, to take into account the more recent experience.

The frequency and severity of accidents and the premium which is currently paid are all considered. (Current premiums are considered to prevent possible distribution effects by territory, class, etc.) Essentially, it is a loss ratio approach that is used to determine whether or not the vehicle has good or poor experience. The Insurance Services Office compiles a series of reports which examines the loss ratio of each make and model of vehicle and compares those loss ratios to the loss ratios for all makes and models of vehicles and isolates those which are much better or much worse. If it is necessary to up-symbol or down-symbol more than two from the symbol derived based on the original cost new, it would be necessary for the Insurance Services Office to present the changes to the State Board of Insurance for approval.

Changed symbols will not take effect until a new symbol page has been approved by the board. The board currently receives recommendations from the industry about symboling of new car models each year. Based on 1981 and 1982 manual symbol pages, which are used in most other states, it appears that about 35% to 40% of vehicles end up with symbols different than under the original cost new system.

Those persons making comments in favor of the amendments included Richard S. Geiger and David B. Irons, attorneys representing the Texas Automobile Insurance Service Office; D. E. O'Brien and Gaylon Daniel, staff, State Board of Insurance; Patrick Whatley, Employers Casualty Company, representing the Texas Automobile Insurance Service Office (TAISO); and C.A. Bryan, USAA, also representing TAISO.

Hubert Laney and Mel Safer, agents, submitted comments against the proposal.

Regarding deletion of "Fleet Rating Plan" references, the board disagreed with the opponent's argument and felt that the obsolescence of the plan and its overall inappropriate results outweighed the possible detrimental effects of increased premiums some individual risks may have to bear. The board also felt that those detrimental effects could be partially offset by rate deviations or dividends.

Regarding additional comprehensive deductibles and deletion of certain collision deductibles, the board disagreed with the opponent's arguments and felt that the change in collision deductible relativities is necessary to ensure rate adequacy.



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.

James W. Norman  
November 30, 1981

The amendments are adopted under the Texas Insurance Code, Articles 5.01, 5.06, and 5.10, which provide the State Board of Insurance with the authority to prescribe rates, premiums, rules, policy forms, and endorsements applicable to automobile insurance.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818670 Pat Wagner  
Deputy Chief Clerk  
State Board of Insurance

Effective Date: January 1, 1982  
Proposal Publication Date: October 2, 1981  
For further information, please call (512) 475-2950.

### Policy Forms and Endorsements 059.05.06.

The State Board of Insurance adopts the repeal of Rule 059.05.06.002, which adopts by reference the standard provisions for automobile policies written on and after April 1, 1955, without changes to the proposed notice of repeal published in the September 4, 1981, issue of the *Texas Register*, (6 TexReg 3247). The proposed repeal was to have been effective November 1, 1981; however, to coincide with the amendments to the Texas Automobile Manual, the effective date was changed to January 1, 1982.

The Texas Personal Auto Policy replaced the family automobile policies effective June 1, 1981, and the family automobile

policy provisions in Rule 059.05.06.002 have no applicability to policies effective on and after that date.

The basic automobile physical damage policy provisions set out in Rule 059.05.06.002 were limited to use with single interest coverage, wholesale floor plan coverages, and the automobile finance company forms and endorsements. The board recently adopted separate, self-contained, single-interest policy forms under the standard provisions for automobile policies (October 1, 1974, edition, Rule 059.05.06.001). The board also recently adopted endorsements TX-10-93, TX-03-32, and 529 to replace the old automobile finance company forms and endorsements. Effective January 1, 1982, the board is eliminating the wholesale floor plan rules and forms as a standard program.

Since all of the printing instructions and standard policy provisions adopted under Rule 059.05.06.002 have been replaced by other forms and approaches, the entire rule is obsolete.

No comments were received regarding the notice of repeal.

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.

James W. Norman  
November 30, 1981

The repeal is adopted under Texas Insurance Code, Article 5.06, which empowers the State Board of Insurance to prescribe automobile insurance policy forms and endorsement forms.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818671 Pat Wagner  
Deputy Chief Clerk  
State Board of Insurance

Effective Date: January 1, 1982  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 475-2950.

The Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. An institution of higher education must have notice posted for at least 72 hours before the scheduled meeting time. Although some notices may be received and filed too late for publication before the meeting is held, all filed notices will be published in the *Register*. Each notice published includes the date, time, and location of the meeting; an agenda or a summary of the agenda as furnished for publication by the agency; where additional information may be obtained; and the date and time of filing.

A political subdivision covering all or part of four or more counties must have notice posted for at least 72 hours before the scheduled meeting time. Each notice published includes the date, time, and location of the meeting and where further information may be obtained. These notices are published under the heading "Regional Agencies," alphabetically by date filed.

Any of the governmental entities named above must have notice of an emergency meeting, or an emergency addition or amendment to an agenda, and the reason for such emergency, posted for at least two hours before the meeting is convened. Emergency notices filed by these entities will be published in the *Register*; however, notices of an emergency addition or amendment to an agenda filed by a regional agency will not be published in the *Register* since the original agendas for these agencies are not published.

All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor in the East Wing of the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

## State Bar of Texas

*Friday, December 4, 1981, 9 a.m.* The Executive-Budget Committee of the State Bar of Texas will meet in the President's Room, third floor, Texas Law Center, 1414 Colorado Street, Austin. Items on the agenda summary include: reports of the president, president-elect, board chairman, executive director, general counsel, finance director, and associate executive director; discussion of proposed changes in prepaid legal services policy; and reports on weekly digest and biweekly digest, State Bar College, and convention 1982 progress.

Information may be obtained from Evelyn Avent, 1414 Colorado Street, Austin, Texas, (512) 475-4746.

Filed: November 25, 1981, 3:10 p.m.  
Doc. No. 818606

## Texas Coastal and Marine Council

*Friday, December 11, 1981, 9 a.m.* The Texas Coastal and Marine Council will meet at the Lamar University Library, 8th Floor, Beaumont. Items on the agenda include: approval of minutes of August 21, 1981, TCMC meeting in Galveston, and approval of minutes of October 16, 1981, TCMC meeting in Brownsville; considera-

tion of council resolution supporting concept of experimental shrimp hatchery; briefing on federal outer-continent shelf revenue sharing legislation; briefing on federal legislation impacting Texas ports; report from navigation risk management program committee; report from fisheries committee past/future council projects; public testimony; and location of February 19, 1982, TCMC meeting.

Information may be obtained from Charles L. Branton, P. O. Box 13407, Austin, Texas 78711, (512) 475-5849.

Filed: December 1, 1981, 9:55 a.m.  
Doc. No. 818684

## Coordinating Board, Texas College and University System

*Thursday, December 10, 1981, 10 a.m.* The Administrative Council of the Coordinating Board, Texas College and University System will meet in the Bevington A. Reed Building, conference room 209, 200 East Riverside Drive, Austin. According to the agenda summary, the council will discuss receipt of advisory committee recommendations; status report from ad hoc committee on deviations; consideration of proposed changes to the basic coverage standards; institutional program review; and executive secretary's report.

Information may be obtained from James McWhorter, P. O. Box 12788, Austin, Texas 78711.

Filed: November 30, 1981, 9:30 a.m.  
Doc. No. 818647

## Texas Department of Corrections

*Monday, November 30, 1981, 2 p.m.* The board of the Texas Department of Corrections conducted an emergency meeting in Room 103, 815 11th Street, Huntsville. The board met in executive session with the attorney general to discuss pending litigation matters.

Information may be obtained from W. J. Estelle, Jr., P.O. Box 99, Huntsville, Texas 77340, (713) 295-6371, ext. 160.

Filed: November 25, 1981, 2:59 p.m.  
Doc. No. 818605

## Texas County and District Retirement System

*Thursday, December 10, 1981, 9 a.m.* The Board of Trustees of the Texas County and District Retirement System will meet at the Sheraton Crest Inn, Austin. According to the agenda summary, the board will: review applications for service and disability retirement benefits; act on reports from actuary, legal counsel, investment counsel, and director; consider the proposed budget for 1982; determine interest rate for the year 1981; consider a resolution regarding expense fund and distributive benefits account of endowment fund. Officers for 1982 will be elected.

Information may be obtained from J. Robert Brown, 802 Perry-Brooks Building, Austin, Texas 78701, (512) 476-6651.

Filed: November 30, 1981, 12:41 p.m.  
Doc. No. 818672

## Texas Commission for the Deaf

**Saturday, December 5, 1981, 9 a.m.** The Board for Evaluation of Interpreters of the Texas Commission for the Deaf will meet in Room 106, 510 South Congress, Austin. Items on the agenda include: action on minutes; final action on evaluation procedures and evaluation score sheets; development of written test (in executive session); review of evaluation procedures (in executive session); establishment of time line for certification program; and chairman's report.

Information may be obtained from Fred Tammen, 510 South Congress, Austin, Texas 78704, (512) 475-2492.

Filed: November 24, 1981, 4:04 p.m.  
Doc. No. 818554

**Friday, December 11, 1981, 9 a.m.** The Technical Advisory Council for Planning and Operations of the Texas Commission for the Deaf will meet in Room 105, 118 East Riverside Drive, Austin. According to the agenda, the council will discuss an update on the Texas Commission for the Deaf and state agency services to deaf people; and set date for next meeting.

Information may be obtained from Fred R. Tammen, P. O. Box 12904, Austin, Texas 78711, (512) 475-2492.

Filed: November 30, 1981, 9:31 a.m.  
Doc. No. 818649

## Interagency Council on Early Childhood Intervention

**Friday, December 4, 1981, 9 a.m.** The Interagency Council on Early Childhood Intervention will meet in the second floor law library, 909 West 45th Street, Austin. According to the agenda summary, the council will consider issues regarding interagency procedures; the submission and review process covering grant proposals for programs of intervention services and the establishing of rules for grant proposals (and review and evaluation); public awareness and training; and interagency council and advisory committee operational procedures. The council will also meet in executive session.

Information may be obtained from James P. Rambin, 1100 West 49th Street, Austin, Texas, (512) 458-7241.

Filed: November 25, 1981, 11:50 a.m.  
Doc. No. 818600

## Texas Education Agency

**Wednesday, December 2, 1981, 10 a.m.** The Governor's Education Action Group of the Texas Education Agency met in the Senate Reception Room, Capitol Building, Austin. According to the agenda, the group will consider proposed rules concerning organization of the group; briefings by Texas Education Agency staff on: teacher competency testing (Senate Bill 50) and school-community guidance centers (House Bill 354), curriculum reform (House Bill 246), vocational education study (House Concurrent Resolution 23), and summer school pilot program (House Bill 603), bilingual

education (Senate Bill 477), select committee on public education (Senate Concurrent Resolution 22); and agendas and schedule for future meetings.

Information may be obtained from Joe Neely, 201 East 11th Street, Austin, Texas 78701, (512) 475-2633.

Filed November 24, 1981, 4:22 p.m.  
Doc. No. 818549

**Tuesday and Wednesday, December 8 and 9, 1981, 1:30 p.m. and 8:30 a.m. respectively.** The Advisory Committee for the Comprehensive School Health Program of the Texas Education Agency will meet in the board room, 150 East Riverside Drive, Austin. According to the agenda summary, the committee will consider reports of deputy commissioners; reports from subcommittees, including the health related and health services committee and the Senate Committee on Human Resources' study of the school health program; report on House Bill 246--curriculum study; update on nutrition education and training program; progress report on wellness lifestyle conferences; report from special education advisory committee regarding the role of school nurse and private physicians and adaptive physical education; status of revision of bulletin 752; early and periodic screening, detection and treatment; school health services; March 1982 issue of Texas School Board Journal on School Health; and a Texas School Board Association presentation.

Information may be obtained from Dr. Victoria Bergin, 201 East 11th Street, Austin, Texas 78701, (512) 475-8693.

Filed: November 24, 1981, 4:23 p.m.  
Doc. No. 818552

**Monday, December 14, 1981, 10 a.m.** The Public School Professional Personnel Advisory Committee of the Texas Education Agency will meet in the board room, 150 East Riverside Drive, Austin. According to the agenda, the committee will consider the proposed rules regarding organization of the committee; briefings by Texas Education Agency staff on teacher competency testing (Senate Bill 50), curriculum reform (House Bill 246), school finance study (Senate Bill 180), vocational education study (House Concurrent Resolution 23), bilingual education (Senate Bill 477), Select Committee on Public Education (Senate Concurrent Resolution 22); and agendas and schedule for future meetings.

Information may be obtained from Cis Myers, 201 East 11th Street, Austin, Texas 78701, (512) 475-4536.

Filed: November 30, 1981, 12:09 p.m.  
Doc. No. 818666

**Friday, December 18, 1981, 10 a.m.** The Public School Boards of Trustees Advisory Committee of the Texas Education Agency will meet in the board room, 150 East Riverside Drive, Austin. According to the agenda, the committee will consider proposed rules regarding organization of the committee; briefings by Texas Education Agency staff on teacher competency testing (Senate Bill 50), curriculum reform (House Bill 246), school finance study (Senate Bill 180), vocational education study (House Concurrent Resolu-

tion 23), bilingual education (Senate Bill 477), Select Committee on Public Education (Senate Concurrent Resolution 22); and agendas and schedule for future meetings.

Information may be obtained from Cis Myers, 201 East 11th Street, Austin, Texas 78701, (512) 475-4536.

Filed: November 30, 1981, 12:09 p.m.  
Doc. No. 818667

## Texas Department of Health

*Saturday, December 5, 1981, 9:30 a.m.* The board of the Texas Department of Health will meet in Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the board will consider the following: minutes of the October 31 and November 1, 1981 meetings; commissioner's report; progress report on management by objectives; update on the activities of the Dental Advisory Committee and the Maternal and Child Health Technical Advisory Committee; creation of a Resources Recovery Advisory Council to the Texas Board of Health; emergency and proposed rules for the administration of a rape crisis program; proposed amendment to formal hearing procedure rules; final adoption of rules concerning use of departmental facilities, rules and regulations governing laboratory premarital and prenatal syphilis serology, and revised immunization requirements for Texas Crippled Children's Hospital Applications; Personnel Committee reports on requests for extension of employment beyond age 70 and appointments to the Maternal and Child Health Technical Advisory Committee, Sanitarian Advisory Committee, Tuberculosis Advisory Committee, Technical Advisory Committee to the Congenital Heart Program, Kidney Health Care Advisory Committee, and the Technical Advisory Committee for Crippled Children's Services; and a meeting date for January 1982.

Information may be obtained from Lillie Gilligan, 1100 West 49th Street, Austin, (512) 458-7375.

Filed: November 25, 1981, 11:50 a.m.  
Doc. No. 818599

## Texas Statewide Health Coordinating Council

*Friday, December 11, 1981, 1 p.m.* The Texas Statewide Health Coordinating Council will meet in Room 3-102, Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. According to the agenda summary, the council will discuss minutes of October 23, 1981 meeting; application, budget and project review committee report; state health plan development committee report; monitoring and assessment committee report; resource development and implementation committee report; and selection of next meeting date.

Information may be obtained from Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: December 1, 1981, 9:18 a.m.  
Doc. No. 818682

## Texas Health Facilities Commission

*Friday, December 11, 1981, 10 a.m.* The Texas Health Facilities Commission will meet in suite 305, the Jefferson Building, 1600 West 38th, Austin, to consider the following applications:

### Certificate of Need

Medical Surgical Clinic Association, Denton  
A081-0515-015  
Harris Hospital-Methodist, Fort Worth  
AH81-0508-008

St. Elizabeth Hospital, Beaumont

AH81-0610-003

Dallas Home for Jewish Aged, Inc., Dallas

AH81-0630-031

Raleigh Hills Hospital, San Antonio

AH81-0701-014

Clear Lake Care Center, Webster

AN81-0507-029

### Amendment of Exemption Certificate Order

Southwestern Community House, El Paso

A081-0121-001A(102881)

### Amendment of Certificate of Need Order

Baptist Memorial Hospital, San Antonio

AH81-0312-036A(103081)

Southeast Baptist Hospital, San Antonio

AH81-0312-034A(103081)

Baylor University Medical Center, Dallas

AH79-1119-023A(110281)

### Declaratory Ruling

Comanche Community Hospital, Comanche

AH81-1029-010

Timberlawn Psychiatric Hospital, Dallas

AH81-1030-019

### Notice of Intent to Acquire an Existing Health Care Facility

Velma Mynier, Corpus Christi

AN81-1102-025

A routine business meeting will follow the open meeting.

Information may be obtained from Linda E. Zatopek, P. O. Box 15023, Austin, Texas 78761

Filed: November 30, 1981, 9:55 a.m.  
Doc. No. 818650

## Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

*Wednesday, December 9, 1981.* The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet in Suite 105 of the Penthouse Apartments, 1212 Guadalupe, Austin, to conduct a board meeting from 1:30 p.m. to 2 p.m., and an Examination Committee meeting from 2 p.m. until 5 p.m. Items on the agendas include discussion of 30-day trial period guidelines and state examination format review.

Information may be obtained from R. B. Hall, Penthouse Apartments, Suite 105, 1212 Guadalupe, Austin, Texas 78701, (512) 475-3429.

Filed: November 24, 1981, 4:01 p.m.  
Doc. No. 818559

## University of Houston System

**Monday, December 7, 1981, 10 a.m.** The University of Houston System Board of Regents will meet in Room 510, Houston United Bank Building, 4600 Gulf Freeway, Houston. According to the agenda, the board will discuss and/or approve the issuance of general endowment revenue bonds and Series 1981. The board will also meet in executive session.

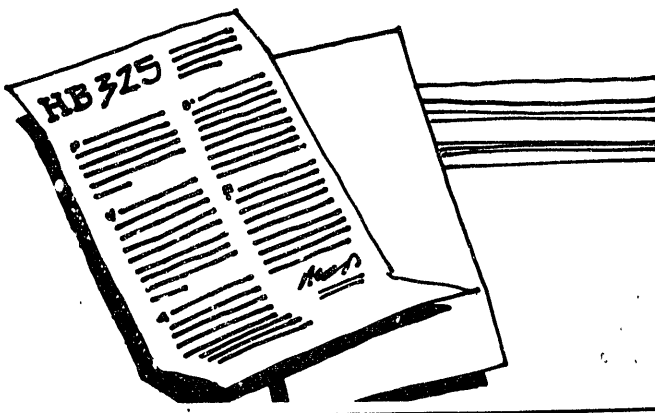
Information may be obtained from Deborah Selden, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: November 30, 1981, 9:27 a.m.  
Doc. No. 818645

**Monday, December 7, 1981, 10:30 a.m.** The University of Houston System Board of Regents UH/Community Committee will meet in room 510, Houston United Bank Building, 4600 Gulf Freeway, Houston. According to the agenda, the committee will discuss and/or approve a development plan brochure and a property acquisition report update. The committee will also meet in executive session.

Information may be obtained from Deborah Selden, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: November 30, 1981, 9:28 a.m.  
Doc. No. 818648



## Texas Department of Human Resources

**Tuesday, December 8, 1981, 10 a.m.** The Advisory Committee for Child Care Administrators of the Texas Department of Human Resources will meet in Room 443 at Fountain Park Plaza, 3000 FH 35, Austin. According to the agenda, the committee will consider proposed changes in the examination; the LAR preparation;

proposed handbook changes; and information on social work certification.

Information may be obtained from Michael O. Doughty, P. O. Box 2960, Austin, Texas 79760, (512) 441-3355, ext. 6039.

Filed: November 24, 1981, 4:06 p.m.  
Doc. No. 818553

## State Board of Insurance

**Thursday, December 2, 1981, 9 a.m.** The Commissioner's Hearing Section of the State Board of Insurance reopened a public hearing in Room 342, 1110 San Jacinto Street, Austin, in Docket 6580—incorporation of Slavonic Insurance Company of Texas, Rosenberg, Fort Bend County, to engage in the business of fire and casualty insurance.

Information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: November 24, 1981, 4:22 p.m.  
Doc. No. 818548

**Thursday, December 3, 1981, 9 a.m.** The State Board of Insurance met in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board considered a motion by Republic Financial Services, Inc., for a rehearing on Board Order 39724, and conducted a prehearing conference concerning the appeal of Republic Financial Services, Inc., from Commissioner's Order 81-2733.

Information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: November 25, 1981, 9:58 a.m.  
Doc. No. 818583

**Monday, December 7, 1981, 9 a.m.** A designate of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, to consider the appeal of Westland Film Industries from the decision of the Texas Catastrophe Property Insurance Association.

Information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: November 25, 1981, 9:21 a.m.  
Doc. No. 818584

**Tuesday, December 8, 1981, 9 a.m.** The State Board of Insurance will conduct a public hearing in Room 414, 1110 San Jacinto Street, Austin, to consider the following: rates for endorsements promulgated by Monoline Form 222A and TXCMP-131A as a result of elimination of the exclusion for wind-driven rain; and implementation of House Bill 764—reduction of homeowner's premium for compliance with certain security standards.

Information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: November 25, 1981, 9:59 a.m.  
Doc. No. 818585

**Tuesday, December 8, 1981.** The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 350, 1110 San Jacinto Street, Austin. The times and dockets are as follows.

**9 a.m.** Docket 6629—application of Jansen Enterprises, Inc., Dallas, to acquire control of National Life Insurance Company of Texas, Dallas.

**1:30 p.m.** Docket 6608—charter amendment to increase the lines of coverage provided by Comco Insurance Company, Amarillo.

Information may be obtained from J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: November 30, 1981, 10:54 a.m.  
Doc. Nos. 818660 and 818661

**Wednesday, December 9, 1981, 9 a.m.** A designate of the State Board of Insurance rescheduled a public hearing to be held in Room 342, 1110, San Jacinto Street, Austin, to consider the plea to the jurisdiction filed by Texas Catastrophe Property Insurance Association in Board Docket 1209, Anthony A. Endres v. TCPIA. The hearing was originally scheduled for December 1, 1981.

Information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: November 25, 1981, 9:59 a.m.  
Doc. No. 818586

**Friday, December 11, 1981.** The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin. The times and dockets follow.

**9 a.m.** Docket 6624—merger of NNU Life Insurance Company of Delaware, a Delaware corporation, Oklahoma City, Oklahoma, into United American Insurance Company, Dallas.

**10:30 a.m.** Docket 6625—merger of The Millers Casualty Insurance Company of Texas, Fort Worth, into The Millers Casualty Insurance Company of Delaware, Wilmington, Delaware.

**1:30 p.m.** Docket 6627—merger of Reliance Life Insurance Company of Texas, Houston, into Eureka Life Insurance Company of America, Wichita Falls.

Information may be obtained from John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: November 30, 1981, 10:54 a.m.  
Doc Nos. 818663 and 818664

**Monday, December 14, 1981, 9 a.m.** A designate of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, Texas to consider the appeal of Wayne A. Johnson, et ux, for the decision of the Texas Catastrophe Property Insurance Association.

Information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: November 25, 1981, 9:22 a.m.  
Doc. No. 818587

## Texas Department of Mental Health and Mental Retardation

**Thursday, December 3, 1981, 1:30 p.m.** The Board of the Texas Department of Mental Health and Mental Retardation met at 909 West 45th Street, Austin. According to the agenda, the board considered the status of pending and contemplated litigation.

Information may be obtained from James A. Adkins, P.O. Box 12668, Austin, Texas 78711, (512) 465-4588.

Filed: November 24, 1981, 4:23 p.m.  
Doc. No. 818551

**Thursday-Saturday, December 3-5, 1981, 9:30 a.m. daily.** The Texas Board of Mental Health and Mental Retardation Personnel Committee will meet at 909 West 45th Street, Austin. According to the agenda, the committee will discuss the status of application process for the position of commissioner, and interview prospective candidates for commissioner of the department.

Information may be obtained from James A. Adkins, P.O. Box 12668, Austin, Texas 78711, (512) 465-4588.

Filed: November 24, 1981, 4:23 p.m.  
Doc. No. 818550

## State Board of Morticians

**Wednesday and Thursday, December 9 and 10, 1981, 2 p.m. and 9 a.m. respectively.** The State Board of Morticians will meet at 1513 IH 35 South, Austin. According to the agenda summary, the board will discuss the following: applicants for reciprocal licenses; governor's conference and report of staff and budget committee; formal hearings and report on the cost of printing brochures and annuals; and procedure for hearings and complaints to be reviewed.

Information may be obtained from John W. Shocklee, 1513 IH 35 South, Austin, Texas 78741, (512) 442-6721.

Filed: November 30, 1981, 11:17 a.m.  
Doc. No. 818665

## Board of Nurse Examiners

**Tuesday-Thursday, December 8-10, 1981, 8 a.m. daily.** The Board of Nurse Examiners will meet in the Lonestar Room, Sunrise Motor Hotel, 7622 IH 35 North, Austin. Items of the agenda summary include disciplinary hearings; reinstatement hearings; informal hearings; imposter; education report; report of executive secretary; report of examination; public hearing regarding the establishment of new nursing programs at Austin Community College, Henderson County Junior College, and Tyler Junior College scheduled for December 10, at 9 a.m.; and new business.

Information may be obtained from Margaret L. Rowland, R.N., 510 South Congress, Room 216, Austin, Texas 78704, (512) 478-9602.

Filed: November 30, 1981, 9:29 a.m.  
Doc. No. 818646

## Texas Optometry Board

**Wednesday, December 2, 1981, 7 p.m.** The Texas Optometry Board will meet at the Hilton Hotel, Austin. According to the agenda summary, the committees of the Texas Optometry Board will meet at 7 p.m. followed by a general business meeting at 8 p.m. to consider reports of secretary-treasurer, legal counsel, and committees; adoption of proposed rules; costs of transcripts; national board candidates; advertising in possible violation of the Act; requests for duplicate licenses; correspondence from optician association; correspondence regarding prescriptions; discussion regarding §3.01 of the Act. The board will also meet in executive session in compliance with §2(e) of Article 6252-17, Open Meetings Act, to discuss contemplated and pending litigation with board attorney.

Information may be obtained from Lois Ewald, Commerce Park, Suite H-101, 5555 North Lamar, Austin, Texas 78751, (512) 458-2141.

Filed: November 24, 1981, 3:53 p.m.  
Doc. No. 818547

## Board of Polygraph Examiners

**Tuesday and Wednesday, December 15 and 16, 1981, 9 a.m. daily.** The Board of Polygraph Examiners will meet at 5805 North Lamar Boulevard, Austin. According to the agenda, the board will approve minutes; consider and act upon applications for internship/reciprocity licensure; conduct administrative hearings; set date of next meeting and licensing examinations; consider any communications from the public or polygraph examiners; consider and act upon any other polygraph-related business that may come before the board. The board will also conduct examinations.

Information may be obtained from Candy Moore, P.O. Box 4143, Austin, Texas 78765, (512) 465-2058.

Filed: November 25, 1981, 9:59 a.m.  
Doc. No. 818580



## Public Utility Commission of Texas

**Friday, December 4, 1981, 1 p.m.** The Hearings Division of the Public Utility Commission of Texas will hold a prehearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 2765—inquiry by the commission into certain rates of Southwestern Bell Telephone Company concerning MCI Telecommunications Corporation.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 24, 1981, 2:56 p.m.  
Doc. No. 818544

**Monday, December 7, 1981, 9 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4167—application of Continental Telephone Company of Texas for a rate/tariff revision.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 24, 1981, 2:57 a.m.  
Doc. No. 818545

**Tuesday, December 8, 1981, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, Docket 4171—application of Gulf States-United Telephone Company for a rate/tariff change.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 25, 1981, 9:58 a.m.  
Doc. No. 818581

**Wednesday, December 9, 1981, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Dockets 3838 and 3896—application of Lower Colorado River Authority for a certificate amendment to include Generating Unit 3 of the Fayette Power Project, and application of Texland Electric Cooperative, Inc., for a certificate of convenience and necessity for proposed Texland Generating Units 1 and 2.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 25, 1981, 2:28 p.m.  
Doc. No. 818612

**Friday, December 11, 1981, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas has rescheduled a prehearing conference to be held in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4162—inquiry into the rate increase of Utilities Operations, Inc. The conference was originally scheduled for December 4, 1981.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 25, 1981, 2:28 p.m.  
Doc. No. 818613

**Friday, December 11, 1981, 1 p.m.** The Hearings Division of the Public Utility Commission of Texas has rescheduled a prehearing conference to be held in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4165—inquiry into the rate increase of Buena Vista Water System. The conference was originally scheduled for December 4, 1981.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 30, 1981, 2 p.m.  
Doc. No. 818675

**Monday, December 17, 1981, 8:30 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, on the merits in Docket 4140—application of DeWitt County Electric Cooperative, Inc., for a cease and desist order.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 30, 1981, 2 p.m.  
Doc. No. 818676

**Monday, January 11, 1982, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, Docket 4142—application of Northwest Water System, Inc., for a rate increase.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 24, 1981, 4:01 p.m.  
Doc. No. 818556

**Tuesday, January 12, 1982, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4174—inquiry into the rates of Westwood Water Supply.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1981, 9:17 a.m.  
Doc. No. 818680

**Thursday, January 21, 1982, 9 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, on the merits in Docket 4150—application of Southwestern Electric Service Company for authority to change rates.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 24, 1981, 2:58 p.m.  
Doc. No. 818546

**Tuesday, February 2, 1982, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3970—application of Southern Utility Company for a rate increase.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 24, 1981, 4:02 p.m.  
Doc. No. 818557

**Thursday, February 4, 1982, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, on the merits in Docket 4133—application of Leon Springs Villa Water System, a subsidiary of Bulverde Utility Company, for authority to increase rates within Bexar County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 24, 1981, 4:01 p.m.  
Doc. No. 818558

**Tuesday, February 16, 1982, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4168—application of Community Water Service, Inc., for a rate increase within Dallas, Ellis, and Denton Counties.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 25, 1981, 9:58 a.m.  
Doc. No. 8128582

## Railroad Commission of Texas

**Monday, November 30, 1981, 9 a.m.** The Gas Utilities Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in Room 107, 1124 IH 35 South, Austin. The addition concerned consideration of Gas Utilities Dockets 3259, 3260, 3261, and 3262. The emergency status was necessary to prevent the rates from going into effect before the next scheduled conference of the commission.

Information may be obtained from Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1126.

Filed: November 25, 1981, 11:13 a.m.  
Doc. No. 818597

**Monday, November 30, 1981, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerned consideration of a motion by Humble Exploration, Inc., to set aside and dismiss the interim order entered in Oil and Gas Docket 3-77343, the complaint of Joe D. Burtschell with respect to the Humble Exploration, Inc.'s Lauren B. Unit Well I, Gidding (Austin Chalk) Field, in Lee County. This agenda item was properly noticed for the November 23, 1981, meeting and was passed at that meeting. Consideration on less than seven days' notice was necessary as a matter of public necessity.

Information may be obtained from Sandra B. Buch, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1293.

Filed: November 25, 1981, 11:15 a.m.  
Doc. No. 818594



**Monday, November 30, 1981, 9 a.m.** The Transportation Division of the Railroad Commission of Texas made the following emergency additions to the agenda of a meeting held in the first floor auditorium, Room 107, 1124 IH 35 South, Austin.

Consideration of a request of oral argument on rulemaking proceedings concerning Rule 051.03.02.027, captioned Common Carrier Obligation of Specialized Motor Carriers; and Rules 051.03.10.001, .003, and .005-.008, all dealing with leasing of operating rights and equipment. The request was properly noticed for consideration by the commission in its November 23, 1981, meeting and was reconsidered on less than seven days' notice as a matter of urgent public necessity.

Consideration of a final order in the application of Mistletoe Express Service of Texas, Inc., Docket 002674A8A, to amend Common Carrier Certificate 2674. This matter was properly noticed for consideration by the commission in its November 23, 1981, meeting, was passed at that meeting, and was being considered again as a matter of urgent public necessity.

Consideration of corrected final order in Docket 024702ZZT—application of Common Carrier Motor Freight Association, Inc., (line haul rates, line haul charges, and minimum rates via common carrier motor carriers only) to increase Texas revenue overall by 4.3%; CCMFA tariffs 25-T, 50, and 100-C. Consideration on less than seven days' notice was necessary as a matter of urgent public necessity in order to clarify the commission's order of November 23, 1981, prior to the effective date.

Information may be obtained from Owen T. Kinney, P.O. Drawer 12967, Austin, Texas, 78711, (512) 445-1330.

Filed: November 25, 1981, 11:154 a.m.  
Doc. Nos. 818585, 818593, and 818596

**Monday, December 17, 1981, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas will meet at the Quality Inn South, 2200 IH 35 South, Austin, for a statewide oil and gas hearing.

Information may be obtained from Harriett Trammell, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1297.

Filed: November 25, 1981, 11:14 a.m.  
Doc. No. 818598



## Texas Real Estate Commission

**Monday, December 7, 1981, 9:30 a.m.** The Texas Real Estate Commission will meet in the conference room, 1101 Camino La Costa, Austin. According to the agenda summary, the commission will consider the following: minutes of the October 19, 1981, commission meeting; appeal of San Antonio Community College of administrative decision; statutory language and rules relative to two-year internship; position of licensee who buys real property for himself; motions for rehearing; San Antonio Builder's report; proposed amendment to §537.11; staff reports for the months of September and October 1981; and school matters.

Information may be obtained from Camilla S. Shannon, P. O. Box 12188, Austin, Texas 78711, (512) 459-1123.

Filed: November 30, 1981, 9:29 a.m.  
Doc. No. 818673

## Texas Sesquicentennial Museum Board

**Thursday, December 10, 1981, 10:30 a.m.** The Texas Sesquicentennial Museum Board will meet in Room 346 of the State Capitol. Items on the agenda include: review of authorizing Legislation House Bill 1986; discussion of goals and objectives; and appointment of appropriate committees.

Information may be obtained from Lawrence Wood, P. O. Box AA, Refugio, Texas 78377, (512) 526-2378.

Filed: December 1, 1981, 9:45 a.m.  
Doc. No. 818683

## Stephen F. Austin State University

**Wednesday, December 9, 1981, 2:30 p.m.** The Board of Regents of Stephen F. Austin State University will meet in the San Antonio Room at the Sheraton Crest Inn, 111 East First Street, Austin. According to the agenda, the board will consider approval of minutes of meeting of October 16, 1981, and selection of the athletic director and board secretary.

Information may be obtained from William R. Johnson, P.O. Box 6078, Nacogdoches, Texas 75962, (713) 569-2201.

Filed: November 24, 1981, 10:29 a.m.  
Doc. No. 818537

## Teacher Retirement System of Texas

**Friday, December 11, 1981, 10 a.m.** The Board of Trustees of the Teacher Retirement System of Texas will meet on the fourth floor, 1001 Trinity, Austin. According to the agenda, the board will consider approval of minutes; investments for quarter ending November 30, 1981; discussions and recommendations at IAC meeting; report from actuary; report from Audit Committee; report on various interim study groups; report on investment processing procedures; report on request for approval on zoning changes for

proposed highrise building; report of the general counsel; and report of Member Benefits Division.

Information may be obtained from Mary Godzik, 1001 Trinity, Austin, Texas 78711, (512) 477-9711, ext. 201.

Filed: December 1, 1981, 9:31 a.m.  
Doc. No. 818685

## Commission on Standards for the Teaching Profession

*Monday, December 21, 1981, 9 a.m.* The Committee on Standards and Procedures for Institutional Approval of the Commission on Standards for the Teaching Profession will meet in the second floor conference room, 158 East Riverside Drive, Austin. According to the agenda, the committee will study the proposed draft of *Texas Standards for the Approval of Teacher Education Institutions*.

Information may be obtained from Dr. Edward M. Vodicka, 201 East 11th Street, Austin, Texas 78701, (512) 475-0164.

Filed: November 30, 1981, 12:08 p.m.  
Doc. No. 818668

## Advisory Committee for Technical-Vocational Education

*Tuesday, December 15, 1981, 10 a.m.* The Steering Committee of the Advisory Council for Technical-Vocational Education will meet in Suite 202, 1700 South Lamar, Austin. The committee will hear reports from Dr. Katy Greenwood on the CETA vocational education linkage project and from Dr. Victoria Bergin, associate commissioner for general education, TEA, on the implementation of provisions of House Bill 246 relating to curriculum; review a draft of the 12th annual report to the State Board of Education and possible plans of committees for meeting as a part of the January 13 council meeting; discuss program of work activities and other business.

Information may be obtained from Valeria J. Blaschke, P.O. Box 1886, Austin, Texas 78767, or 1700 South Lamar, Suite 202, Austin, Texas 78704, (512) 475-2046.

Filed: November 25, 1981, 2:27 p.m.  
Doc. No. 818614

## Texas Southern University

*Friday, December 4, 1981.* The Texas Southern University Board of Regents will meet in Room 203 of the Student Life Center, and committees of the board will meet in Room 117 of Hannah Hall, 3100 Cleburne, Houston. The times and agendas follow.

*9 a.m.* The Finance Committee will conduct a routine meeting to consider monthly financial reports and approval of short-term investments.

*9:45 a.m.* The Faculty and Curriculum Committee will conduct a routine meeting to receive enrollment and curricula data from the administration.

*10:30 a.m.* The Building and Grounds Committee will meet to approve contracts for payments, acquisition of real estate, and awarding of contracts.

*2 p.m.* The Board of Regents will consider fiscal and curriculum reports from the administration and approval of short-term investments as recommended by the Finance Committee.

Information may be obtained from Everett O. Bell, (713) 529-8911.

Filed: November 25, 1981, 2:26 p.m.  
Doc. No. 818608-818611

## Texas State Technical Institute

*Sunday and Monday, December 13 and 14, 1981, 8:30 a.m. and 9 a.m., respectively.* The Texas State Technical Institute (TSTI) Board of Regents will meet at TSTI in Harlingen to approve minutes and hear Policy Committee recommendations.

Information may be obtained from Theodore Talbot, TSTI-Waco, (817) 799-3611, ext. 385.

Filed: November 25, 1981, 10 a.m.  
Doc. No. 818578

## Texas Turnpike Authority

*Friday, December 11, 1981, 10:30 a.m.* The Board of Directors of the Texas Turnpike Authority will meet in Salon III, Houston Marriott Hotel, 2100 South Braeswood Boulevard, Houston. Items on the agenda summary include: approval of minutes of board of directors meeting of October 27, 1981; approval of Supplemental Agreement 1 to contract HSC-12 and construction progress report on the Houston Ship Channel Bridge project; award of contract MLB C-108 for the Mountain Creek Lake Bridge project; final adoption of budgets of Dallas North Tollway and Mountain Creek Lake Bridge projects for calendar year 1982; and in executive session, pending or contemplated litigation, personnel matters, and purchase or value of real property.

Information may be obtained from Harry Kabler, P. O. Box 19327, Dallas, Texas 75219, (214) 522-6200.

Filed December 1, 1981, 9:18 a.m.  
Doc. No. 818681

## Board of Vocational Nurse Examiners

*Monday-Wednesday, December 7-9, 1981, 8:30 daily.* The Board of Vocational Nurse Examiners will meet at the Howard Johnson Motor Lodge, 7800 IH 35 North, and in Room H-131, 5555 North Lamar, Austin. According to the summarized agenda, the board will consider the following: approval of minutes of October meeting; report of executive director; report of division of education; program contacts; school matters; review of October 1981 examination; accreditation review; special reports; and ad-

ministrative hearings. The meeting on Wednesday will be a closed for draft review.

Information may be obtained from Waldeen D. Wilson, 5555 North Lamar, Building H, Suite 131, Austin, Texas 78751, (512) 458-1203.

Filed: November 24, 1981, 4:03 p.m.  
Doc. No. 818555

## Texas Water Commission

**Tuesday, November 24, 1981, 3 p.m.** The Texas Water Commission met in emergency session in Room 124A, Stephen F. Austin Building, 1700 North Congress, Austin, to consider an application by Jefferson Lake Sulphur Company for a temporary order to discharge approximately 300 million gallons of contaminated storm water in Fort Bend County. The emergency status was necessary because the applicant was seeking the authorization to discharge as soon as possible due to severe erosion to the retaining walls of Reservoir 4.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 24, 1981, 11:14 a.m.  
Doc. No. 818535

**Monday, December 7, 1981, 10 a.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. The times and agendas follow.

**10 a.m.** The commission will consider the following: water district bond issues, use of surplus funds, water quality permit, amendments and renewals, water right permits, extension of time, and the setting of hearing dates.

**2 p.m.** The commission will conduct a hearing on a temporary order of Hughes Sand Pits, Inc., concerning the discharge of impounded contaminated stormwater runoff from a Class IV industrial solid waste landfill located on the south side of Genoa-Red Bluff Road and north of Ellington Air Field in Pasadena, Harris County.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 25, 1981, 11:16 a.m.  
Doc. No. 818589 and 818590

**Tuesday, December 15, 1981, 2 p.m.** The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin, to consider an application by the City of Marble Falls for an amendment to Water Quality Permit 10654 to expand existing wastewater treatment facilities in Burnet County.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 24, 1981, 10:52 a.m.  
Doc. No. 818538

**Thursday, December 17, 1981, 10 a.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700

North Congress, Austin. According to the agenda summary, the commission will consider application by Brazoria County Municipal Utility Water District 1 for Water Quality Permit 12332-01, San Jacinto-Brazos Coastal Basin, Brazoria County, and by Formosa Plastics Corporation, U.S.A., for Water Quality Permit 02436, Calhoun County.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 24, 1981, 10:52 a.m.  
Doc. No. 818539

**January 6, 1982, 10 a.m.** The Texas Water Commission will conduct a hearing in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. The hearing concerns a petition for conversion of Dallas County Levee Improvement District 17 into a Municipal Utility District operating under Chapter 54 of the Texas Water Code, and a petition for the creation of Harris County Municipal Utility District 223 containing 327.60 acres.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 24, 1981, 10:53 a.m.  
Doc. No. 818540 and 818541

**Monday, January 21, 1982, 10 a.m.** The Texas Water Commission will conduct a hearing in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin, on the following.

Application 4169 of Roaring Springs Ranch, Inc., for a permit to authorize the maintenance of six dams and reservoirs on Camp Wood Creek, tributary of Nueces River, Nueces River Basin, and impound the water for irrigation, recreation, and domestic purposes in Real County.

Application 1437B of Lone Star Steel Company seeking an amendment to Permit 1405 to authorize construction of a dam and an 11,248-acre-foot capacity reservoir on an unnamed tributary of Peacock Creek, tributary of Big Cypress Creek, Cypress Basin, to be used for storing tailings generated during applicant's mining process in Morris County.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 25, 1981, 11:17 a.m.  
Doc. No. 818591 and 818592

## Regional Agencies

### Meeting Filed November 24, 1981

**The Brown County Appraisal District**, Board of Directors, met in the Brown County District Court Room, Brownwood, on November 30, 1981, at 6:30 p.m. Information may be obtained from Alvis Sewalt, 400 South Broadway, Brownwood, Texas 76801, (915) 643-5676.

**The Sabine River Authority of Texas**, Board of Directors, met at the Adolphus Hotel, Dallas, on November 30, 1981, at 9 a.m. In-

formation may be obtained from Sam F. Collins, P. O. Box 579, Orange, Texas 77630, (713) 883-2531.

Doc. No. 818542

## Meetings Filed November 25, 1981

**The Capital Area Rural Transportation System**, Board of Directors, met at 2520 IH 35 South, Austin, on December 3, 1981, at 10 a.m. Information may be obtained from Jace Graf, 2520 IH 35 South, Austin, Texas 78704, (512) 443-7653.

**The Gillespie County Appraisal District**, Board of Directors, will meet in the County Courtroom, County Courthouse, Fredericksburg, on December 10, 1981, at 9 a.m. Information may be obtained from Fredolin Kaderli, P. O. Box 429, Fredericksburg, Texas 78624, (512) 997-7655

**The Middle Rio Grande Development Council**, Regional Alcoholism Advisory, Committee met in the Uvalde City Council Chambers at City Hall, Uvalde, on December 2, 1981, at 2 p.m. Information may be obtained from Ramon S. Johnston, Suite 308, Del Rio National Bank Building, Del Rio, Texas 78840, (512) 774-3878.

Doc. No. 818579

## Meetings Filed November 30, 1981

**The Ark-Tex Council of Governments**, Executive Committee, met at the Cattleman's Restaurant, Highway 37 South, Clarksville, on December 3, 1981, at 5:30 p.m. Information may be obtained from Vivienne Arvin, P.O. Box 5307, Texarkana, Texas 75501, (501) 774-3481.

**The Ark-Tex Council of Governments**, Board of Directors, met at the Red River County Library, Clarksville, on December 3, 1981, at 7:30 p.m. Information may be obtained from Vivienne Arvin, P.O. Box 5307, Texarkana, Texas 75501, (501) 774-3481.

**The Blanco County Central Appraisal District**, will meet at the Blanco County Courthouse Annex-Appraisal Office, Johnson City, on December 8, 1981, at 6:30 p.m. Information may be obtained from Kay Wright, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

**The Brazos Valley Development Council**, Board of Directors, will meet at the Brazos Center, 3232 Briarcrest Drive, Bryan, on December 10, 1981, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805, (713) 822-7421.

**The Central Texas Health Systems Agency, Inc.**, Board of Directors, will meet in the Coronet Room, Hilton Inn, 6000 Middle Fiskville Road, Austin, on December 15, 1981, at 7 p.m. Information may be obtained from Central Texas Health Systems Agency, Inc., 55 IH 35 North, Suite 202, Austin, Texas 78702 (512) 478-9889.

**The East Texas Council of Governments**, Executive Committee, met at ETCOG Conference Room, Stoneridge Plaza Office Building, 3800 Stone Road, Kilgore, on December 3, 1981, at 2

p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

**The Region I Education Service Center**, Board of Directors, will meet at Laredo Hilton, One South Main Avenue, Laredo, on December 11, 1981, at 7 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas, (512) 383-5611.

**The Region VII Education Service Center**, Board of Directors, will meet at Romeo's Restaurant, Highway 259, Kilgore, on December 8, 1981, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas 75662, (512) 984-3071.

**The Hale County Appraisal District**, met at the Central Appraisal Office, 302 West Eighth Street, Plainview, on December 3, 1981, at 7 p.m. Information may be obtained from Larry Hamilton, P. O. Box 29, Plainview, Texas 79072.

**The Hansford County Appraisal District**, will meet at 13 West Kenneth Avenue, Spearman, on December 9, 1981, at 3 p.m. Information may be obtained from Alice Peddy, P. O. Box 567, Spearman, Texas 79081, (806) 659-5575.

**The Heart of Texas Council of Governments**, Executive Committee, will meet at the Bellmead Community Center, 3900 Parrish, Bellmead, on December 10, 1981, at 5:30 p.m. Information may be obtained from Mary A. McDow, 320 Franklin, Waco, Texas 76701, (817) 756-6631.

**The Heart of Texas Council of Governments**, Board of Directors, will meet at the Bellmead Community Center, 3900 Parrish, Bellmead, on December 10, 1981, at 7 p.m. Information may be obtained from Mary A. McDow, 320 Franklin, Waco, Texas 76701, (817) 756-6631.

**The Red River Authority of Texas**, Board of Directors, met in Room 215 at the Activity Center, 1001 Indiana, Wichita Falls, on December 3, 1981, at 10 a.m. Information may be obtained from Fred Parkey, 302 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

**The Panhandle Regional Planning Commission**, A-95 Project Notification and Review Committee, will meet in the conference room at the Gibraltar Building, Eighth and Jackson, Amarillo, on December 10, 1981, at 1:30 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381.

**The Tri-Region Health Systems Agency**, West Central Texas Subarea Advisory Council, will meet at Hardin-Simmons University, Ambler and Hickory, Moody Coliseum, Room 208, Abilene, on December 9, 1981, at 7 p.m. Information may be obtained from Susan K. Bennett, 2642 Post Oak Road, Abilene, Texas, (915) 698-9481.

**The Wheeler County Appraisal District**, will meet at the district's office, Courthouse Square, Wheeler, on December 7, 1981, at 2 p.m. Information may be obtained from Charles Buzzard, County Courthouse Square, Wheeler, Texas, (806) 826-5900.

Doc. No. 818644

## Regional Agencies Meetings Filed December 1, 1981

*The Bexar-Medina-Atascosa Counties Water Control and Improvement District 1*, Board of Directors, will meet at the district office, Highway 81, Natalia, on December 7, 1981, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

*The Copano Bay Soil Conservation District 329*, will meet at 106 South Alamo, Refugio, on December 9, 1981, at 8:30 a.m. Information may be obtained from Jim Wales, P.O. Drawer 340, Refugio, Texas 78377, (512) 526-2334.

*The Region II Education Service Center*, Board of Directors, will meet at the education service center, Administrative Conference

Room, 209 North Water, Corpus Christi, on December 15, 1981, at 6:30 p.m. Information may be obtained from Gerald V. Cook, 209 North Water, Corpus Christi, Texas, (512) 883-9288.

*The Region XII Education Service Center*, Administrative - ESC XII Board of Directors, will meet at 401 Franklin Avenue, Waco, on December 17, 1981, at 7:30 p.m. Information may be obtained from Mack W. Mullins, P.O. Box 1249, Waco, Texas 76703.

*The San Patricio County Appraisal District*, Board of Directors, will meet in Room 101, courthouse annex, Sinton, on December 10, 1981, at 9:30 a.m. Information may be obtained from Bennie L. Stewart, 313 North Rachal, Sinton, Texas, (512) 364-5402.

Doc. No. 818679

The following documents are required to be published in the *Register*: applications to purchase control of state banks filed by the Banking Commissioner of Texas pursuant to Texas Civil Statutes, Article 342-401 a(B) (6); changes in interest rate filed by the Savings and Loan Commissioner of Texas pursuant to Texas Civil Statutes, Article 5069-1.07; and consultant proposal requests and awards filed by state agencies, regional councils of government, and the Texas State Library pursuant to Texas Civil Statutes, Article 6252-11c. In order to allow agencies to communicate information quickly and effectively, other information of general interest to the public of Texas is published as space allows.

## Texas Department of Agriculture

### Correction of Errors

The repeal of §§7.1-7.29 and new §§7.1-7.22 submitted by the Texas Department of Agriculture contained errors as published in the November 24, 1981, issue of the *Texas Register*. A correction of these errors, listing the sections involved, and *Texas Register* citations, follows.

At 6 TexReg 4331—The introductory paragraph incorrectly lists the new sections as §§7.1-7.21; it should have read §§7.1-7.22.

At 6 TexReg 4335—Subparagraph (A) of §7.3(5) should read "the net weight or measure of contents shall be the average contents unless explicitly stated as a minimum quantity;"

At 6 TexReg 4337—Paragraph (1) of §7.10(b) should read "conducted as part of the official certification process;"

At 6 TexReg 4339—Subsection (d) of §7.20 should read "The investigating agency will not estimate monetary losses sustained."

## Texas Air Control Board

### Notice of Applications for Construction Permits

Notice is hereby given by the Texas Air Control Board of applications for construction permits received during the periods of November 9-13 and 16-20, 1981.

Information relative to these applications listed below, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the address stated above and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the name of the applicant and the city in which the facility is located; type of facility; location of the facility (if

available); permit number; and type of application—new source or modification.

### Week Ending November 13, 1981

Troy Dodson Construction Company, Inc., Beaumont; dryer asphalt plant; 6100 Highland Avenue; 8430A; new source

Adamson Chronister Valves, Inc., Houston; spray paint booth/sand blast; 13223 Spencer Road; 8960; new source

Galveston Marine Transfer Terminal Company, Galveston; soda ash, bulk handling, storage facility; Bradner Street on Pelican Island; 8961; new source

Valley Metal Recycling Company, Harlingen; scrap shredding plant/metal; FM 1594, 1/4 mile off FM 106 due north; 8962; new source

Alamo Cement Company, San Antonio; railroad loading facility; 1604 Plant RR Loading; 8963; new source

Barrett Industries, San Antonio; conversion of existing aggregate kiln to fire coal; 2718 Southwest Military Drive; 8964; new source

Lorino Construction Company, Tomball; trench burner; 7107B; new source

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818532 Ramon Dasch  
Director of Hearings  
Texas Air Control Board

Filed: November 24, 1981, 9:04 a.m.  
For further information, please call (512) 451-5711, ext. 354.

### Week Ending November 20, 1981

Well Servicing Equipment & Supply, Inc., Kilgore; sandblast cleaning; 8965; new source

Crist Steel Fabricating & Tank, Inc., Fort Worth; abrasive blasting and spray painting; 10200 Jacksboro Highway; 8966; new source

Friendswood Refining Corporation, Houston; crude oil refinery; 2501 Choate Road; 8967; new source

Ready Rock, Paris; rock crusher; 8355A; new source

Centex Cement Corporation, Corpus Christi; limestone car unloader; 1800 Navigation; 8968; new source

Central Ready Mix Concrete Company, Dallas; ready mix concrete; Oscar Williams Road; 8969; new source

Jake Diel Dirt and Paving, Inc., Amarillo; hot mix asphalt plant; Bishop Hill; 5588A; new source

Issued in Austin, Texas, on November 23, 1981.

Doc. No. 818533 Ramon Dasch  
Director of Hearings  
Texas Air Control Board

Filed: November 24, 1981, 9:04 a.m.  
For further information, please call (512) 451-5711, ext. 354.

## Contested Case Hearing 163

Pursuant to the authority provided in the Texas Clean Air Act, §§3.15, 3.16, and 3.17, Texas Civil Statutes, Article 4477-5, and Procedural Rules of the Texas Air Control Board, §§103.31, 103.41, and 103.81 (131.02.04.001, 131.02.05.001, and 131.02.07.001), an examiner for TACB will conduct a de novo hearing on the appeal of the issuance of Exemption Permit X-2916 by the executive director to Motorola Inc., hereinafter referred to as the company, for an integrated circuit manufacturing facility to be constructed in Oak Hill, Texas, approximately 2,000 feet east of the intersection of Texas State Highways 290 and 71.

Said company is directed to appear at the time and place shown to demonstrate by a preponderance of the evidence that the facility will not make a significant contribution of air contaminants to the atmosphere.

The record of such hearing will be submitted to the TACB for a determination whether to affirm, modify, or reverse the decision of the executive director to issue Exemption Permit X-2916 pursuant to §3.27 of the Act and Regulation VI of the TACB.

Information regarding the application for the permit and copies of the board's rules and regulations are available for public inspection at the central office of the agency located at 6330 Highway 290 East, Austin, Texas 78723, the regional office of the agency located at West Loop Plaza, 900 North State Highway 6, Suite E, Waco, Texas 76710, and the office of the principal, Oak Hill Elementary School, 6101 Patton Road, Oak Hill, Texas 78735.

The examiner has set the date and place for the hearing on the merits concerning Exemption Permit X-2916 for 6 p.m., January 12, 1982, at the TACB central office auditorium located at 6330 Highway 290 East, Austin. Prospective parties to the hearing are the staff of the TACB, the company, Jerry Lobdill and Bruce E. Shumate. Any other persons desiring to be made a party to the hearing may apply to Examiner Kenneth E. Davison, Jr., Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. No other persons will be admitted as parties unless the request is received at the address shown above with a postmark date no later than December 3, 1981. At the hearing on the merits, only those persons admitted as parties will be permitted to present evidence and argument and to cross-examine witnesses. If an interested person desires to give testimony at the hearing on the merits but does not desire to be a party, he or she may call the legal division of the TACB at (512) 451-5711, extension 358, to determine the names and addresses of all admitted parties. These parties may then be contacted about the possibility of presenting testimony.

Pursuant to Procedural Rules of the TACB, §103.46 (131.02.05.006), the examiner has scheduled a prehearing conference on December 17, 1981, at 6 p.m. at the TACB central office auditorium located at 6330 Highway 290 East, Austin. All persons wishing to be admitted as parties must attend the conference. Proposed disputed issues for consideration at the hearing on the merits and requests for official notice should be made at the prehearing conference. At this conference, a specific date prior to the hearing on the merits will be established for the exchange of witness lists, short summaries of their prospective testimony, and copies of

written and documentary evidence pursuant to §103.46(2) (131.02.05.006(2)).

Interested members of the general public who plan to attend the hearing are encouraged to telephone the central office of the TACB in Austin at (512) 451-5711, extension 358, or the regional office in Waco at (817) 772-9240, a day or two prior to the hearing date to confirm the setting since continuances are granted from time to time.

Issued in Austin, Texas, on November 24, 1981.

Doc. No. 818659 Bill Stewart, P.E.  
Executive Director  
Texas Air Control Board

Filed: November 30, 1981, 9:22 a.m.

For further information, please call (512) 451-5711, ext. 354.

## Comptroller of Public Accounts

### Administrative Decision

#### Summary of Administrative Decision 11,17's (Sales Tax)

For copies of the following recent opinion selected and summarized by the administrative law judges, contact the administrative law judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with our confidentiality statutes.

**Summary of Decision:** A coffee dispensing machine with a coin slot is not a "coin-operated vending machine" for purposes of the exemption provided in Texas Taxation—General Annotated, Article 20.04(U)(1) (Vernon 1969), unless coins are actually required to operate the machine for the sales in question. In this case the seller received payment from the employer for the total number of cups dispensed, and the coin-activated lever on the machine was turned "off," thereby enabling the employees to fill up their cups without placing any coins in the machine.

Issued in Austin, Texas, on November 25, 1981.

Doc. No. 818569 Bob Bullock  
Comptroller of Public Accounts

Filed: November 25, 1981, 10:15 a.m.

For further information, please call (512) 475-1938.



## Office of Consumer Credit Commissioner

### Rate Ceilings

Pursuant to the provisions of the 67th Legislature of Texas, Regular Session, 1981, House Bill 1228, the Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Article 1.04, Title 79, as amended (Texas Civil Statutes, Article 5069-1.04).

Type of Rate Ceiling	Effective Period <sup>(1)</sup>	Type of Transaction	
		Consumer <sup>(2)/ Commercial<sup>(3)</sup> through \$250,000</sup>	Commercial <sup>(4)</sup> over \$250,000
Indicated rate (weekly rate)	12/07/81-12/13/81	21.50%	21.50%
Monthly (variable commercial only)	12/01/81-12/31/81	22.75%	22.75%
Quarterly	1/01/82-3/31/82	24%	26.37%
Annual <sup>(5)</sup>	1/01/82-3/31/82	24%	28%

(1) Dates set out above are inclusive.

(2) Credit for personal, family, or household use.

(3) Credit for business, commercial, investment, or other similar purpose.

(4) Same as (3) above, except excluding credit for agricultural use.

(5) Only for open end as defined in Texas Civil Statutes, Article 5069-1.01(f).

Issued in Austin, Texas, on November 30, 1981.

Doc. No. 818642 Sam Kelley  
Consumer Credit Commissioner

Filed: November 30, 1981, 8:56 a.m.

For further information, please call (512) 475-2111.

## Texas Energy and Natural Resources Advisory Council

### Contract Awards

The Texas Energy and Natural Resources Advisory Council hereby furnishes this notice of contract award. The proposal request appeared in the September 30, 1980, issue of the *Texas Register* (5 TexReg 3934). This notice of contract award does not come under Texas Civil Statutes, Article 6252-11c, but is furnished as public information.

**Description.** Project 80-B-6-6Ac is a study to evaluate the biomass energy production potential for West Texas plant species and determine production requirements.

**Contractor.** The contractor is Texas A&M University, Department of Plant Sciences, College Station, Texas 77843. The total value of the contract is \$50,000. The beginning date of the contract is November 4, 1981, and the ending date of the contract is August 31, 1983.

**Due Dates for Reports.** Progress reports are due January 1, April 1, July 1, and October 1, 1982, and January 1 and April

1, 1983; a draft final report is due July 1, 1983; and a final report is due August 31, 1983.

Issued in Austin, Texas, on November 18, 1981.

Doc. No. 818390 Roy R. Ray, Jr., Director  
Technology Development Division  
Texas Energy & Natural Resources  
Advisory Council

Filed: November 20, 1981, 9:44 a.m.

For further information, please call (512) 475-0414.

The Texas Energy and Natural Resources Advisory Council hereby furnishes this notice of contract award. The proposal request appeared in the September 30, 1980, issue of the *Texas Register* (5 TexReg 3933). This notice of contract award does not come under Texas Civil Statutes, Article 6252-11c, but is furnished as public information.

**Description.** Project 80-B-4-4c is a study to perform economic analysis of vegetable oil/diesel fuel substitution and evaluate and screen vegetable oils in test engines.

**Contractor.** The contractor is Texas A&M University, Department of Agricultural Engineering, College Station, Texas 77843. The total value of the contract is \$124,689. The beginning date of the contract is November 4, 1981, and the ending date of the contract is August 31, 1983.

**Due Dates for Reports.** Progress reports are due January 1, April 1, July 1, and October 1, 1982, and January 1 and April 1, 1983; a draft final report is due July 1, 1983; and a final report is due August 31, 1983.

Issued in Austin, Texas, on November 18, 1981.

Doc. No. 818391 Roy R. Ray, Jr., Director  
Technology Development Division  
Texas Energy & Natural Resources  
Advisory Council

Filed: November 20, 1981, 9:44 a.m.

For further information, please call (512) 475-0414.

## Office of the Secretary of State Correction of Error

The November 24 and 27 issues of the *Texas Register* were numbered incorrectly. The November 24 issue should have been numbered 88; the November 27 issue numbered 89.

## Texas Water Commission

### Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of November 16-20, 1981.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain (1) the name, mailing address, and phone number of the person making the request; and (2) a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the



commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by writing Larry R. Soward, assistant chief hearings examiner, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 475-1311.

Listed are the name of the applicant and the city in which the facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

### Week Ending November 20, 1981

Spaw-Glass, Inc., Richmond Equipment Division, Houston; equipment cleaning facility; south of the intersection of Little York Road and North Houston Rosslyn Road in the City of Houston, Harris County; 02527; new permit

Kings's Colony, Inc., Houston; domestic sewage facility; on the southern bank of Turkey Creek in Harris County; 12455; new permit

Superior Derrick Services, Inc., Houston; aeration package plant; west of Fairbanks-North Houston Road in Harris County; 12443; new permit

Southern Pacific Transportation Co., Houston; domestic sewage facility; between the 6000 and 8000 blocks of Liberty Road on Wallisville Road in the City of Houston, Harris County; 01180; amendment

Camfield Municipal Utility District, Houston; wastewater treatment facility; east of Jackrabbit Road in Harris County; 12304; new permit

City of Humble; contact stabilization plant; within the city limits of Humble in Harris County; 10763-02; amendment

Louisiana-Pacific Corp., Carthage; domestic sewage facility; on State Highway 149 in Panola County; 11369-01; renewal

Associated Properties, Inc., Houston; sewage treatment facility; on the east side of the Kickapoo Creek arm of Lake Livingston in Polk County; 12454; new permit

Wurlitzer Properties, Inc., Burlingame, California; wastewater treatment facility; west of the City of Austin in Travis County; 11040-01; amendment

Don W. Hinton, Sulphur Springs; commercial dairy operation; south of Sulphur Springs in Hopkins County; 02521; new permit

Galveston County Water Control & Improvement District 1, Dickinson; sewage treatment facility; on the north side of Dickinson Bayou in Galveston County; 10173-01; amendment

Boise Cascade Corp., Waco; wastewater treatment facility; on company-owned property adjacent to FM Road 529 in Harris County; 11689; new permit

Issued in Austin, Texas, on November 20, 1981.

Doc. No. 818431

Mary Ann Hefer

Chief Clerk

Texas Water Commission

Filed: November 20, 1981, 3:10 p.m.

For further information, please call (512) 475-4514.

Each issue of the *Register* includes a conversion table of *Texas Administrative Code* titles affected for that issue. Once a month a guide to agency activity for the previous month is published, as well as a cumulation of TAC titles affected for the previous month. Quarterly and annual indexes to the *Texas Register* are published separately and bound in light blue for distinction.

22 TAC §467.5 (400.04.00.005) ..... 4422  
 22 TAC §471.2 (400.06.00.001-.003) ..... 4423

**Part XVI. Texas Board of Physical Therapy Examiners**

22 TAC §§323.1, 323.2 ..... 4467

**TAC Titles Affected in This Issue**

The following is a list of the chapters of each title of the *Texas Administrative Code* affected by documents published in this issue of the *Register*. The listings are arranged in the same order as the table of contents of the *Texas Administrative Code*.

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 1 TAC §§3.721-3.725 ..... 4447  
 1 TAC §§3.741-3.744 ..... 4448  
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 4 TAC §§15.121, 15.122 ..... 4453

**Part II. Texas Animal Health Commission**

4 TAC §§35.1, 35.2, 35.4, 35.5  
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 4 TAC §§35.2, 35.4, 35.5  
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**TITLE 16. ECONOMIC REGULATION**

**Part I. Railroad Commission of Texas**

16 TAC §9.30 (051.05.03.310) ..... 4420

**TITLE 19. EDUCATION**

**Part II. Texas Education Agency**

19 TAC §§77.351-77.365 ..... 4456  
 19 TAC §§77.351-77.371 (226.32.52.001-.050) ..... 4455

**TITLE 22. EXAMINING-BOARDS**

**Part X. State Board of Morticians**

22 TAC §203.17 (387.02.00.017) ..... 4415, 4420

**Part XXI. Texas State Board of Examiners of Psychologists**

22 TAC §§463.2, 463.4 (400.02.00.002, .004) ..... 4421  
 22 TAC §§465.1-465.18 (400.03.00.001-.018) ..... 4421

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 25 TAC §§405.53-405.57, 405.61, 405.63, 405.64  
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 25 TAC §§405.56, 405.57 (302.04.03.006, .007) ... 4426  
 25 TAC §405.267 (302.04.14.007) ..... 4468  
 25 TAC §§405.401-405.414 (302.04.21.001-.014) ... 4468  
 25 TAC §§405.401-405.411 (302.04.21.101-.111) ... 4469  
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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

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 31 TAC §§65.2, 65.16, 65.17, 65.24, 65.33-65.35,  
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**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**Part V. Board of Pardons and Paroles**

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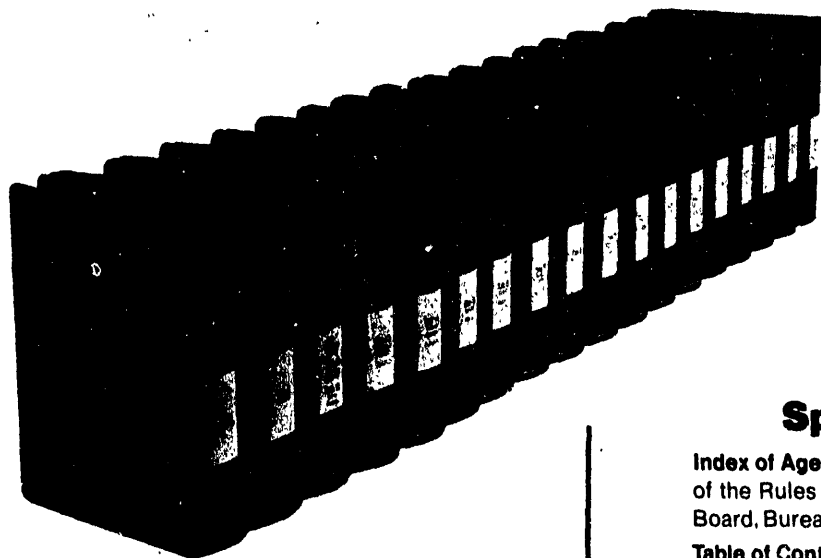
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# The Texas Administrative Code



The **Texas Administrative Code** is published and distributed by Shepard's/McGraw-Hill in cooperation with The Texas Register Division of the Office of the Texas Secretary of State.

The complete **Code** will comprise fifteen titles in twenty-six loose leaf volumes for ease in adding future supplements. Assembled in sturdy five-ring binders, the **Code** will be compiled in a uniform format, style, and numbering system. Tabs will ease reference to each title, its parts, and index.

Each complete set of the **Code** will include: an index to locate each agency's rules in the **Code**; a table of contents listing each title, with its parts, chapters, and subchapters; a series of tables listing the constitutional and statutory authority for each rule; the full text of the Administrative Procedure and Texas Register Act; and the full text of the Texas Administrative Code Act.

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TITLE 40. SOCIAL SERVICES AND  
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## Special Features

**Index of Agencies**, listing the location in the Code of the Rules issued by each Agency, Department, Board, Bureau or Commission of the State of Texas

**Table of Contents** for the entire Code and for each Title, Part, Chapter, and Subchapter of the Code

**Complete title contents for each title**, listing all currently active pages contained in that title by page number, so as to insure completeness and accuracy. Detailed index for each title.

**Parallel Reference Table** for each title, showing the section number used in the Code to designate a Rule and, where applicable, the ten-digit identification number assigned to it by the Texas Register Division.

**Tables of Authorities**, listing every statute and constitutional authority contained in the Code, and the various components of the Code issued under each.

**Authority Notes**, containing a reference to the statutory or constitutional authority for each Title, Part, Chapter, Subchapter, and Section contained in the Code

**Source Notes**, containing a reference to the date and, when applicable the citation to the *Texas Register* issue in which each Title, Part, Chapter, Subchapter, and Section of the Code was adopted and became effective.

**Cross References**, showing every Part, Chapter, Subchapter, and Section of the Code cited in a Rule.

**Editor's notes**, containing clarifying comments or statements as appropriate.

**Notes of Decisions**, containing a summary of each court decision and Attorney General's opinion that construes a Rule.

For more information please contact:

**In eastern Texas: Gayle Carpenter**  
806-797-4878

**In western Texas: Marc McKonic**  
512-349-7730

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## **State Bar of Texas**

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