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# TEXAS REGISTER

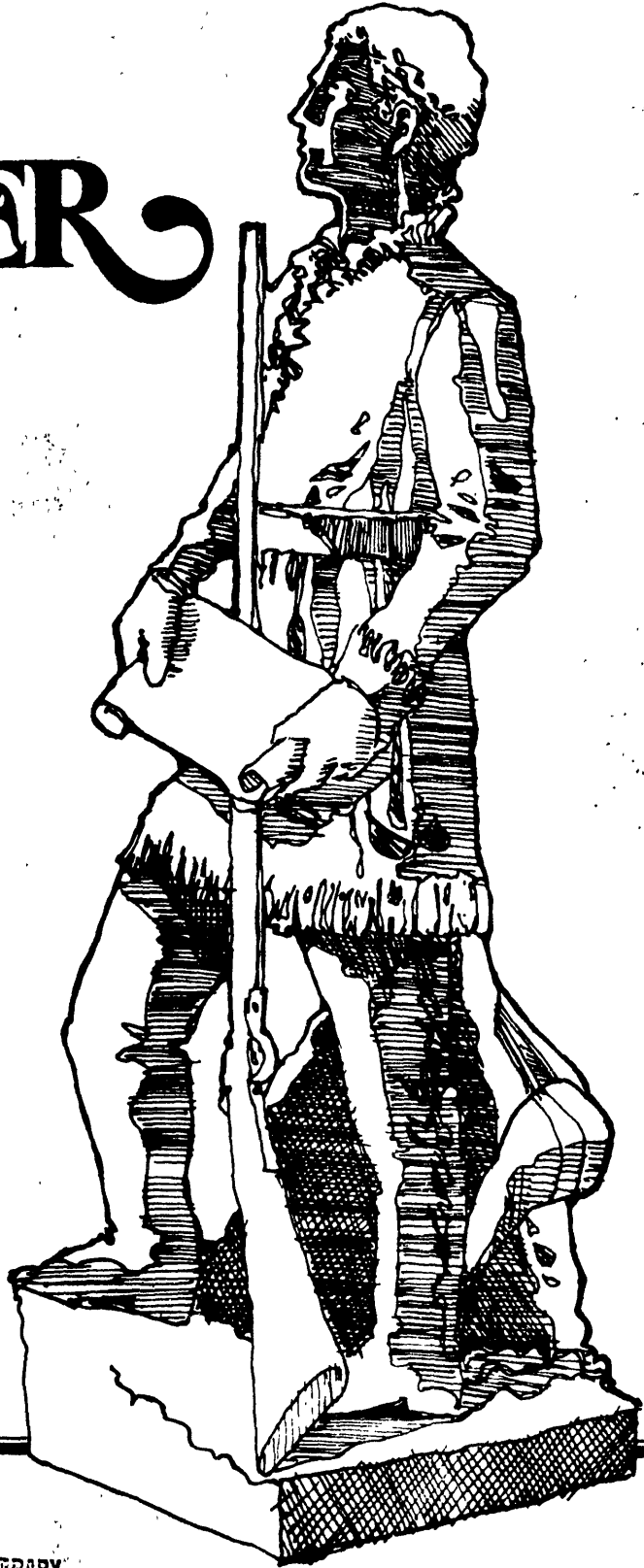
## In This Issue...

State Board of Pharmacy adopts on an emergency basis, and proposes for permanent adoption, amendments and additions to chapters concerning general provisions, pharmacies, and generic substitution; effective date—January 1, 1982; proposed date of permanent adoption—January 11, 1982 ..... 4577, 4601

Texas Parks and Wildlife Department adopts on an emergency basis new sections affecting operation game thief fund; effective date—December 3 ..... 4592

Texas Department of Agriculture proposes repeals, amendments, and additions to chapters regarding quarantines and Consumer Services Division; proposed date of adoption—January 11, 1982 ..... 4593

Texas Merit System Council adopts, with changes, new chapter of rules on personnel administration; effective date—January 1, 1982.... 4617



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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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**HOW TO CITE:** Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2404 of Volume 4 is cited as follows: 4 TexReg 2404.

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

# TEXAS REGISTER

The *Texas Register* (ISSN 0362-4781) is published twice weekly, at least 100 times a year, except January 6, September 1, December 1, and December 29, by the Texas Register Division, Office of the Secretary of State, 201 East 14th Street, P.O. Box 13824, Austin, Texas 78711-3824, telephone (512) 475-7886. The *Register* contains executive orders of the governor; summaries of attorney general's opinions and summaries of requests for opinions; emergency rules, proposed rules, and adopted rules of state agencies; notices of open meetings; and miscellaneous notices of general interest to the public of Texas. Annual subscriptions are \$70. Six-month subscriptions are also available for \$50. Back issues, when available, are \$2.00 each.



**David A. Dean**  
Secretary of State

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

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## The Governor

### Executive Orders

- 4571 WPC-23A
- 4571 WPC-34
- 4572 WPC-35
- 4573 WPC-36
- 4574 WPC-37
- 4574 WPC-38

## The Attorney General

### Requests for Opinions

- 4576 RQ-755 (concerning denial of a pawnbroker's license to an individual solely because of attempted robbery conviction in 1940)
- 4576 RQ-756 (concerning constitutionality of prohibition of solicitation for dental business in view of recent U.S. Supreme Court decisions)
- 4576 MW-402 (RQ-682) (concerning taxation of mineral interests)
- 4576 MW-403 (RQ-678) (concerning construction of constitutional dual office exemption for directors of soil and water conservation districts)

## Emergency Rules

### State Board of Pharmacy

- 4577 General Provisions
- 4579 Pharmacies
- 4590 Generic Substitution

### Texas Parks and Wildlife Department

- 4592 Law Enforcement

## Proposed Rules

### Texas Department of Agriculture

- 4593 Quarantines
- 4596 Consumer Services Division

### Railroad Commission of Texas

- 4599 Liquefied Petroleum Gas Division

### State Board of Pharmacy

- 4601 General Provisions
- 4602 Pharmacies
- 4603 Generic Substitution
- 4604 Code of Conduct

### Texas State Board of Podiatry Examiners

- 4605 Examinations

### Texas Water Well Drillers Board

- 4606 Substantive Rules

## Adopted Rules

### Texas Merit System Council

- 4617 Merit System of Personnel Administration

### Board of Vocational Nurse Examiners

- 4630 Administration
- 4632 Education
- 4633 Licensing

### Texas Board of Land Surveying

- 4634 General Rules of Procedure and Practice
- 4634 Standards of Responsibility and Rules of Conduct

### Texas Department of Human Resources

- 4645 Food Stamps

## Open Meetings

- 4636 Texas Department of Agriculture
- 4636 Interagency Council on Early Childhood Intervention
- 4636 Texas Education Agency
- 4637 Texas Employment Commission
- 4637 Office of the Governor
- 4637 Texas Department of Health
- 4637 Texas Health Facilities Commission
- 4637 State Board of Insurance
- 4638 Commission on Jail Standards
- 4638 Board for Lease of State-Owned Lands
- 4639 Texas Department of Mental Health and Mental Retardation
- 4639 State Board of Morticians
- 4639 Pan American University
- 4639 Board of Pardons and Paroles
- 4639 Texas Board of Private Investigators and Private Security Agencies
- 4640 Texas State Board of Examiners of Professional Counselors
- 4640 Public Utility Commission of Texas
- 4641 Railroad Commission of Texas
- 4643 School Land Board
- 4643 The University of Texas System
- 4643 Texas Water Commission
- 4644 Texas Department of Water Resources
- 4645 Regional Agencies

## In Addition

### Texas Air Control Board

- 4647 Request for Proposals

### Automated Information Systems Advisory Council

- 4648 Position Available

### State Banking Board

- 4648 Notice of Hearing

### Comptroller of Public Accounts

- 4648 Administrative Decision

### Office of Consumer Credit Commissioner

- 4649 Rate Ceilings

### Texas Energy and Natural Resources Advisory Council

- 4649 Consultant Proposal Request

### Texas Department of Health

- 4650 Amendments of Specific Radioactive Material Licenses
- 4652 Availability of Environmental Assessment and Opportunity for Public Hearing

### Texas Health Facilities Commission

- 4652 Applications Accepted for Amendment: Declaratory Ruling, and Notices of Intent
- 4652 Petitions for Certificate of Need Reissuance

- Texas Department of Human Resources**  
4652 *Proposed 1982 Home Energy Assistance Program*
- Texas Industrial Commission**  
4653 *Consultant Proposal Request*
- University of Texas System**  
4653 *Consultant Proposal Request*

**Indexes**

- 4655 *TAC Titles Affected in This Issue*
- 4655 *Table of TAC Titles*

Texas Civil Statutes, Article 6252-13a, §6, requires that executive orders issued by the Governor of Texas be published in the *Register*. Appointments made and proclamations issued by the governor are also published. Appointments are published in chronological order. The certification information, which includes a telephone number for additional information, follows each published submission.

## Executive Orders

### WPC-23A

Executive Order WPC-23 is amended as follows and shall be known as WPC-23 as Amended December 1, 1981.

*Establishing the Governor's Task Force on Water Resource Use and Conservation.*

WHEREAS, the continued prosperity and well being of the citizens of Texas is dependent upon the preservation and development of the state's water resources; and

WHEREAS, there is a critical need both at the present time and in the future for an adequate supply of water; and

WHEREAS, the State of Texas is already a water-short state in that more water is being used than is being replaced by nature; and

WHEREAS, anticipated population growth coupled with the needs of industry and agriculture will place ever greater demands upon this basic resource; and

WHEREAS, in the immediate future certain urban areas would suffer greatly curtailed water supplies in the event of a severe drought; and

WHEREAS, the need to anticipate and meet these additional demands is a statewide challenge, not limited to any single region or locality; and

WHEREAS, there is no existing mechanism which effectively coordinates the activities of the responsible state agencies planning for our present and future water needs; and

WHEREAS, the Governor of Texas has the authority to create an interagency planning council to coordinate the planning efforts of the several governmental agencies in the area of water resources under Texas Civil Statutes, Article 4413(32a);

THEREFORE, in order to meet my responsibilities as chief executive officer of this state and to provide coordination and cooperation among state and local water agencies and to avoid a critical water resource shortfall, I am creating the Governor's Task Force on Water Resource Use and Conservation, hereinafter referred to as task force. The task force will be charged with the following responsibilities:

(a) to provide a forum which will facilitate the exchange of ideas and information among the various state water authorities;

(b) to advise the governor and the Texas Water Development Board on matters which impact the water development and conservation policies of this state;

(c) to study, evaluate, and investigate future water development in agriculture, industry, recreation, and domes-

tic use in all geographic portions of the state as well as both rural and urban areas;

(d) to develop alternative legislative recommendations regarding various mechanisms for state financing or guaranteeing of local water projects in Texas;

(e) to assist the Water Development Board in maintaining and updating the state water plan and to make such interim reports to the governor as necessary;

(f) to assist, support, and coordinate with the Texas 2000 Commission; and

(g) to undertake such additional tasks as, from time to time, may be assigned by the governor.

The task force will consist of not more than 30 members appointed by the governor. Task force members will serve for two-year terms at the pleasure of the governor. The governor shall designate a chairman and vice-chairman from the membership who shall serve in that position at the pleasure of the governor. Principal staff support for the task force shall be provided by the Texas Department of Water Resources

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

The members of the task force shall serve without compensation and without reimbursement for their travel and expenses.

All agencies of state and local governments are hereby directed to cooperate with and assist the task force in the performance of its duties.

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

Issued in Austin, Texas, on December 2, 1981.

Doc. No. 818837 William P. Clements, Jr.  
Governor of Texas

For further information, please call (512) 475-3021.

### WPC - 34

*Establishing the Governor's Task Force on State Trust and Asset Management.*

WHEREAS, public pension funds in Texas are estimated to be in excess of \$10 billion; and

WHEREAS, annual contributions to these pension funds constitutes one of the largest budget factors for the State of Texas and its local subdivisions; and

WHEREAS, the long-term liabilities of these pension funds represent a future claim of extremely large proportions for the State of Texas and its local subdivisions; and

WHEREAS, funds invested by Texas' state agencies and institutions of higher education represent a major budget factor; and

WHEREAS, funds invested by Texas' state treasury represent a sizeable budget factor; and

WHEREAS, state lands leased by the State of Texas are a significant income resource to the state; and

WHEREAS, a wide variety of options are available for more complex investments with an intermingling of different investment services for these state funds; and

WHEREAS, the current inflation rate necessitates a maximum return on each state dollar invested; and

WHEREAS, it is a public imperative that the actuarial soundness of the state funds be examined; and

WHEREAS, there is an overriding need to review the investment of all public pension funds, major public endowment funds, public leased lands, and state treasury funds for the purpose of long-term economic planning proper management practices and sound public policies.

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me do hereby create and establish the Governor's Task Force on State Trust and Asset Management, hereinafter referred to as task force.

The task force will consist of not more than 25 members appointed by the governor who shall serve for a two-year term and at the pleasure of the governor. The governor shall designate a chairman and vice-chairman from the membership who shall serve in those positions at the pleasure of the governor.

The task force is charged with the following responsibilities:

(a) examine in detail the current investment policy of all public pension funds, major public endowment funds, state agencies and institutions of higher learning funds, state treasury funds, and state leased funds;

(b) determine the actuarial soundness of each of the investment policies as set forth in (a) above;

(c) examine current investment options available which may result in higher yields and returns for the funds as set forth in (a) above;

(d) examine in detail for each state agency and institution of higher education, the policies regarding administration, management, and investment of funds as set forth in (a) above; and

(e) perform other duties as may be requested by the governor.

On or before January 1, 1983, the task force shall make a complete written report of its activities and recommendations to the governor.

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

The Governor's Office of Budget and Planning shall serve as coordinating staff for the task force.

The members of the task force shall serve without compensation and shall be responsible for their expenses.

All agencies of state and local governments are hereby directed to cooperate with and assist the task force in the performance of its duties.

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

Issued in Austin, Texas, on November 2, 1981.

Doc. No. 818786 William P. Clements, Jr.  
Governor of Texas  
(512) 475-3021

For further information, please call (512) 475-3021.

## WPC - 35

*Establishing the Governor's Task Force on State Aviation Policy.*

WHEREAS, the vastness of the State of Texas demands an efficient and comprehensive commercial air transportation system for its citizens, professionals, and air cargo; and

WHEREAS, Texas' commercial air transportation system has developed rapidly since the first air mail service inaugural flight between Dallas-Fort Worth and Chicago on May 12, 1926; and

WHEREAS, Texas' intrastate commercial air facilities include publicly and privately owned airports, farm and ranch airstrips for personal use, heliports, seaplane bases, airship ports, and glider ports, and

WHEREAS, the number of federal-certified and state-certified carriers serving Texas in recent years has increased dramatically, and

WHEREAS, for the public convenience and necessity, safety regulations are necessary to protect Texas' commercial air travelers; and

WHEREAS, to address the increased demand for intrastate commercial air travel, public airport facilities must be made available and operated in a safe manner; and

WHEREAS, to effectively address the demand by the state's citizens for efficient air transportation, Texas needs a coordinated state strategy to both assess and provide comprehensive intrastate and interstate air transportation; and

WHEREAS, the Governor of Texas is the highest elected officer of this state and designated by law as the chief planner for the state

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby create and establish the Governor's Task Force on State Aviation Policy, hereinafter referred to as task force.

The task force will consist of not more than 25 members appointed by the governor who shall serve for two-year terms and at the pleasure of the governor. The governor shall designate a chairman and vice-chairman from the membership who shall serve in those positions at the pleasure of the governor.

The task force is charged with the following responsibilities:

(a) examine in detail the duties and responsibilities of each state agency involved in Texas' aeronautical regulation;

(b) examine in detail the need for additional airports, intrastate and interstate routes, and commercial carriers to serve the needs of Texans;

(c) examine in detail the Federal Aviation Administration's rules and regulations affecting Texas' intrastate and interstate aeronautical development;

(d) assess and project the state's future aeronautical demands; and

(e) perform other duties as may be requested by the governor.

On or before January 1, 1983, the task force shall make a complete written report of its activities and recommendations to the governor.

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

The members of the task force shall serve without compensation and shall be responsible for their expenses.

All agencies of state and local governments are hereby directed to cooperate with and assist the task force in the performance of its duties.

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

Issued in Austin, Texas, on November 2, 1981.

Doc. No. 818787 William P. Clements, Jr.  
Governor of Texas

For further information, please call (512) 475-3021.

## WPC - 36

### *Establishing the Governor's Task Force on Traffic Safety.*

WHEREAS, the State of Texas has established a statewide traffic safety program designed to reduce traffic accidents and the resulting deaths, injuries, and property damage; and

WHEREAS, in the first six months of 1981, 2,125 persons were killed in motor vehicle traffic accidents which is a 6.3% increase over the first six months of 1980; and

WHEREAS, 4,424 persons were killed in motor vehicle traffic accidents on Texas' highways and streets in 1980—a record number of traffic fatalities for the fourth consecutive year; and

WHEREAS, in 1980, the State of Texas maintained over 267,000 miles of public highways; and

WHEREAS, in 1980, the total number of persons holding valid Texas driver's licenses exceeded 9.4 million and the total number of motor vehicles registered in Texas exceeded 10.8 million; and

WHEREAS, the two leading causes of traffic deaths are DWI-related accidents and excessive speed-related accidents; and

WHEREAS, in 1980, in addition to deaths, thousands of persons were injured on Texas' highways in DWI-related accidents; and

WHEREAS, in 1980, 81,220 drivers suspected of DWI were administered alcohol breath tests and 85% were found to be above the legal point of intoxication; and

WHEREAS, in 1980, the Highway Patrol of the Texas Department of Public Safety charged 40,273 motorists with DWI and in the first six months of 1981, 21,905 motorists have been charged with DWI; and

WHEREAS, during the past five years, Texas' population increased 16%, licensed drivers increased 22%, registered motor vehicles increased 20%, total vehicle miles traveled increased 22%, fatal traffic accidents increased 30%, and the number of authorized highway patrol officers increased only 2.0%; and

WHEREAS, the current strength of the Highway Patrol Service of the Texas Department of Public Safety provides only one officer, including supervisors, for every 133 miles of highway; and

WHEREAS, all Texans are deeply concerned over the increase in traffic fatalities and injuries (especially DWI-related), and the safety of all citizens traveling on Texas' highways is imperative.

NOW THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me do hereby create and establish the Governor's Task Force on Traffic Safety, hereinafter referred to as task force.

The task force shall consist of not more than 15 members appointed by the governor who shall serve for two-year terms and at the pleasure of the governor. The governor shall designate a chairman and vice-chairman from the membership who shall serve in those positions at the pleasure of the governor.

The task force is charged with the following responsibilities:

(a) examine in detail the scope of Texas' existing traffic safety programs and the allocation of current law enforcement manpower protecting Texas' motorists;

(b) examine in detail the current laws pertaining to the offense of DWI:

(1) need for more stringent and mandatory penalties/fines,

(2) need for improvement in existing laws,

(3) judicial discretion in sentencing, and

(4) pattern of filing public intoxication charges in lieu of DWI;

(c) identify the peak periods in which most alcohol-related traffic accidents occur on Texas' highways and propose strategies to combat this problem;

(d) examine in detail the need for more stringent eligibility requirements to obtain a Texas driver's license and the desirability of periodic retesting of Texas drivers;

(e) examine in detail the amount of resources allotted to the Texas Department of Public Safety and the State Department of Highways and Public Transportation to provide for a safe and expeditious transportation system for Texas;

(f) inform the state's criminal justice officials, educators, and the general public of the statewide traffic safety program with emphasis on the commitment of the leadership and criminal justice professionals for enforcement and prosecution of DWI offenses to enhance safety on Texas' highways;

(g) inform the general public through a statewide education program of the physical effects of alcohol, the subsequent impairment of motor skills on the driver, and the number of motorists in Texas killed and injured due to alcohol-related traffic accidents;

(h) make recommendations to the governor regarding necessary legislation or actions by the Governor's Office

which will promote the purposes of the task force; and

(i) perform other duties as may be requested by the governor.

On or before January 1, 1983, the task force shall make a complete written report of its activities and recommendations to the governor.

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

The Traffic Safety Section, Safety and Maintenance Operations Division of the State Department of Highways and Public Transportation, and the Texas Department of Public Safety shall serve as coordinating staff to the task force.

The members of the task force shall serve without compensation and shall be responsible for their expenses.

All state agencies and units of local government are hereby directed to cooperate with and assist the task force in the performance of its duties.

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

Issued in Austin, Texas, December 1, 1981.

Doc. No. 818788 William P. Clements, Jr.,  
Governor of Texas

For further information, please call (512) 475-3021.

## WPC - 37

*Establishing the Governor's Task Force on Undocumented Mexican Workers.*

WHEREAS, undocumented Mexican workers generally reside in the State of Texas for temporary periods of six months and then return to their native country; and

WHEREAS, the undocumented Mexican workers residing in Texas perform necessary functions and significantly contribute to Texas' favorable economic climate; and

WHEREAS, the undocumented Mexican workers residing in Texas must be afforded full protection of our laws and access to vital human services; and

WHEREAS, current available estimates are that the number of undocumented Mexican workers in Texas range from 600,000 to three million.

WHEREAS, in July 1981, the administration proposed a nationwide plan to legalize the immigration of foreign nationals into the United States including undocumented Mexican workers; and

WHEREAS, there is a need for a systematic and accurate documentation profiling the number of illegal Mexican aliens residing in Texas, their origins, living conditions, and future residence plans; and

WHEREAS, such documentation will enable Texas' state leadership to properly advise the administration and Congress as to the scope of the illegal Mexican alien problem in Texas.

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me do hereby create and establish the Governor's Task Force on Undocumented Mexican Workers, hereinafter referred to as task force.

The task force will consist of not more than 20 members appointed by the governor who shall serve for two-year terms and at the pleasure of the governor. The governor shall designate a chairman and vice-chairman from the membership who shall serve in those positions at the pleasure of the governor.

The task force is charged with the following responsibilities:

(a) Develop and administer a survey instrument which identifies:

- (1) the number of illegal Mexican aliens residing in Texas,
- (2) family history of the illegal aliens,
- (3) current living conditions,
- (4) future residence plans in Texas,
- (5) current wages received, and
- (6) other relevant profile data.

(b) Perform other duties as may be requested by the governor.

On or before March 31, 1982, the task force shall make a complete written report of its activities, findings, and recommendations to the governor.

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

The members of the task force shall serve without compensation and without reimbursement for their travel and expenses.

All agencies of state and local governments are hereby directed to cooperate with and assist the task force in the performance of its duties.

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

Issued in Austin, Texas, on November 5, 1981.

Doc. No. 818789 William P. Clements, Jr.,  
Governor of Texas

For further information, please call (512) 475-3021.

## WPC-38

*Establishing the Advisory Committee to the Texas Education Agency on Block Grants.*

WHEREAS, the United States Congress enacted the Omnibus Budget Reconciliation Act of 1981; and

WHEREAS, Subtitle D may be cited as the Education Consolidation and Improvement Act of 1981 and Chapter 2, §564 of this subtitle provides that each state desiring to receive grants under this chapter must file an application which designates the state educational agency as the state agency responsible for the administration and supervision of programs for elementary and secondary education and establish



an advisory committee appointed by the governor for the purpose of active and continuing consultation with the state educational agency.

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me do hereby create and establish the Advisory Committee to the Texas Education Agency on Block Grants, hereinafter referred to as advisory committee.

The advisory committee will consist of not more than 14 members appointed by the governor who shall serve for two-year terms and at the pleasure of the governor. The membership shall include representatives of public and private elementary and secondary school children; classroom teachers; parents of elementary and secondary school children; local boards of education; local and regional school administrators (including principals and superintendents); institutions of higher education; and the state legislature. The governor shall appoint a chairman and vice-chairman from the membership who shall serve in those positions at the pleasure of the governor.

The advisory committee is charged with the following responsibilities:

(a) advise the state educational agency on the allocation among authorized functions of funds (not to exceed 20 % of the amount of the state's allotment) reserved for state use under §565(a) of this chapter, on the formula for the allocation of funds to local educational agencies, and on the planning, development, support, implementation, and evaluation of state programs assisted under this chapter;

(b) set forth the planned allocation of funds reserved for the state under §565(a) of this chapter and among the authorized programs and projects which are to be implemented, and the allocation of such funds required to implement §586 of this chapter, including administrative costs of carrying out the responsibilities of the state educational agency under this chapter;

(c) provide for timely public notice and public dissemination of the information provided pursuant to paragraphs (2) and (3) of §564 of this chapter;

(d) beginning with fiscal year 1984, provide for an annual evaluation of the effectiveness of programs assisted under this chapter which shall include comments of the advisory committee, and shall be made available to the public; and

(e) provide that the state educational agency will keep such records and provide such information to the secretary of education as may be required for fiscal audit and program evaluation; and

(f) contain assurances that there is compliance with the specific requirements of this chapter; and

(g) perform other duties as may be requested by the governor.

The advisory committee shall meet at the call of the chairman. A majority of the membership shall constitute a quorum. Task force members will serve for two-year terms at the pleasure of the governor. The chairman shall, with the consultation of the governor, establish the agenda for advisory committee meetings.

The members of the advisory committee shall serve without compensation and without reimbursement for their travel and expenses.

All agencies of state and local governments are hereby directed to cooperate with and assist the advisory committee in the performance of its duties.

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

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818790

William P. Clements, Jr.  
Governor of Texas

For further information, please call (512) 475-3021.

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-755

Request from Sam Kelley, consumer credit commissioner, Austin.

**Summary of Request:** Does Texas Civil Statutes, Article 5069-51.03A, require the consumer credit commissioner to deny a pawnbroker's license to an individual solely because he was convicted of attempted robbery in 1940?

(1) Is attempted robbery a crime involving moral turpitude?

(2) If attempted robbery is a crime involving moral turpitude, does Article 5069-51.03A mandate the denial of a pawnbroker's license to one who has been convicted of that crime?

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818833 Susan Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

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

### Summary of Request for Opinion RQ-756

Request from William S. Nail, executive director, Texas State Board of Dental Examiners, Austin.

**Summary of Request:**

(1) Is Texas Civil Statutes, Article 4548g(2), which prohibits solicitation of dental business under certain circumstances, constitutional in view of recent U.S. Supreme Court decisions on professional advertising?

(2) Is Texas Civil Statutes, Article 4548g(2) in conflict with Article 4548f?

(3) Do the following forms of solicitation violate Article 4548g(2): a mass mail-out soliciting dental business to 100 persons; stuffing union envelopes with dental cards or dental information; mail out to all newcomers to the city; and passing out dental leaflets to shoppers in a mall?

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818834 Susan Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

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

## Opinions

### Summary of Opinion MW-402 (RQ-682)

Request from Stephen Davidchik, county attorney, Grayson County, concerning taxation of mineral interests.

**Summary of Opinion:** The Choctaw Watershed Improvement District tax is to be assessed and collected for the current year on the value of producing and nonproducing mineral estates, whether severed from the surface or not, located within the district. Back taxes are to be assessed and collected for prior years on the value of all producing and nonproducing mineral estates that escaped taxation in prior years. A mineral interest will not be considered as having escaped taxation for the year, however, if it had not been severed from the surface estate prior to January 1 of that year, and the surface estate was rendered or assessed for that year.

Issued in Austin, Texas, on December 3, 1981.

Doc. No. 818868 Susan Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

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

### Summary of Opinion MW-403 (RQ-678)

Request from A.C. Spencer, executive director, Texas State Soil and Water Conservation Board, Temple, concerning construction of constitutional dual office exemption for directors of soil and water conservation districts.

**Summary of Opinion:** Local soil and water conservation district directors may legally serve on the Texas State Soil and Water Conservation Board at the same time. Such directors may legally qualify and serve in the Texas Legislature at the same time.

Issued in Austin, Texas, on December 3, 1981.

Doc. No. 818869 Susan 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 "Non-codified."

**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 XV. State Board of Pharmacy

#### Chapter 281. General Provisions

#### Practice and Procedure

The State Board of Pharmacy adopts new §281.54 and §281.55 and amendments to §§281.2, 281.4, 281.28, 281.30, 281.32, 281.36, 281.37, 281.41, 281.48-281.51, 281.53, 281.59, 281.68, 281.69, and 281.72, on an emergency basis, relating to Chapter 281, concerning practice and procedure. These rules are being adopted and amended on an emergency basis because the violation hearings are scheduled for January 1982. In addition, the board simultaneously proposes identical rule action on a permanent basis.

The amendments and new sections are adopted under House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981, §16 and §27, which provide the State Board of Pharmacy with the authority to adopt rules for the proper administration and enforcement of this Act, consistent with the Act. Section 27 states that unless otherwise provided, dis-

ciplinary action taken by the board under §26 of this Act is governed by the Administrative Procedure and Texas Register Act and the rules and procedures before the board.

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

Act—Senate Bill 41, 64th Legislature, 1975; Texas Civil Statutes, Article 6252 13a, *as amended*.

Board—The *members of the Texas* [six member] State Board of Pharmacy.

*Hearings officer—Individual designated by the board to preside at contested case hearings, rule on points of law at such hearings, and maintain decorum at such hearings.*

*Quorum—A majority of the members of the board appointed and serving on the board.*

*Texas Pharmacy Act—House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981.*

§281.4. *Official Acts in Writing and Open to the Public.* All official acts of the board shall be evidenced by written record. Such writings shall be open to the public in accordance with Texas Civil Statutes, Article 6252-17a (the Texas Open Records Act). Any hearing and any board meeting shall be open to the public in accordance with Texas Civil Statutes, Article 6252-17 (the Texas Open Meetings Act), *provided, however, pursuant to subsection (c) of §14 of the Texas Pharmacy Act, the board may, in its discretion, conduct deliberations relative to licensee disciplinary actions in executive session. At the conclusion of its deliberations relative to licensee disciplinary action, the board shall vote and announce its decision relative to the licensee in open session.* Official action of the board shall not be bound or prejudiced by any informal statement or opinion made by any member of the board or the employees of the agency.

§281.28. *Notice and Service.*

(a) In a contested case all parties shall be afforded an opportunity for hearing after notice of not less than 10 days. *The board shall give notice of hearing by personal service or by registered or certified mail to the licensee or the licensee's attorney.* The notice shall include:

(1)-(4) (No change.)

(b) (No change.)

(c) In addition to any requirement of notice provided in this section, notice of *disciplinary action against* [a revocation, suspension, or cancellation of] a license shall comport with §281.32 of this title (relating to Denial of or *Disciplinary Action against a License* [Revocation of License or Permit]).

(d) Deposit in the U.S. mails of a registered or certified letter, return receipt requested, containing a notice of hearing in compliance with the requirements set out in this section, or containing a copy of any decision or order addressed to the affected party or the attorney of record for said party, *personally delivered or sent to the party's last known address, shall constitute notice of the hearing or of such decision or order.*

(e) (No change.)

§281.30: *Ex Parte Consultations.* Unless required for the disposition of ex parte matters authorized by law, the board members may not communicate, directly or indirectly, with any party or such representative about any issue of fact or law relating to a pending contested case except on notice and

opportunity for all parties to participate. *A board member may communicate ex parte with other members of the board, and pursuant to the authority provided in subsection (Q) of §14 of the Act, members of the board assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.*

**§281.32. Denial of or Disciplinary Action against a License [Revocation of License or Permit].**

(a) (No change.)

(b) *No disciplinary action against a license* [revocation, suspension, annulment, or withdrawal of any license or permit] is effective unless, prior to the institution of proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee or *the licensee's attorney* [permit holder] of facts or conduct alleged to warrant the intended action, and the licensee [or permit holder] is given an opportunity to show compliance with all requirements of law for the retention of the license [or permit].

**§281.36. Discovery, Entry on Property; Use of Reports and Statements.**

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

(d) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement previously made by such party, *concerning the action or its subject matter and which is in the possession, custody or control* of any party. If the request is refused, the person may move for an agency order under this subsection. For the purpose of this subsection, a statement previously made is:

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

**§281.37. Subpoenaing Witnesses and Materials.** On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums with the executive director/secretary that will reasonably insure payment of the amounts estimated to accrue under §281.33 of this title (relating to Depositions), the board shall issue a subpoena addressed to *an authorized agency employee or* [the] sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purpose of the proceedings.

**§281.41. Motions for Postponement.** Either by agreement of the parties or their attorneys or representatives, or on a showing of good cause to the presiding officer, a motion for postponement of a hearing in a contested case may be granted. Any postponement requested within seven days of *such hearing*, [the date set] will require approval from the presiding officer.

**§281.48. Informal Disposition of a Contested Case.**

(a) (No change.)

(b) Any proposed consent order shall be presented to the board for its review. At the conclusion of its review, the board shall approve or disapprove the proposed consent order. Should the board approve the proposed consent order, the appropriate notation shall be made in minutes of the board and the proposed consent order shall be entered as an official action of the board. Should the board disapprove the proposed consent order, the licensee and charges that are the subject of such proposed consent order shall be scheduled for public

hearing before the board at a *subsequent* [the next regularly scheduled] disciplinary hearing.

**§281.49. Final Decisions.**

(a) (No change.)

(b) A decision of the board is final, in the absence of a timely motion for rehearing, or the expiration of the period for filing a motion for rehearing, and is final and appealable *to a district court of Travis County, Texas*, on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If the agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered *to a district court of Travis County, Texas*.

(c) (No change.)

**§281.50. Motion for Rehearing.** Other than the exception provided in §281.49 of this title (relating to Final Decisions), a motion for rehearing is a prerequisite to appeal from a board's final decision or order in a contested case. A motion for rehearing shall be filed within 15 days after the date of rendition of final decision or order. Replies to a motion for rehearing shall be filed with the executive director/secretary within 25 days after the date of rendition of the final decision or order, *and board action on the motion shall be taken within 45 days after the date of rendition of the final decision or order.* [The presiding officer shall take action on the motion within 45 days after the decision or order.] If *board action* is not taken [by the presiding officer] within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The *board* [presiding officer], by written order, may extend the period of time for filing the motions and replies and [for] taking *board action*, except that an extension may not extend the period for *board action* beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order.

**§281.51. Application for Re-issuance or Removal of Restrictions of a License.** *A person whose pharmacy license or license to practice pharmacy has been canceled, revoked, or restricted, whether voluntary or by action of the board, may, after 12 months from the effective date of such cancellation, revocation, or restriction, petition the board of reinstatement or removal of the restriction of the license. The petition shall be in writing and in the form prescribed by §281.69 of this title (relating to Initiating Proceedings before the Board). On investigation and hearing, the board may in its discretion grant or deny the petition or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification. If such petition is denied by the board, a subsequent petition may not be considered by the board until 12 months from the date of denial or the previous petition.* [Subject to §281.69(a)(2) of this title (relating to Initiating Proceedings before the Board), the board may schedule a hearing to consider an application to reissue a license or permit of a person whose license has been revoked.

Such application may not be considered prior to the expiration of 12 months from the date of entry of an order revoking such applicant's previously held license.]

**§281.53. Modification of Time Periods.** The parties may by agreement with the approval of the *presiding officer* [board] provide for a modification of the time periods provided in §281.49 of this title (relating to Final Decisions), and §281.50 of this title (relating to Motion for Rehearing).

**§281.54. Interpreters for Deaf Parties and Witnesses.**

(a) If a party or subpoenaed witness in a contested case is deaf, the board shall provide an interpreter whose qualifications are approved by the Texas Commission for the Deaf to interpret the proceedings for that person.

(b) In this section, "deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

**§281.55. Enforcement of Orders, Decisions, and Rules.** If it appears to the agency that a person is engaging in or is about to engage in a violation of a final order or decision or a rule of the agency or is failing or refusing to comply with a final order or decision or a rule of the board, the attorney general, on the request of the agency and in addition to any other remedy provided by law, may bring an action in a district court in Travis County, Texas, to exercise judicial review of the final order or decision or the rule, to enjoin or restrain the continuation or commencement of the violation, or to compel compliance with the final order or decision or the rule.

**§281.59. Prerequisites to Adopting, Repealing, or Amending Rules.**

(a) Prior to adopting, repealing, or amending any rule, the board or its designated representative shall give at least 30 days' notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state for publication in the *Register* and a copy of the notice delivered to the *lieutenant governor and speaker*. The notice shall include:

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

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated, *including a concise explanation of the particular statutory or other provisions under which the rule is proposed, and a certification that the proposed rule has been reviewed by legal counsel and found to be within the agency's authority to adopt;*

(4) a fiscal note showing the name and title of the officer or employee responsible for preparing or approving it and stating for each year for the first five years that the rule will be in effect:

(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;

(B) estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(C) estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(D) if applicable, that enforcing or administering the rule will have no foreseeable implication in any of the preceding respects.

(5) A public benefit-cost note showing the name and title of the officer or employee responsible for prepar-

ing or approving it and stating for each year for the first five years that the rule will be in effect:

(A) the public benefits to be expected as a result of adoption of the proposed rule; and

(B) the probable economic cost to persons who are required to comply with the rule;

(6)(4) request for comments on the proposed rule from any interested person; and

(7)(5) any other statement required by law.

(b)-(e) (No change.)

**§281.68. Official Action by Majority.** Any official act or decision of the board shall be concurred in by a majority [at least four] of its members *present at a meeting*. Such act or decision shall be based upon information presented to members present at official meetings of the board. There shall be at least a *quorum of the* [four] board members present at any official meeting of the board. Private solicitation of individual members in an effort to in any way influence their official actions through information or arguments not simultaneously presented to other members of the board is improper.

**§281.69. Initiating Proceedings before the Board.**

(a) Proceedings *may be initiated* before the board [are divided into two classifications: matters over which it has original jurisdiction and matters over which it has appellate jurisdiction. The provisions of Article 4542a, §4 and §5, vest original jurisdiction in the board to determine policy and promulgate rules. Proceedings over which the board has original jurisdiction may be initiated] as follows:

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

(b) (No change.)

**§281.72. Place of Meeting of the Board.** All meetings shall be held in accordance with the provisions of Texas Civil Statutes, Article 6252-17 (The Texas Open Meetings Act) and subsection (c) of §14 of the Texas Pharmacy Act.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818764 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Effective Date: January 1, 1982

Expiration Date: April 30, 1982

For further information, please call (512) 478-9827.

## Chapter 291. Pharmacies

### Nuclear Pharmacy (Class B)

The State Board of Pharmacy adopts new §§291.51-291.54, concerning Nuclear Pharmacy (Class B), on an emergency basis, relating to Chapter 291, Pharmacies. These rules establish the standards that each nuclear pharmacy and its employees or personnel involved in the practice of nuclear pharmacy must meet to qualify for licensing or relicensing as a nuclear pharmacy. These rules are adopted on an emergency basis in order to comply with §44 of the Texas Pharmacy Act, as passed by the 67th Legislature, 1981, which states in part, "a person required to obtain a pharmacy license under this Act who was not required to obtain a pharmacy permit under the law repealed by this Act is not required to have a pharmacy license until January 1, 1982." In addition, the

State Board of Pharmacy simultaneously proposes identical rule action on a permanent basis.

These rules are adopted under House Bill 1628, 67th Legislature, 1981, §§5, 17, 29, and 30, which provide the State Board of Pharmacy with the authority to govern the practice of nuclear pharmacies and nuclear pharmacists and the standards that each nuclear pharmacy and its employees or personnel involved in the practice of nuclear pharmacy must meet to qualify for licensing or relicensing as a nuclear pharmacy.

**§291.51. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in §5 of the Act.

**Act**—The Texas Pharmacy Act, Acts of the 67th Legislature, Regular Session, 1981.

**Administer**—The direct application of a prescription drug and/or radioactive drug, by injection, inhalation, ingestion, or any other means to the body of a patient by a licensed (medical) practitioner or an authorized agent under his or her supervision.

**Authentication of product history**—Identifying the purchasing source, the intermediate handling, and the ultimate disposition of any component of a radioactive drug.

**Authorized user**—Any individual or institution named on a radioactive materials license, issued by the Texas Department of Health.

**Board**—The State Board of Pharmacy.

**Class B pharmacy license or nuclear pharmacy license**—A license issued to a pharmacy dispensing or providing radioactive drugs or devices for administration to an ultimate user.

**Dangerous drug**—Any drug and/or radioactive drug and/or device that is not included in penalty groups I through IV of the Texas Controlled Substances Act and Texas Pharmacy Act, and that it is unsafe for self medication, or any drug or device that bears or is required to bear the legend:

(A) "Caution: Federal Law Prohibits Dispensing Without a Prescription;" or

(B) "Caution: Federal Law Restricts This Drug To Be Used By or On The Order Of a Licensed Veterinarian."

**Deliver or delivery**—The actual constructive or attempted transfer of a prescription drug and/or radioactive drug and/or device or controlled substance from one person to another whether or not for a consideration.

**Designated agent**—An individual under the direct supervision of a practitioner authorized to communicate the practitioner's instructions to the nuclear pharmacy.

**Device**—An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related articles, including any component parts or accessory that is required under federal or state law to be ordered or prescribed by a practitioner.

**Dispense**—Preparing, packaging, compounding, or labeling for delivery, a prescription drug and/or radioactive drug and/or device in the course of professional practice to an ultimate user or his or her agent by or pursuant to the lawful order of a practitioner.

**Distribute**—The delivering of a prescription drug and/or radioactive drug and/or device other than by administering or dispensing.

**Drug**—

(A) A substance recognized as a drug and/or radioactive drug in the current official *U.S. Pharmacopoeia/National Formulary, Official Homeopathic Pharmacopoeia*, or other drug compendium or any supplement to any of them;

(B) A substance intended for use in a diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal;

(C) A substance other than food, intended to affect the structure or any function of the body of man or any animal;

(D) A substance intended for use as a component of any of the articles specified in subparagraph (A), (B), or (C), or a dangerous drug or a controlled substance (as defined in the Texas Pharmacy Act or Controlled Substances and Dangerous Drug Laws.)

**Internal test assessment**—Performance of tests for quality assurance necessary to insure the integrity of the test.

**Label**—Written, printed, or graphic matter on the immediate container of a drug and/or radioactive drug and/or device.

**Labeling**—The process of affixing a label including all information required by federal or state law or regulation to any drug and/or radioactive drug and/or device, and/or container. The term does not include the labeling by manufacturer, packer, or distributor of a nonprescription drug or a commercially packaged prescription drug or device, or unit dose packaging.

**Medication order for a radioactive drug**—A written order from a practitioner or a verbal order from a practitioner, or his or her authorized agent for administration of a drug and/or radioactive drug and/or device.

**Nuclear pharmacist**—A pharmacist who is licensed by the board and who satisfies the education, training, and/or experience requirements, as designated by the board to practice nuclear pharmacy.

**Nuclear pharmacy**—A pharmacy that has been issued a Class B pharmacy license by the board, which receives, prepares, possesses, uses, transfers, owns, acquires, or distributes radioactive material (drugs and devices) as specified in Part 41, Texas Regulations for Control of Radiation, Texas Department of Health.

**Nuclear supportive personnel**—Those individuals utilized in a nuclear pharmacy whose responsibilities shall be to provide nonjudgmental technical services concerned with the preparation and distribution of drugs and/or radioactive drugs under the direct supervision of and responsible to a nuclear pharmacist.

**Nuclear pharmacy technician**—Those supportive personnel designated by the nuclear pharmacist-in-charge, as nuclear pharmacy technicians.

**Nuclear pharmacy technique**—The mechanical ability required to perform the nonjudgmental, technical aspects of preparing and dispensing radioactive medications.

**Radioactive drug or device**—A drug and/or radioactive drug or device that exhibits spontaneous disintegration of unstable nuclei with the emission of a nuclear particle(s) or photon(s), including any nonradioactive reagent kit or nuclide generator that is intended to be used in preparation of any such substance.

**Radioactive drug quality assurance**—The performance of tests on radioactive drugs to ascertain the radionuclidic,

radiochemical, chemical, physical, and microbiological purity and the interpretation of the resulting data in order to determine the feasibility for use in humans and animals including internal test assessment, authentication of product history, and the keeping of mandatory records.

**Radioactive drug service**—The act of distributing radioactive drugs; the participation in radioactive drug selection; and the performance of radioactive drug reviews.

**Radioactive prescription drug order**—A written order from a practitioner or a verbal order from a practitioner or his or her authorized agent to a pharmacist for a drug and/or radioactive drug and/or device to be dispensed.

**Ultimate user**—A person who has obtained and possesses a prescription drug or radioactive drug or device for his or her own use or for the use of a member of his or her household.

**Unit dose packaging**—The ordered amount of a radioactive drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the radioactive drug.

#### §291.52. Personnel.

##### (a) Pharmacist-in-charge.

(1) **Nuclear pharmacist-in-charge.** Every nuclear pharmacy shall have a pharmacist designated on the nuclear pharmacy permit as the pharmacist-in-charge who shall be responsible for a nuclear pharmacy's compliance with laws and regulations, both state and federal, pertaining to the practice of nuclear pharmacy. The nuclear pharmacist-in-charge shall see that directives from the board are communicated to the owner(s), management, other pharmacists, and interns of the nuclear pharmacy. A nuclear pharmacist may be pharmacist-in-charge for no more than one nuclear pharmacy at any one given time.

(2) **General qualifications for nuclear pharmacists-in-charge.** A nuclear pharmacist shall:

(A) meet minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the Texas Department of Health, Regulations for Control of Radiation;

(B) be a pharmacist licensed by the board to practice in Texas;

(C) submit to the board either:

(i) certification that he or she has completed a minimum of four months on-the-job training providing radioactive drug services under the supervision of a nuclear pharmacist in a nuclear pharmacy, or

(ii) certification that he or she has completed a nuclear pharmacy training program in an accredited college of pharmacy, or

(iii) an application, in affidavit form, along with such other information the board may require, requesting partial or equivalent credit for education and experience gained in programs not sponsored by an accredited college of pharmacy. The board may grant the above request upon a finding that the education and experience gained by the applicant provides the same level of competence as participants in a like program at an accredited college of pharmacy.

(3) The board may issue a letter of notification that the evidence submitted by the pharmacist meets the requirements of subparagraphs (A), (B), and (C) of this paragraph and has been accepted by the board and that, based thereon, the pharmacist is recognized as a nuclear pharmacist or nuclear pharmacist in charge of a facility.

(b) **Supportive personnel.** A person licensed to practice nuclear pharmacy shall have the authority to delegate to any qualified and properly trained person or persons acting under his or her direct supervision, any nuclear pharmacy act which a reasonable and prudent pharmacist would find is within the scope of sound pharmaceutical judgment to delegate. Such delegation may only occur, if in the professional opinion of the delegating nuclear pharmacist, the act may be properly and safely performed by the person to whom the pharmacy act is delegated. The delegated act may only be performed in its customary manner, not in violation of other statutes. The person to whom a nuclear pharmacy act is delegated shall not hold themselves out to the public as being authorized to practice pharmacy.

(c) **Duties of supportive personnel.**

(1) The duties that supportive personnel may perform include, but need not be limited to:

(A) maintaining records;

(B) setting-up, packaging, and labeling radioactive medication doses;

(C) filling and dispensing routine orders for stock supplies; and

(D) maintaining inventories of drug supplies.

(2) The duties set out in paragraph (1) of this subsection shall be performed in strict accordance with standard, written procedures and guidelines, any deviation from which must be approved by the supervising nuclear pharmacist and provided however, such delegated act may not include a nuclear pharmacy technique.

(d) Any act which may be delegated to supportive personnel may be delegated to a nuclear pharmacy technician provided the criteria of subsection (b) of this section are met.

(e) Additionally, any act of nuclear pharmacy technique may be delegated to a nuclear pharmacy technician if the nuclear pharmacist-in-charge determines that the act is reasonable and prudent; further, that the nuclear pharmacy technician is qualified and trained, acting under the supervision of a nuclear pharmacist and the act is within the scope of sound pharmaceutical judgment.

(f) **Nuclear pharmacy technician qualifications.** In order to qualify as a designated nuclear pharmacy technician, supportive personnel shall

(1) Have completed no less than four months of on-the-job training at the nuclear pharmacy under the supervision of the nuclear pharmacist-in-charge.

(2) Possess sufficient education and training to qualify such individual to perform nuclear pharmacy technique.

(g) **Ultimate responsibility/supervision.**

(1) The delegating "nuclear pharmacist" shall remain responsible for the pharmaceutical acts of the person performing any delegated pharmacy act.

(2) Only the board may determine whether or not an act constitutes the practice of pharmacy, not inconsistent with the pharmacy act, and whether or not such act may or may not be properly or safely delegated by licensed pharmacists.

#### §291.53. Operational Standards.

(a) **Licensing.**

(1) **Fees.** Each applicant for a Class B Pharmacy shall:

(A) provide evidence to the board of payment of any fees or other consideration required by the Texas Depart-

ment of Health, Bureau of Occupational Health and Radiation Control, as a condition of operating in this state, and

(B) shall pay a fee to the board of \$50.

(2) **Permits.** It is unlawful for a person to provide radioactive drug services unless such provision is performed by a person licensed to act as a nuclear pharmacist, as defined by the board, or is a person acting under the direct supervision of a nuclear pharmacist acting in accordance with the Act and its rules, and the regulations of the Texas Department of Health, Bureau of Occupational Health and Radiation Control: provided however, this section shall not apply to a licensed practitioner and his or her designated agent for administration to his or her patient. No person may receive, possess, use, transfer, own, acquire, or dispose of radioactive drugs except as authorized in a specific or a general license as provided in Part 41, Texas Regulations for Control of Radiation, Texas Department of Health, or the Act.

(3) A nuclear pharmacy may be managed only by a nuclear pharmacist acting in the capacity of a pharmacist-in-charge. All supportive personnel performing tests, preparations, formulations, and distributions of radioactive drugs shall be under the direct supervision of a nuclear pharmacist. A nuclear pharmacist is responsible for all operations of the licensed facility and shall give final approval of all dispensing activities before distribution of the radioactive drug in fulfillment of the medication order.

(b) **Environment.**

(1) **Physical requirements.** The nuclear pharmacy facility shall have adequate space commensurate with the scope of services.

(2) **Security.** The nuclear pharmacy area shall be separate from the area for nonradioactive drugs and shall be secured for unauthorized personnel.

(3) **Storage.** A nuclear pharmacy shall provide a radioactive storage and product decay area separate from and exclusive of the radioactive laboratory, compounding, dispensing, quality assurance, and administrative areas.

(4) **Floor plans.** Detailed floor plans of the area for a Class B pharmacy license, shall accompany the application for a Class B pharmacy license.

(5) **Construction.** The facility shall be so constructed as to prevent radioactive drugs or materials from escaping into nonrestricted areas either by air exhaustion or liquid or solid waste in excess of quantities permitted in Part 41, Texas Regulations for Control of Radiation, Texas Department of Health.

(c) **Equipment.**

(1) A pharmacy handling radioactive drugs shall meet all of the mandatory requirements governing the operation of the licensed Class A pharmacy as set out in rules of the board.

(2) Upon request by a nuclear pharmacy, which only handles radioactive drugs, the board may waive certain requirements governing the operation of a Class A pharmacy as set out in the rules of the board, which it finds are unnecessary in the practice of nuclear pharmacy. To operate a nuclear pharmacy, at a minimum, the following equipment is required:

(A) vertical laminar flow hood;

(B) dose calibrator;

(C) refrigerator;

(D) Class A prescription balance, and accurate weights or a balance of greater sensitivity;

(E) scintillation analyzer;

(F) microscope and hemocytometer;

(G) adequate glassware, utensils, gloves, syringe shields, and remote handling devices;

(H) adequate shielding material;

(I) portable radiation detector capable of detecting 0.005 uCi of any radionuclide handled or stored;

(J) typewriter or comparable equipment;

(K) radiation dosimeters for visitors and personnel and log entry book;

(L) portable high-level radiation detector;

(M) exhaust/fume hood with monitor, for storage and handling of volatile radioactive drugs;

(N) calculator; and

(O) area radiation monitor.

(d) **Library.** A nuclear pharmacy shall maintain a reference library which shall include the following:

(1) *U.S. Pharmacopoeia/National Formulary* with supplements;

(2) federal and state laws and regulations relating to Texas pharmacy;

(3) Texas radiation control regulations;

(4) reference on the safe handling of radioactive materials;

(5) a minimum of three texts dealing with nuclear medicine science;

(6) Code of Federal Regulations, Title 10, Parts 0-199, with recent amendments; and

(7) Code of Federal Regulations, Title 49, Parts 106-199, with recent amendments.

(e) **Drugs and/or radioactive drugs.** Procurement, preparation, distribution, storage, and disposal.

(1) Nuclear pharmacies may dispense only radioactive drugs complying with acceptable standards of radioactive drug quality assurance.

(2) Nuclear pharmacies shall maintain records of acquisition and distribution of all radioactive drugs in accordance with the Texas Controlled Substances and Dangerous Drug Act and the Act. Nuclear pharmacies shall comply with all applicable laws and regulations governing nonradioactive drugs.

(3) Radioactive drugs may only be dispensed upon a written prescription order or medication order from a licensed practitioner or a verbal order or medication order from a licensed practitioner or his or her designate.

(4) A nuclear pharmacist may distribute radioactive drugs to authorized users for patient use. A nuclear pharmacy may also furnish radioactive drugs for departmental or physicians' use if such authorized users maintain a Texas Radioactive Materials License, and the radioactive drug shall be labeled "For Physician Use" provided such distribution is documented in the control system.

(5) A nuclear pharmacist may transfer to authorized persons, radioactive materials not intended for drug use in accordance with Part 41 of the Texas Regulations for Control of Radiation, Texas Department of Health.

(6) The transportation of radioactive materials from the nuclear pharmacy must be in accordance with all U.S. Department of Transportation regulations.

§291.54. *Records.*

(a) **Policy and procedure manual.**

(1) All nuclear pharmacies shall maintain a policy and procedure manual. The nuclear pharmacy policy and



procedure manual is a compilation of written policy and procedure statements.

(2) A technical operations manual governing all nuclear pharmacy functions shall be prepared. It shall be continually revised to reflect changes in techniques, organizations, etc. All pharmacy personnel shall be familiar with the contents of the manual.

(3) The nuclear pharmacy policies and procedures manual shall be prepared by the pharmacist-in-charge with input from the affected personnel and from other involved staff and committees to govern "procurement, preparation, distribution, storage, disposal, and control of all drugs used" and the need for policies and procedures relative to procurement of multisource items; inventory; investigational drugs; and new drug applications.

(b) Prescriptions (radioactive medication orders).

(1) Prescription or medication orders for radioactive drugs shall include:

- (A) the number and the patient's name;
- (B) the address of the practitioner and/or institution;
- (C) the name of the radioactive drug;
- (D) the amount of radioactivity to be contained in millicuries (mCi), or microcuries (uCi) at calibration;
- (E) the date and time of calibration;
- (F) the activity concentration of the radioactive drug; and
- (G) the lot number.

(2) In addition to any mandatory labeling requirements of the Federal Food and Drug Administration for drugs, the outer container of any radioactive drug to be dispensed shall also be labeled with:

- (A) the number and the patient's name;
- (B) the standard radiation symbol;
- (C) the words "Caution-Radioactive Material;"
- (D) the name of the radioactive drug;
- (E) the amount of radioactive material contained in millicuries (mCi), or microcuries (uCi);
- (G) if a liquid, the volume in milliliters;
- (H) the requested calibration date and time; and
- (I) expiration date and/or time.

(3) The immediate inner container of a radioactive drug shall be labeled with:

- (A) the standard radiation symbol;
- (B) the words "Caution-Radioactive Material;" and
- (C) the name and prescription number of the radioactive drug.

(4) The amount of radioactivity shall be determined by radiometric methods for each individual preparation immediately at the time of dispensing.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818765 Fred S. Brinkley, Jr., R. Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Effective Date: January 1, 1982

Expiration Date: April 30, 1982

For further information, please call (512) 478-9827.

### Institutional Pharmacy (Class C)

The State Board of Pharmacy adopts new §§291.71-291.75, Institutional Pharmacy (Class C), on an emergency basis.

relating to Chapter 291, Pharmacies. These rules provide standards in the conduct, practice activities, and operation of a pharmacy located in a hospital or other inpatient facility that is licensed under the Texas Hospital Licensing Law (Texas Civil Statutes, Article 4437F), or a pharmacy located in a hospital maintained or operated by the state. These rules are being adopted on an emergency basis in order to comply with §44 of the Texas Pharmacy Act, 67th Legislature, 1981, which states in part that a person required to obtain a pharmacy license under this Act who was not required to obtain a pharmacy permit under the law repealed by this Act is not required to have a pharmacy license until January 1, 1982. In addition, the State Board of Pharmacy simultaneously proposes identical rule action on a permanent basis.

These rules are adopted under House Bill 1628, Acts of the 67th Legislature, 1981, §§5, 17, 29, and 30, which provide the State Board of Pharmacy with the authority to govern the practice of institutional pharmacies and institutional pharmacists and the standards that each institutional pharmacy and its employees or personnel involved in the practice of institutional pharmacy must meet to qualify for licensing or relicensing as an institutional pharmacy.

§291.71. *Purpose.* The purpose of this subchapter is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a hospital or other inpatient facility that is licensed under the Texas Hospital Licensing Law (Texas Civil Statutes, Article 4437F) or a pharmacy located in a hospital maintained or operated by the state.

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

Act—The Texas Pharmacy Act, House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981.

Board—The State Board of Pharmacy.

Direct copy—Electronic or carbonized copy.

Facility—Hospital or other inpatient institution that is licensed under the Texas Hospital Licensing Law (Texas Civil Statutes, Article 4437F) or that is maintained or operated by the state.

Formulary—List of drugs approved for use in the facility by the Pharmacy and Therapeutics Committee of the facility.

Institutional pharmacy—Area or areas in a facility where drugs are stored, bulk compounded, delivered, compounded, dispensed, and distributed to other areas or departments of the facility, or dispensed to an ultimate user or his or her agent.

Investigational new drug—New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the Food and Drug Administration.

Pharmacist-in-charge or consultant pharmacist—Pharmacist licensed by the board to practice pharmacy who is responsible for the day-to-day operations of the institutional pharmacy.

Pharmacy and therapeutics committee—Committee of the medical staff in the facility which assists in the formulation of broad professional policies regarding the evaluation, appraisal, storage, distribution, use, and safety procedures, and all other matters relating to the use of drugs in the facility.

Supportive personnel—Those individuals utilized in institutional pharmacies whose responsibility it shall be to

provide nonjudgmental technical services concerned with the preparation and distribution of drugs under the direct supervision of, and responsible to, a pharmacist.

**§291.73. Personnel.**

(a) Pharmacist-in-charge.

(1) General.

(A) Each institutional pharmacy in a facility with 101 beds or more shall have one full-time pharmacist-in-charge, who may be pharmacist-in-charge for only one such pharmacy.

(B) Each institutional pharmacy in a facility with 100 beds or less shall have one pharmacist-in-charge or consulting pharmacist who is employed at least on a part-time basis, but may be employed on a full-time basis, if desired.

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A) preparation and sterilization of parenteral medications compounded within the institutional pharmacy;

(B) admixture of parenteral products, including education and training of nursing personnel concerning incompatibility and provision of proper incompatibility information when the admixture of parenteral products is not performed within the institutional pharmacy.

(C) bulk compounding of drugs;

(D) establishment of specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals.

(E) participation in the development of a formulary for the facility, subject to approval of the appropriate committee of the facility;

(F) distribution of drugs to be administered to inpatients pursuant to an original or direct copy of the practitioner's medication order;

(G) filling and labeling all containers from which drugs are to be distributed or dispensed;

(H) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the institutional pharmacy and inpatient care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the facility;

(I) recording of all transactions of the institutional pharmacy as may be required by applicable law, state and federal, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(J) participation in those aspects of the facility's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(K) participation in teaching and/or research programs in the facility;

(L) implementation of the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the facility;

(M) effective and efficient messenger and delivery service to connect the institutional pharmacy with appropriate areas of the facility on a regular basis throughout the normal workday of the facility;

(N) labeling, storage, and distribution of investigational new drugs, including maintenance of information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of ad-

ministration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(O) meeting all inspection and other requirements of the Texas Pharmacy Act and these rules.

(b) Consultant pharmacist. If the pharmacist-in-charge is in charge of the institutional pharmacy on a consulting or part-time basis, then the following conditions are applicable:

(1) A part-time or consulting pharmacist may not be a part-time or consultant pharmacist for more than five facilities. In addition, the total number of beds within the facilities may not exceed more than 100.

(2) A part-time or consultant pharmacist that is also a pharmacist-in-charge of a retail pharmacy (Class A Pharmacy) may not be a part-time or consultant pharmacist for more than two facilities. In addition, the total number of beds within the facilities may not exceed more than 50.

(3) A written agreement shall exist between the facility and any consultant pharmacist, and a copy of the written agreement shall be made available to the board upon request.

(c) Staff pharmacists.

(1) The pharmacist-in-charge shall be assisted by a sufficient number of additional registered pharmacists as may be required to operate the institutional pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(2) Staff pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in subsection (a)(2) of this section and in ordering, administering, and accounting for pharmaceutical materials.

(3) Staff pharmacists shall be responsible for any delegated act performed by supportive personnel under his or her supervision.

(d) Supportive personnel.

(1) Qualifications.

(A) Supportive personnel must possess education and training necessary to carry out their responsibilities.

(B) Supportive personnel must be qualified to perform the tasks assigned to them.

(2) Duties. Duties include, but need not be limited to, the following functions according to the needs of the facility:

(A) prepackaging and labeling unit and multiple dose packages, providing a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the appropriate quality control records;

(B) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, providing a pharmacist supervises and checks the preparation;

(C) mixing drugs with parenteral fluids pursuant to medication orders, providing a pharmacist supervises and checks the preparation;

(D) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the appropriate quality control records;

(E) distributing routine orders for stock supplies to patient care areas;

(F) maintaining inventories of drug supplies; and

(G) maintaining pharmacy records.

(3) Procedures.

(A) Supportive personnel shall handle medication

orders in accordance with standard, written procedures and guidelines.

(B) Supportive personnel shall handle prescription drug orders in the same manner as those working in a Class A pharmacy.

(4) Training.

(A) Supportive personnel shall receive documented on-the-job training and related education commensurate with the tasks they are to perform prior to the regular performance of those tasks.

(B) Supportive personnel shall receive regular and documented inservice education and training to supplement initial training.

**§291.74. Operational Standards.**

(a) Registration.

(1) All institutional pharmacies shall register annually with the board on a form provided by the board.

(2) The registration form shall be signed by the pharmacist-in-charge of the institutional pharmacy and shall be certified.

(3) The chief executive officer of the facility shall sign the registration form and shall agree to comply with the regulations promulgated by the board governing institutional pharmacies.

(4) The registration form shall state whether the institutional pharmacy is a sole ownership and give the name of the owner, or if a partnership, name all the managing partners, or if a corporation, name all the managing officers.

(5) If the institutional pharmacy is owned or operated by a hospital management or consulting firm, the following conditions apply:

(A) The registration form shall list the hospital management or consulting firm as the owner or operator; and

(B) The hospital management or consulting firm shall obtain DEA and DPS controlled substance registrations that are issued in their name, unless the following occurs:

(i) the hospital management or consulting firm and the facility cosign a contractual pharmacy service agreement which assigns overall responsibility for controlled substances to the facility, and

(ii) such firm maintains dual responsibility for the controlled substances.

(6) When an institutional pharmacy changes ownership, a new and separate registration must be filed with the board and the old permit returned to the board's office.

(7) A fee of \$50 will be charged for issuance of a new license.

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall be enclosed and lockable.

(B) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(C) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean; all required equipment shall be clean and in good operating condition.

(D) A sink with hot and cold running water shall be available to the pharmacist and shall be maintained in a sanitary condition at all times.

(E) The institutional pharmacy shall be properly lighted and ventilated.

(F) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs; the temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(2) Special requirements.

(A) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other controlled drugs requiring additional security.

(B) The institutional pharmacy shall have a designated area for the storage of flammable materials; such area shall meet the requirements set by local and state fire laws.

(C) The institutional pharmacy shall have a designated area for the laminar air flow hood for the preparation of sterile products.

(D) The institutional pharmacy shall have a designated area for the storage of poisons and externals.

(3) Security requirements.

(A) All areas occupied by an institutional pharmacy shall be capable of being locked by key or combination, so as to prevent access by unauthorized personnel by force.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(c) Equipment.

(1) Institutional pharmacies distributing medication orders shall have the following equipment:

(A) typewriter or comparable equipment;

(B) refrigerator; and

(C) metric-apothecary weight and measure conversion charts.

(2) Institutional pharmacies dispensing prescription drug orders shall have the following equipment:

(A) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(B) adequate supply of prescription, poison, and other applicable identification labels.

(3) Special equipment according to the requirements set out below shall be maintained.

(A) If the institutional pharmacy compounds prescriptions, a Class A prescription balance or equivalent, analytical balance (with weights) is required. Such balance shall be properly maintained and inspected at least triannually by the appropriate authority as prescribed by local, state or federal law or regulations; and

(B) If the institutional pharmacy prepares sterile products, an annually certified laminar air flow hood and other equipment necessary for manipulation of sterile products is required.

(d) Library. A reference library shall be maintained which includes the following.

(1) Current copies of the following laws:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Law;

(C) Texas Controlled Substances Act and Regulations; and

(D) Federal Controlled Substances Act and Regulations (or official publication describing the requirements of the Federal Controlled Substances Act and Regulations);

(2) *American Hospital Formulary Service* with current supplements;

(3) *Facts and Comparisons* with current supplements;

(4) At least one current text in one of the following subjects:

- (A) general organic pharmaceutical and biological chemistry,
- (B) theoretical and practical pharmacy,
- (C) toxicology,
- (D) pharmacology,
- (E) therapeutics,
- (F) bacteriology,
- (G) sterilization and disinfection,
- (H) compatibility information,
- (I) drug interaction information, and
- (J) antidote information, and

(5) At least one of the following references:

(A) *United States Pharmacopeia (USP), National Formulary (NF) or USP-NS*,

(B) *United States Dispensatory (USD)*; or

(C) *Remington's Pharmaceutical Sciences*.

(e) Absence of a pharmacist.

(1) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bonafide patient of the facility when the pharmacist is not on duty, the following is applicable:

(A) drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy;

(B) only a designated licensed nurse or practitioner may remove such drugs;

(C) a record shall be made at the time of withdrawal by the authorized person removing the drugs. The record shall contain the following information:

(i) name of patient;

(ii) name of drug, strength, dosage form, lot

number;

(iii) dose prescribed;

(iv) quantity taken;

(v) time and date; and

(vi) signature of person making withdrawal;

(D) the original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of subparagraph (C) of this paragraph; and

(E) the pharmacist shall verify the withdrawal as soon as practical.

(2) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bonafide patient of the facility when the pharmacist is not on duty, the following is applicable:

(A) drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy;

(B) only a designated licensed nurse or practitioner may remove such drugs;

(C) a record shall be made at the time of withdrawal by the authorized person removing the drugs; the record shall meet the same requirements as specified in paragraph (1)(C) and (D) of this subsection; and

(D) after a reasonable interval, but not to exceed seven days, the pharmacist shall verify each distribution.

(f) **Drugs.**

(1) **Procurement, preparation, and storage.**

(A) The pharmacist-in-charge shall have the

responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) All drugs shall be stored at the proper temperatures, as defined by the following terms:

(i) room temperature—temperature maintained between 15°C (59°F) and 30°C (86°F);

(ii) cool—temperature between 8°C (46°F) and 15°C (59°F) which may, alternatively, be stored in a refrigerator unless otherwise specified on the labeling;

(iii) refrigerate—temperature that is thermostatically maintained between 2°C (36°F) and 8°C (46°F); and

(iv) freeze—temperature that is thermostatically maintained between -20°C (-4°F) and -10°C (14°F).

(2) **Formulary.**

(A) A formulary may be developed by the Pharmacy and Therapeutics Committee of the facility.

(B) The pharmacist-in-charge shall be a member of the Pharmacy and Therapeutics Committee.

(3) **Prepackaging.**

(A) Drugs may be repackaged in quantities suitable for internal distribution only by a registered pharmacist or by supportive personnel under the direction and supervision of a registered pharmacist.

(B) The label of a prepackaged unit shall indicate:

(i) the drug;

(ii) strength of drug;

(iii) lot number and appropriate ancillary label

or labels; and

(iv) expiration date, where applicable.

(C) Records shall be maintained to show:

(i) the name of the drug;

(ii) the facility's lot number;

(iii) manufacturer;

(iv) manufacturer's lot number;

(v) expiration date;

(vi) quantity per package;

(vii) number of packages;

(viii) date packaged;

(ix) name or initials of packer; and

(x) signature of the responsible registered pharmacist.

(D) Prepackaging procedures shall be in writing to specify that stock packages, repackaged units, and control records shall be quarantined together until checked/released by the registered pharmacist.

(4) **IV admixtures.**

(A) The pharmacist-in-charge shall have the responsibility for preparation and sterility assurance of parenteral products compounded within the facility.

(B) The pharmacist-in-charge shall have the responsibility for admixture of parenteral products, including education and training of personnel concerning incompatibility and provision of proper incompatibility information.

(C) When any part of these processes is not under direct pharmacy supervision, the pharmacist-in-charge shall have the responsibility for providing written guidelines and

for approving the procedure to assure that all pharmaceutical requirements are met.

(D) A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

- (i) patient's name and location;
- (ii) name and amount of drug(s) added;
- (iii) name of the basic solution;
- (iv) rate of administration;
- (v) name or identifying code of person who prepared admixture; and
- (vi) expiration date of solution.

(5) Distribution.

(A) Orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Only a registered pharmacist may receive, certify, and dispense prescription drug orders.

(iv) Supportive personnel may not receive oral medication orders.

(v) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of subsections (d) and (f) of §40 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

- (I) controlled substances;
- (II) investigational drugs;
- (III) prepackaging and manufacturing;
- (IV) stop orders;
- (V) medication errors;
- (VI) physician orders;
- (VII) floor stocks;
- (VIII) adverse reaction reports;
- (IX) drugs brought into the facility;
- (X) furlough medications;
- (XI) self-administration;
- (XII) emergency drug tray;
- (XIII) formulary;
- (XIV) monthly inspections of nursing stations;
- (XV) drug samples;
- (XVI) drug product defect reports;
- (XVII) drug recall; and
- (XVIII) outdated drugs.

(g) Emergency rooms.

(1) In those facilities having 24-hour outpatient pharmacy service, any drugs dispensed to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) In those facilities not having 24-hour outpatient pharmacy services, or those facilities having no outpatient pharmacy services, the following procedures shall be observed in dispensing drugs when the pharmacy service is closed.

(A) Drugs may only be dispensed to a bona fide patient of the emergency room.

(B) Drugs may only be dispensed in accordance with the system of control and accountability for drugs administered or dispensed from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or the staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the emergency room drug list may be dispensed; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of drugs of the nature and type to meet the immediate needs of emergency room patients.

(D) Drugs may only be dispensed in prepackaged quantities not to exceed a 24-hour supply in suitable containers and appropriately pre-labeled (including necessary auxiliary labels) by the institutional pharmacy.

(E) At the time of delivery of the medication, the practitioner shall appropriately complete the label, such that the dispensing container bears a label with at least the following information:

- (i) date dispensed;
- (ii) name of physician;
- (iii) name of patient;
- (iv) directions for use; and
- (v) unique identification number.

(G) The practitioner or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged medication to the patient and explain the correct use of the drug.

(H) A suitable and perpetual record of dispensing of these drugs shall be maintained in the emergency room; the pharmacist-in-charge or a staff pharmacist designated by the pharmacist-in-charge shall verify the correctness of this record at least once every seven days.

§291.75. Records.

(a) Maintenance of records. Every inventory or other record required to be kept under this rule, shall be kept by the institutional pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies.

(b) Outpatient records. Outpatient records shall be maintained as provided in §301.2 of this title (relating to Records To Be Maintained by a Pharmacy).

(c) Inpatient records.

(1) Each original medication order shall bear the following information:

- (A) patient name and room number;
- (B) drug name, strength, and dosage form;
- (C) directions for use;
- (D) date; and
- (E) practitioner's signature or that of his or her authorized agent; any order signed by an authorized agent, shall be cosigned within 72 hours.

(2) Original medication order shall be maintained with the medication administration record in the medical records of the patient.

(3) Controlled substances records shall be maintained as follows.

(A) All records for controlled substances shall be maintained in a readily retrievable manner.

(B) Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(4) Records of controlled substances listed in Schedule II shall be as follows.

(A) Records of controlled substances listed in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records.

(B) An institutional pharmacy shall maintain a perpetual inventory of any controlled substance listed in Schedule II.

(C) Distribution records for controlled substances listed in Schedule II shall bear the following information:

- (i) patient's name;
- (ii) physician who ordered drug;
- (iii) name of drug, dosage form, and strength;
- (iv) time and date of administration to patient and quantity administered;
- (v) name of individual administering controlled substance;
- (vi) returns to the pharmacy; and
- (vii) waste, provided the waste has been witnessed and cosigned by another individual.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818766 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Effective Date: January 1, 1982

Expiration Date: April 30, 1982

For further information, please call (512) 478-9827.

## Clinic Pharmacy (Class D)

The State Board of Pharmacy adopts new §§291.91-291.97, concerning Clinic Pharmacy (Class D), on an emergency basis, relating to Chapter 291, Pharmacies. These rules establish the standards that each clinic pharmacy and its employees or personnel involved in the practice of clinic pharmacy must meet to qualify for licensing or relicensing as a clinic pharmacy. These rules are adopted on an emergency basis in order to comply with §44 of the Texas Pharmacy Act, 67th Legislature, 1981, which states in part, "a person required to obtain a pharmacy license under this Act who was not required to obtain a pharmacy permit under the law repealed by this Act is not required to have a pharmacy license until January 1, 1982." In addition, the State Board of Pharmacy simultaneously proposes identical rule action on a permanent basis.

These rules are adopted under House Bill 1628, 67th Legislature, 1981, §§5, 17, 29, and 30, which provide the State Board of Pharmacy with the authority to govern the practice of clinic pharmacies and clinic pharmacists and the standards that each clinic pharmacy and its employees or personnel involved in the practice of clinic pharmacy must meet to qualify for licensing or relicensing as a clinic pharmacy.

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

**Act**—The Texas Pharmacy Act, House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981.

**Board**—The State Board of Pharmacy.

**Clinic**—A facility/location other than a physician's office, where limited types of dangerous drugs or devices restricted to those listed in and approved for the clinic's formulary are stored, administered, provided, or dispensed to outpatients.

**Consultant pharmacist**—A pharmacist retained by a clinic on a routine basis to consult with the clinic in areas that pertain to the practice of pharmacy.

**Continuous supervision**—Supervision provided by the pharmacist-in-charge and/or consultant pharmacist, and consisting of on-site and telephone supervision, routine inspection, and a policy and procedure manual.

**Designated agent**—An agent of the practitioner designated in writing as authorized to communicate prescriptions by telephone.

**Limited type of device**—An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner, that relates to the services provided by the clinic.

**Limited type of drug**—A dangerous drug contained in the clinic formulary, and to be administered, dispensed, or provided according to the medical objectives of the clinic.

**Outpatient**—An ambulatory patient who comes to a clinic to receive services related to the objectives of the clinic and departs the same day.

**Pharmacist-in-charge**—The pharmacist designated on a pharmacy license as the pharmacist who is responsible for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

**Supportive personnel**—Individuals under the supervision of a pharmacist-in-charge, designated by the pharmacist-in-charge, and for whom the pharmacist-in-charge assumes legal responsibility, who function and perform under the pharmacist-in-charge's instructions.

### §291.92. Personnel Supervision in a Class D Pharmacy.

(a) Continuous supervision of registered nurses, licensed vocational nurses, physician assistants, technicians, and assistants, carrying out the acts of provision or administration, shall be the responsibility of the pharmacist-in-charge.

(b) Individuals assigned to the pharmacy shall be supervised by the pharmacist-in-charge and/or consulting pharmacist and/or supportive personnel. In the absence of the pharmacist-in-charge and consultant pharmacist, the individual designated by the pharmacist-in-charge from among the supportive personnel, shall supervise the day-to-day pharmacy-related operation of the clinic.

### §291.93. Operational Standards.

(a) Licensing Requirements.

(1) Fees. The annual fee for Class D pharmacy license is \$50.

(2) Application. Application for a Class D pharmacy license shall be on a form provided by the board.

(b) Environment.

(1) Physical requirements. No person may operate a pharmacy which is unclean, unsanitary, or under any condition which endangers the health, safety, or welfare of the public.

(A) The pharmacy shall comply with all federal, state, and local health laws and ordinances.

(B) The pharmacy and equipment therein shall be maintained in a clean and orderly condition.

(C) A sink shall be available to the pharmacist and shall be maintained in a sanitary condition at all times.

(2) Security standards.

(A) The pharmacist(s)-in-charge and/or consultant pharmacist(s), shall be responsible for the security of the prescription department including provisions for adequate safeguards against theft or diversion of dangerous drugs, and records for such drugs.

(B) The pharmacist-in-charge and/or consultant pharmacist shall consult with the practitioner and/or supportive personnel with respect to security of the pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, and records for such drugs.

(C) Housekeeping and maintenance duties shall be carried out in the pharmacy, while the pharmacist-in-charge or consultant pharmacist or supportive personnel is on the premises.

(D) Prescription department. When a pharmacist-in-charge or consultant pharmacist or supportive personnel or practitioner is not on duty, the prescription department shall be secured to prevent entry.

(E) Drugs and devices which bear the words "Caution, federal law prohibits dispensing without prescription" shall be stored within the prescription department or a secured storage area.

(c) Equipment. Each pharmacy shall maintain the following equipment and supplies:

(1) a typewriter or comparable equipment;

(2) a refrigerator or the temperature maintained within a range compatible with the proper storage of drugs;

(3) if the pharmacy compounds prescriptions, a properly maintained Class A prescription balance (with weights) or equivalent analytical balance. It is the responsibility of the pharmacist-in-charge to have such a balance inspected at least triannually by the appropriate authority as prescribed by local, state, or federal law or regulations;

(4) an adequate supply of child-resistant, moisture-proof, and light-proof containers and prescription, poison, and other applicable identification labels used in dispensing and providing of prescription drugs and medication;

(5) a current copy of the Texas Pharmacy Act and Rules adopted pursuant to such law, the Texas Dangerous Drug Law and Regulations adopted pursuant to such law.

(d) Library. Each pharmacy shall maintain a reference library that includes at least three of the following current reference books:

(1) *Remington's Pharmaceutical Sciences*;

(2) *Facts and Comparisons*;

(3) *American Hospital Formulary Service*;

(4) *United States Pharmacopeia or National Formulary*;

ary;

(5) *Physician's Desk Reference*;

(6) *American Drug Index*;

(7) Phillip D. Hansten's *Drug Interactions*; and

(8) appropriate reference texts in one of the following subjects: toxicology, pharmacology, drug interactions, or pharmaceutical mathematics.

§291.94. *Drugs.*

(a) Procurement. Each Class D Pharmacy shall main-

tain invoices and records of procurement in accordance with the requirements of the Texas Dangerous Drug Laws and the Texas Pharmacy Act.

(b) Preparation. Prepacking is the responsibility of the pharmacist-in-charge and/or consultant pharmacist and may only occur in a licensed pharmacy. The label on prepackaged drugs shall bear the manufacturer's lot number and expiration date.

(c) Labeling.

(1) The proper labeling of drugs to be dispensed or provided is the responsibility of the pharmacist-in-charge and/or consultant pharmacist and/or practitioner except when dangerous drugs are being provided under the supervision of a physician; then a qualified and trained person or persons may print at the time of such provision, the date of provision and the patient's name and address on the label.

(2) The label shall be affixed, legible, and in a form not easily altered.

(3) The label shall bear:

(A) date provided or dispensed;

(B) patient/client name;

(C) facility;

(D) identification number/prescription number;

(E) name of medication;

(F) dosage/strength;

(G) directions for use (the patient/client shall be provided verbal and/or written information on side effects, interactions and precautions); and

(H) if a generic drug is substituted, generic name, name of manufacturer or distributor, and words, "substituted for brand prescribed", and the information required by subparagraphs (A)-(G) of this paragraph shall be on the label.

(4) Relabeling of any previously labeled drug is the responsibility of the pharmacist-in-charge and/or consultant pharmacist and/or practitioner.

(d) Drug dispensing and storage.

(1) Any drug bearing an expiration date may not be dispensed beyond the said expiration date of the drug.

(2) All drugs shall be stored at a safe and adequate temperature.

(3) Drug samples supplied by manufacturers shall be properly stored, labeled, provided, or dispensed in the same manner as prescribed by these rules for dangerous drugs.

(4) Samples of controlled substances may not be stored, provided, or dispensed from the clinic.

(5) Outdated drugs shall be removed from stock.

(6) Dispensing is the responsibility of the pharmacist-in-charge and/or consultant pharmacist and/or practitioner.

(7) Drugs may be administered, provided, or dispensed pursuant to the physician's orders, standing delegation orders (as defined by rules of the Texas Board of Medical Examiners) or standing medical orders (as defined by rules of the Texas Board of Medical Examiners) that are consistent with the medical objectives of the clinic.

§291.95. *Records.*

(a) Drug formulary.

(1) The pharmacist-in-charge or consultant pharmacist shall outline a formulary of the drugs needed to meet the medical objectives of the clinic. The formulary shall be created, changed, and reviewed by the pharmacist-in-charge and/or consultant pharmacist after discussion with the clinic's medical director and staff.

(2) The formulary may not include controlled substances.

(b) Policy and procedure manual. A policy and procedure manual is required in order to obtain a Class D pharmacy license. The manual shall include:

(1) a current list of the names and addresses of the pharmacist(s)-in-charge; consultant pharmacist(s), and supportive personnel;

(2) functions of the pharmacist-in-charge, consultant pharmacist, and supportive personnel;

(3) drug formulary;

(4) policies and procedures for:

- (A) security,
- (B) equipment,
- (C) sanitation,
- (D) licensing,
- (E) reference materials,
- (F) drug storage,
- (G) drug packaging-repackaging,
- (H) drug dispensing,
- (I) administration of drugs,
- (J) provision of drugs,
- (K) supervision,
- (L) drug labeling-relabeling,
- (M) drug samples,
- (N) drug destruction and returns,
- (O) drug procuring,
- (P) receiving of drugs,
- (Q) delivery of drugs,
- (R) recordkeeping, and
- (S) inspection, and

(5) date of last review/revision of policy and procedure manual.

(b) Prescriptions.

(1) Recordkeeping requirements for dangerous drugs dispensed through a Class D pharmacy are the same as for a Class A pharmacy as set out in §301.2 of this title (relating to Records To Be Maintained by a Pharmacy).

(2) Records of drugs provided shall include logs, patient records, or other acceptable methods for documentation. Documentation shall include:

- (A) who receives the drug;
- (B) who provides the drug;
- (C) when is the drug provided;
- (D) the name of the drug and quantity of the drug provided; and
- (E) a sequential record (identification) number.

#### §291.96. Inspection Procedures.

(a) The minimum areas of inspection shall include security, storage, recordkeeping, sanitation, policy and procedure manual, equipment, and standing delegation and standing medical orders as they relate to drugs administered and provided in the clinic.

(b) The pharmacist-in-charge and/or consultant pharmacist and/or supportive personnel shall be on-site during an inspection.

#### §291.97. Pharmacist-In-Charge and Consultant Pharmacist.

(a) The consultant pharmacist may be the pharmacist in-charge.

(b) The pharmacist-in-charge may be in charge of more than one clinic.

(c) The consultant pharmacist may be retained by more than one clinic.

(d) Any change of employment of the pharmacist-in-charge shall be reported to the board within 10 days.

Issued in Austin, Texas on December 1, 1981.

Doc. No. 818767 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Effective Date: January 1, 1982

Expiration Date: April 30, 1982

For further information, please call (512) 478-9827.

## Chapter 309. Generic Substitution

The State Board of Pharmacy adopts new §§309.1-309.8, relating to generic substitution, on an emergency basis. This chapter establishes standards governing the substitution of a lower-priced generically equivalent drug product for certain brand name drug products. This chapter is adopted on an emergency basis to coincide with the effective date of January 1, 1982, of §40 of the Texas Pharmacy Act, 67th Legislature, 1981, which became effective September 1, 1981. In addition, the State Board of Pharmacy simultaneously proposes identical rule action on a permanent basis.

This rule is adopted under House Bill 1628, 67th Legislature, 1981, §40, which provides the State Board of Pharmacy with the authority to establish procedures to govern the substitution of lower-priced generically equivalent drug products for certain brand name drug products.

**§309.1 Objective.** The provisions of this chapter govern the substitution of lower priced generically equivalent drug products for certain brand name drug products.

**§309.2 Definitions.** The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. Any term not herein defined shall have the definition set out in §5 and §40 of the Act.

Act—House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981.

**§309.3 Prescription Drug Orders.** A pharmacist may not fill a prescription issued in Texas unless it is ordered on a form containing two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words "product selection permitted," and under the other signature line shall be printed clearly the words "dispense as written." If the practitioner's signature does not clearly indicate that the prescription must be dispensed as written, generically equivalent drug selection is permitted.

#### §309.4 Patient Notification.

(a) Substitution notification. A pharmacist who selects a generically equivalent drug product as authorized by §40 of the Act shall:

(1) personally, or through his or her agent or employee and prior to delivery of a generically equivalent drug product, inform the patient or the patient's agent that a less expensive generically equivalent drug product has been substituted for the brand prescribed and the patient or patient's agent's right to refuse such substitution; or

(2) cause to be displayed, in a prominent place that is in clear public view where prescription drugs are dispensed, a



sign in block letters not less than one inch in height that reads, in both English and Spanish:

Texas law allows a less expensive generically equivalent drug to be substituted for certain brand name drugs unless your physician direct otherwise. You have a right to refuse such substitution. Consult your physician or pharmacist concerning the availability of a safe, less expensive drug for your use.

Las leyes de Texas permiten que se sustituya una medicina genericamente equivalente y menos cara por ciertas medicinas de marca reconocida a menos que su medico instruya de otra manera. Ud. Tiene el derecho de rehusar dicha sustitucion. Consulte a su medico o farmaceutico con referencia a la disponibilidad de una medicina segura y menos cara para su uso.

By the display of a sign as set out in this paragraph, a pharmacy shall be deemed in compliance with this subsection.

(3) A pharmacist complies with the requirements of §40 of the Act, if an employee or agent of the pharmacist notifies a purchaser as required by paragraph (1) of this subsection. The patient or patient's agent shall have the right to refuse substitution.

(b) In-patient notification exemption. Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of subsections (d) and (f) of §40 of the Act, as respects drugs distributed pursuant to medication orders.

(c) Custodial health care facility exemption. Generically equivalent drug selection as authorized by §40 of the Act, is permitted without prior notification to a patient residing in a custodial health care facility or to such patients' agent under the following conditions:

(1) the patient or patient's agent has signed a statement waiving the patient's right to prior notification of generically equivalent drug selection and the right to refuse such product selection; and

(2) such written statement is maintained in the patient's records of the custodial health care facility.

(d) Exemption for delivered prescriptions. Generically equivalent drug selection as authorized by §40 of the Act, is permitted without prior notification to a patient or such patient's agent in those instances where the pharmacy delivers a prescription to a location outside of the pharmacy under the following conditions:

(1) the patient or patient's agent has orally or in writing waived his or her right to prior notification of generically equivalent drug selection and the right to refuse such product selection; and

(2) if such right is waived in writing, then the written statement shall be maintained in the dispensing pharmacy.

**§309.5. Labeling Requirements.** The label affixed on the dispensing container of any prescription dispensed by a pharmacy pursuant to a prescription drug order, shall bear:

(1) the name and address of the pharmacy;

(2) the name of the patient, or if such drug was prescribed for an animal, the species of the animal;

(3) the name of the prescribing practitioner;

(4) the date the prescription is dispensed;

(5) the instructions for use; and

(6) unless otherwise directed by the prescribing practitioner, in addition to the information listed this section, the label shall bear the brand name and strength, or if no brand name, then the generic name of the drug dispensed, the strength of the drug and the name of the manufacturer or

distributor of such generic drug. For combination drug products having no brand name, the principal active ingredients shall be indicated on the label; and

(7) if a drug product is dispensed other than the one prescribed, the statement: "Substituted for brand prescribed." The brand name of the prescribed drug shall not appear on the prescription label unless it is the drug product actually dispensed.

**§309.6. Records.**

(a) When the pharmacist dispenses a generically equivalent drug pursuant to §40 of the Act, the following information shall be noted:

(1) If a prescription drug order is orally communicated to a pharmacist, any dispensing instructions by the practitioner or the practitioner's agent on the file copy of the prescription.

(2) On oral or written prescriptions wherein a generically equivalent drug is dispensed, the name, strength, and manufacturer or distributor of the drug product actually dispensed on the prescription. The information set out in this subsection shall also be indicated on the prescription in those instances when a generically equivalent drug is dispensed from a different manufacturer or distributor than was previously dispensed. The information set out in this subsection shall be noted on the patient medication records if such document is utilized for providing and recording refill information.

(b) The national drug code number (NDC) of a drug or any other code may be indicated on the prescription at the discretion of the pharmacist, but such code shall not be used in place of the requirements of this section.

**§309.7. Dispensing Responsibilities.** The determination of the drug product to be substituted as authorized by §40 of the Act is the professional responsibility of the pharmacist, and the pharmacist may not dispense any product that does not meet the requirements of §40 of the Act. A pharmacist may not dispense a drug product that does not have an approved new drug application or an abbreviated new drug application as required by §505 of the Federal Food, Drug, and Cosmetic Act, or if the drug product is an antibiotic, an approved antibiotic form 5 or 6 as required by §507 of the Federal Food, Drug, and Cosmetic Act. Provided, however, a pharmacist may dispense a drug not meeting the requirements of this section if such drug is exempt for the provisions of §505 or §507 of the Federal Food, Drug, and Cosmetic Act.

**§309.8. Advertising of Generic Drugs by Pharmacies.** Prescription drug advertising comparing generic and brand name drugs is subject to subsection (b) of §16 of the Act.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818768 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Effective Date: January 1, 1982

Expiration Date: April 30, 1982

For further information, please call (512) 478-9827.

# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part II. Texas Parks and Wildlife Department

### Chapter 55. Law Enforcement

#### Operation Game Thief Fund

The Operation Game Thief Committee adopted on an emergency basis §§55.111-55.114 concerning the operation game thief fund. House Bill 1421, 67th Legislature, Regular Session, established the Operation Game Thief Fund and authorized the Operation Game Thief Committee to adopt rules for implementation and maintenance of the fund. The committee will accept donations to the fund and make reward payments to persons who provide information which leads to the arrest and conviction of game law violators.

The committee finds that imminent peril to the public's wildlife resources requires the adoption of the rules on an emergency basis. The rules will also be proposed for permanent adoption before the expiration of the effectiveness of the emergency rules.

The new sections were adopted on an emergency basis under the authority of the Texas Parks and Wildlife Code, Chapter 12, Subchapter C.

**§55.111. Definitions.** The following words or terms, when used in this subchapter, shall have the following meanings:

**Chairman**—Chairman of the Operation Game Thief Committee.

**Committee**—The Operation Game Thief Committee.  
**Department**—The Texas Parks and Wildlife Department.

**Director**—The executive director of the Parks and Wildlife Department.

**Donation**—Something of value, negotiable or convertible, and shall include but not be limited to currency, stocks, bonds, or property, whether real or personal.

**Eligible applicant**—A person making application for a reward for furnishing information to the department which leads to an arrest and conviction of a flagrant violation.

**Flagrant violation**—Shall be as defined in §12.203, Texas Parks and Wildlife Code.

**Information**—Specific information of a flagrant violation furnished to the department that leads to the arrest and conviction of the violator.

**Operation Game Thief Fund**—Monies collected and deposited in a special fund outside the state treasury.

**§55.112. Donations and Disbursements.**

(a) The director shall develop procedures for the acceptance, conversion, and deposit of all donations offered by individuals, clubs or other organizations.

(b) Conversion of donations of real or personal property into United States currency shall be accomplished by the director or his designee.

(c) Donations received shall be deposited by the director in interest bearing accounts (operation game thief fund) insured by the Federal Deposit Insurance Corporation.

(d) Disbursements for rewards shall be approved by the committee. Disbursements for other expenditures directly related to implementation of the program shall be approved by the chairman and may include but not be limited to costs of the WATS line and promotional costs to enhance the fund. All donations may be used for these purposes unless otherwise specifically prohibited by the donor. All disbursements from accounts will be by check signed by the director. The committee will be furnished an annual report detailing all expenditures from the fund.

**§55.113. Reporting Violations; Eligibility of Applicant.**

(a) No person other than a person furnishing information to the department that leads to the arrest and conviction of a person for committing a flagrant violation of the Parks and Wildlife Code may be eligible for receiving a reward.

(b) No person shall be eligible for receiving a reward unless said person furnishes information as required in subsection (a) of this section immediately to a designated office established by the department for the reporting of such information.

(c) The designated office defined in subsection (b) of this section shall provide:

(1) employees on duty 24 hours a day,  
(2) a toll-free telephone number for use by the public for reporting flagrant violations, and

(3) assignment of a specific operation game thief report code number for persons reporting a flagrant violation.

(d) The director shall prescribe the documentation to be furnished to substantiate the information provided.

(e) Informants shall have the option of furnishing his name, address, and telephone number or requesting only a code number for anonymity which shall be used in lieu of applicant's name in all subsequent transactions with the informant.

**§55.114. Rewards: Payment.**

(a) The amount of reward granted to eligible applicants shall be determined on an individual basis by the committee according to the degree of flagrancy of each violation.

(b) In the event two or more eligible applicants furnish information pertaining to a specific flagrant violation, the reward may be divided among the eligible applicants in an amount determined by the committee.

Issued in Austin, Texas, on December 3, 1981.

Doc. No. 818823

Maurine Ray  
Administrative Assistant  
Texas Parks and Wildlife Department

Effective Date: December 3, 1981

Expiration Date: April 4, 1982

For further information, please call (512) 479-4849.

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."

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 4. AGRICULTURE

#### Part I. Texas Department of Agriculture

##### Chapter 5. Quarantines

###### Citrus Black Fly Quarantine

(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 Agriculture, ninth floor, Stephen F. Austin Building, Austin, or in the Texas Register Division office, 503E, Sam Houston Building, Austin.)

The Texas Department of Agriculture proposes the repeal of §§5.101-5.110 (176.22.15.701-.710), concerning citrus black fly quarantines.

The department desires to repeal its citrus black fly quarantine of Cameron and Hidalgo Counties to coincide with the commensurate repeal of a similar federally imposed quarantine by the Animal and Plant Health Inspection Service, U.S. Department of Agriculture found at (46 FedReg 48626). The quarantine, originally established to prevent economic damage to citrus crops, is being repealed because it appears that it is no longer necessary to stem the spread of the citrus black fly (*Aleurocanthus woglumi*, asby). The release of parasites of the citrus black fly has proven effective in preventing the economic damage to citrus crops at which the quarantine was originally directed.

The sections herein proposed for repeal imposed a quarantine on the above counties which regulated the movement of leaves, attached or unattached, from citrus magon, persimmon, Japanese persimmon, pear, quince, coffee, myrtle, cherimoya, black sapote, sweet-sop, and other likely host varieties into, out of, and within the affected counties. The quarantine further gave the department authority to enter the premises of persons within the quarantined area to inspect and treat plants suspected of harboring the citrus black fly. The department was also empowered by the black fly quarantine to require persons engaged in the purchasing, assembling, exchanging, handling, or processing of suspected host materials to sign compliance agreements agreeing to abide by departmental instructions relating to the identity, movement, or handling of host materials. Persons intending to transport host materials were required to make prior application to the department and submit the materials for inspection by department personnel. Criminal penalties were provided for violations of the quarantine.

It is expected that the repeal of the citrus black fly quarantine will have no effect on the plant health or agricultural operation of the state, but will provide for more efficient operation of the resources and personnel of the department.

William C. Neiser, Fiscal Services Division director, has determined that for the first five-year period the repeal will be in effect, there will be fiscal implications.

(A) The effect on state government will be an estimated reduction in cost of \$8,700 each year for 1982, 1983, 1984, 1985, and 1986. No additional costs or loss or increase in revenue are anticipated.

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

David Ivie, Agricultural and Environmental Sciences Division director, has determined that for each year of the first five years the repeal is in effect:

(A) The public benefits anticipated will be reduced costs to state government realized by the elimination of an unnecessary regulatory program.

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

Comments on the proposal may be submitted to David Ivie, Agricultural and Environmental Sciences Division director, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. All comments should be in writing and clearly identify the party or parties wishing the comment to be registered with the department.

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

Steve Haley  
December 3, 1981

The repeal is proposed under Texas Agriculture Code, §71.002 and §71.007 (1981), which provides the Texas Department of Agriculture with the authority to promulgate rules necessary for the protection of agricultural and horticultural interests including the adoption of rules establishing quarantines which prevent the selling, moving, or transporting of any plant, plant product, or substance from a quarantined area.

- §5.101. (176.22.15.701). *Pest.*  
 §5.102. (176.22.15.702). *Quarantined Area.*  
 §5.103. (176.22.15.703). *Regulated Area.*  
 §5.104. (176.22.15.704). *Generally Infested Area.*  
 §5.105. (176.22.15.705). *Suppressive Area.*  
 §5.106. (176.22.15.706). *Regulated Articles.*  
 §5.107. (176.22.15.707). *Conditions Governing Movement of Regulated Articles from or within the Regulated Area.*  
 §5.108. (176.22.15.708). *Compliance and Agreements.*  
 §5.109. (176.22.15.709). *Assembly of Article for Inspection.*  
 §5.110. (176.22.15.710). *Penalties*

Issued in Austin, Texas, on December 3, 1981.

Doc. No. 818824 Reagan V Brown  
 Commissioner  
 Texas Department of Agriculture

Proposed Date of Adoption: January 11, 1982  
 For further information, please call (512) 475-6346.

## Mediterranean Fruit Fly Quarantine

The Texas Department of Agriculture proposes amendments to §5.211 concerning the Mediterranean fruit fly quarantine.

The Texas Department of Agriculture desires to amend its Mediterranean fruit fly (medfly) quarantine to incorporate recent changes made by the U. S. Department of Agriculture to its commensurate federally imposed medfly quarantine. These amendments are aimed at including within the department's quarantine the latest scientific data available for the control of the medfly. The changes should assist the department in combating the continued threat of a medfly infestation within the boundaries of this state.

Recent infestations of the fly in both California and Florida evidence the seriousness of the potential harm posed by the medfly. It 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 the amendment of its Mediterranean fruit fly quarantine, §5.211, by the inclusion of additional hosts and methods of treatment. A brief summary of the proposed amendments follows:

The following plant varieties have been added in alphabetical order to the list of regulated articles in subsection (e):

Japanese plum (*Prunus salicina*)  
 Kiwi (*Actinidia chinensis*)  
 Mango (*Mangifera indica*)  
 Papaya (*Carica papaya*)  
 Pomegranate (*Punica granatum*)  
 Walnut with husk (*Juglans spp.*)

The phrase, "with husk," has been inserted after the common name of the regulated article "Almond" found in the list of regulated articles in subsection (e).

The phrase, "and zucchini squash," has been deleted from subsection (f), paragraph (1), subparagraph (D).

Subsection (f) has been amended by adding subparagraphs (H) and (I). These subparagraphs add to the recommended treatments listed for regulated articles. The former subparagraph (H) has been redesignated subparagraph (J)

Additionally, the phrase "except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)" has been added to the regulated article "Lemon (*Citrus limon*)" in subsection (e)(1).

Spelling corrections have been made to "Apples (*Malus sylvestris*)," "Japanese persimmon (*Diospyros kaki*)," and "Nata plum (*Carissa macrocarpa* and *Terminalia chebula*)" in subsection (e)(1).

It is hoped that the effect of the amendments will be to bring the department's medfly quarantine into compliance with the commensurate federally imposed quarantine.

William C. Neiser, fiscal services director, 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.

David Ivie, Agricultural and Environmental Sciences Division director, 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:

(1) the avoidance of possible adverse effects on this state's fresh produce supply resulting from a major medfly infestation;

(2) the avoidance of major price increases on the fresh produce market resulting from a major medfly infestation;

(3) the avoidance of an economic burden upon the state likely to result if state government is forced to combat an established infestation of the medfly;

(4) the avoidance of loss of markets due to prohibition of shipment of fruits and vegetables from infested areas;

(5) the avoidance of extra treatment cost to growers and shippers.

(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 David Ivie, Agricultural and Environmental Sciences Division director, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. All comments should be in writing and clearly identify the party or parties wishing the comment to be registered with the department.

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

Steve Haley  
December 3, 1981

The amendments are proposed under Texas Agriculture Code, §71.001 and §71.007 (1981), which provide 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)-(d) (No change.)

(e) Host list.

(1) All fruits, vegetables, or berries of the following plants:

Almond *with husk* (*Prunus dulcis*)  
(*P. amygdalus*)  
Apples (*Malus sylvestris*)  
[*(Malus sylvestria)*]  
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 kaki*)  
[*(Diospyros kaka)*]  
*Japanese plum* (*Prunus salicina*)  
*Kiwi* (*Actinidia chinensis*)  
Kumquat (*Fortunella japonica*)  
Lemon (*Citrus limon*) *except Eureka,*  
*Lisbon, and Villa Franca Cultivars*  
(*smooth-skinned sour lemon*)  
Lime (*Citrus aurantifolia*)  
Loquat (*Eriobotrya japonica*)  
Mandarin orange (tangerine)  
(*Citrus reticulata*)  
*Mango* (*Mangifera indica*)  
Mock orange (*Murraya exotica*)  
Mountain apple (*Syzygium mallaccense*)  
(*Eugenia mallaccensis*)

Natal plum (*Carissa Macrocarpa and terminalia chebula*) [*(Carissa macrocarpa and Terminalia chebula)*]

Nectarine (*Prunus persica*)

Olive (*Olea europea*)

Opuntia cactus (*Opuntia spp.*)

*Papaya* (*Carica papaya*)

Peach (*Prunus persica*)

Pear (*Pyrus communis*)

Pepper (*Capsicum annuum* and  
*Capsicum frutescens*)

Pineapple guava (*Fejoa sellowiana*)

Plum (*Prunus americana*)

*Pomegranate* (*Punica granatum*)

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*)

*Walnut with husk* (*Juglans spp.*)

White sapote (*Casimiroa edulis*)

Yellow Oleander (bestill) (*Thevetia*  
*peruviana*)

All others included in any USDA quarantine.

(2)-(4) (No change.)

(f) Certification treatment.

(1) Treatment for regulated articles shall be as follows:

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

(D) Bell pepper[,] *and* 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)-(G) (No change.)

(H) *Almond with husk, grape, kiwi, opuntia cactus, and walnut with husk. Fumigation with methyl bromide at normal atmospheric pressure with 32gm<sup>3</sup> for 3-1/2 hours at 21°C (70°F) or above. Minimum concentration for above fumigations:*

*(i) 26g minimum gas concentration at first 1/2 hour;*

*(ii) 22g minimum gas concentration at first 2 or 2-1/2 hours;*

*(iii) 21g minimum gas concentration at 3-1/2 hours.*

**(I) Grape. Fumigation with methyl bromide at normal atmospheric pressure with 32g/m<sup>3</sup> for four hours at 18°C (65°F) or above. Minimum concentration for above fumigations:**

*(i) 26g minimum gas concentration at first 1/2 hour;*

*(ii) 22g minimum gas concentration at 2 or 2-1/2 hours;*

*(iii) 19g minimum gas concentration at four hours.*

**(J)(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) (No change.)

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

Issued in Austin, Texas, on December 3, 1981.

Doc. No. 818827 Reagan V. Brown  
Commissioner  
Texas Department of Agriculture

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 475-6346.

## Chapter 15. Consumer Services Division

### Texas Grain Warehouse

The Texas Department of Agriculture proposes amendments to §15.72 and §15.76 concerning Texas grain warehouses.

Section 15.72, as presently constituted, allows grain to be listed as company owned on the daily position records of a warehouse even though the warehouseman has neither paid for such grain nor entered into a written contract of sale with the depositor. Amendments have been made to the Texas Grain Warehouse Act (now codified as Texas Agriculture Code, Chapter 14, Subchapter A) which define company-owned grain as grain wholly paid for by the warehouseman, or grain on which the warehouseman has a written contract to purchase. Section 15.72 is, to this extent, in conflict with the Texas Grain Warehouse Act, and is thus proposed for amendment.

The proposed amendments are further motivated by a desire to protect depositors from unwittingly selling their grain under contracts of sale incorporated as part of other warehouse documents.

The amended §15.72 would allow a depositor's grain to be designated as company-owned grain only if the change of position of such grain is preceded by a written contract of sale. Cash transactions are excluded from the operation of the rule. The section further requires that all such contracts be prominently labeled as contracts of sale and maintained as part of the records of the warehouseman. The contracts may not be incorporated as part of, or printed, typed, or

transcribed upon scale tickets, settlement agreements, or other unrelated documents issued by the warehouseman.

It is hoped that the effect of the proposed amendments to §15.72 will be to eliminate the conflict between this section, as presently constituted, and §14.022 of the Texas Agriculture Code, as well as offering increased protection to grain warehouse depositors.

Section 15.76 has been amended to allow the department to propose for adoption by reference revisions made to its grain warehouse forms listed in the section, as presently constituted. The revisions proposed are minor in nature, encompassing address changes, official name changes, deletion of unnecessary data elements, clarifications, rephrasing of material and renumbering of forms. Additionally, two new forms have been proposed. A summary of the contents of these new forms appears below.

The Grain Warehouse Safety Inspection Form has been proposed for use by the department's grain warehouse inspectors when assessing the safety of a grain warehouse facility. Provision is made on such form for the inspector to record the name, address, and telephone number of the warehouse inspected, the name of its manager, general safety conditions at the facility, housekeeping conditions, the condition of fire control equipment, fire warning equipment, dust collection/suppression equipment, whether grain dust is being reintroduced into grain handled at the facility, and whether the facility has a safety program or preventative/periodic maintenance program. Space is also provided for the inspector to list specific safety hazards discovered during the inspection and his recommendations thereon.

The Grain Warehouse Successor's Agreement has been proposed pursuant to the terms of §15.74 of this title. In the event of a change of name, sale, or change of ownership of a grain warehouse, such forms shall serve as a vehicle by which the purchaser of a grain warehouse may assume all of the outstanding storage obligations of the former owner.

Section 15.76 has been further amended to bring it more within the definition of a rule as contained in the Administrative Procedure and Texas Register Act. It is hoped that the effect of the proposed amendments to this section will provide for more effective enforcement of Texas Agriculture Code, Chapter 14, Subchapter A, and improved administrative procedures.

William C. Neiser, director, Fiscal Services Division, 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.

Bill Quicksall, director, Consumer Services Division, 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 increased consumer protection for depositors of grain warehouses and increased administrative efficiency.

(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 Bill Quicksall, director, Consumer Services Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas

78711. All comments should be in writing and clearly identify the party or parties wishing the comment to be registered with the department.

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

Steve Haley  
December 4, 1981

The amendments are proposed under Texas Agriculture Code, Chapter 14, Subchapter A, §14.003 (a)(7)(1981), which provides the Texas Department of Agriculture with the authority to adopt rules necessary to carry out the provisions of Texas Agriculture Code, Chapter 14, Subchapter A.

**§15.72. Requirements for Changing Positions of Warehouse Grain.** All grain in an elevator must be declared as either receipted grain, open-storage grain, or company-owned grain in the daily position records of each warehouseman. Depositor's grain placed in company-owned grain upon delivery or transferred from receipted grain or open-storage grain to company-owned grain must be preceded by a *written contract of sale sufficient to pass title of the grain from the depositor to the warehouseman if the purchase price for the grain is not paid contemporaneously with the change of position.* [an agreement with the depositor that the ownership of the grain has passed to the warehouseman under one or more of the five following rules:]

(1) *A copy of such contract shall be maintained as part of the warehouse records and made available during any duly authorized inspection.* [The depositor or his agent accepts from the warehouseman an inbound scale ticket marked "sold" at the time the grain is delivered to and deposited in the warehouse.]

(2) *Such contract shall not be incorporated as part of, nor printed, typed, or transcribed upon the same writing as any scale ticket, settlement agreement, or other unrelated document issued by the warehouseman.* [The depositor or his agent accepts from the warehouseman an inbound scale ticket marked "sold now priced later" when grain is delivered to and deposited in the warehouse.]

(3) *Such contract shall prominently display that it is a contract of sale.* [The depositor has agreed to sell grain deposited as open storage grain to the warehouseman and the warehouseman has agreed to purchase the depositor's grain; whereupon, the warehouseman shall execute, sign, and deliver a confirmation of purchase to the depositor and the depositor shall execute, sign, and deliver a confirmation of sale to the warehouseman, and the copy entitled "state warehouse copy" shall be maintained at the warehouse in a file for use of the commissioner. copies of confirmation of purchase and state warehouse copy shall be maintained in the warehouse records until destruction is approved by the commissioner, and said copies shall be made available as a part of the warehouse records during any duly authorized inspection. In the event the warehouseman and/or the depositor negotiate a sales agreement by telephone, radio, or other forms of communication that prevents his or her presence at the warehouse or an appointed meeting place, the warehouseman shall mail a signed confirmation of purchase and a confirmation of sale to the depositor no later than the close of business the next business day with the title and ownership of the amount of grain specified in the agreement to pass to the warehouseman immediately upon completion of the verbal agreement. The depositor shall sign the confirmation of

sale and return same to the warehouseman no later than the next business day after receiving same through the United States mail. The commissioner shall prescribe the form and control the printing of serially numbered confirmations by a similar procedure to that used for warehouse receipts under §22 of the Texas Grain Warehouse Laws.

(4) The depositor has surrendered a warehouse receipt or receipts to the warehouseman and sale and purchase confirmations, as described in paragraph (3) of this section, have been exchanged for that part of the depositor's grain that the depositor has agreed to sell

(5) The depositor has agreed to sell grain deposited in the warehouse to the warehouseman and the warehouseman has agreed to purchase the depositor's grain; whereupon, the warehouseman shall pay the depositor with a valid check and issue the depositor a confirmation of purchase. It shall not be required but shall be permissible that the warehouseman have the depositor sign a confirmation of sale.]

*§15.76 Texas Grain Warehouse Forms. The commissioner of agriculture, Texas Department of Agriculture, hereby adopts by reference the following forms as amended effective January 1, 1982. The forms are for use by the Grain Warehouse Section, and are available upon request from the Grain Warehouse Section, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.* [The following forms are adopted by the Grain Warehouse Section of the Texas Department of Agriculture.]

- (1) Public grain warehouse license (*TDA-C61F*).
- (2) Application for state license to operate a public grain warehouse (*TDA-M21-C*).
- (3) Renewal form to operate [a] grain warehouse (*TDA-C124L*).
- (4) Financial statement for license applicant (*TDA-C155-C*).
- (5) Licensed warehouse bond form (*TDA-C33-F*).
- (6) Verification of insurance form (*TDA-C32-D*).
- (7) Grain warehouse receipt order form (*TDA-C68-F*).
- (8) Application for permit to increase grain warehouse capacity (*TDA-C105-D*).
- (9) Warehouse examination report (*TDA-M-18E*).
- (10) Grain warehouse safety inspection form (*TDA-C-316*).
- (11) Grain warehouse successor's agreement (*TDA-C332*).

Issued in Austin, Texas on December 4, 1981.

Doc No 818838      Reagan V Brown  
Commissioner  
Texas Department of Agriculture

Proposed Date of Adoption, January 11, 1982  
For further information, please call (512) 475-6346.

## Texas Grain Warehouse

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Department of Agriculture, ninth floor, Stephen F. Austin Building, Austin, or in the Texas Register Division office, 503E, Sam Houston Building, Austin.)

The Texas Department of Agriculture proposes the repeal of §15.75 (176 44.22.005), concerning Texas grain warehouses.

Section 15.75, when originally implemented, was designed to allow the department to monitor the amount of grain deposited with grain warehouses at open-storage. At the time the section was promulgated, the provisions of the Texas Grain Warehouse Act did not require scale tickets, issued by a warehouse upon an open-storage deposit, to be written in numerical series. Therefore, the department required open-storage grain to be receipted after six months' storage on serially numbered Texas grain warehouse receipts, in order to allow for its efficacious accounting by department inspectors.

The Texas Grain Warehouse Act, now codified as Chapter 14 of the Texas Agriculture Code, has since been amended. Section 14.017 of the Code now requires grain warehouse scale tickets to be issued in serial form. This provision allows the department to effectively monitor open-storage grain without the need for having such grain receipted. Section 15.75 has thereby become unnecessary, and is proposed for repeal.

The section had required all open-storage accounts to be receipted after six months, or, if not receipted, the warehouseperson was required to notify the depositor of the status of his or her account at that time and every 60 days thereafter.

It is hoped that the effect of this repeal will be to eliminate a regulation no longer necessary for the effective enforcement of the Texas Grain Warehouse Act by the department.

William C. Neiser, Fiscal Services Division director, 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.

Bill Quicksall, Consumer Services Division director, has determined that for each year of the first five years the repeal is in effect:

(A) The public benefits anticipated will be the elimination of an unnecessary departmental regulation.

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

Comments on the proposal may be submitted to Bill Quicksall, Consumer Services Division director, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. All comments should be in writing and clearly identify the party or parties wishing the comment to be registered with the department.

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

Steve Haley  
December 3, 1981

The repeal is proposed under Texas Agriculture Code, §14.003(a)(7) (1981), which provides the Texas Department of Agriculture with the authority to promulgate rules necessary to carry out the provisions of Texas Agriculture Code, Chapter 14, Subchapter A.

**§15.75. (176.44.22.005). Requirements for Reporting Grain Left in the Open for an Extended Period.**

Issued in Austin, Texas, on December 3, 1981.

Doc. No. 818825      Reagan V. Brown  
Commissioner  
Texas Department of Agriculture

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 475-6346.

## Alcohol Fuels and Fuel Alcohol Equipment

The Texas Department of Agriculture proposes amendments to §15.122 concerning alcohol fuels and fuel alcohol equipment.

The department proposes amendments to §15.122 in response to comments relating to this section received by the department during its original adoption process. These amendments were not added to the section in its adopted form because, in the determination of the department, the amendments represented substantive changes to the section, as proposed, and thus, pursuant to the provisions of the Administrative Procedure and Texas Register Act, required a period for public comment thereon.

Section 15.122 was originally adopted under the authority of Senate Bill 228, 67th Legislature, which directed the commissioner of agriculture, Texas Department of Agriculture, to develop and by rule adopt procedures for the registration of fuel alcohol equipment. It was the aim of the department, in promulgating §15.122, to protect consumers of alcohol fuel distillation equipment by requiring manufacturers of such equipment to enroll as a matter of public record, vital information relating to the equipment with the department, through the registration process. The object of the department in proposing amendments thereto is to improve upon this registration process.

The proposed amendments will add to the material required to be submitted in an application for registration of fuel alcohol distillation equipment. A summary of the proposed amendments follows.

Section 15.122(a)(2)(A) has been amended to require a registrant to specify the energy requirements of the distillation equipment per gallon of alcohol fuel produced. The energy requirement must be stated in relation to the specific recipe or process upon which it is based.

Section 15.122(a)(4)(E) has been amended to require a registrant to list specifically the elements of the costs of production of the distillation equipment.

Section 15.122(a)(4) has been amended to require a registrant to specify any claims made to the public or potential buyers regarding the quantity and/or value of any production by products produced by the distillation equipment.

It is hoped that the effect of the proposed amendments will be to assist consumers in making an informed market decision when purchasing alcohol distillation equipment, by enrolling vital information relating to such equipment and its manufacturer as a matter of public record through the



registration process. In addition, increased registration requirements should deter those fraudulent practices relating to fuel alcohol equipment that have been experienced in other states, and give the commissioner the ability to monitor the nature and quality of such equipment being sold within the boundaries of this state.

William C. Neiser, Fiscal Services 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 governments as a result of enforcing or administering the rule.

Bill Quicksall, Consumer Services Division director, 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 increased consumer protection for fuel alcohol equipment purchasers; stimulated development of the fuel alcohol industry in this state; and increased availability of alcohol fuels to consumers in this state.

(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 Bill Quicksall, Consumer Services Division director, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. All comments should be in writing and clearly identify the party or parties wishing the comment to be registered with the department. Comments should be submitted no later than 30 days after publication in the *Texas Register*.

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

Steve Haley  
December 3, 1981

The amendments are proposed 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.

*§15.122. 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) (No change.)
- (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, **stated in a manner which specifies the energy requirements (MCF natural gas, gallons LPG or diesel, pound coal or wood, etc.) of the equipment per gallon of alcohol produced (if based on a specific recipe or process, this should be specified).**
  - (B)-(K) (No change.)
- (3) (No change.)
- (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

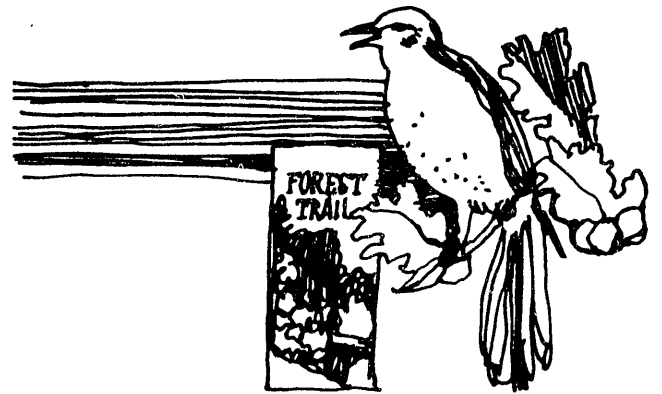
quality and quantity of alcohol the equipment is capable of producing including, but not limited to:

- (A)-(D) (No change.)
- (E) the costs of operation **including**; and]
  - (i) **feed stocks;**
  - (ii) **energy;**
  - (iii) **enzymes and chemicals; and**
  - (iv) **any credits associated with the use or sale of production by-products;**
- (F) (No change.)
- (G) **the quantity and/or value of production by-products.**
  - (5)-(7) (No change.)
  - (b)-(e) (No change.)

Issued in Austin, Texas, on December 3, 1981.

Doc. No. 818826      Reagan V. Brown  
                                 Commissioner  
                                 Texas Department of Agriculture

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 475-6346.



**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 to amend §9.21 (051.05.03.019), concerning applications for an exception to a safety rule. These amendments will allow the director to administratively grant or deny an exception, rather than conducting a formal hearing. However, the applicant may request a hearing should the exception be denied by the director.

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 fiscal implications as a result of enforcing or administering the rule.

- (A) The effect on state government will be an estimated reduction in cost of \$7,496 for 1982; \$8,620 for 1983; \$9,913 for 1984; \$11,400 for 1985; and \$13,110 for 1986. No additional cost or loss or increase in revenue are anticipated.
- (B) There will be no effect on local government.

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 involving the public in the decision-making process by requiring an applicant to notify owners and occupants of surrounding property of the application for exception and requesting their input by either waiver or objection to the proposed exception and dispensing with the necessity of hearings on uncontested applications, thus reducing the cost of obtaining an exception.

(B) The possible economic cost to individuals who are required to comply with the rule as proposed will be:

	1982	1983	1984	1985	1986
Cost per application	\$170	\$196	\$225	\$259	\$298
Cost per hearing (if required)	\$565	\$650	\$747	\$859	\$988

Comments on the proposal may be submitted to Hugh F. Keepers, Liquefied Petroleum-Gas Division director, 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 Lillie  
December 4, 1981

The amendments are 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 protect or tend to protect the health, safety, and welfare of the general public.

**§9.21 (051.05.03 019) Application for an Exception to a Safety Rule [Rules].**

(a) Filing [the application for exception]. Any **LP-gas licensee** [licensed LP-gas dealership] may apply for an exception to **the provisions of this chapter** [Liquefied Petroleum-Gas Docket 1] by filing an application for exception with the Liquefied Petroleum-Gas Division.

(b) Form [of application]. The application or pleading must be typewritten on paper not to exceed 8 1/2 by 14 inches and have an inside margin of at least one inch. Any annexed exhibits must be folded to the same size as the pleading itself. The content must be double spaced and appear on one side of the paper only.

(c) Content [of application]. **The application shall contain:**

(1) A [The application shall make] reference, by section number, to the applicable **section** [docket provision] which serves as the general rule.

(2) A **statement of** [The application shall state] the type of relief desired; i.e., the exception applied for and those details which may be helpful in comprehending the exact nature of the exception.

(3) A [The application shall contain a] concise statement of facts which support the applicant's case for **the** exception; e.g. the need for **the** [such] exception and the reason **for it** [or reasons for such need], the safety aspects of the exception, and the social and/or economic impact of **the** [such] exception.

(4) A [The application shall contain a] description of the acreage **and/or address** upon which the exception, if granted, will be located should its location be stationary.[.]

**The description** [which] shall identify the site sufficiently to permit determination of property boundaries, [and shall further] state the ownership of **the** [such] land, and **state** under what legal authority the applicant, if not the owner, is permitted occupancy.

(5) The [application shall contain the] name, business address, and telephone number of the applicant and of his authorized agent, if any.

(6) **An original signature**, [The original application shall be signed] in ink, by the party filing **the application** [same] or by his authorized representative.

(7) **A list of the names and addresses of all interested parties, as defined in subsection (d) of this section.**

(d) **Notice.**

(1) **The applicant shall mail a copy of the application to all interested parties on the same date on which the application is filed with or sent to the commission.**

(2) **In the case of an exception requested on a stationary site, interested parties to whom the applicant must give notice shall include, but not be limited to:**

(A) **persons and businesses owning or occupying property adjacent to the site;**

(B) **the city council, if the site is within municipal limits; and**

(C) **the county commission, if the site is not within any municipal limits.**

(3) **In the case of an exception requested on a non-stationary site, interested parties to whom the applicant must give notice shall include, but not be limited to:**

(A) **the Texas Department of Highways and Public Transportation;**

(B) **the Texas Department of Public Safety; and**

(C) **all processed gas loading and unloading facilities served by applicant.**

(4) **With the written consent of the director, any requirement in this subsection may be modified to prevent its imposition from being unduly burdensome. The director may require an applicant to give notice to persons in addition to those listed in paragraphs (2) and (3) of this subsection.**

(e)[(d)] Division review **The division director or his delegate shall review the application when it is complete. If the commission has received waivers from all interested parties as defined in subsection (d) of this section, the director may grant administratively the exception if it will neither imperil nor tend to imperil the health, welfare, or safety of the general public. If the director declines administratively to grant the exception, he shall notify the applicant of the reasons and of any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application, or may request a hearing on the matter.** [The application will be reviewed for sufficiency under these rules. If it does not comply substantially therewith, it shall be returned to the applicant with a statement of the reasons for rejection. Thereupon, the applicant may file an amended application. When an application is approved as sufficient, the division shall:

[(1) docket the cause for exception;

[(2) assign a cause number; and

[(3) prepare a notice of hearing which shall be delivered to the applicant together with a copy of the approved application at such a time as will permit the applicant

to give 10 days' notice prior to the date of hearing to interested persons in the cause.]

(e) **Division Review.**[Notice.] *The division director or his delegate shall review the application when it is complete. If the commission has received waivers from all interested parties as defined in subsection (d) of this section, the director may grant administratively the exception if it will neither imperil nor tend to imperil the health, welfare, or safety of the general public. If the director declines administratively to grant the exception, he shall notify the applicant of the reasons and of any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application, or may request a hearing on the matter.*

[(1) By the applicant.

[(A) Copies of both the application and the notice of hearing must be served upon all persons and/or business entities that are owners and/or occupants of property adjacent to the site where the proposed exception will be located, if such location is stationary, and all other interested persons or business entities, such as, but not limited to, the city council where exception will be sited at a stationary location within municipality limits or the county commission where exception will be sited at a stationary location with a rural area.

[(B) The applicant shall mail copies of the application and of the notice of hearing by certified mail to all interested parties, return receipt requested, at such time that interested parties shall receive copies at least 10 days prior to the date of hearing, and shall forward to the LP-Gas Division the certificates of receipt attached to a written affidavit stating that, to the best of the applicant's knowledge, all interested persons have been notified as required herein within the time structures of the section. If in fact all interested persons have not been notified, the reason for such failure to notify shall be stated in the affidavit and the name(s) and last known address(es) of such person(s) shall be stated if known. The affidavit must be signed by the applicant or his authorized representative.]

[(2) By the division. A copy of the notice shall be attached to the application and posted in a conspicuous place in the division's office in Austin, Texas, not less than 10 days prior to the date of hearing.]

(f) **Hearings.**

(1) *When held. A hearing will be held when the commission does not receive waivers from all interested parties, or when the applicant requests one following an administrative denial.*

(2) **Notice.**

(A) *The division shall prepare a notice of hearing which shall be delivered to the applicant at such a time as will permit the applicant to give 10 days notice prior to the date of hearing to interested persons in the cause. A copy of the notice attached to the application shall be posted in a conspicuous place in the division's office in Austin, Texas, not less than 10 days prior to the date of hearing.*

(B) *The applicant shall mail copies of the notice of hearing by certified mail to all interested parties, return receipt requested, at such time that interested parties shall receive copies at least 10 days prior to the date of hearing, and shall forward to the LP-Gas Division:*

(i) *The certified mail receipts; and*

(ii) *An affidavit stating that, to the best of the applicant's knowledge, all interested persons have been*

*notified as required in this subparagraph. If all interested persons have not been notified, the reason for such failure to notify shall be stated in the affidavit and the name(s) and last known address(es) of such person(s) shall be stated. The affidavit must be signed by the applicant or his authorized representative.*

(3) **Hearing procedure.** *Hearings will be held in accordance with the requirements of the administrative procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the general rules of practice and procedure of the Railroad Commission of Texas.*

(g)[(f)] **Penalties.** *Intentional misinformation submitted by an applicant or the authorized agent of such applicant shall be punishable as set out in §91.143, Texas Natural Resources Code, and shall be grounds for dismissing the application with prejudice [and cause].*

(h)[(g)] **Finding requirement.** *After hearing, exceptions to **this chapter** may [Liquefied Petroleum-Gas Docket No. 1 shall] be granted by the commission for good cause when based on a determination that the grant of **the** [such] exception will neither imperil **nor** [or] tend to imperil the health, safety, or welfare of the general public.*

(i) [(h)] **Temporary exception.** *For good cause shown, the director of the LP-Gas Division may grant a temporary exception, not to exceed 30 days, to the examination requirements for representatives and operations supervisors. Good cause shall include, but not be limited to, the death of a sole proprietor or partner, or severe economic hardship. An applicant for a temporary exception must agree to comply with all applicable safety requirements and furnish the director with evidence that granting the exception will not create a safety hazard or endanger the public.*

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818887      Hugh F. Keepers  
Director  
Liquefied Petroleum-Gas Division  
Railroad Commission of Texas

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 445-1186.

## TITLE 22. EXAMINING BOARDS

### Part XV. State Board of Pharmacy

#### Chapter 281. General Provisions

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

The State Board of Pharmacy proposes amendments to §§281.2, 281.4, 281.28, 281.30, 281.32, 281.36, 281.37, 281.41, 281.48-281.51, 281.53, 281.59, 281.68, 281.69, 281.72, and new §281.54 and §281.55. The additions and amendments concern the just, fair, and equitable determination of any matter within the jurisdiction of the board. To the end that this objective may be attained with as great expedition and at the least expense possible to the parties and to the state, the provisions of this chapter shall be given a liberal construction. The provisions of this chapter govern the procedure for the institution, conduct, and determination of all proceedings

before the board. In addition, the State Board of Pharmacy simultaneously adopts emergency action on these rules.

Fred S. Brinkley, Jr., R.Ph., executive director-secretary, 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) The effect on state government will be an estimated reduction in cost of \$60 for each year during years 1982 through 1986. No additional cost, or loss or increase in revenue is anticipated.

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

The executive director-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 will be establishment of procedures for the proper institution, conduct, and determination of all proceedings and matters within the jurisdiction of the board.

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

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., R.Ph., State Board of Pharmacy, 211 East Seventh, Suite 1121, Austin, Texas 78701.

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

Hector DeLeon  
December 1, 1981

The amendments and new sections are proposed under House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981, §16 and §27, which provides the State Board of Pharmacy with the authority to adopt rules for the proper administration and enforcement of this Act, consistent with this Act. Section 27 states that unless otherwise provided, disciplinary action taken by the board under §26 of this Act is governed by the Administrative Procedure and Texas Register Act and the rules of practice and procedure before the board.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818769 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 478-9827.

## Chapter 291. Pharmacies

### Nuclear Pharmacy (Class B)

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

The State Board of Pharmacy proposes new §§291.51-291.54 concerning the practice of nuclear pharmacy (Class B Pharmacy). These rules establish the standards that nuclear pharmacy and its employees or personnel involved in the practice of nuclear pharmacy must meet to qualify for licensing or relicensing as a nuclear pharmacy. In addition, the

State Board of Pharmacy simultaneously adopts emergency action on these rules.

Fred S. Brinkley, Jr., R.Ph., executive director-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 director-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 will be the regulation and control of nuclear pharmacy to protect the public health, safety, and welfare.

(B) The economic cost to individuals who are required to comply with the rule as proposed will be a current license fee of \$50 for each year during years 1982 through 1986.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., R.Ph., State Board of Pharmacy, 211 East Seventh, Suite 1121, Austin, Texas 78701.

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

Hector DeLeon  
December 1, 1981

The new sections are proposed under House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981, §§5. 17, and 30, which provides the State Board of Pharmacy with the authority to govern the practice of nuclear pharmacies and nuclear pharmacists and the standards that each nuclear pharmacy and its employees or personnel involved in the practice of nuclear pharmacy must meet to qualify for licensing or relicensing as a nuclear pharmacy.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818770 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 478-9827.

### Institutional Pharmacy (Class C)

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

The State Board of Pharmacy proposes new §§291.71-291.75 concerning the practice of institutional pharmacy (Class C Pharmacy). These rules provide standards in the conduct, practice activities, and operation of a pharmacy located in a hospital or other in-patient facility that is licensed under the Texas Hospital Licensing Law (Texas Civil Statutes, Article 4437F) or a pharmacy located in a hospital maintained or operated by the state. In addition, the State Board of Pharmacy simultaneously adopts emergency action on these rules.

Fred S. Brinkley, Jr., R.Ph., executive director-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 director-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 will be the regulation and control of institutional pharmacy to protect the public health, safety, and welfare.

(B) The economic cost to individuals who are required to comply with the rule as proposed will be a current license fee of \$50 for each year during years 1982 through 1986.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., R.Ph., State Board of Pharmacy, 211 East Seventh, Suite 1121, Austin, Texas 78701.

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

Hector DeLeon  
December 1, 1981

The new sections are proposed under House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981, §§5, 17, 29, and 30, which provides the State Board of Pharmacy with the authority to govern the practice of institutional pharmacies and institutional pharmacists and the standards that each institutional pharmacy and its employees or personnel involved in the practice of institutional pharmacy must meet to qualify for licensing or relicensing as an institutional pharmacy.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818771 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 478-9827.

### Clinic Pharmacy (Class D)

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

The State Board of Pharmacy proposes new §§291.91-291.97 concerning the practice of clinic pharmacy (Class D Pharmacy). These rules establish standards that each clinic pharmacy and its employees or personnel must meet to qualify for licensing or relicensing as a clinic pharmacy. In addition, the State Board of Pharmacy simultaneously adopts emergency action on these rules.

Fred S. Brinkley, Jr., R.Ph., executive director-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 director-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 will be the regulation and control of clinic pharmacy to protect the public health, safety, and welfare.

(B) The economic cost to individuals who are required to comply with the rule as proposed will be a current license fee of \$50 for each year during years 1982 through 1986.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., R.Ph., State Board of Pharmacy, 211 East Seventh, Suite 1121, Austin, Texas 78701.

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

Hector DeLeon  
December 1, 1981

The new sections are proposed under House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981, §§5, 17, 29, and 30, which provides the State Board of Pharmacy with the authority to govern the practice of clinic pharmacies and clinic pharmacists and the standards that each clinic pharmacy and its employees or personnel involved in the practice of clinic pharmacy must meet to qualify for licensing or relicensing as a clinic pharmacy.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818772 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 478-9827.

### Chapter 309. Generic Substitution

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

The State Board of Pharmacy proposes new §§309.1-309.8 concerning generic substitution. These rules establish standards governing the substitution of a lower-priced generically equivalent drug product for certain brand name drug products. In addition, the State Board of Pharmacy simultaneously adopts emergency action on these rules.

Fred S. Brinkley, Jr., R.Ph., executive director-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 director-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 will be a savings to consumers by allowing the substitution of lower-priced generically equivalent drug products for certain brand name drug products and for pharmacies and pharmacists to pass on the net benefit of the lower costs of the generically equivalent drug product to the purchaser.

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

Comments on the proposal may be submitted to Fred S.

Brinkley, Jr., R.Ph., State Board of Pharmacy, 211 East Seventh, Suite 1121, Austin, Texas 78701.

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

Hector DeLeon  
December 1, 1981

The new sections are proposed under House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981, §40, which provides the State Board of Pharmacy with the authority to govern the substitution of lower-priced generically equivalent drug products for certain brand name drug products.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818773 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
State Board of Pharmacy

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 478-9827.

## Chapter 311. Code of Conduct

The State Board of Pharmacy proposes new §311.1 concerning complaints alleging violations of the State Board of Pharmacy Code of Conduct. This rule will establish procedures to regulate the conduct of board employees responsible for inspections and surveys of pharmacies.

Fred S. Brinkley, Jr., R.Ph., executive director-secretary 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.

The executive director-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 the establishment of standards and procedures to regulate the conduct of board employees responsible for inspections and surveys of pharmacies, and procedures for receiving and investigating any complaints alleging code violations.

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

Comments on the proposal may be submitted to Fred S. Brinkley, Jr., R.Ph., executive director-secretary, State Board of Pharmacy, 211 East Seventh, Suite 1121, Austin, Texas 78701.

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

Hector DeLeon  
December 1, 1981

The new section is proposed under House Bill 1628, Acts of the 67th Legislature, Regular Session, 1981, §41, which provides the Texas State Board of Pharmacy with the authority to adopt a code of professional responsibility to regulate the

conduct of board employees responsible for inspections and surveys of pharmacies.

### §311.1. Procedures.

(a) Complaints alleging violations of the board Code of Conduct by a board employee shall be submitted in writing to the executive director. If a board member is notified of a complaint against an employee, the board member shall direct the complainant to file a written complaint with the executive director.

(b) The executive director shall notify the employee's supervisor that a complaint has been filed against the employee. The supervisor shall provide the employee with written notice that a complaint has been filed, which contains the date the complaint was filed and a description of the complaint. An anonymous complaint will not be considered a valid complaint for the purposes of this section.

(c) In order for a complaint concerning violations of the Code of Conduct to be considered valid, such complaint shall contain the following information:

- (1) the date the complaint is filed;
- (2) the date the violation occurred;
- (3) the complainant's name, address, and telephone number;
- (4) the name of the board employee;
- (5) detailed description of the alleged violation;
- (6) any written documentation or name of witnesses to the alleged violation; and
- (7) the signature of the complainant.

(d) The executive director shall acknowledge receipt of the complaint in writing to the complainant. Such acknowledgement may include a request for additional information concerning the complaint or questions about the occurrence or statements

(e) In reviewing the complaint, the executive director may contact the complainant if necessary and shall conduct a personal interview with the employee and give the employee ample opportunity to present evidence to support his or her explanation of the circumstances surrounding the complaint. The employee shall have the right to submit any relevant records, materials, comments, and documents to the executive director for review. Additionally, the employee has the right to review all documents and records involving the complaint. The employee may request the executive director to allow the board's legal counsel to advise the employee of his or her rights.

(f) Upon completing the review of the complaint and relevant statements or documents, the executive director shall render a decision concerning the complaint within 10 days and provide written notification of his decision to the employee, his or her supervisor, and board members within five days of rendering his decision. The executive director shall notify the complainant of the disposition of the complaint. If the disposition of the complaint affects the employee's employment status, the employee has the right to exercise the board's grievance procedure.

(g) Complaints alleging violations of the board Code of Conduct by the executive director-secretary shall be directed to the president of the board. The procedures set out in this section shall be followed in disposing of such complaints, provided however, that for the purposes of this subsection where the term "executive director-secretary" appears in the pro-

cedures, set out in this section, the term "president of the board" shall be substituted therefore.

Issued in Austin, Texas, on December 1, 1981.

Doc. No. 818755 Fred S. Brinkley, Jr., R.Ph.  
Executive Director-Secretary,  
Texas State Board of Pharmacy

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 476-9827.

## Part XVIII. Texas State Board of Podiatry Examiners

### Chapter 371. Examinations

The Texas State Board of Podiatry Examiners proposes amendments to §371.2 and §371.10 (396.15.00.002 and .010), concerning the establishment of procedures on applications for the examination to qualify for a license to practice podiatry.

Joe C. Littrell, executive 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.

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

(A) There will be no public benefits as a result of enforcing the rule as proposed.

(B) The possible economic cost to individuals who are required to comply with the rule as proposed will be a \$100 examination fee for 1982. This fee may vary during the next five years if the applicable rule is amended. There will be an economic cost of \$100 for each subsequent re-examination in 1982, although such cost may vary during the next five years if the rule is amended.

Comments on the proposal may be submitted to Roxanne Caperton, assistant attorney general, P.O. Box 12548, 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.

Roxanne Caperton  
December 4, 1981

The amendments are proposed under Texas Civil Statutes, Articles 4569(b), (f), and (g), which provide the Texas State Board of Podiatry Examiners with the authority to adopt and enforce rules of procedure for administering Article 4569. Article 4569(f) authorizes the amendment to §371.2(f) (396.15.00.002(f)), since it provides that all applicants shall pay to the secretary-treasurer of the board an examination fee at least 15 days before the date of the regular examinations. Article 4569(g) authorizes the amendment to §371.10 (396.15.00.010), since it provides that applicants who fail to satisfactorily pass an examination and are refused a license for such failure shall be required to pay the regular examination fee for all subsequent re-examinations. Article 4569(b) authorizes the amendment to §371.2(d) (396.15.00.002(d)).

§371.2 (396.15.00.002). *Application for License.*

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

(d) The completed application *and* required supporting materials [and examination fee] must be received by the secretary-treasurer no later than 30 [60] days before the first day of the examination. [Under extenuating circumstances.] The materials supporting the application, such as podiatry college transcripts of recent graduates, shall [may] be received by the secretary-treasurer, [at his discretion, later than 60 days] before the examination.

(e) (No change.)

(f) The full examination fee is \$100 [\$40]. Only certified check, *postal service* [post office] money order, or Express Money shall be accepted. No examination fee will be refunded. The examination fee must be received by the secretary-treasurer *at least 15 days before the dates of the regular examinations* [with the completed application].

§371.10 (396.15.00.010). *Re-Examinations.*

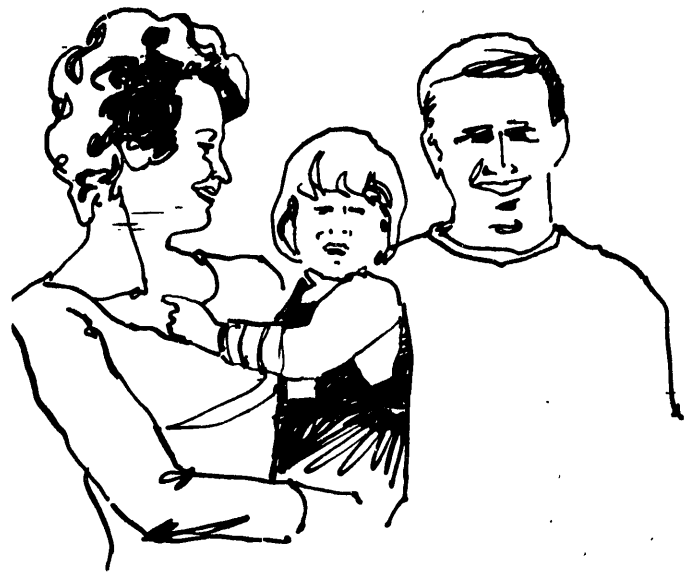
(a) All examinees who fail to satisfactorily pass an examination *and are refused a license for such failure are required to pay the regular examination fee for all subsequent re-examinations* [shall be entitled to one re-examination without payment of an additional examination fee, provided the re-examination is taken within 18 months after date of original examination].

(b) (No change.)

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818908 Roxanne Caperton, Assistant Attorney  
General and Acting Liaison Officer  
Texas State Board of Podiatry Examiners

Proposed Date of Adoption: January 11, 1982  
For further information, please call (512) 475-3131.



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part VII. Texas Water Well Drillers Board

#### Chapter 231. Substantive Rules

##### Introductory Provisions

The Texas Water Well Drillers Board proposes to amend §231.2 (139.01.10.002) concerning the definition of "well logs." The new language appears on the second to the last, and the last lines of the definition. Namely, the reference to the Water Well Drillers Board has been shortened to the "board," and the rule now specifies that well logs must be kept on forms prescribed by the board.

Barbara Speer, chief, Fiscal Services Section, 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. Speer 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 that the information supplied to the board and to the department pursuant to the Water Well Drillers Act will be pertinent information regarding water formations throughout the state.

(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 M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The amendment is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.2 (139.01.10.002). Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

**Well log**—A log accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the [Water Well Drillers] board *on forms prescribed by the board.*

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818870 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Water Well Drillers Board, fourth floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Texas Water Well Drillers Board proposes to repeal §231.5 (139.01.10.005), concerning procedures not otherwise provided for, in order to adopt under a different number, (§231.10) simultaneously with this repeal. That rule delineates the principles to which the board will adhere even when its rules do not address the specific situation presented.

Barbara Speer, chief, Fiscal Services Section, 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.

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

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

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

Comments on the proposal may be submitted to M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The repeal is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.5 (139.01.10.005). Procedures Not Otherwise Provided For.**

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818871 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

The Texas Water Well Drillers Board proposes new §231.5 concerning promulgation of board rules. The rule states the requirements of §7 of the Water Well Drillers Act which apply when the board proposed to adopt any substantive rule or amendment. The section also cross references the board's procedures when promulgating rules with the requirements of the Texas Administrative Procedure and Texas Register Act.

Barbara Speer, chief, Fiscal Services Section, 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.



Ms. Speer 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 greater notice and thereby, public input into the rules and regulations of the Water Well Drillers Board.

(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 M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The new section is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.5. Promulgation of Board Rules.**

(a) The board shall mail a copy of a proposed substantive rule or amendment together with an informative summary of the rule or amendment to each person licensed under the Texas Water Well Drillers Act, at least 20 days prior to the proposed adoption date of the proposed rule or amendment.

(b) The board shall propose and adopt all rules in accordance with the Administrative Procedure and Texas Register Act, as amended by Texas Civil Statutes, Article 6252-13a.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818872 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Water Well Drillers Board, fourth floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or in the Texas Register Division office, 503E, Sam Houston Building, Austin.)

The Texas Water Well Drillers Board proposes to repeal §231.8 (130.01.10.008) concerning the amending of rules as the provision is no longer necessary.

Barbara Speer, chief, Fiscal Services Section, 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.

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

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

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

Comments on the proposal may be submitted to M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The repeal is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.8 (139.01.10.008). Amending of Rules.**

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818873 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

The Texas Water Well Drillers Board proposes new §231.10 concerning procedures not otherwise provided for. This section is identical to §231.5 (139.01.10.005) which the board proposes to repeal simultaneously with this proposal. The reasons for re-enactment of this rule are to allow a change in the number designated for this provision, to provide gapping in the numbering of the provisions within the subchapter, and to maintain the rule which spells out the alternatives available to the board when its rules do not specifically address a particular problem.

Barbara Speer, chief, Fiscal Services Section, 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 rule.

Ms. Speer 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 the knowledge that the board will be guided by the principles stated in its rules even in situations which have not been specifically addressed.

(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 M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The new section is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and en-

force all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.10. Procedures Not Otherwise Provided For.** If, in connection with any hearing, the board determines that there are no statutes or other applicable rules resolving particular procedural questions then before the board, the board will direct the parties to follow procedures consistent with the purpose of these rules.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818874      M. Reginald Arnold II  
                             General Counsel  
                             Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
 For further information, please call (512) 475-4338.

The Texas Water Well Drillers Board proposes new §231.15 concerning board meetings. With the exception of subsection (k), this rule is identical to §231.21 (139.01.20.001) entitled Agency Meetings, which the board proposed to repeal simultaneously with this proposal. The reasons for re-enactment of this rule are to allow a change in the number designated for this provision, to provide gapping in the numbering of the provisions within this subchapter, to place this rule in the proper subchapters, and to maintain a rule which prescribes the administration of the board, including the number of meetings it shall convene in a 12-month period, the time for elections of officers, the procedures for calling special meetings, and the procedures for filling vacancies on the board.

Barbara Speer, chief, Fiscal Services Section, 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. Speer 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 clear understanding of the mechanics and administration of the Water Well Drillers Board.

(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 M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
 December 4, 1981

The new sections are proposed under Texas Civil Statutes, Article 7621e §7, which provides the Texas Water Well Drillers with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.15. Board Meetings.**

(a) The board shall hold six regular meetings annually; which shall generally be held on the first Tuesday of the

following designated months: January, March, May, July, September, and November. Notice of the meetings shall be given at least 10 days prior to said meetings.

(b) Officers of the board shall be elected at the September meeting of each calendar year, and at such meeting the board shall make such changes or additions in the permanent organization as it deems necessary.

(c) Special meetings of the board may be called by the chairman at any time upon 72 hours' notice given to each member of the board. Said notices shall be given by telegraph to the members at their official residences and also by transmitting a letter by United States mail, verifying the notice included in the telegram. The time herein specified shall be considered running from the time the telegram is filed in the telegraph office. Said special meetings may be held at any place within the State of Texas as designated by the chairman.

(d) All notices of regular or special meetings of the board shall be directed to the official residence of the members of the board as they are recorded on the official records of the board.

(e) The chairman shall preside at all meetings of the board, and shall at any and all hearings of the board decide all questions of evidence and procedure, unless an objection is made thereto by a majority of the members of the board present. The chairman shall not vote except when there shall be a tie vote.

(f) In the absence of the chairman, or vice chairman of the board, the members present shall choose, from their number, one member to act as chairman for the period during which the permanent chairman is absent.

(g) The permanent or temporary chairman may appoint such members of the board as are present to act for any other officer of the board who is not present.

(h) In the case of the vacancy of any officer of the board by reason of death, resignation, disqualification, or otherwise, the remaining members of the board shall, at the next regular or special meeting, elect a successor to serve for the unexpired term.

(i) In the event of a vacancy upon the board by reason of death, resignation, disqualification, or otherwise, the chairman or vice chairman, upon being advised of the circumstances, shall cause a notice of the vacancy to be directed to the governor of the State of Texas, requesting the governor to appoint a new board member to fill the vacancy.

(j) Any member of the board may waive notice required to be given under these rules by filing a written waiver with the secretary of the board.

(k) A majority of the board is a quorum for conducting business.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818875      M. Reginald Arnold II  
                             General Counsel  
                             Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
 For further information, please call (512) 475-4338.

## Agency Meetings

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Water Well Drillers Board, fourth

floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or in the Texas Register Division office, 503E, Sam Houston Building, Austin.)

The Texas Water Well Drillers Board proposes to repeal §231.21 (139.01.20.001) concerning agency meetings, in order to adopt under a different number, §231.15, simultaneously with this repeal, a rule which delineates the internal administration of the board.

Barbara Speer, chief, Fiscal Services Section, 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.

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

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

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

Comments on the proposal may be submitted to M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The repeal is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

§231.21 (139.01.20.001). *Agency Meetings.*

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818876 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

## Licenses

(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 Water Well Drillers Board, fourth floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or in the Texas Register Division office, 503E, Sam Houston Building, Austin.)

The Texas Water Well Drillers Board proposes to repeal §§231.32-231.38 (139.01.30.002-.008) concerning licenses, since it proposes to adopt, simultaneously with this repeal, rules which more clearly delineate the requirements for the issuance of licenses. The new rules and amendments will be entitled Licensing Procedures, and numbered §§231.31-231.53.

Barbara Speer, chief, Fiscal Services Section, 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.

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

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

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

Comments on the proposal may be submitted to M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The repeal is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

§231.32 (139.01.30.002). *Application.*  
§231.33 (139.01.30.003). *Examination Required.*  
§231.34 (139.01.30.004). *Qualifying for Licensing.*  
§231.35 (139.01.30.005). *Disposition of Application.*  
§231.36 (139.01.30.006). *Endorsement.*  
§231.37 (139.01.30.007). *Expiration upon Application for  
Renewal of Licenses.*  
§231.38 (139.01.30.008). *Renewal of Licenses.*

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818877 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

## Licensing Procedures

The Texas Water Well Drillers Board proposes to amend §231.31 and proposes new §§231.33, 231.35, 231.37, 231.39, 231.41, 231.43, 231.45, 231.49, 231.51, and 231.53 concerning licensing procedures. The first two sections within this subchapter restate the Water Well Drillers Act's requirements for licensing and the exceptions to the licensing requirements, respectively. Section 231.35 delineates and summarizes all of the requirements for the issuance of a license. The subsequent sections describe in greater detail the components of those requirements, such as how to make application for a license and what an application must include, how to establish Texas residency, the amount of the examination fee, the board's procedure and requirements for certifying an applicant, the mechanics of preparing examinations and the availability of examinations, the amount of the license fee and the procedure for obtaining a new license, and the procedure and fee associated with renewing a license.

Barbara Speer, chief, Fiscal Services Section, 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. Speer 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 better understanding of the board's requirements of issuing a license. With a better understanding, a potential applicant can save time and properly prepare an application and obtain a license with little, if any, duplication of his efforts.

(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 M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The new sections and amendments are proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.31. Licensed Required.** It shall be unlawful for any person to act as, or to offer to perform services as, a water well driller without first obtaining a license pursuant to *the Texas Water Well Drillers Act* and these rules.

**§231.33. Exceptions.**

(a) A person who drills, bores, cores, or constructs a water well on his property for his own use.

(b) A person who assists in the construction of a water well under the direct supervision of a licensed water well driller and is not primarily responsible for the drilling operation.

**§231.35. Requirements for Issuance of a License.**

(a) An application must be submitted by each person desiring to obtain a water well driller's license.

(b) Each applicant shall have been a resident of the state for not less than 90 days consecutive prior to making application for a license.

(c) Each applicant must pay the required examination fee to the department upon submission of his application.

(d) Each applicant's qualifications must be certified by the board before he may take the examination.

(e) Subsequent to certification and within 90 days thereof, each applicant must successfully pass an examination prepared by the board.

(f) Subsequent to passing the examination, an applicant must submit the required license fee to the department.

**§231.37. Applications.**

(a) Applications shall be made on forms which may be obtained from the department.

(b) Applications shall include:

(1) the applicant's name, business address, and permanent mailing address;

(2) a sworn and satisfactory letter of reference from

a licensed water well driller with at least two years licensed experience in water well drilling;

(3) satisfactory letters of reference from:

(A) the applicant's banker, and

(B) two satisfied water well drilling customers who are not related within the second degree of consanguinity to the applicant;

(4) the applicant's sworn statement that he has been a resident of Texas for 90 consecutive days immediately prior to making his application;

(5) the applicant's sworn statement that he has drilled water wells under the supervision of a driller licensed under the Texas Water Well Drillers Act for two years or that he has other comparable water well drilling experience; and

(6) the applicant's endorsement of the board's standards of conduct.

(c) The application must be received by the department 14 days prior to the board's next meeting.

(d) An application shall be null and void, and the examination fee shall be forfeited, if the examination is not taken within 90 days after the board's certification of the application.

**§231.39. Establishing Texas Residency.**

(a) An applicant must provide a sworn statement indicating that he has been physically present in the State of Texas, with the intent of making Texas his permanent home, for at least 90 consecutive days prior to submitting his application for a license.

(b) If the board should deem it necessary, an applicant must provide tangible proof establishing his status as a Texas resident.

**§231.41. Examination Fee.**

(a) A \$25, nonrefundable examination fee must accompany each application.

(b) Each time an applicant applies to retake the board's examination, he must submit the examination fee.

**§231.43. Certification by the Board.**

(a) The board shall review and pass upon each applicant's qualifications.

(b) In assessing an applicant's qualifications, the board shall examine the letters of reference submitted, the applicant's experience and competence in water well drilling and related fields, his residency status, and any other relevant information which may be presented to the board.

**§231.45. Disposition of Application.** The executive director shall notify each applicant as to the disposition of his application 10 days after the issuance of a final decision by the board.

**§231.49. Examinations.**

(a) The board shall design written examinations in such a manner as to disqualify any person lacking in the necessary knowledge of drilling, completion, and plugging methods and techniques, and of groundwater formations to the extent that the performance by such person of services as a water well driller would create a serious risk of polluting fresh water.

(b) Each applicant shall have the right to have such examination given to him orally in lieu of in writing. To exercise this right, an applicant must submit a petition to the board, in writing, a month before a scheduled examination.

(c) Examinations shall be offered once a month by the

department at a time and place designated by the executive director and pursuant to rules promulgated by the Texas Water Development Board of the department.

(d) Additional examinations shall be offered if more than 10 applicants petition the board in writing.

(e) An applicant may take the examination only twice within any 12-month period.

**§231.51. Licenses.**

(a) Upon successfully completing an examination and upon the submission of a \$100 license fee to the department, the board shall cause to be issued to the applicant a water well driller's license.

(b) A license shall not be transferable or assignable.

(c) A duplicate license to replace a lost or destroyed license shall be issued by the department upon application thereof and the payment of a \$10 fee.

(d) All licenses issued shall expire on August 31 of each year.

**§231.53. Renewal of Licenses.**

(a) On or before the expiration date of the license, the licensee shall pay to the department a \$100 renewal fee and submit an application for renewal.

(b) If a person's license has been expired 90 days or less, the person may renew the license by paying to the department the renewal fee in addition to one-half the examination fee.

(c) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by applying all renewal fees which have accrued in addition to a fee that is equal to the examination fee.

(d) If a person's license has been expired for two years or more, the person may not renew the license; he may obtain a new license by submitting to re-examination and complying with all the other requirements and procedures for obtaining an original license.

(e) Applications for renewal shall be made according to department rules and on forms which may be obtained from the department.

(f) When a licensee has made timely and sufficient application for the renewal of a license, the existing license does not expire until action on the application has been finally determined by the board, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board order or a later date fixed by order of the reviewing court.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818878 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

## Revocation of Licenses

(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 Water Well Drillers Board, fourth floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or in the Texas Register Division office, 503E, Sam Houston Building, Austin.)

The Texas Water Well Drillers Board proposes to repeal §§231.51 and §231.52 (139.01.40.001 and .002) concerning

revocation of licenses, and proposes to adopt, simultaneously with this repeal, rules which more clearly delineate the board's procedures governing formal complaints against licensed drillers. The new rules will be entitled *Disposition of Violations*, and numbered §§231.131-231.137.

Barbara Speer, chief, Fiscal Services Section, 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.

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

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

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

Comments on the proposal may be submitted to M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The repeal is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

§231.51 (139.01.40.001). *Revocation of Licenses.*

§231.52 (139.01.40.002). *Procedure for Revocation or Suspension of License.*

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818880 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

## Duties of Licensed Water Well Drillers

(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 Water Well Drillers Board, fourth floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Texas Water Well Drillers Board proposes to repeal §§231.61-231.64 (139.01.50.001-.004) concerning duties of licensed water well drillers, in order to adopt simultaneously with this repeal, rules which more adequately explain the duties of licensed drillers. The new rules will be numbered §§231.71-231.77.

Barbara Speer, chief, Fiscal Services Section, 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.

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

(A) There are no public benefits anticipated.

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

Comments on the proposal may be submitted to M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The repeal is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

- §231.61 (139.01.50.001). *Marking Vehicles and Equipment.*
- §231.62 (139.01.50.002). *Well Logs.*
- §231.63 (139.01.50.003). *Plugging of Water Wells.*
- §231.64 (130.01.50.004). *Supervising Drillers.*

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818881 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

## Standards of Conduct

(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 Water Well Drillers Board, fourth floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Texas Water Well Drillers Board proposes to repeal §§231.71-231.76 (139.01.70.001-.006) concerning standards of conduct governing water well drillers in order to adopt simultaneously with this repeal, rules prescribing standards of conduct for licensed drillers. The new rules will be numbered §§231.91-231.111.

Barbara Speer, chief, Fiscal Services Section, 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.

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

(A) There are no public benefits anticipated.

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

Comments on the proposal may be submitted to M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The repeal is proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

- §231.71 (139.01.70.001). *Ethical Standards*
- §231.72 (139.01.70.002). *Intent.*
- §231.73 (139.01.70.003). *Offer To Perform Services.*
- §231.74 (130.01.70.004). *Representations.*
- §231.75 (139.01.70.005). *Unauthorized Practice.*
- §231.76 (139.01.70.006). *Adherence to Statutes and Codes.*

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818882 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.

The Texas Water Well Drillers Board proposes new §§231.71, 231.73, 231.75, and 231.77 concerning the duties of licensed water well drillers. This section, with the exception of §231.75 and §231.77, parallels §§231.61-231.64 which are presently the board's substantive rules and which the board proposes to repeal simultaneously with this proposal. The reason for re-enactment of these rules is to change the numbers designated for these provisions, to provide gapping in the numbering of the provisions within the subchapter, and to maintain a subchapter which summarizes, in one place, what the duties of a licensed driller are. These duties are provided for in various sections of the Water Well Drillers Act.

Section 231.75, which deals with plugging and completion of water wells, has been shortened to merely cross-reference the requirements of the Water Well Drillers Act and the Texas Department of Water Resources. Since the department has the jurisdiction over plugging completion, under §14 of the Water Well Drillers Act, to prescribe the standards and procedures for plugging and completion, the board thought it best to merely cross-reference the department's requirements and thereby avoid any conflict between its rules and the department's requirements on this subject.

Section 231.77, which prescribes the duties of supervising drillers, provides for the phasing out of the presently accepted form of supervision on and after July 1, 1982. It provides that on or after July 1, 1982, direct supervision shall mean that the licensed driller must be present at the well site at all times during all operations.

Barbara Speer, chief, Fiscal Services Section, has determined that for the first five-year period the rule will be in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule.

(A) The effect on state government will be an estimated increase in revenue for additional licensees of \$5,800 for each fiscal year during years 1982-1986. There will be no addition or reduction in cost.

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

Ms. Speer 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 rules as proposed will be a clear understanding of a licensed driller's responsibilities under the Water Well Drillers Act and the board's rules, avoidance of conflict between the Texas Department of Water Resources's plugging and completion requirements and the board's rules, and after July 1, 1982, greater accountability of licensed drillers, and therefore, better protection of the state's water resources since those properly trained in water well drilling will actually be present during all drilling operations.

(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 M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The new sections are proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Texas Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.71 Marking Vehicles and Equipment.** It is the duty of all licensed water well drillers to see that all water well rigs used by them or their employees in the water well drilling business are marked with legible and plainly visible identification numbers at all times.

(1) The identification number to be used on water well rigs shall be the license number of the water well driller responsible for the water well drilling operations.

(2) License numbers shall be printed upon each side of every water well rig in numerals of not less than two inches high and such numerals shall be in a color sufficiently different from the color of the vehicle or equipment so that the registration number shall be plainly legible.

(3) A driller shall have 30 days from the date a license is issued to him to see that all water well rigs used by him or his employees in the water well drilling business are marked as provided in paragraphs (1) and (2) of this section.

**§231.73. Well Logs.**

(a) Every licensed water well driller, deepening or otherwise altering a water well within this state shall make and keep, or cause to be made and kept, a legible and accurate well log on forms supplied by the department.

(b) Every licensed water well driller shall deliver or transmit a copy of the well log to the department by certified mail and a copy to the owner or other person having the well drilled, deepened, or otherwise altered by regular, first-class mail within 30 days from the completion or cessation of operations.

(c) Every licensed water well driller shall inform the owner or person having the water well drilled, deepened, or otherwise altered, that such person may submit a written request by certified mail to the department that the well log be kept confidential and exempt from disclosure as a public record.

**§231.75. Plugging and Completion of Water Wells.** Each licensed water well driller shall adhere to the department's rules and the Texas Water Well Drillers Act governing the plugging and completion of water wells.

**§231.77. Supervising Drillers.**

(a) Drillers who are not licensed under the Texas Water Well Drillers Act may drill under the direct supervision of a driller who is licensed under the Texas Water Well Drillers Act.

(1) Prior to July 1, 1982, the licensed driller shall be present at the well site at all times during all operations or, he may be represented by a trusted employee who is capable of immediate communication with the licensed driller at all times between his visits; provided that, the licensed driller visits the well site at least once each day of operation to direct the manner in which the drilling or completion work shall be conducted.

(2) On or after July 1, 1982, direct supervision shall mean that that licensed driller must be present at the well site at all times during operations.

(b) The supervising licensed driller shall bear the responsibility for compliance in all respects with the Texas Water Well Drillers Act, the board's rules, and the department's rules.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818883

M. Reginald Arnold II  
General Counsel

Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982

For further information, please call (512) 475-4338.

The Texas Water Well Drillers Board proposes new §§231.91, 231.93, 231.95, 231.97, 231.99 and 231.111, concerning standards of conduct for licensed water well drillers. These provisions are identical to the rules designated as §§231.71-231.76 (130.01.70.001-.006), entitled Standards of Conduct, in the board's present substantive rules. The board proposes to repeal §§231.71-231.76 simultaneously with the adoption of these new sections. The reasons for re-enactment of these rules are to change the numbers designated for these provisions, to provide gapping in the numbering of the provisions within the subchapter, and to maintain provisions prescribing the standards of conduct which apply to the licensed driller.

Barbara Speer, chief, Fiscal Services Section, 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. Speer 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 maintaining provisions which clearly prescribe the standards of conduct to which licensed water well drillers should adhere.

(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 M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The new sections are proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Texas Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.91. Ethical Standards.**

(a) The correct practice of water well drilling as a profession is essential for the protection and conservation of the groundwater of the state. The professional work related thereto has important effects on the welfare, property, economy, and security of the public; and the construction of water wells should be conducted by individuals with high moral and ethical standards. The state legislature has vested in the Texas Water Well Drillers Board the authority and duty to establish and enforce standards of professional conduct and ethics for practitioners of the water well drilling profession. These standards of conduct have been promulgated and adopted by the Texas Water Well Drillers Board to ensure compliance with and enforcement of the statutory charge to the board.

(b) Every applicant for a license under the Texas Water Well Drillers Act shall be fully informed and made aware of the obligation and responsibility inherent in the practice of drilling water wells as outlined by the standards of conduct. Each applicant or licensee shall endorse his or her subscription to the standards of conduct and thereby be deemed to have notice of the standards and be required to abide by the standards.

**§231.93. Intent.**

(a) These standards of conduct are calculated to prescribe responsibility and professional knowledge on the part of the water well driller and to aid in governing the water well drilling profession.

(b) These standards are binding on all licensees, but nothing contained in these standards shall be construed to supersede pertinent state statutes.

(c) These standards require that the board determine what actions constitute violations of the standards and institute appropriate disciplinary action which may lead to the suspension or revocation of a license in accordance with applicable state statutes.

**§231.95. Offer To Perform Services.**

(a) Competence in the performance of services by a licensee requires that the licensee's knowledge and skill encompass the necessary current knowledge of drilling, completion, and plugging techniques, and of the occurrence and availability of groundwater, to the extent that the performance of services by the driller will not create a risk of polluting fresh water. Therefore, licensees must maintain proficiency in the field of water well drilling.

(b) No licensee shall offer to perform services unless such services can be competently performed.

(c) A licensee shall accurately and truthfully represent to a prospective client his or her qualifications and the capabilities of his or her equipment to perform the services to be rendered.

(d) A licensee shall neither perform nor offer to perform services for which he or she is not qualified by experience or knowledge in any of the technical fields involved.

(e) A licensee shall not evade contractual responsibility.

(f) A licensee should, in contracting to drill a well for his client, specify either orally or in writing the approximate starting and completion dates; depth range(s); amount and type of material to be used; guarantees, if any; costs, method, and time of payment; as well as any other information that might help to prevent any possible misunderstanding between the driller and client following completion of the water well.

**§231.97. Representations.**

(a) Licensees shall not mislead others in any way regarding their personal qualifications or capabilities regarding the construction, altering, or plugging of a water well.

(b) A licensee shall not enter into a partnership or any agreement in which a person not legally qualified to perform the services to be rendered has control over the licensee's equipment and/or independent judgment as related to construction, alteration, or plugging of a water well.

(c) A licensee shall not indulge in publicity that is false, misleading, or deceptive.

(d) A licensee shall make known all adverse, or suspicions of adverse, conditions concerning the quantity or quality of groundwater in the area of the prospective client's interest. If there is any uncertainty regarding the quality of water in a newly constructed water well, the licensee shall recommend that the client have the suspected water analyzed.

**§231.99. Unauthorized Practice.**

(a) A licensee shall make known to the board any unauthorized practice of which the licensee has personal knowledge.

(b) A licensee shall not aid or abet an unlicensed person to unlawfully drill or offer to drill water wells for compensation.

(c) A licensee shall, upon request of the board or its authorized representatives, furnish any information the licensee might possess concerning any alleged violation of the Water Well Drillers Act or rules of the board.

**§231.111. Adherence to Statutes and Codes.**

(a) A licensee shall abide by, and conform to, all permitting laws within the state including any permits necessary for the drilling of a well.

(b) A licensee shall abide by, and conform to, the provisions of the Water Code and all local codes and ordinances.

(c) A licensee shall neither violate a rule of conduct nor engage in any conduct that adversely affects his or her fitness to practice as a water well contractor.

(d) A licensee shall strictly adhere to requirements of related sections of the statutes, the Water Code, and all local codes and ordinances in connection with all water well drilling services rendered.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818884 M. Reginald Arnold II  
General Counsel  
Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982  
For further information, please call (512) 475-4338.



The Texas Water Well Drillers Board proposes new §§231.131, 231.133, 231.135, and 231.137, concerning disposition of violations. The new sections prescribe the remedies available to the board when a complaint has been filed before the board against a licensed driller; state some of the grounds for disciplinary action; restate the requirements for notice to a driller accused of a violation (these requirements are prescribed by §8 of the Water Well Drillers Act and the Administrative Procedure and Texas Register Act); restate the procedure for appealing board action which is set forth in §9 of the Water Well Drillers Act; provide for reinstatement of licenses; and parallel §12 of the Water Well Drillers Act.

Barbara Speer, chief, Fiscal Services Section, 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. Speer 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 rules as proposed will be greater awareness of the remedies available to the board when a complaint is filed against a licensed driller before the board, and a better understanding by the driller of the procedure associated with formal hearings before the board.

(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 M. Arcelia Izquierdo, General Counsel's Office, P.O. Box 13087, Austin, Texas 78711, (512) 475-4338.

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

M. Reginald Arnold II  
December 4, 1981

The new sections are proposed under Texas Civil Statutes, Article 7621e, §7, which provides the Texas Water Well Drillers Board with the authority to adopt, prescribe, promulgate, and enforce all rules and regulations reasonably necessary to effectuate the provisions of the Water Well Drillers Act.

**§231.131. Disciplinary Action.**

(a) The board shall reprimand a licensee, suspend a license, place on probation a person whose license has been suspended, or revoke a license for a violation of the Texas Water Well Drillers Act or one of the board's rules.

(b) Grounds for disciplinary action shall include, but will not be limited to:

(1) intentionally misstating or misrepresenting a fact on an application, renewal application, well log, plugging report, or in connection with any other information or evidence furnished to the board in connection with official board matters;

(2) failing to keep and transmit well logs and plugging reports;

(3) failing to mark a water well rig;

(4) failing to advise a person for whom a well is being drilled, deepened, or otherwise altered that injurious water has been encountered, that this poses a potential pollution hazard, and that the well must be plugged or properly completed in accordance with the department's rules;

(5) failing to see that a well which has encountered undesirable water is plugged or properly completed in accordance with the department's rules;

(6) failing to provide direct supervision to an unlicensed driller whom he has agreed to supervise in accordance with the board's rules;

(7) aiding and abetting an unlicensed person to evade the provisions of the Texas Water Well Drillers Act, or knowingly combining or conspiring with an unlicensed person, or allowing his license to be used by an unlicensed person, or acting as an agent, partner, associate, or otherwise, of an unlicensed person with the intent to evade the provisions of the Texas Water Well Drillers Act or the board's rules.

(8) violating the board's standards of conduct;

(9) conducting himself as an incompetent driller; or

(10) failing in any other material respect to comply with the provisions of the Texas Water Well Drillers Act or the board's rules.

(c) Procedures relating to disciplinary action.

(1) Whosoever believes that a licensed driller has violated or is violating the Texas Water Well Drillers Act, the board's rules, or the department's rules shall file a signed written complaint with the board which briefly states:

(A) the licensed driller (respondent's) name, address, and, if known, the licensed driller's (respondent's) business name and address;

(B) the nature of the alleged violation;

(C) the approximate date on which the alleged violation took place; and

(D) the complainant's name and address.

(2) At least 10 days prior to the board meeting at which the board will review the complaint to determine whether or not grounds exist to set the complaint for a public disciplinary hearing, the licensed driller (respondent) shall be informed of the complaint and of the time, date, and place of the board meeting at which the board will review the complaint.

(3) If the board, after its preliminary review of the complaint, determines that there is probable cause to believe that grounds exist for disciplinary action, the board shall set the matter for a public disciplinary hearing and issue written notice to the licensed driller (respondent).

(A) The notice shall state:

(i) the charges made against respondent and the portions of the Texas Water Well Drillers Act and/or board rules allegedly violated,

(ii) the time and place at which the hearing will be held,

(iii) the nature of the hearing and the possible action which may be taken by the board,

(iv) the legal authority and jurisdiction under which the hearing will be held, and

(v) respondent's right to appear and to present testimony on his own behalf.

(B) The board shall give said notice at least 10 days prior to the date set for hearing.

(C) The board shall serve this notice by mailing it by registered mail to the last known business address of the respondent; but if no business address is known, then notice shall be sent to the most recent address found on the respondent's applications or other documents submitted to the board.

(4) At the public hearing, respondent, complainant, other parties to the proceeding, and any witnesses for any

party shall be entitled to present evidence, oral or written, which may be relevant.

(5) The board shall duly swear all witnesses and cause a record for the proceedings to be made.

(6) Any party to the proceedings may request and shall be furnished a copy of the record upon payment to the board of a fee equal to \$0.50 per page.

(7) The board shall issue every decision and order which it renders in a disciplinary hearing in writing.

(A) The board shall briefly state its finding and conclusions, and the effective date of the decision or order.

(B) The board shall transmit such decisions or orders no later than 30 days from the conclusion of the hearing.

(C) The board may transmit such decisions or orders in person or by mail.

(8) If, after its preliminary review of the complaint, the board determines that the alleged violation might constitute a violation of the department's rules, the board shall refer the complaint to the department for investigation and appropriate action.

**§231.133. Reinstatement after Disciplinary Action.**

(a) A licensee who has been suspended or who has been placed on probation after suspension must pay all accrued fees upon expiration of the suspension or probation period to regain his status as a driller in good standing.

(b) A driller whose license has been revoked must apply for a new license and comply with all requirements and procedures for obtaining an original license.

**§231.135. Appeal of Board Action.**

(a) A person affected by any ruling, order, decision, or other act of the board may appeal by filing a petition in a dis-

trict court in the county in which the alleged violation occurred.

(b) The plaintiff must file his petition within 30 days after the board's action, or, in case of a ruling, order, or decision, within 30 days after its effective date.

(c) The plaintiff must serve the board with a citation of the appeal within 30 days after the petition is filed.

(d) A citation may be served on the executive director or on any board member.

(e) The plaintiff shall pursue his action with reasonable diligence.

**§231.137. Enforcement Proceedings.**

(a) The board may enforce, in a court of competent jurisdiction by injunction or other appropriate remedy, any of its rules, decisions, determinations, and orders.

(b) The board may institute an action for civil penalties for failure to comply with the provisions of the Texas Water Well Drillers Act or the board's rules.

(c) An action for civil penalties may be instituted in a court of competent jurisdiction in the county where the alleged violation is occurring or where the defendant resides.

(d) The board may direct the executive director to request that the attorney general institute and conduct a suit in the name of the State of Texas for injunctive relief and/or to recover civil penalties; or, the board may directly request the attorney general to institute and conduct such a suit.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818885

M. Reginald Arnold II

General Counsel

Texas Department of Water Resources

Proposed Date of Adoption: January 12, 1982

For further information, please call (512) 475-4338.

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 VII. Texas Merit System Council

##### Chapter 161. Merit System of Personnel Administration

The Texas Merit System Council adopts new §§161.1-161.24 with changes to the proposed text published in the November 3 and 6, 1981, issues of the *Texas Register* (6 TexReg 4023) and (6 TexReg 4093), respectively.

The new rules are necessary to comply with Senate Bill 988, passed effective September 1, 1981, and to respond to input from agencies under merit system jurisdiction. The new Act abolished the Merit System Council of the Texas Employment Commission and created the Texas Merit System Council. The Act requires a change in composition of the Merit System Council, in duties of council members and appointment of the council and director. New sections of the regulation include provisions for appointment of council members, chairman, and vice chairman by the governor, with the advise and consent of the senate; the increase of the number of council members from three to six; conducting at least six meetings annually; council appointment of the director, establishing a procedure whereby hearing examiners may be made available; establishing statewide subpoena power; and adoption of rules to administer the Act. The merit system agencies modified many of the rules to allow more flexibility of operations and improved service to the public.

The rules will function by providing guidelines by which those agencies under merit system jurisdiction can operate more efficiently with proper personnel administration. The rules combine adherence to federal mandates and the state statute.

Verbal and written comments received by the department are summarized as follows and the department's response appears after each comment.

Regarding §161.13(b)(1)—The language is vague and ambiguous. By giving the appellant a choice of limitations, the rule makes it impossible to determine when the limitations actually bar the appellant. I recommend that the rules be made more definite. Effectively, the appellant could hold some of these cases open as long as 90 days. I also suggest that you add the phrase "and not thereafter" after the language establishing the 20-day time limit.

The language of the rule is succinct; however, in response to this comment, the wording is slightly improved by omitting "of" and substituting "after" so that the statement reads, "All appeals shall be in writing and shall be received by the director within 20 days after either. . ." The elimination of any of the three times from which an appeal may be made could result in chaos for the agencies. For example, if §161.13(c) were deleted, an appeal would be required to be filed simultaneously with the grievance, rendering the respondent's hearing useless and moot; the agency needs an opportunity to resolve the grievance first at the agency level.

It is true a case could remain open up to 90 days if, for example, the respondent agency fails to give notice to the appellant in accord with the regulations or delays in final adjudication of a grievance. The rule permits the 20-day time limit to begin running as soon as the respondent agency has acted in compliance with the regulations.

The phrase "and not thereafter" would divest the council of its inherent jurisdiction to administer and interpret the regulations or, in a proper case, to find good cause for late filing.

Regarding §161.13 (b)(3)(H)—De novo appeals from an agency due process hearing gives appellant's two bites at the apple, giving the appellant a second chance to try his case by bringing into evidence matters that could have

easily been introduced at the first hearing. The subparagraph should provide for de novo appeal only if no due process hearing was given at the agency level. Otherwise, it should be a substantial evidence appeal. Appellant should be required to choose his form. I feel that, upon motion by either party, an appeal should be considered under the substantial evidence rule rather than a de novo case.

The review by the Merit System Council in a properly invoked appeal matter is essentially de novo as has been intended by the federal Standards for a Merit System of Personnel Administration for over 40 years. The revised rules envision a modification of this stance only to the extent that a transcript of a previous due process grievance proceeding could be introduced and relied upon by the council. Even in such an instance, either party can introduce evidence in areas not covered in the grievance proceeding. In the absence of specific legislative permission, it would seem inappropriate for the council to delegate its responsibility to the participating agencies as would be the effect to the substantial evidence rule.

Regarding §161.13(b)(3)(J)(v)—I propose that no change be contemplated.

This comment is confusing as regards its intended meaning; however, if the comment means that one element of due process should be omitted from council consideration, the council must reply that if a grievance system is without the basic elements of due process, the council cannot consider that evidence or testimony for any purpose.

Regarding §161.13(c)(1)—This section would have the effect of coercing an agency into keeping the hearing open and not giving a final decision until such time the Merit System Council, however long that it takes, to render a final decision and only then could the agency, within 15 days, give the appellant its final decision on the first due process hearing. This is most awkward and I am recommending that consideration be given to changing the rule and allowing the agency to make a final decision reviewable and recommendatory by the Merit System Council.

In an effort to alleviate a perceived problem with this rule's wording, the last sentence is changes as follows, "the agency shall promptly give written notification to the appellant and the director of its decision as to whether the council recommendation will be implemented."

Regarding §161.13(c)(2)—In appeals brought under §161.13(a)(4), and appeals from discrimination, the decision of the council shall be final and binding upon the agency. Discrimination is defined and prohibited based on race, color, religion, sex, national origin, political affiliation, age, handicap, or any other nonmerit factor. This allows the council to make a mandatory determination based on a concept that may or may not have anything to do with discrimination. This agency is not, nor has it ever been, able to determine what the phrase means. At the very least, an employee should be required to state, in writing, not only that the action complained of was based on a nonmerit factor, but specifically, what nonmerit factor was used.

Regarding §161.17(a)—It is requested that prior to acceptance of any discrimination case, the "nonmerit factor is prohibited" be fully and adequately defined.

In response to the problem of defining nonmerit factors, the following language is added to §161.17(a): Non

merit factors are those considerations having no evident or apparent relationship to either the work to be performed or to the employee's general fitness for duty.

Regarding §161.9(d)—By requiring the agency to give a reason for releasing a probationary employee and granting the employee a hearing as provided in §161.13(a), the council may be giving them the same property rights as permanent employees. This whole section is confusing as to what rights, if any, a probationary employee has. The subsection should read "...without right of appeal or hearing."

The probationary employee is not afforded the same property rights as the permanent employee; the only appeal right is from alleged discrimination. This rule is mandated by 5 Code of Federal Regulations §900.607-3, which states in part, "State and local governments will provide for appeals of alleged discrimination in any personnel action on the basis of race, color, religion, sex, national origin, political affiliation, age, handicap, or other nonmerit factors by any applicant or employee through an impartial process that will result in timely, enforceable decisions." However, §161.9(d) has been changed to read "... except in cases of alleged discrimination as provided in §161.13. ..." for clarification purposes.

Regarding §161.13(b)(3)(I)—Allowance should be made so that a court reporter need not transcribe every due process hearing at an agency. Perhaps allow tapes to be submitted and/or all written documents involved.

There is no provision in the rules that a court reporter must transcribe every due process hearing at an agency. Either party may move to include a certified transcript as part of the appeal hearing record; however, anyone attesting to its accuracy and completeness may prepare the transcript. The council is not in the position to wade through numerous tape recordings submitted by agencies.

Regarding §161.7—I would specify that the supplementary certification procedure described in §161.7 should be predicated upon the requesting agency having an operating EEO Affirmative Action Plan which indicates under representation by the particular group.

Some merit system agencies are permitted under the consent decree with the Department of Justice to order supplementary certificates only if certain percentages have not been obtained for particular categories of employees. The agencies attest to their deficiencies when they request certificates.

Regarding §161.1—The wording of this section should read "certification by the director that the employment, promotion, or demotion of any individual is not in conformity with the regulation."

The word "employment" is intended to encompass all phases of being employed, not simply the act of hiring. The Merit System Council intends to maintain the definition as previously worded.

It was suggested that the word "adversely" be added to the second sentence of §161.5(h) for clarification of the sentence's intent. This suggestion was implemented.

It was pointed out that the definition of "reclassification" required revision, it has been corrected. Reference to "reclassification" have been appropriately changed to "lateral class change" throughout the text.

The comments were received from the Texas Department of Health, Texas Department of Human Resources, the Office of Personnel Management, and the State Classification Officers.

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.

Paula J. Prather  
December 4, 1961

The new sections are required under 5 Code of Federal Regulations 900 and Texas Civil Statutes, Article 6252-11d, which provides the Merit System Council authority to promulgate procedures and policies in accordance with 5 Code of Federal Standards 900.

**§161.1 Purpose, Scope, Definitions**

(a) **Purpose.** The purpose of this regulation is to provide a modern personnel management system, based on merit principles, for the state and local agencies covered by this regulation. For those agencies covered by this regulation and subject to the Position Classification Act of 1961 and the current Appropriations Act, references made to classification, compensation, and salary administration refer to the State Classification Plan and the compensation schedules and salary administration provisions of Article V of the Appropriations Act.

(b) **Merit principles.** The employment of persons in positions covered by this regulation shall be governed by the following principles:

(1) recruiting, selecting, and advancing employees on the basis of their relative knowledges, skills, and abilities, including open consideration of qualified applicants for initial appointment;

(2) providing equitable and adequate compensation;

(3) training employees, as needed, to assure high quality performance;

(4) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;

(5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, handicap, or other nonmerit factors and with proper regard for their privacy and constitutional rights as citizens;

(6) assuring that employees are protected against coercion for partisan political purposes and prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

(c) **Scope.** The principles set in subsection (b) of this section shall be applicable to personnel administration in the following agencies:

(1) Air Control Board,

(2) Commission on Alcoholism,

(3) Department of Health and affiliated local units (excluding chest hospitals),

(4) Department of Human Resources,

(5) Division of Developmental Disabilities of the Department of Mental Health and Mental Retardation,

(6) Division of Emergency Management of the Department of Public Safety and participating local units,

(7) Drug Abuse Division of the Department of Community Affairs,

(8) Department on Aging,

(9) Employment Commission,

(10) Merit System Council,

(11) Surplus Property Agency.

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

(1) **Agency**—Any board, commission, department, division, or office to which this regulation is applicable.

(2) **Agency classification plan**—The classification titles and specifications approved by the director for use in the agency.

(3) **Applicant**—Anyone submitting an application form to the Merit System Council for examination.

(4) **Application**—The official Merit System form on which the applicant provides all information required as a prerequisite to examination.

(5) **Appointing authority**—The executive head of the agency or any employee to whom the executive head may delegate authority to make appointments.

(6) **Appointment**—The assignment of an individual to a position in the agency.

(7) **Certification**—Referral of eligibles' names from registers to fill positions

(8) **Class or classification**—Positions sufficiently similar as to duties performed, degree of supervision exercised or required, minimum qualifications, and such other characteristics that the same title and the same schedule of compensation may be applied to each position.

(9) **Class specification**—A written description of the distinguishing characteristics of a classification, including minimum qualifications, typical duties, and responsibilities.

(10) **Collective bargaining**—Formalized negotiation between organized workers and employers on wages, work hours, working conditions, etc.

(11) **Conflict of interest**—A situation wherein an employee's performance of official duties may be unduly influenced by considerations of other employment.

(12) **Council**—The Texas Merit System Council

(13) **Day**—Calendar day unless otherwise specified.

(14) **Demotion**—A change of an employee from a position in one class to a position in another class in a lower pay group.

(15) **Director**—The Merit System executive director.

(16) **Dismissal**—The termination of an employee for cause.

(17) **Eligible**—Any applicant for a position who receives a final passing rating on an appropriate examination.

(18) **Emergency appointment**—An appointment required by a state of emergency as described in §161.8 of this title (relating to Original Appointments).

(19) **Employee**—Any person on the payroll of the agency who is paid a salary, wage, or other form of compensation.

(20) **Examination**—The evaluation process finalized by a rating of applicants which determines eligibles for consideration for positions in a class

(21) **Exempt appointment**—An appointment exempted from this regulation as described in §161.8 of this title (relating to Original Appointments)

(22) **Expiration of appointment**—Separation of other

than a probationary or permanent employee who has completed service, whether by expiration of eligibility for continued employment, or by completion of the work for which employed.

(23) **Group of classes**—The grouping made pursuant to the agreement between the United States of America and applicable agencies (Civil Action A-78-CA-286) for statistical purposes.

(24) **Handicapped individual**—Any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(25) **In-service experience**—Experience acquired by a permanent employee while in probationary and permanent status.

(26) **Lateral class change**—Change of an employee from one classification to another in the same pay group.

(27) **Merit salary increase**—An increase in salary within the salary range prescribed for the class by the agency's compensation plan.

(28) **Minimum qualifications**—The minimum requirements of training, education, and experience and/or knowledges, skills, and abilities as designated in a class specification for entry to a position in that class.

(29) **Noncompetitive examination**—An examination on which a permanent employee needs to earn only the minimum passing score.

(30) **Open-competitive examination**—An examination which permits competition among all persons meeting the announced minimum qualifications for the class.

(31) **Payroll exception**—Certification by the director that the employment of an individual is not in conformity with the regulations.

(32) **Permanent employee**—An employee who has been retained following the completion of a probationary period.

(33) **Personnel official**—That employee of the agency responsible for the personnel administration of the agency.

(34) **Position**—A job consisting of a group of duties to be performed by one employee.

(35) **Probationary appointment**—An appointment from a register as described in §161.8 of this title (relating to Original Appointments).

(36) **Probationary period**—The trial of work test period as described in §161.9 of this title (relating to Probationary Period).

(37) **Project indefinite appointment**—An appointment made under the authorization of the Emergency Jobs and Unemployment Assistance Act or subsequent similar acts as provided in §161.8 of this title (relating to Original Appointments).

(38) **Promotion**—A change of an employee, from a position in one class to a position in another class in a higher pay group.

(39) **Provisional appointment**—An appointment to fill a position pending the establishment of a register for such a position.

(40) **Reclassification**—A change of a position from one classification to another.

(41) **Reduction in force**—Separation of an employee without prejudice because of lack of funds or curtailment of work.

(42) **Register**—A list of eligibles for a classification, arranged in order of their final ratings.

(43) **Regulation**—The "Regulation for a Merit System of Personnel Administration."

(44) **Reinstatement**—Re-employment of a permanent employee as provided in §161.11 of this title (relating to Tenure, Separation, and Reinstatement), or placing probationary or permanent employee's name back on a register as provided therein.

(45) **Release**—Separation of a probationary employee whose services have not met the required standards of performance.

(46) **Resignation**—The separation of an employee made at the request of the employee.

(47) **Salary reduction**—A decrease in salary within the pay group prescribed for the class by the agency compensation plan.

(48) **Status**—The condition (probationary, provisional, etc.) of an individual's employment with the agency.

(49) **Suspension**—An enforced leave of absence for disciplinary purposes or pending investigation of charges made against an employee.

(50) **Temporary competitive appointment**—An appointment from a register for a period not to exceed six months.

(51) **Temporary intermittent appointment**—An appointment for intermittent employment of limited duration as provided in the specifications for the classes established for this purpose, and for which qualifying examinations are required.

(52) **Transfer**—A change of an employee from one position to another position in the same class.

(53) **Veteran**—That individual as defined in Texas Civil Statutes, Article 4413(31), as amended

## §161.2. Organization for Merit System.

### (a) Merit System Council.

(1) The Merit System Council is composed of six members appointed by the governor with the advice and consent of the senate. Members of the council hold office for staggered terms of six years, with two members' terms expiring February 1 of each odd-numbered year. A vacancy on the council shall be filled by appointment for the unexpired term in the same manner as a regular appointment. A council member must be a resident of this state. A member may not be employed by an agency served by the council during his or her term as a council member and may not have been an employee of any such agency within one year preceding appointment to the council.

(2) The council shall have the following powers and duties:

(A) to develop procedures and policies to assure the recruitment, selection, and advancement of highly competent personnel in state agencies using its services;

(B) to appoint an executive director;

(C) to develop procedures and policies which meet federal requirements for a merit system of personnel administration applicable to state and local agencies administering federal programs;

(D) to contract with any other state agency for the performance of the council's duties, including areas such as recruitment and test administration;

(E) to adopt rules it considers necessary for the administration of the Texas Merit System Council Act.

prescribe personnel policies for the council, and perform any other functions prescribed by law:

(F) to establish procedures under which applicants for positions and employees of state agencies using the council services may obtain hearings before impartial hearing officers with respect to adverse personnel actions taken against them;

(G) to compel the attendance of witnesses at any of its proceedings through the issuance of subpoenas to be served by any sheriff or constable in this state;

(H) to submit an annual report to the governor.

(3) The governor shall appoint a chairman and vice chairman from among the members of the council. The council shall meet at times and places as specified by call of the chairman or the governor but shall meet at least six times each year. A majority of the council membership constitutes a quorum for the transaction of business. From nominations by the director, the council shall designate a recording secretary, whose duty it shall be to keep a record of the proceedings of the meetings.

(4) A member of the council is entitled to a per diem as set by legislative appropriation for attending meetings and to reimbursement for actual and necessary expenses incurred in performing official duties of the council.

(b) The Merit System executive director.

(1) The Merit System executive director shall be a person who has had training and experience in a field related to merit system administration and who has demonstrated support for the merit principle in government services. The director shall possess such other qualifications as are requisite for the performance of duties herein defined. The director shall not be otherwise employed in any capacity for any agency while occupying the position; nor shall the director within three years prior to appointment have held an office or committee membership in a political party organization; nor within one year prior to appointment have held an elective public office; nor during his or her term hold or be candidate for any political party office or committee or any elective public office.

(2) The director shall manage the affairs of the council subject to the authority of the council.

(3) The director shall appoint such employees as are provided in the approved Merit System budget and who have been selected in accordance with this regulation. Such employees shall not otherwise be employed by the agencies. The director shall prepare and submit to the agencies, with the approval of the council and subject to the appropriations process, a budget request covering all costs of Merit System activities.

(c) Personnel official. The staff employee of the agency designated as personnel official may be responsible for the internal personnel administration of the agency. The personnel official may have the following duties:

(1) to develop and put into effect procedures for carrying out the personnel policies of the agency;

(2) to participate in the preparation of and to administer the classification and compensation plans;

(3) to review personnel operations and to point out to the agency and the council deviations from policies and standards;

(4) to maintain personnel records of all persons employed by the agency and records of all personnel actions;

(5) to request from the director certificates of eligibles;

(6) to report to the director on the selection of eligibles, promotions, salary advancements, salary reductions, demotions, transfers, reclassifications, separations, and all types of appointments;

(7) to recommend to the appointing authority, on the basis of reports received from the supervisory official concerned, the retention or termination of probationary employees at the close of the probationary period;

(8) to provide and administer a system of performance evaluation;

(9) to establish procedures of time records and personnel reports;

(10) to make reports to the agency on the personnel activities of the agency;

(11) to perform other duties as described by this regulation or by the agency.

### §161.3. Classification Plan.

(a) Preparation of plan. The agency shall adopt and maintain, with revisions whenever necessary, a comprehensive classification plan based on job analysis. Each position shall be assigned to its proper class in the classification plan, and each classification shall include an appropriate title, a description of the duties and responsibilities, and the minimum qualifications that are necessary for satisfactory performance.

(b) Submission of plan. The proposed classification plan and any subsequent revisions shall be submitted to the director for approval.

(c) Classification of positions. Every position in the agency shall be assigned to one of the classes established in the classification plan. No position shall be filled until it has been properly classified.

(d) Revision of plan.

(1) Existing classes may be abolished or changed, or new classes added, in the same manner as the classification plan was originally adopted.

(2) Wherever feasible, and on the basis of job analysis, the director shall establish uniform minimum qualifications for class specifications used jointly by various agencies. Subspecifications may be developed for those classifications for which uniform minimum qualifications are not feasible.

(e) Incumbents of reclassified positions.

(1) When the appointing authority reclassifies a position, the incumbent shall not be deemed eligible to move to the new classification unless he or she is eligible for appointment, promotion, lateral class change, or demotion to the new class. If ineligible for the new classification, the employee may receive a lateral class change, promotion, or demotion to a different position provided such action shall be certified by the director.

(2) When a position is reclassified in accordance with changes in the state classification plan, the individual in the position will be moved to the new classification without change of merit status.

### §161.4. Compensation Plan.

(a) Preparation of plan. The agency shall adopt a comprehensive compensation plan for all classes. The plan shall include salary schedules for the various classes with the salary of each class consistent with the functions outlined in job specifications. Initial, intervening, and maximum rates of pay for each class may be established to provide for merit salary increases in recognition of meritorious service. In arriv-

ing at such salary schedules and making any changes therein, applicable laws and/or appropriate enactments shall be observed, and such factors as the responsibility and difficulty of the work and prevailing rates in the labor market shall be taken into consideration.

(b) Submission of plan. The compensation plan, or any changes therein, shall be submitted to the director.

(c) Administration of plan.

(1) The compensation plan shall constitute the official schedule of salaries for all classes. No salary shall be approved unless it conforms to the compensation plan and is at one of the levels established for the class; except that it will not be required that a salary paid from local sources of funds and established by local legislating authorities be within the minimums and maximums established by the compensation plan for the class.

(2) The entry salary for any employee shall be at the rate established by the legislature or other governing authorities.

(3) Merit salary increases shall not be automatic but shall be based upon performance and shall be controlled by agency regulations.

#### §161.5. Applications and Examinations.

(a) Filing applications for examinations. All applications shall be on forms prescribed by the director and must be filed according to the provisions specified in the examination announcement. An application shall include all pertinent information regarding training, experience, and any other information deemed necessary by the director or mandated by state and federal law, regulations, or guidelines. All applications shall be signed. The truth of all statements contained therein is certified by signature of the applicant.

(b) Rejection of application.

(1) The director shall reject an application for any of the following reasons:

(A) failure to meet the announced minimum qualifications established for the class of positions.

(B) failure to meet any bona fide occupational qualifications.

(C) failure to complete the application or submit the application within the prescribed time limits.

(D) failure to provide positive identification at an examination.

(2) The director shall promptly notify in writing an applicant whose application has been rejected, specifying the reason for the rejection. The applicant may request reconsideration of the application by the director.

(c) Disqualification of applicants.

(1) The director may disqualify an applicant for any of the following reasons:

(A) falsification of material fact on the application or other related documents submitted by the applicant;

(B) use or attempted use of political pressure or bribery to secure an advantage on an application, examination, or appointment;

(C) directly or indirectly obtaining information regarding examinations to which an applicant is not entitled;

(D) participation in the compilation, administration, or scoring of the examinations;

(E) failure to return all examination materials;

(F) use of materials not specifically authorized in taking an examination;

(G) collusion in taking an examination.

(2) The director shall promptly notify an applicant

who is disqualified. Such notice shall be in writing and specify the reason for and extent of the disqualification. The applicant will be advised of the right to appeal the disqualification to the council within 30 calendar days of the notice in accordance with §161.13 of this title (relating to Appeals).

(3) A disqualified applicant shall not be further examined or certified for a period not to exceed one year from the date of disqualification, except that a disqualified applicant may be admitted to an examination pending consideration of an appeal, but such admission shall not constitute any waiver of the disqualification.

(4) The provisions of this section shall also apply to all employees of the agencies. Any employee's Merit System status may be disapproved if the director determines that such employee has violated any provision of this section.

(d) Notice of examinations. The director shall make public announcement of all open-competitive written, oral, or performance examinations at least 10 days in advance of the first offering. Public announcement of open-competitive examinations based on training and experience ratings shall be made at least 10 days in advance of any closing date for receipt of applications. Every reasonable effort shall be made to attract qualified persons to compete in these examinations. Special emphasis shall be placed on attracting minorities, females, or other protected groups that are substantially underrepresented in the agency work force. Notice of examinations shall be posted in important centers throughout the state and sent to such organizations and individuals as the director may deem appropriate. Public announcement of examinations shall specify the title and pay group of the classification, the duties to be performed, the minimum qualifications required, the nature of the examination, the final date on which applications will be received, if applicable, and such other information as the director may consider pertinent and useful.

(e) Character of examinations.

(1) Selection of applicants for initial appointment to probationary status employment shall be through open-competitive examinations, except as provided in paragraph (2) of this subsection and §161.8 of this title (relating to Original Appointments). The examinations shall maximize validity, reliability, and objectivity, and may consist of one or more parts, such as written tests, performance tests, structured interviews, and evaluations of training and experience. They will be based on job analysis and will provide for appropriate ranking of eligibles.

(2) In order to facilitate the employment of economically disadvantaged participants in employment or rehabilitation programs authorized by Congress or the state legislature, the director may limit competition for appropriate positions. Examinations used for limited competition purposes may be the same as the open competitive examinations for the same classes, or may be modifications thereof, or may be totally separate examinations, provided the examinations meet the criteria established in paragraph (1) of this subsection.

(3) Examination procedures may be modified, whenever necessary, to accommodate individuals with substantial physical or mental impairments.

(4) The agency shall provide qualified personnel as needed to serve as job knowledge experts in the development of examinations. In addition, the director may use subject



matter experts from outside the agency. The agency may review the examinations to determine their appropriateness.

(f) Conduct of examinations. Written tests shall be conducted as often and in as many locations as practicable. The director shall arrange for such monitors and facilities as may be necessary, and shall provide for the compensation of monitors in accordance with the approved budget.

(g) Rating examinations.

(1) The director shall determine a final score for each applicant's examination. Failure in any part of an examination may disqualify an applicant in the entire examination. All applicants for the same classification shall be accorded uniform and equal treatment in all phases of the examination procedure, except as provided in subsection (e) of this section.

(2) The director shall utilize appropriate scientific techniques and procedures in rating results of the examinations and in determining the final scores of the competitors.

(3) Passing scores shall remain in force for a period of one year from the date of examination, except when such period is extended or reduced by the director.

(h) Investigations. The director may investigate the applicant's training and experience to verify the statements contained in the application form. Should investigations produce information adversely affecting such statements or ratings, the director shall disqualify the applicant or rerate the applicant's record accordingly.

(i) Notice of examination results. Applicants who have completed application and examination requirements shall be promptly notified by mail of examination results. An eligible, after presentation of proper identification, shall be entitled to information concerning his or her relative position on registers.

(j) Examination records. The director shall be responsible for the maintenance of all records pertinent to the examination program. Applications and other necessary examination records shall be kept during the period the scores remain in effect for an applicant. Examination records of appointees shall be kept beyond any dates of termination until such time as the director determines that no further use of the records can reasonably be expected. Applicants and eligibles shall file all notice of changes of address with the director.

(k) Regrading examinations. An applicant who takes an examination for a classification may have the examination regraded for other classifications during the period the original examination score remains in effect, provided that the applicant met the minimum qualifications of the other classifications at the time of the original examination and that all components of the examination for the other classifications were included in the original examination.

#### §161.6. Registers.

(a) Establishment of registers.

(1) After the first offering of an examination for a classification in all testing locations, the director shall establish a register of persons with passing grades. The names of such persons shall be placed on the register in the order of their final ratings, with the highest coming first; except that if two or more eligibles have identical ratings they shall occupy identical rank on the register and shall be entitled to equal treatment in matters of certification and eligibility for consideration by the appointing authority.

(2) If a vacancy exists in a class for which there is no appropriate register, the director may prepare an appropriate

register for the class from an existing register for a similar class.

(b) Duration of registers.

(1) The life of each register shall be as long as examination ratings exist for that classification. The register life may be reduced or extended by the director. In reducing the life of a register, the director shall notify each eligible remaining on such register to this effect by mail to the eligible's last known address.

(2) It shall be the duty of the personnel official to notify the director as far in advance as possible of vacancies which may occur. The director shall be responsible for determining the adequacy of existing registers and for the establishment and maintenance of appropriate registers for all positions for which open-competitive appointments may be made.

(c) Removal of names from registers.

(1) In addition to disqualifications stipulated in §161.5 of this title (relating to Applications and Examinations), the director may remove the name of an eligible from a register:

(A) on evidence that the eligible cannot be located by the postal or telegraph authorities; or for the eligible's failure to respond within seven calendar days to an offer of employment or to a notice to his or her last known address that he or she is eligible and is being considered for appointment; or for the eligible's failure either to reply within 48 hours to telegraphic inquiry, or for the eligible's failure to report within 48 hours when so directed for an interview in the administrative office or in the appropriate field office of the agency;

(B) on receipt of a statement from the eligible stating that he or she is no longer available for appointment to the class for which the register was established;

(C) if three offers of appointment to the class for which the register was established have been declined by the eligible;

(D) if an eligible accepts an appointment and fails to appear for duty at the time and place specified without giving reasons for the delay satisfactory to the appointing authority.

(2) The director may notify the eligible by mail to his or her last known address of this action and the reasons therefore, if appropriate. An eligible's name may be restored to the register upon showing of cause satisfactory to the director.

#### §161.7. Certification of Eligibles.

(a) Request for certification.

(1) When requesting certification of names of eligibles, the appointing authority shall follow the procedures prescribed by the director.

(2) Any requirement which would constitute a bona fide occupational qualification may be specified where such a requirement is necessary for proper and efficient administration as determined by the director. Special job-related training and experience may be specified, provided the director finds the request justified in terms of minimum requirements for the position and as a proper use of the classification.

(3) At the request of the appointing authority, the director may include the names of those eligibles who will complete the educational requirements during the current semester, and who are entitled to be certified by virtue of their ratings, with the provision that those eligibles are not

entitled to actual employment until all educational requirements are completed.

(b) Certification methods.

(1) Upon receipt of a request for certification, the director shall certify the names of eligibles from the appropriate registers as follows:

(A) For a request to fill a single position, the director shall certify the names of the 10 highest ranking available eligibles, plus those additional eligibles, if any, entitled to be certified by virtue of identical scores or ratings as provided in §161.6(a) of this title (relating to Registers).

(B) For a request to fill more than one position in the same class, the director shall certify the names of the 10 highest ranking available eligibles, plus one additional name for each additional vacancy, plus those eligibles, if any, entitled to be certified by virtue of identical scores or ratings as provided in §161.6(a) of this title (relating to Registers).

(2) If the appointing authority notified the director in writing that the proportion of blacks, Hispanics, or female employees comprising a class or group of classes, where applicable, is less than 80% of the proportion of such protected group in the relevant labor force, and if there are no available representatives of such protected group on a certificate prepared for that class or group of classes, then the director may provide a supplementary certificate of three eligibles consisting solely of persons of the under-represented group.

(A) For a request to fill a single position from a supplementary certificate, the director shall certify the names of the three highest ranking available eligibles plus those additional eligibles, if any, entitled to be certified by virtue of identical scores or ratings as provided in §161.6(a) of this title (relating to Registers).

(B) For a request to fill more than one position in the same class or group of classes from a supplementary certificate, the director shall certify the names of the three highest ranking eligibles, plus one additional name for each additional vacancy, plus those eligibles, if any, entitled to be certified by virtue of identical scores or ratings as provided in §161.6(a) of this title (relating to Registers).

(3) The name of an eligible who receives a probationary appointment shall be removed from the register for any classification having a salary equal to or lower than that of the classification in which the appointment is made. The eligible's name may be restored to such registers upon request to the director.

(4) An employee whose name appears on a register for a classification having a salary higher than that of the employee's present classification shall be eligible for certification from the higher register in accordance with the provisions of this section.

(5) If the appointing authority interviews a certified eligible and considers but does not select the eligible in connection with three separate appointments, the name of such eligible may be omitted from any subsequent certification from the same register to the same appointing authority, unless otherwise requested by the appointing authority.

(6) If the appointing authority offers an objection in writing to the certification of an eligible which is sustained by the director, the name of such eligible may be omitted from any subsequent certification from the same register to the same appointing authority, unless otherwise requested by the appointing authority.

(c) Local office certification. In order to facilitate the filling of a vacancy in a class for which it is not feasible to

certify eligibles on a statewide basis, such as a clerical or entry-level professional class, the director may establish procedures providing for the certification of eligibles who are residents of the area in which the vacancy exists. The director shall determine the boundaries of local areas and the classes eligible for certification of local residents.

(d) Return of certificates. The appointing authority shall have 30 calendar days from the date of certification to consider eligibles for selection. Upon the expiration date, unless the period is extended by the director because of justifiable circumstances, the certificate of eligibles shall be returned to the director with actions taken recorded, as appropriate, concerning each eligible.

**§161.8. Original Appointments.**

(a) Appointments.

(1) All appointments to positions in the agency, except positions exempted from Merit System coverage, shall be made in accordance with this regulation.

(2) Individuals who are physically unable, due solely as a result of a handicapping condition, to compete independently in the examination process, may be appointed on a non-competitive basis to appropriate positions, provided minimum qualifications are met, in accordance with procedures established by the director. Employees appointed on a noncompetitive basis shall gain permanent status on the first working day following satisfactory completion of the probationary period.

(b) Probationary appointments.

(1) Except as hereinafter provided, selections for all positions will be made from names on certificates submitted by the director in accordance with §161.7 of this title (relating to Certification of Eligibles). When selecting an eligible for appointment to each position, the appointing authority will consider only the highest ranking 10 available eligibles on the certificate, plus such additional eligibles as may be entitled to be considered by virtue of identical scores or ratings as provided in §161.6(a) of this title (relating to Registers); each additional selection made from that certificate will be made in the same manner. Names of persons who fail to answer or who decline appointment or consideration for appointment or those to whom the appointing authority offers an objection in writing, which is sustained by the director, will be excluded from consideration. In selecting an eligible from a supplementary certificate, only the highest ranking three available eligibles will be considered, plus such additional eligibles as may be entitled to be considered by virtue of identical scores or ratings as provided in §161.6(a) of this title (relating to Registers).

(2) Each certified eligible selected for probationary appointment shall report to work no later than two months following the expiration date of the certificate from which the selection was made.

(c) Provisional appointments.

(1) If there are urgent reasons for filling a position and there are fewer than three eligibles on an appropriate register, the position may be filled on a provisional basis by a person who has been certified by the director as meeting the minimum qualifications established for the classification.

(2) Open-competitive examinations for a classification shall be offered no later than six months following the date of a provisional appointment to that classification. No provisional appointment may be continued for more than 30 calendar days after an adequate register has been established for the class of position.

(d) **Emergency appointments.** Whenever an emergency exists which requires that a position be filled immediately, the appointing authority may appoint a person without regard to other provisions of this regulation governing appointments. The same person shall not be appointed for more than three months during any 12-month period, except that in the event of an officially proclaimed disaster, emergency appointments may be made for the duration of the incident.

(e) **Temporary competitive appointments.** If an employee is needed for a temporary period, a certification of those eligibles who have indicated willingness to accept temporary employment shall be made in the manner set forth in §161.7 (relating to Certification of Eligibles). Appointments shall be made as prescribed for probationary appointments. The duration of a temporary appointment shall be limited to the period of the need and in no event shall a temporary appointment continue for more than six months in any 12-month period. Successive temporary appointments of six months' duration shall not be made. The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or eligibility for a probationary appointment, and the period of temporary service shall not constitute a part of a probationary period.

(f) **Temporary intermittent appointments.** To meet supplementary personnel needs resulting from seasonal or other temporary increases in work load, special classes of positions, designated by title as temporary in character may be established. Positions in such classes shall be filled by temporary intermittent appointment from a list of eligibles who meet prescribed minimum qualifications and who have been certified by the director as having successfully completed an appropriate examination. Such eligibles may be called for duty within 12 months after the date of examination or within 12 months from the last day on duty with the agency. Since such appointments are limited to temporary and intermittent positions (rather than career positions), they shall be made only for a limited duration as prescribed in the approved class specification. Employees serving in these special classes may qualify for permanent status only after certification from registers established through open-competitive examinations, as provided in §161.7 of this title (relating to Certification of Eligibles), followed by completion of the required probationary period.

(g) **Exempt appointments.** Exempt appointments may be made to positions in the agency exempted from the application of this regulation as approved by appropriate federal authorities in accordance with the standards for a merit system of personnel administration.

(h) **Employees appointed prior to date of merit system coverage.** Employees in governmental units which become added divisions or affiliates of an agency, and employees of any board, commission, department, division, or office to which merit system coverage is extended, acquire permanent merit system status as follows:

(1) Employees of the agency with more than six months of service on the date of merit system coverage who are certified by the appointing authority as having served satisfactorily shall be granted permanent status in their positions held on that date and shall be eligible to substitute in-service experience for required qualifications on a year-for-year basis within the series in which classified.

(2) Employees of the agency with less than six months of service on the date of merit system coverage who are certified by the appointing authority as having served

satisfactorily, shall be eligible to retain their positions in a probationary status. Such employees shall be granted permanent status on the first working day following satisfactory completion of the required probationary period, which shall include service with the agency immediately prior to merit system coverage, and shall be eligible to substitute in-service experience for required qualifications on a year-for-year basis within the series in which classified.

(3) Individuals employed by the agency on or after the date of merit system coverage, must be appointed in accordance with this regulation, and may acquire permanent status only after certification and selection from an open-competitive register and after serving the required probationary period.

(i) **Project indefinite appointments.** This section may apply in making project indefinite appointments under the present Emergency Jobs Program authorized by the Emergency Jobs and Unemployment Assistance Act or subsequent acts of a similar nature.

(1) Project indefinite appointments may be made to provide for specific, defined projects (programs) normally anticipated to be more than three months in duration but not permanent in nature.

(2) Project indefinite appointments may be made by the appointing authority only after it has been determined that the applicant meets the eligibility requirements specified in the project (program).

(3) No project indefinite appointment shall confer upon the incumbent any privilege, right of appeal or right of position, transfer, reinstatement, or any other right to any classified position under the merit system.

(4) Employees holding project indefinite appointments may qualify for permanent status only after certification from registers established through open-competitive examinations as provided in §161.7 of this title (relating to Certification of Eligibles) followed by completion of the required probationary period.

(5) Each project indefinite appointment shall, when the appointment is made, be reported in writing by the personnel official to the director.

(6) In making appointments under the provisions of this section, it is not intended to preclude the agency from utilization of existing registers where such appointments can be appropriately and expeditiously made.

#### §161.9. Probationary Period.

(a) Nature, purpose, and duration.

(1) All employees receiving probationary appointments in accordance with §161.8(b) of this title (relating to Original Appointments) shall serve a probationary period of six months, except that the director, upon request from the agency, may determine that for job-related reasons the probationary period for a classification shall be of longer duration, not to exceed 12 months. The probationary period shall be an essential part of the examination process and shall be utilized for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet the required standard of work. When a probationary employee's adjustment or performance requires further evaluation, upon written justification from the agency, the director may approve an extension, not to exceed six additional months, of the employee's probationary period. Permanent status of a probationary employee shall begin the first working day following satisfactory completion of the probationary period.

(2) The period of provisional appointment in a classification may be counted toward the probationary period, provided the provisional appointee is properly certified and selected from an appropriate register for the class during the period of provisional appointment.

(b) Promotions, lateral class change, or demotion during probation. The serving of a probationary period shall not, of itself, prevent an employee from receiving a promotion, lateral class change, or demotion to a position in another class, provided the employee is certified from an appropriate register for the new classification in accordance with the provisions of §161.7 of this title (relating to Certification of Eligibles). If, within these limitations, an employee receives a promotion, lateral class change, or demotion during a probationary period, the probationary period shall begin anew.

(c) Transfer during probation. No employee shall be transferred to another position in the same class in another geographical area of certification unless the director determines that the employee would be within the top 10 eligibles if included on a certificate for the office to which the transfer is requested or unless the agency presents adequate justification to the director.

(d) Release during probation.

(1) At any time during a probationary period an employee may be released from employment without right of appeal or hearing, except in cases of discrimination as provided in §161.13(a) of this title (relating to Appeals), but the reason for release shall be recorded by the agency, and a copy filed with the director for permanent record. The employee shall be notified in writing prior to the completion date of the probationary period that he or she is to be released.

(2) The director may restore to appropriate registers, in accordance with §161.11 of this title (relating to Tenure, Separation, and Reinstatement), the names of appointees who have been separated during the probationary period. The appointing authority is not required to reconsider for appointment any employee separated during the probationary period because of unsatisfactory performance.

#### §161.10. Promotions, Lateral Class Change, and Demotion without Prejudice.

(a) Promotion.

(1) All promotions to positions in the agency, exclusive of positions exempted from merit system coverage, shall be made on the basis of merit and in accordance with this regulation. A permanent employee who is a candidate for promotion must be certified by the director to possess the minimum qualifications for the new classification.

(2) In order to develop career employees and to promote employee development and initiative, the director shall, whenever applicable, establish series to indicate logical career progressions that qualified employees with permanent status may follow in seeking advancement from classes in lower pay groups to classes in higher pay groups. Permanent employees of the agency may be considered for a position in the next higher classification in their series by substituting in-service experience in the series for education on a year-for-year basis if feasible as determined by the director, or on a basis determined to be equitable by the director, except in classes where generally recognized professional qualifications exist, or minimum standards are established either by statute, regulatory authority, or accreditation agencies. The determination of the director as to what constitutes the next higher classification in a series shall be final.

(b) Method of promotion.

(1) A permanent employee may be promoted to a position in a higher class on the basis of certification by the director that minimum qualifications are met. If the director determines that the duties or levels of responsibility of the higher classification are significantly different from those of a lower classification, the employee may be required to pass a noncompetitive examination. A noncompetitive examination may also be administered at the request of the agency.

(2) The appointing authority may elect to fill a vacancy by promotional competitive examination. Such examination shall be limited to permanent employees of the agency who meet the minimum qualifications for the classification. Those employees who receive a passing grade shall be placed on a promotional register for the class in order of their examination ratings.

(c) Lateral class change.

(1) A lateral class change of a permanent employee from a position in one class to a position in another class may be made upon certification by the director that the employee meets the minimum qualifications for the new classification and has passed any required examination.

(2) A permanent employee may receive a lateral class change to a position in another classification in the same series by substituting in-service experience as described in subsection (a) of this section.

(d) Demotion without prejudice.

(1) The appointing authority may demote a permanent employee without prejudice for such reasons as lack of funds, curtailment of work, to permit reinstatement of former employees who have returned from military service, or at the written request of the employee. Such action may be taken upon certification by the director that the employee meets the minimum qualifications for the new classification.

(2) A permanent employee may be demoted to a position in another classification in the same series by substituting in-service experience as described in subsection (a) of this section.

#### §161.11. Tenure, Separation, and Reinstatement.

(a) Tenure of employment. The tenure of every permanent employee shall be during the satisfactory performance of his or her duties. This provision, however, shall not be interpreted to prevent the separation of an employee as provided in paragraph (4) of section (d) or in §161.12 of this title (relating to Adverse Actions).

(b) Dismissal. A permanent employee shall not be dismissed except in cases of discrimination as provided in §161.12 of this title (relating to Adverse Actions).

(c) Resignation. An employee who resigns may be requested to present the reasons in writing to the agency.

(d) Reduction in force.

(1) The appointing authority may separate from the payroll any employee without prejudice because of lack of funds, curtailment of work, or to permit reinstatement of employees upon their release from military service as provided in paragraph (5) of this subsection. All such separations shall be made in an equitable and systematic manner, and they shall be reported to the director.

(2) Insofar as possible, permanent and probationary employees reinstated at the expiration of a leave of absence for military service shall be exempted from separation, except as provided in §161.12 of this title (relating to Adverse Actions) for a period of at least one year from the date of reinstatement. The same protection and rights shall be

granted to provisional employees entitled to leave of absence for military service as provided by state law except that such employees shall be subject to the other sections of this regulation governing examinations and appointments.

(3) Except as provided in paragraph (2) of this subsection, no permanent employee shall be separated while there are emergency, temporary competitive, provisional, or probationary employees serving in the same classification in the same organizational unit as defined by the agency.

(4) A probationary employee who is separated from the payroll due to a reduction in force may be eligible for reinstatement to the previous classification in the same agency and the same geographical area of original certification, for a period of time equivalent to the total period of service under merit system jurisdiction. If so reinstated, the balance of the probationary period shall begin with the date of reinstatement.

(5) Upon request to the director, a probationary or permanent employee who is officially notified that he or she is to be separated from the payroll due to a reduction in force may be reinstated to the register 30 days prior to the separation date. Such reinstatement shall be to the register from which the employee's most recent appointment was made.

(e) Reinstatement to previous class of position.

(1) A permanent employee, who has resigned in good standing or has been separated without prejudice, may be eligible for reinstatement to his or her previous classification within a period of time equivalent to the total period of his or her service under merit system jurisdiction.

(2) An employee granted leave without pay to perform military service as provided by state law shall be reinstated in accordance with said law after being released under honorable conditions.

(f) Reinstatement to register. Upon request to the director, the name of a permanent or probationary employee who has resigned while in good standing or who has been separated without prejudice may be reinstated, for a period of one year, to the register from which his or her most recent appointment was made. The former employee will be placed on the register according to his or her prior examination grade. In no event shall a former employee be reinstated to such register if more than one year has elapsed since separation.

(g) Restoration to previous classification. A permanent employee shall be eligible for restoration to a previous classification in which he or she has served while in permanent status.

#### **§161.12. Adverse Action.**

(a) A permanent employee may be dismissed, demoted, reduced in salary, or suspended for:

- (1) negligence in the performance of duties;
- (2) failure to meet agency standards of job performance;
- (3) failure to follow instructions issued by management or supervisor;
- (4) physical or mental inability to perform duties;
- (5) engaging in conduct which interferes with the proper performance of duties;
- (6) continuing employment with the agency where such employment is a violation of any provision of state law;
- (7) abandonment of a position by being absent without authorization for three consecutive workdays;
- (8) conviction of an offense which is a contraindication to continued employment for which hired;

#### **§161.13. Appeals.**

(a) Actions which may be appealed to the Merit System Council.

(1) Appeal from rejection of application or disqualification. Applicants who have been disqualified or whose applications are rejected in accordance with §161.5(b) and (c) of this title (relating to Applications and Examinations), may be admitted to an examination pending consideration of an appeal, but such admission shall not constitute any assurance of removal of disqualification or approval of applicant's training and experience as satisfying minimum qualifications.

(2) Appeal from examination rating. Applicants may appeal to the council for a review to assure that uniform rating procedures have been applied fairly and equally in the rating of any part of the examination. No change will be made in the rating unless the council finds that an error has been made and any correction shall not affect certifications or appointments previously made from the register.

(3) Appeal from removal from register. An eligible whose name has been involuntarily removed from a register may appeal to the council for reconsideration of the removal.

(4) Appeal from discrimination. An applicant, eligible, or employee who feels adversely affected in employment status or opportunity for employment as a result of discrimination prohibited by §161.17 of this title (relating to Discrimination), shall have the right of appeal to the council.

(9) making a false statement of material fact on the agency or Merit System Council application; or

(10) violation of any state or agency rules, regulations, or policies.

(b) The agency must furnish to the employee at the time such action is taken, or prior thereto, a statement in writing specifying the reason(s) for the action and what type of discipline will be effected. In an emergency situation, where it is impracticable to give prior or immediate notice in writing, such notice shall be given as soon as possible. The notice shall also state that the employee has the right to appeal the action as provided in §161.13 of this title (relating to Appeals).

(c) Suspension for disciplinary reasons. The appointing authority may suspend without pay any employee for any of the reasons specified in subsection (a) of this section. Such suspension shall not exceed one month for any one offense.

(d) Suspension for investigative purposes. The appointing authority may place an employee on leave-without-pay status pending the outcome of an investigation concerning the employee for any reason indicated in subsection (a) of this section.

(e) The appointing authority may reduce an employee's salary to a step rate no lower than the minimum rate for that employee's designated salary group for any reason listed in subsection (a) of this section. An employee's pay may be restored to any step rate in the designated salary group up to and including the prior rate.

(f) An employee may be demoted for any reason given in subsection (a)(1) of this section upon certification by the director that minimum qualifications for the new class have been met.

(g) Like penalties shall be imposed for like offenses insofar as is practicable.

(h) The appointing authority is not required to reconsider for appointment any employee dismissed for any of the reasons specified in subsection (a) of this section.

(5) Appeal from dismissal, suspension, demotion, or salary reduction. A permanent employee who is dismissed, suspended, demoted, or reduced in salary shall have the right to appeal such action to the council.

(b) Requirements and procedures governing appeals.

(1) Contents and time limitation on filing appeals.

All appeals shall be in writing and shall be received by the director within 20 days after either: the action complained of; the date of appellant's first official notice of the action complained of; or notice of denial of any administrative remedies sought by appellant. The appeal shall state the following:

(A) appellant's name, employing agency (if applicable), and mailing address;

(E) specific action(s) complained of, including the alleged violation of this regulation;

(C) relief sought by the appeal;

(D) whether the appellant wishes to appear when the appeal is considered; and

(E) whether appellant is represented by counsel.

(2) Scheduling and processing appeals. Upon receipt of an appeal, the director shall arrange for a council hearing to be held within 45 calendar days of receipt of the appeal, unless an extension of time is agreed to by the parties. The director shall notify the appellant and appointing authority, if applicable, of time and place of the hearing as soon as practicable, but in any event not less than 15 calendar days in advance thereof. The council shall issue its written decision on the appeal within 30 calendar days after the hearing. The director shall promptly transmit copies of the decision to the appellant and to the appointing authority, if the appellant is an employee.

(3) Procedures governing conduct of appeal hearings. The following procedures shall govern the conduct of appeal hearings before the council.

(A) Appeal proceedings before the council shall be open, public hearings, but either party may invoke the rule to exclude nonparty witnesses except while giving evidence.

(B) Any party shall have the right, but shall not be required, to be represented by counsel.

(C) The director shall arrange for a notary public, or other officer empowered to administer oaths, to be in attendance at every hearing and all evidence offered shall be under oath.

(D) All evidence offered shall bear upon the action from which the appeal is taken and the council may properly exclude all extraneous evidence.

(E) The proceedings of all hearings before the council shall be recorded, but shall be transcribed only upon request of a party to the appeal. The council will determine a reasonable fee per transcript page and also will require a deposit sufficient to cover the cost of the transcript prior to its preparation.

(F) Either party may request the other party to produce relevant records, exhibits, and witnesses under custody or control of the requested party. Such requests shall be made at least 10 calendar days prior to the scheduled hearing and copies of all such requests to the adverse party shall be filed with the council. The council may direct compliance with such requests. Upon a showing of good cause, the council may order production of such relevant documents and/or witnesses when such requests are made later than 10 calendar days prior to the hearing. The council will sum-

marily dismiss the appeal of an appellant who refuses to comply with this procedure.

(G) At the appellant's request, a certified interpreter shall be provided by the council for the appellant whose hearing is so impaired as to prohibit understanding voice communications. The appellant must provide notice of the hearing impairment at least 10 calendar days prior to the appeal hearing.

(H) Appeals made directly to the council shall be heard and considered de novo. When an appeal to the council is taken from an agency's internal grievance proceeding which included a due process hearing, upon motion by either party, a certified transcript of such hearing shall be admitted into evidence. Thereafter, the council shall not rehear any of the evidence so admitted.

(I) A certified transcript is an accurate and complete written record of any and all proceedings of a due process hearing, including copies of all exhibits, motions, and pleadings, and a verbatim transcript of all testimony, objections, rulings, arguments, and findings made in such proceeding.

(J) A due process hearing is an adversary hearing conducted under standards and conditions substantially equivalent to those established in this regulation, including the following:

(i) all testimony is given under oath or penalty of perjury.

(ii) parties are given notice of the rights of representation by legal counsel and cross-examination of witnesses.

(iii) irrelevant and immaterial evidence is excluded.

(iv) decisions are made by a person or persons not under the supervision, directly or indirectly, of the agency official proposing or recommending the adverse action.

(v) parties have the right to compel the attendance and testimony of witnesses who are under control, direction, or supervision of the opposing party.

(c) Enforcement of appeal decisions.

(1) Appeal from dismissal, suspension, demotion, or salary reduction. In appeals brought under subsection (a) of this section, the opinion of the council shall be recommendatory to the appointing authority. Within 15 calendar days after receipt of the opinion, the appointing authority shall make its decision which shall be final and record same in the permanent records of the agency. Except in cases where the recommendation is that the action of the agency be sustained, promptly give written notification to the appellant and the director of its decision as to whether the council recommendation will be implemented.

(2) Appeals from other actions. In cases of all appeals except those brought under subsection (a)(5) of this section, the decision of the council shall be final and binding upon the director and/or the appointing authority. Within 15 calendar days after receipt of the council's decision, except in cases where the decision is that the action of the agency be sustained, the agency shall advise the director of the agency's action in implementing the decision.

*§161.14. Attendance and Leave.* The agency shall adopt regulations covering attendance, vacations, sick leave, and other types of leave.

*§161.15. Performance Reviews and Training.*

(a) Performance reviews.

(1) The agency shall establish and maintain a system

of performance reviews designed to give a fair evaluation of work performed. Such reviews may be made as often as determined necessary.

(2) Performance reviews should be considered in making determinations concerning merit salary increases, promotions, demotions, dismissals, and the order of separations due to reduction in force.

(3) If the overall performance of a permanent employee is below the standard accepted by the agency, the appointing authority may impose a period of administrative notice, during which the performance of the employee shall be closely monitored and documented. The agency shall make reasonable efforts to correct inadequate performance.

(b) Training.

(1) To assure a high quality of performance, the agency will provide in-service training as needed for its employees. Such training shall be designed to give employees the knowledges, skills, and abilities to perform their jobs efficiently and effectively.

(2) The director may assist agencies in determining their training needs and in devising and establishing programs to meet such needs.

**§161.16. Political Activities.**

(a) No employee shall use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office. No employee may directly or indirectly coerce, attempt to coerce, command, or advise another employee to pay, lend, or contribute anything of any value to a party, committee, organization, agency, or person for political purposes. No employee may be a candidate for elective office in violation of any statutory provision.

(b) All employees retain the right to express their opinions on all political subjects and candidates, and take an active part in political management and political campaigns subject to the limitations in this section.

(c) No employee during the hours of duty shall work to influence the outcome of any election, or the passage or defeat of any legislative measure.

**§161.17. Discrimination.**

(a) Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, or other personnel action, based on race, color, religion, sex, national origin, political affiliation, age, handicap, or any other nonmerit factor is prohibited, except where specific age, sex, or physical requirements constitute a bona fide occupational qualification. Nonmerit factors are considerations lacking an evident or apparent relationship to work to be performed or to the employee's general fitness for duty.

(b) The agency shall adopt an affirmative action plan to assure compliance with provisions of this article and to principles of equal employment opportunity. Such plans shall be reviewed annually, updated as deemed necessary by the agency, and filed with the Merit System Council.

**§161.18. Dual Employment.** The agency may require that an employee have official permission before obtaining employment in addition to the position held with the agency. The agency may withhold permission upon a finding of conflict of interest.

**§161.19. Payroll Certification.** The director shall make a monthly review of the payroll to ascertain conformity with this regulation and shall promptly certify the findings to the

agency and appropriate federal authorities, taking exception to the name of any person whose employment is found to be in nonconformity with or in violation of this regulation.

**§161.20. Reports and Records.**

(a) Reports. The agency shall make reports as required by state and federal law. The personnel official shall make such personnel reports as may be required by the agency and the director.

(b) Records.

(1) All personnel records of the agency shall be open to the inspection of the director.

(2) The personnel official shall designate to the director those employees who are authorized by the agency to have access to personnel records and information maintained by the merit system office. The director shall have final authority on the release of personnel information.

**§161.21. Use of Merit System Registers Established by Other Agencies.**

(a) Cooperation with other agencies. The director may cooperate with other state departments or with federal or local departments whose merit systems operate in conformity with standards comparable to those contained in this regulation. The director may give recognition to appropriate registers of the other agencies for like classifications.

(b) Individual certification of incumbents. Recognition may be given to merit status conferred on an individual by another state, federal, or local agency operating under a merit system with standards equivalent to those in effect in this regulation, and such individuals may be deemed eligible for transfer to the agencies with merit status, provided:

(1) the transfer is to a position determined by the director to involve duties and responsibilities of a character closely related to those of the position occupied by the individual in the other state or federal service, or the director determines by appropriate examination that the individual is qualified to perform the duties of the position to which transfer is proposed;

(2) the director certifies that the individual meets the minimum qualifications for the position to which transfer is proposed;

(3) the individual so transferred serves a satisfactory probationary period as provided in §161.9(a) of this title (relating to Probationary Period).

**§161.22. Veterans' Preference for Applicants.**

(a) Preference on competitive examinations. In establishing registers based upon competitive examinations, the director shall give preference to veterans as provided by state law.

(b) Rating training and experience. The director shall in rating training and experience as provided in §161.5 of this title (relating to Applications and Examinations) give appropriate weight to pertinent training and experience gained by applicants during military service.

(c) Minimum qualifications. Any person honorably discharged or released under honorable conditions after having been in active service shall be exempted from provisions requiring recency of experience when such provisions are a part of the minimum qualifications for any classifications, provided that the applicable training and experience would, at the time of entrance into military service, have met all of the minimum qualifications currently required. Such exemptions shall apply only to applications filed for examinations

held within two years following the date of discharge or release from the armed forces.

(d) Reinstatement to registers. Any person honorably discharged or released under honorable conditions from active service in the armed forces may, within one year and upon written request to the director, be reinstated to any current registers upon which the individual's name appeared at the time of entrance upon such service.

### §161.23. Employee-Management Relations.

(a) Membership in labor organizations. All employees shall have the right to organize, join, or refrain from joining a labor organization. The term "labor organization" means any organization of any kind, or any agency or employee, representation committee, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with one or more employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Right to present grievances.

(1) All employees shall have the right to present grievances to the agency concerning their wages, hours of work, or conditions of work individually or through a representative that does not claim the right to strike.

(2) The agency will meet with employees or their designated representatives at reasonable times and places to hear their grievances concerning wages, hours of work, and conditions of work.

(3) Agreements under this section between the agency and employees or their designated representatives that would compromise other sections of this regulation are prohibited.

(c) Prohibition of right to strike. In accordance with state law, any employee who participates in a strike or organized work stoppage shall forfeit all civil service rights, re-employment rights, and any other rights, benefits, or privileges which he or she enjoys as a result of employment or prior employment, providing, however, that the right of an individual to cease work shall not be abridged so long as the individual is not acting in concert with others in an organized work stoppage.

(d) Prohibition of collective bargaining. No agency or employee shall enter into a collective bargaining contract with a labor organization respecting the wages, hours, or conditions of employment of employees, or recognize a labor organization as the bargaining agent for any group of employees.

§161.24. Amendments. If and when it appears desirable in the interest of efficient and economic administration of the system or necessary by law, the council may make additions or amendments to this regulation.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818900 F. Kemp Dixon  
Interim Administrator  
Texas Merit System Council

Effective Date: January 1, 1982  
Proposal Publication Date: November 3, 1981  
For further information, please call (512) 477-9665.



## TITLE 22. EXAMINING BOARDS

### Part XII. Board of Vocational Nurse Examiners

#### Chapter 231. Administration

##### General Practice and Procedure

The Board of Vocational Nurse Examiners adopts the repeal of §§231.28, 231.37-231.39, and 231.41 (390.01.02.018, .027-.029, and .032), relating to general practice and procedures, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3212).

These rules are repealed so the board may adopt new rules to provide clarification of the responsibilities of the director of education, the blanket position bond, and fee structures. Repeal of these rules will allow for the adoption of new rules which will establish the responsibilities of the director of education, associate directors of education, and specified who is covered by a blanket position bond. New fees have been established, thus making the rules relating to such fees obsolete.

No comments were received regarding the 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.

Waldeen D. Wilson, R.N.  
December 4, 1981

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

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818888 Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.



The Board of Vocational Nurse Examiners adopts new §§231.37-231.39, 231.41, and 231.62, relating to general practice and procedure, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3213).

These rules provide clarification of the responsibilities of the director of education, the blanket position bond, and fee structures and adoption, amendment and repeal of rules. The new sections establish the responsibilities of the director of education, associate directors of education, and states who is covered by a blanket position bond. The new fees have been established, and these rules will provide a synopsis of these fees. The rules will clarify where information is available concerning the adoption, amendment, and repeal of rules.

No comments were received regarding the adoption of these new rules.

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.

Waldeen D. Wilson, R.N.  
December 4, 1981

These rules are adopted under the authority of Texas Civil Statutes, Article 4528c, §5(g), which provides authority for the board to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818889      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

## Board Rules

The Board of Vocational Nurse Examiners adopts the repeal of §§231.62, 231.65, and 231.66 (390.01.03.002, .005, and .006) relating to board rules, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3232).

These rules are repealed to comply with the Vocational Nurse Act, and will allow for the adoption of new rules for clarification.

No comments were received regarding the 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.

Waldeen D. Wilson, R.N.  
December 4, 1981

These rules are repealed under the authority of Texas Civil Statutes, Article 4528c, §5(g), which provides authority for the board to make such rules and regulations as may be

necessary to govern its procedures and to carry in effect the purposes of the law.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818890      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

## Procedural Guidelines in Contested Cases

The Board of Vocational Nurse Examiners adopts the repeal of §§231.81-231.89 (390.01.04.001-.009) relating to procedural guidelines in contested cases, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3232).

These rules are repealed to allow the board to establish new rules which will comply with the new Vocational Nurse Act, and to provide the public with information regarding violations of the Act, and the procedure for disciplinary action.

No comments were received regarding the repeal of these rules.

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.

Waldeen D. Wilson, R.N.  
December 4, 1981

These rules are repealed under the authority of Texas Civil Statutes, Article 4528c, §5(g), which provides authority for the board to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818891      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

## Disciplinary Action

The Board of Vocational Nurse Examiners adopts new §§231.81-231.85, 231.87-231.90, and 231.92-231.101, relating to disciplinary action, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3216).

These rules are adopted to comply with §10 of the amended Vocational Nurse Act, and will provide the public with information regarding violations of the Act and the procedure for disciplinary action.

No comments were received regarding the adoption of these new rules.

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.

Waldeen D. Wilson, R.N.  
December 4, 1981

These rules are adopted under the authority of Texas Civil Statutes, Article 4528c, §5(g), which provides authority for the board to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818892      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

The Board of Vocational Nurse Examiners adopts new §231.86, relating to disciplinary action, with changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3215).

The rule was established to comply with §10 of the amended Vocational Nurse Act and will provide the public with information regarding procedure for petitioning for a continuance of a hearing.

No comments were received regarding the adoption of the new 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.

Waldeen D. Wilson, R.N.  
December 4, 1981

This rule is adopted under the authority of Texas Civil Statutes, Article 4528c, §5(g), which provides authority for the board to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§231.86. *Continuances.* A licensee who has been served with proper notice of hearing may petition the board for a continuance of the said hearing in writing. Said petition must be received in the office no later than five days prior to the set hearing date.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818893      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

## Chapter 233. Education

### Operation of a Vocational Nursing Program

The Board of Vocational Nurse Examiners adopts the repeal of §233.17 and §233.27 (390.02.02.007 and .017) relating to the operation of a vocational nursing program, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3232).

These rules are repealed and combined into one rule which better states the transfer of controlling authority of a vocational nursing program.

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.

Waldeen D. Wilson, R.N.  
December 4, 1981

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

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818894      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

The Board of Vocational Nurse Examiners adopts new §233.17, relating to the operation of a vocational nursing program, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3219).

The new section clarifies transfer of the control of a vocational nursing program by providing a procedure for the transfer of controlling authority of such programs.

No comments were received regarding adoption of the new 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.

Waldeen D. Wilson, R.N.  
December 4, 1981

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

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818895      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

The Board of Vocational Nurse Examiners adopts the repeal of §233.57 and §233.59 (390.02.04.009, and .011) relating to vocational nursing education standards, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3233).

Section 233.57 was repealed to allow the board to establish a rule to clarify procedures for challenging programs. Section 233.59 was repealed as it dictates curriculum.

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.

Waldeen D. Wilson, R.N.  
December 4, 1981

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

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818907      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

The Board of Vocational Nurse Examiners adopts new §233.57, relating to the operation of a vocational nursing program, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3219).

The new section clarifies transfer of the control of a vocational nursing program by providing a procedure for the transfer of controlling authority of such programs.

No comments were received regarding adoption of the new 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.

Waldeen D. Wilson, R.N.  
December 4, 1981

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

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818896      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

## Chapter 235. Licensing

### Application for Licensure

The Board of Vocational Nurse Examiners adopts the repeal of §235.8 and §235.11 (390.03.01.008 and .011) relating to applications for licensure, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3233).

These rules are repealed to allow the board to establish new rules and clarify qualifications for applications for the licensing examination and rewriting of the examination.

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.

Waldeen D. Wilson, R.N.  
December 4, 1981

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

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818897      Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981  
Proposal Publication Date: September 4, 1981  
For further information, please call (512) 458-1203.

The Board of Vocational Nurse Examiners adopts new §§235.8, 235.11, and 235.16, relating to applications for licensure, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3222).

The new sections clarify who is qualified to apply for the licensing examination and rewriting of the examination, and provide information regarding persons, other than graduates, who are allowed to apply for the licensing examination and time frame in which application may be made.

No comments were received regarding adoption of the new 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.

Waldeen D. Wilson, R.N.  
December 4, 1981

The new sections are adopted under Texas Civil Statutes, Article 4528c, §5(g), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and

regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818898 Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date: December 31, 1981

Proposal Publication Date: September 4, 1981

For further information, please call (512) 458-1203.

## Issuance of Licenses

The Board of Vocational Nurse Examiners adopts the repeal of 5235.47 (390.03.04.007) relating to issuance of licenses, without changes to the proposed text published in the September 4, 1981, issue of the *Texas Register* (6 TexReg 3233).

This section is repealed in order to place the information in another section of the rules and regulations. The repeal allows clarification of the procedure for denial, revocation, or suspension of license in the new rules.

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.

Waldeen D. Wilson, R.N.  
December 4, 1981

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

Issued in Austin, Texas, on December 4, 1981.

Doc No 818899 Waldeen D. Wilson, R.N.  
Executive Director  
Board of Vocational Nurse  
Examiners

Effective Date December 31, 1981

Proposal Publication Date September 4, 1981

For further information, please call (512) 458-1203.

## Part XXIX. Texas Board of Land Surveying

### Chapter 661. General Rules of Procedure and Practice

#### Applications, Examinations, and Licensing

The Texas Board of Land Surveying adopts amendments to §661.45 (408.01.04.005) without changes to the proposed text published in the October 9, 1981, issue of the *Texas Register* (6 TexReg 3755).

This rule is adopted by the board to permit more flexibility in the type of calculator used by an applicant during an examination. This rule does not affect anyone other than an applicant taking the examination.

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.

Betty J. Pope  
December 3, 1981

The amendments are adopted under Texas Civil Statutes, Article 5282C, §9(a), which states that the board shall have the authority and power to make and enforce all reasonable and necessary rules, regulations, and bylaws in administering this Act.

Issued in Austin, Texas, on December 3, 1981.

Doc. No. 818840 Betty J. Pope  
Executive Secretary  
Texas Board of Land Surveying

Effective Date: December 25, 1981

Proposal Publication Date October 9, 1981

For further information, please call (512) 452-9427.

### Chapter 663. Standards of Responsibility and Rules of Conduct

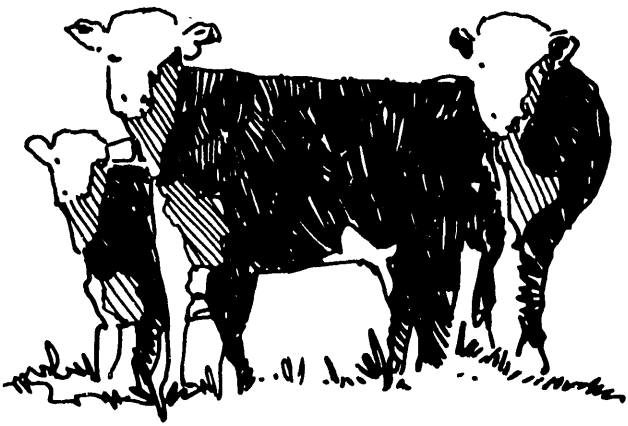
The Texas Board of Land Surveying has withdrawn from consideration for adoption proposed new §663.11 (408.02.00.011) The text of the new section as proposed was published in the October 6, 1981, issue of the *Texas Register* (6 TexReg 3686).

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818841 Betty J. Pope  
Executive Secretary  
Texas Board of Land Surveying

Filed: December 4, 1981

For further information, please call (512) 452-9427.



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**NONCODIFIED**

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**Texas Department of Human Resources****Food Stamps**

(Editor's note: Adoptions submitted by the Texas Department of Human Resources will be published in the December 15 issue. The submissions which concern the Food Stamp Program were adopted by federal mandate effective October 10, 1981. A list of the subchapters and rules contained within them follows.)

Responsibilities  
Rules 326 15.12.005, .014

Household Concept  
Rules 326 15.22.023-.028  
Rule 326.15.22.029

Application Process  
Rules 326.15.23.011, .017-.036  
Rules 326.15.23.037-.040

Expedited Service  
Rule 326.15.25.020

Changes  
Rule 326 15.26.026

Resources  
Rule 326 15.35.017

Income  
Rules 326 15 41 038, .057

Computation of Income  
Rule 326.15.43 009

Self-Employment Income  
Rules 326 15 44 008, .010, .015, .019  
Rule 326 15 44.016

Strikers  
Rules 326 15 55.001-.005  
Rule 326 15.55 006

Farm Laborers  
Rule 326 15.57.007

Contract Employees  
Rule 326 15 58 002

Certification Periods  
Rule 326 15 63 008

Notice of Adverse Action  
Rule 326 15 65 006  
Rule 326.15.65 009

Restoration of Lost Benefits  
Rule 326 15.72.014

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*.

## Texas Department of Agriculture

**Monday, January 4, 1982, 10 a.m.** The Texas Egg Law Unit of the Texas Department of Agriculture will conduct a formal adjudicative hearing in Suite 301 of the Texas Department of Agriculture District Office, 2800 Northeast Loop 410, San Antonio, to consider suspension of current Type 1, Class 5 License 5261, and Type 1, Class 8 License 1162, issued to Lloyd J. Bell, P.O. Box 178, Smiley, for alleged violation of Texas Agriculture Code, §132.072 by conviction of an offense under the Texas Egg Law.

Information may be obtained from Steve Haley, P.O. Box 12847, Austin, Texas, (512) 475-1572.

Filed: December 4, 1981, 3:57 p.m.  
Doc. No. 818902

**Monday, February 8, 1982.** The Agricultural and Environmental Sciences Division of the Texas Department of Agriculture will conduct formal adjudicative hearings in Room 1046 of the Stephen F. Austin Building, 17th and Congress, Austin, to consider suspension, modification, or revocation of the following current noncommercial pesticide applicator licenses.

**10 a.m.** License 2542—William Greer, 13455 Woodforest, Apartment 116B, Houston, for alleged violation of

Texas Agriculture Code, §§76.116, 76.201, and 76.131; and 4 TAC §§7.12, 7.15, 7.18, and 7.29.

**2 p.m.** License 2552—L.C. White, 7015 Pinetex, Humble, for alleged violation of Texas Agriculture Code, §§76.116, 76.201, and 76.131, and 4 TAC §§7.12, 7.15, 7.18, and 7.29.

Information may be obtained from David Ivie, P.O. Box 12847, Austin, Texas, (512) 475-4457.

Filed: December 4, 1981, 3:57 p.m.  
Doc. Nos. 818903 and 818904

## Interagency Council on Early Childhood Intervention

**Friday, December 11, 1981, 9 a.m.** The Interagency Council on Early Childhood Intervention will meet in the law library, second floor, 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. Ramin, 1100 West 49th Street, Austin, Texas, (512) 458-7241.

Filed: December 3, 1981, 4:19 p.m.  
Doc. No. 818800

## Texas Education Agency

**Monday, December 14, 1981, 2 p.m.** The Interagency Planning Committee for the State Plan for Vocational Education and the Department of Occupational Education and Technology of the Texas Education Agency will meet in the second floor conference room of the Texas Education Agency, Riverside Square South, 158 East Riverside Drive, Austin. Items on the agenda include discussion of the list of tentative dates and activities for the development of the five-year plan for vocational education for fiscal years 1983-1987; an accountability report for fiscal year 1981; an overview of the five-year plan and accountability report development procedures; certified list of courses for occupational education and technology; a status report of the Comprehensive Employment and Training Act (CETA) projects; and scheduling of meeting dates for the committee.

Information may be obtained from Dan Bristow, 201 East 11th Street, Austin, Texas 78701, (512) 475-6205.

Filed: December 4, 1981, 11:13 a.m.  
Doc. No. 818843

## Texas Employment Commission

**Tuesday, December 15, 1981, 9 a.m.** The Texas Employment Commission will meet in Room 644 of the Texas Employment Commission Building, 15th and Congress, Austin. Items on the agenda summary include prior meeting notes; reports of the general counsel and administrator; status report on fiscal year 1982 funding; E.S. and U.I. program activities; advisory council guidelines; and agenda items for the December 29, 1981, meeting. The commission will also meet in executive session to consider personnel, premises, and litigation.

Information may be obtained from Pat Joiner, Texas Employment Commission Building, Room 656, Austin, Texas, (512) 397-4514.

Filed: December 7, 1981, 3:34 p.m.  
Doc. No. 818942

## Office of the Governor

**Tuesday, December 15, 1981, 2 p.m.** The Crime Stoppers Advisory Council of the Governor's Office of General Counsel and Criminal Justice will meet in the Salon H, Marriott Hotel, 6121 IH 35 North, Austin. According to the summarized agenda, the council will meet to discuss rules and reports on status of the media program and the status of local crime stoppers' programs.

Information may be obtained from Willis Whately, P.O. Box 12428, Austin, Texas 78711, (512) 475-3021.

Filed: December 7, 1981, 11:38 a.m.  
Doc. No. 818921

## Texas Department of Health

**Monday, December 14, 1981, 9:30 a.m.** The Interagency Committee on Children's Vision of the Texas Department of Health will meet in Room T-407 of the Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda include reports on vision screening program activities by committee members of the Texas Education Agency, Texas Department of Human Resources, State Commission for the Blind, and the Texas Department of Health; and a report on the meeting of the Advisory Committee on Children's Vision to the Texas Board of Health.

Information may be obtained from Donald J. Tausch, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7420.

Filed: December 3, 1981, 3:43 p.m.  
Doc. No. 818795

## Texas Health Facilities Commission

**Friday, December 18, 1981, 10 a.m.** The Texas Health Facilities Commission will meet in Suite 305 of the Jefferson Building, 1600 West 38th Street, Austin, to consider the following applications:

### Certificate of Need

Northwest Mediplex, Austin  
AH81-0527-021

Trinity Towers Health Center, Corpus Christi  
AH81-0626-034

Baylor University Medical Center, Austin  
AH81-0729-019

Amarillo Good Samaritan Center, Amarillo  
AH81-0713-034

Cliff Towers Nursing Home, Dallas  
AN81-0526-041

Pasadena Bayshore Hospital, Pasadena  
AH81-0814-014

Amendment of Certificate of Need Order  
McAllen Methodist Hospital, McAllen  
AH80-0613-013A (111281)

Motion for Rehearing/Petition for Reconsideration regarding  
Amendment of Exemption Certificate  
Thomas L. Goodnight Memorial Hospital, Inc., Caldwell  
AH79-0425-021A

Petition for Reconsideration regarding Allegation of Violation  
Thomas L Goodnight Memorial Hospital, Inc., Caldwell  
FH81-0909-015.

Information may be obtained from Linda E. Zatopek, P.O. Box 15023, Austin, Texas 78761, (512) 475-6940.

Filed: December 7, 1981, 9:53 a.m.  
Doc. No. 818918

## State Board of Insurance

**Wednesday, December 16, 1981, 9 a.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 350, 1110 San Jacinto Street, Austin, in Docket 6649—application for admission by the Fidelity Standard Life Insurance Company, Wilmington, Delaware.

Information may be obtained from J.C. Thomas, 1110 San Jacinto, Austin, Texas 78786, (512) 475-4353.

Filed: December 7, 1981, 3:15 p.m.  
Doc. No. 818931

**Thursday, December 17, 1981, 9 a.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, in Docket 6647—application for admission by The Penn Insurance and Annuity Company, Wilmington, Delaware.

Information may be obtained from John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287

Filed: December 7, 1981, 3:15 p.m.  
Doc. No. 818932

**Thursday, December 17, 1981, 10:30 a.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin, in Docket 6636—application of Texas Employers Insurance Association, Dallas, for approval to acquire control of Texas Compensation Insurance Company, Dallas.

Information may be obtained from J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: December 7, 1981, 3:14 p.m.  
Doc. No. 818933

**Thursday, December 17, 1981, 1:30 p.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, in Docket 6637—merger of Savings Life Insurance Company of Texas, Dallas, into Consolidated Bankers Life Insurance Company of Louisiana, Shreveport, Caddo Parish, Louisiana.

Information may be obtained from John Brady, 1110 San Jacinto Street, Austin, Texas, (512) 475-2287.

Filed: December 7, 1981, 3:14 p.m.  
Doc. No. 818934

**Thursday, December 17, 1981, 3 p.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, in Docket 6316 to consider the release from supervision of Commercial Standard Insurance Company, Fort Worth.

Information may be obtained from J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: December 7, 1981, 3:13 p.m.  
Doc. No. 818935

**Friday, December 18, 1981, 8:30 a.m.** The Commissioner's Hearing Section of the State Board of Insurance will reopen a public hearing in Room 350, 1110 San Jacinto Street, Austin, in Docket 5716 to consider release from supervision of Union Pacific Insurance Company, Dallas.

Information may be obtained from J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: December 7, 1981, 3:13 p.m.  
Doc. No. 818936

**Friday, December 18, 1981, 9 a.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, in Docket 6613—application for admission by Columbian Mutual Life Insurance, Binghamton, New York.

Information may be obtained from John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: December 7, 1981, 3:13 p.m.  
Doc. No. 818937

**Friday, December 18, 1981, 10:30 a.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto, Austin, in Docket 6628—application for original charter by Abacus Life Insurance Company, Houston.

Information may be obtained from John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: December 7, 1981, 3:12 p.m.  
Doc. No. 818938

**Friday, December 18, 1981, 1 p.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 350, 1110 San Jacinto, Austin, in Docket 6626—application for authority to issue variable annuity contracts in Texas by Lincoln National Pension Insurance Company, Fort Wayne, Indiana.

Information may be obtained from J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: December 7, 1981, 3:12 p.m.  
Doc. No. 818939

**Monday, December 21, 1981, 2 p.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto, Austin, in Docket 6642 to consider for approval of valuation to be placed on title plant of Multnomah County, Oregon, as requested by Stewart Title Guaranty Company, Houston.

Information may be obtained from John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: December 7, 1981, 3:12 a.m.  
Doc. No. 818940

**Monday, December 21, 1981, 3 p.m.** The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, in Docket 6643 to consider for approval of valuation to be placed on title plant of Oklahoma County, Oklahoma, as requested by Stewart Title Guaranty Company, Houston.

Information may be obtained from John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: December 7, 1981, 3:11 p.m.  
Doc. No. 818941

## Commission on Jail Standards

**Wednesday, December 16, 1981, 8:30 a.m.** The Commission on Jail Standards will meet in Suite 206, Law Center, 1414 Colorado, Austin. Items on the agenda summary include: approval of minutes of October 28, 1981, meeting; directors report; Camp, Val Verde, Potter, Webb, Randall, Crockett Counties; proposed definitions, §253.1 (217.02.00.001); adopted disciplinary plan, §283.1 (217.18.00.001); adopted grievance plan, §283.2, (217.18.00.002); proposed privileges plan, §291.1; (217.22.00.001); supervision, §217.14; Collin, Delta, Dimmit, Fannin, Fisher, Gonzalez, Jim Hogg, Jim Wells, Parker, Wilson, and Zavala counties; and applications for variance for Armstrong, Caldwell, Crane, Crockett, Dawson, Grayson, Kendall, Lamb and Nolan Counties.

Information may be obtained from Robert O. Viterna, 411 West 13th, Suite 900, Austin, Texas, (512) 475-2716.

Filed: December 3, 1981, 4:03 p.m.  
Doc. No. 818794

## Board for Lease of State-Owned Lands

**Wednesday, December 16, 1981, 3:30 p.m.** The Board for Lease of State Department of Highways and Public Transportation Lands of the Board for Lease of State-Owned Lands will meet in Room 831, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the board will consider approval of the



minutes of the previous board meeting; pooling application; and refunds to be made to high bidders of previous lease sales.

Information may be obtained from Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress, Room 835, Austin, Texas 78701, (512) 475-2071.

Filed: December 7, 1981, 5 p.m.  
Doc. No. 818945

## Texas Department of Mental Health and Mental Retardation

**Monday, December 14, 1981, 2:45 p.m.** The Texas Board of Mental Health and Mental Retardation Personnel Committee of the Texas Department of Mental Health and Mental Retardation will meet in Room 295, 909 West 45th Street, Austin. According to the agenda, the committee will consider a recommendation for appointment to the position of commissioner.

Information may be obtained from James A. Adkins, P.O. Box 12668, Austin, Texas 78711, (512) 465-4503.

Filed: December 4, 1981, 4:13 p.m.  
Doc. No. 818905

**Monday, December 14, 1981, 3 p.m.** The Texas Board of Mental Health and Mental Retardation of the Texas Department of Mental Health and Mental Retardation will meet in the board room, 909 West 45th Street, Austin. According to the agenda, the board will consider the recommendation of the Personnel Committee for the appointment to the position of commissioner.

Information may be obtained from James A. Adkins, P.O. Box 12668, Austin, Texas 78711, (512) 465-4503.

Filed: December 4, 1981, 4:13 p.m.  
Doc. No. 818906

## State Board of Morticians

**Wednesday, December 9, 1981, 1 p.m.** The State Board of Morticians made an emergency revision to the agenda of a meeting held at 1513 IH 35 South, Austin. The revision concerned a discussion of the cost of printing the consumer brochure and annual and the procedure for the hearing on consumer brochure content. The meeting was originally scheduled to be held on December 9 and 10, 1981. The revision was made on an emergency basis because not all board members could be present on December 10.

Information may be obtained from John W. Shocklee, 1513 IH 35 South, Austin, Texas 78741, (512) 442-6721.

Filed December 8, 1981, 9:38 a.m.  
Doc. No. 818951

**Wednesday, December 9, 1981, 2 p.m.** The State Board of Morticians made an emergency addition to the agenda of a meeting to be held at 1513 IH 35 South, Austin. The addition concerned con-

sideration of an application for a reciprocal license. The addition was made on an emergency basis because all the credentials and information was not received until after the filing deadline.

Information may be obtained from John W. Shocklee, 1513 IH 35 South, Austin, Texas 78741, (512) 442-6721.

Filed: December 4, 1981, 9:46 a.m.  
Doc. No. 818829

## Pan American University

**Tuesday, December 15, 1981, 4:30 p.m.** The Pan American University Board of Regents will conduct a special meeting in the conference room, Pan American University Administration Building, Edinburg. According to the agenda, the board will consider authorization for bids on furniture and acquisition of real property. The board will also meet in executive session to discuss personnel matters.

Information may be obtained from Dr. Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2101.

Filed: December 7, 1981, 1:49 p.m.  
Doc. No. 818922

## Board of Pardons and Paroles

**Monday-Wednesday, December 21-23, 1981, 9 a.m. daily.** The Board of Pardons and Paroles will meet at Room 711, Stephen F. Austin Building, Austin. According to the agenda, the board will review cases of inmates for parole consideration, act on emergency reprieve requests and other acts of executive clemency, review reports regarding persons on parole, procedures affecting the day to day operation of support staff, review and initiate needed rule changes relating to general operation, executive clemency, parole and all hearings conducted by this agency, and to take action upon gubernatorial directives.

Information may be obtained from Ken Casner, 711 Stephen F. Austin Building, Austin, Texas, (512) 475-3363.

Filed: December 7, 1981, 3:58 p.m.  
Doc. No. 818943

## Texas Board of Private Investigators and Private Security Agencies

**Thursday, December 17, 1981, 9:30 a.m.** The Texas Board of Private Investigators and Private Security Agencies will meet in the conference room, Suite 127, 105 West Riverside Drive, Austin. According to the summarized agenda, the board will consider the following: minutes of June 24 and August 6, 1981 board meetings; approval of staff actions; adoption of proposed board rules to im-

plement amendments to Texas Civil Statutes, Article 4413-29bb; possible approval of Texas A & M alarm installation and maintenance training program; possible adoption of policy regarding signs to be used by licensed companies; possible adoption of policy regarding advertising by national companies; and general procedures and policies to implement provisions of Texas Civil Statutes, Article 4413-29bb.

Information may be obtained from Clema D. Sanders, P.O. Box 13509, Austin, Texas 78711, (512) 475-3944.

Filed: December 7, 1981, 11:16 a.m.  
Doc. No. 818920

## Texas State Board of Examiners of Professional Counselors

**Friday and Saturday, December 11 and 12, 1981, 3 p.m. and 9 a.m. respectively.** The Texas State Board of Examiners of Professional Counselors will meet in Room T-507 of the Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda summary include the following: approval of minutes of the November 20 and 21, 1981, meeting; consideration of draft and adoption of rules to implement the Licensed Professional Counselor Act; appointment of committees; other matters relating to the licensure and regulation of professional counselors; and setting of the next meeting date.

Information may be obtained from Daniel L. Boone, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: December 3, 1981, 4:19 p.m.  
Doc. No. 818799

## Public Utility Commission of Texas

**Tuesday, December 15, 1981, 9 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. The conference, originally scheduled for December 7, 1981, concerns 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: December 4, 1981, 3:22 p.m.  
Doc. No. 818886

**Tuesday, December 15, 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 Docket 4202—application of West Texas Utilities Company for authority to increase rates.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 3, 1981, 3:40 p.m.  
Doc. No. 818796

**Thursday, December 17, 1981, 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 3969—inquiry by the commission into the water rates charged by Haysco Water Supply Corporation.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 8, 1981, 8:58 a.m.  
Doc. No. 818948

**Monday, December 21, 1981, 2 p.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 4200—application by Alpha Utilities to amend its service area boundary within Harrison and Marion Counties.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 3, 1981, 3:41 p.m.  
Doc. No. 818797

**Tuesday, January 5, 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 3654—application by Danville Water Supply Corporation to amend its certificate of convenience and necessity within Collin County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 4, 1981, 10 a.m.  
Doc. No. 818831

**Tuesday, January 5, 1982, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Docket 4206—inquiry into the water rates of Chisholm Trail Retreat, Inc.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 7, 1981, 1:48 p.m.  
Doc. No. 818923

**Wednesday, January 27, 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, in Docket 4184—application of the Lower Colorado River Authority for relief and endorsement of existing electric rate order.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0010.

Filed: December 3, 1981, 3:40 p.m.  
Doc. No. 818798

**Wednesday, January 27, 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 4089—petition of Houston Lighting and Power Company for review of the rate ordinance of the City of Pasadena, et al, and a motion for interim rates.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 8, 1981, 8:57 a.m.  
Doc. No. 818949

**Monday, February 22, 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 4181—application of Kimble Electric Cooperative, Inc., for authority to increase rates.

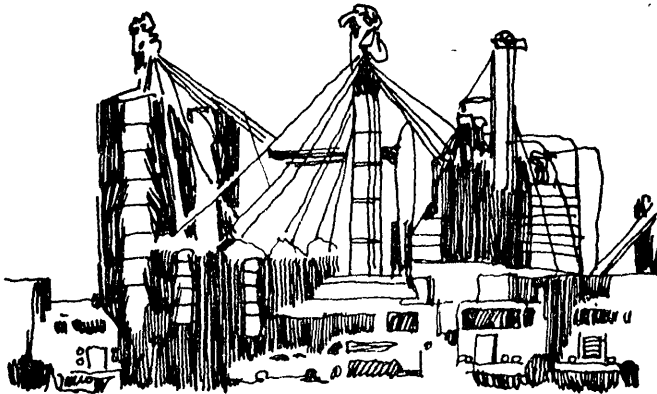
Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 8, 1981, 8:57 a.m.  
Doc. No. 818950

**Wednesday, March 10, 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 4173—appeal by S.S.S. Water Systems, Inc., from rates set by the City of Granite Shoals.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 7, 1981, 9:34 a.m.  
Doc. No. 818917



## Railroad Commission of Texas

**Monday, December 14, 1981, 9 a.m.** The Administrative Services Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin. According to the agenda, the division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Information may be obtained from Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1211.

Filed: December 4, 12:57 p.m.  
Doc. No. 818852

**Monday, December 14, 1981, 9 a.m.** The Automatic Data Processing Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin, to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Information may be obtained from Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1204.

Filed: December 4, 1981, 12:58 p.m.  
Doc. No. 818853

**Monday, December 14, 1981, 9 a.m.** The Flight Division of the Railroad Commission of Texas will meet in Room 107, 1124 IH 35 South, Austin. According to the agenda, the division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Information may be obtained from Ken Fossler, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1103.

Filed: December 4, 1981, 12:57 p.m.  
Doc. No. 818854

**Monday, December 14, 1981, 9 a.m.** The Gas Utilities Division of the Railroad Commission of Texas will meet in Room 107, 1124 IH 35 South, Austin, to consider Gas Utilities Dockets 3203, 3293, 3300, 3301, 3302, 3254, 3298, 3259, 3260, 3261, 3262, 3299, and the director's report on division administration, budget, procedures, and personnel matters.

Information may be obtained from Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1126.

Filed: December 4, 1981, 1:01 p.m.  
Doc. No. 818855

**Monday, December 14, 1981, 9 a.m.** The Office of Information Services of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin, to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Information may be obtained from Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711.

Filed: December 4, 1981, 12:57 p.m.  
Doc. No. 818856

**Monday, December 14, 1981, 9 a.m.** The Liquefied Petroleum-Gas Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin, to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Information may be obtained from Hugh F. Keepers, P.O. Drawer 12967, Austin, Texas 78711, (512) 475-1301.

Filed: December 4, 1981, 12:56 p.m.  
Doc. No. 818857

**Monday, December 14, 1981, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin, to consider various mat-

ters falling within the Railroad Commission's oil and gas regulatory jurisdiction.

Information may be obtained from Jan Burriss, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1307.

Filed: December 4, 1981, 1 p.m.  
Doc. No. 818858

**Monday, December 14, 1981, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 IH 35 South, Austin, concerning consideration of category determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978

Information may be obtained from Madalyn J. Girvin, P.O. Drawer 12967, Austin, Texas, 78711, (512) 445-1273.

Filed: December 4, 1981, 1:02 p.m.  
Doc. No. 818863

**Monday, December 14, 1981, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerns consideration of whether to adopt rules amending §3.09 and §3.46 (051.02.02.009 and .046) relating to salt water disposal well applications and fluid injection applications, and new §3.71 (051.02.02.074) relating to underground hydrocarbon storage.

Information may be obtained from Jerry W. Mullican, P.O. Drawer 12967, Austin, Texas, (512) 445-1373.

Filed: December 4, 1981, 12:56 p.m.  
Doc. No. 818861

**Monday, December 14, 1981, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerns consideration of whether or not to initiate rulemaking proceedings to amend §3.31 (051.02.02.031) concerning gas well allowables.

Information may be obtained from Sandra K. Joseph, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1286.

Filed: December 4, 1981, 12:58 p.m.  
Doc. No. 818859

**Monday, December 14, 1981, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerns consideration of a contract between the commission and the Texas Department of Water Resources for information processing services.

Information may be obtained from David M. Garlick, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1313.

Filed: December 4, 1981, 12:58 a.m.  
Doc. No. 818860

**Monday, December 14, 1981, 9 a.m.** The Oil and Gas Division of the Railroad Commission of Texas made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 IH 35 South, Austin. The addition concerns consideration of Docket

89,228—application of John H. Hendrix Corporation, Hahn Lease 1, Gloria-Gay, W. (Congl.) and (Ellen) Fields, Stonewall County, for Statewide Rule 37.

Information may be obtained from Skipper Lay, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1293.

Filed: December 4, 1981, 1 p.m.  
Doc. No. 818862

**Monday, December 14, 1981, 9 a.m.** The Personnel Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin, to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Information may be obtained from Herman L. Wilkins, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1120.

Filed: December 4, 1981, 12:59 p.m.  
Doc. No. 818864

**Monday, December 14, 1981, 9 a.m.** The Office of Special Counsel of the Railroad Commission of Texas will meet in the third floor conference room, 1124 IH 35 South, Austin, to consider and act on the division director's report relating to pending litigation, Sunset Commission procedure, and other budget, administrative, and personnel matters.

Information may be obtained from Walter Earl Lilie, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1186.

Filed: December 4, 1981, 12:56 p.m.  
Doc. No. 818865

**Monday, December 14, 1981, 9 a.m.** The Surface Mining and Reclamation Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 IH 35 South, Austin. According to the agenda, the division will consider allowance for a county road (White Oak Springs Church) in the Monticello (Docket 5) permit area to be temporarily relocated; adoption of final rules regarding uranium exploration hole drilling; and consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Information may be obtained from J. Randel (Jerry) Hill, 105 West Riverside Drive, Austin, Texas, (512) 475-8751.

Filed: December 4, 1981, 12:59 a.m.  
Doc. No. 818866

**Monday, December 14, 1981, 9 a.m.** The Transportation Division of the Railroad Commission of Texas will meet in the first floor auditorium, Room 107, 1124 IH 35 South, Austin, to consider various matters falling within the Railroad Commission's transportation regulatory jurisdiction.

Information may be obtained from Owen T. Kinney, 1124 IH 35, Austin, Texas 78704, (512) 445-1330.

Filed: December 4, 1981, 1:01 p.m.  
Doc. No. 818867

## School Land Board

**Tuesday, December 15, 1981, 10 a.m.** The School Land Board will meet in the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will consider: approval of minutes of previous board meeting; application of heirs of Emma Holland for patent to certain lands in the Thornton P. Kuykendall survey, and the application of Ann McAdams for a patent to certain land in the Benjamin Webb Survey, all in Leon County, pursuant to Article 7, §4(A) of the Texas Constitution; pooling applications; excess acreage application; coastal public lands—easement applications; cabin permit transfer request; and costal public lands report—cabin permit renewals.

Information may be obtained from Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress Avenue, Room 835, Austin, Texas 78701, (512) 475-2071.

Filed: December 7, 1981, 5:01 p.m.  
Doc. No. 818944

## The University of Texas System

**Thursday and Friday, December 10 and 11, 1981, 10 a.m. and 9 a.m., respectively.** The University of Texas System Board of Regents and Standing Committees are meeting on the fourth floor, Classroom Building, UT at Permian Basin, University at Parkway Boulevards, Odessa. Items on the agenda summary include: building and grounds matters, including authorization for study and projects, approval of preliminary and final plans, authorization for bids and award of contracts; amendments to 1981-1982 budgets; Chancellor's Docket (index submitted by System Administration); amendments to R and R; 1982-1983 budget policies and limitations; increase in student services fee (required) and rental rates for student housing—UT at Arlington; affiliation agreements; appointments to endowed positions; private fund development campaign; appointments to development boards and advisory councils; land and investment matters; acceptance of gifts, bequests, and estates; establishment of endowed positions and funds; oil and gas leases; sale of real property; pending litigation, land acquisition, and negotiated contracts; and personnel matters.

Information may be obtained from Arthur H. Dilly, P.O. Box N, Austin, Texas 78712, (512) 471-1265.

Filed: December 4, 1981, 1:14 p.m.  
Doc. No. 818845

## Texas Water Commission

**Monday, December 14, 1981, 10 a.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. Items on the agenda summary include: an application for a change order on a bond issue; setting a hearing date on district creations; water quality permits; amendments and renewals; uranium mining project matter; final decisions on

water right matters; and consideration of a request by Pacific Intermountain Express Company for an extension of Temporary Order 81-7E, issued by the commission on November 2, 1981, Harris County.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: December 3, 1981, 11:37 a.m.  
Doc. Nos. 818781 and 818782

**Tuesday, January 5, 1982, 9 a.m.** The Texas Water Commission will conduct a hearing in the auditorium of the Bank of the Southwest, 910 Travis, Houston, to consider the following applications:

Application by the City of Houston (Turkey Creek Plant), Department of Public Works, for an amendment to Permit 10495-85 to relocate and expand the Turkey Creek Improvement District sewage treatment plant. The new facility will achieve an advanced secondary treatment at an annual average flow of 6.0 MGD in Harris County.

Application by Cameron Iron Works, Inc., Houston, for a permit to authorize a discharge of 15,000 gallons per day of treated domestic sewage effluent. The applicant proposes to provide wastewater treatment for its Brookshire Technical Center in Waller County.

Information may be obtained from Phillip Paine, P.O. Box 13087, Austin, Texas 78711, (512) 475-1468.

Filed: December 3, 1981, 2:58 p.m.  
Doc. Nos. 818792 and 818791

**Thursday, January 7, 1982, 9 a.m.** The Texas Water Commission will conduct a hearing in the City of Houston Health Department Auditorium, 1115 North MacGregor, Houston, to consider an application by Malone Service Company (Swan Lake Site), Texas City, for a permit to operate certain storage and processing facility components for Class I and Class II industrial/hazardous solid wastes at the existing facility in Texas City, Galveston County.

Information may be obtained from Lee Mathews, P.O. Box 13087, Austin, Texas 78711, (512) 475-1311.

Filed: December 3, 1981, 11:17 a.m.  
Doc. No. 818844

**Tuesday, January 12, 1982, 9 a.m.** The Texas Water Commission will conduct a hearing in the Council and Courts Building, Main and Freeman Streets, Duncanville, to consider an application by Doherty Brothers Trucking, Inc., Ennis, for a permit to operate a commercial Class II and III disposal facility at a site near Ennis in Ellis County.

Information may be obtained from David Hume, P.O. Box 13087, Austin, Texas 78711, (512) 475-2711.

Filed: December 4, 1981, 11:17 a.m.  
Doc. No. 818846

**Thursday, January 14, 1981, 9 a.m.** The Texas Water Commission will conduct a hearing in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, to consider an application by B.N. Adams, Houston, for a permit to authorize a

discharge of 35,000 gallons per day of treated domestic sewage effluent. The applicant proposes to construct wastewater treatment facilities to serve the domestic needs of residents of an apartment complex in Colorado County.

Information may be obtained from Phillip Paine, P.O. Box 13087, Austin, Texas 78711, (512) 475-1468.

Filed: December 3, 1981, 2:57 p.m.  
Doc. No. 818793

**Wednesday, January 20, 1982, 10 a.m.** The Texas Water Commission will conduct a hearing in Room 124A, Stephen F. Austin Building, 1700 North Congress, Austin, to consider Application RE-0181 of the City of Carrollton for the construction of certain improvements on Hutton Branch, a tributary of the Elm Fork of the Trinity River, Trinity River Basin, in Dallas County.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: December 7, 1981, 11:14 a.m.  
Doc. No. 818919

**Thursday, January 21, 1982, 9 a.m.** The Texas Water Commission will conduct a hearing in the City of Houston Health Department Auditorium, 1115 North MacGregor, Houston, to consider the following:

Application by Homecraft Land Development, Inc., Houston, for a permit to authorize the discharge of 350,000 gallons per day of treated domestic sewage effluent. The facility will provide wastewater treatment for a combination of development types including residential, multi-family, and commercial in Fort Bend County.

Application by Ronald L. Jordan Company, Inc., Houston, for an amendment to Permit 11069 to increase the discharge rate from 24,000 to 40,000 gallons per day of domestic sewage effluent in Harris County.

Information may be obtained from Sandra Fitzpatrick, P.O. Box 13087, Austin, Texas 78711, (512) 475-1418.

Filed: December 4, 1981, 11:18 a.m.  
Doc. Nos. 818847 and 818848

**Friday, January 22, 1982, 10 a.m.** The Texas Water Commission will conduct a hearing in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, to consider the following applications:

Application 4171 of Frank H. Smaistrla, William J. Hlavinka, and Joseph C. Hlavinka, Jr., for a permit to authorize the direct diversion of 1,011 acre-feet per annum from the Middle Bernard Creek, tributary of San Bernard River, Brazos-Colorado Coastal Basin, for irrigation purposes in Wharton County.

Application 4170 of Twain J. Jagge and Sharon A. Jagge for a permit to divert a maximum of 15 acre-feet of water from the Medina River, tributary of the San Antonio River, San Antonio River Basin, for irrigation purposes in Medina County.

Application 4172 of the City of Coolidge for a permit to maintain two existing dams and reservoirs on an unnamed

tributary of Munger Branch, tributary of Pin Oak Creek, tributary of Richland Creek, tributary of Trinity River, Trinity River Basin, for recreational purposes in Limestone County.

Information may be obtained from Mary Ann Hefner, P.O. 13087, Austin, Texas 78711, (512) 475-4514.

Filed: December 3, 1981, 11:39 a.m.  
Doc. Nos. 818849, 818783, and 818784

**Thursday, January 28, 1982, 9 a.m.** The Texas Water Commission will conduct a hearing in the City of Houston Health Department Auditorium, 1115 North MacGregor, Houston, to consider the following:

Application by Demco Flange Company, Inc., doing business as Federal Flange Company, Houston, for a permit to authorize a discharge of 2,500 gallons per day of treated domestic sewage effluent. The applicant proposes to construct wastewater treatment facilities to serve the domestic needs of employees of an industrial manufacturing plant in Harris County.

Application by Diversified Power Systems, Inc., Houston, for a permit to authorize a discharge of 4,500 gallons per day of treated domestic sewage effluent. The applicant proposes to construct wastewater treatment facilities to serve the domestic needs of employees of a manufacturing plant in Harris County.

Information may be obtained from David Hume, P.O. Box 13087, Austin, Texas 78711, (512) 475-2711.

Filed: December 4, 1981, 11:18 a.m.  
Doc. Nos. 818850 and 818851

## Texas Department of Water Resources

**Tuesday, December 15, 1981, 9 a.m.** The Texas Water Development Board of the Texas Department of Water Resources will meet in Room 118, Stephen F. Austin Building, Austin. According to the summarized agenda, the board will consider: approval of minutes of previous meeting; status of the development fund and water assistance fund; extension of loan commitments to Hardin County Water Control and Improvement District 1 and to the City of Laredo; authorizing the executive director to conduct a public hearing for the purpose of obtaining evidence on actions the board should take to protect the Edwards Aquifer from pollution; a briefing on the staff's research concerning the constitutionality of House Bill 8; the proposed work plan and schedule to review and revise the Texas Water Plan; and approval of Washington County private sewage facilities rules.

Information may be obtained from Harvey Davis, P.O. Box 13087, Austin, Texas 78711, (512) 475-3187.

Filed: December 7, 1981, 3:11 p.m.  
Doc. No. 818930

## Regional Agencies

### Meetings Filed December 3, 1981

*The Texas Municipal League Workers' Compensation Joint Insurance Fund and the Municipal Liability Joint Self-Insurance Fund* met in the Hyde Park Room of the Plaza of Americas Hotel, 650 North Pearl Boulevard, Dallas, on December 7, 1981, at 9 a.m. Information may be obtained from William I. Martin, Jr., 1020 Southwest Tower, Austin, Texas 78701, (512) 478-6601.

*The Panhandle Regional Planning Commission*, Board of Directors, will meet in the conference room of the Gibraltar Building, Eighth and Jackson Streets, Amarillo, on December 17, 1981, at 1:30 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381.

*The Taylor County Central Appraisal District*, Board of Directors, met in the Abilene Club in the Abilene National Bank Building, Abilene, on December 8, 1981, at 6:30 p.m. Information may be obtained from Richard Petree, P.O. Box 3738, Abilene, Texas 79604, (915) 676-9381.

Doc. No. 818780

### Meetings Filed December 4, 1981

*The Capital Area Planning Council*, Executive Committee and General Assembly, will meet at Quality Inn South, Austin, on December 15, 1981, at noon. Information may be obtained from Richard G. Bean, 2520 IH 35 South, Austin, Texas 78704, (512) 443-7653.

*The Deep East Texas Regional MH/MR Services*, Board of Trustees, will meet in the Ward R. Burke Community Room of the Day Treatment Administration Facility, 4101 South Medford Drive, Lufkin, on December 15, 1981, at 1 p.m. Information may be obtained from Wayne Lawrence, Ph.D., 4101 South Medford Drive, Lufkin, Texas 75901, (713) 639-1141.

*The Henderson County Appraisal District*, Board of Directors, will meet in Room 202, 101 East Corsicana, Athens, on December 17 and December 30, 1981, at 7:30 p.m. each night. Information may be obtained from A.K. Monroe, P.O. Box 430, Athens, Texas 75751, (214) 675-9296.

*The Hockley County Appraisal District* will meet at K Bob's Steak Houst, College Avenue, Levelland, on December 21, 1981, at 6 p.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

*The Houston-Galveston Area Council Health Systems Agency*, Board of Directors, will meet in the large conference room, 3701 West Alabama, Houston, on December 16, 1981, at 10 a.m. Information may be obtained from Sharon Greer, P.O. Box 22777, Houston, Texas 77027, (713) 627-3200, ext. 274.

*The Kendall County Appraisal District*, Board of Directors, met in the appraisal district office, Professional Building, 207 East San Antonio Street, Boerne, on December 7, 1981, at 8 p.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

*The MH/MR Regional Center of East Texas*, Board of Trustees, met in the board room, 2323 West Front Street, Tyler, on December 10, 1981, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4359, Tyler, Texas 75712, (214) 597-1351.

*The Shackelford County Appraisal District*, Appraisal Board, met in the appraisal district office, 527 Greer, Albany, on December 8, 1981, at 10 a.m. Information may be obtained from Betty Viertel, P.O. Box 565, Albany, Texas 76430, (915) 762-2656.

*The Swisher County Appraisal District* met in the appraisal district office, 130 North Armstrong, Tulia, on December 10, 1981, at 7 a.m. Information may be obtained from Nan Davis, 130 North Armstrong, Tulia, Texas 79088.

Doc. No. 818830

### Meetings Filed December 7, 1981

*The Amarillo MH/MR Regional Center*, Executive Committee of the Board of Trustees, met in Room G-14 of the Psychiatric Pavilion, 7201 Evans Street, Amarillo, on December 10, 1981, at noon. The Board of Trustees met in Room J-13 on the same day at 1 p.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

*The Austin-Travis County MH/MR Center*, Board of Trustees, met in the board room, 1430 Collier Street, Austin, on December 10, 1981, at noon. Information may be obtained from Debbie Sandoval, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 31.

*The Blanco County Central Appraisal District* will meet in the Blanco County Appraisal Office, Johnson City, on December 14, 1981, at 6:45 p.m. Information may be obtained from Kay Wright, P.O. Box 338, Johnson City, Texas 78736, (512) 868-4624.

*The Brazos Valley Development Council*, Board of Directors, met 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 Brown County Appraisal District* will meet in the district court room of the Brown County Courthouse, Brownwood, on December 21, 1981, at 6:30 p.m. Information may be obtained from Alvis Sewalt, 400 South Broadway, Brownwood, Texas, (915) 643-5676.

*The Deep East Texas Council of Governments*, Rural Development Committee, will meet in the fellowship hall of the First United Methodist Church, 329 North Bowie Street, Jasper, on December 17, 1981, at 10 a.m. The Board of Directors will meet in the same location on the same day at 1:30 p.m. Information may be obtained from Ivy Mays and Billy D. Langford respectively, P.O. Box 1170, Jasper, Texas 75951, (713) 384-5704.

*The Eastland County Appraisal District* will meet in the commissioner's courtroom of the Eastland County Courthouse, Eastland, on December 16, 1981, at 3 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597.

*The Region I Education Service Center*, Board of Directors, will meet in the Ming Room of the Echo Hotel, Edinburg, on December

16, 1981, at noon. Information may be obtained from Lauro Guerra, 1900 West Schnior, Edinburg, Texas 78539, (512) 383-5611, ext. 110.

*The Region III Education Service Center*, Board of Directors, will meet at 1905 Leary Lane, Victoria, on December 14, 1981, at 1 p.m. Information may be obtained from Dennis Grizzle, 1905 Leary Lane, Victoria, Texas 77901.

*The Region IX Education Service Center*, Board of Directors, will meet at 301 Loop 11, Wichita Falls, on December 17, 1981, at 10 a.m. Information may be obtained from Dr. H.M. Fullerton, 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928.

*The Region XIV Education Service Center*, Board of Directors, will meet at 1850 State Highway 351, Abilene, on December 18, 1981, at 11:30 a.m. Information may be obtained from Dr. Thomas Lawrence, P.O. Box 3258, Abilene, Texas 79604, (915) 676-8201.

*The Jasper County Appraisal District*, Board of Directors, will meet in the Evadale Independent School District Administration Office, Evadale, on January 6, 1982, at 7 p.m. Information may be obtained from Frances Horn, P.O. Drawer G, Buna, Texas 77612, (713) 994-2241.

*The Lamar County Appraisal District*, Board of Directors, will meet at 1523 Lamar Avenue, Paris, on December 14, 1981, at 3 p.m. Information may be obtained from L. F. Ricketson, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785, 7822.

*The Lee County Appraisal District*, Board of Equalization, will meet in the Lee County Courthouse, Giddings, on December 14-17, 1981, at 9 a.m., daily. Information may be obtained from James L. Dunham, 218 East Richmond Street, Giddings, Texas 78942, (713) 542-5027.

*The Lower Neches Valley Authority*, Board of Directors, will meet in the authority's office building, 7850 Eastex Freeway, Beaumont, on December 15, 1981, at 10:30 a.m. Information may be obtained from J.D. Nixon, P.O. Drawer 3464, Beaumont, Texas.

*The North Texas Municipal Water District*, Board of Directors, will meet in the water district's administration building, Wylie, on December 22, 1981, at 4 p.m. Information may be obtained from Carl W. Riehn, P.O. Drawer C, Wylie, Texas 75098, (214) 442-5405.

*The Northeast Texas Municipal Water District*, Board of Directors, will meet at 1003 Linda Drive, Daingerfield, on December 14, 1981, at 7 p.m. Information may be obtained from Homer Tanner, P.O. Box 680, Daingerfield, Texas, (214) 645-2241.

*The Panhandle Ground Water Conservation District 3*, Board of Directors, will meet in the district office, 300 South Omohundro, White Deer, on December 14, 1981, at 8 p.m. Information may be obtained from Richard S. Bowers, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

*The Sabine Valley Regional MH/MR Center*, Board of Trustees, will meet at 1501 East Marshall Avenue, Longview, on December 17, 1981, at noon. Information may be obtained from Frances H. Willis, P.O. Box 6800, Longview, Texas 75608, (214) 297-2191.

*The San Antonio River Authority*, Board of Directors, will meet in the conference room, 100 East Guenther Street, San Antonio, on December 16, 1981, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, San Antonio, Texas 78204, (512) 227-1373.

*The Upshur County Appraisal District*, Board of Directors, will meet in the district office, Warren Street, Gilmer, on December 14, 1981, at 7 p.m., and at the Catfish Village, Highway 155, Ore City, on December 15, 1981, at 7 p.m. Information may be obtained from Louise Stracener, P.O. Box 31, Gilmer, Texas 75644.

Doc. No. 818912

## Meetings Filed December 8, 1981

*The Concho Valley Council of Governments*, Executive Committee, will meet at 5002 Knickerbocker Road, San Angelo, on December 16, 1981, at 7 p.m. Information may be obtained from Robert R. Weaver, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666.

*The Dewitt County Appraisal District*, Board of Directors, will meet at 103 Bailey Street, Cuero, on December 17, 1981, at 7:30 p.m. Information may be obtained from Wayne K. Woolsey, 103 Bailey Street, Cuero, Texas 77954, (512) 275-5753.

*The Gulf Bend MH/MR Center*, Board of Trustees, will meet at 2105 Port Lavaca Drive, Victoria, on December 17, 1981, at noon. Information may be obtained T. G. Kelliher, Jr., from 2105 Port Lavaca Drive, Victoria, Texas 77901, (512) 578-5262.

*The Heart of Texas Region MHMR Center*, Board of Trustees, will meet in the second floor conference room, Cameron Building, 110 South 12th Street, Waco, on December 15, 1981, at 11:30 a.m. Information may be obtained from Sue Richardson, 110 South 12th Street, Waco, Texas 76703, (817) 752-3451.

*The High Plains Underground Water Conservation District 1*, Board of Directors, will meet in the conference room, 2930 Avenue Q, Lubbock, on December 14, 1981, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

*The Lamb County Appraisal District*, Board of Directors, will meet at 318 Phelps Avenue, Littlefield, on December 17, 1981, at 7 p.m. Information may be obtained from Jack Samford, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

Doc. No. 818947



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 342-401a(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 Air Control Board Request for Proposals

Assessment of the significance of emissions of primary inhalable particulate matter from facilities in the Houston-Galveston and El Paso areas. This request for proposals is not filed under the provisions of Texas Civil Statutes, Article 6252-11c.

**Notice of Invitation for Proposals.** The Texas Air Control Board (TACB) invites all interested parties to submit technical proposals to provide professional engineering services to the agency. The last day for receipt of offers shall be December 28, 1981. The contract shall become effective after signing by the executive director of the TACB and the selected firm. It shall terminate on December 31, 1982. Funds expended under this contract for these services will not exceed \$70,000.

**Description of Services.** The purpose of this contract is to assess the impact of emissions of primary inhalable particulate matter from facilities located in the Houston-Galveston and El Paso areas of Texas allowed under current requirements of the board, identify additional reasonably available control technologies which would be effective in reducing emissions of small particles from the major sources, determine the cost and air quality benefit which could reasonably be expected to result from implementing these control requirements, and recommend procedures and equipment to obtain information which is needed to evaluate fully the need for and effectiveness of inhalable particulate controls and which is currently unavailable.

**Procedure for Selecting Consultant.** The TACB shall select and award such contracts and engage such services on the basis of demonstrated competence and qualifications for the type of professional services to be performed and at fair and reasonable prices. Such qualifications include the history of similar work, references, ability to complete the work in the designated time frame, and key personnel to be assigned to the project. This contract is to be funded by a grant from the Environmental Protection Agency and execution will be dependent on timely receipt of funds by the TACB from that agency.

**Contact.** Persons interested in providing the services described should contact Richard Tropp, Control Strategy Division, Texas Air Control Board, 6330 Highway 290 East,

Austin, Texas 78723, (512) 451-5711, to obtain the full statement of work.

Issued in Austin, Texas, on December 2, 1981.

Doc. No. 818832      Bill Stewart, P.E.  
Executive Director  
Texas Air Control Board

Filed: December 4, 1981, 9:48 a.m.

For further information, please call (512) 451-5711, ext. 354.

Assessment of state air pollution research objectives and administrative structure to manage accomplishment of objectives.

This request for proposals is not filed under the provisions of Texas Civil Statutes, Article 6252-11c.

**Notice of Invitation for Proposals.** The Texas Air Control Board (TACB) invites all interested parties to submit technical proposals to provide professional engineering services to the agency. The last day for receipt of offers shall be January 13, 1982. The contract shall become effective after signing by the executive director of the TACB and the selected firm. It shall terminate on August 15, 1982. Funds expended under this contract for these services shall not exceed \$100,000.

**Description of Services.** The purpose of this contract is to procure assistance to:

(1) Identify and assess the need for air pollution-related research necessary to enable TACB to respond appropriately to protect the health and general welfare of the people as mandated in the Texas Clean Air Act. The project shall include, but not be limited to, consideration of research needs pertaining to ambient air monitoring, characterization of emissions and emission sources, evaluation of health risk and population exposure, and the appropriate structure of data collection and investigation activities necessary to correlate and integrate information in these three subject areas. The contractor shall document and assist in the evaluation of such research needs as perceived by state officials and recognized local experts and scientists.

(2) Assess the adequacy of existing state and national systems and programs to address these needs.

(3) Assess and describe state and local capabilities to address needs where perceived but where such needs are not being adequately addressed by other state or national entities.

(4) Assess and describe alternative administrative and management structures which could be established by the state to fund and manage a comprehensive and long-term state air pollution research program.

This effort shall be coordinated with an advisory committee established by the TACB with members appointed by the TACB. Additional information is available from the TACB.

**Procedure for Selecting Consultant.** The TACB shall select and award such contract and engage such services on the basis of demonstrated competence, qualifications, history of similar work, references, ability to complete the work in the designated time-frame, key personnel to be assigned to the project, and reasonableness of cost estimates.

**Contact.** Any parties interested in providing the described services should contact Jim Gise or Roger Wallis, Standards and Regulations Program, TACB, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, for additional information.

Issued in Austin, Texas, on December 7, 1981.

Doc. No. 818909 Bill Stewart, P.E.  
Executive Director  
Texas Air Control Board

Filed: December 7, 1981, 9:24 a.m.  
For further information, please call (512) 451-5711, ext. 354.

## Automated Information Systems Advisory Council

### Position Available

**Executive Director, Automated Information Systems Advisory Council**, an agency of the State of Texas. Responsible for the management of the agency staff in carrying out the policies established by the governing council. Primary duties of the council staff are to review proposed actions by state agencies in the development of automated information systems, including procurement of requisite software equipment, and contract services and to advise state agencies in the areas of long-range planning of automated information systems, data bases, networks, applications, shared software, security, and disaster recovery.

Candidates must possess knowledge and experience in management of substantial information processing resources, a demonstrated managerial capability and a demonstrated ability to work well with state agencies and public educational institutions. Master's degree or bachelor's degree plus equivalent experience and training are preferred. Salary negotiable not to exceed \$41,200 per year. Applications must include complete resume, salary history, and references and must be mailed by December 31, 1981.

Mail applications to Automated Information Systems Advisory Council, P.O. Box 13564, Austin, Texas 78711-3564, (an equal opportunity employer).

Issued in Austin, Texas, December 4, 1981.

Doc No 818901 Charles Warlick  
Vice Chairman  
Automated Information Systems  
Advisory Council

Filed: December 4, 1981, 2:25 p.m.  
For further information, please call (512) 475-7881.

## State Banking Board

### Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing on Monday, December 14, 1981, at 9 a.m. at 2601 North Lamar, Austin, on the proposed domicile change for South Loop Bank, Houston, to move to 7000 Fannin, Houston, Harris County.

Additional information may be obtained from O. A. Cassity, III, assistant general counsel, Banking Department of Texas, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on December 2, 1981.

Doc. No. 818761 O. A. Cassity, III  
Assistant General Counsel  
Banking Department of Texas

Filed: December 2, 1981, 3:51 p.m.  
For further information, please call (512) 475-4451.

## Comptroller of Public Accounts

### Administrative Decision

#### Summary of Administrative Decision 12,115

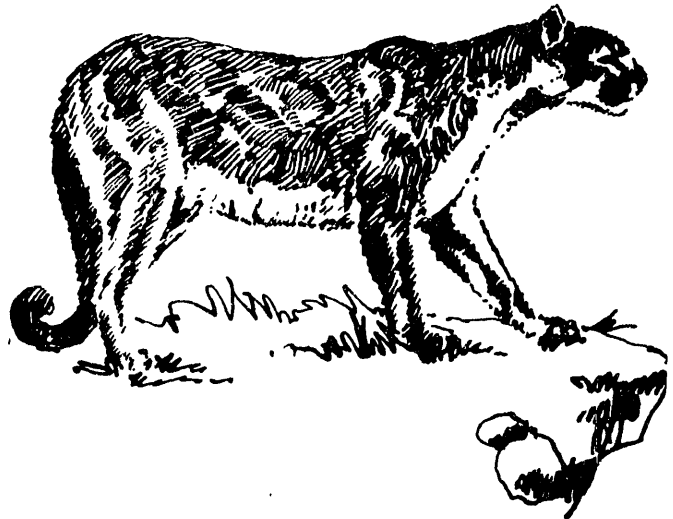
For copies of the following recent opinion selected and summarized by the administrative law judges, contact the administrative law judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with our confidentiality statutes.

**Summary of Decision:** The taxpayer's argument that his out-of-state pipe purchases are exempt from the use tax, since the sections were only temporarily kept alongside its right-of-way prior to their incorporation into a pipeline, rather than placed in a storage yard, must be rejected in view of the definition of "use" provided in Texas Taxation—General Annotated, Article 20.01 (N), and the Texas Supreme Court's rationale in *Bullock v. Lone Star Gas Company*, 567 S.W.2d 493 (Texas 1978), certificate denied, 99 Supreme Court 577.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818842 Bob Bullock  
Comptroller of Public Accounts

Filed: December 4, 1981, 10:34 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)</sup> / Commercial <sup>(3)</sup> through \$250,000	Commercial <sup>(4)</sup> over \$250,000
Indicated rate (weekly rate)	12/14/81-12/20/81	21.50%	21.50%
Monthly (variable commercial only)	12/01/81-12/31/81	22.75%	22.75%
Quarterly	01/01/82-03/31/82	24%	26.37%
Annual <sup>(5)</sup>	01/01/82-03/31/82	24%	28%

<sup>(1)</sup> Dates set out above are inclusive.

<sup>(2)</sup> Credit for personal, family, or household use.

<sup>(3)</sup> Credit for business, commercial, investment, or other similar purpose.

<sup>(4)</sup> Same as <sup>(3)</sup> above, except excluding credit for agricultural use.

<sup>(5)</sup> Only for open end as defined in Texas Civil Statutes, Article

Issued in Austin, Texas, on December 7, 1981.

Doc. No. 818910 Sam Kelley  
Consumer Credit Commissioner

Filed: December 7, 1981, 9:28 a.m.  
For further information, please call (512) 475-2111.

## Texas Energy and Natural Resources Advisory Council

### Consultant Proposal Request

The Texas Energy and Natural Resources Advisory Council (TENRAC) invites proposals from qualified groups to develop, produce, and duplicate three slide/tape programs and leaders' guides. These programs will be used statewide to educate residential and commercial consumers on efficient use of energy and renewable resources. Copies of the slide/tape programs will be made available on a loan basis to service clubs, community organizations, trade groups, and professional organizations.

These services are funded as part of the Texas Energy Extension Service, a grant from the United States Department of Energy. The Texas Energy Extension Service is a program designed to provide direct personal energy information and technical assistance to small energy users, thereby increasing their capability to make informed energy choices.

Respondents must comply with all applicable policies and procedures of TENRAC and the Department of Energy, as well as with all federal laws and regulations regarding grants to states and subgrantees.

**Statement of Work Deliverables.** The contractor will provide all necessary facilities, equipment, supplies, and qualified personnel to produce the following:

(1) Three copies each of three different, 15- to 20-minute slide/tape media programs. Two copies of each program will be duplicated on cassette play tapes compatible with automatic, synchronized recorder equipment and one program will be duplicated on standard cassette play tape with audible advance indicators for use with standard manual slide/tape equipment.

(2) A leader's guide for each program to include written script, background information, and statistics suitable for use as introductory remarks, suggestions for use of the presentation, bibliography of additional information, suggested publications for use with the program, and an evaluation survey response form for leaders to return to TENRAC regarding uses of the program.

(3) Packaging for each program suitable for mailing through U.S. Parcel Post.

(4) Camera-ready copy of a brochure promoting the slide/tape programs to potential audiences. The brochure should have a self-addressed, detachable coupon to be used by recipients in requesting the loan of a program.

All deliverables are due by August 31, 1982. Respondents may suggest additions or modifications to the statement of work.

**Program Content.** Programs should be designed to encourage consumer action, emphasizing the benefits of using energy and renewable resources efficiently. The information presented in the program should help consumers prioritize potential conservation measures for their residences and businesses. Programs are to be developed on the following subjects:

(1) Checklist of energy-efficient actions for commercial businesses with emphasis on lighting techniques. No supporting publication produced by TENRAC currently exists on this topic.

(2) Guide to the applications of solar energy in Texas with emphasis on passive solar concepts. Supporting TENRAC publication: *Citizen's Solar Guide*.

(3) Home ventilating techniques, including whole-house fans, ceiling fans, portable fans, and evaporative cooling. No supporting publication produced by TENRAC currently exists on this topic.

**Selection Criteria.** Proposals will be evaluated by staff and an external review committee. Selection will be made based on the following areas:

(1) Realistic work plan capable of delivering a quality product by August 31, 1982;

(2) Ability to develop all deliverables described in an informative and understandable style yet with a creative approach to the subject;

(3) Performance of services at a fair, reasonable, and competitive price;

(4) Qualification and experience of the personnel actually working on the project;

(5) Contractor's previous work and experience in production of educational media materials;

- (6) Options offered beyond the statement of work; and  
 (7) Contractor's knowledge of energy conservation and renewable resources topics.

All responding organizations should provide a history of experience in related types of work, including the experience of those persons actually working on the project, and show the specific staff and management personnel to be assigned and their relevant capabilities and experience. TENRAC reserves the right to reject any or all proposals if it is advantageous to do so. TENRAC also reserves the right to enter into competitive negotiations with selected respondents prior to award of the contract.

**Screening.** Following review of the proposals, a maximum of four bidders will be selected for further consideration. These bidders will be notified by January 27, 1982. These bidders are required to make a 30-minute presentation to members of the evaluation selection committee. This presentation should include ideas for execution of the concepts presented in the proposal, samples of media produced, and qualifications of the proposed account representative. Selected bidders will be notified of time and location of presentation. The Texas Energy and Natural Resources Advisory Council will select a contractor after these presentations, based on recommendations of the review committee.

**Funding.** Proposals should include a work schedule which details delivery of product based on a progressive work schedule. Payment will be made in increments based on a delivery schedule agreed upon by TENRAC and the contractor. To insure full compliance of the contractor with the described performance, final payment in an amount equal to 10% of the contract total shall be withheld until delivery and approval of the final project report, evaluation materials, and/or all deliverables required. The final project report and all deliverables are due no later than August 31, 1982. Payment will be on a cost reimbursement basis upon submission of costs in a manner prescribed by the State of Texas and applicable federal standards.

Each proposal should include a detailed budget which breaks costs down into the following categories:

- (1) professional services;
- (2) travel;
- (3) printing and publications;
- (4) supplies and materials;
- (5) subcontracts;
- (6) other.

**Term of Contract; Proposal Due Date.** Each respondent should submit five copies of the proposal. Contract will begin on the date of contract signing and will continue through August 31, 1982. All contracts are contingent upon continued availability of funding. Written proposals should be sent by registered mail or by courier and must arrive no later than 5 p.m., January 11, 1982. Send proposals to TENRAC, 200 East 18th Street, Room 504, Austin, Texas 78701. Attention: Jane M. Anaejionu. For further information, please contact Jane M. Anaejionu at (512) 475-0964.

This request for consulting services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Issued in Austin, Texas, on December 7, 1981.

Doc. No. 818911      Jane M. Anaejionu  
 EES Information Coordinator  
 Conservation Division  
 Texas Energy and Natural Resources  
 Advisory Council

Filed: December 7, 1981, 9:36 a.m.  
 For further information, please call (512) 475-0414.



## Texas Department of Health

### Amendments of Specific Radioactive Material Licenses

Notice is hereby given that License 8-2923, issued to Conoco, Inc., Denver, Colorado, for the Trevino Project, Duval County, Highway 16, 4.2 miles north of Hebbbronville, (mailing address—P.O. Box 579, Hebbbronville, Texas 78361), has been amended as follows.

Calvin L. Dupnik is designated as the on-site radiological safety officer.

Records of water well sampling are maintained within the permit area.

Downwind low-volume air particulate monitoring is eliminated because the facility does not have a yellowcake drying operation.

Temporary storage of yellowcake slurry product in tank trailers prior to off-site shipment is authorized.

Construction of a lixiviant solution pond at the site is authorized.

License 11-2807, issued to Rhone-Poulenc, Inc., Freeport, for the project in Freeport, Brazoria County, (mailing address—6213 Highway 332-E, Freeport, Texas 77541), has been amended as follows.

Radiological analysis of process area sumps prior to release to a holding pond is required.

An elemental analysis limit on plant liquid effluents is established.

Use of a French government analytical procedure for Radium-226 analyses is authorized.

Maximum removable alpha contamination limits on shipments of natural uranium and thorium are established.

A maximum removable alpha contamination level in plant process areas is authorized.

These notices afford opportunities for written requests for public hearings within 30 days by affected persons, as required by Texas Civil Statutes, Article 4590(f), §11, as amended.

Additional information may be obtained from David K. Lacker, director, Bureau of Radiation Control, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on November 30, 1981.

Doc. No 818822 & Robert A. MacLean, M.D.  
818823 Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: December 3, 1981, 3:42 p.m.  
For further information, please call (512) 458-7236.

## Availability of Environmental Assessment and Opportunity for Public Hearing

Notice is hereby given that an environmental assessment prepared by the Texas Bureau of Radiation Control related to the Urex, Inc., Santonino project in Webb County, is available upon request by writing to the Division of Environmental Programs, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. This environmental assessment, as amended, is an evaluation of the public health and environmental impacts associated with the operation of this proposed uranium production facility.

Written comments and requests from persons affected for a public hearing will be accepted by the Bureau of Radiation Control until January 15, 1982.

Issued in Austin, Texas, on December 2, 1981.

Doc. No. 818821 Robert A. MacLean, M.D.  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: December 3, 1981, 3:43 p.m.  
For further information, please call (512) 458-7236.

## Texas Health Facilities Commission

### Applications Accepted for Amendment, Declaratory Ruling, and Notices of Intent

Notice is hereby given by the Texas Health Facilities Commission of applications accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance, NIE indicates notice of intent to acquire major medical equipment; NIEH indicates notice of intent to ac-

quire existing health care facilities; NIR indicates notice of intent regarding a research project; and NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party to any of the above-stated applications, that person must file a proper request to become a party to the application within 15 days after the date of this publication of notice. If the 15th day is a Saturday, Sunday, state or federal holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, state or federal holiday. A request to become a party should be mailed to the chair of the commission at P.O. Box 15023, Austin, Texas 78761, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to any of these applications must meet the criteria set out in commission §515.9. Failure of a party to supply the necessary information in the correct form may result in a defective request to become a party.

Unicare Health Facilities, Inc., Milwaukee,  
Wisconsin  
AN81-1130-040

NIEH—Request for declaratory ruling that a certificate of need is not required prior to the acquisition of Concho Nursing Center, Inc., an existing 82-bed ICF-III facility in Eden

Unicare Health Facilities, Inc., Milwaukee,  
Wisconsin  
AN81-1130-038

NIEH—Request for a declaratory ruling that a certificate of need is not required prior to the acquisition of Bremond Nursing Center, Inc., an existing 82-bed ICF-III facility in Bremond

Unicare Health Facilities, Milwaukee,  
Wisconsin  
AN81-1130-036

NIEH—Request for a declaratory ruling that a certificate of need is not required prior to the acquisition of Villa Haven, an existing 92-bed ICF-III facility in Breckenridge, from Burgess Care Center, Inc.

Hospital Corporation of America for Hurst General  
Hospital, Hurst  
AH80-0806-003A (113081)

CN/AMD—Request to amend Certificate of Need AH80-0806-003, which authorized the construction, and operation of a 200-bed hospital to replace the existing Hurst General Hospital. The certificate holder requests an increase in the project cost from \$23,627,000, to \$26,369,217, an increase in the gross area to be constructed from 155,835 square feet to 169,975 square feet, to change the site location of the replacement hospital, and to extend the completion deadline from May 1, 1983, to November 1, 1983

Midland County Hospital District for Midland  
Memorial Hospital, Midland  
AH80-0805-011A (112581)

CN/AMD—Request to extend the completion deadline in Certificate of Need AH81-0805-011, which authorized the renovation of a portion of exist-

ing hospital space to expand the physical therapy and occupational therapy departments and to provide a separate area for the existing Sara Woolridge Multiple Sclerosis Clinic. (Requested extension is for the Sara Woolridge portion of the project.)

New Boston Nursing Center, Inc., New Boston  
AN81-0121-013A(112581)

CN/AMD—Request to increase the total project cost and to extend the completion deadline in Certificate of Need AN81-0121-013, which authorized the construction of a 7,050 square foot addition to the present 97-bed ICF-III nursing facility for a net increase of 23 ICF-III beds

Issued in Austin, Texas, on December 7, 1981.

Doc No 818915 Linda E. Zatopek  
Assistant General Counsel  
Texas Health Facilities Commission

Filed December 7, 1981, 9:54 a.m.  
For further information, please call (512) 475-6940.

## Petitions for Certificate of Need Reissuance

Notice is hereby given by the Texas Health Facilities Commission of application (including a general project description) for petition of reissuance of certificate of need which have been filed with the commission.

The commission may require a hearing on a petition for reissuance of certificate of need when it is determined that good cause exists for such a hearing. A request for a hearing on a petition for reissuance of certificate of need must be submitted to the commission within 15 days after publication of notice and show reason why a hearing should be held. Requests for a hearing are to be mailed to the chairman of the commission, P.O. Box 15023, Austin, Texas 78761, and must be postmarked no later than the day prior to the last day allowed for filing requests for hearing.

The petition will be approved only if the commission determines that it qualifies under the criteria of Texas Civil Statutes, Article 4418(h), §3.13, and §507.51-507.53 (315.18.02.010-.030) and §509.21 and §509.22 (315.19.02.010 and .020).

In the following list, the applicant is listed first, the file number second, and the relief sought and description of the project third.

Doctors Nursing Center Foundation, Inc., Dallas  
AN80-1028-002R (112581)  
Reissuance of CN—Petition for reissuance of Certificate of Need AN80-1028-002, which authorized the construction and operation of a 65,000 square foot, one-story addition to the present 52,000 square foot facility for the addition of 72 private pay and 55

skilled nursing beds, and the replacement of 40 existing beds

Issued in Austin, Texas, on December 7, 1981.

Doc. No. 818914 Linda E. Zatopek  
Assistant General Counsel  
Texas Health Facilities Commission

Filed: December 7, 1981, 9:54 a.m.  
For further information, please call (512) 475-6940.

## Texas Department of Human Resources

### Proposed 1982 Home Energy Assistance Program

The Texas Department of Human Resources will administer the Home Energy Assistance Program (HEAP) for fiscal year 1982. This program is designed to assist poor Texans in meeting the increased cost of energy for home heating. The department held a public hearing on September 23, 1981, concerning the operation of the program for 1982. In addition, the department conducted a meeting on October 20, 1981, with energy suppliers. All comments were considered and incorporated into the design of the program wherever possible. The following summary describes the program components included in the HEAP State Plan.

#### Eligibility Criteria

- (1) A recipient must meet one of the following conditions and be an active public assistance recipient during the eligibility period:
  - (a) be a certified adult in the household and receive an AFDC payment;
  - (b) be a member of a certified food stamp household;
 or
  - (c) be an adult living in a private home or apartment and an active SSI recipient.
- (2) A recipient must be vulnerable to energy cost. A recipient cannot reside in public housing and be eligible unless he receives a utility bill from a utility company.
- (3) A recipient must have income not exceeding a predetermined level based upon family size.

The department will compute household income for AFDC, Food Stamp, and SSI recipients. Households meeting the HEAP income test will be sent a questionnaire during the first two weeks of January 1982. The department will determine from the questionnaire the recipient's vulnerability to energy cost, housing arrangement, fuel type, and household composition. The recipient must return the questionnaire to be eligible for HEAP. After analyzing the questionnaires, the department will mail a HEAP payment to eligible recipients in February or March 1982.

The department will not have an application period for non-public assistance persons.

The department will use Community Service Administration poverty guidelines for a one-person household and Bureau of Labor Statistics Lower Living Standards for larger house-

holds to determine income eligibility. The department will base the benefit amounts on the average cost of utility service in each county. The highest benefit will be paid to the household having the lowest income. Payments will not be varied by fuel type. The department will notify recipients who are denied HEAP benefits and provide them the right to appeal. The department will not provide payments to energy suppliers.

Comments concerning the HEAP program will be accepted through December 22, 1981. Written comments may be sent to Susan L. Johnson, administrator, Policy Development Support Division-332, Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769.

Issued in Austin, Texas, on December 7, 1981.

Doc. No. 818916      Marlin W. Johnston  
                                  Commissioner  
                                  Texas Department of Human Resources

Filed: December 7, 1981, 9:25 a.m.

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

## Texas Industrial Commission Consultant Proposal Request

**Notice of Acceptance of Applications.** The Texas Industrial Commission (TIC), under authority of its enabling Act, Texas Civil Statutes, Article 5183, is requesting consultant services pursuant to Texas Civil Statutes, Article 6252-11c. The services intended to be contracted for are those of manager, Texas State Trade Office, Mexico City, D.F. Applicants interested in making applications to fill this position may do so by following the instructions outlined. Before TIC can consider any submitted applications from a potential consultant, the consultant must meet the requirements outlined in the following general information.

**General Information.** Applicants should demonstrate an ability to manage a staff for the TIC at the Texas Trade Office located in Mexico City, D.F. Services shall begin January 11, 1982, and extend to September 30, 1982. The following are the responsibilities and requirements of the manager and shall include, but not be limited to:

- (1) must be a U.S. citizen, preferably a Texas resident;
- (2) must be fluent in Spanish;
- (3) possess Mexican working papers with FM-2 visa status for self, personal property, and automobile;
- (4) have an in-depth knowledge of organization and function of the Mexican government and its agencies, functioning of the U.S. Embassy and its sections and knowledgeable with regard to conducting business in Mexico and Latin America;
- (5) must have a working knowledge of international finance, reverse investment, joint venture, acquisition, trade missions, trade fair activities, and an overall knowledge of industrial development activities;
- (6) advise and assist Texas manufacturers and businessmen in making contacts and appointments with Mexican government officials, U.S. Embassy Officials, Mexican, Central and South American industry importers who may be interested in their products when appropriate;
- (7) conduct a public relations program within Mexico,

Central and South America to aggressively promote the sale of Texas products and materials;

(8) advise and assist Texas manufacturers and businessmen in displaying their products in such a manner as to enhance their possibility and probability of sale in Mexico City, Central and South America;

(9) locate Mexican, Central and South American suppliers of products and materials, on request, for Texas businessmen;

(10) assist Mexican, Central and South American manufacturers and exporters in making contact with Texas industries and importers who may be interested in buying their products; and

(11) advise and assist State of Texas officials in the conduct of their duties in Mexico, Central and South America when requested, to include making and monitoring of appointments.

The TIC reserves the right to accept or reject any or all applications submitted under this announcement and to negotiate modifications to improve the quality or cost-effectiveness of any application. The TIC is under no legal requirement to execute a resulting contract, if any, on the basis of this announcement and intends any material provided herein only as a means of identifying the services sought by TIC. This announcement does not obligate the TIC to pay for any costs incurred prior to the execution of a contract and is subject to the availability of appropriated funds and a 30-day cancellation notice by either party.

**Deadline for Submission of Applications.** The deadline for receipt of applications to the Texas Industrial Commission's mail room is December 20, 1981, at 5 p.m.

**Contact.** Further information regarding the interest or scope of work related to this announcement may be obtained by contacting the International Development Department, Texas Industrial Commission, P.O. Box 12728, Austin, Texas 78711, (512) 472-5059.

**Application Submission.** Applications may be submitted to the International Development Department, Texas Industrial Commission, P.O. Box 12728, Austin, Texas 78711, (512) 472-5059.

Issued in Austin, Texas on December 1, 1981.

Doc. No. 818913      Charles B. Wood  
                                  Executive Director  
                                  Texas Industrial Commission

Filed: December 7, 1981, 9:25 a.m.

For further information, please call (512) 472-5059.

## University of Texas System Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, The University of Texas at Austin is soliciting offers for consulting services to perform a study and prepare a comprehensive campus transportation and parking plan. The university has 48,000 students and approximately 15,000 faculty and staff members. Traffic is congested on campus. Parking space is

not adequate to meet the need. A contract shuttle bus service provides student transportation to and from the campus to various residential locations within the City of Austin. The university is soliciting statements of qualifications from interested consultants. Qualified consultants will be asked to submit specific proposals, one of which will result in a contract to perform the study and prepare a plan.

**Proposal Specifications.**

(1) The selected consultant will assess the parking and traffic conditions on campus with the objective of determining the feasibility of establishing an on-campus shuttle system.

(2) The consultant will assess the pedestrian movement on campus with the objective of determining the feasibility of converting selected campus streets to pedestrian walking malls.

(3) The consultant will assess the present shuttle bus service with the objective of determining the feasibility of establishing remote parking lots to be used in conjunction with a "park and ride" service.

(4) The consultant will review the present on campus parking lot capacity, use, and need by various groups including faculty and staff, visitors, handicapped, and students, with the objective of determining the feasibility of constructing financially self-supporting parking garages on campus.

**Selection Criteria.** Consultants should submit a summary of qualifications to develop the desired transportation and parking plan. Based on their qualifications a limited number of consultants will be asked to submit detailed proposals for preparation of the plan. Qualifications will be judged on the following basis.

(1) consultant's demonstrated ability to produce a workable transportation and parking plan.

(2) consultant's experience in the preparation of

transportation and parking plans for universities and similar communities; and

(3) consultant's qualified personnel who will be directly associated with the project.

A contract for service will be awarded to the consultant who submits the proposal which best satisfies the needs of the university, taking into consideration the following:

(1) experience and capabilities of the individuals to be assigned to the study;

(2) the consultant's approach to the study;

(3) the level of resources and effort which will be devoted to the study;

(4) timeliness; and

(5) cost.

**Submission of Qualifications.** Written qualifications may be submitted until 3 p.m., Monday, January 11, 1982. They should be addressed to the Vice President for Business Affairs, The University of Texas at Austin, P.O. Box 8179, Austin, Texas 78712. Qualifications may be delivered in person to Room 102 in the Main Building at The University of Texas at Austin.

**Contact.** James S. Wilson, assistant to the vice president for business affairs, at the above address, (512) 471-1422.

The University of Texas at Austin reserves the right to refuse any or all proposals.

Issued in Austin, Texas, on December 4, 1981.

Doc. No. 818836

James S. Wilson  
Assistant to the Vice President  
for Business Affairs  
The University of Texas at Austin

Filed: December 4, 1981, 11:02 a.m.

For further information, please call (512) 471-1265.



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.

## 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*.

### TITLE 1. ADMINISTRATION

#### Part VII. Texas Merit System Council

1 TAC §§161.1-161.24..... 4617

### TITLE 4. AGRICULTURE

#### Part I. Texas Department of Agriculture

4 TAC §§5.101-5.110..... 4593  
4 TAC §5.211 ..... 4594  
4 TAC §§15.72, 15.76 ..... 4596  
4 TAC §15.75 ..... 4597  
4 TAC §15.122 ..... 4598

### TITLE 16. ECONOMIC REGULATION

#### Part I. Railroad Commission of Texas

16 TAC §9.21 (051.05.03.019)..... 4599

### TITLE 22. EXAMINING BOARDS

#### Part XII. Board of Vocational Nurse Examiners

22 TAC §§231.28, 231.37-231.39, 231.41  
(390.01.02.018, .027-.029, .032) ..... 4630  
22 TAC §§231.37-231.39, 231.41, 231.62 ..... 4631  
22 TAC §§231.62, 231.65, 231.66  
(390.01.03.002, .005, .006)..... 4631  
22 TAC §§231.81-231.89 (390.01.04.001-.009) ..... 4631  
22 TAC §§231.81-231.85, 231.87-231.101 ..... 4631  
22 TAC §231.86 ..... 4632  
22 TAC §233.17 ..... 4632  
22 TAC §§233.17, 233.27 (390.02.02.007, .017) ..... 4632  
22 TAC §233.57 ..... 4633  
22 TAC §§233.57, 233.59 (390.02.04.009, .011) ..... 4633  
22 TAC §235.8, 235.11 (390.03.01.008, .011) ..... 4633  
22 TAC §§235.8, 235.11, 235.16 ..... 4633  
22 TAC §235.47 (390.03.04.007) ..... 4634

#### Part XV. State Board of Pharmacy

22 TAC §§281.2, 281.4, 281.28, 281.30, 281.32  
281.36, 281.41, 281.48-281.51, 281.53  
281.54, 281.55, 281.59, 281.68, 281.69,  
281.72 ..... 4577, 4601

22 TAC §§291.51-291.54..... 4579, 4602  
22 TAC §§291.71-291.75 ..... 4583, 4602  
22 TAC §§291.91-291.97 ..... 4588, 4603  
22 TAC §§309.1-309.8 ..... 4590, 4603  
22 TAC §311.1 ..... 4604

#### Part XVIII. Texas State Board of Podiatry Examiners

22 TAC §§371.2, 371.10 (396.15.00.002, .010) ..... 4605

#### Part XXIX. Texas Board of Land Surveying

22 TAC §661.45 (408.01.04.005) ..... 4634  
22 TAC §663.11 (408.02.00.011) ..... 4634

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department

31 TAC §§55.111-55.114 ..... 4592

### Part VII. Texas Water Well Drillers Board

31 TAC §231.2 (139.01.10.002) ..... 4606  
31 TAC §231.5 (139.01.10.005) ..... 4606  
31 TAC §231.5 ..... 4606  
31 TAC §231.8 (139.01.10.008) ..... 4607  
31 TAC §231.10 ..... 4607  
31 TAC §231.15 ..... 4608  
31 TAC §231.21 (139.01.20.001) ..... 4608  
31 TAC §§231.32-231.38 (139.01.30.001-.008) ..... 4609  
31 TAC §§231.31, 231.33, 231.35, 231.37, 231.39  
231.41, 231.43, 231.45, 231.51, 231.53 ..... 4609  
31 TAC §§231.51, 231.52 (139.01.40.001, .002) ..... 4610  
31 TAC §§231.61-231.64 (139.01.50.001-.004) ..... 4611  
22 TAC §§231.71-231.76 (139.01.70.001-.006) ..... 4612  
31 TAC §§231.71, 231.73, 231.75, 231.77 ..... 4612  
22 TAC §§231.91, 231.93, 231.95, 231.97,  
231.99, 231.111 ..... 4613  
22 TAC §§231.131, 231.133, 231.135, 231.137 ..... 4615

## Table of TAC Titles

TITLE 1. ADMINISTRATION  
TITLE 4. AGRICULTURE  
TITLE 7. BANKING AND SECURITIES  
TITLE 10. COMMUNITY DEVELOPMENT  
TITLE 13. CULTURAL RESOURCES  
TITLE 16. ECONOMIC REGULATION  
TITLE 19. EDUCATION  
TITLE 22. EXAMINING BOARDS  
TITLE 25. HEALTH SERVICES  
TITLE 28. INSURANCE  
TITLE 31. NATURAL RESOURCES AND CONSERVATION  
TITLE 34. PUBLIC FINANCE  
TITLE 37. PUBLIC SAFETY AND CORRECTIONS  
TITLE 40. SOCIAL SERVICES AND ASSISTANCE  
TITLE 43. TRANSPORTATION

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