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TXD S 500.6 R 263

Texas Register

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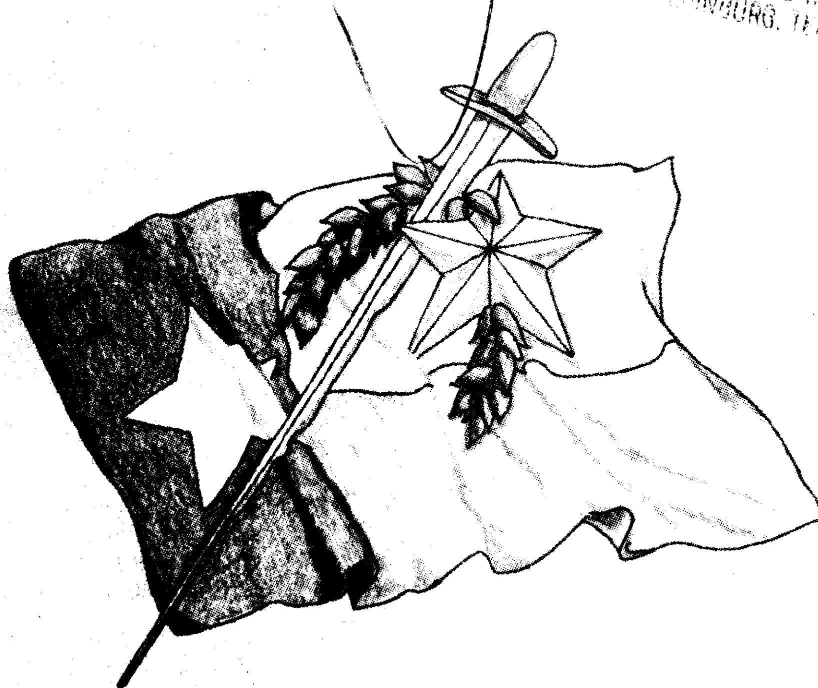

Highlights

★ State Securities Board proposes new sections concerning registration and qualification of oil and gas drilling programs; proposed date of adoption - June 21 . . . . page 2025

★ Interagency Council on Early Childhood Intervention adopts new sections concerning funding for the Early Childhood Intervention Program to promote habilitative services and to prevent further disability pertaining to handicapped children who are developmentally delayed; effective date - June 13 . . . . page 2068

★ Texas Water Development Board proposes amendments to a section concerning the hazardous waste rules of the department; proposed date of adoption - June 28 . . . . . . page 2053

Office of the Secretary of State Volume 7, Number 39, May 28, 1982

How To Use the Texas Register

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice a week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1982 with the exception of January 5, April 27, November 16, November 30, and December 28, by the Texas Register Division, Office of the Secretary of State, 201 East 14th Street, P.O. Box 13824, Austin, Texas 78711-3824, (512) 475-7886.

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

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

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register Division six months after proposal publication date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

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

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: page 2 in the lower left-hand corner of this page is written: "*7 TexReg 2 issue date,*" while on the opposite page, in the lower right-hand corner, page 3 is written "*issue date 7 TexReg 3.*"

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

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules currently being published by Shepard's/McGraw-Hill, in cooperation with this office.

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

1 indicates the title under which the agency appears in the *Texas Administrative Code* (a listing of all the titles appears below);

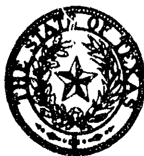
TAC stands for the *Texas Administrative Code;*

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

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

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



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Contents

The Governor

Appointments Made May 11

2020 Texas State Board of Podiatry Examiners

Appointments Made May 12

2020 Egg Marketing Advisory Board

Appointments Made May 14

2020 Governor's Committee on Employment of the Handicapped

2020 State Board of Vocational Nurse Examiners

Appointments Made May 17

2021 158th Judicial District Court of Texas

Proposed Rules

Texas Department of Agriculture

2022 Pesticides

State Securities Board

2023 Public Solicitation or Advertisements

2025 Oil and Gas Drilling Programs

Texas Department of Health

2041 Long-Term Care

2048 Solid Waste Management

Texas Water Development Board

2053 Industrial Solid Waste

2056 Consolidated Permits

Comptroller of Public Accounts

2057 Tax Administration

Texas Department of Public Safety

2058 Organization and Administration

Texas Department of Human Resources

2058 AFDC

2060 Food Stamps

2060 Changes

2060 Joint AFDC/Food Stamp Applications

Adopted Rules

Railroad Commission of Texas

2062 Oil and Gas Division

Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

2064 Definitions and Procedures

Texas Board of Licensure for Nursing Home Administrators

2064 Inactive Status

Texas State Board of Pharmacy

2065 General Provisions

2065 Pharmacies

Polygraph Examiners Board

2067 Penalties, Sanctions, and Hearings

Interagency Council on Early Childhood Intervention

2068 Early Childhood Intervention Program

Parks and Wildlife Department

2072 Fisheries

Comptroller of Public Accounts

2073 Tax Administration

Texas Department of Human Resources

2077 Food Stamps

Open Meetings

2080 Texas Air Control Board

2080 Coordinating Board, Texas College and University System

2081 Texas Department of Corrections

2081 Texas County and District Retirement System

2081 State Depository Board

2081 Interagency Council on Early Childhood Intervention

2081 Employees Retirement System of Texas

2081 Office of the Governor

2081 Governor's Commission on Physical Fitness

2081 Texas Department of Health

2082 Texas Health Facilities Commission

2082 Texas Housing Agency

2082 University of Houston System

2082 State Board of Insurance

2083 Interim Committee on Regional Intergovernmental Cooperation

2083 Texas Board of Land Surveying

2083 Texas Department of Mental Health and Mental Retardation

2083 State Board of Morticians

2083 Texas Motor Vehicle Commission

2083 Texas Board of Licensure for Nursing Home Administrators

2084 Pan American University

2084 Board of Pardons and Paroles

2084 Public Utility Commission of Texas

2084 Railroad Commission of Texas

2085 School Land Board

2085 State Securities Board

2085 Advisory Council for Technical—Vocational Education

2085 Veterans Land Board

2085 Texas Water Commission

2086 Regional Agencies

In Addition

Texas Air Control Board

2088 Applications for Construction Permits

2088 Contract Award

Office of Consumer Credit Commissioner

2089 Rate Ceilings

Texas Education Agency

2089 Consultant Proposal Request

Texas Health Facilities Commission

2090 Applications Accepted for Amendment, Declaratory Ruling, and Notices of Intent

Teacher Retirement System of Texas

2090 Consultant Proposal Request

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Register* publishes executive orders issued by the Governor of Texas. Appointments made and proclamations issued by the governor are also published. Appointments are published in chronological order.

Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 475-3021.

Appointments Made May 11

Texas State Board of Podiatry Examiners

For six-year terms to expire July 10, 1987:

Eugene R Sciolo, D P.M.
2126 50th Street
Lubbock, Texas 79412

Dr. Sciolo is replacing Dr. T. D. Yoder of Odessa, Ector County, whose term expired.

Dr. Marion J. Filippone
2041 West Alabama
Houston, Texas 77098

Dr. Filippone is being reappointed.

Johnnie Davis
2541 Palo Verde
Odessa, Texas 79763

Mrs. Davis is being appointed to a new position on the board.

Issued in Austin, Texas, on May 17, 1982.

TRD-824224 William P. Clements, Jr.
Governor of Texas

Appointments Made May 12

Egg Marketing Advisory Board

For a six-year term to expire September 27, 1987:

Carl Smith
Smith Farms, Inc.
P.O. Box 219
Flatonia, Texas 78941

Mr. Smith is being reappointed.

Issued in Austin, Texas, on May 17, 1982.

TRD-824225 William P. Clements, Jr.
Governor of Texas

Appointments Made May 14

Governor's Committee on Employment of the Handicapped

For one-year terms to expire April 9, 1983:

Justin Dart, Jr., chairman
2012 Lear Lane
Austin, Texas 78745

Rafaela G. Acosta
1300 North El Paso
El Paso, Texas 79902

Sharon Gardner
P.O. Box 4709
Austin, Texas 78765

Don McDowell
4412 Avenue A
Apartment 203
Austin, Texas 78751

Tommy Polk
P.O. Box 894
Beaumont, Texas 77704

Robert E. Price
2700 Republic Bank Tower
Dallas, Texas 75201

Susan S. Tiller
233 Cape Henry
Corpus Christi, Texas 78412

All of the above are being reappointed.

State Board of Vocational Nurse Examiners

For six-year terms to expire September 6, 1987:

Dorothy S. Harris, LVN
1507 East Harry
Victoria, Texas 77901

Mrs. Harris is replacing Mildred Thormann of Stephenville, Hood County, whose term expired.

E. Kathleen Franklin, LVN
8418 Hollow Bend Lane
Port Arthur, Texas 77640

Mrs. Franklin is replacing Patsie Anderson of Uvalde, Uvalde County, whose term expired.

Lola Marie Mills, LVN
2024 North Harrision
San Angelo, Texas 76901

Mrs. Mills is replacing Wynelle Chillders of Amarillo, Potter County, whose term expired.

Bobbie Jo Haney, LVN
4604 Byers
Fort Worth, Texas 76107

Mrs. Haney is being appointed to a new position on the board.

Issued in Austin, Texas, on May 17, 1982.

TRD-824226 William P. Clements, Jr.
Governor of Texas

Appointments Made May 17

158th Judicial District Court of Texas

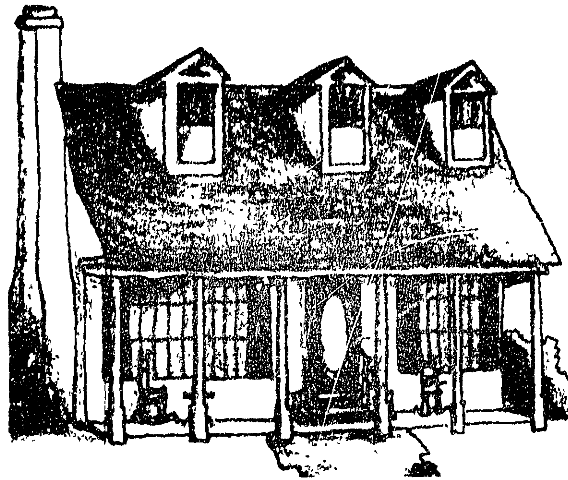
To be judge of the 158th Judicial District, Denton County, effective June 1, 1982, until the next general election and until his successor shall be duly elected and qualified:

John Keith Narsutis
3517 Granada Trail
Denton, Texas 76201

Mr. Narsutis will be replacing Judge Robert Scofield of Denton, Denton County, who resigned.

Issued in Austin, Texas, on May 17, 1982.

TRD-824227 William P. Clements, Jr.
Governor of Texas



Proposed Rules

Thirty days before an agency intends to permanently adopt a new or amended rule, or repeal an existing rule, it must submit a proposal detailing the action in the *Register*. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. A public hearing on the proposal may also be granted if such a procedure is requested by a governmental subdivision or agency, or by an association consisting of at least 25 members.

Unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice, the proposal may not be adopted until 30 days after publication. The document, as published in the *Register,* must include a brief explanation of the proposed action; a fiscal statement indicating effect on state or local government; a statement explaining anticipated public benefits and possible economic costs to individuals required to comply with the rule; a request for public comments; a statement of legal authority under which the proposed rule is to be adopted (and the agency's interpretation of the legal authority); the text of the proposed action; and a certification statement. The certification information which includes the earliest possible date that the agency may file notice to adopt the proposal, and a telephone number to call for further information, follows each submission.

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

TITLE 4. AGRICULTURE
Part I. Texas Department of Agriculture
Chapter 7. Pesticides

4 TAC §7.23

The Texas Department of Agriculture proposes new §7.23, concerning the state plan for certification of applicators.

The department is required, pursuant to the provisions of 7 United States Code, §136b(2) and Texas Agriculture Code, §76.101(a)(1981), to submit a state plan for the certification of pesticide applicators to the administrator of the Environmental Protection Agency. The submission of such plan is a prerequisite to the certification by the department of applicators of restricted-use pesticides as defined by 40 Code of Federal Regulations §162.31. In the interest of satisfying the requirements of the foregoing statutes and implementing a safe and efficacious plan of pesticide applicator certification, the department proposes to adopt by reference the State of Texas Plan for Certification of Pesticide Applicators. A brief outline of the material contained in the plan follows:

(I) State Agency Responsibilities.

(A) Lead Agency.

(B) Cooperating Agencies.

(C) Coordination of Agencies.

(1) Texas Department of Agriculture as lead agency.

(2) Coordinating Council.

(3) Parameters of certification authority of the cooperating agencies.

(4) Progress Reports.

(5) Information dissemination.

(6) Internal organization of cooperating agencies.

(II) Legal Authority and Qualified Personnel.

(A) Structural Pest Control Applicators.

(B) Enabling Statutes, apppendixes A and B styled Structural Pest Control Law and Regulations and Texas Pesticide Law and Regulations, respectively.

(C) Relevant Provisions of Enabling Statutes.

(1) License suspension and revocation.

(2) Right-of-entry.

(3) Penal prosecution.

(4) Record maintenance.

(D) State Employees Involved in Administration of Program.

(1) Texas Department of Agriculture.

(2) Texas Structural Pest Control Board.

(3) Texas Department of Health.

(III) Assurance of Funding.

(1) Texas Department of Agriculture.

(2) Texas Structural Pest Control Board.

(3) Texas Department of Health.

(IV) Reports.

(A) Contents of Report
(B) Texas Department of Agriculture to Submit.
(V) Conformity to Standards.
(A) Commercial and Noncommercial Applicators.
(B) Categories of Certification
(C) Standards of Competency.
(1) Training program required.
(2) Types of training programs allowed.
(VI) Government Agency Plan.
(VII) Applicators on Indian Reservations.
(VIII) Reciprocity
(IX) Other Pesticide Regulatory Activities.
(X) Maintenance of State Plan
(A) State Agency Field Personnel.
(B) License Renewal.
(C) Retraining and Retesting of Applicators.
(D) Training Programs to be Offered.

It is hoped that the effect of the adoption by reference of the State of Texas Plan for Certification of Pesticide Applicators will be to satisfy the requirements of 7 United States Code §136(b)(2) and Texas Agriculture Code, §76.101(a)(1981), and provide for the safe and efficacious use of restricted-use pesticides in this state.

William C. Neiser, director, Fiscal Services, 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. The effect on state government will be an estimated additional cost of $153,900 for 1982; $161,600 for 1983; $169,700 for 1984; $178,200 for 1985; and $187,000 for 1986. There will also be an estimated increase in revenue for state governments in the following amounts: $134,900 for 1982; $137,600 for 1983; $140,300 for 1984; $143,100 for 1985; and $146,000 for 1986.

There will be no effect on local government.

David Ivie, director, Agricultural and Environmental Sciences Division, has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be increased availability of certified applicators of restricted-use pesticides occasioned by satisfaction of statutory requirements for state government certification of applicators; and increased coordination of the activities of all state agencies involved in pesticide applicator certification.

The possible economic cost to individuals who are required to comply with the rule as proposed will be a testing fee of $10 per year for 1982 1986; a noncommercial license fee of $50 per year for 1982-1986; and a commercial license fee of $75 per year for 1982-1986.

Comments on the proposal may be submitted to Steve Haley, general counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. All comments should be in writing and substantially comply with 4 TAC §1.4(b).

The new section is proposed under 7 United States Code §136b(2), and Texas Agriculture Code, §76.101(a)(1981), which provide the Texas Department of Agriculture with the authority to adopt a state plan for the certification of applicators of restricted-use pesticides.

§7.23. *State Plan for Certification of Applicators.* The Texas Department of Agriculture hereby adopts by reference the State of Texas Plan for Certification of Pesticide Applicators (1982) with appendixes A and B styled Structural Pest Control Law and Regulations and Texas Pesticide Law and Regulations, respectively, attached, submitted by the department to the administrator of the EPA pursuant to the requirements of 7 United States Code §136(b)(2). Such plan with appendixes is available upon request from the Texas Department of Agriculture, Agricultural and Environmental Sciences Division, P.O. Box 12847, Austin, Texas 78711.

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

Issued in Austin, Texas, on May 24, 1982.

TRD-824262 Reagan V. Brown
Commissioner
Texas Department of Agriculture

Proposed date of adoption: June 28, 1982
For further information, please call (512) 475-6346.

TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 109. Public Solicitation or Advertisements

7 TAC §109.4

The State Securities Board proposes amendments to §109.4, concerning transactions exempt from registration.

Richard D. Latham, securities commissioner, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Latham has also determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be increased uniformity of state exemptive provisions with federal securities exemptions.

There is no possible economic cost to individuals who are required to comply with the rule as proposed as persons structuring securities offerings to comply with federal exemptions will be allowed to use the state exemptions provided in the rule as amended, and there is no filing or other fee which must be paid to the State Securities Board in connection with utilizing the exemption.

Comments on the proposal may be submitted to Russell R. Oliver, State Securities Board, P.O. Box 13167, Austin, Texas 73711.

The amendments are proposed under Texas Civil Statutes, Article 581-5.T and 28-1, which provide, respectively, that the board may prescribe exempt transactions by rule or regulation, and that the board may adopt such rules and regulations as may be necessary to carry out the provisions of The Securities Act.

§*109.4. Public Solicitation or Advertisements.* This section is intended to reflect the support of the Securities Board for the proposition that potential investors in transactions exempt under §5.1 of the Act have a legitimate interest in receiving reasonable information concerning the plan of business and the financial condition of the issuer of the securities.

(1) The offer for sale or sale of the securities of the issuer would not involve the use of "public solicitation" under §5.1 of the Act if the offer for sale or sale is made to sophisticated, well-informed investors or to well-informed investors who have a relationship with the issuer or its principals, executive officers, or directors evincing trust between the parties (namely close business association, close friendship, or close family ties), and who acquire the securities as ultimate purchasers and not as underwriters or conduits to other beneficial owners or subsequent purchasers. The use of a registered dealer in a sale otherwise meeting the requirements of §5.1 does not necessarily mean that the transaction involves the use of "public solicitation."

(A) (No change.)

(B) In determining who is a "sophisticated investor" at least the following factors should be considered:

(i) The financial capacity of the investor, to be of such proportion that the total cost of that investor's commitment in the proposed investment would not be material when compared with his total financial capacity. **It may be presumed that if the investment does not exceed 20% of the investor's net worth (excluding principal residence, furnishings, and personal automobiles) that the amount invested is not material.**

(ii)-(iii) (No change.)

(2) (No change.)

(3) Number of "persons" or "security holders." In computing the number of purchasers or security holders for §5.1, the following criteria shall be used:

(A) There shall be counted as one purchaser or security holder any purchaser or security holder together with:

(i) (No change.)

(ii) any trust or estate in which such purchaser or security holder or any of the persons related to him as specified in clauses *(i)* or *(iii)* of this subparagraph collectively have **more than 50** [100]% of the beneficial interest (excluding contingent interests); and

(iii) any corporation or other organization of which such purchaser or security holder or any of the persons related to him as specified in clauses *(i)* or *(ii)* of this subparagraph collectively are the beneficial owners **of more than 50% of** [all] the equity securities (excluding director's qualified shares) or equity interest.

(B)-(C) (No change.)

(4)-(10) (No change.)

(11) **Sales to accredited investors** [Investments of $100,000 or more]. In addition to sales made under §5.1 of The Securities Act, the State Securities Board, pursuant to §5.T of The Securities Act, exempts from the registration requirements of §7 of The Securities Act the sale of any securities by the issuer itself or by a registered dealer acting as agent for the issuer provided all the following conditions are satisfied [in sales to Texas investors]:

(A) The sale is made, without the use of any public solicitation or advertisements[,] to [sophisticated,] well-informed investors, as these terms are defined in this section [065.05.00.009] The use of the term "5.1" in this section shall include sales made pursuant to this rule.

(B) **Each purchaser meets the definition of "accredited investor" set forth in §107.2 of this title (relating to Definitions.)** [The minimum purchase of such security by each investor is $100,000, and such minimum amount must be paid in cash, or in installments, or by other financing arrangements which put the investor at risk for a minimum of $100,000. For the purpose of determining the sophistication of the investor in order to comply with paragraph (1)(B)*(i)* of this section, it will be presumed that the entire investment is due at the time the initial sale is made, regardless of the actual terms of payment.]

(C) **Neither the issuer nor the registered dealer (as such terms are defined in clause *(vi)* of this subparagraph**

***(i)* is currently subject to any state or federal administrative order issued by securities regulatory authorities within five years of the expected offer and sale of securities in reliance upon this exemption, which order**

(I) has the effect of enjoining such person from activities subject to federal or state securities laws, or

(II) is based upon a finding that such person has engaged in fraudulent conduct; or

(III) has the effect of enjoining such person from activities subject to federal or state statutes designed to protect consumers aginst unlawful or deceptive practices involving insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services;

***(ii)* has been convicted within five years prior to commencement of the offering of any felony or misdemeanor of which fraud is an essential element, or which is a violation of the securities laws or regulations of this state, or of any other state of the United States, or of the United States, or any foreign jurisdiction; or which is a crime involving moral turpitude; or which is a criminal violation of statutes designed to protect consumers against unlawful practices involving insurance, securities, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services.**

***(iii)* is currently subject to any state or federal administrative order which prohibits the use of any exemption from registration in connection with the purchase or sale of securities;**

***(iv)* is subject to any order, judgment or**

decree entered within five years prior to commencement of the offering by any court of competent jurisdiction which temporarily or permanently restrains or enjoins such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving any false filing with any state; or which restrains or enjoins such person from activities subject to federal or state statutes designed to protect consumers against unlawful or deceptive practices involving insurance, commodities or commodity futures, real estate, franchises, business opportunities, consumer goods, or other goods and services:

(v) **the prohibitions of clauses *(i)*, *(ii)*, and *(iv)* of this subparagraph shall not apply if the party or interest subject to the disqualifying order is duly licensed to conduct securities related business in the state in which the administrative order or judgment was entered against such party or interest. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.**

(vi) **for purposes of this section, "issuer" includes any predecessor or affiliate, and any director, officer, general partner, beneficial owner of 10% or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities), and any promoter presently connected with the issuer in any capacity, and "registered dealer" shall include any partner, director, officer, or affiliate of the registered dealer.**

[No securities of the issuer of the same class as those offered under this paragraph can be currently registered for sale in Texas, and no application to register securities of the issuer of the same class as those offered under this paragraph can be pending.]

[(D) The entire offering of which the sale is a part must be sold pursuant to exemptions from the securities registration requirements of the Federal Securities Laws.]

(D)[(E)] Issuers who are not registered securities dealers and who do not sell securities under this subsection by or through registered securities dealers, **(except where the sales are made exclusively to accredited investors listed in subparagraphs (A), (B), (C), and (D) of the definition of "accredited investor" contained in §107.2 of this title (relating to Definitions) or to entities in which all of the equity owners are accredited investors listed in subparagraphs (A), (B), (C), and (D) of such definition)** shall file a sworn notice on Form 133.29 or on a reproduction thereof not less than 10 business days before any sale claimed to be exempt under this paragraph may be consummated setting forth at least:

(i)-(v) (No change.)

(E)[(F)] Security holders who purchase in sales made under this exemption are not counted as security holders under §5.I(a) or purchasers under §5.I(c) in determining whether any other sales to other security holders or purchasers are exempt under §5.I. That is to say, this exemption is cumulative with and in addition to the exemptions contained in §5.I, and sales made under this exemption are not considered in determining whether sales made in reliance on the exemptions contained in §5.I would be within the numerical limits on the number of security holders or purchasers contained in §5.I

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

Issued in Austin, Texas, on May 21, 1982.

TRD-824283 Richard D Latham
Securities Commissioner

Proposed date of adoption: June 28, 1982
For further information, please call (512) 474-2233.

Chapter 121. Oil and Gas Drilling Programs

7 TAC §§121.1-121.4

(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 State Securities Board, 1800 San Jacinto Street, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The State Securities Board proposes to repeal §§121.1-121.4. These sections govern registration of public oil and gas drilling programs and are proposed to allow adoption of the Guidelines for Registration of Oil and Gas Programs which have been adopted by the North American Securities Administrators Association, Inc., to promote uniformity in the registration of public oil and gas programs.

William Kuntz, director of the Securities Registration Division, has determined that for the first five-year period the repeals will be in effect, assuming that the aforementioned NASAA Guidelines for Registration of Oil and Gas Programs are adopted, there will be no fiscal implications as a result of enforcing or administering the repeals.

Mr. Kuntz has also determined that for each year of the first five years the repeals as proposed will be in effect, the public benefit anticipated, assuming adoption of the NASAA rules, will be clarification and uniformity of the registration requirements for oil and gas programs. There is no possible economic cost to individuals as a result of repeal of the rules as simultaneous adoption of the NASAA Guidelines will not make registration more difficult.

Comments on the proposal may be submitted to Russell R. Oliver, State Securities Board, P.O. Box 13167, Austin, Texas 78711.

The repeal of these sections is proposed under The Securities Act, §28-1, which authorizes the board to repeal prior rules or regulations.

§121.1. Introduction.

§121.2. Plan of Business.

§121.3. *Plan of Distribution*
§121.4. *Prospectus and its Contents.*

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

Issued in Austin, Texas, on May 17, 1982.

TRD-824063 Richard D. Latham
Securities Commissioner

Proposed date of adoption: June 21, 1982
For further information, please call (512) 474-2233.

7 TAC §121.1-121.10

The State Securities Board proposes to adopt new §§121.1-121.10 concerning registration and qualifications of oil and gas programs.

William Kuntz, director of the Securities Registration Division, has determined that for the first five-year period the sections will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Mr. Kuntz has also determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be uniformity of registration criteria for oil and gas programs, as the sections as adopted are the Statement of Policy Regarding Oil and Gas Programs adopted by the North American Securities Administrators Association, Inc., with minor changes, and the NASAA Guidelines are applied by a number of other states in the United States in registering such programs.

There is no possible economic cost to individuals who are required to comply with the sections as proposed, as the sections are designed to promote uniformity and thereby ease the registration process for such programs.

Comments on the proposal may be submitted to Russell R. Oliver, State Securities Board, P.O. Box 13167, Austin, Texas 78711.

The new rules are proposed under Texas Securities Act, Article 28-1, which provides that the board may make or adopt rules and regulations governing registration applications.

§*121.1. Introduction.*

(a) Application.

(1) These guidelines apply to the registration and qualification of oil and gas programs in the form of limited partnerships (herein sometimes called "programs" or "partnerships"), and will be applied by analogy to oil and gas programs in other forms, including general partnerships formed solely to invest as a limited partner in an affiliated program. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain guidelines may be modified or waived by the securities commissioner.

(2) Where the individual characteristics of specific programs warrant modification from these standards, they will be accommodated, insofar as possible, while still being consistent with the spirit of these guidelines.

(b) Definitions. The following words and terms, when used in these sections, shall have the following meanings unless the context clearly indicates otherwise:

(1) Affiliate—

(A) Any person directly or indirectly owning, controlling, or holding with power to vote 10% or more of the outstanding voting securities of such other person;

(B) any person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;

(C) any person directly or indirectly controlling, controlled by, or under common control with such other person;

(D) any officer, director, or partner of such other person; and

(E) if such other person is an officer, director, or partner, any company for which such person acts in any such capacity.

(2) Assessments—Additional amounts of capital which may be mandatorily required of or paid voluntarily by a participant beyond his subscription commitment.

(3) Capital contributions—The total investment, including the original investment, assessments, and amounts reinvested, in a program by a participant or by all participants, as the case may be.

(4) Capital expenditures—Those costs which are generally accepted as capital expenditures pursuant to the provisions of the Internal Revenue Code.

(5) Cost–

(A) When used with respect to property in §127.7 of this title (relating to Farm-outs):

(i) the sum of the prices paid by the seller for such property, including bonuses;

(ii) title insurance or examinations costs, broker's commissions, filing fees, recording costs, transfer taxes, if any, and like charges in connection with the acquisition of such property; and

(iii) rentals and ad valorem taxes paid by the seller with respect to such property to the date of its transfer to the buyer, interest on funds used to acquire or maintain such property, and such portion of the seller's reasonable, necessary, and actual expenses for geological, geophysical, seismic, land engineering, drafting, accounting, legal, and other like services allocated to the property in accordance with generally accepted industry practices, except for expenses in connection with the past drilling of wells which are not producers of sufficient quantities of oil or gas to make commercially reasonable their continued operations, and provided that the expenses enumerated in clause *(iii)* of this subparagraph have been incurred not more than 36 months prior to the purchase by the program; provided that such period may be extended, at the discretion of the administrator, upon proper justification.

(B) When used with respect to services: the reasonable, necessary, and actual expense incurred by the seller on behalf of the program in providing such services,

determined in accordance with generally accepted accounting principles.

(C) As used elsewhere: the price paid by the seller in an arm's-length transaction.

(6) Development well—A well drilled as an additional well to the same reservoir as other producing wells on a lease, or drilled on an offset lease usually not more than one location away from a well producing from the same reservoir.

(7) Exploratory well—A well drilled either:

(A) in search of a new and as yet undiscovered pool of oil or gas, or

(B) with the hope of greatly extending the limits of a pool already developed.

(8) General and administrative overhead—All customary and routine legal, accounting, geological, engineering, well supervision fee, travel, office rent, telephone, secretarial, salaries, and other incidental reasonable expenses necessary to the conduct of the partnership business, and generated by the sponsor.

(9) Landowner's royalty interest—An interest in production, or the proceeds therefrom, to be received free and clear of all costs of development, operation, or maintenance, reserved by a landowner upon the creation of an oil and gas lease.

(10) Noncapital expenditures—Expenditures that under present law are generally accepted as fully deductible currently for federal income tax purposes.

(11) Operating costs—Expenditures made and costs incurred in producing and marketing oil or gas from completed wells, including, in addition to labor, fuel, repairs, hauling, materials, supplies, utility charges and other costs incident to or therefrom, ad valorem and severance taxes, insurance and casualty loss expense, and compensation to well operators or others for services rendered in conducting such operations.

(12) Offering expenses—All costs of offering and selling the program, including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriters' attorneys), expenses for printing, engraving, mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositaries, engineers and other experts, expenses of qualification of the sale of the securities under federal and state law, including taxes and fees, accountants' and attorneys' fees.

(13) Overriding royalty interest—An interest in the oil and gas produced pursuant to a specified oil and gas lease or leases, or the proceeds from the sale thereof, carved out of the working interest, to be received free and clear of all costs of development, operation, or maintenance.

(14) Participant—The purchaser of a unit in the oil and gas program.

(15) Program—A single partnership. (This does not mean that a prospectus may not offer a series of partnerships, with individual partnerships being formed in sequence as the minimum amount necessary to form a partnership is obtained.)

(16) Prospect—An area in which the program owns or intends to own one or more oil and gas interests, which is geographically defined on the basis of geological data by the sponsor of such program and which is reasonably anticipated by the sponsor to contain at least one reservoir.

(17) Proved reserves—Those quantities of crude oil, natural gas, and natural gas liquids which, upon analysis of geologic and engineering data, appear with reasonable certainty to be recoverable in the future from known oil and gas reservoirs under existing economic and operating conditions. Proved reserves are limited to those quantities of oil and gas which can be expected, with little doubt, to be recoverable commercially at current prices and costs, under existing regulatory practices and with existing conventional equipment and operating methods. Depending upon their status of development, such proved reserves shall be subdivided into the following classifications.

(A) Proved developed reserves. These are proved reserves which can be expected to be recovered through existing wells with existing equipment and operating methods.

(i) This classification shall include the following.

(I) Proved developed producing reserves. These are proved developed reserves which are expected to be produced from existing completion interval(s) now open for production in existing wells.

(II) Proved developed nonproducing reserves. These are proved developed reserves which exist behind the casing of existing wells, or at minor depths below the present bottom of such wells, which are expected to be produced through these wells in the predictable future, where the cost of making such oil and gas available for production should be relatively small compared to the cost of a new well.

(ii) Additional oil and gas expected to be obtained through the application of fluid injection or other improved recovery techniques for supplementing the natural forces and mechanisms of primary recovery should be included as "Proved Developed Reserves" only after testing by a pilot project or after the operation of an installed program has confirmed through production response that increased recovery will be achieved.

(B) Proved undeveloped reserves. These are proved reserves which are expected to be recovered from new wells on undrilled acreage, or from existing wells where a relatively major expenditure is required for recompletion. Reserves on undrilled acreage shall be limited to those drilling units offsetting productive units, which are virtually certain of production when drilled. Proved reserves for other undrilled units can be claimed only where it can be demonstrated with certainty that there is continuity of production from the existing productive formation. Under no circumstances should estimates for proved undeveloped reserves be attributable to any acreage for which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir. If warranted, however, a narrative discussion can be provided to point out those areas where future drilling or other operations may develop oil and gas production which at the time of filing is considered too uncertain to be expressed as numerical estimates for proved reserves.

(18) Sponsor—Any person directly or indirectly instrumental in organizing a program or any person who will manage or participate in the management of a program, including the general partner(s) and any other person, who pursuant to a contract with the program, regularly performs or selects the person who performs 25% or more of the exploratory, developmental, or producing activities of the program, or segment thereof. "Sponsor" does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of units. Whenever the context of these guidelines so requires, the term "sponsor" shall be deemed to include its affiliates.

(19) Working interest—An interest in an oil and gas leasehold which is subject to some portion of the expense of development, operation, or maintenance.

§121.2. Requirements of Sponsor.

(a) Experience. The general partner or its chief operating officers shall have at least three years relevant oil and gas experience demonstrating the knowledge and experience to carry out the stated program policies and to manage the program operations. Additionally, the general partner or any affiliate providing services to the program shall have had not less than four years relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed. If any managerial responsibility for the program is to be rendered by persons other than the general partner, then such persons must be identified in the prospectus, their experience must be similar to that required of a general partner and must be set out in the prospectus, and a contract setting forth the basis of their relationship with the program must be filed with and not disapproved by the administrator.

(b) Net worth.

(1) The financial condition of the general partner must be commensurate with any financial obligations assumed by it. The general partner must specifically have a minimum aggregate net worth at all times equal to 5.0% of participants' capital in all existing programs organized by the general partner plus 5.0% of total subscriptions in the program being offered, but such minimum required net worth shall in no case be less than $100,000 nor shall net worth in excess of $1 million be required. An individual general partner's net worth shall be determined exclusive of home, home furnishings, and automobiles. Audited balance sheets of sponsors shall be furnished, except that in the event that an individual is a general partner, an unaudited balance sheet prepared by a certified public accountant and signed and sworn to by such individual general partner may be accepted for the purpose of determining said required net worth, in the discretion of the administrator, and such unaudited statement will be carefully scrutinized.

(2) In determining a general partner's net worth, the discounted value of proved reserves, as determined by an independent petroleum appraiser, of oil, gas, and other minerals owned by a general partner may be used. Notes and accounts receivables from all programs, interests in all programs, and all contingent liabilities will be scrutinized carefully to determine the appropriateness of their inclusion in the net worth computation. If an individual general partner's net worth is used in complying with the above requirements, a statement as to such net worth shall be included in the prospectus.

(3) If more than one person acts or serves as general partner of a program, the net worth requirements may be met by aggregating the net worth of all such persons. In addition, the net worth of any guarantor of the general partner's obliations to or for the program may be included in the net worth computation, but only if the guarantor's liability is coextensive with that of the general partner.

(c) Tax ruling or opinion. The sponsor must have a tax ruling from the Internal Revenue Service or an opinion of qualified tax counsel in a form acceptable to the securities commissioner concerning the flow-through tax benefits and the other tax consequences to the public investor.

(d) Investment in program. In appropriate cases, the securities commissioner may require that the sponsor purchase for cash a minimum amount of participation units.

(e) Reports. The sponsor shall agree to file with the securities commissioner, if he so requests it, concurrently with the transmittal to participants, a copy of each report made pursuant to §121.8(c) of this title (relating to Rights and Obligations of Participants).

(f) Liability and indemnification. The sponsors shall not attempt to pass on to participants the unlimited liability imposed upon them by law except that the program agreement may provide for indemnification of the sponsor(s) under the following circumstances and in the manner and to the extent indicated.

(1) In any threatened, pending, or completed action, suit, or proceeding to which the sponsor was or is a party or is threatened to be made a party by reason of the fact that he is or was the sponsor of the program (other than an action by or in the right of the program) involving an alleged cause of action for damages arising from the performance of oil and gas activities including exploration, development, completion, or operation, or other activities relative to management and disposition of oil and gas properties or production from such properties, the program may indemnify such sponsor against expenses, including attorneys' fees, judgments, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if the sponsor acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program, and provided that his conduct does not constitute gross negligence, willful or wanton misconduct, or a breach of his fiduciary obligations to the participants. The termination of any action, suit, or proceeding by judgment, order, or settlement shall not, of itself, create a presumption that the sponsor did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the program.

(2) In any threatened, pending, or completed action or suit by or in the right of the program, to which the sponsor was or is a party or is threatened to be made a party, involving an alleged cause of action by a partici-

pant or participants for damages arising from the activities of the sponsor in the performance of management of the internal affairs of the program as prescribed by the program agreement or by the law of the state of organization, or both, the program may indemnify such sponsor against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program as specified in this paragraph, except that no indemnification shall be made in respect of any claim, issue, or matter as to which the sponsor shall have been adjudged to be liable for negligence, misconduct, or breach of fiduciary obligation in the performance of his duty to the program as specified in this paragraph, unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a sponsor has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in paragraphs (1)-(2) of this subsection, or in defense of any claim, issue, or matter therein, the program may indemnify him against the expenses, including attorney's fees, actually and reasonably incurred by him in connection therewith.

(4) Any indemnification under paragraphs (1)-(2) of this subsection, unless ordered by a court, shall be made by the program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the sponsor is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (1)-(2) of this subsection.

§121.3. Selling of Units and Sales Materials.

(a) Sales of units.

(1) Compensation to broker-dealers shall be a cash commission. Indeterminate compensation to broker-dealers, such as overriding interests and net profit interests, for example, is prohibited. In the absence of a firm underwriting, warrants or options to broker-dealers are prohibited.

(2) Compensation to wholesale dealers must be a cash commission, must be reasonable, and must be fully disclosed.

(3) Sales commissions based on assessment of units are prohibited.

(b) Sales material. Supplementary materials (including prepared presentations for group meetings) must be submitted to the securities commissioner in advance of use, and its use must either be preceded by or accompanied with an effective prospectus.

§121.4. Suitability of the Participant.

(a) Standards to be imposed. In view of the limited transferability, the relative lack of liquidity, the high risk of loss, or the specific tax orientation of many oil and gas programs, suitability standards which are reasonably related to the risks to be undertaken will be required for the participants, and they must be set forth both in the prospectus and in a written instrument to be executed by each participant.

(b) Sales to appropriate persons.

(1) The sponsor and each person selling limited partnership interests on behalf of the sponsor or program shall make every reasonable effort to assure that those persons being offered or sold the limited partnership interests are appropriate in light of the suitability standards set forth as required in subsection (a) of this section and are appropriate to the customers' investment objectives and financial situations.

(2) The sponsor and/or his representative shall make every reasonable effort to ascertain that the participant can reasonably benefit from the program, and the following shall be evidence thereof.

(A) The participant has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following:

(i) the nature of employment experience;

(ii) educational level achieved;

(iii) access to advice from qualified sources, such as, attorney, accountant, and tax adviser; and

(iv) prior experience with investments of a similar nature.

(B) The participant has apparent understanding:

(i) of the fundamental risks and possible financial hazards of the investment; and

(ii) the lack of liquidity of the investment.

(C) The participant is able to bear the economic risk of the investment and can reasonably benefit from the program, on the basis of his net worth and taxable income. For purposes of determining the ability to bear the economic risk and to reasonably benefit from the program, unless circumstances warrant and the securities commissioner allows another standard, a participant shall have:

(i) a net worth of $225,000 or more (exclusive of home, furnishings, and automobiles), or

(ii) a net worth of $60,000 or more (exclusive of home, furnishings, and automobiles) and had during the last tax year, or estimates that he will have during the current tax year, "taxable income" as defined in §63 of the Internal Revenue Code of 1954, as amended, of $60,000 or more, without regard to the investment in the program.

(c) Suitability standards for production purchase program.

(1) In the case of programs engaged primarily in investing in income producing properties (production purchase program) the securities commissioner may allow lower suitability standards than those described in subsection (b)(2)(C) of this section. Subject to a satisfactory showing as to the plan of business of the program, the following suitability standards will be deemed reasonable:

(A) the participant has a net worth of $90,000 or more (exclusive of home, furnishings, and automobiles), or

(B) the participant has a net worth of $25,000 (exclusive of home, furnishings, and automobiles) and an annual income of $25,000 or more.

(d) Minimum investment. For a drilling program, the minimum purchase shall not be less than $5,000, and

the initial investment by a participant not less than $5,000 and for an income or production purchase program, the minimum purchase shall not be less than $2,500 and the initial investment not less than $2,500. All of the aforesaid minimums must be paid within 12 months from the date the program commences. Assignability of the unit must be limited so that no assignee (transferee) or assignor (transferor) may hold less than the prescribed minimum except by gifts or by operation of law.

(c) Maintenance of suitability records. The broker-dealer or sponsor shall retain for at least six years all records necessary to substantiate the fact that program interests were sold only to purchasers for whom such securities were suitable. The securities commissioner may require broker-dealers or sponsors to obtain from the purchaser a letter justifying the suitability of such investment.

§*121.5. Fees, Compensation, and Expenses.*

(a) Organization expenses, offering expenses, and management fees.

(1) To be fair, just, and equitable, program organization expenses which are to be paid from the proceeds of the offering must be reasonable. Generally, most expenses incurred to establish and structure the program in a manner to make its interests acceptable for registration in any jurisdiction will be considered offering expenses and not organization expenses.

(2) All offering expenses incurred in order to sell program units shall be reasonable, and the total of those organization and offering expenses, which may be charged to the program, plus any management fee, which may be charged by the sponsor, shall not exceed 15% of the initial subscriptions.

(3) Commissions payable on the sale of program units shall be paid in cash solely on the amount of initial subscriptions. Payments of commissions in the form of overriding royalties, net profit interests, or other interests in production will not be approved, except that no objection will be raised to the payment of commissions in the form of interests in the program, provided the amount does not exceed that purchasable by applying the aggregate cash commission allowable to the unit offering price.

(4) All items of compensation to underwriters or dealers, including, but not limited to, selling commissions, expenses, rights of first refusal, consulting fees, finders' fees, and all other items of compensation of any kind or description paid by the program, directly or indirectly, shall be taken into consideration in computing the amount of allowable selling commissions.

(b) Compensation. The participation in program revenues by the sponsor and any affiliate shall be reasonable, taking into account all relevant factors. Overriding royalty interests will be looked upon with disfavor. Sponsors' interests in revenues will be considered reasonable if they meet the standards set forth below. Any other combination of fees, working or net profits interests, or interests subordinated to pay out to the public investors, which are justified, in light of the entire offering, may be considered reasonable by the securities commissioner. References in this subsection to a percent of revenues refer to that percent of program revenues, and references to a percent working interest refer to that percent of the working interest owned by a program in a prospect, if the program does not own the total working interest.

(1) Drilling programs: functional allocation.

(A) Where the sponsor agrees to pay all capital expenditures of the program, but in any case at least 10% of the capital contributions to the program (excluding any capital contributions from the sponsor or any of his affiliates), his share of revenues will be determined by the following formula.

(*i*) if the agreement is to pay all capital expenditures but in any case a sum of not less than 10% of the capital contributions to the program (excluding any capital contributions from the sponsor or any of his affiliates), the sponsor will be entitled to receive 35% of program revenues;

(*ii*) the sponsor's revenue sharing may be increased in additional increments of 5.0% for each additional 5.0% increase in the percentage of capital contributions to the program (excluding any capital contributions from the sponsor or any of his affiliates) agreed to be paid by him up to a maximum of 50% of revenues subject to sponsor's agreement to pay in any case all capital expenditures.

(B) As one alternative to subparagraph (A) of this paragraph, the sponsor may elect to receive 15% of revenues and an additional percentage of revenues determined by computing the sponsor's capital expenditures as compared to total costs associated with obtaining production, on a prospect basis, until such time as the sponsor shall have received from such additional percentage of revenues an amount equal to his capital expenditures; after which revenues shall be distributed as follows: 15% of revenues to the sponsor and 85% of revenues to the participants until the participants shall have received on a program basis a return of their capital contributions in cash and then, 15% plus the additional percentage of revenues shall be paid to the sponsor and the remainder to the participants.

(C) In connection with other possible alternatives that may be submitted to subparagraph (A) of this paragraph, a promotional interest in excess of 25% on a program basis will not be permitted, and a minimum commitment by the sponsor to pay at least 10% of the total program's contributions will be required.

(D) The aforesaid arrangement to pay capital expenditures refers to and includes all capital expenditures for the drilling and completing of wells during the life of the program, but does not include capital expenditures for facilities downstream of a wellhead. If the sponsor should enter into farm-out or other arrangements through which only he is relieved of his obligations to pay for such capital expenditures, then the sponsor's share of revenue shall be proportionately reduced, the amount to be determined on an individual basis.

(E) In order to elect a sharing arrangement as provided in subparagraph (D) of this paragraph, the sponsor must have a net worth of $300,000 or 10% of the total contributions to the program by the participants, whichever is greater, and must be under a contractual obligation to pay his share of expenses as such expenses are paid by the program and to complete his minimum financial commitment to the program by the payment of

cash by the end of the third fiscal year succeeding the fiscal year in which the program commenced operations. Any additional contributions made by the sponsor will be used to pay program expenses which would otherwise be charged to the participants.

(F) For the purposes of this subsection, if a well is not abandoned within 60 days following the commencement of production, then it shall be deemed to be a commercial well insofar as the program is concerned and the sponsor may not recapture its capital expenditures from the program, which otherwise would be treated as noncapital expenditures upon abandonment. As used herein, production shall refer to the commencement of the commercial marketing of oil or gas, and shall not include any spot sales of oil or gas produced as a result of testing procedures. All revenues from a well abandoned under this subsection shall be allocated pro rata to those persons bearing the costs of such well.

(G) The sharing arrangement set forth in this subsection shall not be considered presumptively reasonable

(i) in the case of sharing arrangements in which the sponsor pays all development costs and exploratory wells are drilled on prospects which cannot reasonably be expected to require developmental drilling if the exploratory drilling is successful, or

(ii) in the case of sharing arrangements where the sponsor does not pay his share or category of costs on a current basis.

(2) Drilling programs: subordinated or reversionary working interest.

(A) As an alternative to sharing revenues on a basis related to costs paid, it will be considered reasonable for a sponsor of a drilling program to receive a promotional interest in the form of a subordinated percentage of the working interest. The holder of a subordinated working interest shall be entitled to receive his share of revenues only after the participants have had allocated to their respective accounts an amount determined in accordance with either one of the following alternative formulas:

(i) an amount which reflects that the participants' share of revenues from production and other items credited to a prospect equal the sum of the costs of acquisition, drilling and development, all costs of operating the leases underlying the prospect, and an appropriately allocated portion of all other program expenses, including organizational and offering expenses; or

(ii) an amount which reflects that the revenues of the program equal all the expenses of the program.

(B) If the sponsor elects to use the first formula, his subordinated working interest shall entitle him to receive 25% of program revenues and if he chooses the second formula his interest shall equal 33-⅓% of program revenues.

(C) At such time as the sponsor is entitled to receive his promotional interest, he shall also bear program costs in the same ratio as he participates in program revenues.

(3) Income or production purchase programs.

(A) Where a major portion of the sponsor's management and operating responsibilities are performed by third parties, the cost of which is paid by the program, the sponsor may take a 3.0% working interest convertible to not more than a 5.0% working interest after the return from production to the investors of 100% of their capital contribution, computed on a total program basis.

(B) Where the sponsor maintains the operating capabilities and technical staff so as to be in a position to, and in fact does, provide the program with a major part of the management and operating responsibilities of the program, the sponsor may take no more than a 15% working interest. Where the individual characteristics of specific programs warrant modification from the two approaches to production purchase programs in subparagraphs (A) and (B) of this paragraph, they will be accommodated, insofar as possible, while still being consistent with the aforesiad compensation arrangements. The sponsor's interest in a program or in properties owned by a program shall bear a pro rata share of all costs, expenses, and obligations of the program including, but not limited to, costs of operations, general and administrative expenses, debt service, and any other items of expense chargeable to the operation of the program.

(4) The sharing arrangement set forth in this subsection shall not be considered presumptively reasonable for a sponsor who does not actively participate in obtaining a significant portion of the program's prospects and who does not assume management responsibility for drilling, completing, equipping, and operating a significant portion of a program's wells, unless such sponsor shall satisfactorily demonstrate that his compensation together with the costs of procuring such services for the program from third parties does not exceed the permissible compensation to the sponsor set forth in this subsection. For purposes of these guidelines, a sponsor shall be deemed to be actively participating in obtaining a significant portion of a program's prospects if the sponsor has in-house or under contract the technical capability of originating and/or fully evaluating the prospects to be acquired by that program. "Prospect origination" is the process of formulating a geological or geophysical concept and negotiating for the acquisition of a sufficient acerage interest in the area to warrant drilling and testing. "Prospect evaluation" is the process of determining the viability of a prospect which has been originated by a third party. A sponsor must describe in adequate detail in the offering documents the nature of the sponsor's capability to originate and/or evaluate the prospects the sponsor intends to transfer to a program. If the capability is in-house, the "Operation" section of the offering documents should have a full discussion of the process by which such origination and evaluation will take place and the "Management" section of those documents should include a biographical discussion of the key personnel of the sponsor performing these activities. If the capability is to be provided by third parties under contract to the sponsor, the third parties should be identified, their qualifications described, and the contractual nature of the arrangement between the sponsor and the third party should be fully disclosed. This should include a detailed discussion of the administrative process involved in the relationship. It will be deemed presumptively unreasonable, in the latter instance, if the contracts do not provide the program with comparable capabilities to

those that would be provided if the sponsor's capability was in-house, including, among other things, availability of technical expertise and the provision of adequate response time. Unless the sponsor can adequately demonstrate the availability of such capability, it will not be permitted to elect any of the sharing of costs and revenues described in the guidelines.

(c) Program expenses.

(1) All actual and necessary expenses incurred by the program may be paid by the sponsor out of capital contributions and out of program revenues.

(2) A sponsor may be reimbursed out of capital contributions and program revenues for all actual and necessary direct expenses paid or incurred by it in connection with its operation of a program, and for an allocable portion of its general and administrative overhead, computed on a cost basis. All overhead costs shall be determined in accordance with generally accepted accounting principles, subject to annual independent audit. Administrative and similar charges for services must be fully supportable as to the necessity thereof and the reasonableness of the amount charged. The prospectus shall disclose in tabular form an estimate of such expenses to be charged to the program showing direct expenses and general and administrative overhead spearately, and the sponsor must demonstrate that it has a reasonable basis for such estimates. The estimate of general and administrative overhead shall be broken down into the various types of services and costs, with a separate breakdown for salaries to officers, directors, and other principals of the sponsor, and any affiliate of the sponsor; a summary of the manner in which such expenses are allocated shall be included. In addition, the prospectus shall disclose in tabular form for each program formed in the last three years the dollar amount of the expenses so charged and allocated, and the percentage of subscriptions raised reflected thereby. The sponsor shall bear a percentage of general and administrative overhead equal to its percentage of revenue participation. A subordinated interest shall bear its percentage of general and administrative overhead from the time that the sponsor participates in program revenues.

§121.6. Transactions with Affiliates and Conflicts of Interest.

(a) Sales and Purchases of Properties.

(1) Neither the sponsor of a drilling program nor any affiliated person shall sell, transfer, or convey any property to or purchase any property from the program, directly or indirectly, except pursuant to transactions that are fair and reasonable to the participants of the program and then subject to the following conditions.

(A) In the case of a sale, transfer, or conveyance to a program:

(i) The prospectus discloses the fact that the sponsor will sell, transfer, or convey property to the program and whether or not the property will be sold from the sponsor's existing inventory.

(ii) The property is sold, transferred, or conveyed to the program at the cost of the sponsor, unless the seller has reasonable grounds to believe that cost is materially more than the fair market value of such property, in which case such sale should be made for a price not in excess of its fair market value.

(iii) If the sponsor sells, transfers, or conveys any oil, gas, or other mineral interests or property to the program, he must, at the same time, sell to the program an equal proportionate interest in all his other property in the same prospect. If the sponsor or any affilate subsequently proposes to acquire an interest in a prospect in which the program possesses an interest or in a prospect abandoned by the program within one year preceding such proposed acquisition, the sponsor shall offer an equivalent interest therein to the program; and, if cash or financing is not available to the program to enable it to consummate a purchase of an equivalent interest in such property, neither the sponsor nor any of its affiliates shall acquire such interest or property. The term "abandon" for the purpose of this subsection shall mean the termination, either voluntarily or by operation of the lease or otherwise, of all of the program's interest in the prospect. The provisions of this subsection shall not apply after the lapse of five years from the date of formation of the program. For the purpose of this subsection, the terms "sponsor" and "affiliate" shall not include another program where the interest of the sponsor is identical to, or less than, his interest in the subject program.

(iv) A sale, transfer, or conveyance of less than all of the ownership of the sponsor in any interest or property is prohibited unless the interest retained by the sponsor is a proportionate working interest, the respective obligations of the sponsor and the program are substantially the same after the sale of the interest by the sponsor, and his interest in revenues does not exceed the amount proportionate to his retained working interest. The sponsor may not retain any overrides or other burdens on the interest conveyed to the program and may not enter into any farm-out arrangements with respect to his retained interest, except to nonaffiliated third parties or other programs managed by the sponsor.

(B) In the case of a transfer of nonproducing property from a program, the transfer is made at a price which is the higher of the fair market value or the cost of such property.

(C) The sponsor, or affiliates other than other public programs, shall not be permitted to purchase producing property from a program.

(2) Neither the sponsor of a production purchase program nor any affiliated person shall sell, transfer, or convey any property to or purchase any property from the program, directly or indirectly, except pursuant to transactions that are fair and reasonable to the participants of the program and then subject to the following conditions.

(A) In the case of a purchase from or sale to a program:

(i) The prospectus discloses the fact that the sponsor may sell property to the program and whether or not the property will be sold from the sponsor's existing inventory.

(ii) The purchase from or sale to the program is at cost as adjusted for intervening operations, unless the sponsor has reasonable grounds to believe that cost is materially more than or less than the fair market value of such property, in which case such sale or pur-

chase should be made for a price not in excess of its fair market value, as determined by an independent petroleum reservoir engineer.

(B) Any such transaction must be consistent with the objectives of the program.

(3) The program shall not purchase properties from nor sell properties to any program in which its sponsor or any affiliated person has an interest. This subsection shall not apply to transactions among programs for whom the same person acts as sponsor by which property is transferred from one to another in exchange for the transferee's obligation to conduct drilling activities on such property or to joint ventures among such programs, provided that the respective obligations and revenue sharing of all parties to the transactions are substantially the same and provided further that the compensation arrangement or any other interest or right of the sponsor and any affiliated person of such sponsor is the same in each program, or, if different, the aggregate compensation of the sponsor does not exeeed the lower of the compensation he would have received in any one of the programs.

(b) Restricted and prohibited transactions.

(1) During the existence of a program and before it has ceased operations, neither the sponsor nor any affiliate (excluding another program where the interest of the sponsor is identical to or less than his interest in the first program) shall acquire, retain, or drill for its own account any oil and gas interest in any prospect upon which such program possesses an interest, except for transactions which comply with subsection (a)(1)(A)*(iv)* of this section. In the event the program abandons its interest in a prospect, this restriction shall continue for one year following abandonment. The geological limits of a prospect shall be enlarged or contracted on the basis of subsequently acquired geological data to define the productive limits of a reservoir, and must include all of the acreage determined by the subsequent data to be encompassed by such reservoir; provided, however, that the program shall not be required to expend additional funds unless they are available from the initial capitalization of the program or if the sponsor believes it is prudent to borrow for the purpose of acquiring such additional acreage. If the geological limits of a prospect as so enlarged encompass any interest held by a sponsor or affiliate, that interest shall be sold to the program in accordance with the provisions of subsection (a)(1)(A)*(iii)* of this section if the interest held by the sponsor at the time of the prospect's enlargement has been proved up by the program.

(2) A sponsor shall not take any action with respect to the assets or property of the program which does not primarily benefit the program, including among other things:

(A) the utilization of program funds as compensating balances for its own benefit, and

(B) the commitment of future production.

(3) All benefits from marketing arrangements or other relationships affecting property of the sponsor and the program shall be fairly and equitably apportioned according to the respective interests of each.

(4) Any agreements or arrangements which bind the program must be fully disclosed in the prospectus.

(5) Anything to the contrary notwithstanding, a sponsor may never profit by drilling in contravention of his fiduciary obligation to the participants.

(6) Neither the sponsor nor any affiliate shall render to the program any oil field, equipage, or drilling services nor sell or lease to the program any equipment or related supplies unless:

(A) such person is engaged, independently of the program and as an ordinary and ongoing business, in the business of rendering such services or selling or leasing such equipment and supplies to a substantial extent to other persons in the oil and gas industry in addition to programs in which he has an interest;

(B) the compensation, price, or rental therefor is competitive with the compensation, price, or rental of other persons in the area engaged in the business of rendering comparable service or selling or leasing comparable equipment and supplies which could reasonably be made available to the program;

(C) the drilling services are billed on either a per foot, per day, or per hour rate, or some combination thereof; and

(D) provided, that, if such person is not engaged in a business within the meaning of subparagraph (A) of this paragraph, then such compensation, price, or rental shall be the cost of such services, equipment, or supplies to such person or the competitive rate which could be obtained in the area, whichever is less.

(7) With the exception of compensation authorized by §121.5 of this title (relating to Fees, Compensation, and Expenses), all services for which the sponsor and any affiliated person is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensations to be paid.

(8) No loans may be made by the program to the sponsor.

(9) On loans made available to the program by the sponsor, the sponsor may not receive interest in excess of its interest costs, nor may the sponsor receive interest in excess of the amounts which would be charged the program (without reference to the sponsor's financial abilities or guaranties) by unrelated banks on com parable loans for the same purpose and the sponsor shall not receive points or other finanacing charges or fees regardless of the amount.

(c) Custody of program funds and properties.

(1) Funds of a program must not be commingled with funds of any other entity—the prospectus must clearly prohibit any such commingling. Advance payments to the sponsor or its affiliates should be prohibited, except where necessary to secure tax benefits of prepaid drilling costs. Advance payments should not include nonrefundable payments for completion costs prior to the time that a decision is made that the well or wells warrant a completion attempt.

(2) Program properties may be held in the names of nominees temporarily to facilitate the acquisition of properties and for similar valid purposes. On a permanent basis, program properties may be held in the name of a special nominee entity organized by the general partner provided the nominee's sole purpose is the holding

of record title for oil and gas properties and it engages in no other business and incurs no other liabilities.

§121.7. Farm-outs.

(a) As used in these sections, the term "farm-out" means an agreement whereby the owner of the leasehold or working interest agrees to assign his interest in certain specific acreage to the assignees, retai: g some interest such as an overriding royalty interst, an il and gas payment, offset acreage or other type of interest, subject to the drilling of one or more specific wells or other performance as a condition of the assignment.

(2) The prospectus shall contain the definition of farm-out and no other term shall be used to describe a farm-out transaction.

(b) Disclosure.

(1) The prospectus shall state the circumstances under which the sponsor may farm-out a prospect or lease, the ability to farm-out to other public programs of the sponsor or its affiliates, and any limitations on the ability to farm-out to such public programs.

(2) If the sponsor or any of its a filiates enters into a farm-out or other similar agreement with its program, all such transactions must be in accordance with these guidelines and subject to the following conditions:

(A) the sponsor, exercising the standard of a prudent operator, shall determine that the farm-out is in the best interests of the program; and

(B) the terms of the farm-out are consistent with and in any case no less favorable than those utilized in the geographic area for similar arrangements.

(3) No program lease will be farmed out, sold, or otherwise disposed of unless the sponsor, exercising the standard of a prudent operator, determines:

(A) the program lacks sufficient funds to drill on the leases and cannot obtain suitable alternative financing for such drilling; or

(B) the leases have been downgraded by events occurring after assignment to the program so that drilling would no longer be desirable for the program; or

(C) drilling on the leases would result in an excessive concentration of program funds creating in the sponsor's opinion undue risk to the program; or

(D) the best interests of the program would be served by the farm-out.

(c) Conflict of interest.

(1) The prospectus shall state that the decision with respect to making a farm-out and the terms of a farm-out to a program involve conflicts of interest, as the sponsor may benefit from cost savings and reduction of risk, and in the event of a farm-out to an affiliated public program, the sponsor will represent both partnerships.

(2) The prospectus shall contain a statement regarding farm-outs from a drilling or combination program to another such program meeting the requirements of §121.6(a)(3) of this title (relating to Transactions with Affiliates and Conflicts of Interest).

(3) Except as required by §121.6(a)(3) of this title (relating to Transactions with Affiliates and Conflicts of Interest), the prospectus shall state that the program shall acquire only those leases that are reasonably acquired for the stated purpose of the program and no leases shall be acquired for the prupose of subsequent sale or farm-out, unless the acquisition of such leases by the program is made after a well has been drilled to a depth sufficient to indicate that such an acquisition is believed to be in the best interests of the program.

(4) The prospectus shall state that the sponsor shall not farm-out a lease for the primary purpose of avoiding payment of sponsor's costs relating to drilling a lease or prospect.

(d) Reporting. The semiannual report shall contain a description of all farm-outs including sponsor's justification, location, time, to whom, and general description of terms.

§121.8. Rights and Obligatio f Participants.

(a) Meetings. Meetings of the participants may be called by the general partner(s) or by participants holding more than 10% of the then outstanding units for any matters for which the participants may vote as set forth in the limited partnership agreement or charter document. Such call for a meeting shall be deemed to have been made upon receipt by the general partner of a written request from holders of the requisite percentage of units stating the purpose(s) of the meeting. The general partner shall deposit in the United States mails within 15 days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on a date not less than 30 nor more than 60 days after the date of mailing of said notice, at a reasonable time and place.

(b) Annual and periodic reports.

(1) The partnership agreement or charter document shall provide for the transmittal to each participant of an annual report within 120 days after the close of the fiscal year, and commencing with the year following investment of substantially all the program subscriptions, a report within 75 days after the end of the first six months of its fiscal year, containing, except as otherwise indicated, at least the following information:

(A) Financial statements, including a balance sheet and statements of income, partners' equity, and changes in financial position prepared in accordance with generally accepted accounting principles and accompanied by a report of an independent certified public accountant or independent public accountant stating that his examination was made in accordance with generally accepted auditing standards and that in his opinion such financial statements present fairly the financial position, results of operations, and the changes in financial position in accordance with generally accepted accounting principles consistently applied, except that semiannual reports need not be audited. Along with such financial statements shall be a summary itemization, by type and/or classification of the total fees and compensation, including any overhead reimbursements, paid by the program, or indirectly on behalf of the program, to the sponsor and affiliates of the sponsor. If compensation is paid on a subordinated interest, a reconciliation of all such payments to the conditions precedent and limitations thereto.

(B) A description of each geological prospect in which the program owns an interest, except succeeding reports need contain only material changes, if any, regard-

ing such geological prospects.

(C) A list of the wells drilled by such program (indicating whether each of such wells has or has not been completed), and a statement of the cost of each well completed or abandoned. Justification shall be included for wells abandoned after production has commenced.

(D) With respect to a program which compensates the sponsor on a basis related to certain costs paid by the sponsor:

(i) a schedule relecting the total program costs, and where applicable, the costs pertaining to each prospect, the costs paid by the sponsor and the costs paid by the participants;

(ii) the total program revenues, the revenues received or credited to the sponsor, and the revenues received or credited to the participants; and

(iii) a reconciliation of such expenses and revenues to the limitations prescribed.

(E) Annually, beginning with the fiscal year succeeding the fiscal year in which the program commenced oeprations, a computation of the total oil and gas proven reserves of the program and dollar value thereof at then existing prices and of each participant's interest in such reserve value. The reserve computations shall be based upon engineering reports prepared by qualified independent petroleum consultants. In addition, there shall be included an estimate of the time required for the extraction of such reserves and the present worth of such reserves; with a statement that because of the time period required to extract such reserves the present value of revenues to be obtained in the future is less than if immediately receivable. In addition to the annual computation and estimate required, as soon as possible, and in no event more than 90 days after the occurrence of an event leading reduction of such reserves of the program of more than 10%, excluding reduction as a result of normal production, a computation and estimate shall be sent to each participant.

(2) By March 15 of each year, the general partner must furnish a report to each participant containing such information as is pertinent for tax purposes.

(3) Production purchase programs that are subject to the continuing reporting requirements of the Securities Exchange Act of 1934 and agree to make all such reports available to participants on request, will not be required to transmit to participants reports other than the annual reports required under paragraph (1) of this subsection, and the reports for tax purposes required by paragraph (2) of this subsection.

(c) Access to program records.

(1) The general partner shall maintain a list of the names and addresses of all participants at the principal office of the partnership. Such list shall be made available for the review of any participant or his representative at reasonable times, and upon request either in person or by mail the general partner shall furnish a copy of such list to any participant or his representative for the cost of reproduction and mailing.

(2) The participants and/or their accredited representatives shall be permitted access to all records of the program, after adequate notice, at any reasonable time. The sponsor shall maintain and preserve during the term of the program and for four years thereafter all accounts, books, and other relevant program documents. Notwithstanding the foregoing, the sponsor may keep logs, well reports, and drilling data confidential for a reasonable period of time.

(d) Transferability of program interests. Restrictions on assignment of units will be looked upon with disfavor. Restrictions on the substitution of a limited partner are generally disfavored and will be allowed only to the extent necessary to preserve the tax status of the partnership and any restriction must be supported by opinion of counsel as to its legal necessity.

(e) Assessability and defaults.

(1) In appropriate cases there may be a provision for assessability; provided, however, that the maximum amount for voluntary assessments shall not exceed 100% of initial subscriptions and for mandatory assessments shall not exceed 25% of initial subscriptions, and provided further, that in no case shall the total of all assessments exceed 100% of initial subscriptions. All assessments shall be made solely for the purpose of conducting subsequent operations on prospects upon which evaluation had begun during a program's initial operations, or on leases sufficiently related to such prospects as to merit, in the sponsor's judgment, additional operations to fully develop those prospects. In such cases, the aggregate offering price of the units as set forth in the application for qualification shall include and show separately the basic unit offering price and the maximum amount of the assessment.

(2) In the event of a default in all or a portion of the payment of assessments, the participant's percentage interest in the program represented by his unit should not be subject to forfeiture, but may be subject to a reasonable reduction for the failure of the participant to meet his commitment. Provisions which conform to the following will be considered reasonable.

(A) For voluntary assessments:

(i) a proportionate reduction of the participant's percentage interest in revenues derived from future development based on the ratio of his unpaid assessment to all capital contributions and assessments used for such future development; or

(ii) a subordination of the defaulting participant's right to receive revenues from future development until those nondefaulting participants who have paid the defaulting participant's assessment have received an amount of revenues from revenues of the program from future development equal to 300% of the proportionate amount of the defaulted assessment which they paid.

(B) For mandatory assessments:

(i) a proportionate reduction of the participant's percentage interest in program revenues based on the ratio of his unpaid assessment to all capital contributions and assessments; or

(ii) a subordination of the defaulting participant's right to receive revenues from the program until those nondefaulting participants who have paid the defaulting participant's assessment have received an amount of revenues from all revenues of the program equal to 300% of the proportionate amount of the defaulted assessment which they paid; or

(iii) personal liability of a participant as to the amount defaulted upon. The sponsor may enforce

such personal liability through a lien on the participant's program interest, which permits the sponsor to withhold and apply all revenues attributable to the participant to the payment of any delinquent assessment. For purposes of this subsection, voluntary assessments which a participant has committed to pay will be considered mandatory assessments.

(C) In order to make any assessment, the sponsor shall include with the call for such assessment a statement of the purpose and intended use of the proceeds from such assessment, a statement of the reduction to be imposed for failure of the participant to meet the assessment, and to the extent practicable, a summary of pertinent geological data on the relevant properties to which the assessments relate.

(D) The above alternatives, set forth in subparagraphs (A) and (B) of this paragraph, are not exclusive and other provisions demonstrated to be essentially equivalent to these alternatives may be permitted by the securities commissioner.

(f) Voting rights of limited partners. To the extent the law of the state of organization is not inconsistent, the limited partnership agreement must provide that holders of a majority of the then outstanding units may, without the necessity for concurrence by the general partner, vote to:

(1) amend the limited partnership agreement or charter document;

(2) dissolve the program;

(3) remove the general partner and elect a new general partner;

(4) elect a new general partner if the general partner elects to withdraw from the program;

(5) approve or disapprove the sale of all or substantially all of the assets of the program; and

(6) cancel any contract for services with the sponsor or any affiliate without penalty upon 60 days notice.

§*121.9. Miscellaneous Provisions.*

(a) Minimum program capital. The minimum amount of funds to activate a partnership shall be sufficient to accomplish the objectives of the program, including "spreading the risk." Any minimum less than $1 million will be presumed to be inadequate to spread the risk of the public investors. In those instances where it appears unlikely that the stated objectives of the program can be achieved with the minimum subscriptions, the securities commissioner may require a greater amount or a reduction of the stated objectives of the program. Provision must be made for the return to public investors of 100% of paid subscriptions in the event that the established minimum to activate the program is not reached. All funds received prior to activation of the program must be deposited with an independent custodian, trustee, or escrow agent whose name and address shall be disclosed in the prospectus.

(b) Temporary investment of proceeds and return of unused proceeds.

(1) Until proceeds from the public offering are invested in the program's operations, such proceeds may be temporarily invested in short-term highly liquid investments, where there is appropriate safety of principal, such as U.S. Treasury Bills.

(2) Any proceeds of the public offering of a drilling program not used, or committed for use, in the program's operations within one year of the closing of the offering, except for necessary operating capital, must be distributed pro rata to the participants as a return of capital, and without any deductions for selling and offering expenses.

(3) If a production purchase program sponsor has not used, or committed for use, an amount equal to 80% of the proceeds of the public offering which are available for property acquisitions within one year of the closing of the offering, such sponsor shall not be permitted to continue offering interests in subsequent programs of a similar nature, until such time as the requirement has been met. If the production purchase program sponsor has not used, or committed for use, an amount equal to 100% of the proceeds of the public offering which are available for property acquisitions within two years of the closing of the offering, any excess proceeds, except for necessary operating capital, must be distributed pro rata to the participants as a return of capital, and without any charges for selling or offering expenses being allocable to the return of capital.

(c) Deferred payments. Arrangements for deferred payments on account of the purchase price of program interests may be allowed when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions.

(1) The period of deferred payments shall coincide with the anticipated cash needs of the program, but the full amouunt of the purchase price shall be paid within nine months of the date on which the program commences operations.

(2) Selling commissions paid upon deferred payments are collectible when such payment is made.

(3) The program shall not sell or assign the deferred payments. In the event of the default in the payment of any deferred payment when due, the participant's percentage interests in the program shall not be subject to forfeiture but may be subject to a reasonable reduction for failure of the participant to meet his commitment. Reduction provisions will be considered reasonable if they conform to the reduction provisions provided for in §121.8(e)(2)(B) of this title (relating to Rights and Obligations of Participants).

(d) Cash redemption values. When cash redemption values of units are computed, such value must be clearly based on appraisal of properties by qualified independent petroleum consultants. Any evaluation by company personnel must be based on such independent appraisals. Any redemption must be for cash. No redemption shall be considered effective until after cash payments have been paid to the participants.

(e) Future exchanges and reinvestment of revenues. For the purposes of this subsection, an "offer of exchange" includes any security of a program which is convertible into a security issued by the sponsor or another issuer.

(1) No sponsor or any affiliates shall make or cause to be made any offer to a participant to exchange his units for a security of any company, unless:

(A) such offer is made after the expiration of two years after such program commenced operations;

(B) such offer is made to all participants;

(C) such offer, if made by a third party to the sponsor or principal underwriter, or any affilate of such sponsor or principal underwriter, is on a basis not more advantageous to such sponsor, principal underwriter, or affiliate than to participants;

(D) the value of the security or other consideration offered is at least equivalent to the value of the units;

(E) the value of any reserves used in computing the exchange ratio is supported by an appraisal prepared by an independent petroleum consultant within 120 days of the date such exchange is to be made; the value of any undeveloped acreage used in computing the exchange ratio is at cost unless fair market value, as evidenced by supporting data, is higher; and the value of other assets used in computing the exchange ratio is based upon audited financial statements prepared in accordance with generally accepted accounting principles consistently applied; and

(F) the offer is made pursuant to all registration requirements under both federal and state laws.

(2) No offering will be approved by the administrator that includes a provision which requires that the participant reinvest his share of distributable cash distributions. Subject to compliance with applicable securities laws, a program may make available to its participants a voluntary plan for systematic reinvestments in such program or in any other program. No sales commissions may be charged the participants, however, for effecting such reinvestment.

(f) Distribution of revenues. From time to time and not less often than quarterly, the sponsor will review the program's accounts to determine whether cash distributions are appropriate. The program will distribute pro rata to the participants funds received by the program and allocated to their accounts which the sponsor deems unnecessary to retain in the program. Cash distributions from the program to the sponsor shall only be made out of funds properly allocated to the sponsor's account.

§121.10. Prospectus and Disclosure and Marketing Requirements.

(a) Sales materials and marketing restrictions.

(1) Sales literature. Sales literature, including, without limitation, books, pamphlets, movies, slides, article reprints, and television and radio commercials, sales presentations (including prepared presentations to prospective participants at group meetings), and all other advertising used in the offer or sale of units shall conform in all applicable respects to filing, disclosure, and adequacy requirements currently imposed on the sale of corporate securities under these guidelines. When periodic or other reports, except those required by and filed with the Securities and Exchange Commission, furnished to participants in prior programs are furnished to prospective participants in a program not yet sold, such reports will be treated as sales literature subject to the above requirements. Sales literature shall not be so excessive in size or amount as to detract from the prospectus, nor shall any sales literature be used by securities broker-dealers or agents unless such literature has been approved by the sponsor in writing.

(2) Group meetings. All advertisements of, and oral or written invitations to, "seminars" or other group meetings at which units are to be described, offered, or sold shall clearly indicate that the purpose of such meeting is to offer such units for sale, the minimum purchase price thereof, the suitability standards to be employed, and the name of the person selling the units. No cash, merchandise, or other items of value shall be offered as an inducement to any prospective participants to attend any such meeting. All written or prepared audiovisual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted to the securities commmissioner within the prescribed review period. The provisions of this section shall not apply to meetings consisting only of representatives of securities broker-dealers.

(b) Offerings registered with the Securities and Exchange Commission. With respect to offerings registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, and registered or qualified with the securities commissioner, a prospectus which is part of a registration statement which has been declared effective by said commission shall be deemed to comply with all requirements as to form of these guidelines; provided, however, that the securities commissioner may require additional disclosure of substance, in order to insure compliance with these guidelines.

(c) Contents of prospectus.

(1) The following information shall be included in the prospectus of each program.

(A) Initial information:

(i) Information on cover page. There should be set forth briefly on the cover page of the prospectus a summary which should include the following: the title and general nature of the units being offered; the maximum aggregate amount of the offering; the minimum amount of net proceeds; the minimum subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid (or, if none, or if such commissions are paid by the sponsor); the nature of any sharing arrangement and fees; the estimated amount to be paid during the first 12 months following commencement of operations for administrative and similar services.

(ii) Sales to appropriate persons. There should be set forth in the second page of the prospectus, the suitability requirements for participants as set forth in §121.4 of this title (relating to Suitability of the Participant).

(B) Definitions. Technical terms used in the prospectus should be defined either in a glossary or as they appear in the prospectus.

(C) Risk factors. Offerees should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before making an investment in the program. These paragraphs should include a cross-reference to further information in the prospectus. In particular, in those cases where the sponsor has elected the compensation arrangement described in §121.5(b)(1) of this title (relating to Fees, Compensation, and Expenses), there should be set forth the fact that there is a conflict where the sponsor must decide whether to complete a well

which is anticipated to have a marginal return since the tangible costs he would incur would not appear to warrant his investment, although completion of the well would be in the best interests of the participants.

(D) Business experience. The business experience of the sponsor(s), including general partner(s), principal officers of a corporate general partner (chairman of the board, president, vice president, treasurer, secretary, or any person having similar authority or performing like function), and others responsible for the program, shall be prominently disclosed in the prospectus, such disclosure indicating their business experience for the past 10 years. The lack of experience or limited experience of the sponsor, or other person supplying services to the program, shall be prominently disclosed in the prospectus.

(E) Compensation.

(i) All indirect and direct compensation which may be paid by the program to the sponsor or any affiliate of every type and from every source shall be summarized in tabular form and in narrative where appropriate to fully disclose material information, in one location, in the forepart of the prospectus. Also include estimates of all actual and necessary direct expenses paid or incurred, or to be paid or incurred, by the sponsor for a period of three years in connection with its operations of a program for which the sponsor is to be reimbursed out of capital contributions and program revenues. Such table shall also include administrative and similar charges for services.

(ii) In a program where the sponsor elects to receive a promotional interest in the form of a subordinated percentage of the working interest, whether determined in acccordance with the formula stated in §121.5(b)(2)(A)*(i)* or *(ii)* of this title (relating to Fees, Compensation, and Expenses), the following factor shall be disclosed. The sponsor shall be entitled to receive program revenues attributable to this subordinated percentage of the working interest after the participants have had program revenues credited or allocated to their respective accounts in an amount sufficient to trigger the subordinated percentage of the working interest in favor of the sponsor. This method of crediting program revenues is an allocation method and does not necessarily result in the distribution of cash to participants. Distribution of cash will be delayed to the extent such allocated revenues are applied in satisfaction of program or prospects costs and expenses attributable to the participants.

(iii) In a program where the sponsor elects to receive a promotional interest in the form of a subordinated percentage of the working interest based upon the formula stated in §121.5(b)(2)(A)*(i)* or *(ii)* of this title (relating to Fees, Compensation, and Expenses), the following factor shall be disclosed. It is possible that the sponsor may receive cash distributions prior to participants receiving the same since revenues of participants which might otherwise be available for distribution to participants could be utilized to repay borrowed funds used to cover certain costs of the participants incurred before the sponsor commenced sharing in program revenues or because such revenues could be used to pay the participants' costs and expenses arising out of developments, production, and operations of other program prospects which have not attained the status set forth in the formula stated in §121.5(b)(2)(A)*(i)*.

(F) Use of proceeds. State the purposes for which the next proceeds of the program are intended to be used and the approximate amount and percentages intended to be used for each such purpose. Also state the minimum aggregate amount necessary to initiate the program and the disposition of the funds raised if they are not sufficient for that purpose.

(G) Deferred payment schedule. If deferred payments are called for or allowed, the schedule of payment shall be set forth.

(H) Assessments. If provisions for assessments are provided, the method of assessment and the penalty for default shall be prominently set forth.

(I) Investment objectives and policies. Describe the investment objectives and policies of the program (indicating whether they may be changed by the general partner without a vote of the limited partners) and, if and to the extent that the sponsor is able to do so, the approximate percentage of assets which the program may invest in any one type of investment. State the approximate percentage of exploratory and developmental drilling to be done by the program, the method of acquisition of leases, including information as to possible farm-outs, and the approximate percentage of development drilling to be done through acquisition of offsetting leases as opposed to development of drilling sites acquired in the exploratory state. State also the expected percentage of leases where the program will not have control of drilling and operation.

(J) Description of oil and gas interests. State the location and describe the general character of all materially important oil and gas interests now held or presently intended to be acquired by the program.

(K) "Performance," when required or permitted by the securities commissioner, shall contain the following information.

(i) The previous program experience of the sponsor and other relevant parties shall be disclosed in the prospectus for all programs during the past five years which:

(I) involved a public offering registered under state or federal securities laws;

(II) involved a private or limited offering, the results of which are material to an informed investment decision by the offeree.

(ii) Information on previous programs shall include, but not be limited to, the following:

(I) name of the program, including the type of legal entity and state of incorporation or organization;

(II) the effective date of the offering, the date it commenced operations, and the date of dissolution or termination, or if it is continuing;

(III) the total amount of units, the gross amount of capital raised by the program, the number of participants, and the amount of investment of the sponsor, if applicable;

(IV) the drilling results of the program, including the number of gross and net wells drilled, both oil and gas, both exploratory and developmental, and

both successful and unsuccessful;

(V) total dollar amounts of federal tax deductible items passed on to participants;

(VI) income credited and cash distributed to participants and the sponsor;

(VII) compensation and fees to the sponsor and its affiliates, segregated as to type;

(VIII) disclosure of any development wells drilled which did not or have not returned the investment therein within four years;

(IX) such additional or different disclosures of the success or failure of the programs as may be permitted or required by the securities commissioner.

(iii) All of the foregoing information shall be set forth on a cumulative basis for each program, and in tabular form wherever possible.

(iv) The following caveat should be prominently featured in the presentation of the foregoing information: "It should not be assumed that participants in the offering covered by this prospectus will experience returns, if any, comparable to those experienced by investors in prior programs."

(v) The foregoing information shall be supported in the application by an affidavit of the sponsor that the performance summary is a fair representation of the information contained in the audited financial statement or the federal income tax returns of the program or in other reports or data of the program or sponsor.

(L) Operating data. Include appropriate data with respect to each property which is separately described in answer to subparagraph (J) of this paragraph.

(M) The program.

(i) Date of formation.

(ii) Place of formation.

(iii) Sponsor.

(iv) Address and telephone number of the program and the sponsor.

(v) Duration.

(vi) Information called for in clauses *(i)*-*(v)* of this subparagraph shall be given for any other programs in which the program invests.

(N) Summary of terms of the program.

(i) Powers of the sponsor.

(ii) Rights and liabilities of the participants.

(iii) Allocation of costs and revenues.

(iv) Termination and dissolution.

(v) Meetings and reports.

(vi) Indemnification to sponsor.

(vii) Amendment of partnership agreement.

(viii) Provision for additional assessments.

(ix) Other pertinent matters.

(O) Federal tax consequences.

(i) A summary of an opinion of tax counsel acceptable to the securities commissioner and/or a ruling from the IRS covering federal tax questions relative to the program, which may be based on reasonable assumptions described in the opinion letter. To the extent the opinion of counsel or IRS ruling is based on the maintenance of or compliance with certain requirements or conditions by the sponsor(s), the prospectus shall to the extent practicable contain representations that such requirements or conditions have been met and that the sponsors shall use their best efforts to continue to meet such requirements or conditions.

(ii) Tax treatment of the program.

(iii) Tax treatment of the participants.

(iv) Allocation of intangible drilling deductions, depreciation, depletion allowances, etc.

(v) Method of allocation of losses or profits and cash distributions upon transfer of a unit or the rights to income or revenues.

(vi) Any other pertinent information applicable to the tax shelter aspects of the investment.

(vii) Possibility of requirement for filing tax returns with states in which prospects are located.

(viii) In all programs where applicable, the prospectus shall disclose that participants will have to pay federal income taxes upon program revenues allocated to their respective accounts which revenues are not distributed to the participants, but rather are used to pay other program or prospect costs attributable to their respective accounts.

(P) Units.

(i) Amount.

(ii) Minimum purchase.

(iii) Assessability.

(iv) Transferability.

(v) Voting rights.

(vi) Redemption provisions, including the basis for appraisal.

(Q) Plan of distribution.

(i) Discounts and commissions.

(ii) Estimated fees and expenses paid or reimbursed by the program.

(iii) Indemnification and hold harmless provisions.

(iv) Terms of payment.

(v) Identity of underwriter, managing dealer, and/or principal selling agent.

(vi) Type of underwriting—best efforts or firm commitment.

(vii) Minimum and maximum sales.

(viii) Escrow provisions.

(ix) Material relationship of underwriter to the program, if any.

(R) Pending legal proceedings. Briefly describe any legal proceedings to which the program or the sponsor is a party which are material to the program and any material legal proceedings between sponsor and participants in any prior program of the sponsor. Also, describe any material legal proceedings to which any of the program's or sponsor's property is subject.

(S) Conflicts of interest and transactions with affiliates. Describe fully any transactions and the dollar amount thereof which may be entered into between the program and the sponsor or any affiliate. Include a full description of the material terms of any agreement and the dollar amount thereof between the program and the sponsor or any affiliate. Where the sponsor originates or promotes other programs, describe the equitable principles which will apply in resolving any conflict between the programs. In the case where the program has been in existence, include all transactions and contracts of the program with the sponsor or any affiliate during the

period of such existence. All conflicts shall be set forth in one section and shall be denominated with the title of this subsection.

(T) Interest of affiliates in program property. If within the past five years the sponsor or any affiliate has been in the chain of title or had a beneficial interest in any property to be acquired by the program, this fact must be disclosed.

(U) Interest of counsel and experts in the sponsor or program. Where counsel for the selling representatives or the sponsor or named in the prospectus as having passed upon the legality of the units being registered or upon other legal matters in connection with the registration or offering of such units, there should be disclosed in the conflict of interests section in the prospectus the nature and amount of any direct or indirect material interest of any such counsel, other than legal fees to be received by such counsel, in the sponsor or any affiliate. Any such interest received or to be received in connection with the registration or offering of the units being registered, including the ownership or receipt by counsel, or by members of the firm participating in the matter, of securities of the sponsor or any affiliate of the program, for services shall be disclosed. Employment by the sponsor, other than retainer as legal counsel, should be disclosed in the prospectus.

(V) Investment Company Act of 1940. Where beneficial interests of a program are to be sold, treatment under the Investment Company Act of 1940 must be disclosed.

(W) Financial Statements. As provided in subsection (d) of this section.

(X) Additional Information. Any additional information which is material should be included.

(d) Financial information required on application. The sponsor or the program shall provide as an exhibit to the application, or where indicated in paragraphs (1), (3), (4), and (5) of this subsection shall provide as part of the prospectus, the following financial information and financial statements.

(1) Balance sheet of general partner.

(A) Corporate general partner. A balance sheet of any corporate general partners as of the end of their most recent fiscal year, prepared in accordance with generally accepted acccounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing. Such statements shall be included in the prospectus.

(B) Other general partners. A balance sheet for each noncorporate general partner (including individual partners or individual joint venturers of a sponsor) as of a time not more than 90 days prior to the date of filing an application; such balance sheet, which may be unaudited, should conform to generally accepted accounting principles and shall be signed and sworn to by such general partners. A representation of the amount of such net worth must be included in the prospectus.

(2) Statement of income for corporate general partners. A statement of income for the last fiscal year of any corporate general partner (or for the life of the corporate general partner, if less) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and an unaudited statement for any interim period ending not more than 90 days prior to the date of filing an application.

(3) Balance sheet of program. As part of the prospectus, a balance sheet of the program as of the end of its most recent fiscal year prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing.

(4) Statements of income, partner's equity, and changes in financial position of program. As part of the prospectus, if the program has been formed and owns assets, statements of income, statements of partner's equity, and statements of changes in financial position for the program for each of the last three fiscal years of the program (or for the life of the program, if less), all of which statements shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and unaudited stastements for any interim period ending not more the 90 days prior to the date of filing an application.

(5) Cash flow statement of program. As part of the prospectus, if the program has been formed and owns assets, a cash flow statement, which may be unaudited, for the program for each of the last three fiscal years of the program (or for the life of the program, if less) and unaudited statements for any interim period between the end of the latest fiscal year and the date of the balance sheet furnished, and for the corresponding interim period of the preceding years.

(6) Filing of other statements. Upon request by an applicant, the administrator may, where consistent with the protection of investors, permit the omission of one or more of the statements required under this section and the filing, in substitution thereof, of appropriate statements verifying financial information having comparable relevance to an investor in determining whether he should invest in the program.

(e) Opinions of counsel.

(1) The application for qualification shall contain a favorable ruling from the IRS or an opinion of counsel to the effect that the program will be treated as a "partnership" and not as an "association taxable as a corporation" for federal income tax purposes. An opinion of counsel shall be in form satisfactory to the securities commissioner and shall be unqualified except to the extent permitted by the securities commissioner. However, an opinion of counsel may be based on reasonable assumptions, such as:

(A) facts or proposed operations as set forth in the prospectus and organization document;

(B) the absence of future changes in applicable laws;

(C) compliance with certain procedures such

as the execution and delivery of certain documents and the filing of a certificate of limited partnership or an amended certificate; and

(D) the continued maintenance of or compliance with certain financial ownership or other requirements by the sponsor or general partner.

(2) The securities commissioner may request from counsel as supplemental information such supporting legal memoranda and an analysis as he shall deem appropriate under the circumstances. To the extent the opinion of counsel or IRS ruling is based on the maintenance of or compliance with certain requirements or conditions by the sponsor or general partner, the prospectus shall contain representations that such requirements or conditions will be met and the partnership agreement shall, to the extent practicable, contain provisions requiring such compliance. There shall be included also an opinion of counsel to the effect that the units being offered will be duly authorized or created and validly issued interests in the program, and that the liability of the participants will be limited to their respective capital contributions, except as set forth in the prospectus.

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

Issued in Austin, Texas, on May 17, 1982.

TRD-824094 Richard D. Latham
Securities Commissioner

Proposed date of adoption: June 21, 1982
For further information, please call (512) 474-2233.

TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 145. Long-Term Care

The Texas Department of Health proposes amendments to §145.12 and §145.32, the repeal of §145.121, and new §§145.251-145.261.

Section 145.121, entitled "Texas Approved Training Program in Medication Administration for all Nonlicensed Personnel Administering Medications in Nursing Homes, Convalescent Care Homes, and Related Institutions," is being proposed for repeal but will be readopted in a significantly revised and updated version in a new Subchapter P, §§145.251-145.261, and retitled "Medication Aide Training Program."

The new Medication Aide Training Program will consist of rules on the state-approved training program in medication administration for all personnel administering medications to residents in Texas nursing homes, custodial care homes, facilities serving the mentally retarded citizens of Texas, personal care homes, and related institutions licensed under Texas Civil Statutes, Article 4442c, by the Texas Department of Health; skilled nursing facilities certified under the U.S. Social Security Act, Title XVIII, Federal Medicare Regulations, and skilled nursing and intermediate care facilities certified under U.S. Social Security Act, Title XIX, Federal/State Medicaid Regulations.

In addition, the new version will be reflected in amendments to the department rules on minimum standards for nursing homes (Subchapter B, §145.12 of this title (relating to Definitions)) and minimum standards for custodial care homes (Subchapter C, §145.32 of this title (relating to Definitions)).

Major differences in the proposed new rules when compared to the current rules, and the reasons for those differences, are as follows:

(A) Nursing homes and related facilities continue to place greater reliance on the use of medication aides as part of the nursing service staff. The department, therefore, is of the opinion that medication aides should receive strengthened training. Consequently, the training program has been increased from 70 clock hours of instruction, including clinical experience, to 100 academic hours of theory and laboratory training and 20 clock hours of clinical experience.

(B) In order that a medication aide better understand the complexities of allowed medication administration, the department is of the opinion that a medication aide should have completed high school education or G.E.D. equivalent, and wording is provided accordingly. The current medication aide training recommends at least the eighth grade of grammar school.

(C) The current rules require that the medication aide on application for training must have one year of employment in nursing facilities in the capacity of a nurse aide. The department has found that this requirement is too restrictive and now proposes that the person be eligible for application after completing the facility's required program of orientation and job specific training as a nurse aide.

(D) The current rules require the applicant must be recommended for training by the administrator and director of nurses of the facility in which he/she is employed. The department is of the opinion that this is too restrictive and proposes two character references be furnished.

(E) The current rules indicate that the enrollee in the training program must demonstrate skill in taking vital signs to the registered nurse instructor. The department is of the opinion that an enrollee in meeting other prerequisite requirements already has such skill; therefore, the proposed rules do not include this requirement.

(F) The current rules do not provide for the acceptance of certain nonlicensed persons to administer medications allowed under this program who have not specifically taken the medication aide training program but who have had equivalent training or experience. An example of such persons is former medical corpsmen of the armed services. The department has determined that the current rules are too restrictive, and has proposed rules to provide for recognition of such persons.

(G) The current rules do not provide for appeal of a decision made by department staff relative to the status or acceptability of a medication aide or an applicant. The department has determined that the current rules are too restrictive in this regard and now proposes an appeal mechanism.

(H) The current rules do not provide a time limit for the completion of a medication aide course. The department is of the opinion that a reasonable time limit should be specified and purposes wording accordingly.

(I) The current rules provide that certain personnel of the department may teach the licensure and certification standards portion of the training program. The department is of the opinion that this should primarily be the responsibility of the teaching institution and has not included this option in the proposed rules.

(J) Various current programs for medication aide training lack consistency in assuring that a person has gained necessary knowledge through the training. In order to provide consistency and increased asssurance that the student has received the knowledge, the department now proposes that a final examination, administered by representatives of the department, be given in the teaching institution at the close of the training.

(K) The current rules are not clear on procedures for the department to recognize medication aides who have met all training requirements. The proposed rules specify the issuance of a medication aide acknowledgement card.

(L) The current rules do not indicate how sanctions can be taken against a medication aide for engaging in unacceptable practices. While medication aide rules need not speak to sanctions, the proposed rules now cross reference Texas Civil Statutes, Article 4442c, as the authority for seeking sanctions.

(M) The current rules do not permit nursing school students to obtain practical training in medication administration in nursing facilities. The department is of the opinion that nursing students, after completion of a basic pharmacology course, may administer patients' medications under direct and specific supervision of the nursing school's licensed nurse instructor.

(N) The current rules permit the use of a pharmacist instructor in addition to the registered nurse instructor. The department is of the opinion that the pharmacist should be responsible to instruct the medication aide in areas of medication, while the registered nurse instructor's responsibility is to instruct the medication aide in the technique of medication administration. The department proposes the medication aide training program be taught by the registered nurse who shall be assisted by a registered pharmacist.

(O) The current rules were developed prior to the state licensure for mental retardation facilities. The department proposes appropriate language to include the medication aide training rules for mental retardation facilities.

Stephen Seale, chief accountant III, has determined that for the first five-year period the rules will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Seale has also determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be a significantly updated and improved training program for medication aides working in long-term care facilities. The possible economic cost to individuals who are required to comply with the rules as proposed will be the following: estimated tuition at approved initial medication administration training program is $100; continuing education fees in subsequent years are estimated to average $10 per year.

Comments on the proposal may be submitted to Cesar M. Elizondo, M.D., chief, Bureau of Long-Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706. Comments will be received for 30 days after publication of the proposed changes in the *Texas Register* . A hearing will be conducted on June 10, 1982, at 9 a.m. at the Texas Department of Health auditorium.

Subchapter B. Minimum Standards for Nursing Homes

25 TAC §145.12

The amendments to §145.12 are proposed under Texas Civil Statutes, Article 4442c, which provides the Texas Department of Health with the authority to adopt minimum standards on the use and administration of medications in long-term care facilities.

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

Medication aide—A person who has **met all requirements of and** successfully completed the **Texas Department of Health** [state-approved] training program in medication administration. [The Texas Department of Health is the approval authority. Medication aides must function in accordance with accepted pharmaceutical and nursing practices, and as set forth in these standards. After successful completion of the training, a medication aide may perform only the following functions.

[(A) May, after authorization by the facility's licensed nurse or the resident's treating physician, administer PRN medications.

[(B) May observe for and report to the facility's charge licensed nurse reactions and side-effects of medications commonly administered to nursing facilities residents.

[(C) May take and record vital signs prior to administration of medications which could affect or change the vital signs.

[(D) May administer and document regularly prescribed medications which the medication aide is permitted to administer only after personally preparing (sett-

ing up) of those medications to be administered and documented.

[(E) May administer oxygen per nasal canula or a nonsealing face mask only in an emergency when no licensed nursing staff is on duty.

[Practices or acts prohibited by nonlicensed nursing personnel (medication aides) after completing the state-approved training program in medication administration—

[(A) May not administer medications by the injection route:

[*(i)* Intramuscular route.

[*(ii)* Intravenous route.

[*(iii)* Subcutaneous route.

[*(iv)* Intradermal route.

[*(v)* Hypodermoclysis route.

[(B) May not administer medications used for intermittent positive pressure breathing (IPPB) treatments or other methods involving medication inhalation treatments.

[(C) May not administer PRN medications unless authorization is obtained from the facility's licensed nurse or the resident's treating physician.

[*(i)* Nonlicensed nursing personnel (medication aides) must document in nurses notes symptoms indicated for the need of the medication and the time the symptoms occurred.

[*(ii)* Nonlicensed nursing personnel (medication aides) must document in nurses notes that the facility's licensed nurse or the treating physician was contacted, symptoms were described, permission was granted to administer the medication, and the time of contact.

[(I) Permission to grant the administration of medications shall be on an individual basis.

[(II) Permission to grant the administration of medications shall not be given prior to the time the symptoms occurred.

[*(iii)* The administration of the authorized PRN medication must be correctly documented.

[*(iv)* The facility's licensed nurse giving permission for administration of the PRN medication shall cosign the nurse's note on the next tour of duty, or if on duty in the facility, by the end of that shift.

[(D) May not administer the initial dose of a medication that has not been previously administered to the resident.

[(E) May not administer medication doses that involve any calculation of dosage strength and/or alteration of the originally dispensed dose except the measure of a prescribed amount of liquid medication and the crushing of medication.

[(F) May not crush medications unless the initial prior authorization is obtained from the facility's licensed nurse; the licensed nurse shall document initially the authorization for the medication aide to crush medications on the appropriate medication records from which medications are administered.

[(G) May not administer medications by way of the naso-gastric tube.

[(H) May not receive or assume responsibility for reducing to writing, verbal or telephone orders from a physician.

[(I) May not order residents' medications from a pharmacy.

[(J) May not administer any medications that involve the treatment of the skin requiring aseptic techniques.]

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

Issued in Austin, Texas, on May 18, 1982.

TRD-824172 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption: June 25, 1982
For further information, please call: (512) 458-7236.

Subchapter H. Medication Administration

25 TAC §145.121

(Editor's note: The text of the following rule proposed for repeal will not be published. The text may be examined in the offices of the Texas Department of Health, 1100 West 49th Street, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The repeal of §145.121 is proposed under Texas Civil Statutes, Article 4442c, §7(h), which provides the Texas Department of Health with the authority to adopt minimum standards on the use and administration of medications in long-term care facilities.

§145.121. Training Programs.

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

Issued in Austin, Texas, on May 18, 1982.

TRD-824174 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption: June 25, 1982
For further information, please call (512) 458-7236.

Subchapter P. Medication Aide Training Program

25 TAC §§145.251-145.261

New §§145.251-145.261 are proposed under Texas Civil Statutes, Article 4442c, which provides the Texas Department of Health with the authority to adopt minimum standards on the use and administration of medications in long-term care facilities.

§145.251. Requirements for Personnel Administering Medications.

(a) All personnel administering medications to residents in Texas nursing homes, custodial care homes,

personal care homes, facilities serving the mentally retarded citizens of Texas, and related institutions licensed by the Texas Department of Health under Texas Civil Statutes, Article 4442c, must have completed the state-approved training program in medication administration.

(b) The completed state-approved training program in medications administration by all personnel administering medications is also the training program recognized to fulfill the requirements under certification of the following:

(1) skilled nursing facilities for U.S. Social Security Act, Title XVIII, Federal Medicare participation; and

(2) intermediate care facilities for U.S. Social Security Act, Title XIX, Federal/State Medicaid participation.

§145.252. Personnel Meeting, Exempt From, or Those Persons Who Fulfill the Training Requirements.

(a) Personnel licensed or registered by their appropriate Texas board of examiners which authorizes the administration of medications in the course of their practice are exempt from the requirement for completing a state-approved training program in medication administration, as follows:

(1) Texas State Board of Medical Examiners; or

(2) Texas State Board of Dental Examiners; or

(3) Texas State Board of Podiatry Examiners.

(b) Personnel licensed or registered by their appropriate Texas Board of Nurse Examiners meet the requirement for completing the state-approved training program in medication administration, as follows:

(1) Board of Nurse Examiners for the State of Texas; or

(2) Texas Board of Vocational Nurse Examiners.

(c) Personnel who are graduates of accredited Texas schools of nursing, but are not licensed or registered by their appropriate Texas Board of Nurse Examiners, meet the requirement for completing the state-approved training program in medication administration; provided the date of graduation does not go back beyond January 1st of the year immediately prior to the year that application is made for medication aide status.

(1) A notarized application for medication aide status under subsection (c) of this section shall be submitted to the Texas Department of Health, Bureau of Long Term Care, 1100 West 49th Street, Austin, Texas 78756.

(A) The application must include an official copy of the applicant's transcript documenting graduation from an accredited Texas school of nursing.

(B) The Texas Department of Health shall acknowledge receipt of the application by forwarding to the applicant a copy of the medication aide rules, and a copy of the examination covering the medication aide rules.

(C) The applicant shall complete the examination covering the medication aide rules and return it within 45 days to the Texas Department of Health.

(D) Upon successful completion (greater than 70% correct answers) of the examination, the Texas Department of Health will evaluate all documents submitted by the applicant.

(E) The Texas Department of Health shall notify the applicant in writing of the evaluation results.

(2) Personnel meeting the requirements under subsection (c) of this section and issued a medication aide acknowledge card shall be considered in all respects unlicensed nursing personnel and shall conform to all medication aide training program rules as set forth for unlicensed nursing personnel.

(d) Personnel who are licensed nurses outside of Texas, and who have made application to the appropriate Texas Board of Nurse Examiners for reciprocity may make application for medication aide status, during the interim, not to exceed 120 days.

(1) A notarized application for medication aide status under subsection (d) of this section shall be submitted to the Texas Department of Health, Bureau of Long Term Care, 1100 West 49th Street, Austin, Texas 78756.

(A) Application for medication aide status shall include documentation of valid nurse licensure outside Texas, and an official copy of the applicant's transcript, documenting graduation from an accredited school of nursing.

(B) The Texas Department of Health shall evaluate the documentation and notify the applicant in writing of the results, along with a copy of the medication aide training program rules.

(2) Personnel meeting the requirements under subsection (d) of this section and issued a medication aide acknowledgement card shall be considered in all respects unlicensed nursing personnel and shall conform to all medication aide rules as set forth for unlicensed nursing personnel.

(e) Personnel who have successfully completed a course of study in pharmacology equivalent to the prescribed requirement for vocational nursing students in Texas, and who have completed the required state-approved job specific and orientation training may make application for medication aide status.

(1) Application for medication aide status under subsection (e) of this section shall be submitted to the Texas Department of Health, Bureau of Long Term Care, 1100 West 49th Street, Austin, Texas 78756.

(A) Application for medication aide status shall include the appropriate documentation.

(B) The Texas Department of Health shall acknowledge receipt of the application by forwarding to the applicant a copy of the medication aide rules, and a copy of the examination covering the medication aide rules.

(C) The applicant shall complete the examination covering the medication aide rules and return it within 45 days to the Texas Department of Health.

(D) Upon successful completion (greater than 70% correct answers) of the examination, the Texas Department of Health will evaluate all documents submitted by the applicant.

(E) The Texas Department of Health shall notify the applicant in writing of the evaluation results.

(2) Personnel meeting the requirements under subsection (e) of this section and issued a medication aide acknowledgement card shall be considered in all respects, unlicensed nursing personnel and shall conform to all

medication aide rules as set forth for unlicensed nursing personnel.

(f) All applicants denied medication aide status as outlined in subsections (c), (d), and (e) of this section may request a hearing.

(1) The applicant shall make a written request to the Texas Department of Health, chief, Bureau of Long Term Care, 1100 West 49th Street, Austin, Texas 78756.

(2) The chief, Bureau of Long Term Care, as hearing officer, shall schedule a hearing at a time and on a date mutually agreeable to both applicant and the Texas Department of Health. The applicant shall be notified in writing of the scheduled hearing.

(3) The hearing shall be conducted at the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(g) Full-time nursing students attending an accredited Texas school of nursing who have successfully passed the course of instruction in pharmacology, may administer medications to residents in a nursing facility as part of their practical experience training, provided that:

(1) Each student shall be under the direct contact supervision of a registered nurse, during all medication and training procedures.

(2) Each student shall be knowledgeable of the residents' rights.

(3) Each student shall be required to sign a statement that he or she realizes his or her criminal liability for abuse and neglect of residents.

(4) Each student shall have on file in the facility, documentation from the school of nursing of his/her student nurse status.

§145.253. Prohibited Acts or Practices by Medication Aides. Unlicensed nursing personnel (medication aides), after completing the state-approved training program in medication administration:

(1) May not administer medications by the injection route including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route.

(2) May not administer medications used for intermittent positive pressure breathing (IPPB) treatments or other methods involving medication inhalation treatments.

(3) May not administer previously ordered PRN ("as needed") medications unless authorization is obtained from the facility's licensed nurse or the resident's treating physician.

(A) Unlicensed nursing personnel (medication aides) must document in nurses notes or residents' records for mental retardation facilities, symptoms indicated for the need of the medication and the time the symptoms occurred.

(B) Unlicensed nursing personnel (medication aides) must document in nurses notes or residents' records for mental retardation facilities that the facility's licensed nurse or the treating physician was contacted, symptoms were described, permission was granted to administer the medication, and the time of contact.

(i) Permission to grant the administration of medication shall be on an individual basis.

(ii) Permission to grant the administration of medication shall not be given prior to the time the symptoms occurred.

(iii) The administration of the authorized PRN medication must be correctly documented.

(iv) The facility's licensed nurse giving permission for administration of the PRN medication shall cosign the nurses notes or residents' records for mental retardation facilities on the next tour of duty, or if onduty in the facility, by the end of that shift.

(4) May not administer the initial dose of a medication that has not been previously administered to the resident. Documentation of a previously administered medication shall be determined in the residents' current clinical records.

(5) May not calculate any patients' medication doses for administration.

(A) The medication aide may measure a prescribed amount of a liquid medication to be administered.

(B) The medication aide may break a tablet for administration to patients provided the licenses nurse has calculated the dosage. The medication card or its equivalent shall accurately document the tablet must be altered prior to administration.

(6) May not crush medication until authorization is obtained from the facility's licensed nurse. The licensed nurse's authorization for crushing the specific medication shall be documented on the medication card or its equivalent.

(7) May not administer medications by way of the naso-gastric tube.

(8) May not receive or assume responsibility for reducing to writing, verbal or telephone orders from a physician.

(9) May not order resident's medications from a pharmacy.

(10) May not apply topical medications that involve the treatment of skin lesions except where usual scratches and abrasions may require first aid treatment.

§145.254. Functions Authorized to be Performed by Medication Aide. The state-approved training program in medication administration shall teach and train unlicensed nursing personnel (medication aides), after successful completion, that they:

(1) May observe for and report to the facility's charge licensed nurse, reactions and side effects of medications commonly administered to nursing facilities' residents.

(2) May take and record vital signs prior to administration of medication which could affect or change the vital signs.

(3) May administer regularly prescribed medications which the medication aide is permitted and taught to administer only after personally preparing (setting up), of those medications to be administered. The medication aide may document the administered medications in the resident's clinical record.

(4) May administer oxygen per nasal canula or

a nonsealing face mask only in an emergency when no licensed staff is on duty in the nursing facility or mental retardation facility.

§145.255. Organization of the State-Approved Training Program in Medication Administration for Unlicensed Nursing Personnel.

(a) The Texas Department of Health shall be the approval agency for the state-approved training program.

(b) All public education institutions teaching the state-approved training program in medication administration shall be accredited by the Texas Education Agency. Accreditation requirements shall not apply to mental retardation facilities under direct control of the Texas Department of Mental Health and Mental Retardation.

(c) All medication aide classes shall be conducted in educational classrooms, except the clinical experience training.

(d) The Texas Department of Health shall provide each accredited public education institution and each mental retardation facility of the Texas Department of Mental Health and Mental Retardation with a copy of the medication aide rules and course outline for the teaching of the state-approved training program in medication administration.

(e) The Texas Department of Health shall maintain the names and addresses of all accredited public education institutions and mental retardation facilities of the Texas Department of Mental Health and Mental Retardation.

(f) Each selected public education institution and each mental retardation facility of the Texas Department of Mental Health and Mental Retardation shall formulate and develop the curriculum for the training program in conformance with the state-approved course content.

(1) The public education institution and the mental retardation facilities of the Texas Department of Mental Health and Mental Retardation shall grant a statement of completion to all personnel successfully completing the state-approved training program in medication administration.

(2) The public education institution and the mental retardation facilities of the Texas Department of Mental Health and Mental Retardation shall furnish, within 20 days, the required information on personnel successfully completing the state-approved training program to the Texas Department of Health.

(3) The Texas Department of Health shall maintain a roster of all personnel successfully completing the state-approved medication aide training program.

(4) The Texas Department of Health shall issue a medication aide acknowledgement card to each person successfully completing or meeting the requirements of the state-approved training program in medication administration.

(A) The medication aide acknowledgement card shall be the only acceptable documentation for employment in a nursing facility or mental retardation facility as a medication aide.

(B) Each medication aide's acknowledgement card (original or direct photocopy) shall be on record in the facility's appropriate file prior to the medication aide administering medications to residents/patients.

(g) The state-approved training program in medication administration shall include, but shall not be limited to, the following instruction and training.

(1) Procedures for preparation and administration of medications.

(2) Responsibility, control, accountability, storage, and safeguarding medications.

(3) Use of reference material.

(4) Proper documentation of medications in resident's clinical records, including PRN medications.

(5) Minimum licensing standards for nursing homes, minimum licensing standards for custodial care homes, and facilities serving the mentally retarded citizens of Texas, covering pharmaceutical service, nursing service, and clinical records. Instruction in state licensure standards shall not apply to mental retardation facilities under the direct control of the Texas Department of Mental Health and Mental Retardation.

(6) Federal/state certification standards for participation, under U.S. Social Security Act, Title XIX, Medicaid requirements covering pharmaceutical service, nursing service, and clinical records. Instruction shall be included in the U.S. Social Security Act, Title XIX, Federal Medicaid Standards for Participation for Intermediate Care Facilities - Mental Retardation.

(7) Identification of lines of authority in the nursing facility, including facility personnel who are immediate supervisors.

(8) Identification of the responsibilities and liabilities associated with the administration and safeguarding of medications.

(9) Knowledge of practices prohibited by medication aides in medication administration.

(10) Knowledge of practices permitted medication aides in medication administration.

(11) Identification of some drug reactions and side effects of medication commonly administered to nursing facility residents and mental retardation facility residents.

(12) Rules covering the medication aide training program.

(h) Instructors for the state-approved training program shall be a registered nurse assisted by a registered pharmacist.

(1) A registered nurse instructor must be currently registered, in good standing with the Board of Nurse Examiners for the State of Texas, and:

(A) must have a minimum of two years of current experience, including experience in the administration of medications;

(B) must be knowledgable of appropriate nursing facilities and mental retardation facilities licensure and certification standards for participation;

(C) Must be knowledgeable of the medication aide training program rules.

(2) Full-time instructors in an accredited Texas school of nursing shall be deemed to meet the experience requirements in subsection (h)(1) of this section.

(3) A registered pharmacist must be currently registered and be in good standing with the Texas State Board of Pharmacy, and

(A) must have two years experience as a registered pharmacist,

(B) must be currently serving as a nursing facility or mental retardation facility consultant pharmacist,

(C) must be knowledgeable of appropriate nursing facilities and mental retardation facilities licensure and certification standards for participation,

(D) must be knowledgeable of the medication aide training program rules.

(i) The completion date of the medication aide training program shall not exceed six months from the begining date of the program.

(j) The Texas Department of Health shall develop a course of study for the 100 academic hours and the annual continuing education and shall monitor, as necessary, the 20 clock hours of clinical experience training.

(k) The registered nurse instructor shall be responsible to coordinate each student's required 20 clock hours of clinical experience training with the administrator in the nursing facility or mental retardation facility.

(1) Medication aide students shall obtain their clinical experience training in the facility where they are employed or in other nursing or mental retardation facilities approved by the training institution.

(2) The 20 clock hours of clinical experience training shall be counted only when the medication aide student is actually performing functions involving medication administration and under the direct contact supervision with the licensed nurse.

(3) The facility's director of nurses or health service supervisor shall evaluate the student in clinical experience training and report the results of the evaluation to the student's registered nurse instructor.

(4) The registered nurse instructor shall be responsible for the final determination that the student's clinical experience training has been completed in accordance with the approved training program.

(l) A written final examination shall be given to each medication aide student by the Texas Department of Health.

(1) The medication aide students shall be tested on the subjects taught from the course outline and and their knowledge of the accurate and safe drug therapy to facility residents.

(2) The instructors shall notify the Texas Department of Health, Bureau of Long Term Care, 1100 West 49th Street, Austin, Texas 78756, at least four weeks prior to the scheduled final examination date.

(3) A representative of the Texas Department of Health, Bureau of Long Term Care, shall serve as an onsite proctor.

(4) The proctor shall forward the final examination for grading to the Texas Department of Health, Bureau of Long Term Care, 1100 West 49th Street, Austin, Texas 78756, and the grading examination shall be correlated with the required information furnished by the training institution.

(5) A passing grade on the examination shall be 70 percent or better correct answers.

(6) A medication aide acknowledgement card shall be forwarded to the student successfully completing the training program and examination.

(7) A student failing to obtain a passing grade in the training program or on the final examination shall be notified in writing by the Texas Department of Health.

§145.256. Total Hours of the Training Program. The state-approved training program in medication administration shall consist of 100 academic hours of classroom instruction and training and 20 clock hours of clinical experience training in a nursing facility.

(1) Theory (classroom)—80 hours

(2) Clinical Laboratory (classroom)—20 hours

(3) Clinical Experience Training In a Nursing Facility—20 hours

§145.257. Training Program Renewal Requirements. Personnel who have completed the state-approved training program in medication administration shall maintain current status as a medication aide on a calendar year (January 1st through December 31st) renewal basis.

(1) The successful completion of the state-approved continuing education training program shall fulfill the calendar year renewal requirement.

(A) Continuting education must be successfully completed between January 1st and December 31st of the year immediately after the year the basic medication aide training program was completed.

(B) After successful completion of the continuing education training program as outlined in paragraph (1)(A) of this section, subsequent continuing education training programs must be successfully completed each year between January 1st and December 31st.

(2) The Texas Department of Health shall not issue a medication aide acknowlegement card to any person who does not meet the renewal requirements of continuing education under this section.

§145.258. Prerequisites for Unlicensed Nursing Personnel Enrolling in the State-Approved Training Program in Medication Administration. The personnel:

(1) Must be able to read, write, speak, and understand English.

(2) Must be at least 18 years of age.

(3) Must be currently employed in a nursing facility in the capacity of a nurse aide or in a mental retardation facility as an unlicensed direct care staff personnel.

(A) The personnel must have completed the required state-approved employee job specific training.

(2) Successful completion of a minimum 200 academic hours of nurse aide training in an accredited Texas educational institution may be substituted for the current employment requirement in this paragraph. The minimum 200 academic hours must include the state-approved job specific training.

(4) Must furnish to the educational institution instructor two character references.

(5) Must furnish to the educational institution instructor a copy of his/her high school graduation diploma or an equivalent GED diploma.

(6) Must be free of contagious diseases and in a suitable physical and emotional health to safely administer medications.

§145.259. Supervision of the Medication Aide. The medication aide shall function under the direct supervision and/or responsibility of the facility's licensed nurse

on duty, or on call, and ultimately under the responsibility of the director of nurses, health service supervisor, and administrator of the facility.

(1) Medication aides must function in accordance with accepted pharmaceutical and nursing practices.

(2) Medication aides must function in accordance with practices as set forth in Subchapter B of this chapter (relating to Minimum Licensing Standards for Nursing Homes), Subchapter C of this chapter (relating to Custodial Care Homes), and Subchapter N of this chapter (relating to Facilities Serving the Mentally Retarded Citizens of Texas).

(3) Medication aides must function in accordance with practices as set forth in the federal and state Medicare/Medicaid Standards for Participation for Nursing Facilities and Mentally Retarded Facilities under Title XVIII and XIX of the U.S. Social Security Act.

§145.260. Invalid or Fraudulent Use of Medication Aide Acknowledgement Card. A medication aide acknowledgement card shall be considered not to be valid if it is issued in error or under conditions of fraud.

(1) Any persons who obtain a medication aide acknowledgement card in error shall immediately upon learning of the error notify the Texas Department of Health of the error and return the card to the Texas Department of Health. A person who has received a medication aide acknowledgement card in error and who knows of the error may not use the card for any purpose and may not function as a medication aide.

(2) A person who has obtained a medication aide acknowledgement card by fraud may not use the card for any purpose and may not function as a medication aide. This person shall notify the Texas Department of Health immediately of the fraud and return the card to the Texas Department of Health.

(3) Any person performing functions of a medication aide that obtained his/her medication aide acknowledgement card under fraudulent statements, conditions, or acts may jeopardize the nursing facility or mental retardation facility residents' medical health and safety in violation of Texas Civil Statutes, Article 4442c; and/or Title XVIII, Medicare Regulations; and/or Title XIX, Medicaid Regulations of the U.S. Social Security Act.

(4) Any person performing functions of a medication aide without a valid medication aide acknowledgement card may jeopardize the nursing facility or mental retardation facility residents' medical health and safety in violation of Texas Civil Statutes; Article 4442c, and/or Title XVIII, Medicare Regulations; and/or Title XIX, Medicaid Regulations of the U.S. Social Security Act.

§145.261. Violations. Medication aides or unlicensed nursing personnel performing practices or acts prohibited under the medication aide training program rules may jeopardize the nursing facilities or mental retardation facilities residents' medical health and safety in violation of Texas Civil Statutes, Article 4442c, and/or Title XVIII, Medicare Regulations; and/or Title XIX, Medicaid Regulations of the U.S. Social Security Act.

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

Issued in Austin, Texas, on May 18, 1982.

TRD-824175 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption: June 25, 1982
For further information, please call (512) 458-7236.

Chapter 325. Solid Waste Management

Subchapter M. Solid Waste Technician Training and Certification Program

25 TAC §§325.381-325.391

The Texas Department of Health proposes new §§325.381-325.391, concerning a solid waste technician training and certification program within the department's municipal solid waste management program.

Glendon D. Eppler, planner III, 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. There will be no additional cost to state government in 1982; however, the new rule will cost the state $6,000 in 1983, $11,000 in 1984, and $15,000 in 1985 and 1986. State revenue will increase by the same amount for each year. There is no estimated reduction in cost anticipated for state government, and no effect on local government.

Mr. Eppler has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be an improvement in operation of solid waste facilities, a reduced risk to public health and the environment, an enhancement of public confidence and support in government, a reduction of public complaints, and the promotion of solid waste management as a respected career.

The possible economic cost to individuals who are required to comply with the rule as proposed will be the cost of application fees. Individuals, cities, counties, and commercial establishments will pay application fees, training fees, and travel and per diem costs for applicants and trainees as follows: $0 in 1982; $270 in 1983; $290 in 1984; $300 in 1985; and $310 in 1986.

Comments on the proposal may be submitted to Jack C. Carmichael, P.E., Bureau of Solid Waste Management chief, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271. Comments will be received for 30 days after publication of this proposal in the *Texas Register.*

In addition, eight public hearings will be held throughout the state as follows:

(1) Monday, June 14, 1982, 9:30 a.m.,

auditorium, High Plains Underground Water Conservation District 1, 2930 Avenue Q, Lubbock;

(2) Tuesday, June 15, 1982, 9:30 a.m., City Council Chambers, Irving City Hall, 825 West Irving Boulevard, Irving;

(3) Wednesday, June 16, 1982, 10 a.m., City Council Room, second floor, Tyler City Hall, 212 North Bonner, Tyler;

(4) Friday, June 18, 1982, 9:30 a.m., conference room, Houston-Galveston Area Council of Governments, 3701 West Alabama, Houston;

(5) Monday, June 21, 1982, 10:30 a.m., auditorium (Room 20), Corpus Christi/Nueces County Health Department, 1702 Horne Road, Corpus Christi;

(6) Tuesday, June 22, 1982, 10 a.m., Bougainvillea Room, San Benito Community Service Center, 210 East Heywood, San Benito;

(7) Wednesday, June 23, 1982, 10 a.m., Commissioner's Court Room, third floor, Old County Courthouse, Fourth and Oak, Abilene; and

(8) Friday, June 25, 1982, 9:30 a.m., auditorium, Texas Deprtment of Health, 1100 West 49th Street, Austin.

The new sections are proposed under Texas Civil Statutes, Article 4477-7, §4, which provides the Texas Department of Health with the authority to adopt rules for regulation of municipal and mixed municipal-industrial solid waste.

§325.381. Purpose and Applicability.

(a) The purpose of this rule is to establish a procedure and requirements for training and certification of solid waste technicians who are or who may become engaged in the operation of a municipal solid waste management facility and for training and certification of solid waste technicians who are or who may become engaged in the collection or transportation of municipal solid waste.

(b) This rule is applicable to persons who wish to be provided a Letter of Competency by the Texas Department of Health that recognizes that the solid waste technician meets or exceeds the standards established in this rule. Training requirements for persons engaged in management of hazardous waste are established in Subchapter L of this chapter (relating to Hazardous Waste Management).

§325.382. General.

(a) Section 1 of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, establishes the policy of the state and the purpose of the Act which is to safeguard the health, welfare, and physical property of the people, and to protect the environment, through controlling the management of solid wastes.

(b) Section 3(a) of the Act designates the Texas Department of Health as the solid waste agency with respect to the management of municipal solid waste.

(c) Section 4(g) of the Act encourages the owner or operator of a solid waste facility to employ as site manager a solid waste technician holding a Letter of Competency from the department. The Act authorizes the department to develop a program for the training of solid waste technicians and to prescribe standards of training. Under the Act, the department is authorized to award categories of Letters of Competency, with each category reflecting a different degree of training or skill and to require a reasonable fee to be paid by participants. The department may extend or renew letters and may withdraw a letter for good cause.

(d) Section 4(e) of the Act gives each state agency the power to require and issue permits authorizing and governing the operation and maintenance of solid waste facilities used for the storage, processing, or disposal of solid waste.

(e) The Texas Department of Health has issued "Municipal Solid Waste Management Regulations" that cover the standards and requirements for the management of municipal solid waste to include collection, transportation, handling, storage, processing, and disposal. Regulations are established for both hazardous and nonhazardous solid waste. Subchapters A-K of this chapter contain regulations of general application and regulations applicable to nonhazardous waste. Subchapter L of this chapter contains regulations for the management of hazardous waste.

§325.383. Classification of Municipal Solid Waste Sites. The requirements for classification of municipal solid waste sites will be the same as those contained in Subchapter D of this chapter (relating to Classification of Municipal Solid Waste Sites).

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

Board of Health—Texas Board of Health.

Collection—The act of removing solid waste (or materials which have been separated for the purpose of recycling) for transport elsewhere.

Collection system—The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment, and management; and operating procedures. Systems are classified as municipal, contractor, or private.

Commissioner—Commissioner of Health.

Committee—Advisory Committee for the Solid Waste Technician Training and Certification Program.

Department—Texas Department of Health.

Disposal—The discharge, deposit, injection, dumping, spillage, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Engineering Extension Service—Texas Engineering Extension Service, Texas A & M University System.

Experience—Actual experience gained from participating as a principal operator, foreman, or supervisor of a solid waste facility or other experience approved by the committee.

Hazardous waste—Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976.

Letter of Competency—The letter issued by the department stating that the solid waste technician has met or exceeded the requirements for training and certification for the specified classification of the program.

Management—The systematic control of any or all of the following activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

Municipal solid waste—Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

Processing—The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

Sanitary landfill—A facility for the land disposal of solid waste which complies with all applicable standards and regulations so as to ensure that there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility.

Site operator—The holder of, or the applicant for, a permit (or license) for a municipal solid waste site.

Solid waste—Any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26, Water Quality Control;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Railroad Commission of Texas.

Solid waste facility—All contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and consist of several processing, storage, or disposal operational units; e.g., one or more landfills, surface impoundments, or combinations of them.

Solid waste technician—An individual who is trained in the practicial aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the Board of Health.

Storage—The holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere.

Training credits—Credits awarded for participating in training courses, conferences, meetings or seminars, correspondence courses, or other activities approved by the department.

§325.385. Administration.

(a) Committee.

(1) Membership and appointment. A nine member advisory committee for the Solid Waste Technician Training and Certification Program will be appointed by the commissioner. Members will be selected as follows.

(A) One member each from the state organization representing the Public Works Association, Governmental Refuse Collection and Disposal Association, and the National Solid Waste Management Association.

(B) One member from a state university or technical institute offering extension courses in solid waste management.

(C) One member representing the Texas Department of Health.

(D) One member who is a mayor or city manager from a city that operates a solid waste facility.

(E) One member who is a county judge or county commissioner from a county that operates a solid waste facility.

(F) Two members from the general public.

(2) Term of Office. Members will be selected to a three-year term and no member shall serve more than two consecutive three-year terms.

(3) Organization.

(A) Annually, the committee will select from its members a chairman and such officers as may be needed to conduct business.

(B) A quorum of the committee will be a majority of its appointed members.

(4) Responsibilities. The committee will:

(A) assist and advise in promulgating rules of procedure or policies to develop and administer the training and certification program;

(B) identify and recommend legislation that is designed to increase the effectiveness of the program;

(C) assist the department in identifying training needs and make recommendations for developing training programs and testing protocol;

(D) assist the department in evaluating training and experience records of applicants to establish the level of classification for which the applicant is qualified; and

(E) promote the program and encourage owners/operators to employ technicians certified under the program.

(5) Reimbursements. Members of the committee may be reimbursed for travel, lodging, and meals when expenses are incurred in connection with the performance of duties of the committee. Reimbursement will be in accordance with established travel and per diem rates for state employees.

(b) Department.

(1) The commissioner, guided by the Board of Health, will have overall responsibility for the administration of the program. He may delegate to the chief, Bureau of Solid Waste Management, those functions necessary to administer and operate the program.

(2) The department will establish training and testing requirements to determine the qualifications of the solid waste technician. The department will consider the recommendations of the committee when establishing these qualifications.

(3) The department shall provide a member to the committee, appointed by the commissioner, from the Solid Waste Program. Further, the department shall:

(A) provide administrative and secretarial services to the committee;

(B) provide meeting places for the committee;

(C) maintain records of transaction of the committee meetings;

(D) maintain records of correspondence;

(E) maintain records of solid waste technicians who apply for Letters of Competency or participate in the training program;

(F) obtain, assemble, and evaluate documents and information from applicants;

(G) prepare, administer, or arrange for the giving of tests or examinations to applicants;

(H) grade tests or examinations for determining the competency of solid waste technicians;

(I) issue the appropriate Letter of Competency to succcessful applicants; and

(J) notify unsuccessful applicants of test results and/or deficiencies in eligibility for certification.

§325.386. Application for Letter of Competency.

(a) Solid waste technicians desiring a Letter of Competency from the department shall submit an application on a standard form, signed under oath, setting forth the applicant's qualification.

(b) Applications for renewal or for higher classification shall be submitted on a standard form, signed under oath, and shall include necessary documentation to establish the applicant's qualification.

(c) The applicant shall include the payment of required fees.

§325.387. Qualification.

(a) Requirements for Letter of Competency. Except as provided in subsection (d) of this section, all individuals issued a Letter of Competency shall meet the following requirements based upon education, specialized training, actual operating experience, and passing examinations.

(1) Class A Letter of Competency.

(A) College degree with a major in a related branch of engineering or science, two years experience, and 160 hours of training credits; or

(B) two years of college with a major in a related branch of engineering or science, four years experience, and 160 hours of training credits; or

(C) high school graduate or equivalent, six years experience, and 160 hours of training credits.

(2) Class B Letter of Competency.

(A) Two years of college with a major in a related branch of engineering or science, two years experience, and 80 hours of training credit; or

(B) High school graduate or equivalent, four years experience, and 80 hours of training credit; or

(C) Six years experience and 80 hours of training credit.

(3) Class C Letter of Competency.

(A) High school graduate or equivalent, two years experience, and 40 hours of training credit; or

(B) Four years experience and 40 hours of training credit.

(4) Class D Letter of Competency (Collection System).

(A) One year of college with a major in a related branch of engineering or science, one year experience, and 40 hours of training credit; or

(B) High School graduate or equivalent, three years experience, and 40 hours of training credit; or

(C) Five years experience and 40 hours of training credit.

(5) Solid Waste Technician in Training. An individual engaged in or who expects to be engaged in a solid waste management activity who does not meet the education, training, or experience requirements established for a Letter of Competency, may be issued a letter—Solid Waste Technician in Training—after being employed as a solid waste technician for six months or after enrolling in a program of training to qualify for a Letter of Competency. The Solid Waste Technician in Training letter may be issued upon application and substantiation of these requirements.

(6) Substituting education for experience. Additional qualifying education at a university, college, or technical institute may be used to substitute for experience on a year-for-year basis in any requirements established in paragraphs (1)-(4) of this subsection.

(b) Training credits. Training credits may be earned by successfully completing the course of instruction for each classification which has been approved by the department and given by the Engineering Extension Service or other state university or technical institute.

(1) Class A—Succcessfully complete the training required for Class B, C, and D, and successfully complete 40 hours of approved additional training.

(2) Class B—Successfully complete the training required for Class C and successfully complete 40 hours of approved additional training.

(3) Class C—Successfully complete 40 hours of approved training.

(4) Class D—Successfully complete 40 hours of approved training.

(c) Examination.

(1) Written examination will be used in determining the knowledge, ability, and judgment of a candidate. Upon petition, the department may use an oral examination to establish a candidate's qualification.

(2) Examinations will normally be given by the department in conjunction with the training offered by the Engineering Extension Service. Examinations may be offered at other times as the need is determined by the department.

(3) Correctly answering 70% of the questions on an examination constitutes a passing grade.

(d) Certification by the commissioner. Persons cur-

rently engaged in the operation of a solid waste facility or in the operation of a collection system, who apply for a Letter of Competency within six months after the effective date of this rule and demonstrate training and experience that establishes qualifications substantially equivalent to the requirements in subsection (a)(1)-(4) of this section, and who are recommended by the committee, may be certified by the commissioner without examination.

(e) Term of the Letter of Competency. The Letter of Competency shall be issued for a term of four years and shall expire on the day before the anniversary of the date the letter was awarded.

§325.388. Renewal. A Letter of Competency may be renewed, unless revoked by cause, either by examination or by continuation of training during the time the letter is valid. For renewal without examination, the applicant shall make application 60 days prior to expiration of the current letter and shall provide evidence of continued education as follows.

(1) Renewal of Letters of Competency without examination requires that the applicant successfully complete approved formal training courses offered by the Engineering Extension Service or by a state university or technical institute.

(A) Class A—40 hours.

(B) Class B—32 hours.

(C) Class C—24 hours.

(D) Class D—24 hours.

(2) The department may approve alternate training for certification where documented by the applicant and recommended by the committee.

§325.389. Revocation. The commissioner may revoke a Letter of Competency if it is found that the person to whom the letter is issued has practiced fraud or deceit in making application for a Letter of Competency or in performance of duties as a solid waste technician; that reasonable care or judgment was not used in performance of duties; or that the person is incompetent or unable to properly perform his duties. The decision may be appealed in accordance with the Administrative Procedure and Texas Register Act.

§325.390. Recommendations for Solid Waste Facility Owners/Operators.

(a) Pursuant to Section 4(g) of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the Board of Health recommends and encourages owners or operators of municipal solid waste facilities to employ as facility managers/supervisors at each site a solid waste technician who holds a Letter of Competency from the department. The Board of Health finds that:

(1) facilities that fail to meet department operating standards result in large measure from lack of knowledge of good operating practices and lack of understanding of the rules and permit requirements pertaining to the facility;

(2) citizen opposition to siting of replacement facilities is based in part on inadequate control at existing facilities;

(3) remedial action to correct improper operations is more costly to the operator than continuous practice of good operating procedures;

(4) persons meeting qualifications, successfully completing training and testing requirements, and/or recognized by the department, develop a sense of professionalism and pride in their position; and

(5) the employment of qualified persons increases efficiency and safety, lowers maintenance and operating costs, and reduces the potential of health and environmental risks associated with solid waste processing, storage, and disposal.

(b) The Board of Health encourages owners or operators to employ solid waste technicians who hold a Letter of Competency of the appropriate class for the type of facility.

Type Facility	Population Served	Letter of Competency Class
Type I Landfill	5,000 or more	A
Type IV Landfill	5,000 or more	A
Type V Process		A
VI Experimental		A
VII Landspreading		A
Hazardous Waste* Processing, Storage or Disposal		A
Type II Landfill	1,500 to 4,999	B
Type IV Landfill	1,500 to 4,999	B
Type III Landfill	1 to 1,499	C
Type IV Landfill	1 to 1,499	C
Collection System		D

*Additional requirements established in Subchapter L of this chapter (relating to Hazardous Waste Management).

§325.391. Fees.

(a) The following fees are established for initial application whether qualifying with or without examination.

(1) Class A—$40

(2) Class B—$30

(3) Class C—$20

(4) Class D—$20

(b) Fee for renewal shall be $20 for each class.

(c) Letters for Solid Waste Technician in Training shall be issued without fee.

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

Issued in Austin, Texas, on May 18, 1982.

TRD-824176 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Sevices
Texas Department of Health

Proposed date of adoption: June 25, 1982
For further information, please call (512) 458-7236.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 335. Industrial Solid Waste

Subchapter B. Hazardous Industrial Solid Waste Management General Provisions

31 TAC §335.41

The Texas Department of Water Resources proposes amendments to §335.41, relating to the purpose, scope, and applicability of the hazardous waste rules of the department.

The proposal would amend §335.41 to clarify that the department intends to regulate as hazardous those wastes which would be regulated as such by the administrator of the U. S. Environment Protection Agency (EPA) under the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 United States Code 6901 et seq. The department proposes to remove existing subsections (b) and (i) of §335.41 because these provisions are found in 40 Code of Federal Regulations, §261.4, establishing exclusions from the scope of regulation under Subtitle C of RCRA. The department also proposes to amend §335.41 to exempt from the requirements of Subchapters E-T and Subchapter V of this chapter, any person who adds absorbent material to hazardous waste in a container, at the time waste is first placed in the container, in order to reduce free liquids in a container. The department also proposes to amend §335.41 to remove existing subsection (g) concerning the beneficial use or reuse of hazardous waste. The department has proposed a separate rule concerning the recycling of solid waste. See the March 2, 1982, issue of the *Texas Register* (7 TexReg 850).

Mike Hodges, acting chief, Fiscal Services Section, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Hodges has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be to clarify the purpose and scope of the department's hazardous waste rules and to exempt certain persons from the requirement of obtaining a permit under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, for those activities where such a requirement is not justified. The addition of absorbent material to a container minimizes the extent of containerized free-liquid wastes which may be landfilled. There will be no possible economic cost to persons required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mary Reagan, staff attorney, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

This amendment is proposed under the authority of Texas Water Code, §5.131 and §5.132, which provide the Texas Water Development Board with the authority to make any rules necessary to carry out the powers and duties under the provisions of the code and other laws of the state and to establish and approve all general policy of the Texas Department of Water Resources. This amendment is further proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the department to adopt and promulgate rules consistent with the general intent and purposes of the Act and establish minimum standards of operation for all aspects of the management and control of industrial solid waste. Under §3(b) of the Solid Waste Disposal Act, the Texas Department of Water Resources is designated as the state solid waste agency with respect to the management of industrial solid waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under the Act and other existing legislation. Section 3(b) grants to the department the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.41. Purpose, Scope, and Applicability.

(a) The purpose of these rules is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which **have been identified** [are listed as hazardous] by the administrator of the United States Environmental Protection Agency (EPA) in 40 Code of Federal Regulations Part 261 [, Subpart D and those wastes which exhibit any of the characteristics of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C.

[(b) The following solid wastes are not hazardous wastes subject to the requirements of Subchapter B of this chapter (relating to Hazardous Industrial Solid Waste Management in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Industrial Solid Waste), Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Solid Waste), Subchapter E of this chapter (relating to General Facility Standards), Subchapter F of this chapter (relating to Preparedness and Prevention), Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings), Subchapter H of this chapter (relating to Shipping Ticket, Recordkeeping, and Reporting Requirements), Subchapter I of this chapter (relating to Groundwater Monitoring), Subchapter J of this chapter (relating to Closure and Post-Closure), Subchapter K of this chapter (relating to Financial Requirements), Subchapter L of this chapter (relating to Use and Management of Containers), Subchapter M of this chapter (relating to Tanks), Subchapter N of this chapter (relating to Surface Impoundments), Subchapter O of this chapter (relating to Waste Piles), Subchapter P of this chapter (relating to Land Treatment), Subchapter Q of this chapter (relating to Landfills), Subchapter R of this chapter (relating to Incinerators), Subchapter S of this

chapter (relating to Thermal Processing), Subchapter T of this chapter (relating to Chemical, Physical, and Biological Processing), and Subchapter V of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, and Disposal Facilities):

[(1) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

[(2) solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore;

[(3) cement kiln dust waste; and

[(4) solid waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical treated wood and wood products for these materials intended end use.

[(5) wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in 40 Code of Federal Regulations Part 261, Subpart D, due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

[(A) the chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

[(B) the waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

[(C) the waste is typically and frequently managed in nonoxidizing environments.

[NOTE: Specific wastes which meet the standard in subparagraphs (A), (B), and (C) of this paragraph (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:

[*(i)* chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

[*(ii)* chrome (blue) shavings generated by the following subcategories of the leather tanning and finish industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

[*(iii)* buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

[*(iv)* sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

[*(v)* wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

[*(vi)* wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

[*(vii)* waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

[*(viii)* wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

[NOTE: Other wastes which may meet the standard in Subparagraphs (A), (B), and (C) of this paragraph may be excluded by filing a petition for rulemaking under 40 Code of Federal Regulations, §260.20(a).]

(b) [(c)] Subchapter E of this chapter (relating to General Facility Standards), Subchapter F of this chapter (relating to Preparedness and Prevention), Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings), Subchapter H of this chapter (relating to Shipping Ticket, Recordkeeping, and Reporting Requirements), Subchapter I of this chapter (relating to Groundwater Monitoring), Subchapter J of this chapter (relating to Closure and Post-Closure), Subchapter K of this chapter (relating to Financial Requirements), Subchapter L of this chapter (relating to Use and Management of Containers), Subchapter M of this chapter (relating to Tanks), Subchapter N of this chapter (relating to Surface Impoundments), Subchapter O of this chapter (relating to Waste Piles), Subchapter P of this chapter (relating to Land Treatment), Subchapter Q of this chapter (relating to Landfills), Subchapter R of this chapter (relating to Incinerators), Subchapter S of this chapter (relating to Thermal Processing), Subchapter T of this chapter (relating to Chemical, Physical, and Biological Processing), Subchapter V of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, and Disposal Facilities), §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §335.42 of this title (relating to Definitions).

(c) [(d)] Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter E of this chapter (relating to General Facility Standards), Subchapter F of this chapter (relating to Preparedness and Prevention), Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings), Subchapter H of this chapter (relating to Shipping Ticket, Recordkeeping, and Reporting Requirements), Subchapter I of this chapter (relating to Groundwater Monitoring), Subchapter J of this chapter (relating to Closure and Post-Closure), Subchapter K of this chapter (relating to Financial Re-

quirements), Subchapter L of this chapter (relating to Use and Management of Containers), Subchapter M of this chapter (relating to Tanks), Subchapter N of this chapter (relating to Surface Impoundments), Subchapter O of this chapter (relating to Waste Piles), Subchapter P of this chapter (relating to Land Treatment), Subchapter Q of this chapter (relating to Landfills), Subchapter R of this chapter (relating to Incinerators), Subchapter S of this chapter (relating to Thermal Processing), Subchapter T of this chapter (relating to Chemical, Physical, and Biological Processing), and Subchapter V of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, and Disposal Facilities) do not apply to:

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

(d) [(e)] Subchapter E of this chapter (relating to General Facility Standards), Subchapter F of this chapter (relating to Preparedness and Prevention), Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings), Subchapter H of this chapter (relating to Shipping Ticket, Recordkeeping, and Reporting Requirements), Subchapter I of this chapter (relating to Groundwater Monitoring), Subchapter J of this chapter (relating to Closure and Post-Closure), Subchapter K of this chapter (relating to Financial Requirements), Subchapter L of this chapter (relating to Use and Management of Containers), Subchapter M of this chapter (relating to Tanks), Subchapter N of this chapter (relating to Surface Impoundments), Subchapter O of this chapter (relating to Waste Piles), Subchapter P of this chapter (relating to Land Treatment), Subchapter Q of this chapter (relating to Landfills), Subchapter R of this chapter (relating to Incinerators), Subchapter S of this chapter (relating to Thermal Processing), Subchapter T of this chapter (relating to Chemical, Physical, and Biological Processing), and Subchapter V of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, and Disposal Facilities) do not apply to:

(1) the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §335.42 of this title (relating to Definitions); [and]

(2) persons with respect to those activities which are carried out to immediately contain a spill of hazardous waste or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of Subchapter F of this chapter (relating to Preparedness and Prevention) and Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings) are applicable to owners and operators of storage, processing, or disposal facilities.

NOTE: **Paragraph (2)** [This paragraph] only applies to activities taken in immediate response to a spill. After the immediate response activities are completed, Subchapter E of this chapter (relating to General Facility Standards), Subchapter F of this chapter (relating to Preparedness and Prevention), Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings), Subchapter H of this chapter (relating to Shipping Ticket, Recordkeeping, and Reporting Requirements), Subchapter I of this chapter (relating to Groundwater Monitoring), Subchapter J of this chapter (relating to Closure and Post-Closure), Subchapter K of this chapter (relating to Financial Requirements), Subchapter L of this chapter (relating to Use and Management of Containers), Subchapter M of this chapter (relating to Tanks), Subchapter N of this chapter (relating to Surface Impoundments), Subchapter O of this chapter (relating to Waste Piles), Subchapter P of this chapter (relating to Land Treatment), Subchapter Q of this chapter (relating to Landfills), Subchapter R of this chapter (relating to Incinerators), Subchapter S of this chapter (relating to Thermal Processing), Subchapter T of this chapter (relating to Chemical, Physical, and Biological Processing), and Subchapter V of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, and Disposal Facilities) apply fully to the management of any spill residue or debris which is a hazardous waste.

(3) Persons adding absorbent material to waste in a container, as defined in §335.42 of this title (relating to Definitions) and persons adding waste to absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container, and §335.118(b) of this title (relating to General Requirements for Ignitable, Reactive, or Incompatible Wastes), §335.242 of this title (relating to Condition of Containers), and §335.243 of this title (relating to Compatibility of Waste with Container) are complied with.

(e) [(f)] Subchapter B of this chapter (relating to Hazardous Industrial Solid Waste Management in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Industrial Solid Waste), Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Solid Waste), Subchapter E of this chapter (relating to General Facility Standards), Subchapter F of this chapter (relating to Preparedness and Prevention), Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings), Subchapter H of this chapter (relating to Shipping Ticket, Recordkeeping, and Reporting Requirements), Subchapter I of this chapter (relating to Groundwater Monitoring), Subchapter J of this chapter (relating to Closure and Post-Closure), Subchapter K of this chapter (relating to Financial Requirements), Subchapter L of this chapter (relating to Use and Management of Containers), Subchapter M of this chapter (relating to Tanks), Subchapter N of this chapter (relating to Surface Impoundments), Subchapter O of this chapter (relating to Waste Piles), Subchapter P of this chapter (relating to Land Treatment), Subchapter Q of this chapter (relating to Landfills), Subchapter R of this chapter (relating to Incinerators), Subchapter S of this chapter (relating to Thermal Processing), and Subchapter T of this chapter (relating to Chemical, Physical, and Biological Processing) do not apply to a person who stores, processes, or disposes of hazardous waste on site and meets the requirements of §335.61(c) of this title (relating to Purpose, Scope, and Applicability) of this chapter.

[(g) Subchapter B of this chapter (relating to Hazardous Industrial Solid Waste Management in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Industrial

Solid Waste), Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Solid Waste), Subchapter E of this chapter (relating to General Facility Standards), Subchapter F of this chapter (relating to Preparedness and Prevention), Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings), Subchapter H of this chapter (relating to Shipping Ticket, Recordkeepinng, and Reporting Requirements), Subchapter I of this chapter (relating to Groundwater Monitoring), Subchapter J of this chapter (relating to Closure and Post-Closure), Subchapter K of this chapter (relating to Financial Requirements), Subchapter L of this chapter (relating to Use and Management of Containers), Subchapter M of this chapter (relating to Tanks), Subchapter N of this chapter (relating to Surface Impoundments), Subchapter O of this chapter (relating to Waste Piles), Subchapter P of this chapter (relating to Land Treatment), Subchapter Q of this chapter (relating to Landfills), Subchapter R of this chapter (relating to Incinerators), Subchapter S of this chapter (relating to Thermal Processing), and Subchapter T of this chapter (relating to Chemical, Physical, and Biological Processing) do not apply to hazardous waste which is:

[(1) being beneficially used or reused or legitimately recycled or reclaimed, or

[(2) being accumulated, stored, or physically, chemically, or biologically processed prior to beneficial use or reuse or legitimate recycling or reclamation, provided that one hazardous waste is not a sludge, a waste listed in 40 Code of Federal Regulations Part 261, Subpart D, or a waste containing one or more hazardous wastes listed in Subpart D.]

(f) [(h)] The following requirements apply to residues of hazardous waste in containers:

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

[(i) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-processing manufacturing unit, is not subjects to regulation under Subchapter B of this chapter (relating to Hazardous Industrial Solid Waste Management in General), Suchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Industrial Solid Waste), Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Solid Waste), Subchapter E of this chapter (relating to General Facility Standards), Subchapter F of this chapter (relating to Preparedness and Prevention), Subchapter G of this chapter (relating to Contingency Plan and Emergency Proceedings), Subchapter H of this chapter (relating to Shipping Ticket, Recordkeeping, and Reporting Requirements), Subchapter I of this chapter (relating to Groundwater Monitoring), Subchapter J of this chapter (relating to Closure and Post-Closure), Subchapter K of this chapter (relating to Financial Requirements), Subchapter L of this chapter (relating to Use and Management of Containers), Subchapter M of this chapter (relating to Tanks), Subchapter N of this chapter (relating to Surface Impoundments), Subchapter O of this chapter (relating to Waste Piles), Subchapter P of this chapter (relating to Land Treatment), Subchapter Q of this chapter (relating to Landfills), Subchapter R of this chapter (relating to Incinerators), Subchapter S of this chapter (relating to Thermal Processing), Subchapter T of this chapter (relating to Chemical, Physical, and Biological Processing), and Subchapter V of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, and Disposal Facilities) until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.]

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824220

M. Reginald Arnold II
General Counsel
Texas Department of Water Resources

Proposed date of adoption: June 28, 1982
For further information, please call (512) 475-7845.

Chapter 341. Consolidated Permits

The following proposals submitted by the Texas Department of Water Resources will be serialized beginning in the June 1, 1982, issue of the *Texas Register*. Proposed date of adoption for the documents is June 28, 1982.

General Provisions
§§341.1-341.6
(proposed repeal)

Procedure for Obtaining Waste Discharge Permits
§§341.21-341.37
(proposed repeal)

Revocation, Suspension, and Amendments of Waste Discharge Permits
§§341.51-341.56
(proposed repeal)

Corrections of Permits
§341.71
(proposed amendments)
§341.72
(proposed repeal)

Renewals
§§341.81-341.84
(proposed repeal)

Emergency Orders
§§341.91, 341.92, 341.94
(proposed amendments)

General Provisions
§341.122, §341.123
(proposed amendments)

Applications and Review
§341.133, §341.134
(proposed amendments)

Amendments, Renewals, Transfers, Revocation, or Suspension
§§341.225, 341.240, 341.241
(proposed amendments)

Additional Conditions for Solid Waste Storage, Processing, or Disposal Permits
§341.341
(proposed amendments)

TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts
Chapter 3. Tax Administration
Subchapter F. Motor Vehicle Sales and Use Tax Division

(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 Comptroller of Public Accounts, LBJ Building, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Comptroller of Public Accounts proposes new §3.89, Sales of House Trailers, to replace §3.89 that is being simultaneously repealed. The purpose of the new section is to reflect the enactment of the Manufactured Housing Sales and Use Act and concurrent exemption of manufactured housing from the Motor Vehicle Sales Tax Act. The section sets out what types of trailers are still subject to motor vehicle sales tax and what types are subject to other taxes.

Bill Allaway, director of revenue estimating, 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 new rule or the repeal.

Mr. Allaway also has determined there is no anticipated economic cost or benefit to persons who are required to comply with the new section or repeal.

Public comment on the new section and repeal should be submitted in writing to Richard Montgomery, Motor Vehicle Division, P.O. Box 13528, Austin, Texas 78711.

34 TAC §3.89

The repeal is proposed under the authority of Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules and regulations relating to the enforcement and administration of the tax code.

§3.89. Sale of House Trailers.

34 TAC §3.89

This new section is proposed under the authority of Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules and regulations relating to the enforcement and administration of the tax code.

§3.89. Sale of House Trailers.

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

(1) House trailer—A vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and to be drawn by a motor vehicle. Included in this definition are "travel trailers," "park models," "bunkhouses," and "mobile offices." This definition does not include "manufactured housing" as defined in the Texas Housing Standards Act, Texas Civil Statutes, Article 5221f, or "portable buildings" and "prefabricated buildings" as defined in §3.306 of this title (relating to Sales of Portable Buildings, Prefabricated Buildings, and Readybuilt Homes).

(2) Travel trailer or park model—A house trailer designed to be used as a dwelling and less than eight body feet in width and 40 body feet in length in the traveling mode, and which is less than 320 square feet when installed or erected on site.

(3) Bunkhouse—A house trailer designed to be used as a sleeping place for a group or crew but not as a single family residence.

(4) Mobile office—A house trailer designed to be used as an office, sales outlet, work place, or for other commerical use.

(5) Its own structure—The house trailer is built on a permanent chassis with wheels, axle(s), and a towing device.

(6) Installation or set-up charges—Include charges for spotting, placing, leveling, blocking, anchoring, and connecting electricity, plumbing, and other utilities, and may include a charge for installing underskirting, awnings, and steps.

(b) Loss of identity.

(1) A house trailer does not lose its identity as a motor vehicle due to:

(A) removing wheels, axle(s), or towing device;

(B) leveling and blocking on a foundation system which may include a concrete base or piers;

(C) anchoring;

(D) adding underskirting, awnings, or steps;

(E) adding electrical, plumbing, or utility connections.

(2) A house trailer that has been permanently affixed to realty so that it cannot reasonably be reconstructed and made operational for highway use loses its identity as a motor vehicle for tax purposes and becomes an improvement to realty. If a house trailer which has lost its identity as a motor vehicle by becoming an improvement to realty has a certificate of Texas title, the title must be surrendered under the provisions of Texas Civil Statutes, Article 6687-1, §37(a).

(c) Application of the motor vehicle sales tax.

(1) A retail sale of a house trailer is a taxable sale of a motor vehicle. Motor vehicle sales tax is due on the total sales price including all accessories attached at the time of sale.

(2) Transportation charges prior to the sale are taxable.

(3) Transportation charges after the sale (transportation from the place of sale to the set-up site) and installation or set-up charges are not subject to tax.

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

Issued in Austin, Texas, on May 24, 1982.

TRD-824284, 824285 — Bob Bullock, Comptroller of Public Accounts

Proposed date of adoption: June 28, 1982
For further information, please call (512) 475-1935.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Disposition of Fees

37 TAC §1.181

The Texas Department of Public Safety proposes new §1.181, concerning refunds. The new rule provides that money paid by mistake of fact or law, or in excess of a required fee or charge will not entitle a party to a refund. Only amounts in excess of $1.00 will be refunded unless the payor requests a refund in writing within 90 calendar days from the date of deposit.

Melvin C. Peeples, chief accountant II, 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. The estimated reduction in cost to state government will be $189,420 for each year during 1983-1987. There is no estimated additional cost to state government and no loss or increase in revenue anticipated. There is no effect on local government.

Mr. Peeples has also determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as result of enforcing the rule as proposed will be to reduce the number of state warrants written by 5,412, which, at $35 each, will save the state $189,420 in costs of writing the warrants. The possible economic cost to individuals who are required to comply with the rule as proposed will be nonrefundable fees of $2,706 for each year from 1983-1987.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773, (512) 465-2000.

The new section is proposed under House Bill 656, 67th Legislature, Article I, page 168, paragraph 4, which provides the Texas Department of Public Safety with the authority to refund money deposited into the State Treasury by the Department of Public Safety, either by mistake of fact or by mistake of law, by warrant issued against the fund in the State Treasury into which such money was deposited and so much for said refunds as is necessary was appropriated.

§1.181. Refunds.

(a) Money paid by mistake of fact or mistake of law or in excess of a required fee or charge which is deposited by the Department of Public Safety into the State Treasury will not entitle a payor to an automatic refund.

(b) Only amounts in excess of $1.00 will be automatically refunded. Amounts of $1.00 or less will be refunded by the department if the payor makes a request for refund in writing within 90 calendar days from the date of deposit.

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

Issued in Austin, Texas, on May 19, 1982.

TRD-824194 — James B. Adams, Director, Texas Department of Public Safety

Proposed date of adoption: June 28, 1982
For further information, please call (512) 465-2000.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

(Editor's note: Because the Texas Department of Human Resources' rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register Division numbers. However, the rules will appear under the agency's correct title and part.)

AFDC

The Texas Department of Human Resources proposes to amend and add rules to its chapter on client responsibilities, income, and case budgeting in the Aid to Families with Dependent Children (AFDC) Program. The Omnibus Budget Reconciliation Act of 1981 required implementation of a statewide monthly reporting and retrospective budgeting system for the AFDC program. Federal regulations do not require implementation of these changes in the food stamp program until October 1983. The department, however, decided to implement these changes for AFDC cases and the corresponding food stamp cases.

The department proposes to determine a client's benefit for the first two months using the existing policy for prospective budgeting which requires the

department to estimate the client's future income and circumstances. For retrospective budgeting, the department is proposing to determine the client's benefit for the third and following payment months on the client's income and circumstances that existed two months before the payment month.

The department is proposing to require that clients submit status reports. The status report includes questions about eligibility factors and benefit amount. To receive benefits, the client must correctly complete the status report and submit it within the dates indicated on the form. Another policy change proposed by the department and required by federal regulations is a clarification of contractual earnings.

David Hawes, Office of Programs Budget and Statistics director, has determined that for the first five-year period the rules will be in effect, there will be fiscal implications as a result of enforcing or administering the rules. The additional cost for fiscal year 1982 is estimated to be $400,627. For 1983, the department expects a reduction in cost, estimated to be $172,985. The additional costs for the next three years are estimated to be $495,701 for 1984; $867,126 for fiscal year 1985; and $908,631 for fiscal year 1986. There is no estimated loss or increase in revenues to the state, and there are no fiscal implications for units of local government.

Mr. Hawes also has determined that for each year of the first five years the rules as proposed are in effect the public benefits will be state compliance with the federally mandated changes. There is no economic cost to individuals required to comply with the rules.

Written comments are invited and may be sent to Susan L. Johnson, administrator, Policy Development Support Division-104, Department of Human Resources 153-B, P. O. Box 2960, Austin, Texas 78769 within 20 days of publication in this *Register.*

Determination of Income Eligibility [Budgeting Process]

326.10.34.020, .022

The following amendments to Rules 326.10.34.020 and .022 are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which authorize the department to administer public assistance programs.

.020. Ineligibility for Earned Income Deductions. An employed **recipient** [client whose needs the department considers to decide AFDC eligibility] does not qualify for the full-time or part-time work-related expense deduction, allowed child care costs, and the $30 and ⅓ disregard if he:

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

(3) Fails without good cause to make a timely report of income changes. Good cause exists:

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

(C) If a client notifies the department of initial receipt of or an increase in earned income on a timely submitted status report.

.022. Seasonal and Contractual Earnings. Seasonal earnings include income earned from types of employment that are available only during certain months of the year and that recur each year. **The department prorates contractual earnings over the period of time covered by the contract. The department does not prorate seasonal income received in a period of less than six months; seasonal income received for more than six months is prorated over a 12-month period.** [The characteristics of this type employment make it necessary to predict future available income from past earnings if the family situation changes, such as earnings or work-related expenses increase/decrease, the employment is no longer available, etc., the income would be recomputed and/or the payment adjusted accordingly.]

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824240 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Proposed date of adoption: June 28, 1982
For further information, please call (512) 441-3355, ext. 2037.

Budgeting AFDC Cases [Overpayments]

326.10.35.009, .010

New Rules 326.10.35.009 and .010 are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which authorize the department to administer public assistance programs.

.009. Budgeting.

(a) The department uses a best estimate of the client's future income and circumstances to determine:

(1) eligibility for all months, and

(2) benefit amount for the first two months benefits are received.

(b) The department bases the amount of benefit received in the third and following payment months on the client's income and circumstances that existed two months before the payment month.

.010. Status Report. To receive benefits, any client who receives a status report form must correctly complete and return the form so that the department receives it within the dates indicated on the form. The client correctly completes the status report form by answering each applicable question and by signing and dating the form. The status report form includes questions about factors affecting eligibility and benefit amount. When the department changes eligibility or benefits because of status report information or processing, the client has the right to receive adequate notice. Notice is adequate when the department mails or gives the notice to the client on the same date the department makes the change. If the client returns the status report form after the due date, the report is not timely and he may lose the right to receive timely benefits. If a client does not report income changes

in a timely manner, he is not eligible for the AFDC earned income deductions.

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824241 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Proposed date of adoption: June 28, 1982
For further information, please call (512) 441-3355, ext. 2037.

Food Stamps

The Texas Department of Human Resources proposes to amend and add rules concerning income and household responsibilities for participation in the Food Stamp Program. These changes are being proposed also in the AFDC Program which is required, by the Omnibus Reconciliation Act of 1981, to implement these policies. The federal regulations for the Food Stamp Program do not require these policy changes until October 1983.

The department is proposing to implement retrospective budgeting for public assistance food stamp cases. The department proposes to base the client's benefit for the first two months using the existing policy for prospective budgeting which requires the department to estimate the client's future income and circumstances. The department proposes to base the client's benefit for the third and following payment months on the client's income and circumstances that existed two months before the payment month.

The department is proposing to require that clients submit status reports. This report includes questions about eligibility factors and benefit amount. To receive benefits, the client must correctly complete the status report and submit it within the dates indicated on the form.

David Hawes, Office of Program's Budget and Statistics director, has determined that for the first five-year period the rules will be in effect, there will not be fiscal implications as a result of enforcing or administering the rules. Since these changes are proposed for public assistance food stamp cases, the fiscal implications affect the AFDC Program.

Mr. Hawes also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit will be having the same policies and procedures for clients who receive both AFDC and food stamp benefits. There is no economic cost to individuals required to comply with the rules.

Written comments are invited and may be sent to Susan L. Johnson, administrator, Policy Development Support Division-104, Department of Human Resources 153-B, P. O. Box 2960, Austin, Texas 78769 within 20 days of publication in this *Register.*

Changes
326.15.26.020

The amendments to Rule 326.15.26.020 are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs.

.020. Time Limit on Reporting Changes. Households must report changes within 10 days of the date the household knows about the change. **Households may report** changes [may be reported] by mail, phone, in person, or through someone acting in the household's behalf. **The requirement to report changes within 10 days of the date the household knows about the change does not apply to PA households required to submit status reports. These households meet the time limit for reporting a change by including the change in their status report.**

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824242 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Proposed date of adoption: June 28, 1982
For further information, please call (512) 441-3355, ext. 2037.

Joint AFDC/Food Stamp Applications
326.15.28.033, .034

New Rules 326.15.28.033 and .034 are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs.

.033. Budgeting.

(a) The department uses a best estimate of the client's future income and circumstances to determine:

(1) eligibility for all months, and

(2) benefit amount for the first two months benefits are received.

(b) The department bases the amount of benefits received in the month retrospective budgeting begins in the corresponding AFDC case and the following payment months, on the client's income and circumstances that existed two months before the payment month.

.034. Status Report. To receive benefits, any client who receives a status report form must correctly complete and return the form so that the department receives it within the dates indicated on the form. The client correctly completes the status report form by answering each applicable question and by signing and dating the form. The status report form includes questions about factors affecting eligibility and benefit amount. When the department changes eligibility or benefits because of status report information or processing, the client has the right to receive adequate notice. Notice is adequate when the department mails or gives the notice to the client on the same date the department makes the change. If the client

returns the status report form after the due date, the report is not timely, and he may lose the right to receive timely benefits. If a client does not report income changes in a timely manner, he is not eligible for the AFDC earned income deductions.

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824243 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Proposed date of adoption: June 28, 1982
For further information, please call (512) 441-3355, ext. 2037.

Definition of Income
326.15.41.037

The following amendments to Rule 326.15.41.037 are proposed the under Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs.

.037. Definition. Household income is all income received from any source excluding only those items specified in department rules. In determining **a non-PA** [the] household's eligibility and basis of issuance, [the] income [considered] is that income already received by the household during the certification period and any anticipated income the household and the caseworker are reasonably certain will be received during the remainder of the certification period. **This policy applies to PA households when a new member joins the household and when determining eligibility for each month of the certification period until retrospective budgeting begins in the corresponding AFDC case.** If the amount to be received, or when it will be received is uncertain, **the department considers** only that portion of the household's income that is certain [will be considered]. Households, **except households filing monthly status reports, must** [are required to] report the income when it is received.

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824244 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Proposed date of adoption: June 28, 1982
For further information, please call (512) 441-3355, ext. 2037.

Adopted Rules

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

The document, as published in the *Register*, must indicate whether the rule is adopted with or without changes to the proposal. The notice must also include paragraphs which: explain the legal justification for the rule; how the rule will function; contain comments received on the proposal; list parties submitting comments for and against the rule; explain why the agency disagreed with suggested changes; and contain the agency's interpretation of the statute under which the rule was adopted.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. The text of the rule, as appropriate, will be published only if final action is taken with alterations to the proposal. The certification information, following the submission, contains the effective date of the final action, the proposal's publication date, and a telephone number to call for further information.

TITLE 16. ECONOMIC REGULATION.

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division Conservation Rules and Regulations

16 TAC §3.31

The Railroad Commission of Texas adopts amendments to §3.31 (051.02.02.031), with changes to the proposed text published in the December 25, 1981, issue of the *Texas Register* (6 TexReg 4801).

The adopted amendments will eliminate needless paperwork and reduce the time needed to process an application for suspension of the allocation formula.

The amendments provide for administrative suspension of the allocation formula for a particular gas field if all of the purchasers from the field have a market for 100% of the deliverability from the field, none of the operators or purchasers from the field object to suspension of the formula, and suspension will not cause a pipeline limitation for any field. Suspension of the allocation formula will void the requirement of filing form G-7, balance the field's production status at zero, and provide for a 100% capacity allowable.

The great majority of those commenting strongly favored adoption of the amendments, but some changes were suggested. Only one respondent, Exxon, was completly opposed to adoption of the amendments. The most frequent criticism was that the protest period prescribed was too short and should be extended to 21 or 30 days. In addition, respondents suggested that the rule more clearly provide for administrative reinstatement of the allocation formula, indicate standards which would be applied in hearings, allow for filing letters of no objection with an application, make clear the effect of suspension, and indicate any production cut-off point for considering administrative suspension.,

Exxon expressed the opinion that seasonal variations in demand, deliverability, and field development will result in alternating suspension and reinstatement, causing more, not less paperwork. Exxon also expressed its concern that royalty owners in the subject field and operators in other fields delivering into the system would not receive notice of impending suspension of the allocation formula.

Upham Oil and Gas Company stated that acreage allocation is a fair method for determining allowables and expressed concern that substandard acreage tracts will share disproportionately in the reserves of the field if the acreage allocation formula is suspended.

Those making comments for the rule were Petroleum Corporation of Texas; Tenneco Oil Exploration and Production; Jake L. Hamon; Gulf Minerals Operating Company; HNG Oil Company; Conoco; Pioneer Production Corporation; Amoco; MCOR Oil and Gas Corporation; Ike Lovelady, Inc.; Lear Petroleum Exploration, Inc.; Wainonco Oil and Gas Company; Mac Coker; Mobil Producing Texas and New Mexico, Inc.; Texas Independent Producers and Royalty Owners Association; Upham Oil and Gas Company; Texaco, U.S.A.; Mesa Petroleum Company; and Natural Gas Pipeline Company of America.

Exxon Company, U.S.A., made comments against the rule.

The commission agrees with many of the comments and has made changes in the rule accordingly; however, the commission disagrees with some of the

comments. Commission experience refutes the idea that seasonal variations will result in alternating suspension and reinstatement. The interests of royalty owners and operators in other field are protected by operators in the subject field, the gatherer, and ratable take. Furthermore, the rule protects against inequity resulting from drilling on substandard acreage by not suspending the field rules and by providing operators the opportunity to protest suspension or request reinstatement of the allocation formula.

The amendments are adopted under the authority of Texas Natural Resources Code, §86.041, which provides the Railroad Commission of Texas with the authority to adopt any rule necessary to effectuate the purposes of the chapter.

§3.31 (051.02.02.031). Gas Well Allowables.

(a)-(g) (No change.)

(h) Suspension and reinstatement of allocation formula.

(1) The director of oil and gas or the director's delegate may administratively suspend the allocation formula for a particular gas field if:

(A) all of the purchasers from that field have a market for 100% of the deliverability from the field,

(B) none of the operators or purchasers from the field object to suspension of the formula, and

(C) suspension will not cause a pipeline limitation for any field.

(2) Suspension of the allocation formula may be initiated by the director of oil and gas, by the director's delegate, by one of the operators in the field, or by one of the purchasers in the field.

(A) The director or the director's delegate will determine which fields are appropriate for suspension utilizing the criteria of paragraph (1) of this subsection. Notice of intent to suspend the allocation formula for a particular field will be sent to each of the operators and purchasers for the field. If the commission receives no protest to suspension within 21 days of the mailing of the notice, the director or the director's delegate may suspend the allocation formula for the field administratively.

(B) If it is anticipated that suspension of the allocation formula will cause a pipeline limitation in any field, purchasers in the field where the allocation formula will be suspended shall notify the director of the Oil and Gas Division within 21 days of the mailing of the notice of intent to suspend the allocation formula.

(C) An operator or purchaser may request that the allocation formula for a field be suspended administratively. If the director or the director's delegate finds that the field meets the criteria of paragraph (1) of this subsection, the commission will issue notice to each of the operators and purchasers for the field. If no protest is received within 21 days of the mailing of the notice, the allocation formula may be suspended.

(3) Reinstatement of the allocation formula may be initiated by the director of oil and gas, by the director's delegate, by one of the operators in the field, or by one of the purchasers in the field.

(A) If the market demand for gas from a field with suspended allocation drops below 100% of deliverability at any time, the operators and/or purchasers for the field shall immediately notify the director of the Oil and Gas Division giving an explanation of the reduction in demand. The director or director's delegate will then make a determination of whether the allocation formula should be reinstated and may reinstate the allocation formula immediately.

(B) If a pipeline limitation occurs after suspension of the allocation formula, purchasers in the field shall immediately notify the director of the Oil and Gas Division. The director or the director's delegate will then make a determination of whether the allocation formula should be reinstated and may reinstate the allocation formula immediately.

(C) An operator or purchaser may request that the allocation formula for a field be reinstated administratively. The commission will issue notice to each of the operators and purchasers within the field. If no protest is received within 21 days of the mailing of the notice, the allocation formula may be reinstated administratively. If the matter is set for hearing, the allocation formula may be administratively reinstated during the interim pending hearing. The notice of request for reinstatement shall specify the date on which allocation again becomes effective.

(4) If the director or the director's delegate denies a request to suspend or reinstate allocation in a particular field, the applicant may request a hearing, after which the examiner will make a recommendation to the commission for final action. In addition to the criteria set forth in paragraph (1) of this subsection, the commission will consider whether or not suspension or reinstatement is necessary to prevent waste or protect correlative rights.

(5) If written statements expressing no objection from each operator and purchaser to whom notice would be given accompany a request for suspension or reinstatement of allocation the director or director's delegate may automatically suspend or reinstate the allocation formula.

(6) Suspension of the allocation formula will eliminate the requirements of filing form G-7, balance the field's production status at zero, and provide for a 100% capacity allowable.

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 authority.

Issued in Austin, Texas, on May 17, 1982.

TRD-824249 Mack Wallace and
Buddy Temple
Commissioners
Railroad Commission of Texas

Effective date: June 11, 1982
Proposal publication date: December 25, 1981
For further information, please call (512) 445-1186.

TITLE 22. EXAMINING BOARDS

Part VII. Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Chapter 141. Definitions and Procedures

22 TAC §§141.16, 141.23, 141.25, 141.32

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids adopts the repeal of §§141.16, 141.23, 141.25, and 141.32, without changes to the proposed notice of repeal published in the April 16, 1982, issue of the *Texas Register* (7 TexReg 1537).

These rules are being repealed as they no longer apply to Texas Civil Statutes, Article 4566.

No comments were received regarding adoption of the repeal.

The repeal is proposed under Senate Bill 604, Acts of the 67th Legislature, §3, which provides the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids with the authority to repeal these rules as they no longer apply to Texas Civil Statutes, Article 4566.

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824221 Wanda F. Stewart
Executive Director
Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Effective date: June 11, 1982
Proposal publication date: April 16, 1982
For further information, please call (512) 475-3429.

22 TAC §§141.17, 141.19, 141.31

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids adopts amendments to §§141.17, 141.19, and 141.31, without changes to the proposed text published in the April 16, 1982, issue of the *Texas Register* (7 TexReg 1537).

The amendments will bring the board's rules and regulations into compliance with Texas Civil Statutes, Article 4566, eliminate unnecessary costs to examiners, and prohibit the sale of hearing aids by mail.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Senate Bill 604, Acts of the 67th Legislature, which provides the Texas Board of Examiners in Fitting and Dispensing of Hearing Aids with the authority to amend its rules to comply with Texas Civil Statutes, Article 4566.

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824222 Wanda F. Stewart
Executive Director
Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Effective date: June 11, 1982
Proposal publication date: April 16, 1982
For further information, please call (512) 475-3429.

22 TAC §141.33, §141.34

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids adopts the repeal of §141.33 and §141.34, without changes to the proposed notice of repeal published in the January 26, 1982, issue of the *Texas Register* (7 TexReg 337).

These rules are being repealed as they no longer apply to Texas Civil Statutes, Article 4566.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Senate Bill 604, Acts of the 67th Legislature, §3, which provides the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids with the authority to repeal these rules as they no longer apply to Texas Civil Statutes, Article 4566.

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824223 Wanda F. Stewart
Executive Director
Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Effective date: June 11, 1982
Proposal publication date: January 26, 1982
For further information, please call (512) 475-3429.

Part XIII. Texas Board of Licensure for Nursing Home Administrators

Chapter 251. Inactive Status

22 TAC §251.1

The Texas Board of Licensure for Nursing Home Administrators adopts the repeal of old §251.1 and adopts new §251.1 without changes to the proposed notice of repeal and proposed text published in the April 6, 1982, issue of the *Texas Register* (7 TexReg 1404).

The repeal of the old rule and adoption of the new rule ensure professionalism of nursing home administration through higher professional standards and better monitoring of nursing home administrators through more thorough documentation.

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

The repeal and new section are adopted under Texas Civil Statutes, Article 4442d, §8, which provides the Texas Board of Licensure for Nursing Home Administrators with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in §1908 of the Social Security Act, (42 United States Code Annotated §1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rules shall be promulgated, altered, or abolished without the approval of a 2/3 majority of the board.

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.

Issued in Austin, Texas, on May 18, 1982.

TRD-824201, 824202 — Karl E. Bishop, Executive Director, Texas Board of Licensure for Nursing Home Administrators

Effective date: June 10, 1982
Proposal publication date: April 6, 1982
For further information, please call (512) 479-0922.

Part XV. Texas State Board of Pharmacy

Chapter 281. General Provisions

22 TAC §281.21, §§281.24-281.26

The Texas State Board of Pharmacy adopts new §281.21 and §§281.24-281.26, without changes to the proposed text published in the March 12, 1982, issue of the *Texas Register* (7 TexReg 991).

Section 281.21 is adopted to facilitate obtaining prescriptions for use in investigations to determine if pharmacies are practicing in compliance with the Texas Pharmacy Act, effective September 1, 1981. Sections 281.24 and 281.25 are adopted to define terms used in rules of the board, for the purpose of providing grounds for discipline for a pharmacist and pharmacy license. Section 281.26 is adopted to define terms used in rules of the board regarding penalties against a pharmacy or pharmacist license.

Section 281.21 will negate any liability imposed by this Act on any authorized board employee or person acting under the supervision of a board employee, or on any state, county, or municipal officer, engaged in the lawful enforcement of this Act. Sections 281.24 and 281.25 provide definitions for terms specified as grounds for discipline for a pharmacist or pharmacy license. Section 281.26 provides definitions for rules governing penalties against a pharmacy or pharmacist license.

One comment was submitted in reference to §281.25 (Grounds for Discipline for a Pharmacy License), requesting consideration by the State Board of Pharmacy to permit practice under supervision by an impaired pharmacist under §281.25(3).

The Texas Pharmaceutical Association (TPA) made the comment in favor of the rule, but with objection raised to §281.25(3).

The State Board of Pharmacy disagrees with TPA's objection because the board, by entry of a board order, may authorize an impaired pharmacist to practice pharmacy. The order could require practice under supervision or under any other conditions the board determined were appropriate.

The new sections are adopted under House Bill 1628, Acts of the 67th Legislature, 1981, §§26, 28, and 38 which provides the Texas State Board of Pharmacy with the following authority: §38 of the Act negates any liability imposed by this Act on any authorized board employee or person acting under the supervision of a board employee, or on any state, county, or officer, engaged in the lawful enforcement of this Act. Sections 281.24 and 281.25, §26(a) of the Act provides the board with the authority to define the terms "unprofessional conduct," "gross immorality," and "fraud, deceit, and misrepresentation" in the rules of the board, for purposes of grounds for discipline for a pharmacist license. Section 28(a) provides the board with the authority to define the terms "cancellation," "diversion of controlled substances," "probation," "reprimand," "restriction," "revocation," and "suspension," in the rules of the board, for purposes of grounds for discipline for a pharmacy license.

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

Issued in Austin, Texas, on June 11, 1982.

TRD-824259 — Fred S. Brinkley, Jr., R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy

Effective date: June 10, 1982
Proposal publication date: March 12, 1982
For further information, please call (512) 478-9827.

Chapter 291. Pharmacies

22 TAC §§291.16-291.18

The State Board of Pharmacy adopts new §§291.16-291.18, with changes to the proposed text published in the March 12, 1982, issue of the *Texas Register* (7 TexReg 992).

These rules are adopted with changes to §291.17(e) regarding the change of the pharmacist-in-charge of a pharmacy. This section was amended to limit the inventory to Schedule II drugs and those drugs the board finds are most abused.

Sections 291.16 and 291.17 will insure that pharmacists are in compliance with the law in requiring a controlled substances inventory. Adoption of §291.18 will establish the "reasonable time" within which the board may obtain an injunction under subsection (k) of §17 of the Texas Pharmacy Act, effective September 1, 1981.

Sections 291.16 and 291.17 establish requirements for the submission of a controlled substance inventory upon licensure or relicensure of a pharmacy, and upon the change of the pharmacist-in-charge. Section 291.18 concerns the time limit for filing a complaint and establishes the "reasonable time" within which the board may obtain an injunction under subsection (k) of §17 of the Act.

The following comments were received regarding adoption of the new sections. The Texas Pharmaceutical Association questioned TSBP's authority to require an inventory to be submitted to TSBP. They suggested that inventory should be submitted only every two years, and also objected to submission of inventory on the change of the pharmacist-in-charge. REVCO objected to taking the inventory and submitting it to TSBP on the change of the pharmacist-in-charge. The Texas Federation of Drug Stores objected to submitting the inventory to TSBP and suggested submitting an affidavit instead of the inventory, objected to taking and submitting the inventory on the changing of the pharmacist-in-charge, and requested additional time for filing the inventory. Medico, Inc. objected to taking and submitting the inventory on the change of the pharmacist-in-charge.

Following are the specific sections to which the commentors objected. Revco objected to §291.17(e). The Texas Pharmaceutical Association raised objections to §291.17. Medico, Inc. of McAllen raised objections on §291.17(b) and (e). The Texas Federation of Drug Stores objected to §219.17.

The State Board of Pharmacy disagrees with the comments because the board has determined that a significant number of pharmacists are not recording a biennial controlled substances inventory as required by law. This rule is adopted in order to insure compliance with the law and to protect the public health and welfare.

The new sections are adopted under House Bill 1628, Acts of the 67th Legislature, 1981, §§17, 18, and 30, which provide the Texas State Board of Pharmacy with the following authority: §30 provides the board with authority to specify by rule the licensing procedures to be followed, including specification of forms for use in applying for a license and fees for filing an application.

Section 30(b)(5) specifically requires the following: "to qualify for a pharmacy license, the applicant must submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board that shall include the following information and be given under oath: . . . (5) any other information the board determines necessary."

Section 26(b)(8) states: "the board shall refuse to issue a pharmacy license for failure to meet the requirements of §29 or §30 of this Act. The board may in its discretion refuse to issue or renew a license or may fine, reprimand, revoke, restrict, cancel, or suspend any license granted by the board, and may probate any license suspension if the board finds that the applicant or licensee has: ....(8) failed to keep and maintain records as required by this Act, the Controlled Substances Act, Dangerous Drug Act, or rules adopted under this Act or the Dangerous Drug Act."

Sections 17 and 18 provide the board with the authority to petition the district court to restrain or enjoin a person from continuing to violate the Act or rules promulgated pursuant to the Act. Section 18(i) provides the board with the authority to determine the "reasonable time" the licensee must be given to comply with this Act or rules adopted by the board as provided by this Act.

§291.16. Definitions. Any term not herein defined shall have the definition set out in §5 of House Bill 1628, Acts of the 67th Legislature, 1981.

§291.17. Controlled Substances Inventory Requirements.

(a) New pharmacies. A new Class A or C pharmacy that has been issued a license by the board and has been registered under the Controlled Substances Act shall forward a copy of its initial controlled substances inventory to the board within 30 days after being registered under the Controlled Substances Act.

(b) Previously licensed pharmacies. A Class A or C pharmacy applying for renewal of a pharmacy license shall attach to the pharmacy license renewal application a copy of its most recent biennial controlled substance inventory required by the Controlled Substances Act.

(c) Transfer of ownership. On the date of closing of any transfer of ownership of a Class A or C pharmacy, an inventory of all controlled substances shall be taken; such inventory shall constitute for the purpose of this rule the closing inventory for the seller and the initial inventory for the buyer. A copy of the inventory bearing the date of the inventory and the signature of the licensee performing the inventory shall be submitted by the buyer to the board within 10 days of the closing date of such transfer of ownership.

(d) Closed pharmacies. The pharmacist-in-charge of a Class A or C pharmacy that ceases to operate as a pharmacy shall forward to the board within 10 days of the cessation of operation a copy of the inventory of controlled substances on hand, the date of closing and a copy of the records used to legally transfer or otherwise dispose of controlled substances possessed by such pharmacy.

(e) Change of pharmacist-in-charge of a pharmacy. On the date of change of the pharmacist-in-charge of a Class A or C pharmacy, an inventory of the following controlled substances shall be taken:

(1) all Schedule II Controlled Substances;

(2) all dosage forms containing Pentazocine (Talwin);

(3) all dosage forms containing Phentermine (Ionamin, Fastin, Adipex-P, etc.);

(4) all dosage forms containing Diazepam (Valium);

(5) all dosage forms containing Phendimetrazine (Bontril, Plegine, Prelu-2, etc.);

(6) all oral liquid dosage forms containing Codeine.

NOTE: Such inventory shall constitute, for the purpose of this rule, the closing inventory of the departing pharmacist-in-charge and the initial inventory of the incoming pharmacist-in-charge. A copy of inventory bearing the date of the inventory and the signature of the departing and incoming pharmacists-in-charge shall be submitted to the board within 10 days from the date of the change of pharmacist-in-charge.

(f) Failure of a licensee to provide the information required under subsections (a)-(e) of this section is grounds for denying an application or renewal application for a pharmacy license or for disciplinary action against a licensee.

§291.18. Time Limit for Filing a Complaint. For the purposes of subsection (i) of §18 of the Act, the board determines that a "reasonable time" to be no less than 10 days from the date of an inspection giving rise to a possible complaint; provided however, in situations presenting imminent danger to the public health and safety, the board may obtain an injunction under subsection (k) of §17 of the Act to restrain or enjoin a person from continuing to violate the Act or rules promulgated pursuant to the Act without waiting the 10-day period set out in this section.

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

Issued in Austin, Texas, on May 21, 1982.

TRD-824260 Fred S. Brinkley, Jr., R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: June 11, 1982
Proposal publication date: March 12, 1982
For further information, please call (512) 478-9827.

Part XIX. Polygraph Examiners Board

The Polygraph Examiners Board adopts amendments to the following sections and repeal of certain sections contained in Chapters 391 and 395, without changes to the proposed text published in the March 12, 1982, issue of the *Texas Register* (7 TexReg 1020).

Chapter 391. Polygraph Examiner Internship
22 TAC §§391.2-391.7
(adopted amendments)

Chapter 395. Code of Operating Procedure for Polygraph Examiners
22 TAC §§395.3, 395 6, 395.10, 395.13, 395.14
(adopted amendments)
22 TAC §§395.7, 395.12, 395.15, 395.17
(adopted repeal)

The amendments and repeal will enable the board to provide an effective program to insure the citizenry of this state competent polygraph service in compliance with the intent of the 1965 state legislature. The rule changes will more clearly define the code of operating procedures for examiners and interns.

No comments were received regarding adoption of the amendments and repeal of the sections.

The amendments and repeal are adopted under Texas Civil Statutes, Article 4413(29cc), which provides the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

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.

Issued in Austin, Texas, on May 19, 1982.

TRD-824208-824210 William J. Taylor
Vice Chairman
Board of Polygraph Examiners

Effective date: June 10, 1982
Proposal publication date: March 12, 1982
For further information, please call (512) 465-2000.

Part XXVII. Board of Tax Assessor Examiners
Chapter 629. Penalties, Sanctions, and Hearings

22 TAC §629.16

The Board of Tax Assessor Examiners adopts new §629.16, without changes to the proposed text published in the November 20, 1981, issue of the *Texas Register* (6 TexReg 4277).

The Board of Tax Assessor Examiners is required to hold hearings for revoking of licenses under Texas Civil Statutes, Article 7244b, §10, of the Registration and Professional Certification Act of the 65th Legislature. The new rule will provide for accurate transcription of proceedings to be available for any subsequent court proceedings.

Harlingen Taxpayers Association submitted a comment opposing the rule because it feels the rule places an undue burden on the taxpayer as the complaining party.

The Administrative Procedure and the Texas Register Act allows the board to pay for its cost or charge one or both parties for court reporting and transcript costs. The rule will be adopted until funds are requested by the board and appropriated by the legislature to allow board funding for costs associated with hearings.

The new section is adopted under the Registration and Professional Certification Act, Texas Civil Statutes, Article 7244b, §7 and §10, which allow the Board of Tax Assessor Examiners to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on May 19, 1982.

TRD-824200 Ben H. Tow
Executive Director
Board of Tax Assessor Examiners

Effective date: June 10, 1982
Proposal publication date: November 20, 1981
For further information, please call (512) 837-9800.

TITLE 25. HEALTH SERVICES
Part VIII. Interagency Council on Early Childhood Intervention
Chapter 621. Early Childhood Intervention Program
Funding of the Early Childhood Intervention Program
25 TAC §§621.21-621.28

The Interagency Council on Early Childhood Intervention adopts new §§621.21-621.28, with changes to the proposed text published in the April 9, 1982, issue of the *Texas Register* (7 TexReg 1456).

The new sections cover funding for the Early Childhood Intervention Program. The justification is the implementation of a program to promote habilitative services and to prevent further disability pertaining to handicapped children who are developmentally delayed. The new sections contain procedures for making funds available to public or private organizations who may be current or potential providers of services for developmentally delayed children.

One comment was made that indirect costs should be an allowable expense. The council agrees and has added a new subparagraph (H) to §621.24(e)(2) because indirect costs generally are allowable expenses.

The Texas Department of Mental Health and Mental Retardation (TDMHMR) made the following comments:

Under §621.22, definitions should be added covering "comprehensive developmental evaluation" and "interdisciplinary team" because these definitions would help to clarify the application process. The council accepts this recommendation for the reasons given.

Under §621.23(a), client eligibility should be changed from "under three years of age and is ineligible for entry into the comprehensive special education" to "under three years of age or ineligible to comprehensive education" because the recommended language would be more consistent with the statutory language. The council accepts this recommendation for the reasons given.

Under §621.23(d)(1), the term "comprehensive evaluation" should be changed to "comprehensive developmental evaluation" because the recommended change would be more consistent with statutory language. The council accepts this recommendation for the reason given.

Under §621.23(d) regarding developmental plans, all intervention services included in the statute should be addressed in the individualized developmental plan (IDP).

Under §621.23(d)(4)(B), the IDP should be developed jointly with the parent in addition to obtaining the parent's written consent.

Under §621.24(b), the listing of paragraphs (1)-(6) should be deleted to facilitate format revisions on an ongoing basis. However, subparagraphs (A)-(D) under paragraph (6) of §621.24(b) should remain in the rule. The council accepts this recommendation for the reason given and has deleted paragraphs (1)-(6) of §621.24(b) and has renumbered subparagraphs (A)-(D) of paragraph (6) of §621.24(b) as paragraphs (2)-(5).

Under §621.29, the title "Appeals" should be changed to "Termination of Contract" to avoid confusion with the grant award process. The council accepts this recommendation for the reason given.

None of the changes made by the council to the new sections are major or substantial changes.

TDMHMR was the only group or association commenting on the adoption of the new sections.

The council disagrees with the fourth and fifth comments. Regarding TDMHMR's comment on the IDP in §621.23(d)(4)(B), the council made no changes because the section already includes parent participation. Regarding TDMHMR's comment on §621.23(d) concerning the inclusion of intervention services in the IDP, the council has rejected this request because it would involve a major change to the rules at this time.

The new sections are adopted under Texas Civil Statutes, Article 4413(43e), §3, which authorizes the council to establish procedures, guidelines, and recommendations to implement the Early Childhood Intervention Program.

§621.21. Purpose.

(a) Senate Bill 630 established a statewide system of early childhood intervention services for developmentally delayed children. The legislature enacted the bill with an effective date of September 1, 1981.

(b) Funds are available to public or private service organizations who may be current or potential providers of services for developmentally delayed children.

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

Agency—TEA, TDMHMR, or TDH.

Comprehensive Developmental Evaluation—An integrated report which summarizes current assessment (performed within the past three months) and pertinent background information obtained through medical, social, and educational/developmental assessments and data gathering. Medical information includes medical history, history of medication, current medical status, relevant nutritional information, and other screenings as deemed necessary by the interdisciplinary team. Social information addresses the description of the child's living environment, primary caretaker, other family members in the home, and expressed family attitudes toward the child. Educational/developmental data include results of formal and informal screening, assessment and observation instruments, and parent reports. The evaluation report should:

(A) describe the child's level of functioning in the areas of cognitive, gross and fine motor, language or speech, social or emotional, and self help skills, and

(B) summarize the child's strengths and needs. Determination of the child's eligibility for services and recommendation for the individualized developmental plan should be based on data gathered from the comprehensive developmental evaluation.

Developmentally delayed child is either—

(A) a child with a significant delay, beyond acceptable variations in normal development, in one or more of the following areas:

(i) cognitive;

(ii) gross or fine motor;

(iii) language or speech;

(iv) social or emotional;

(v) self-help skills; or

(B) a child who has an organic defect or condition that is very likely to result in delayed development in subparagraph (A) of this definition.

ECI—Early Childhood Intervention Program.

ECI staff—Staff of the Early Childhood Intervention Program.

IDP—Individualized Developmental Plan.

Interagency Council—Early Childhood Intervention Council.

Interdisciplinary Team—A group of two or more appropriate professional personnel from different disciplines (education/developmental, health, and social information) and the child's parent or guardian who meet face-to-face to evaluate, determine eligibility, and develop the child's individualized developmental plan. Team members share all information and recommendations as a basis for developing as a team, a single integrated individual developmental plan to meet the child's identified needs.

TDH or Department—Texas Department of Health.

TDHR—Texas Department of Human Resources.

TDMHMR—Texas Department of Mental Health/Mental Retardation.

TEA—Texas Education Agency.

§621.23. General Requirements.

(a) Client eligibility. A developmentally delayed child shall be eligible for ECI services if the child is under three years of age or ineligible to comprehensive special education program for handicapped children under Texas Education Code, §16.104.

(b) Program eligibility.

(1) In granting ECI funds, priority will be given for new services or for the expansion of existing services.

(2) The means by which maintenance of effort of present programming will be assured must be stated.

(c) Funding criteria. The Early Childhood Intervention Council shall use the following criteria when considering the funding of grant requests:

(1) the extent to which the program will meet identified needs;

(2) the cost of initiating a program;

(3) the availability of other funding sources including parent payment; and

(4) the assurance of quality services. The application shall be judged on a competitive basis.

(d) Developmental plans.

(1) A written individualized developmental plan (IDP) shall be developed for each child based on a comprehensive developmental evaluation performed by an interdisciplinary team with parent or guardian participation and periodic review and reevaluation.

(2) The IDP shall be jointly formulated by the program provider and parents or guardians of the developmentally delayed child. It includes specific short and long-term goals, objectives, and services needed for the development of the child. No IDP shall be implemented without prior written consent from the parents and/or guardians.

(3) The IDP shall serve as a method to be used for evaluating the quality and performance of the program provider in regard to the child's progress and services provided.

(4) Programs which receive ECI funds shall have an IDP for each child, which shall be completed within 30 days of admission and which meets the following criteria:

(A) shall be in writing;

(B) shall be developed jointly by program staff and with the written consent of the child's parents or guardians;

(C) shall be based on a comprehensive evaluation performed by an interdisciplinary team;

(D) shall identify each service to be delivered and the person who will provide the service; and

(E) shall be periodically reviewed, at least quarterly, based on the needs of the child.

(e) Services. The program shall provide services to meet the unique needs of each child as indicated by the child's individualized developmental plan. The provider shall demonstrate a capability to obtain or provide an array of services that must include:

(1) training, counseling, case management services, and home visits for the parents (guardians) of each child;

(2) individualized instruction or treatment in the following areas of development:

(A) cognitive;

(B) gross and fine motor;
(C) language or speech;
(D) social or emotional; and
(E) self-help skills.

(3) related services as prescribed:
(A) occupational therapy;
(B) physical therapy;
(C) speech and language therapy;
(D) adaptive equipment;
(E) transportation;
(F) other therapies.

(f) Instructional or treatment options. Instructional or treatment options for each child shall take into consideration the medical, social, educational, and developmental needs as stated in the individualized developmental plan.

(g) Inservice education. Each provider shall assess needs and develop and implement a plan for the inservice training of personnel.

(h) Frequency and duration of service. The frequency and duration of service for each child shall be based on need as indicated in the individualized developmental plan.

(i) Staff-child ratios. Staff-child ratios must take into consideration the degree of each child's developmental level of handicapping condition, the setting in which the child will be served, and the nature of the service to be provided. These aspects of service must be specifically addressed in the individualized developmental plan.

(j) Staff composition and qualifications. Each program shall have staff who have qualifications in terms of education and experience commensurate with the duties that they will be assigned in the program.

(k) Other program aspects. There are several other program aspects designed to ensure the provision of quality services.

(1) Screening, assessment, and referral. Each provider shall have written procedures which describe screening, assessment, and referral procedures. Screening and assessment instruments shall be specified.

(2) Parental involvement. Each provider shall have a written plan which provides for parental participation in various aspects of the program.

(3) Public awareness. Each provider shall maintain written information regarding its public awareness activities.

(l) Fees for intervention services. Fees may be charged for intervention services based on the parent's or guardian's ability to pay. If a fee is charged, a separate charge must be made for each type of service provided. Guidelines for determining parent's ability to pay shall be developed by the program provider and included in the application.

(m) Continuation funding. Programs may be eligible for second-year funding. This will be contingent upon the program's accomplishments and progress toward stated goals and objectives, and upon the availability of ECI funds. The program provider shall complete and submit an application for the second year.

§621.24. Applicant Requirements.

(a) Proposal format. The council adopts by reference the document entitled *"Proposal Format,"* published by the council. Copies are available upon request from the chairperson, Interagency Council on Early Childhood Intervention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(b) Format content.

(1) The format consists of the forms and related material that the applicant shall complete to apply to perform program services. The ECI grant review instrument is also included for the applicant's information.

(2) The format included in the application kit shall be used.

(3) Applications not using the approved format will not be considered.

(4) Incomplete applications will not be considered.

(5) Applications received after the grant application closing date will not be considered.

(c) Total program costs. The total program cost is defined as the sum of the total ECI share plus the total applicant share.

(d) Applicant share.

(1) Maximum funding through ECI Program is as follows:

First Year Funding	ECI	Program Provider
New programs in unserved areas	100%	—
New and expanded programs	90%	10%
Second Year Funding; (applicant must reapply)		
All programs	80%	20%

Note: These percentages are not intended to apply on a line item basis, but rather on the basis of the total cost of the program.

(2) Matching or cost sharing may include the following:
(A) federal, state, and local funds;
(B) private contributions;
(C) sliding fee charges based on eligibility; and
(D) in-kind contributions (if properly valued, see subsection (e) of this section, "Allowable Costs," and subsection (f) of this subsection, "Unallowable Costs").

(3) Contributions will be accepted as applicant match when such contributions are:
(A) identifiable from the program provider's records;
(B) necessary and reasonable for proper and efficient accomplishment of program objectives; and
(C) types of costs which are allowable (e.g. new services or the expansion of existing services).

(4) If the applicant share is contributed in whole or in part by another agency, there shall be an attachment to the application which details the source and amount of such contribution and which acknowledges that such contributor agrees to be bound by all assurances of the grant.

(e) Allowable costs.

(1) The following is intended to be a summary of the most frequently requested costs, and should not be construed to be complete. (Exclusion of a particular item from the allowable list does not necessarily mean it is unallowable. All costs to be reimbursed by ECI or applicant share must go exclusively for the conduct of the program.)

(A) Personnel—Salaries and wages and fringe benefits.

(B) Consultants—Only for essential services which cannot be met by grant personnel or other applicant personnel.

(C) Travel and/or transportation—Staff travel necessary for the conduct of the program. Children's transportation on public or private systems when such transportation is necessary for their participation in the program.

(D) Consumable supplies—Allowable when necessary for the execution of the grant. This includes educational supplies with a useful life of less than one year.

(2) The following expenses are the most common types of "other expenses:"

(A) Audit fees—allowable applicant share expenditure only.

(B) Communications—such as telephone and postage charges.

(C) Depreciation—allowable whenever real or personal property are used for the benefit of the grant. May only count toward the applicant's share; is not chargeable to the ECI share.

(D) Insurance.

(E) Rental of space.

(F) Maintenance and operation including utilities—prorated to the actual amount of space used by the program.

(G) Taxes—allowable only for those taxes which the program provider is required to pay as they relate to employment services, travel, renting, or purchasing for the program.

(f) Unallowable costs.

(1) The following are the most common types of costs which are requested but unallowable:

(A) construction, renovation, or alteration of buildings.

(B) purchase of land or buildings.

(C) program equipment.

(D) vehicles.

(2) Items excluded from the list in paragraph (1) of this subsection are not necessarily allowable.

§621.25. Financial Management and Record Keeping Requirements.

(a) Financial management system.

(1) Upon award of early childhood intervention grant funds, the program provider will be expected to implement a financial management system which will provide for the following:

(A) Accurate, current, and complete disclosure of the financial status of each program.

(B) Records which identify the source and application of funds for program provider supported activity.

(C) Effective control over and accountability for all funds, property, and other assets. Program provider shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(D) Comparisons of actual amounts expended with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the ECI Program.

(2) Accounting for applicant funds should be in accordance with generally accepted accounting principles consistently applied. All supporting documents of grant expenditures shall be recorded in sufficient detail to show the exact nature and cost of the expenditures for each account. Records must be maintained in such a manner to permit preparation of required financial reports and to indicate that grant funds are used for the purposes for which the grant was made. Any funds not expended in accordance with the contract entered in between the program provider and TDH should be returned to TDH.

(3) All records pertaining to the financial management of the grant shall be maintained for a period of five years (or until all audit questions are resolved) from the date of submission of the annual or final report.

(b) Reports. In addition, all program providers will be expected to submit the following reports to the Early Childhood Intervention Program office:

(1) quarterly and final program performance reports; and

(2) quarterly and final expenditure reports.

(c) On-site reviews.

(1) Program review.

(A) TEA, TDMH/MR, or TDH will conduct prescheduled on-site visits of programs in order to determine progress and accomplishments of stated goals and objectives.

(B) In addition, program provider records will be reviewed to determine compliance with assurance statements. A check of the program provider's individual development plan system will be made according to program guidelines.

(2) Financial review. A financial review will be conducted to ascertain that program costs are:

(A) allowable as budgeted;

(B) properly documented; and

(C) in compliance with matching requirements.

(3) Record availability. All records shall be made available to TEA, TDMH/MR, and TDH agency monitoring teams.

(d) Audit requirements. Early Childhood Intervention Programs shall have a financial audit performed by an independent certified public accountant or other independent public accountant licensed by the Texas State Board of Public Accountancy for those fiscal years that include any portion of an early childhood intervention grant period. Those ECI Programs which are audited by the state auditor or an equivalent state agency auditor may substitute that audit to fulfill this audit requirement. A copy of this audit must be sent to the ECI office.

§621.26. Grant Application Submission and Review.

(a) Submission of application.

(1) Applications are deemed received when logged by the ECI office. The ECI staff will review each application to ensure that all parts of the proposal are included.

(2) Applications which are late or are incomplete will not be accepted and will be returned to the applicant with an explanation. Otherwise, all applications will be considered for funding.

(3) A completed original and eight copies of the grant application shall be submitted to Early Childhood Intervention Program, 1100 West 49th Street, Austin, Texas 78756.

(4) The grant application shall be typed.

(5) The grant application shall follow the format provided as the "grant application." If you should need additional space for continuation of an item, continue onto a reproduction of the original page.

(6) Assemble each copy of your application into proper order, making sure that all pages are appropriately numbered. All copies of the application should be sent as one package.

(b) TEA and TDMH/MR rules. Applicants seeking funding for programs under the auspices of TEA and TDMH/MR must do so in accordance with the rules of TEA and TDMH/MR, in addition to the rules of the council.

(c) ECI review team. The ECI review team is formed by representatives of TEA, TDMH/MR, TDHR, and TDH. The ECI review team will be responsible for making recommendations to the council for approval or denial.

§621.27. Grant Award. Following the review process, the council will meet to approve or deny grants. Final versions of the programs will be negotiated where necessary. Each applicant will be notified in writing of the council's decision. The reason for a denial will be communicated in writing to the applicant.

§621.28. Contract.

(a) An approved provider will enter into a contract with the Department of Health prior to being allocated funds.

(b) The contract shall contain:

(1) program standards as required under §19 of Article 1 of Senate Bill 630;

(2) the agency guidelines of TEA or TDMH/MR;

(3) the minimum and maximum number of eligible developmentally delayed children to be serviced; and

(4) agency program monitoring requirements and department fiscal requirements on accounting for funds and for recovering funds as required by Texas law and department policies.

(c) The contract shall be concurrent with the current fiscal year.

§621.29. Termination of Contract.

(a) If the agency determines that a program is not meeting a requirement of the contract, the agency shall notify the department to withhold further funding.

(b) A provider shall have the right to appeal to the council the decision of the agency to withhold further funding in accordance with the contested case provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

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

Issued in Austin, Texas, on May 19, 1982.

TRD-824229 Clift Price, M.D., F.A.A.P.
Chairman
Interagency Council on Early Childhood Intervention

Effective date: June 13, 1982
Proposal publication date: April 9, 1982
For further information, please call (512) 458-7236.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Parks and Wildlife Department

Chapter 57. Fisheries

Final Destination

31 TAC §57.391

The Parks and Wildlife Department adopts new §57.391, concerning the definition of final destination for fish, without changes to the proposed text published in the March 9, 1982, issue of the *Texas Register* (7 TexReg 952).

A definition of final destination is not included in House Bill 1000, §6, 67th Legislature, (codified as Parks and Wildlife Code, §66.216). This section provides an administrative definition to allow for proper enforcement of the statute while preventing the waste of finfish caught in the coastal waters during transportation to the fisherman's permanent residence. Enforcement of this rule will allow coastal fisherman a method of preservation to protect their catch from spoilage while transporting the fish to their permanent residence to insure a high quality product for consumption.

No comments were received regarding adoption of the new rule.

This section is adopted under the Parks and Wildlife Code, Chapter 66, which authorizes the Parks and Wildlife Commission to provide an administrative definition to inform the public of its meaning and allow for its proper enforcement.

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

Issued in Austin, Texas, on May 20, 1982.

TRD-824207 Maurine Ray
Administrative Assistant
Parks and Wildlife Department

Effective date: June 10, 1982
Proposal publication date: March 9, 1982
For further information, please call (512) 479-4806.

TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts
Chapter 3. Tax Administration
Subchapter S. Motor Vehicle Tax Division—Interstate Motor Carrier Sales and Use Tax

34 TAC §§3.441-3.448

The Comptroller of Public Accounts adopts new §§3.441-3.448, concerning the interstate motor carrier sales and use tax, with changes to the proposed text published in the March 23, 1982, issue of the *Texas Register* (7 TexReg 1238).

The purpose of the new sections is to implement the Interstate Motor Carrier Sales and Use Tax Act enacted during the legislative session, Texas Tax Code, Chapter 157. The rules explain what information must be maintained by interstate motor carriers doing business in this state, what constitutes doing business in the state, and how the tax liability is to be computed. The changes from the proposed rule include rewording §3.442(c)(6) and (e) for clarity, and rewording §3.443(a)(1) to conform to the statutory definition.

No comments were received regarding adoption of the new sections.

These new sections are adopted under the authority of Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules and regulations relating to the enforcement and administration of the tax code.

§3.441. Records Required.

(a) An interstate motor carrier responsible for paying the taxes imposed under Texas Tax Code, Chapter 157, is responsible for keeping complete and accurate records which show the total mileage operated in Texas and the total mileage operated everywhere. These mileage records must contain the following information for each trip of each interstate motor vehicle and each interstate commercial motor vehicle:

(1) starting and ending date of the trip;

(2) trip origin and destination;

(3) route of travel;

(4) total trip miles;

(5) mileage by state;

(6) unit number or vehicle identification number;

(7) vehicle fleet number, if applicable; and

(8) carrier's name.

(b) If, during any reporting period, the motor carrier elects to pay the interstate motor carrier tax on individual trailers or semitrailers under Texas Tax Code, §157.102(c)(2), the motor carrier must maintain records of each trip of each trailer and semitrailer purchased during the reporting period. These records must be maintained separately from the motor carrier's records for interstate motor vehicles and interstate commercial motor vehicles and they must show:

(1) starting and ending date of the trip;

(2) trip origin and destination;

(3) the route of travel;

(4) the unit number or vehicle identification number of the truck-tractor;

(5) the unit number or vehicle identification number of the trailer or semitrailer;

(6) vehicle fleet number;

(7) carrier's name;

(8) the retirement date of any trailer or semitrailer that is retired; and

(9) if the trailer or semitrailer is temporarily removed from service, the date removed from and the date returned to service.

(c) An interstate motor carrier must also keep accurate records that show:

(1) sales price of each vehicle, including any trade-in;

(2) lease price of each vehicle;

(3) all trip-leases entered into;

(4) all vehicles leased with an operator; and

(5) any taxes paid for which credit has been claimed.

(d) The records required to be kept for this tax must be retained for a period of at least four years.

§3.442. Doing Business.

(a) For the purposes of this section and Texas Tax Code, §157.101, a motor carrier is doing business in the state if it engages in or transacts some part of its ordinary business in the state. Either the activities of the entity or the manner in which the motor vehicle is used in the state may result in liability for the interstate motor carrier tax.

(b) A motor carrier that has sufficient contacts, or conducts sufficient activities in the state so that it is doing business, will be liable for the interstate motor carrier tax. If the carrier does not conduct sufficient activities or have sufficient contacts with the state to be considered to be doing business, it will not be liable for the interstate motor carrier tax on interstate motor vehicles which operate upon the highways of Texas.

(c) The following is a nonexhaustive list of activities which constitute doing business in Texas and which would subject a person, firm, corporation, or other entity to liability for the interstate motor carrier tax imposed by Texas Tax Code, §157.101:

(1) Except as provided in subsection (e) of this section, providing any service in Texas, whether or not the persons performing the service are residents of the state.

(2) Assembling, erecting, processing, manufacturing, selling, or storing property in Texas.

(3) Transporting persons or property from one point in Texas to another point in Texas, even though the transporting vehicle's ultimate origination or destination may be outside Texas.

(4) Owning, leasing, or maintaining facilities, and/or maintaining employees in Texas:

(A) for storage, delivery, or shipment of goods;

(B) for service, maintenance, repair, etc. of vehicles; or

(C) for coordinating and directing the transportation of persons or property, at least part of

which takes place within Texas.

(5) Having a representative, agent, salesman, canvasser, or solicitor in the state under the authority of the entity for the purpose of selling or soliciting goods or services.

(6) Delivering one's own goods to locations in Texas with one's own vehicles or employees.

(d) A domestic corporation or a foreign corporation which has a certificate of authority qualified to transact business in Texas is considered to be doing business in Texas for the purposes of this section.

(e) A person, firm, corporation, or other entity not otherwise doing business under this section will not be liable for the interstate motor carrier tax on vehicles which enter Texas from outside the state solely to deliver and/or pick up persons or property as a third party carrier when the persons or property is being transported in interstate or foreign commerce.

§3.443. *Imposition of Tax after Effective Date.*

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

(1) Purchase—Includes a lease of a motor vehicle without a driver for a period exceeding 180 days.

(2) Interstate motor vehicle—

(A) A motor vehicle which:

(i) could be registered on an apportioned basis if it were registered in a state or province that is a member of the International Registration Plan;

(ii) is operated in two or more states or provinces; and

(iii) either:

(I) has a gross vehicle weight in excess of 26,000 pounds,

(II) has three or more axles, or

(III) is used in combination with a trailer or semitrailer, when the gross weight of the combination exceeds 26,000 pounds.

(B) Charter buses are interstate motor vehicles if they meet the requirements specified in subparagraphs (A)*(i)* and *(ii)* of this paragraph.

(C) Any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also an interstate motor vehicle.

(3) Trailer—A vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(4) Semitrailer—A vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

(5) Truck-tractor—A motor vehicle which is designed or used primarily for drawing other vehicles and which is constructed so as to be able to carry a part of the weight of the vehicle and the load being drawn.

(b) Effective date-proportioned tax. Any interstate motor vehicle, trailer, or semitrailer which is operated by a motor carrier who is a resident, domiciled, or doing business in Texas and which was purchased in Texas or which was first brought into Texas before January 1, 1982, will not be subject to the interstate motor carrier tax. The burden of proving that an interstate motor vehicle, trailer, or semitrailer was used in Texas before January 1, 1982, is upon the motor carrier making the claim. A vehicle first brought into Texas includes those entering Texas for the first time ever, and those entering Texas for the first time:

(1) after a change in ownership or lease contract, or

(2) while they are operated by a different motor carrier.

(c) Effective date-contracts. The tax imposed by Texas Tax Code, §157.102(d) and (e) will be due only upon those contracts entered into after December 31, 1981.

§3.444. *Computation of the Proportioned Tax—Interstate Motor Vehicles.*

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

(1) Trip-lease agreement—A lease of a vehicle with a driver on a single trip basis.

(2) Preceding year—The period of 12 consecutive calendar months immediately prior to September 1.

(3) Interstate motor vehicle—

(A) A motor vehicle which:

(i) could be registered on an apportioned basis if it were registered in a state or province that is a member of the International Registration Plan;

(ii) is operated in two or more states or provinces; and

(iii) either:

(I) has a gross vehicle weight in excess of 26,000 pounds,

(II) has three or more axles, or

(III) is used in combination with a trailer or semitrailer, when the gross weight of the combination exceeds 26,000 pounds.

(B) Charter buses are interstate motor vehicles if they meet the requirements specified in subparagraphs (A)*(i)* and *(ii)*, of this paragraph.

(C) Any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an interstate motor vehicle.

(4) Truck-tractor—A motor vehicle which is designed or used primarily for drawing other vehicles and which is constructed so as to be able to carry a part of the weight of the vehicle and the load being drawn.

(5) Interstate truck-tractor—A truck-tractor which is operated in two or more states or provinces.

(6) Interstate commercial motor vehicle—A motor vehicle other than a motorcycle or passenger car which:

(A) is designed or used primarily for the transportation of persons or property;

(B) operates in two or more states or provinces; and

(C) has fuel supply tanks of 42 gallons or more; or

(D) any motor vehicle which is operated in two or more states and which has actually been registered on

an apportioned basis under the International Registration Plan is also considered to be an interstate motor vehicle.

(7) Owner-operator—A motor carrier who leases, rents, or otherwise provides a motor vehicle for the use of others and who, in the regular course of business, also provides, procures, or arranges for, directly, indirectly, or by course of dealing, a driver or operator for the vehicle.

(8) Total miles—The mileage of all interstate truck-tractors and interstate commercial motor vehicles which were operated in Texas and which were:

(A) owned by the motor carrier;

(B) leased to the carrier without a driver and for a time period exceeding 180 days;

(C) leased to the carrier by an owner-operator; or

(D) leased by the carrier to another pursuant to a trip-lease agreement.

(9) Purchase—Includes a lease of a motor vehicle without a driver for a period exceeding 180 days.

(b) Computation of the proportioned tax.

(1) Divide the carrier's total miles operated in Texas during the preceding year by the carrier's total miles operated everywhere during the preceding year.

(2) Multiply the percentage calculated in paragraph (1) of this subsection by 4.0% of the purchase price of each interstate motor vehicle purchased in Texas or first brought into Texas during the reporting period. A vehicle first brought into Texas includes those entering Texas for the first time ever, and those entering Texas for the first time:

(A) after a change in ownership or lease contract, or

(B) while they are operated by a different motor carrier.

(c) Credit for tax paid to another state. If the motor carrier has previously paid any legally imposed sales or use tax to another state upon a motor vehicle subject to tax under subsection (b) of this section, a deduction or credit may be taken in accordance with Texas Tax Code, §157.102(a)(3). In computing the proportioned credit allowed, credit may not be taken for sales or use tax previously paid to Texas or another state in excess of 4.0% of the purchase price of any vehicle.

§3.445. Computation of the Proportioned Tax—Trailers and Semitrailers.

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

(1) Trip-lease agreement—A lease of a vehicle with a driver on a single trip basis.

(2) Preceding year—The period of 12 consecutive calendar months immediately prior to September 1.

(3) Interstate motor vehicle—

(A) A motor vehicle which:

(i) could be registered on an apportioned basis if it were registered in a state or province that is a member of the International Registration Plan;

(ii) is operated in two or more states or provinces; and

(iii) either:

(I) has a gross vehicle weight in excess of 26,000 pounds;

(II) has three or more axles; or

(III) is used in combination with a trailer or semitrailer, when the gross weight of the combination exceeds 26,000 pounds.

(B) Charter buses are "interstate motor vehicles" if they meet the requirements specified in subparagraphs (A)*(i)* and *(ii)* of this paragraph.

(C) Any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an interstate motor vehicle.

(4) Truck-tractor—A motor vehicle which is designed or used primarily for drawing other vehicles and which is constructed so as to be able to carry a part of the weight of the vehicle and the load being drawn.

(5) Interstate truck-tractor—A truck-tractor which is operated in two or more states or provinces.

(6) Interstate commercial motor vehicle—A motor vehicle other than a motorcycle or passenger car which:

(A) is designed or used primarily for the transportation of persons or property;

(B) operates in two or more states or provinces; and

(C) has fuel supply tanks of 42 gallons or more; or

(D) any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an interstate motor vehicle.

(7) Owner-operator—A motor carrier who leases, rents, or otherwise provides a motor vehicle for the use of others and who, in the regular course of business, also provides, procures, or arranges for, directly, indirectly, or by course of dealing, a driver or operator for the vehicle.

(8) Total miles—The mileage of all interstate truck-tractors and interstate commercial motor vehicles which were operated in Texas and which were:

(A) owned by the motor carrier;

(B) leased to the carrier without a driver and for a time period exceeding 180 days;

(C) leased to the carrier by an owner-operator; or

(D) leased by the carrier to another pursuant to a trip-lease agreement.

(9) Purchase—includes a lease of a motor vehicle without a driver for a time period exceeding 180 days.

(10) Truck-tractor ratio—The total number of truck-tractors operated in Texas during the reporting period divided by the total number of truck-tractors operated everywhere during the same reporting period.

(b) Computation of the proportioned tax—Method 1.

(1) Divide the carrier's total miles operated in Texas during the preceding year by the carrier's total miles operated everywhere during the preceding year.

(2) Multiply the percentage calculated in paragraph (1) of this subsection by 4.0% of the purchase

price of all trailers and semitrailers purchased during the reporting period.

(3) Multiply the amount calculated in paragraph (2) of this subsection by the truck-tractor ratio.

(c) Computation of the proportioned tax—Method 2.

(1) If a motor carrier can prove that the tax liability for the number of trailers and semitrailers which were actually purchased in Texas or first brought into Texas during the reporting period is less than the amount computed using the method described in subsection (b) of this section, the motor carrier may use the following method:

(A) Divide the carrier's total miles operated in Texas during the preceding year by the carrier's miles operated everywhere during the preceding year.

(B) Multiply the percentage calculated in subparagraph (A) of this paragraph by 4.0% of the purchase price of each trailer and semitrailer that was purchased in Texas or first brought into Texas during the reporting period.

(2) If the motor carrier elects to use this method, it will be held responsible for maintaining records which are separate from its records for interstate motor vehicles and interstate commercial motor vehicles and which detail the movements of all trailers and semitrailers purchased during the reporting period.

(3) Tax must be paid on any trailers or semitrailers which are first brought into Texas during a subsequent reporting period.

(4) A vehicle first brought into Texas includes those entering Texas for the first time ever, and those entering Texas for the first time:

(A) after a change in ownership or lease contract, or

(B) while they are operated by a different motor carrier.

(d) Credit for tax paid to another state. If the motor carrier has previously paid any legally imposed sales or use tax to another state upon a vehicle subject to tax under subsection (b) or (c) of this section, a deduction or credit may be taken in accordance with Texas Tax Code, §157.102(a)(3), or §157.102(c)(1)(D). In computing the proportioned credit allowed, credit may not be taken for sales or use tax previously paid to Texas or another state in excess of 4.0% of the purchase price of any vehicle.

§3.446. Lease Price, Sales Price, and Purchase Price.

(a) Lease price.

(1) Lease price—The total amount of lease payments specified in the lease contract without any deduction for:

(A) lessor's markup;

(B) charges for depreciation; or

(C) charges for accessories attached to the vehicle and included in the same lease contract.

(2) Lease price does not include any separately stated charges for:

(A) fuel;

(B) maintenance;

(C) insurance; or

(D) pass-through charges such as federal highway use tax, state sales or use taxes, and title and registration fees.

(3) For purposes of computing the amount of interstate motor carrier tax that is due, the lease price may not be less than the lessor's capitalized cost of the vehicle.

(b) Sales price.

(1) Sales price—The total consideration paid or to be paid for a motor vehicle and all accessories attached at the time of sale, without any deduction for any of the following:

(A) the cost of the motor vehicle sold;

(B) the cost of material used, labor or service costs, interest paid, losses, or any other expenses;

(C) the cost of transportation of the motor vehicle prior to its sale or purchase; and

(D) the amount of any manufacturers' or importers' excise tax imposed upon the motor vehicle by the United States.

(2) Sales price does not include any of the following:

(A) cash discounts allowed on sale;

(B) sales price of a motor vehicle returned by a customer when the full sales price is refunded either in cash or credit;

(C) the amount charged for labor or services rendered in installing, applying, remodeling, or repairing the motor vehicle sold;

(D) the amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of motor vehicles under conditional sale contracts or other contracts providing for deferred payments of the purchase price;

(E) the value of a motor vehicle taken by a seller in trade as all or a part of the consideration for sale of another motor vehicle; or

(F) charges for transportation of the motor vehicle after sale.

(c) Purchase price. When computing the amount of interstate motor carrier tax that is due, purchase price includes both the sales price of any vehicle that the motor carrier owns and the lease price of any vehicle which the motor carrier leases without a driver for a time period exceeding 180 days.

§3.447. Owner-Operator Contracts.

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

(1) Owner-operator—A motor carrier who leases, rents, or otherwise provides a motor vehicle for the use of others and who, in the regular course of business, also provides, procures, or arranges for, directly, indirectly, or by course of dealing, a driver or operator for the vehicle.

(2) Controlling interest—50% or more of ownership.

(b) Taxability.

(1) If a motor carrier contracts to hire an owner-operator to transport persons or property over the carrier's routes and under the authority of the carrier's permits, the tax rate is $25 per truck-tractor per contract and $25 per trailer or semitrailer per contract.

(2) The contract between the motor carrier and

the owner-operator must be for more than a single trip.

(3) The tax is the responsibility of the motor carrier operating the motor vehicle under the contract (the lessee).

(c) Exclusion. If a sales or use tax of at least 4.0% of the purchase price of the motor vehicle has been paid or if the tax under Texas Tax Code, §157.102(a), (b), or (c), has been paid, the $25 tax is not due.

(d) Controlling interest. The $25 tax may not be paid in lieu of the tax due under Texas Tax Code, §157.102(a), (b), or (c), by a motor carrier contracting with an owner-operator who is controlled or who has controlling interest in the motor carrier.

(e) Operation of a vehicle under contract to another. The $25 tax may not be paid in lieu of the tax due under Texas Tax Code, §157.102(a), (b), or (c), if the owner-operator operates the motor vehicle in Texas on his own behalf while the motor vehicle is under contract to the other motor carrier.

§3.448. Trip-Lease Agreements.

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

(1) Trip-lease agreement—A lease of a vehicle with a driver on a single trip basis.

(2) Controlling interest—50% or more of ownership.

(b) Taxability.

(1) If a motor carrier contracts to use equipment under a trip-lease agreement, the tax rate is $5.00 per truck-tractor per contract and $5.00 per trailer or semitrailer per contract.

(2) The tax is the responsibility of the motor carrier operating the motor vehicle under the agreement (the lessee).

(c) Exclusion. If a sales or use tax of at least 4.0% of the purchase price of the motor vehicle has been paid or if the tax under Texas Tax Code, §157.102(a), (b), or (c), has been paid, the $5.00 tax is not due.

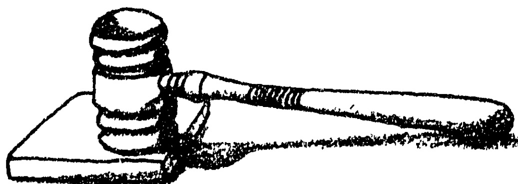
(d) Controlling interest. The $5.00 tax may not be paid in lieu of the tax due under Texas Tax Code, §157.102(a), (b), or (c), by a motor carrier contracting with a person who is controlled or who has controlling interest in the motor carrier.

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

Issued in Austin, Texas, on March 17, 1982.

TRD-824286 Bob Bullock
Comptroller of Public Accounts

Effective date: June 14, 1982
Proposal publication date: March 23, 1982
For further information, please call (512) 475-7000.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

(Editor's note: Because the Texas Department of Human Resources' rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register Division numbers. However, the rules will appear under the agency's correct title and part.)

Food Stamps

The Texas Department of Human Resources adopts the following amendments to its rules concerning applications and participants in special programs for food stamp assistance. These rules are adopted because of regulations issued by the United States Department of Agriculture (USDA) effective April 1, 1982. The regulations authorize states to add shelters for battered women to the list of institutions whose residents can receive food stamps.

Household Concept
326.15.22.029

The amendments to Rules 326.15.22.029 are adopted under Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are also adopted under federal requirements effective April 1, 1982.

.029. Household Determination. An applicant must complete an application on behalf of a household.

(1) For food stamp purposes, a household is:

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

(C) An individual or group of people who are disabled residents of an authorized group living arrangement, and who receive benefits under Title II or Title XVI of the Social Security Act.

(D) An individual narcotic addict or alcoholic residing for the purpose of regular participation in a drug or alcohol treatment program at a facility or treatment center authorized to accept food stamps.

(E) A resident(s) in a public or private nonprofit residential facility that serves battered women and children. DHR considers persons temporarily living in shelters for battered women and children individual household units if they apply for and receive food stamps.

(2) DHR cannot certify the following people separately if they live together:

(A) Parents and children (natural, adopted, or step, regardless of the child's age) unless at least one parent is age 60 or older.

(B) Children under age 18 who are under the parental control of a household member.

(C) Spouses defined as individuals who are considered married to each other under applicable state law, or who live together and hold themselves out to the community as husband and wife by representing themselves as such to relatives, friends, or tradespeople.

This definition applies for food stamp purposes only and may differ from state laws governing common-law marriage.

(3) Disqualified persons in a household cannot participate during their period of disqualification.

(4) The following cannot be household members and are ineligible for food stamps:

(A) (No change.)

(B) Institutional residents who receive most of their meals from the institution as part of the institution's normal services. Neither residents of federally subsidized housing for elderly built under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act, nor persons described in (1)(c)(d), and (e) of this rule, are institutional residents.

(C) Aliens who do not meet residency requirements for food stamps and students who are required to meet special criteria but fail to do so.

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 authority.

Issued in Austin, Texas, on May 20. 1982.

TRD-824245 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: April 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355, ext. 2037.

Residency
326.15.31.003

The amendments to Rules 326.15.31.003 are adopted under Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements effective April 1, 1982.

.003. Requirements. Applicants must be living in the county where they apply. Persons may not participate as members of more than one household nor in more than one county in any month, unless they are residents of an approved shelter for battered women and children. To participate twice during the first month of application, these residents must have been living in a household with the person who had abused them or threatened them with abuse.

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 authority.

Issued in Austin, Texas, on May 20, 1982.

TRD-824246 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: April 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355, ext. 2037.

Exempt Resources
326.35.017

The amendments to Rule 326.15.35.017 are adopted under Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements effective April 1, 1982.

.017. Exempt Resources. Only the following are not household resources in determining eligibility.

(1)-(13) (No change.)

(14) Inaccessible resources.

(A)-(D) (No change.)

(E) Resources held jointly by persons living in shelters for battered women and children and their former households are inaccessible, if:

(i) the resources are jointly owned by the household in the shelter and by members of their former household, and

(ii) the shelter resident's access to the value of the resources depends on the agreement of a joint owner who still lives in the resident's former household.

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 authority.

Issued in Austin, Texas, on May 20, 1982.

TRD-824247 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: April 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355, ext. 2037.

Participants in Special Programs
326.15.021-.026

The amendments to Rules 326.15.021-.024 are adopted under Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements effective April 1, 1982.

.021. General.

(a) The following participants in special programs may choose to receive food stamps:

(1) narcotic addicts or alcoholics who regularly participate as residents in an approved drug or alcoholic treatment program;

(2) disabled residents of certified group living arrangements who receive benefits under Title II (Disability) or Title XVI (SSI) of the Social Security Act; and

(3) residents in approved shelters for battered women and children.

(b) These residents must meet the same income and resource standards as other households.

(c) The special procedures for residents in shelters for battered women and children apply to persons living in private or public nonprofit residential facilities that

usually serve meals. Shelters that do not serve meals as part of their usual services are not institutions. Residents of this type of shelter may participate in the Food Stamp Program as individual household units or as part of a group of individuals like any other household.

.022. The Facility as Authorized Representative.

(a)-(e) (No change.)

(f) Residents in shelters for battered women and children may apply for food stamps, cash ATPs, and use food stamps on their own behalf. Households may appoint a shelter representative or any other person to act as A/R the same as any other household.

(g) Individual households may use their stamp allotments to buy meals prepared for them at a shelter approved by USDA to use food stamps at a wholesale food business. If the shelter is not approved by USDA to use food stamps at a food wholesaler, the household may ask that all or part of its stamps be of the $1.00 denomination.

.023. Approved Centers.

(a)-(g) (No change.)

(h) Shelters for battered women and children must be public or private nonprofit residential facilities that serve battered women and children. If a facility serves other persons, part of the facility must be set aside on a long-term basis to serve only battered women and children.

.024. Processing Participant Applications.

(a) The usual processing standards for initial and later eligibility decisions, handling reported changes, and other program actions as well as usual verification and documentation requirements apply to residents in treatment centers, group living facilities, and shelters for battered women.

(b) Services provided by the facility to the participants, or by other agencies such as the Texas Rehabilitation Commission, or payments for the services paid on behalf of the participant by a third party, are excluded from income.

(c) DHR certifies residents of treatment centers, if otherwise eligible, as one-person households. DHR certifies non-resident participants under normal procedures.

(d) If the residents of group living arrangements apply through the facility's authorized representative, DHR determines their eligibility as one-person households. If the residents apply on their own behalf, the largest household size allowed is 16.

(e) Residents of battered women and children shelters may apply on their own or use the shelter or other person as an authorized representative. DHR determines the eligibility of these applicants as individual households.

(f) DHR may certify as separate households an application from a shelter resident who received food stamps as a member of his former household. DHR would base the allotment on the new household size. DHR may authorize a resident in an approved shelter to receive two allotments in one month only once in any given month.

(g) Resident households have the same right to notices of adverse action, fair hearings, and lost benefits as other households. DHR does not provide notice of adverse action when the drug addict or alcoholic treatment center or group living arrangement loses either:

(1) its certification from the state, or

(2) its status as an authorized representative because USDA revoked its retail status, prohibiting it from receiving food stamps.

(h) The exemption from the notice of adverse action does not apply to shelters for battered women because the residents participate as individual households, and each household decides how it spends its allotment.

.025. Work Registration.

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

(c) Residents in shelters for battered women and children are not exempt from the work registration requirement. These clients, however, may be exempt from work registration because of their responsibility for taking care of dependent children under age 12.

.026. ID Cards.

(a) If residents of drug addict or alcoholic treatment centers or group living arrangements apply through the facility's authorized representative, the facility receives and uses the participant's ID card on the participant's behalf. If the residents apply on their own behalf, the household receives and uses its own ID card and ATPs.

(b) Residents in shelters for battered women and children always receive and use their own ID cards.

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 authority.

Issued in Austin, Texas, on May 20, 1982.

TRD-824248

Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: April 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355, ext. 2037.

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Although some notices may be received too late for publication before the meeting is held, all those filed are published in the *Register.* Notices concerning state agencies, colleges, and universities must contain the date, time, and location of the meeting, and an agenda or agenda summary. Published notices concerning county agencies include only the date, time, and location of the meeting. These notices are published alphabetically under the heading "Regional Agencies" according to the date on which they are filed.

Any of the governmental entities named above must have notice of an emergency meeting, or an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published. However, notices of emergency additions or revisions to a regional agency's agenda will not be published since the original agenda for the agency was not published.

All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register.*

Texas Air Control Board

Thursday and Friday, June 3 and 4, 1982. The following committees of the Texas Air Control Board will meet in Room 332, 6330 Highway 290 East, Austin. Committees, times, and agendas are as follows:

June 3, 1982, 7 p.m. The Budget and Finance Committee will review and approve the agency budget proposal for 1984-1985 biennium, and discuss a request for technical proposals for study to identify procedures and methods to enhance the effectiveness of motor vehicle emission control systems.

June 4, 1982, 8:30 a.m. The Regulation Development Committee will consider the following: revisions to Regulation II; proposed 1982 revisions to the Ozone State Implementation Plan for Harris County; request for technical proposals for study to identify procedures and methods to enhance the effectiveness of motor vehicle emission control systems; and status report on public hearings on proposed permit fee rule.

June 4, 1982, 9:30 a.m. The Monitoring and Research Committee will consider the report on the June 3, 1982, Research Advisory Council meeting and contract approvals.

June 4, 1982, 10:30 a.m. The Texas Air Control Board will consider the following: minutes of April 23, 1982, meeting; reports; approval of agency budget proposal; revisions to Regulation II—property line standards for non-ferrous smelters in El Paso County; proposed agency contracts; resolution authorizing subdelegation of national emission standards for hazardous air pollutants; resolutions of appreciation for past service on the board—William D. Parish and Joe C. Bridgefarmer; and new business. The board will also meet in executive session to receive advice of counsel regarding obligations under contract authorized by Resolution R81-4.

Contact: Ramon Dasch, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: May 21, 1982, 1:37 p.m.
TRD-824232-824235

Friday, June 4, 1982, 8:30 a.m. The Regulation Development Committee of the Texas Air Control Board has made an addition to the agenda of a meeting to be held in Room 332, 6330 Highway 290 East, Austin. According to the revised agenda, the committee will also consider subdelegation of national emission standards for hazardous air pollutants.

Contact: Ramon Dasch, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: May 25, 1982, 9:10 a.m.
TRD-824313

Coordinating Board, Texas College and University System

Thursday, June 3, 1982, 10 a.m. The Administrative Council of the Coordinating Board, Texas College and University System, will meet in Conference Room 209, Bevington A. Reed Building, 200 East Riverside Drive, Austin. Items on the agenda include institutional program review, consideration of institutional requests for deviations, receipt of institutional requests for deviations, receipt of Advisory Committee recommendations, discussion on a legislative package for the 68th Regular Session of the Texas Legislature, and executive secretary's report.

Contact: James McWhorter, P.O. Box 12788, Austin, Texas 78711.

Filed: May 24, 1982, 9:18 a.m.
TRD-824268

Texas Department of Corrections

Tuesday, May 25, 1982, 10 a.m. The Board of the Texas Department of Corrections met in emergency session in Room 103, 815 Eleventh Street, Huntsville, to review proposals to alleviate overcrowding in prisons. The emergency status was necessary because of overcrowded conditions.

Contact: W. J. Estelle, Jr., P.O. Box 99, Huntsville, Texas 77340, (713) 295-6371.

Filed: May 24, 1982, 9:19 a.m.
TRD-824266

Tuesday, May 25, 1982, 10 a.m. The Texas Department of Corrections made an emergency addition to the agenda of a meeting held in Room 103, 815 11th Street, Huntsville. According to the agenda, the department met in executive session to discuss litigation of Ruiz *v.*Estelle. The emergency status was necessary because of pressing litigation matters.

Contact: W. J. Estelle, Jr., P.O. Box 99, Huntsville, Texas 77340, (713) 295-6371.

Filed: May 24, 1982, 4:16 p.m.
TRD-824307

Texas County and District Retirement System

Friday, June 4, 1982, 9 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at the Hyatt Regency on Town Lake, Austin. Items on the agenda summary include minutes of March regular board meeting; applications for service retirement benefits and disability retirement benefits; review financial statements; review and act on reports from director, actuary, legal counsel, and investment counsel; and set date of September 1982 meeting.

Contact: J. Robert Brown, 802 Perry-Brooks Building, Austin, Texas 78701, (512) 476-6651.

Filed: May 21, 1982, 9:07 a.m.
TRD-824217

State Depository Board

Tuesday, June 10, 1982, 11 a.m. The State Depository Board will meet in the Office of the State Treasurer, LBJ Building, 111 East 17th Street, Austin. According to the agenda, the board will review and consider rate of interest to be charged on time account deposits, and review any applications for designation as a depository that have been received since the last board meeting, March 31, 1982.

Contact: Warren G. Harding, P.O. Box 12608, Austin, Texas 78711, (512) 475-2591.

Filed: May 21, 1982, 11:10 a.m.
TRD-824228

Interagency Council on Early Childhood Intervention

Tuesday, June 1, 1982, 1:30 p.m. The Interagency Council on Early Childhood Intervention will meet in Room T-604, Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda summary include public comments; council rules of conduct; submission and review process covering grant proposal for programs of intervention services and the establishing of rules for grant proposals and review and evaluation; public awareness and training; Early Childhood Intervention (ECI) budget; discussion of proposed amendments to Senate Bill 630, 67th Legislature; ECI state plan; program evaluation and research; requests for budget revisions from grantees; programmatic monitoring; fiscal monitoring; and Advisory Committee. The council will also meet in executive session.

Contact: James P. Rambin, 1100 West 49th Street, Austin, Texas, (512) 458-7241.

Filed: May 24, 1982, 4:09 p.m.
TRD-824310

Employees Retirement System of Texas

Tuesday and Wednesday, June 15 and 16, 1982, 1 p.m. and 9 a.m., respectively. The Group Insurance Advisory Committee of the Employees Retirement System of Texas will meet in the fourth floor board room, ERS Building, 18th and Brazos, Austin. According to the agenda, the committee will discuss and consider the cost containment features to be included in the health program effective September 1, 1983.

Contact: Clayton T. Garrison, P.O. Box 13207, Austin, Texas, (512) 476-6431.

Filed: May 21, 1982, 2:23 p.m.
TRD-824239

Office of the Governor

Tuesday, June 8, 1982, 9:30 a.m. The Governor's Task Force on Industrial and Tourist Development will meet in Room 100B, John H. Reagan Building, 105 West 15th Street, Austin. Items on the agenda include discussion of structure of Department of Commerce; selection of structure; refining and defining; and set next meeting.

Contact: Henry B. Ellis, P.O. Box 1072, El Paso, Texas 79958, (915) 546-4420.

Filed: May 24, 1982, 2:24 p.m.
TRD-824305

Governor's Commission on Physical Fitness

Friday, May 28, 1982, 10 a.m. The Governor's Commission on Physical Fitness met in emergency session at the Executive Inn, Dallas. Items on the agenda summary included introductions; director's report; budget revision fiscal year 1982; establishing 1983 fiscal year budget; legislative budget recommendations and guidelines for budget development for 1984 and 1985 fiscal year; honor awards; status of contract agreement with the Texas Physical Fitness Educational Foundation, Inc.; considerations of bylaw changes regarding meetings, elections, and amount of state vouchers requiring cosignature of chairperson; date of next commission meeting; and new business. The emergency status was necessary because of a death in immediate family of a board member. The meeting was rescheduled from May 14, 1982.

Contact: Albert A. Rooker, 4200 North Lamar, Number 110, Austin, Texas 78756, (512) 475-6718.

Filed: May 21, 1982, 2:02 p.m.
TRD-824238

Texas Department of Health

Thursday, June 24, 1982, 10 a.m. The Texas Department of Health will meet in the council room, City Hall, McCamey. According to the agenda summary, the department will conduct a hearing to consider Application 566 of the City of McCamey to operate an existing Type II municipal solid waste disposal site located southeast of McCamey, 1,000 feet east of FM Road 305, 1¼ miles southeast of the intersection of FM Road 305 and 1901, in Upton County.

Contact: Jack C. Carmichael, 1100 West 49th Street, Austin, Texas, (512) 458-7271.

Filed: May 24, 1982, 4:09 p.m.
TRD-824311

Tuesday, June 29, 1982, 10 a.m. The Texas Department of Health will meet in the Laredo Room, Ramada Inn Northwest Crossing, 12801 Northwest Freeway (U.S. Highway 290), Houston. According to the agenda summary, the department will conduct a hearing to consider Application 1420 of Northwest Sand Company for a proposed Type IV municipal solid waste

disposal site (for brush, construction-demolition wastes, and rubbish only) to be located at 8619 Taub Road—750 feet south of Taub Road, 800 feet west of Fairbanks-North Houston Road, 280 feet east of Kay Lane, 1.5 miles northeast of Jersey Village city limits, and 1.8 miles northeast of Jersey Village city limits, and 1.8 miles north of Houston city limits, in Harris County.

Contact: Jack C. Carmichael, 1100 West 49th Street, Austin, Texas, (512) 458-7271.

Filed: May 24, 1982, 4:09 p.m.
TRD-824311

Tuesday, June 29, 1982, 1:30 p.m. The Texas Department of Health will meet in City Hall, Hallettsville. According to the agenda summary, the department will conduct a hearing to consider Application 477-A of the City of Hallettsville to operate a proposed 28.27-acre addition to the existing 41-acre Type II municipal solid waste disposal site to be located on the east side of the existing Hallettsville landfill, 2.3 miles east of U.S. Highway 277, and 0.3 mile north of U.S. Highway 90A, on the north side of a county road, in Lavaca County.

Contact: Jack C. Carmichael, 1100 West 49th Street, Austin, Texas, (512) 458-7271.

Filed: May 24, 1982, 4:09 p.m.
TRD-824311

Tuesday, July 6, 1982, 9:30 a.m. The Texas Department of Health will meet in the auditorium, 1100 West 49th Street, Austin. According to the agenda summary, the department will conduct a hearing to consider Application 1513 of the City of Austin to operate a proposed Type I municipal solid waste disposal site to be located southeast of Austin, on the southwest side of Pearce Lane, approximately 5,000 feet southeast of its intersection with Ross Road and two miles southeast of its intersection with FM Road 973 and extending along Pearce Lane for 1.5 miles to a point two miles west of the Travis-Bastrop county line, 2.5 miles northeast of Elroy, 1.3 miles south of State Highway 71 at its nearest point, and approximately 3,000 feet northeast of Elroy and Fagerquist Roads, with the westernmost corner being approximately 2,600 feet from Ross Road, in Travis County.

Contact: Jack C. Carmichael, 1100 West 49th Street, Austin, Texas, (512) 458-7271.

Filed: May 24, 1982, 4:09 p.m.
TRD-824311

Texas Health Facilities Commission

Friday, May 28, 1982, 9:30 a.m. The Texas Health Facilities Commission will meet in emergency session in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will consider the petition for reissuance of certificate of need by Centro Medico Del Valle, Inc., (AO80-1231-023R (040582)), El Paso. The emergency status was necessary in order that the commission may meet its statutory-mandated time frame of ruling upon such petitions within 60 days.

Contact: John L. Darrouzet, P.O. Box 15023, Austin, Texas 78761, (512) 475-6940.

Filed: May 24, 1982, 8:45 a.m.
TRD-824263

Texas Housing Agency

Wednesday, May 26, 1982, 10 a.m. The Board of Directors of the Texas Housing Agency made an emergency addition to the agenda of a meeting held in the Hill Country Room, Hyatt Regency, 208 Barton Springs, Austin. Items on the revised agenda summary included consideration and approval of multifamily loans to lenders allocation procedure; delegation of authority to executive administrator regarding official action on multifamily loans to lenders program and to approve the content and mail out of the multifamily loans to lenders preliminary official statement and related documents, if any; a report of the Committee on Programs and Legislation concerning construction loan note program, Woodlands Development Corporation proposal, Crocket Bank proposal, and Smith Barney Harris Upham and Company, Inc. proposal; and a presentation by Mike Beauquoi. The board met on an emergency basis because of the shortage of safe and sanitary housing which is available at prices and rentals which persons and families of low income and families of moderate income can afford, necesitating immediate action by the board on programs designed to alleviate the effects of such housing conditions.

Contact: Earline Jewett, P.O. Box 13941, Austin, Texas 78711, (512) 475-0812.

Filed: May 24, 1982, 2:44 p.m.
TRD-824304

University of Houston System

Monday, May 24, 1982, 11 a.m. The Board of Regents Executive Committee of the University of Houston System met in emergency session in Room 510 Enterprise Bank, Houston United Bank Building, 4600 Gulf Freeway, Houston. According to the agenda, the committee considered and approved a settlement offer in a law suit. The committee also met in executive session.

Contact: Patricia Bailey, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: May 21, 1982, 1:07 p.m.
TRD-824230

State Board of Insurance

Monday, May 24, 1982, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance held an emergency hearing in Room 342, 1110 San Jacinto Street, Austin, to consider the application of American Capitol Insurance Company, Houston, to acquire control of American Underwriters Life Insurance Company, Houston. The emergency status was necessary due to prior court scheduling of company attorney and expert witness to be available at a reasonable later date.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: May 21, 1982, 4:57 p.m.
TRD-824261

Tuesday, June 1, 1982, 1 p.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider agenda items 13-81, 16-81, 17-81, 18-81, 19-81, and 21-81 from the 1981 property hearing held May 7, 1981.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: May 24, 1982, 10:53 a.m.
TRD-824294

Wednesday, June 2, 1982. The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin. The times and dockets follow:

9 a.m. In Docket 6823—application for admission by Nordic Union Reinsurance Corporation, Dover, Delaware.

9:30 a.m. In Docket 6842—application for admission by Marquette National Life Insurance Company, Chicago, Illinois.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas, (512) 475-4353.

Filed: May 24, 1982, 10:54 a.m.
TRD-824295, 824296

Thursday, June 3, 1982. The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin. The times and dockets follow:

1:30 p.m. In Docket 6838—application for approval of the articles of agreement of CMI Lloyds, Dallas.

3 p.m. In Docket 6847—application for admission by Assurance Life Company, Kansas City, Missouri.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas, (512) 475-4353.

Filed: May 24, 1982, 10:54 a.m.
TRD-824297, 824298

Friday, June 4, 1982, 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, to consider the suspension or revocation of any or all insurance agent's licenses to Larry F. Willman in the State of Texas.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas, (512) 475-4353.

Filed: May 24, 1982, 10:54 p.m.
TRD-824299

Interim Committee on Regional Intergovernmental Cooperation

Friday, June 4, 1982, 10 a.m. The Interim Committee on Regional Intergovernmental Cooperation will meet in Room 206 and 207, Texas Law Center, 1414 Colorado Street, Austin. Items on the agenda include briefing on the objectives of House Concurrent Resolution 199; review of committee plans and procedures; review and discussion of issues to be addressed by the committee; and briefings on the history and functions of regional councils and other regional planning organizations.

Contact: Gary Thompson, Cap. l Building, Room G-5, Austin, Texas 78701, (512) 475-3597.

Filed: May 20, 1982, 2:56 p.m.
TRD-824308

Texas Board of Land Surveying

Saturday, June 12, 1982, 8:30 a.m. The Surveyor-In-Training Committee of the Texas Board of Land Surveying will meet at 125 West Sunset, San Antonio. According to the agenda, the committee will review the Surveyor-In-Training Program as provided for under §15(d) of the Land Surveying Practices Act, and the board's rules for Surveyor-In-Training applicants.

Contact: Betty J. Pope, 1106 Clayton Lane, 210 West, Austin, Texas, (512) 452-9427.

Filed: May 24, 1982, 9:19 a.m.
TRD-824293

Texas Department of Mental Health and Mental Retardation

Friday, June 4, 1982, 9 a.m. The Governor's Planning Council for Developmental Disabilities of the Texas Department of Mental Health and Mental Retardation will meet at the Marriott Hotel, Austin. Items on the agenda include introduction of guests; approval of minutes from last meeting; committee reports; Texas DD Plan summary and projections for 1983; state Developmental Disabilities Law and state appropriations; institutions of higher education and developmental disabilities; priorities and values vsfunding projects discrepancy evaluation; status report on fiscal year 1982 grant review process, and discussion of retreat September 10 and 11, 1982, in Corpus Christi.

Contact: Kathy Sandusky, P.O. Box 12668, Austin, Texas 78711, (512) 465-4659.

Filed: May 20, 1982, 4:33 p.m.
TRD-824215

Friday, May 28, 1982, 9 a.m. The Mental Health Code Task Force of the Texas Department of Mental Health and Mental Retardation will meet in Room 104, Texas Law Center, 1414 Colorado, Austin. Items on the agenda include introductory remarks by Helen Farabee, chair; subcommittee work sessions; consideration of subcommittee recommendations; discussion of public hearing phase; and development of public support.

Contact: Jane Fontana, P.O. Box 12128, Austin, Texas 78711, (512) 475-8454.

Filed: May 20, 1982, 4:34 p.m.
TRD-824214

State Board of Morticians

Tuesday and Wednesday, June 1 and 2, 1982, 2 p.m. and 9 a.m., respectively. The State Board of Morticians will meet at 1513 IH 35 South, Austin. Items on the June 1 agenda include applicants for reciprocal licenses; request for reinstatment apprenticeships; review of budget and report of meeting of the governor's task force for handicapped citizens; and report of all committees and complaints to be reviewed. The June 2 agenda includes informal hearings on complaints, and any business not finished on June 1.

Contact: John W. Shocklee, 1513 IH 35 South, Austin, Texas 78741, (512) 442-6721.

Filed: May 20, 1982, 3:44 p.m.
TRD-824213

Texas Motor Vehicle Commission

Tuesday, June 8, 1982, 9:30 a.m. The Texas Motor Vehicle Commission will meet in Suite 300, 815 Brazos, Austin. Items on the agenda include consideration of Proceedings 257-.rv Thomas Honda *v.* Pagan-Lewis Motors, Inc.; 261—J.E. Davidson, complainant *v.* Alamo Toyota, Inc., and Gulf States Toyota, Inc.; orders of dismissal in Proceedings 227—Dan Hixson Auto Plaza, Limited, Inc., movant *v* Volkswagen of American, Inc., respondent; 228—Dan Hixson Auto Plaza, Limited, Inc. movant *v.* Porsche-Audi Division, Volkswagen of America, Inc., respondent; 241—Anita L. Gentle, complainant *v.* Southpoint Porsche Audi Associates and Porsche-Audi Division of America, Inc., respondents; 248—Ray Sykes Buick, Inc., applicant *v.* DeMontrond Buick Company, Inc., protestant; 249—One Car Place, Inc., doing business as Arlington Subaru, applicant *v.* Holiday Lincoln-Mercury Sales, Inc., protestant; 250—Glesby Marks BMW, Inc., doing business as Bavarian Motors, complainant *v.* Ferrari North America, division of Fiat Motors of North America, Inc., respondent; 251—Chick Smith Ford, Inc., complainant *v.* Ford Motor Company, Inc.; 254—Stovall Cycle II, applicant *v.* Garland Cycle Center, protestant; 255—B. P. Crittenden, Mid City Motors Inc., Joe Bob Kinsel, Jr., J. B. Kinsel, and Kinsel Motors, Inc., movants *v.* General Motors Corporation, respondents; 256—Sam White Datsun, applicant *v.* Southwest Datsun, Inc., protestant; 260—Jack May Motor Company, Inc., complainant *v.* American Motors Sales Corporation, respondent; and 262—Mrs. Nadine Williams, complainant *v.* Charles Maund Oldsmobile-Cadillac, Inc., and Oldsmobile Division of GMC, respondents.

Contact: Russell Harding, 815 Brazos, Austin, Texas 78701, (512) 476-3587.

Filed: May 25, 1982, 9:02 a.m.
TRD-824316

Texas Board of Licensure for Nursing Home Administrators

Tuesday and Wednesday, June 2 and 3, 1982, 2 p.m., daily. The Texas Board of Licensure for Nursing Home Administrators will meet at 3407 IH 35 North,

Austin. Items on the agenda include approval of agenda; approval of February 10 and 11, 1982, minutes; demonstration of computer programs; Education Committee report; Suitability Committee report; Texas Department of Health report; Texas Department of Human Resources report; executive director's report; rule waivers (personal appearances); and report by the chair.

Contact: Karl E. Bishop, 3407 IH 35 North, Austin, Texas.

Filed: May 24, 1982, 9:17 a.m.
TRD-824269

Pan American University

Tuesday, June 1, 1982. Several committees and the Board of Regents of Pan American University will meet in the conference room, Pan American University Administration Building, Edinburg. The times, committees, and agendas follow:

9:30 a.m. The Board of Regents' Buildings and Grounds Committee will consider architect for Biology Annex.

10 a.m. The Board of Regents' Finance Committee will consider authorization of signatures; fee schedules; budget changes; and university audit.

10:30 a.m. The Board of Regents' Academic and Developmental Affairs Committee will meet in executive session to consider personnel matters.

11 a.m. The Board of Regents will consider minutes of the previous meeting; reports of Buildings and Grounds Committee, Finance Committee, Academic and Developmental Affairs Committee, and Committee of the Whole; traffic policies; grants, donations, and gifts; and president's informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2101.

Filed: May 24, 1982, 10:11 a.m.
TRD-824288-824291

Board of Pardons and Paroles

Monday-Friday, June 7-11, 1982, 9 a.m., daily. The Board of Pardons and Paroles will meet at 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; review 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 take action upon gubernatorial directives.

Contact: John W. Byrd, 711 Stephen F. Austin Building, Austin, Texas, (512) 475-3363.

Filed: May 25, 1982, 9:06 a.m.
TRD-824314

Public Utility Commission of Texas

Friday, June 4, 1982, 9:30 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 4488—application of Cherokee County Electric Cooperative Association for a $1,733,674 systemwide rate increase.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 9:19 a.m.
TRD-824216

Tuesday, June 8, 1982, 10:30 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4490—complaint of Rodger W. Benson against Nueces Electric Cooperative regarding switchover request.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1982, 9:19 a.m.
TRD-824267

Friday, June 11, 1982, 9:30 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 4411—application of H & S Water Systems for a certificate of convenience and necessity within Aransas County.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 21, 1982, 2:02 p.m.
TRD-824236

Wednesday, July 21, 1982, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing on the merits in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4428—application of Hewitt Water Company for a rate increase within McLennan County.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 25, 1982, 9:01 a.m.
TRD-824315

Tuesday, August 3, 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 3976—applications of St. Paul Industrial Training School for a certificate of convenience and necessity and of Lakeshore Utility Company to amend its certificate of convenience and necessity to provide sewer utility service within Henderson County (water).

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 21, 1982, 2:03 p.m.
TRD-824237

Railroad Commission of Texas

Monday, May 24, 1982, 9 a.m. The following divisions of the Railroad Commission of Texas made emergency additions to the agendas of meetings held in Room 107, 1124 IH 35 South, Austin. The revised agendas follow.

The Oil and Gas Division considered Statewide Rule 44 reporting requirements, and final order and request for oral argument regarding BDK Production Company, Inc.'s application for exceptions to Statewide Rules 37 and 38, Caldwell (Austin Chalk), Geodyne (Austin Chalk), and Giddings (Austin Chalk) fields, Burleson County. The emergency status was necessary to consider matters of urgent public necessity.

Contact: Susan Bains or Jan Burris, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1123 or 445-1307.

Filed: May 21, 1982, 3:07 p.m.
TRD-824250, 824251

The Transportation Division considered final order in the application of Ralph Owens Trucking Company, Inc., Docket 032549E2A, to amend SMC Certificate 32549 to authorize the transportation of meat packing house supplies, waxes, cleaning compounds, lubricants, and concentrates, when requiring specialized equip-

ment in the loading and/or unloading and/or transportation thereof, from Harris, Fort Bend, Jefferson, Bexar, Orange, Brazoria, Chambers, Galveston, and Nueces Counties, to points in Texas, and vice versa. The matter was properly noticed for consideration by the commission in open meeting on May 17, 1982, was passed at such meeting, and is now being considered on less than seven days notice as a matter of urgent public necessity.

Contact: Owen T. Kinney, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1330.

Filed: May 21, 1982, 3:08 p.m.
TRD-824252

School Land Board

Tuesday, June 1, 1982, 10 a.m. The School Land Board will meet in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Items on the agenda include approval of the minutes of the previous board meeting; application for suspension of leases; pooling applications; pooling agreement amendments; consideration of applications of Robert J. Blough, et al for patent to certain lands in the W. C. Foster Survey, Anderson Company; final approval of Williamson County Land Trade, Part III; coastal public lands: easement applications, cabin permit alteration requests; and report-cabin permit renewals.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 835, Austin, Texas, (512) 475-2071.

Filed: May 24, 1982, 4:41 p.m.
TRD-824312

State Securities Board

Thursday, June 3, 1982, 1 p.m. The Securities Commissioner of the State Securities Board will meet at 1800 San Jacinto Street, Austin. According to the agenda, a hearing will be held to determine whether the application of Arnold Francis Miller for registration as a securities salesman should be granted or denied.

Contact: Sue B. Roberts, 1800 San Jacinto Street, Austin, Texas, (512) 474-2233.

Filed: May 21, 1982, 1:01 p.m.
TRD-824231

Advisory Council for Technical-Vocational Education

Wednesday, June 9, 1982, 9 a.m. The Steering Committee of the Advisory Council for Technical-Vocational Education will meet in Suite 202, 1700 South Lamar, Austin. According to the agenda, the committee will review plans for the June 23 and 24, 1982, council meeting, review the Sunset Commission summary report, discuss annual reports of committees, review State Board of Education responses to council recommendations and reports, review plans for council meetings and conferences for 1982 and 1983, and approve the council's statement on the state plan for vocational education.

Contact: Valeria Blaschke, P.O. Box 1886, Austin, Texas 78767, (512) 475-2046.

Filed: May 21, 1982, 9:09 a.m.
TRD-824218

Veterans Land Board

Tuesday, June 8, 1982, 10 a.m. The General Land Office of the Veterans Land Board will meet in Room 831, Stephen F. Austin Building, Austin. Items on the agenda include approval of the minutes of the May 18, 1982, board meeting; receive and open sealed bids on the forfeited land sale set for June 8, 1982; report of executive secretary; and discussion of board policy.

Contact: Richard Keahey, Stephen F. Austin Building, Room 738, Austin, Texas, (512) 475-3766.

Filed: May 24, 1982, 4:13 p.m.
TRD-824309

Texas Water Commission

Tuesday, June 1, 1982, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will consider water district bond amendments; change in plans; escrow release and use of surplus funds; water quality permits, renewals, and amendment; voluntary cancellation of water quality permit complaint; final decisions on water right matters; and the filing and setting of hearing dates.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: May 20, 1982, 3:04 p.m.
TRD-824212

Wednesday, June 30, 1982, 10 a.m. The Texas Water Commission will meet in Room 124A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on Application 4216 of Arthur Lynn Hahn for a permit to authorize the direct diversion from Squaw Creek, tributary of Beaver Creek, tributary of Llano River, tributary of Colorado River, Colorado River Basin for irrigation purposes in Gillespie County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: May 21, 1982, 3:05 p.m.
TRD-824253

Thursday, July 1, 1982, 10 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on Application 2553A of Ralph and Raleigh Coppedge seeking an amendment to Permit 2319 to authorize the diversion and use of not to exceed 538,560 acre-feet of water per year from the Guadalupe River, Guadalupe River Basin for the generation of hydroelectric energy in DeWitt County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: May 21, 1982, 3:06 p.m.
TRD-824254

Friday, July 2, 1982, 10 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on Application 4271 of Irving P. Savage doing business as Six Bar Ranch for a permit to divert 3,500 acre-feet of water per year directly from Hardeman's Slough, tributary of Caney Creek, tributary of East Matagorda Bay, Brazos-Colorado Coastal Basin and use the water for irrigation purposes in Matagorda County. The commission will also conduct a hearing on application by Port Mansfield Public Utility District for an amendment to Certificate of Adjudication 23-7 to change the purpose of use, change the place of use in Hidalgo County, Rio Grande Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: May 21, 1982, 3:06 p.m.
TRD-824255, 824256

Tuesday, July 13, 1982, 9 a.m. The Texas Water Commission will meet in the conference room, San Antonio River Authority Building, 100 East Guenther, San Antonio. According to the agenda summary, the commission will consider the application of L. R. Cole, Sr.; L. R. Cole, Jr.; and

Tuesday, July 20, 1982, 9 a.m. The Texas Water Commission will meet in the classroom, Rolling Hills Water Treatment Plant, 2500 Southeast Loop 820, Fort Worth. According to the agenda summary, the commission will conduct a hearing for the application of H. D. Terrell and George Butler, P.O. Box 409, Burleson, Texas 76028, to the Texas Department of Water Resources for a permit (proposed Permit 12531-01) to authorize a discharge of treated domestic sewage effluent at a volume not to exceed an average flow of 18,000 gallons per day from the Meadows Wastewater Treatment Plant. The applicants propose to construct wastewater treatment facilities to provide for the domestic needs of residents of a mobile home park. The commission will also conduct a public hearing on the application of Northwest Independent School District, Route 1, Box 39A, Justin, Texas 76247, to the Texas Department of Water Resources for a permit (proposed Permit 11760-02) to authorize a discharge of treated domestic sewage at a volume not to exceed an average flow of 22,000 gallons per day. The applicant proposes to build a wastewater treatment plant to serve the new high school in the school district.

Contact: Jon A. Green, P.O. Box 13087, Austin, Texas 78711, (512) 475-1339.

Filed: May 20, 1982, 11:03 a.m.
TRD-824205, 824206

Regional Agencies

Meeting Filed May 20

The Lubbock Regional Mental Health and Mental Retardation Center met at 3800 Avenue H, Lubbock, on May 25, 1982, at 4:30 p.m. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 763-4213.
TRD-824211

Meetings Filed May 21

The Amarillo Mental Health and Mental Retardation Center, Executive Committee of the Board of Trustees, met in Room G-15, Psychiatric Pavilion, 7201 Evans Street, Amarillo, on May 27, 1982, at noon. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

The Amarillo Mental Health and Mental Retardation Regional Center, Board of Trustees, met in Room J-13, Psychiatric Pavilion, 7201 Evans Street, Amarillo, on May 27, 1982, at 1 p.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 353-7235.

The Atascosa County Appraisal District, Board of Directors, met at 1010 Zanderson, Jourdanton, on May 27, 1982, at 9 a.m. The meeting was rescheduled from May 20, 1982. Information may be obtained from Ernest Dunnagan, 1010 Zanderson, Jourdanton, Texas 78026, (512) 769-2730.

The Austin-Travis County Mental Health and Mental Retardation Center, Board of Trustees Personnel Committee, met in emergency session in the board room, 1430 Collier Street, Austin, on May 24, 1982, at 11:45 a.m. The meeting was rescheduled from Wednesday, May 12, 1982. Information may be obtained from Cynthia C. Garcia, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 50.

The Central Plains Comprehensive Community Mental Health and Mental Retardation Center, Board of Trustees, met at 2601 Dimmitt Road, Plainview, on May 27, 1982, at 7 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 296-2726.

The Central Texas Council of Governments, Executive Committee, met at 302 East Central, Belton, on May 27, 1982, at 12:45 p.m. Information may be obtained from Walton B. Reedy, P.O. Box 729, Belton, Texas 76513.

The Interim Regional Transportation Authority, Ad Hoc Budget and Implementation Subcommittee, met in Suite 201, Love Field Terminal Building, Dallas, on May 25, 1982, at 5 p.m. The meeting was rescheduled from the same date at 5:30 p.m. Information may be obtained from Eloise Hajek, Lock Box 12, Love Field Terminal Building, Dallas, Texas 75235, (214) 358-3217.

The Panhandle Regional Planning Commission, Board of Directors, met in the first floor conference room, Gibraltar Building, Eighth and Jackson, Amarillo, on May 27, 1982, at 1:30 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105.

The Trinity River Authority of Texas, Onalaska Right-of-Way Committee, met at 5300 South Collins, Arlington, on May 26, 1982, at 10 a.m. Information may be obtained from Geri Elliott, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

The West Central Texas Council of Governments, Law Enforcement Advisory Board, met at 1025 East North 10th Street, Abilene, on May 27, 1982, at 10 a.m. Information may be obtained from Les Wilkerson, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

The West Central Texas Council of Governments, Regional Alcohol Abuse Advisory Committee (RAAC), will meet at 1025 East North 10th Street, Abilene, on June 16, 1982, at 10 a.m. Information may be obtained from Sue Smith, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.
TRD-824219

Meetings Filed May 24

The Austin-Travis County Mental Health and Mental Retardation Center, Board of Trustees, met in emergency session in the board room, 1430 Collier Street, Austin, on May 27, 1982, at 11:30 a.m. Information may be obtained from Debbie Sandoval, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 27.

The Central Counties Center for Mental Health and Mental Retardation Services, Board of Trustees, met in emergency session at 302 South 22nd Street, Temple, on May 26, 1982, at 7:45 p.m. Information may be obtained from Steven B. Schnee, Ph.D., P.O. Box 518, Temple, Texas 76503-0518.

The Gillespie County Appraisal District, Board of Directors, will meet in the County Courtroom, County Courthouse, Fredericksburg, on June 9, 1982, at 9 a.m. Information may be obtained from Gary Neffendorf, P.O. Box 111, Fredericksburg, Texas 78624, (512) 997-7521.

The Houston Galveston Area Council Health Systems Agency, Area Health Commission, met in emergency session in the large conference room, 3701 West Alabama, Houston, on May 26, 1982, at 10 a.m. Information may be obtained from Aquina Janice, 3701 West Alabama, Houston, Texas 77027, (713) 627-3200, ext. 274.

The Jasper County Appraisal District, Board of Directors, will meet at Buna ISD Administration Building, Buna, on June 9, 1982, at 7:30 p.m. Information may be obtained from Frances Horn, P.O. Drawer G, Buna, Texas 77612.

The Panhandle Health Systems Agency, Review Committee, will meet in the first floor conference room, Gibraltar Savings Building, 801 South Jackson, Amarillo, on June 3, 1982, at 5 p.m. Information may be obtained from Gordon Darrow, P.O. Box 9257, Amarillo, Texas, (806) 372-3381.

The Tyler County Tax Appraisal District, Board of Directors, will meet at 1004 West Bluff, Woodville, on June 1, 1982, at 7 p.m. Information may be obtained from Leslie J. Silva, P.O. Drawer 9, Woodville, Texas 75979, (713) 283-3736.

TRD-824292

Meetings Filed May 25

The Austin-Travis County Mental Health and Mental Retardation Center, Executive Committee, met in emergency session in Room 301, 1820 East Eighth Street, Austin, on May 25, 1982, at 11:15 a.m. Information may be obtained from Debbie Sandoval, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 27.

The Gonzales County Appraisal District, Board of Directors, will meet at 926 St. Lawrence Street, Gonzales, on June 10, 1982, at 8:30 a.m. Information may be obtained from Nancy Seitz, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Kendall County Appraisal District, Board of Review, will meet at 207 East San Antonio Street, Boerne, on June 3, 1982, at 3 p.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

TRD-824317

In Addition

The *Register* is required by statute to publish applications to purchase control of state banks (filed by the banking commissioner); notices of rate ceilings (filed by the consumer credit commissioner); changes in interest rate and applications to install remote service units (filed by Texas Savings and Loan commissioner); and consultant proposal requests and awards (filed by state agencies, regional councils of government, and the Texas State Library and Archives Commission).

In order to aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows. This often includes applications for construction permits (filed by the Texas Air Control Board); applications for amendment, declaratory ruling, and notices of intent (filed by the Texas Health Facilities Commission); applications for waste disposal permits (filed by the Texas Water Commission); and notices of public hearing.

Texas Air Control Board
Applications for Construction Permits

Notice is hereby given by the Texas Air Control Board of applications for construction permits received during the period of May 10-14, 1982.

Information relative to the applications listed below, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the address stated above, and at the regional office for the Air Quality Control Region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Louisiana Pacific Corporation, Corrigan; rotary dryer system; Wafer Board Plant; 9088; new source

Taft Grain and Elevator Company, Inc., Taft; grain elevator; Highway 81; 9089; new source

Cargill, Inc., Dimmitt; liquid feed plant; East Second and Dulin Street; 9090; new source

H. B. Zachary Company, Fate; central mix concrete plant; across IH 30 from Fate; 9091; new source

Kaneka Texas Corporation, Bayport; MBS resin, trade name: Kane Ace B; Underwood Road; 9092; new source

Sid Richardson Carbon and Gasoline Company, Big Spring; dryers, and tail gas burning, units 1, 2, and 3; (location not available); 9093; new source

Wichita Falls Foundry, Wichita Falls; foundry; 307 Barwise and 203 Virginia; 285A, 4328A, 6281A, 6915A, 7043A, 7340A, new sources

Rest Assured Manufacturing, Inc., Austin; wood furniture builders; 9603 Saunders; 9094; new source

Folger Coffee Company, Sherman; alternate fuel boiler modification; 300 West FM 1417; 9095, new source

Issued in Austin, Texas, on May 17, 1982.

TRD-824193 Ramon Dasch
Director of Hearings
Texas Air Control Board

Filed: May 19, 1982, 2:38 p.m.
For further information, please call (512) 475-5711, ext. 354.

Contract Award

Description. The contract award for consulting services set out herein is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The consultant proposal request was published in the December 22, 1982, issue of the *Texas Register* (6 TexReg 4776). On May 14, 1982, a consultant contract was awarded to Energy Technology Consultants, Inc. to conduct a study to quantify the emission source contributions to ambient concentrations of total suspended particulate matter and particulate lead in the El Paso area of Texas. The contractor will use proton induced x-ray emissions spectroscopy, computer controlled scanning electron microscopy, optical microscopy, ion chromatography, and low temperature ashing in the analysis of 110 source and ambient air quality samples. The contractor will then interpret the results of these analyses to determine the source contributions. The name and business address of the private consultant is Energy Technology Consultants, Inc., 4758 Old William Penn Highway, Murrysville, Pennsylvania 15668.

Cost and Dates. The total value of the contract is $75,000. The contract shall begin on May 14, 1982, and end on October 15, 1982.

Due Date of Documents. On June 10, 1982, a report is due from the contractor concerning the analysis of 29 ambient and source filters. The contractor is required to deliver a report on the analysis of an additional 48 filters on July 30, 1982. On August 31, 1982, the contractor is required to deliver a report on the analysis of 33 blind samples. On October 11, 1982, a final report is due from the contractor.

Issued in Austin, Texas, on May 20, 1982.

TRD-824203 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Filed: May 20, 1982, 12:46 p.m.
For further information, please call (512) 451-5711, ext. 354.

Office of Consumer Credit Commissioner
Rate Ceilings

Pursuant to the provisions of House Bill 1228, 67th Legislature of Texas, 1981, 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.

Effective Period(1)	Type of Transaction Commercial(3) Consumer(2)/thru $250,000	Commercial(4) over $250,000
Indicated Rate		
Weekly Rate Ceiling 5/31/82-6/06/82	23.25%	23.25%
Monthly Rate Ceiling (Variable Commercial Only) 5/01/82-5/31/82	24%	25.50%
Quarterly Rate Ceiling 4/01/82-6/30/82	24%	25.54%
Annual(5) Rate Ceiling 4/01/82-6/30/82	24%	27.33%

(1) Dates set out above are inclusive.
(2) Credit for personal, family, or household use.
(3) Credit for business, commercial, investment, or other similar purpose.
(4) Same as (3) above, except excluding credit for agricultural use.
(5) Only for open end as defined in Texas Civil Statutes, Article 5069-1.01(f).

Issued in Austin, Texas, on May 24, 1982.

TRD-824265 Sam Kelly
Consumer Credit Commissioner

Filed: May 24, 1982, 9:34 a.m.
For further information, please call (512) 475-2111.

Texas Education Agency Consultant Proposal Request

Description. Pursuant to a request for proposals published in the November 20, 1981, issue of the *Texas Register* (6 TexReg 4310), the Texas Education Agency is negotiating a software licensing agreement with Insurance Systems of America, Inc. of Atlanta, Georgia. This computer accounting and investment analysis software, intended for use in management of the state permanent school fund, is proprietary to, and a trade secret of, Insurance Systems of America, Inc. Both a product support contract and a modifications and consulting contract are necessary; the first to assure availability of software modifications as developed, and the second to assure the availability to Texas Education Agency of the assistance of persons competent in modifying hardware programming of this particular proprietary software.

Contact. Persons or firms having the capabilities for the product support and modifications and consulting requirements and wishing to make an offer should contact Jim M. Hooks, deputy commissioner for investments, Texas Education Agency, 201 East 11th Street, Austin, Texas 78701, (512) 475-4791. The closing date for receipt of offers is June 15, 1982.

Procedure for Selecting Consultant. Only that person or firm having the requisite knowledge of the proprietary software of Insurance Systems of America, Inc. will be selected for price and contract negotiations.

Issued in Austin, Texas, on May 19, 1982.

TRD-824192 Raymon L. Bynum
Commissioner of Education

Filed: May 19, 1982, 4:05 p.m.
For further information, please call (512) 475-7077.

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 acquire existing health care facilities; NIR indicates notice of intent regarding a research project; 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 25 TAC §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.

John Knox Villages of the Lower Rio Grande Valley, Inc., Weslaco,
AN82-0518-011
DR—Request for a declaratory ruling that neither a certificate of need nor a notice of intent to acquire an existing health care facility was required for John Knox Villages of the Lower Rio Grande Valley, Inc. to acquire the assets of John Knox Village of Weslaco from Community Churches of America, Inc. The acquisition took place on January 22, 1982, without commission authorization, but is alleged to be the consummation of an agreement made prior to September 1, 1981.

Advanced Health Systems, Inc., doing business as Raleigh Hills Hospital, San Antonio
AH81-0701-014A(051782)
CN/AMD—Request to increase the project cost from $698,380 to $765,998 and extend the completion deadline in Certificate of Need AH81-0701-0' ' which authorized the establishment of an alcoholism treatment program at Raleigh Hills Hospital.

St. Anthony's Hospital, Amarillo
AS82-0514-014
NIEH—Request for a declaratory ruling that a certificate of need is not necessary prior to the acquisition by lease of The Harrington Cancer Center, an ambulatory cancer center located in the Amarillo Medical Center, Amarillo, from the Don and Sybil Harrington Cancer. Inc., on or after September 1, 1982.

Issued in Austin, Texas, on March 24, 1982.

TRD-824264 L. Darrouzet
Assistant General Counsel
Texas Health Facilities Commission

Filed: May 24, 1982, 8:45 a.m.
For further information, please call (512) 475-6940.

Teacher Retirement System of Texas

Consultant Proposal Request

Description of Services Requested. In accordance with Texas Civil Statutes, Article 6252-11c, the Teacher Retirement System of Texas (TRS) is requesting proposals for the services of a contractor to conduct a comprehensive review of the adequacy and efficiency of the system's internal controls. The review should also provide procedural documentation in key transaction areas for use by TRS personnel. The contractor will be required to document and test each of the control functions which are part of the system's internal control procedures including management controls, system controls, and monitoring controls. Specific deliverables to be provided by the contractor include:

(1) conclusions on the adequacy of internal controls;

(2) recommendations for improvements in the efficiency or effectiveness of control procedures; and

(3) documentation of major transaction cycles for internal use by TRS management and personnel.

Closing Date for Offers. Offers must be received and date stamped by TRS no later than 5 p.m. July 1, 1982.

Contact. Individuals or firms interested in submitting proposals may contact Wayne Fickel, Teacher Retirement System of Texas, 1001 Trinity Street, Austin, Texas 78701, (512) 397-6400.

Evaluation Criteria. Criteria to be used to evaluate offers will include:

(a) thorough knowledge of procedures and operations of employee retirement systems, both in Texas and nationally;

(b) knowledge of the Teacher Retirement System of Texas organization and procedures;

(c) thorough understanding of internal control techniques and safeguards;

(d) corporate capabilities and experience in similar projects and the experience of project personnel;

(e) quality of the offerer's technical approach to accomplish project requirements; and

(f) reasonableness of proposed cost of services in relation to the work described.

This project is undertaken as a result of work previously performed by the firm of Peat, Marwick, Mitchell & Co. (PMM&Co.). Award of the contract will not necessarily be made to the offerer proposing the lowest price. The department's evaluation of the technical quality of service and qualifications will be considered jointly with the offerer's proposed price.

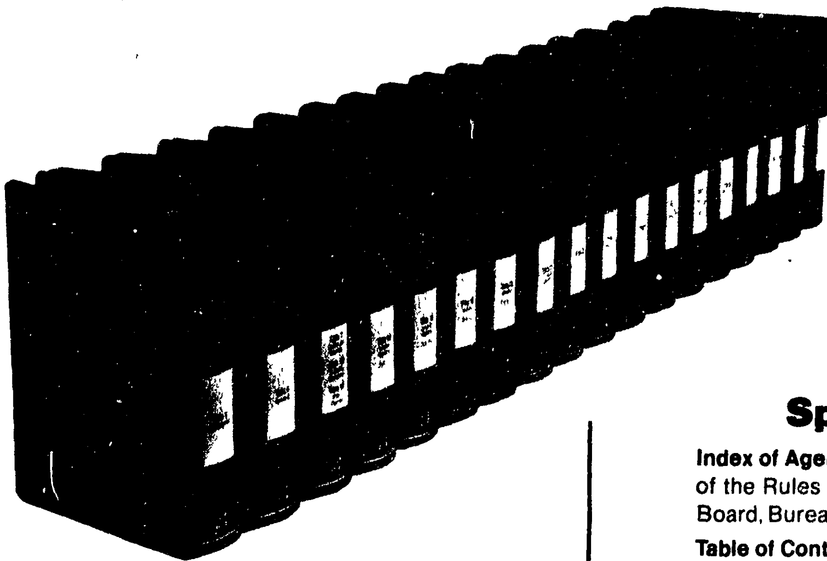
Schedule for Completion. Work must be completed by August 31, 1982.

Selection Criteria. Final selection will be made by the Audit Committee of the Teacher Retirement System of Texas, based upon submitted qualifications. The system reserves the right to reject any or all proposals received in response to this request for proposals if it is considered to be in the best interest of the system to do so. Issuance of this request in no way constitutes a commitment by the system to award a contract.

Issued in Austin, Texas, on May 21, 1982.

TRD-824258 Bruce Hineman
Executive Secretary
Teacher Retirement System of Texas

Filed: May 21, 1982, 3:57 p.m.
For further information, please call (512) 397-6400, ext. 413.



The Texas Administrative Code

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Table of 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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Index of Agencies, listing the location in the Code of the Rules issued by each Agency, Department, Board, Bureau or Commission of the State of Texas.

Table of Contents for the entire Code and for each Title, Part, Chapter, and Subchapter of the Code.

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Parallel Reference Table for each title, showing the section number used in the Code to designate a Rule and, where applicable, the ten-digit identification number assigned to it by the Texas Register Division.

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Source Notes, containing a reference to the date and, when applicable the citation to the *Texas Register* issue in which each Title, Part, Chapter, Subchapter, and Section of the Code was adopted and became effective.

Cross References, showing every Part, Chapter, Subchapter, and Section of the Code cited in a Rule.

Editor's notes, containing clarifying comments or statements as appropriate

Notes of Decisions, containing a summary of each court decision and Attorney General's opinion that construes a Rule.

For more information please contact:

In eastern Texas: Gayle Carpenter 806-797-4878

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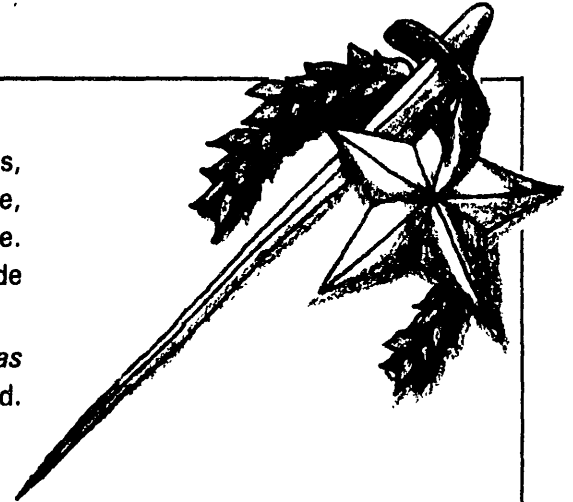

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