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TEXAS DOCUMENTS

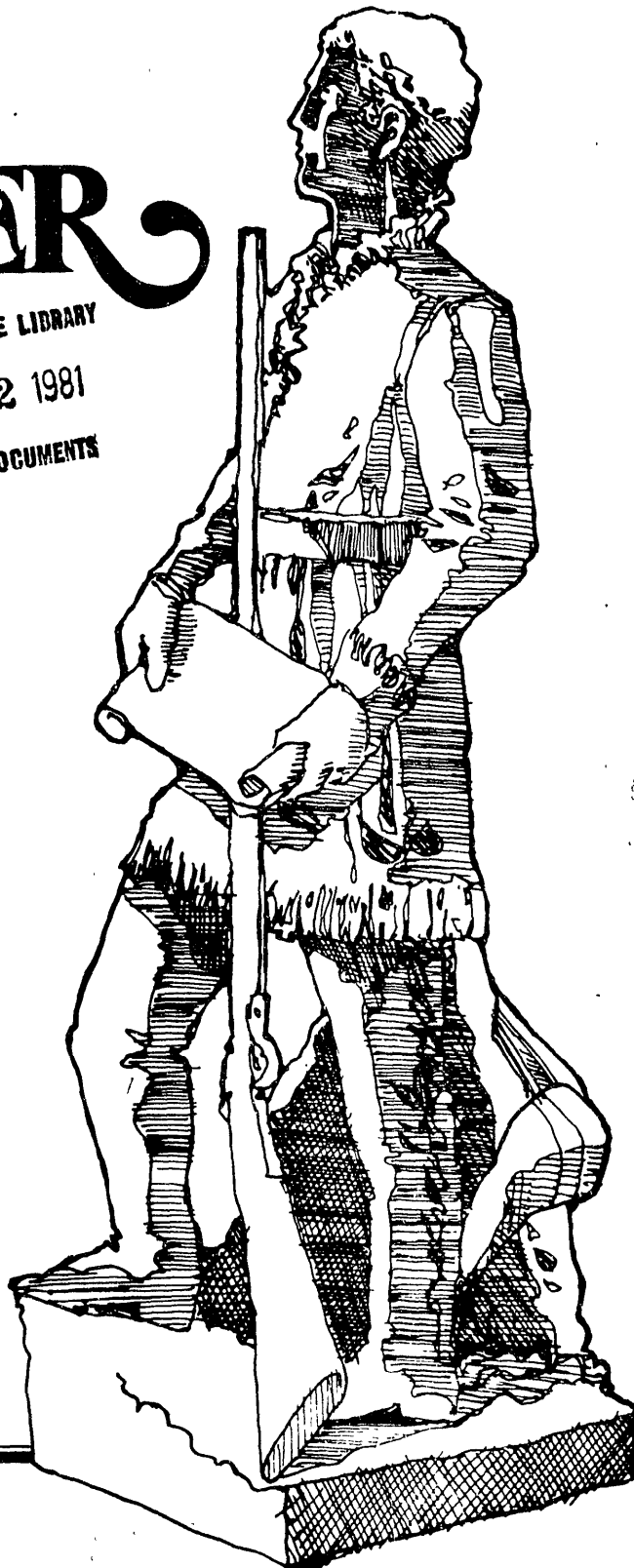
In This Issue...

Railroad Commission of Texas proposes amendments to the rules of the Oil and Gas Division relating to salt-water and other oil and gas waste disposal wells; fluid injection operations in reservoirs productive of oil, gas, or geothermal resources; and underground hydrocarbon storage facilities; proposed date of adoption—July 10..... 2052

Texas Department of Health proposes amendments to its immunization requirements in Texas elementary and secondary schools and institutions of higher education due to the outbreak of measles among students; proposed date of adoption—July 10 2058

Texas Department of Human Resources proposes amendments concerning designation of an emergency authorized representative (A/R) in its Food Stamp Program rules; proposed date of adoption—July 10..... 2060

Texas Parks and Wildlife Commission adopts amendments to its regulation concerning shell dredging on the Texas Gulf Coast, with changes made to the text as proposed; effective date—June 23..... 2066



Office of the Secretary of State

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

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

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

1 is the title (agencies grouped together by subject title which are arranged alphabetically)

TAC is the *Texas Administrative Code*

§27.15 is the section number (27 represents the chapter number and 15 represents the individual rule within the chapter)

Latest Texas Code Reporter
(Master Transmittal Sheet): No. 4, Jan. 81

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



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George W. Strake, Jr.
Secretary of State

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Opinions

- 2050 *MW-338 (RQ-509) (concerning disposition of interest on capitol complex area Fund 7)*
- 2050 *MW-339 (RQ-399 & RQ-399a) (concerning consent for comprehensive diagnosis and evaluation and for admission to nonresidential mental retardation services)*
- 2050 *MW-340 (RQ-552) (concerning whether Texas Parks and Wildlife Commission may contract with a private attorney to prosecute shrimp and confiscation cases)*
- 2050 *MW-341 (RQ-215) (concerning ineligibility of campaign contributors for appointment to Good Neighbor Commission)*
- 2050 *MW-342 (RQ-412) (concerning whether insurance contracts purchased by school districts must be let on competitive bids)*
- 2051 *MW-343 (RQ-593) (concerning whether cities may invest their funds in United States Treasury bills and notes instead of city depositories)*
- 2051 *MW-344 (RQ-584) (concerning competitive bidding requirement)*

Open Records Decisions

- 2051 *ORD-271 (RQ-546) (concerning whether a boxer-promoter contract on file with the Texas Department of Labor and Standards is available to the public)*

Proposed Rules

Texas Commission on the Arts

- 2052 *Guide to Assistance for Arts Programs*

Railroad Commission of Texas

- 2052 *Oil and Gas Division*

Texas Real Estate Commission

- 2057 *Provisions of the Real Estate License Act*

Texas Department of Health

- 2058 *Communicable Diseases*

Texas Department of Human Resources

- 2060 *Food Stamps*
- 2060 *Nursing Facilities Administration*

Adopted Rules

Board of Vocational Nurse Examiners

- 2066 *Licensing*

Texas Parks and Wildlife Department

- 2066 *Fisheries*

Texas Department of Human Resources

- 2066 *Food Stamps*

Open Meetings

- 2070 *Texas Board of Chiropractic Examiners*
- 2070 *Texas Department of Health*
- 2070 *Texas Health Facilities Commission*
- 2071 *Texas Department of Human Resources*
- 2071 *State Board of Insurance*
- 2071 *Texas Board of Irrigators*
- 2071 *Board for Lease of State-Owned Lands*
- 2072 *Natural Fibers and Food Protein Commission*
- 2072 *Texas Optometry Board*
- 2072 *Board of Nurse Examiners*
- 2072 *Texas Parks and Wildlife Department*
- 2073 *Polygraph Examiners Board*

2073 *Texas State Board of Examiners of Psychologists*

2073 *Public Utility Commission of Texas*

2074 *Regional Agencies*

In Addition

State Banking Board

- 2075 *Public Hearing*

Texas Department of Community Affairs

- 2075 *Request for Proposal*

Texas Department of Health

- 2075 *Correction of Error*

Texas Health Facilities Commission

- 2076 *Applications for Declaratory Ruling, Exemption Certificate, and Transfer and Amendment of Certificate*

Indexes

2077 *TAC Titles Affected in This Issue (Conversion Table)*

2077 *Table of TAC Titles*

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

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

Opinions

Summary of Opinion MW-338 (RQ-509)

Request from Homer A. Foerster, executive director, State Purchasing and General Services Commission, Austin, concerning disposition of interest on capitol complex area Fund 7.

Summary of Opinion: Interest earned on the capitol complex area Fund 7 may not be credited to that fund but must be credited to the General Revenue Fund as required by Texas Civil Statutes, Article 2543d.

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

Doc. No. 813646 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

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

Summary of Opinion MW-339 (RQ-399 & RQ-399a)

Request from John J. Kavanagh, M.D., commissioner, Texas Department of Mental Health and Mental Retardation, Austin, concerning consent for comprehensive diagnosis and evaluation and for admission to nonresidential mental retardation services.

Summary of Opinion: Legally adequate consent as defined by Texas Civil Statutes, Article 5547-300, §3(20), is required for the performance of a comprehensive diagnosis and evaluation. A comprehensive diagnosis and evaluation must be performed before a person may be admitted to residential or nonresidential mental retardation services. Legally adequate consent is required for admission to residential or nonresidential mental retardation services. If an adult proposed client has not been declared incompetent, has no guardian, and does not possess the mental capacity to give legally adequate consent for admission to mental retardation services, he must be denied the services. If he has been admitted to

services and it is then determined that he has never been judicially declared incompetent, has no guardian, and does not possess the mental capacity to give legally adequate consent, he must be discharged from such services. In neither case does he have a property right protected by the 14th amendment to the United States Constitution. However, a client admitted to a facility under prior law may remain there until appropriate alternative placement can be found. If he cannot be discharged without safety to himself or the public, the superintendent may apply for his commitment. The facility has no duty to initiate a guardianship proceeding to determine whether the client should be legally adjudicated incompetent, but the department may take measures to assist a discharged client in need of institutional care to be provided a guardian or committed to an appropriate facility.

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

Doc. No. 813647 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

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

Summary of Opinion MW-340 (RQ-552)

Request from Bennie Bock II, chairman, Committee on Environmental Affairs, Texas House of Representatives, Austin, concerning whether Texas Parks and Wildlife Commission may contract with a private attorney to prosecute shrimp and confiscation cases.

Summary of Opinion: Absent statutory authority permitting it to do so, the Parks and Wildlife Department may not contract with a private attorney to prosecute shrimp and confiscation cases and other wildlife infringements of the law. No such statutory authority exists.

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

Doc. No. 813648 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

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

Summary of Opinion MW-341 (RQ-215)

Request from Tim Von Dohlen, Committee on Regions, Comacts, and Districts, Texas House of Representatives, Austin, concerning ineligibility of campaign contributors for appointment to Good Neighbor Commission.

Summary of Opinion: The statutory provision is void which limits membership on the Good Neighbor Commission to persons not contributing to the political campaign of the appointing governor.

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

Doc. No. 813649 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

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

Summary of Opinion MW-342 (RQ-412)

Request from Oscar H. Mauzy, chairman, Education Committee, Texas Senate, Austin, concerning whether insurance contracts purchased by school districts must be let on competitive bids.

Summary of Opinion: A contract for the purchase of school insurance need not be submitted to competitive bidding under the Texas Education Code, §21.901. Whether a school trustee's interest in a group with which the school board has contracted will render the contract void depends upon whether the trustee possesses a pecuniary interest in the contract or occupies a position with the group which would tend to prevent him from exercising absolute loyalty and undivided allegiance to the school district.

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

Doc. No. 813650 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

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

Summary of Opinion MW-343 (RQ-593)

Request from O. H. "Ike" Harris, chairman, Economic Development Committee, Texas Senate, Austin, concerning whether cities may invest their funds in United States Treasury bills and notes instead of city depositories.

Summary of Opinion: When a city uses a depository, it must comply with the procedures set out in Texas Civil Statutes, Articles 2559-2566a. City officials may withdraw funds from the depository to invest them in United States securities only as expressly permitted by statute. To withdraw such funds would constitute a breach of the depository contract. Any provisions contained in the depository contract inconsistent with the city depository statutes are unenforceable. Texas Civil Statutes, Article 1269j-3, authorizes cities to invest in federal obligations only the monies remaining as surplus from the proceeding fiscal year.

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

Doc. No. 813651 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

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

Summary of Opinion MW-344 (RQ-584)

Request from Gibson D. (Gib) Lewis, chairman, Committee on Intergovernmental Affairs, Texas House of Representatives, Austin, concerning competitive bidding requirement.

Summary of Opinion: The Board of Trustees of Galveston Wharves is required to receive competitive bids pursuant to Texas Civil Statutes, Article 2368a, in order to award a contract for the services of a container terminal operator.

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

Doc. No. 813652 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

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

Open Records Decisions

Summary of Open Records Decision ORD-271 (RQ-546)

Request from Lias B. "Bubba" Steen, Texas Department of Labor and Standards, Austin, concerning whether a boxer-promoter contract on file with the Texas Department of Labor and Standards is available to the public.

Summary of Decision: The Texas Department of Labor and Standards received a request under the Open Records Act, Texas Civil Statutes, Article 6252-17a, for a contract between a boxer and promoter filed with the department. Financial information related to a business enterprise is not excepted from disclosure by the Open Records Act, §3(a)(4) or (10), unless a specific statute or judicial decision renders the information confidential; unless disclosure would impair the government's ability to obtain the information in the future; or unless specific harm would result from disclosure. In this case, no statute or decision treated the earnings of a boxer as confidential. Since departmental regulations required the filing of contracts, disclosure would not impair the department's ability to obtain the information in the future. Nor was there any suggestion of specific harm that might result from disclosure of such a document. Consequently, the boxer-promoter contract filed with the Department of Labor and Standards is not excepted from disclosure under the Open Records Act.

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

Doc. No. 813645 Susan L. Garrison, Chairwoman
Opinion Committee
Office of the Attorney General

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

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

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

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

CODIFIED

TITLE 13. CULTURAL RESOURCES

Part III. Texas Commission on the Arts

Chapter 37. Guide to Assistance for Arts Programs

Application Materials

The Texas Commission on the Arts proposes to amend §37.21 (353.04.02.001) which adopts by reference the guide to assistance for arts programs—application materials. This amendment changes the assistance review application form and instructions in order to clarify and update the application and include in the instructions a listing of required and optional attachments for each application.

This amendment has no fiscal implications for units of local or state government according to agency personnel.

Public comments may be submitted in writing to the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

The amendment is proposed under the authority of Texas Civil Statutes, Article 6144g, as revised.

§37.21 (353.04.02.001). *Instructions and Application Form for Assistance Review Process*. The commission adopts by reference the instructions and application form for the regular assistance review process as outlined in the commission's guide to assistance, policies, and procedures *as amended June 1981*. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

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

Doc. No. 813624 Allan Longacre
Executive Director
Texas Commission on the Arts

Proposed Date of Adoption: July 10, 1981

For further information, please call (512) 475-6593.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation

The Railroad Commission of Texas proposes to amend §3.9 (051.02.02.009) which pertains to standards and permit application procedures for saltwater and other oil and gas waste disposal wells. The amendments would provide more specifics in the section, thereby increasing effectiveness in regulating saltwater and other oil and gas waste disposal well operations in the State of Texas.

It is the opinion of the Oil and Gas Division staff that these proposed amendments have no fiscal implications for any unit of state or local government.

Public comment is invited. Comments will be accepted for 30 days following publication of the proposed amendments in the *Texas Register* and should be submitted in writing to Jerry W. Mullican, underground injection control director, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

These amendments are proposed under the authority of the Texas Water Code, Chapter 27, and the Texas Natural Resources Code, Title III, Oil and Gas.

§3.9 (051.02.02.009) *Saltwater Disposal Wells [Well Applications]*. *It is in the public interest to allow the underground disposal by injection of saltwater and other oil and gas waste provided that the injection occurs in a manner which will not endanger oil, gas, geothermal, or freshwater resources. Therefore, every person who disposes of saltwater or other oil and gas waste by injection into a*

porous formation not productive of oil, gas, or geothermal resources shall be responsible for complying with this section; the Texas Water Code, Chapter 27; and the Natural Resources Code, Title III. [The commission shall grant permits for saltwater disposal without notice and hearing, provided the operator fulfills the following requirements:]

(1) **General.** Saltwater or other **oil and gas waste** [water containing minerals in such an amount as to be unfit for domestic, stock, irrigation, or other general uses] may be disposed of, upon application to and approval by the commission, by injection into [the following formations: all] non-producing zones of oil, gas, or geothermal resources bearing formations that contain water mineralized by processes of nature to such a degree that the water is unfit for domestic, stock, irrigation, or other general uses. **Every operator who proposes to dispose of saltwater or other oil and gas waste must obtain a permit from the commission authorizing the disposal in accordance with this section.**

(2) **Texas Department of Water Resources letter.** Before such formations are approved for disposal use, the applicant shall **show that** [ascertain whether or not] the formations are separated from freshwater formations by impervious beds which will give adequate protection to such freshwater formations and must submit a letter from the Texas Department of Water Resources, Austin, Texas, stating that the use of such formation will not endanger the freshwater strata in that area and that the formations to be used for [saltwater] disposal are not freshwater-bearing sands.

(3) Saltwater disposal wells shall be cased and the casing cemented in such a manner that there will be no danger to oil, gas, geothermal resources, or freshwater reservoirs.]

(3)(4) **Application.** The application to dispose of saltwater or other **oil and gas waste** by injection into a porous formation not productive of oil, gas, or geothermal resources shall be verified and filed with the commission. **One copy shall be filed with the appropriate district office.**

(4)(5) **Notice and hearing.**

(A) The applicant shall give notice by mailing or delivering a copy of the application to the surface owner and to each **adjoining** offset operator on or before **the date** the application is mailed to or filed with the commission.

(B) **Notice of the application shall be published by the applicant in a newspaper of general circulation in the county where the well will be located in a form approved by the director of underground injection control (hereinafter "director"). The applicant shall file proof of publication prior to the hearing or administrative approval.**

(C)(A) If a **complaint** [complaints] from a person notified pursuant to subparagraph (A) of this paragraph or other interested person is [are] made to the commission within 15 [10] days of receipt of the application or of publication that the proposed plan as contained in the application will cause damage to oil, gas, geothermal resources, or freshwater resources, then a hearing will be held on the application **after the commission provides notice of hearing** [following notice] to all interested persons [of such hearing].

(D)(B) If no **complaint** [complaints] is [are] received by the commission, **the director may administratively approve the application** [then a permit will be

issued without notice and hearing, subject to its approval of all the information submitted on or with the prescribed form]. **If the director denies administrative approval, the operator shall have a right to a hearing on the matter. After hearing, the examiner shall recommend a final action by the commission.**

(5) **Subsequent commission action.**

(A) **A permit for saltwater or other oil and gas waste disposal may be modified, revoked and reissued, or terminated by the commission for just cause after notice and opportunity for hearing, if:**

(i) **a substantial change of conditions occurs in the operation or completion of the disposal well, or the operator makes substantial changes in the information originally furnished;**

(ii) **freshwater is or may be polluted as a result of continued operation of the well;**

(iii) **there are substantial violations of the terms and provisions of the permit or of commission rules;**

(iv) **the operator has misrepresented any material facts during the permit issuance process; or**

(v) **injected fluids are escaping from the permitted disposal zone.**

(B) **A disposal well permit may be transferred only upon written approval of the director. The permitted operator shall file application with the commission for approval of the transfer of the ownership and operation of the facility. The director may require a hearing on the matter. After hearing, the examiner shall recommend a final action by the commission.**

(6) **Area of review.** The operator shall review the data of record for wells that penetrate the proposed disposal zone within a 1/4-mile radius of the proposed disposal well to determine if all wells have been plugged in a manner that will prevent the movement of fluids from the disposal well into any strata other than the authorized disposal zone. The operator shall identify in the application any unplugged or improperly plugged wells.

(7) **Casing.** Disposal wells shall be cased and the casing cemented in compliance with §3.13 (051.02.02.013) of this title (relating to Casing) in such a manner that the injected fluids will not endanger oil, gas, geothermal resources, or freshwater resources.

(8) **Special equipment.**

(A) **Tubing and packer.** New wells drilled or converted for disposal after the effective date of this section shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 100 feet above the top of the disposal zone. Existing disposal wells must be so equipped by January 1, 1982.

(B) **Pressure valve.** The wellhead shall be equipped with a pressure observation valve on the tubing and for each annulus of the well. Operators of existing disposal wells shall comply with this requirement by no later than six months after the adoption of this section.

(C) **Exceptions.** The director may grant an exception to any provision of this paragraph upon proof of good cause. If the director denies an exception, the operator shall have a right to a hearing. After hearing, the examiner shall recommend a final action by the commission.

(9) **Well record.** Within 30 days after the completion or conversion of a disposal well, the owner or operator shall file in duplicate in the district office a complete

record of the well on the appropriate form which shows the current completion.

(10) Monitoring and reporting.

(A) The operator shall monitor the injection pressure and injection rate of each disposal well on at least a monthly basis.

(B) The results of the monitoring shall be reported annually to the commission on the prescribed form.

(C) All monitoring records shall be retained by the operator for at least five years.

(D) The operator shall report to the appropriate district office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well. The operator shall confirm this report in writing within five working days.

(11) Testing.

(A) Before beginning disposal operations, the operator shall test the long string casing at a pressure not less than the maximum authorized injection pressure or 500 psi, whichever is greater, to determine if there are any leaks.

(B) Each disposal well shall be pressure-tested in the manner provided in subparagraph (A) of this paragraph at least once every five years to determine if there are leaks in the casing, tubing, or packer. The director may prescribe a schedule and mail notification to operators to allow for timely compliance with this requirement.

(C) The director may grant an exception to the testing required in subparagraph (B) of this paragraph when the casing-tubing annulus pressure is monitored and included on the annual monitoring report required by paragraph (10) of this section and there is no indication of problems.

(D) The operator shall notify the district office at least 48 hours prior to the testing. Testing shall not commence before the end of the 48-hour period unless authorized by the district office. The district director may authorize or require alternative tests or surveys as is deemed appropriate and necessary.

(E) A complete record of all tests shall be made out, verified, and filed in duplicate in the district office on the appropriate form within 30 days after the testing.

(12) **Confinement of fluids.** If the operator or the commission determines that the disposal operation is causing fluid to enter an unauthorized stratum or to escape to the land surface, the operator shall shut in the disposal well immediately and notify the district office within 24 hours. Injection into the disposal well shall not be resumed until a certificate of compliance has been issued by the director. If the certificate of compliance is not issued within 90 days, the disposal well shall be plugged in accordance with §3.14 (051.02.02.014) of this title (relating to Plugging) and the permit shall be canceled.

(13) **Plugging.** Disposal wells shall be plugged upon abandonment in accordance with §3.14 (051.02.02.014) of this title (relating to Plugging).

(14) Penalties.

(A) Violations of this section may subject the operator to penalties and remedies specified in the Texas Water Code, Chapter 27, and the Natural Resources Code, Title III.

(B) The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.68 (051.02.02.073) of this title (relating to Pipeline Connection and Severance) for violation of this section.

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

Doc. No. 813637

John Camp, General Counsel
Oil and Gas Division
Railroad Commission of Texas

Proposed Date of Adoption: July 10, 1981

For further information, please call (512) 445-1186.

The Railroad Commission of Texas proposes to amend §3.46 (051.02.02.046) which pertains to standards and permit application procedures for fluid injection operations in reservoirs productive of oil, gas, or geothermal resources. The amendments would provide more specifics in the section, thereby increasing effectiveness in regulating such fluid injection operations in the State of Texas.

It is the opinion of the Oil and Gas Division staff that these proposed amendments have no fiscal implications for any unit of state or local government.

Public comment is invited. Comments will be accepted for 30 days following publication of the proposed amendments in the *Texas Register* and should be submitted in writing to Jerry W. Mullican, underground injection control director, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

These amendments are proposed under the authority of the Texas Natural Resources Code, Title III, Oil and Gas.

§3.46 (051.02.02.046). Fluid Injection into Productive Reservoirs.

(a) **Permit required.** Any person who engages in fluid injection operations in reservoirs productive of oil, gas, or geothermal resources must obtain a permit from the commission. Permits may be issued when the injection will not endanger oil, gas, or geothermal resources or cause the pollution of freshwater strata unproductive of oil, gas, or geothermal resources. [Uncontested applications for fluid injection operations for reservoirs productive of oil, gas, or geothermal resources shall be processed and permitted administratively by the commission, without the necessity of notice and hearing, provided that a contested application shall not be approved administratively, but shall be set for hearing with formal notice issued by the commission.]

(b) Filing of application.

[(1)] An application to conduct fluid injection operations in a reservoir productive of oil, [or] gas, or geothermal resources shall be filed on the form prescribed by the commission[, and shall include all of the information required by the questionnaire and instructions stated thereon]. The [Such] form shall be executed by a party having knowledge of the facts entered on the [such] form [as prescribed]. **If freshwater is to be injected, the applicant shall file the freshwater injection data form and shall include a list of alternative water sources.**

[(2)] An application to conduct fluid injection operations in a reservoir productive of geothermal resources shall

be filed on the form prescribed by the commission, and shall include all of the information required by the questionnaire and instructions stated thereon. Such form shall be executed by a party having knowledge of the facts entered on such form as prescribed.]

(c) *Notice and hearing.*

(1) *The applicant shall give notice by mailing or delivering a copy of the application to the surface owner and to each adjoining offset operator on or before the date the application is mailed to or filed with the commission. Notice shall be given to all operators of wells in the reservoir if the application is the initial application for fluid injection into that reservoir.*

(2) *The applicant shall publish notice of the application in a newspaper of general circulation in the county where the well will be located in a form approved by the director of underground injection control (hereinafter "director"). The applicant shall file proof of publication prior to the hearing or administrative approval.*

(3) *If a complaint from a person notified pursuant to paragraph (1) of this subsection or other interested person is made to the commission within 15 days of receipt of the application or after publication that the proposed plan will cause damage to oil, gas, geothermal resources, or freshwater resources, then a hearing will be held on the application after the commission provides notice of hearing to all interested persons.*

(4) *If the commission receives no complaint, the director may administratively approve the application. If the director denies administrative approval, the operator shall have a right to a hearing. After hearing, the examiner shall recommend a final action by the commission.*

[An application must be accompanied by copies of notification given of the application to all operators with a well in the reservoir, if such application is the initial application for fluid injection into that reservoir, or, to offset operators only for a reservoir where prior permission has been given.]

(d) *Subsequent commission action.*

(1) *A permit for fluid injection may be modified, revoked and reissued, or terminated for just cause after notice and opportunity for hearing if:*

(A) *a substantial change of conditions occurs in the operation or construction of the injection well, or the operator makes substantial changes in the information originally furnished;*

(B) *freshwater is or may be polluted as a result of continued operation of the well;*

(C) *there are substantial violations of the permit provisions or of commission rules;*

(D) *the operator has misrepresented any material facts during the permit issuance process; or*

(E) *injected fluids are escaping from the permitted injection zone.*

(2) *An injection well permit may be transferred only upon written approval of the director. The permitted operator shall file application with the commission for approval of the transfer of the ownership and operation of the well. The director may require a hearing on the matter. After hearing, the examiner shall recommend a final action by the commission.*

[An application filed shall be held for a period of 10 days from receipt in the commission's Austin office before processing is commenced. Such waiting period may be eliminated by the filing of waivers from all parties for whom notice is required. A protest to such application to be effective must be received before processing is commenced.]

(e) *Area of review.* *The operator shall review the data of record for wells that penetrate the proposed injection zone within a 1/4-mile radius of the proposed injection well to determine if all wells have been plugged in a manner to prevent the movement of fluids from the injection well into any strata other than the authorized injection zone. The operator shall identify in the application any unplugged or improperly plugged wells. [An application that does not qualify for administrative approval shall be returned to the applicant with such a notification; however, the applicant is not precluded from requesting that the application be set down for hearing.]*

(f) *Casing.* *Fluid injection wells shall be cased and the casing cemented in accordance with §3.13 (051.02.02.013) of this title (relating to Casing) in such a manner that the injected fluids will not endanger oil, gas, or geothermal resources, and will not endanger freshwater resources not productive of oil, gas, or geothermal resources.*

(g) *Special equipment.*

(1) *Tubing and packer.* *New wells drilled or converted for injection after the effective date of this section shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 100 feet above the top of the injection zone.*

(2) *Pressure valve.* *The wellhead shall be equipped with a pressure observation valve on the tubing and for each annulus of the well. Operators of existing injection wells shall comply with this requirement by no later than six months after the adoption of this section.*

(3) *Exceptions.* *The director may grant an exception to any provision of this subsection upon proof of good cause. If the director denies an exception, the operator shall have a right to a hearing. After hearing, the examiner shall recommend a final action by the commission.*

(h) *Well record.* *Within 30 days after the completion or conversion of an injection well, the owner or operator shall file in duplicate in the district office a complete record of the well on the appropriate form which shows the current completion.*

(i) *Monitoring and reporting.*

(1) *The operator shall monitor the injection pressure and injection rate of each injection well on at least a monthly basis.*

(2) *The results of the monitoring shall be reported annually to the commission on the prescribed form.*

(3) *All monitoring records shall be retained by the operator for at least five years.*

(4) *The operator shall report to the appropriate district office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well. The operator shall confirm this report in writing within five working days.*

(j) *Testing.*

(1) *Before beginning injection operations, the operator shall test the long string casing at a pressure not less than the maximum authorized injection pressure or*

500 psi, whichever is greater, to determine if there are any leaks.

(2) Each injection well shall be pressure tested in the manner provided in paragraph (1) of this subsection at least once every five years to determine if there are leaks in the casing, tubing, or packer. The director may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with this requirement.

(3) The director may grant an exception to the testing required in paragraph (2) of this subsection when the casing-tubing annulus pressure is monitored and included on the annual monitoring report required in subsection (i) of this section and there is no indication of problems.

(4) The operator shall notify the district office at least 48 hours prior to pressure testing. Testing shall not commence before the end of the 48-hour period unless authorized by the district office. The district director may authorize or require alternative tests or surveys as is deemed appropriate and necessary.

(5) A complete record of all tests shall be made out, verified, and filed in duplicate in the district office on the appropriate form within 30 days after the testing.

(k) Confinement of fluids. If the operator or the commission determines that the injection operation is causing fluid to enter an unauthorized stratum or to escape to the land surface, the operator shall shut in the injection well immediately and notify the district office within 24 hours. Injection shall not be resumed until a certificate of compliance has been issued by the director. If the certificate of compliance is not issued within 90 days, the injection well shall be plugged in accordance with §3.14 (051.02.02.014) of this title (relating to Plugging) and the permit shall be canceled.

(l) Plugging. Injection wells shall be plugged upon abandonment in accordance with §3.14 (051.02.02.014) of this title (relating to Plugging).

(m) Penalties.

(1) Violations of this section may subject the operator to penalties and remedies specified in the Natural Resources Code, Title III.

(2) The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.68 (051.02.02.073) of this title (relating to Pipeline Connection and Severance) for violation of this section.

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

Doc. No. 813638 John Camp, General Counsel
Oil and Gas Division
Railroad Commission of Texas

Proposed Date of Adoption: July 10, 1981

For further information, please call (512) 445-1186.

The Railroad Commission of Texas proposes to adopt a new section establishing permit requirements and standards for the creation, operation, maintenance, and abandonment of underground hydrocarbon storage facilities.

It is the opinion of the Oil and Gas Division staff that there will be no fiscal implications for any unit of state or local government.

Public comments are invited. Comments will be accepted for 30 days following publication of this proposed section in the *Texas Register* and should be submitted in writing to Jerry W. Mullican, underground injection control director, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

This section is proposed under the authority of Texas Natural Resources Code, Title III, Oil and Gas.

§3.71 (051.02.02.074). Underground Hydrocarbon Storage.

(a) Permit required. No person may create, operate, or continue to use or maintain an underground hydrocarbon storage facility without obtaining a permit from the commission. Permits from the commission issued before the effective date of this section shall continue in effect until revoked, modified, or suspended by the commission.

(b) Application.

(1) An application for a permit to dispose of saltwater or other mineralized water arising out of or incidental to the creation, operation, or maintenance of the underground storage facility shall be filed with the commission in accordance with §3.9 (051.02.02.009) of this title (relating to Saltwater Disposal Wells Applications).

(2) An application for a permit to create, operate, or maintain an underground hydrocarbon storage facility shall be filed in the Austin office of the commission and shall contain the necessary information to demonstrate compliance with the laws of Texas and the rules of the commission.

(c) Geological requirement.

(1) Underground hydrocarbon storage facilities shall only be created, operated, or maintained in formations which are confined by impervious strata so as to prevent the waste of hydrocarbons, the uncontrolled escape of hydrocarbons to the surface, and the escape of hydrocarbons into freshwater reservoirs.

(2) The applicant must submit a letter from the Texas Department of Water Resources, Austin, Texas, with the application, stating the depth to which freshwater strata occurs in that area, and stating that the formations to be used for the underground hydrocarbon storage are not freshwater-bearing sand.

(d) Notice and hearing.

(1) The applicant shall give notice by mailing or delivering a copy of the application to the surface owner and to each adjoining offset operator on or before the date the application is mailed to or filed with the commission.

(2) Notice of the application shall be published by the applicant for three consecutive days in a newspaper of general circulation in the county where the facility will be located in a form approved by the director of underground injection control (hereinafter "director"). The applicant shall file proof of publication prior to the hearing or administrative approval.

(3) An application for a new underground hydrocarbon storage project will be considered for approval after notice and hearing. After hearing, the examiner shall recommend a final action by the commission.

(4) An application for an expansion of an approved project may be considered for administrative approval if the commission receives no complaint.

(A) If the commission receives a complaint from a person notified pursuant to paragraph (1) of this subsection or other interested person within 15 days of receipt of the application or after publication that the proposed plan as contained in the application will cause damage to oil, gas, geothermal resources, freshwater resources, or otherwise cause harm, then a hearing will be held on the application after the commission provides notice of hearing to all interested persons.

(B) If the commission receives no complaint, the director may administratively approve the application. If the director denies administrative approval, the operator shall have a right to a hearing on the matter. After hearing, the examiner shall recommend a final action by the commission.

(e) Subsequent commission action. A permit may be modified, revoked and reissued, or terminated after notice and opportunity for hearing if:

(1) a substantial change of conditions occurs in the operation or construction of the facility, or there are substantial changes in the information originally furnished;

(2) freshwater is or may be polluted as a result of continued operation of the facility;

(3) there are substantial violations of the terms and provisions of the permit or of commission rules;

(4) the operator has misrepresented any material facts during the permit issuance process; or

(5) injected fluids or gases are escaping from the storage facility.

(f) Transfer. An underground hydrocarbon storage permit may be transferred only upon written approval of the director. The permitted operator shall file application with the commission for approval of the transfer of the ownership and operation of the facility. The director may require a hearing on the matter. After hearing, the examiner shall recommend a final action by the commission.

(g) Casing. Wells used for injection and removal of hydrocarbons from the storage facility shall be cased and the casing strings cemented to prevent stored hydrocarbons from escaping to the surface, into freshwater strata, or otherwise escaping and causing waste or endangering the public health.

(h) Monitoring and reporting.

(1) All operators of hydrocarbon storage wells shall monitor the volumes injected and removed for each storage well on at least a monthly basis and shall annually report the results to the commission on the prescribed form. All monitoring records shall be retained by the operator for at least five years.

(2) The operator shall report immediately to the appropriate district office any mechanical failure or other problem. The operator shall confirm this report in writing within 24 hours.

(i) Plugging. Upon abandonment, all wells used for the injection or removal of hydrocarbons from the facility shall be plugged in accordance with §3.14 (051.02.02.014) of this title (relating to Plugging).

(j) Penalties.

(1) Violations of this section may subject the operator to penalties and remedies specified in the Texas Natural Resources Code, Title III.

(2) The certificate of compliance for any underground hydrocarbon storage facility may be revoked in the manner provided in §3.68 (051.02.02.073) of this title (relating to Pipeline Connection and Severance) for violation of this section.

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

Doc. No. 813639 John Camp, General Counsel
Oil and Gas Division
Railroad Commission of Texas

Proposed Date of Adoption: July 10, 1981

For further information, please call (512) 445-1186.

TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Education, Experience, Educational Programs, Time Periods, and Type of License

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Real Estate Commission, 4920 IH 35 North, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Texas Real Estate Commission proposes to repeal §535.65 (402.03.07.005) concerning issuance of real estate licenses on or after January 1, 1985.

The Real Estate License Act, Texas Civil Statutes, Article 6573a, §7(e), was repealed April 23, 1981. The section required the commission to accept only real estate broker license applications on or after January 1, 1985. Section 535.65 (402.03.07.005) was originally adopted to clarify the status of salesmen holding licensure privileges as of January 1, 1985; however, it is now proposed for repeal to remove any conflict existing after repeal of Article 6573a, §7(e).

Commission staff estimates that adoption of the repeal would have no fiscal implications, either for the state or for units of local government.

Written comments are invited and may be submitted to the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, until July 6, 1981.

This repeal is proposed pursuant to the authority of Texas Civil Statutes, Article 6573a.

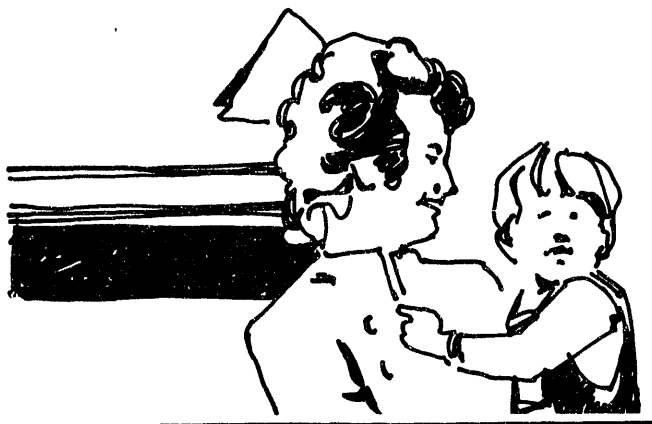
§535.65 (402.03.07.005). License; Issuance after January 1, 1985.

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

Doc. No. 813642 Andy James
Administrator
Texas Real Estate Commission

Proposed Date of Adoption: July 10, 1981

For further information, please call (512) 475-6693.



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education

The Texas Department of Health proposes to amend §97.63, §97.64, and §97.67 (301.41.04.003, .004, and .007). These sections originally became effective on September 1, 1978, and were published in the June 23, 1978, issue of the *Texas Register* (3 TexReg 2145). The outbreak of measles among students in Texas schools has prompted the proposed amendments. The major changes proposed are:

(1) Simplification and reduction of the text of §97.63 and §97.64 (301.41.04.003 and .004).

(2) Elimination of the provision that parental histories of measles illness are acceptable in place of vaccine for children enrolled in Texas schools prior to September 1, 1979 (see §97.63 and §97.67 (301.41.04.003 and .007)).

(3) A requirement for measles vaccine (or physician-verified history of measles) throughout high schools (see §97.63 and §97.64 (301.41.04.003 and .004)).

(4) A requirement that measles vaccine must have been received since January 1, 1968 (see §97.63 and §97.64 (301.41.04.003 and .004)).

(5) Because of the proposed changes listed in numbers (1)-(4) in this preamble, §97.68 (301.41.04.008), concerning unspecified dates for measles on immunization records, and §97.69 (301.41.04.009), concerning allowable time for responses to Form C-90 or similar forms, will be repealed because they are no longer needed. The notice of repeal of these sections follows this submission.

(6) Section 97.63 (301.41.04.003) will be subdivided into two new subsections (a) and (b). This means that paragraphs (1)-(4) now contained in the section will be transferred to subsection (b).

The fiscal implications of these proposed amendments to state and units of local government will be approximately \$229,680 for fiscal year 1981. There will be no fiscal implications for fiscal years 1982 through 1985 (source: Budget Office and Immunization Division).

Public comments are invited and should be submitted in writing no later than 30 days after publication of these amendments in the *Register*. Comments should be sent to Euel A. Smith, director, Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. In addition, a public hearing will be held in the Texas Department of Health auditorium, 1100 West 49th Street, Austin, beginning at 9 a.m. Monday, June 22, 1981.

These amendments are proposed under authority of the Texas Education Code, Article 2.09, and Texas Civil Statutes, Articles 4418a and 6252-13a.

§97.63 (301.41.04.003). *Required Immunizations.*

(a) See §97.71 (301.41.04.011) of this title (relating to Provisional Enrollment) and §97.77 (301.41.04.017) of this title (relating to Remarks and Special Recommendations). Oral polio vaccine is the usual vaccine of choice for preventing polio; however, inactivated polio vaccine may be medically indicated for some students. The required number of doses and booster requirements for inactivated polio vaccine (IPV) differ from the requirements for oral polio vaccine. See §97.66 (301.41.04.006) of this title (relating to Inactivated Polio Vaccine). If a student fails to complete the oral polio vaccine series, and, upon medical advice, starts receiving IPV, then the IPV requirements specified in §97.66 (301.41.04.006) of this title (relating to Inactivated Polio Vaccine) will apply.

(b) The following immunizations are required in the respective age groupings.

(1) (No change.)

(2) Children in kindergarten and grades one through five, or children ages 5 through 11 in ungraded schools.

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

(C) Measles. All students in this group must have received measles vaccine on or after the first birthday, or provide a *physician-validated* history of measles illness. [On or after September 1, 1979, all new histories of measles illness presented by students, parents, or guardians must be verified by a physician's statement. See §97.67 (301.41.04.007) of this title (relating to Verification of Measles Illness); §97.68 (301.41.04.008) of this title (relating to Unspecified Dates for Measles on Immunization Records); §97.69 (301.41.04.009) of this title (relating to Allowable Time for Responses to Form C-90 or Similar Forms); and §97.77 (301.41.04.017) of this title (relating to Remarks and Special Recommendations).

(D)-(E) (No change.)

(3) Children and others in grades 6 through 12, or children and others ages 12 and older in ungraded schools other than institutions of higher education. **See §97.65 (301.41.04.005) of this title (relating to Pregnancy).**

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

(C) Measles.

[(i)] Effective September 1, 1981 [1979], *all* students *through the 12th grade* [12 years of age or those enrolled in the sixth grade] will be required to have received measles vaccine on or after the first birthday, *and after January 1, 1968*, or provide a *physician-validated* history of measles illness. [On the first of September each year thereafter, students one year older, or in one higher grade, must also meet these requirements. Effective September 1, 1985, students through 18 years of age or in the 12th grade will be required to have received measles vaccine on or after the first birthday, or provide a history of measles illness. See the following table.

[Measles Vaccine Requirements by Effective
Dates for Students in Schools]

Effective Dates	Grades	Ages* in Ungraded Schools
September 1, 1978	Preschool, Kindergarten, Grades 1-5	Through 11
September 1, 1979	Through 6th	Through 12
September 1, 1980	Through 7th	Through 13
September 1, 1981	Through 8th	Through 14
September 1, 1982	Through 9th	Through 15
September 1, 1983	Through 10th	Through 16
September 1, 1984	Through 11th	Through 17
September 1, 1985	Through 12th	Through 18

*Ages in ungraded schools are ages of students on the effective date.

[Note: Measles vaccine is not required for children less than 18 months old.]

[(ii) On or after September 1, 1979, all new histories of measles illness presented by students, parents, or guardians must be verified by a physician's statement. See §97.67 (301.41.04.007) of this title (relating to Verification of Measles Illness); §97.68 (301.41.04.008) of this title (relating to Unspecified Dates for Measles on Immunization Records); §97.69 (301.41.04.009) of this title (relating to Allowable Time for Responses to Form C-90 or Similar Forms); and §97.77 (301.41.04.017) of this title (relating to Remarks and Special Recommendations). Eventually, all students will be included in the measles requirements. In the meantime, measles vaccine is recommended for all students for whom measles vaccine is not yet required, especially if:

- [(I) history of vaccine or illness is uncertain;
- or
- [(II) measles vaccine was received prior to the first birthday; or
- [(III) the "inactivated" (killed) type of measles vaccine was received.]
- [(D)-(E) (No change.)
- (4) (No change.)

§97.64 (301.41.04.004). Boosters.

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

(c) Effective September 1, 1981 [1979], a measles booster is required for each *student through the 12th grade* [child 18 months to 12 years of age (or enrolled through the fifth grade)] who received measles vaccine prior to the first birthday, *or before January 1, 1968*, unless the *student* [child has] had *physician-validated* measles illness. [On the first of September each year thereafter, each student one year older or in one higher grade will also be required to receive a measles booster if his or her previous dose was received prior to the first birthday, unless measles illness has occurred. On or after September 1, 1979, all new histories of measles illness presented by students, parents, or guardians must be verified by a physician's statement. Note: This subsection contains the same policies previously stated in §97.63(a)(5), (b)(3), and (c)(3) (301.41.04.003(a)(5), (b)(3), and (c)(3)) of this title (relating to Required Immunizations).]

§97.67 (301.41.04.007). Verification of Measles Illness. Section 97.63 (301.41.04.003) of this title (relating to Required Immunizations) states that a *physician-validated* history of measles illness is acceptable in lieu of vaccine. All [verbal or written histories of measles illness received by schools from

parents, guardians, or physicians prior to September 1, 1979, will always be considered to be valid histories; however, effective September 1, 1979, all new] histories of measles illness must be supported by a physician's written statement of measles illness. The physician's statement should contain wording such as "This is to verify that (name of student) had measles (rubeola) illness on or about (date) and does not need measles vaccine." A copy of the statement must be attached to the student's school immunization record, and the original should be returned to the student, parent, or guardian. [Standard Form C-90 is available at no charge from the Texas Department of Health for schools to use in obtaining verification of measles illness, or schools may design and use similar forms. See §97.68 (301.41.04.008) of this title (relating to Unspecified Dates for Measles on Immunization Records) and §97.69 (301.41.04.009) of this title (relating to Allowable Time for Responses to Form C-90 or Similar Forms). Note: If *a student is unable to submit a physician's statement* [students who are required to submit physician's statements are unable to obtain them], then measles vaccine is required.

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

Doc. No. 813640 Jerome H. Greenberg, M.D.
Deputy Commissioner, Preventable
Diseases
Texas Department of Health

Proposed Date of Adoption: July 10, 1981
For further information, please call (512) 458-7284.

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

The Texas Department of Health proposes to repeal §97.68 and §97.69 (301.41.04.008 and .009). The outbreak of measles among students in Texas schools has prompted the department to amend §§97.63, 97.64, and 97.67 (301.41.04.003, .004, and .007) which will make it no longer necessary to have §97.68 and §97.69 (301.41.04.008 and .009); therefore, the department is proposing to repeal them. (The amendments are explained in more detail in a separate submission simultaneously proposed in this issue of the *Register*).

There are no fiscal implications to the state or units of local government in that the repeal will make inapplicable any probable cost of enforcing or administering rules (source: Budget Office and Immunization Division).

Public comments are invited and should be submitted in writing no later than 30 days after publication of this notice of repeal in the *Register*. Comments should be sent to Euel A. Smith, director, Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. In addition, a public hearing will be held on this proposed repeal and preceding amendments. The hearing will be held in the Texas Department of Health auditorium, 1100 West 49th Street, Austin, beginning at 9 a.m. Monday, June 22, 1981.

This repeal is being proposed under authority of the Texas Education Code, Article 2.09, and Texas Civil Statutes, Articles 4418a and 6252-13a.

§97.68 (301.41.04.008). *Unspecified Dates for Measles on Immunization Records.*

§97.69 (301.41.04.009). *Allowable Time for Responses to Form C-90 or Similiar Forms.*

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

Doc. No. 813641 Jerome H. Greenberg, M.D.
Deputy Commissioner, Preventable Diseases
Texas Department of Health

Proposed Date of Adoption: July 10, 1981

For further information, please call (512) 458-7284.

NONCODIFIED

Texas Department of Human Resources

Food Stamps

Application Process 326.15.23

The Texas Department of Human Resources proposes to amend Rules 326.15.23.026, .027, and .036 concerning designation of emergency authorized representatives (A/R) in the Food Stamp Program. The United States Department of Agriculture (USDA) has requested that the method used for designation of an emergency A/R be changed to relieve the client of the requirement to report use of the designation portion of the Food Stamp ID card. The department proposes to change the procedures to provide space for designation on the back of the ATP card. The household will not be required to report use of an emergency A/R in order to obtain a new designation form.

The department has determined that the proposed rules will have no fiscal implications for state or local units of government.

Written comments are invited and may be sent to Susan L. Johnson, administrator, Policy Development Support Division—436, Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769 within 15 days following publication of this *Register*.

These amendments are proposed under the authority of the Human Resources Code, Title II.

.026. Designation of an Emergency Authorized Representative (A/R). *Space for the household to designate the emergency A/R is provided on the back of the ATP card.* [A tear-off portion of the ID card is used by the household to designate the emergency A/R.] *Only the head of the household or spouse whose signatures already appear on the ID*

card may designate an emergency A/R. The following entries must be completed on the back of the ATP:

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

(3) Signature of the emergency A/R obtained in the presence of *the* [an appropriate] household [member].

(4) The serial number of the specific ATP to be redeemed. Only one ATP can be redeemed with one designation. The designation cannot be reused.]

.027. Redemption by Emergency Authorized Representative (A/R).

(a) The emergency A/R presents the ATP *and* the household's ID card[, and the emergency A/R designation] to the issuing office. The issuing officer will not accept a designation which contains blank entries or inappropriate signatures.

(b) To validate the designation of the emergency A/R, the issuing cashier will compare the signature of the household member on the *back of the ATP* [designation] with that person's signature on the ID card. The emergency A/R will sign the ATP in the presence of the issuing officer, and the signature will be compared with his or her signature given earlier in the presence of the household. The ID card is returned to the household and may be re-used; however, the household should immediately report its use of an emergency A/R so that the worker can provide a new ID card, complete with designation portion, to accommodate a subsequent designation if necessary].

.036. Issuing ID Cards.

(a) The ID card is issued to the household by the certifying worker at the time of initial certification and remains valid for subsequent certifications. The ID card may be replaced in case of loss, mutilation, destruction, or changes in persons listed on the card. [The ID card must also be replaced when a emergency A/R has been designated.]

(b) (No change.)

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

Doc. No. 813610 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Proposed Date of Adoption: July 10, 1981

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

Nursing Facility Administration

The Texas Department of Human Resources seeks to improve its reimbursement methodology for nursing facilities participating in the Texas Medicaid Nursing Home Program. Improvements are required to ensure that industry profits are fair; expenses used in rate setting are reasonable; and reimbursement rates are equitable. Amendments to existing department rules are being offered with a proposed effective date of September 1, 1981.

As a matter of good public policy, economic and efficient providers are allowed to earn reasonable profits. However, the inclusion of a return on equity in the current methodology has resulted in excessive industry profits. Consequently, the department is proposing the elimination of this provision

from the reimbursement methodology. Economic and efficient providers can earn a reasonable profit without this provision.

Many facilities continue to experience very low occupancy rates. This results in poor economic utilization of the physical plant. The current methodology adjusts expenses for rate setting purposes to the 85% level of occupancy. In spite of this adjustment, the Texas Medicaid Nursing Home Program continues to subsidize this inefficient use of resources. The department is proposing to change the occupancy adjustment from the 85% level to the 90% level in order to eliminate this continuing subsidy.

Almost half of contracted nursing facilities are leased. The statewide average annual cost for a leased bed reported in 1979 cost reports was \$931, while a nonleased bed was \$700. Generally, the additional expense for a leased bed benefits neither the recipient nor the provider. Rather, it benefits only the owner of the real property. The department believes that facility costs for leased facilities are excessive, due in great part to lease agreements containing inflationary annual cost escalators. Therefore, the department is proposing that fixed real and personal property expenses in leased facilities be limited to expenses incurred in nonleased facilities of similar size.

In seeking to ensure equitable reimbursement rates, analyses have been performed which profile providers in different service delivery configurations. It was found that providers meeting the requirements of the Social Security Act, §1861(j)(1), have statistically significant higher costs than providers not meeting these requirements. This results from the fact that providers meeting the requirements have higher staffing ratios than providers not meeting the requirements. The department is proposing that separate reimbursement classes be created for the ICF and ICF-II levels of care based upon whether or not a facility meets the requirements of the Social Security Act, §1861(j)(1). Additionally, providers meeting the requirements are required to furnish necessary durable medical equipment within the current uniform reimbursement rate, while providers not meeting the requirements are not required to do so. The department believes the addition of this provision will improve substantially the equitability of reimbursement in the Texas Medicaid Nursing Home Program.

The department is also proposing the repeal of several rules in the support documents subcategory. The proposed amendments to Rule 326.33.99.200 include provisions which currently exist under agency Rules 326.33.99.201, 326.33.99.205, and 326.33.99.206. The repeal of these latter rules is being proposed due to their inclusion in the proposed amendments to Rule 326.33.99.200.

The department has determined that the proposed amendments will have fiscal implications for the State of Texas. State fiscal year savings in the Nursing Home Program are estimated to be:

Fiscal Year	Savings
1982	\$18,964,763
1983	\$19,982,262
1984	\$22,692,452
1985	\$24,071,756
1986	\$26,935,151

There are no fiscal implications for units of local government.

Public hearings will be conducted in Lubbock, Arlington, Houston, and San Antonio. Times and locations will be announced in the *Texas Register* at a later date. Written comments are invited and may be sent to Susan L. Johnson, administrator, Policy Development Support Division—139, Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769, within 30 days following publication in this *Register*.

Support Documents 326.33.99.200, .203, and .204

The following amendments are proposed under the authority of the Human Resources Code, Title II.

.200. *Reimbursement Methodology for Rates for Skilled Nursing Facilities and Intermediate Care Facilities.*

(a) *General.* The Texas Department of Human Resources will reimburse Texas Medicaid long-term care contracted providers for care rendered to recipients in the SNF, ICF, and ICF-II levels of care. Reimbursement rates are determined on a statewide basis using financial and statistical information from annual cost reports which must be submitted by each participating provider.

(1) *Uniform rates.* Reimbursement rates are uniform statewide for the same class of service.

(2) *Class of service.* Service classes are based upon the level of care of the recipient and the designation of the contracted distinct part in which the recipient resides.

(3) *Rate period.* The rate period is the state fiscal year which is the annual period September 1 through August 31.

(4) *Prospective rates.* Reimbursement rates are determined prospectively by projecting expenses reported on cost reports for a specific cost report year to the next ensuing rate period.

(5) *Frequency of rate determination.* Reimbursement rates are determined at least annually.

(b) *Cost reporting.*

(1) *Cost reports.* Each provider must submit financial and statistical information at least annually in a cost report prescribed by the department.

(A) *Accounting requirements.* Financial and statistical information submitted in cost reports must be based upon the accrual method of accounting, except governmental institutions operated on the cash method of accounting. The treatment given any financial or statistical item must reflect the application of the generally accepted accounting principles (GAAP) approved by the American Institute of Certified Public Accounts.

(B) *Content of cost report.* The cost report will contain financial information such as schedules of revenue, schedules of expense, income statement, schedules of depreciation and amortization, schedules of purchases from related organizations and/or related parties, and balance sheets reflecting the assets, liabilities and capital for the long-term care facility. The cost report will contain statistical information such as ownership detail and days of service provided.

(C) *Chart of accounts.* The cost report must be completed in accordance with the department's prescribed chart of accounts for long-term care providers. Each provider must maintain records in accordance with the department's prescribed chart of accounts for long-

term care providers in sufficient detail to substantiate information submitted in the cost report.

(D) Allowable and unallowable costs. The cost report must be completed in accordance with the department's lists of allowable and unallowable costs for long-term care provider reimbursement rate determination.

(E) Reporting period. The cost report must be prepared reflecting the activities of the provider during its fiscal year. Cost reports may be required for other periods in order to ensure that all persons have been reported, or to ensure that the most complete information is reported for a facility in an exceptional circumstance, such as ownership change, bankruptcy proceeding, etc.

(F) Due date. The cost report must be submitted no later than three months from the end of the provider's fiscal year.

(G) Cost report supplements. Additional financial and statistical information may be required periodically in order to ensure the fiscal integrity of the Texas Medicaid Long-Term Care Program.

(H) Extension of due date. An extension of a due date may be granted for good cause. Good cause is that cause outside the control of the provider. A request for an extension must be submitted in writing.

(I) Failure to file acceptable cost report. Failure to file a cost report in accordance with all applicable rules and instructions will result in a "hold" on the provider's vendor payments. Such "hold" will be removed when all deficiencies have been corrected.

(J) Cost report certification. Cost reports must bear the following certification:

Misrepresentation or falsification of any information contained in this report may be punishable by fine and/or imprisonment under state or federal law.

I hereby certify that I have read the above statement and, that I have examined the accompanying Texas Medicaid long-term provider (year) cost report including: general information; patient-day and resident-day statistics; schedules of revenue; schedules of expense; income statement; balance sheets; and, schedules of purchases from related organizations and/or related parties; for the reporting period (beginning date) through (ending date) and that, to the best of my knowledge and belief, the (year) cost report is true, correct, and complete; is prepared in accordance with the department's list of allowable and unallowable costs for long-term care providers; is prepared in accordance with applicable instructions, except as noted; and, is prepared from the books and records of (name of facility).

This certification must be signed by an individual legally responsible for the conduct of the contracted provider such as the owner, a partner, a corporation officer, and association officer, or a government official. Only facility administrators who hold one of these positions are authorized to sign. The cost report certification must be notarized.

(2) Desk verification of cost report. Each cost report is desk verified to ensure that all financial and statistical information submitted in the cost report is in accordance with all applicable rules and instructions. Cost report desk verifications are accomplished within six months of the date the cost report is received. The desk verification procedure includes the adjustment of reported costs to remove any unallowable costs which may be reported.

(3) On-site cost report audits.

(A) Number of on-site audits to be performed. A sufficient number of on-site audits are performed each year to ensure the fiscal integrity of the Texas Medicaid Long-Term Care Program. The number of on-site audits actually performed each year can vary according to budget constraints, but is not less than the number specified in federal regulations.

(B) On-site auditing standards. On-site cost report audits are performed in accordance with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants.

(C) Use of on-site audited cost reports. On-site cost report auditing schedules are arranged to maximize the number of on-site audited cost reports available for use in reimbursement rate determination.

(4) Record-keeping requirements. Records must be maintained by each provider for a period of not less than three years following the date of submission of the cost report to the department. Records must be accurate and in sufficient detail to support the financial and statistical information reported in cost reports.

(5) Failure to maintain records. A provider not maintaining adequate records to support the financial and statistical information reported in cost reports, or not maintaining records in accordance with the department's prescribed chart of accounts for long-term care providers will be given 90 days to bring its record-keeping into compliance. Failure to correct deficiencies within 90 days from the date of notification of deficiency can result in the cancellation of the provider's contract for services under the Texas Medical Assistance Plan.

(c) Cost-finding methodology. The cost-finding methodology recasts reported expense data in a consistent manner to determine per diem allowed costs. Certain adjustments are made in allowable costs in the cost-finding process to ensure that costs used for rate setting are costs required for long-term care; are costs derived from the marketplace; and are costs incurred from economic and efficient use of resources.

(1) Cost determination by cost area. Reported expenses are combined into four cost areas.

(A) Patient care cost area. The patient care cost area includes daily service expense; laundry, linen, and housekeeping expense; activity services expense; social service expense; training expense; and consultant expense for direct patient care.

(B) Dietary care cost area. The dietary care cost area includes food and food service expense and dietary consultant expense.

(C) Facility cost area. The facility cost area includes building, equipment, and capital expense; and, operation and maintenance expense.

(D) Administration cost area. The administration cost area includes all administrative expenses.

(2) Adjustments to reported expenses.

(A) Non-Medicaid expenses removed:

(i) Expenses incurred to produce revenues for non-Medicaid required services are reduced to an amount which allows for a reasonable profit;

(ii) Expenses incurred on behalf of Medicaid recipients which arise as a result of the receipt of gifts, grants, donations, endowments, and trusts are removed.

(B) Interest expenses are reduced by interest revenue not to exceed total reported interest expenses.

(C) Leased facility. Fixed real and personal property expenses in a leased facility are limited to fixed real and personal property expenses incurred by the average provider in a nonleased facility of comparable size calculated on a per bed basis.

(D) Management fees. Administration expenses for a facility under contract management are limited to administration expenses incurred by the average provider-managed facility of comparable size calculated on a per diem basis.

(E) Services, facilities, and supplies purchased from related organizations. Expenses for services, facilities, and supplies furnished by organizations related to the provider by common ownership or control must not exceed the lower of the cost to the organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(F) Personal services purchased from a related party. Expenses for personal services purchased from a related party are limited to expenses incurred in the open market by a facility of comparable size calculated on a per diem basis.

(G) Occupancy adjustment. Facility and administration expenses are lowered to reflect per diem expenses at the 90% rate of occupancy for a provider with an occupancy rate less than 90%.

(3) Projected costs. Adjusted costs are projected from the various reporting periods for the same cost report year to the next ensuing rate period. Cost increase projections are performed so that substantively equitable treatment is afforded all providers. Cost increase factors appropriate for each expense category are derived from the Bureau of Labor Statistics' consumer and producer price indices, the Bureau of Economic Analysis' implicit price deflators, the Fair Labor Standard Act's minimum wage provisions, the Social Security Administration's scheduled increases in Federal Insurance Contributions Act (FICA) amounts, and others.

(4) Projected cost arrays. Cost area per diem expenses will be rank ordered from low to high to produce projected per diem expense arrays.

(d) Rate-setting methodology. Reimbursement rates for each class of service are determined by selecting the 60th percentile provider per diem expense from each cost area within each class of service and summing the cost area amounts to determine the per diem reimbursement rates.

(1) Classes of service.

(A) Level of care of recipient:

- (i) SNF;
- (ii) ICF;
- (iii) ICF-II.

(B) Designation of contracted distinct part.

(i) 1861(j)(1) criteria met. The recipient resides in a contracted distinct part which meets the requirements of the Social Security Act, §1861(j)(1).

(iii) 1861(j)(1) criteria not met. The recipient resides in a contracted distinct part which does not meet the requirements of the Social Security Act, §1861(j)(1).

(2) Reimbursement classes:

- (A) SNF;
- (B) ICF/1861(j)(1) criteria met;

(C) ICF/1861(j)(1) criteria not met;

(D) ICF-II/1861(j)(1) criteria met;

(E) ICF-II/1861(j)(1) criteria not met.

(3) Cost area projected cost arrays. Class rates are determined by selecting the 60th percentile provider per diem expense from projected cost arrays.

(A) Patient care cost area arrays:

- (i) SNF;
- (ii) ICF,
 - (I) 1861(j)(1) criteria met,
 - (II) 1861(j)(1) criteria not met;
- (iii) ICF-II,
 - (I) 1861(j)(1) criteria met,
 - (II) 1861(j)(1) criteria not met.

(B) Dietary care cost area arrays:

- (i) 1861(j)(1) criteria met;
- (ii) 1861(j)(1) criteria not met.

(C) Facility cost area arrays:

- (i) 1861(j)(1) criteria met;
- (ii) 1861(j)(1) criteria not met.

(D) Administration cost area arrays:

- (i) 1861(j)(1) criteria met;
- (ii) 1861(j)(1) criteria not met.

(4) Reimbursement rate determination for each reimbursement class. Each rate is determined by summing the four cost area amounts from within each reimbursement class selected from the cost area arrays.

(A) SNF:

- (i) patient care cost area—SNF;
- (ii) dietary care cost area—1861(j)(1) criteria met;
- (iii) facility cost area—1861(j)(1) criteria met;
- (iv) administration cost area—1861(j)(1) criteria met.

(B) ICF/1861(j)(1) criteria met:

- (i) patient care cost area—1861(j)(1) criteria met;
- (ii) dietary care cost area—1861(j)(1) criteria met;
- (iii) facility cost area—1861(j)(1) criteria met;
- (iv) administration cost area—1861(j)(1) criteria met.

(C) ICF/1861(j)(1) criteria not met:

- (i) patient care cost area—1861(j)(1) criteria not met;
- (ii) dietary care cost area—1861(j)(1) criteria not met;
- (iii) facility cost area—1861(j)(1) criteria not met;
- (iv) administration cost area—1861(j)(1) criteria not met.

(D) ICF-II/1861(j)(1) criteria met:

- (i) patient care cost area—1861(j)(1) criteria met;
- (ii) dietary care cost area—1861(j)(1) criteria met;
- (iii) facility cost area—1861(j)(1) criteria met;
- (iv) administration cost area—1861(j)(1) criteria met.

(E) ICF-II/1861(j)(1) criteria not met:

- (i) *patient care cost area—1861(j)(1) criteria not met;*
- (ii) *dietary care cost area—1861(j)(1) criteria not met;*
- (iii) *facility cost area—1861(j)(1) criteria not met;*
- (iv) *administration cost area—1861(j)(1) criteria not met.*

(5) *Exceptions to reimbursement rate determination. The reimbursement rate in each reimbursement class is lowered to the provider's customary charge, if the provider's customary charge is less than the Medicaid reimbursement rate for the same services.*

(e) *Appeals procedure. The Department of Human Resources will resolve appeals in accordance with its established administrative procedures.*

(a) The Texas Department of Human Resources will reimburse long-term care facilities on a cost-related basis for care rendered to recipients in ICF-II, ICF-III, and skilled levels of care. Rates will be determined for the ICF-II, ICF-III, and skilled levels of care on a statewide basis. These cost-related rates will be set using financial and statistical information from cost reports which must be completed by each participating provider at least annually.

[(1) Major characteristics:

[(A) statewide uniform rates;

[(B) reimbursement rates determined prospectively;

[(C) reimbursement rates set for each level of care—SNF, ICF-III, and ICF-II;

[(D) certain allowable costs adjusted to a minimum occupancy rate of 85%;

[(E) certain non-Medicaid related expenses reduced or removed;

[(F) return on owner's net equity of proprietary providers included as an allowable cost;

[(G) reimbursement rates established at the 60th percentile provider cost.

[(2) Cost-finding methodology.

[(A) Allowable costs submitted in cost reports will be adjusted as shown below:

[(i) facility and administration costs will be lowered to reflect per diem costs at the 85% level of occupancy for providers with occupancy rates less than 85%;

[(ii) expenses incurred to produce revenues for non-Medicaid required services will be reduced to an amount which allows for a reasonable profit not to exceed the maximum Title XVIII rate of return on owner's equity;

[(iii) expenditures from gifts, grants, donations, endowments and trusts will be removed;

[(iv) interest expenses will be reduced by interest income not to exceed total reported interest expenses.

[(B) A return on owner's equity of proprietary providers will be included as an allowable cost by the application of a rate of return to reported owner's equity. The rate of return shall not exceed the maximum rate allowed under Title XVIII.

[(C) Projected costs. Adjusted costs are multiplied by applicable estimated rates of increase to project costs for the various reporting periods to a common year. Cost increase factors are derived, as appropriate, from the National Bureau of Labor Statistics consumer and producer price in-

dices, the Fair Labor Standards Act's minimum wage provisions, the Social Security Administration's scheduled increases in Federal Insurance Contributions Act (FICA) amounts, and others.

[(D) Level of care projected costs. Projected level of care costs are determined through a cost allocation method which allocates costs to each level of care. Projected costs for days of service (which are provided in beds classified higher than the patient) are determined using mismatch ratios to weigh daily service costs. The mismatch ratios are derived from predictor equations which predict mismatch free daily service costs.

[(E) Cost area cost determination. Level of care projected costs per patient day will be combined into the four cost areas as shown below:

[(i) Patient care cost. Daily service expense; laundry, linen, and housekeeping expense; activity services expense; social service expense; training expense; consultant expense.

[(ii) Dietary care cost. Food and food service expense; dietary consultant expense.

[(iii) Facility cost. Building, equipment, and capital expense, operation and maintenance expense.

[(iv) Administration cost. Administrative expense.

[(F) Provider cost arrays. Cost area provider costs will be rank ordered from low to high to produce projected cost arrays.

[(3) Reimbursement rate determination.

[(A) Cost area reimbursement rates. Cost area reimbursement rates are determined by selecting the 60th percentile costs for each cost area for each level of care from the arrays of projected provider costs.

[(B) Level of care reimbursement rates. Cost area reimbursement rates are summed to determine the level of care reimbursement rates.

[(4) Appeals procedure. The Department of Human Resources will resolve appeals in accordance with its established administrative procedures.]

203. Allowable Costs. The following described items of expense are not intended to be exhaustive of all possible allowable costs. They are intended to serve only as a general guide. Detailed are many types of costs which can reasonably be anticipated to be incurred in a long-term care facility. The absence of a particular type of cost does not necessarily mean that it is not an allowable cost.

(1) (No change.)

(2) List of allowable costs.

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

[(F) Return on net invested equity of proprietary providers. Net invested equity is defined as the long-term care provider's allowable assets less its allowable liabilities. Loans from stockholders, owners, partners, related organizations, and related parties to pay for allowable items of expense for which interest expenses are unallowable are considered to be advances of capital—not liabilities—for the purposes of determining allowable net invested equity.]

204. Unallowable Costs. The following described items of expense are not intended to be exhaustive of all possible unallowable costs. Rather, they are intended to be a general guide to various unallowable costs which may be encountered in long-term care facilities. The absence of a particular type of cost does not necessarily mean that it is an allowable cost.

- (1) (No change.)
 (2) List of unallowable costs.
 (A)-(V) (No change.)

(W) Purchases of services, facilities, or supplies from related organizations or related parties. Allowable costs shall not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere. Allowable costs for personal services purchased from a related party shall not exceed the [lower of the reported cost or the] price of [comparable personal] services purchased *elsewhere*. [in the area. Amounts exceeding these limitations are unallowable costs.]

(X)-(CC) (No change.)

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

Doc. No. 813643 Marlin W. Johnston
 Commissioner
 Texas Department of Human Resources

Proposed Date of Adoption: September 1, 1981
 For further information, please call (512) 441-3355, ext. 2037.

326.33.99.201, .205, .206

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the office of the Texas Department of Human Resources, 706 Banister Lane, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

Rules 326.33.99.201, .205, and .206 are proposed for repeal under the authority of the Human Resources Code, Title II.

.201. Accounting Requirements.

.205. Cost Reports.

.206. Record Keeping.

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

Doc. No. 813644 Marlin W. Johnston
 Commissioner
 Texas Department of Human Resources

Proposed Date of Adoption: September 1, 1981
 For further information, please call (512) 441-3355, ext. 2037.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, an agency may take final action on a rule 30 days after publication of the proposed action in the *Register*. Upon adoption of the action, "the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption." The action is effective 20 days after filing of the notice of final action with the Texas Register Division unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice. The notice includes whether the action is promulgated with or without changes to the action proposed; a statement of the legal authority under which the final action is promulgated; and the text of the final action, in compliance with the rules of the Texas Register Division. If an agency takes final action on a rule with no changes made to the text as proposed, only the preamble of the notice and statement of legal authority will be published. The text, as appropriate, will be published only if final action is taken with changes made to the proposed action. The certification information, which includes the effective date of the final action, follows each published submission of final action. A telephone number for further information is also published.

An agency may withdraw proposed action or the remaining effectiveness of emergency action by filing a notice of withdrawal with the Texas Register Division. The notice will appear in this section of the *Register* and is generally effective immediately upon filing with the Texas Register Division.

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

CODIFIED

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 235. Licensing

Application for Licensure

The Board of Vocational Nurse Examiners adopts an amendment to §235.10 (390.03.01.010), without changes, as published in the May 1, 1981, issue of the *Texas Register* (6

TexReg 1545). The amendment clarifies the deadline date for examination applications.

The amendment is adopted under the authority of Texas Civil Statutes, Article 4528c.

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

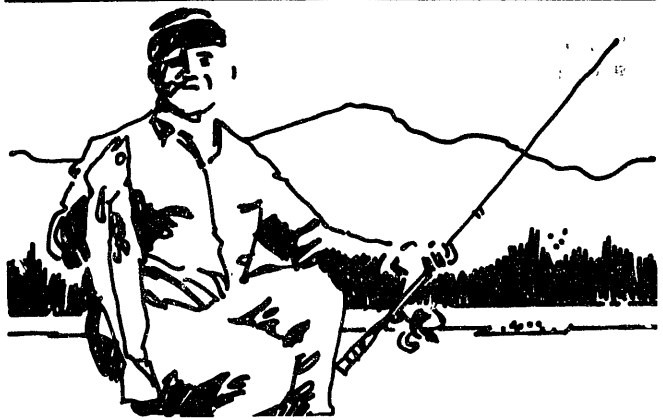
Doc. No. 813609

Waldeen D. Wilson, R.N.
Executive Secretary
Board of Vocational Nurse
Examiners

Effective Date: June 22, 1981

Proposal Publication Date: May 1, 1981

For further information, please call (512) 458-1203.



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Shell Dredging on the Texas Gulf Coast

The Texas Parks and Wildlife Commission adopts amendments to §57.42 (127.30.04.002) concerning shell dredging on the Texas Gulf Coast. As a result of comments received from interested parties, several changes have been made to the proposed text, which was published in the March 20, 1981, issue of the *Texas Register* (6 TexReg 963).

Changes to the paragraph (1)(B) include the following:

(1) Clause (i) has been changed to allow a permittee to re-enter a closed state tract if given written permission from the director.

(2) Clause (iv) has been changed to specify that the location of any replacement reef will be of sufficient water depth to allow permittee to deliver and spread the shell. Another change in this clause specifies that the permittee will not be required to pay for the shell used for the construction of a replacement reef.

(3) Clause (viii), as contained in the proposed amendments, has been deleted since a similar provision is contained in the shell pricing amendments currently being adopted.

The remaining clauses have been renumbered to reflect the deletion of clause (viii).

These amendments are adopted under the authority of Texas Parks and Wildlife Code, Chapter 86.

§57.42 (127.30.04.002). Contents. In view of the facts stated in §57.41 (127.30.04.001) of this title (relating to Finding of Facts), the commission now promulgates the following sections for the control, wise use, and taking of shell resources that may yet be available for industry.

(1) The director of the department is expressly authorized to issue shell dredging permits in all the coastal waters of Texas except in those areas described as follows:

(A) (No change.)

(B) In no event will shell dredging operations be conducted in that portion of San Antonio Bay and tributary water bodies north of North Latitude 28° and 22 minutes except that shell dredging operations may be conducted in state Tracts 74, 101, 102, and 106, subject to the conditions contained at (i)-(ix).

(i) The director is authorized to designate specific state tracts which are open or closed for dredging except that not more than one state tract will be designated for dredging at any one time. Once dredging is completed within a state tract, no further dredging will be authorized in that state tract without written permission from the director.

(ii) Permittee will map and mark the edges of all exposed reefs within 1,500 feet of the proposed dredge operating site prior to the commencement of any dredging within an authorized tract. All mapping and marking will be verified and approved by the department prior to any dredging.

(iii) Except as provided in clause (iv) of this subparagraph, no dredging will be authorized within 100 feet of an exposed reef.

(iv) No exposed shell reefs 1/2 acre or larger will be dredged. When the exposed reef area is less than 1/2 acre in size, the director or the department agent having responsibility for shell management may give permission in writing to the permittee to dredge the exposed reef provided the permittee agrees in writing to construct an artificial replacement reef at permittee's sole expense at least one acre in area and at least one foot thick at a location designated by the department within the confines of San Antonio Bay except that the location designated will be of sufficient water depth to allow permittee to deliver and spread the replacement shell. The director will designate the period of time when the shell will be furnished to the department. Permittee will not be required to pay for the shell used for construction of an artificial replacement reef. The quantity of shell referred to in this clause is in addition to the shell permittee is required to furnish for reef enhancement by §57.101(b) (127.30.07.001(b)) of this title (relating to Prices).

(v) Those sections relating to siltation and to minor violations for siltation of exposed reefs are suspended for operations which occur in the state tracts designated in this section when no live oysters are present on an exposed reef at any time during the dredging operation. Permittee will remove all silt from an exposed reef following dredging operations or if removal of silt is determined to be impractical, permittee will resurface the entire area of the exposed reef with clean, coarse shell to the satisfaction of the department. If live oysters are present on any exposed reef and siltation occurs to the reef as a result of the dredging opera-

tion or related dredging activities of permittee, those sections relating to siltation and minor violations will remain in full force and effect. For purposes of this clause, live oysters are considered to be present on an exposed reef within a state tract when three, one bushel or more, samples produce an average of one or more market oyster (three inches or larger) per bushel or 10 or more seed oysters (3/4 inch to three inches), and spat (below 3/4 inch) combined per bushel sample. The director will designate the period of time when the shell will be furnished to the department. The quantity of shell referred to in this clause is in addition to the shell permittee is required to furnish for reef enhancement by §57.101(b) (127.30.07.001(b)) of this title (relating to Prices).

(vi) No more than one dredge per permittee will be authorized to operate at any time and not more than one dredge will operate at one time regardless of the number of permittees. The director will determine the periods of operation allotted to each permittee and all periods will be distributed equally as nearly as possible.

(vii) Permittee will be required to use a silt screen around the discharge pipe of the dredge at such times as it is determined by the department agent having responsibility for shell management that this procedure will diminish the silt load in the water column.

(viii) Permittee will pay the costs incident to the monitoring of shell dredging operations and for monitoring the biological, physical, and chemical parameters deemed essential by the department to maintain water quality and fisheries production in San Antonio Bay as required by §57.101 (127.30.07.001) of this title (relating to Prices). Monitoring of shell dredging activities and, biological, physical, and chemical parameters includes, but is not limited to: surveying of exposed reefs, placement and checks of siltation baskets to determine sediment transport and deposit, sampling of reef surfaces to determine deposition of dredge-suspended sediments and such other similar activities deemed appropriate by the director. Factors such as dredge distance from reefs, length of operation, direction and depth, extent of plume, turbidity, type and composition of suspended solids, water depth, tidal current and direction, wind direction and velocity, salinity and temperatures may be determined as necessary in evaluating siltation and assuring compliance with department regulations.

(ix) A major violation will occur in the state tracts designated in this section for any of the following: failure to map and mark the edges of all exposed reefs within 1,500 feet of any dredging within an authorized tract; except as authorized at clause (iv) of this subparagraph, dredging within 100 feet of an exposed reef; dredging an exposed reef 1/2 acre or larger; dredging an exposed reef of less than 1/2 acre without permission from the director or the department agent; dredging in a tract not designated as open by the director; returning to dredge in a tract previously open but which has been closed by the director; operating more than one dredge at one time; failure to use a silt screen around the discharge pipe when required to do so by the department agent; and failure to respond to a stop activity order given as a result of any violation.

(2) Shell dredging operators will be required to secure permits from the director of the department to dredge shell and mudshell in areas authorized to be dredged under these sections and under such terms and conditions as may be prescribed from time to time by the director.

(3) No permittee will have or be given the exclusive right to dredge and produce shell in any certain area covered by these sections, and no permittee is authorized to operate more than one dredge at one time in any portion of San Antonio Bay and not more than one dredge will operate at one time in San Antonio Bay regardless of the number of permittees.

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

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

Doc. No. 813625 Maurine Ray
Administrative Assistant
Texas Parks and Wildlife Department

Effective Date: June 23, 1981

Proposal Publication Date: March 20, 1981

For further information, please call (512) 475-4954.

Prices of Sand, Shell, and Gravel

The Texas Parks and Wildlife Commission adopts amendments to §57.101 (127.30.07.001) concerning the shell pricing. As a result of comments received from interested parties several changes have been made to the proposed text, which was published in the March 20, 1981, issue of the *Texas Register* (6 TexReg 965).

Changes include the following:

(1) Subsection (a) has been changed to require a semiannual adjustment in the price of shell rather than a quarterly adjustment as originally proposed.

(2) Subsection (b) has been changed to authorize an adjustment in the amount of shell the permittee is required to furnish the department for reef enhancement when the shell reef is to be located over 50 miles from the dredge site to offset the increased transportation cost to the permittee.

(3) Subsection (c) has been changed to authorize the director to determine the methods and terms for payment of the monitoring cost. This provision was originally contained in the proposed amendments relating to shell dredging in §57.42 (127.30.04.002), which was also proposed in the March 20, 1981, issue of the *Texas Register* (6 TexReg 963); however, it appears more appropriate to transfer the provision to this section.

These amendments are adopted under the authority of Texas Parks and Wildlife Code, §86.012.

§57.101 (127.30.07.001). *Prices.*

(a) The commission, with approval of the Governor, establishes a price of \$.20 per cubic yard on sand and gravel and \$1.25 per cubic yard on all grades of shell removed from state-owned submerged tidelands. The price of shell will hereafter be adjusted semiannually, starting October 1, 1981, to reflect any increase or decrease (percent of change) in the Consumer Price Index of retail sales as prepared by the Bureau of Labor Statistics, U.S. Department of Labor (using the National Consumer Price Index, all urban consumers, 1967 equals 100) except that any adjustment for the six-month period starting October 1, 1981, will be based upon the Consumer Price Index statistics compiled for the six months' ending June 30, 1981, and each succeeding six-month period will be adjusted in the same manner in order to provide per-

mittees advanced notice of price adjustments, and except that the price of shell per cubic yard will be rounded off to the nearest whole cent and will not be adjusted in any six-month period to less than the base price of \$1.25 per cubic yard as established in this section.

(b) In addition, 3.0% of all shell dredged from state-owned submerged tidelands north of North Latitude 28° and 22 minutes in San Antonio Bay will be delivered to points designated by the department in Texas bays and spread at permittee's expense for reef enhancement. Except that when permittee is required to deliver and spread shell at a point greater than 50 statute miles (computed using the nearest water route through public navigational channels) from the dredge site, the director is authorized to adjust the amount of shell permittee is required to deliver and spread to a quantity less than 3.0% in order to offset permittee's increased delivery cost for the distance over 50 miles. Permittee will not be required to pay for the shell used for reef enhancement.

(c) Effective September 1, 1981, and for the fiscal year 1982 (September 1, 1981, through August 31, 1982) and for each year thereafter, the department's cost of monitoring the dredging operations in San Antonio Bay, not to exceed \$50,000 will be assessed against each permittee in proportion to the quantity (percentage of the total) shell removed by each permittee. The maximum monitoring cost of \$50,000 will be adjusted each fiscal year thereafter using the Consumer Price Index (CPI-U) for the preceding 12-month period except that the maximum monitoring cost will not be adjusted below \$50,000. The director is authorized to determine the methods and terms for payment of the monitoring cost.

(d) Unless otherwise indicated in preceding the subsections, this section takes effect on the first day of the next month immediately following the 20-day filing period for final rules required by the Administrative Procedure and the Texas Register Act.

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

Doc. No. 813626 Maurine Ray
Administrative Assistant
Texas Parks and Wildlife Department

Effective Date: July 1, 1981

Proposal Publication Date: March 20, 1981

For further information, please call (512) 475-4954.

NONCODIFIED

Texas Department of Human Resources

Food Stamps

The Texas Department of Human Resources adopts the following amendments and repeals to several rules in the Food Stamp Program. These proposals were published in the May 1, 1981, issue of the *Texas Register* (6 TexReg 1558).

These rule changes represent rule clarifications and deletions of duplicated rule material. No comments were received and no changes were made to the proposed text of the following rules.

Resources 326.15.35.014

The amendment to Rule 326.15.35.014 is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

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

Doc. No. 813611 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective Date: June 22, 1981
Proposal Publication Date: May 1, 1981
For further information, please call (512) 441-3355, ext. 2037.

326.15.35.019

The repeal of Rule 326.15.35.019 is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

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

Doc. No. 813612 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective Date: June 22, 1981
Proposal Publication Date: May 1, 1981
For further information, please call (512) 441-3355, ext. 2037.

Definition of Income 326.15.41

The amendments to Rules 326.15.41.039 and .059 are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

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

Doc. No. 813613 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective Date: June 22, 1981
Proposal Publication Date: May 1, 1981
For further information, please call (512) 441-3355, ext. 2037.

Documentation of Income 326.15.42

The amendments to Rule 326.15.42.009 are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

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

Doc. No. 813614 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective Date: June 22, 1981
Proposal Publication Date: May 1, 1981
For further information, please call (512) 441-3355, ext. 2037.

Military Households 326.15.54

The repeal of Rules 326.15.54.001-.004 is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

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

Doc. No. 813616 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective Date: June 22, 1981
Proposal Publication Date: May 1, 1981
For further information, please call (512) 441-3355, ext. 2037.

Farm Laborers 326.15.57

The amendments to Rules 326.15.57.002 and .010 are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

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

Doc. No. 813617 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective Date: June 22, 1981
Proposal Publication Date: May 1, 1981
For further information, please call (512) 441-3355, ext. 2037.

The Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. An institution of higher education must have notice posted for at least 72 hours before the scheduled meeting time. Although some notices may be received and filed too late for publication before the meeting is held, all filed notices will be published in the *Register*. Each notice published includes the date, time, and location of the meeting; an agenda or a summary of the agenda as furnished for publication by the agency; where additional information may be obtained; and the date and time of filing.

A political subdivision covering all or part of four or more counties must have notice posted for at least 72 hours before the scheduled meeting time. Each notice published includes the date, time, and location of the meeting and where further information may be obtained. These notices are published under the heading "Regional Agencies," alphabetically by date filed.

Any of the governmental entities named above must have notice of an emergency meeting, or an emergency addition or amendment to an agenda, and the reason for such emergency, posted for at least two hours before the meeting is convened. Emergency notices filed by these entities will be published in the *Register*; however, notices of an emergency addition or amendment to an agenda filed by a regional agency will not be published in the *Register* since the original agendas for these agencies are not published.

All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor in the East Wing of the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

Texas Board of Chiropractic Examiners

Thursday, June 11, 1981, 7 p.m. The Texas Board of Chiropractic Examiners will meet at the Marriott Hotel, 711 East Riverwalk, San Antonio. According to the agenda, the board will consider the following matters: changes in the Chiropractic Act made by the legislature and the effects; cancellation of licenses for nonrenewal; requirements for license renewal; and general board business.

Information may be obtained from Edna A. Parsons, 5555 North Lamar, Building H-103, Austin, Texas 78701, (512) 453-1703.

Filed: June 3, 1981, 2:30 p.m.
Doc. No. 813663

Texas Department of Health

The Texas Department of Health will conduct hearings in two locations as follows:

Monday, July 6, 1981, 2 p.m. City council chambers, city hall, Third and Franklin, Waco. Consideration of Application 1419 of City of Waco to operate a proposed Type I mu-

nicipal solid waste disposal site to be located immediately north of County Road 131-A, immediately south of Flat Creek across from the existing disposal site, 400 feet east of FM Road 3400, 0.6 mile west of FM Road 434, 0.9 mile east of the Robinson city limits, and 2.2 miles south of the Waco city limits, in McLennan County.

Wednesday, July 8, 1981, 1:30 p.m. Public library, 1954 Commerce Street, Dallas. Consideration of Application 1453 of City of Dallas to operate a proposed Type V municipal solid waste processing site (transfer station), to be located at 4610 Westmoreland Road, in the northeast quadrant of the junction of Westmoreland Road and Bronze Way, approximately 0.25 mile south of Ledbetter Drive (Loop 12) in Dallas, Dallas County.

Information may be obtained from Jack C. Carmichael, 1100 West 49th Street, Austin, Texas, (512) 458-7271.

Filed: June 2, 1981, 1:48 p.m.
Doc. No. 813628

Texas Health Facilities Commission

Friday, June 5, 1981, 10 a.m. The Texas Health Facilities Commission made an emergency addition to the agenda of a meeting held in Suite 305 of the Jefferson Building, 1600 West 38th Street, Austin. The addition concerned consideration of approximately 43 petitions for reconsideration filed to the commission's administrative order issued on May 21, 1981, regarding AH80-1006-006—Medical Center Hospital, Odessa. The emergency addition was necessary because the petitions would have been overruled by operation of law if not considered on or prior to June 5, 1981.

Information may be obtained from Linda E. Zatopek, P.O. Box 15023, Austin, Texas 78761, (512) 475-6940.

Filed: June 3, 1981, 4:32 p.m.
Doc. No. 813670

Friday, June 12, 1981, 10 a.m. The Texas Health Facilities Commission will meet in Suite 305 of the Jefferson Building, 1600 West 38th Street, Austin, to consider the following applications:

Amendment of Certificate of Need

All Saints Episcopal Hospital, Fort Worth
AH80-0523-035A (033181)

Exemption Certificate

All Saints Episcopal Hospital, Fort Worth

AH81-0402-026

AH81-0402-028

Coronado Community Hospital, Inc., Pampa

AH81-0406-040

Orange Memorial Hospital, Orange

AH81-0406-024

Hemphill County Hospital, Canadian

AH81-0403-031

Medical Plaza Hospital, Fort Worth

AH81-0415-010

AH81-0415-005

Doctors Hospital, Dallas

AH81-0401-010

Certificate of Need

All Saints Episcopal Hospital of Fort Worth, Fort Worth
AH81-0223-033

Information may be obtained from Linda E. Zatopek, P.O.
Box 15023, Austin, Texas 78761, (512) 475-6940.

Filed: June 3, 1981, 9:47 a.m.
Doc. No. 813656

Texas Department of Human Resources

Sunday, June 28, 1981, 9:30 a.m. The EPSDT Dental Professional Advisory and Review Committee of the Texas Department of Human Resources will meet in Parlor B of the Sheraton Crest Inn, First and Congress Streets, Austin. According to the summarized agenda, the committee will hear opening remarks by Chairman Howard Cassada and consider the following matters: report on elimination of D-102s; recommended case management code; report on provider manual; reorganization of EPSDT; fee profile update, date and site of next meeting; tentative schedule for next year's meetings; budget report; revised operational manual. The committee will also meet in executive session to hear utilization review reports.

Information may be obtained from C. C. Chandler, D.D.S., P.O. Box 2960, Austin, Texas 78769, (512) 835-0440, ext. 2787.

Filed: June 3, 1981, 9:10 a.m.
Doc. No. 813667

Saturday, August 8, 1981, 9 a.m. The Medical Care Advisory Committee of the Texas Department of Human Resources is rescheduling a meeting to be held in Room 1B, 706 Banister Lane, Austin. Items on the agenda remain as follows: commissioner's report; budget, legislation; program status reports on ICF-MR, geriatric rate methodology, and common assessment form; and EPSDT overview on department survey and corrective actions being implemented. This meeting was originally scheduled for June 20, 1981.

Information may be obtained from John F. Boff, P.O. Box 2960, Austin, Texas 78769, (512) 458-6341.

Filed: June 3, 1981, 9:10 a.m.
Doc. No. 813662

State Board of Insurance

Friday, June 12, 1981, 10:30 a.m. The Commissioner's Hearing Section of the State Board of Insurance has revised the agenda of a public hearing to be held in Room 342, 1110 San Jacinto, Austin. The location of Gamut Indemnity Company of Tulsa, Oklahoma, which seeks an application for admission (Docket 6422), was incorrectly submitted as Kansas City, Missouri.

Information may be obtained from J. C. Thomas, 1110 San Jacinto, Austin, Texas 78786, (512) 475-4353.

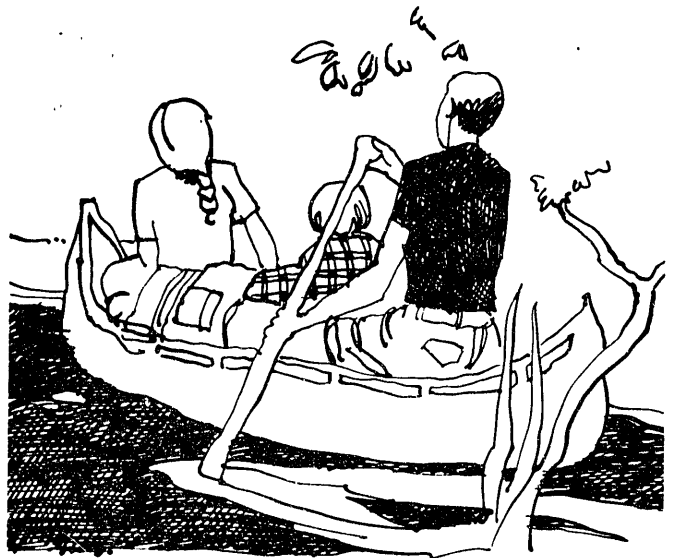
Filed: June 3, 1981, 11:56 p.m.
Doc. No. 813657

Texas Board of Irrigators

Wednesday, June 10, 1981, 9:30 a.m. The Texas Board of Irrigators will meet in Room 513, (executive conference room,) Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the summarized agenda, the board will consider the following matters: approval of minutes; certification of June 8 and 9, 1981, licensed irrigator examination results; the dates for the next licensed irrigator examination; adoption of an amended rule which raises the licensed irrigator annual renewal fee to \$75; report on the licensed installer examination; chairman's report; complaint investigation procedures; reports on informal resolution of complaints; and whether to refer a complaint to the Texas Water Commission for revocation of two certificates of registration.

Information may be obtained from Joyce Watson, P.O. Box 12337, Austin, Texas 78711, (512) 475-8161.

Filed: June 2, 1981, 2:26 p.m.
Doc. No. 813632



Board for Lease of State-Owned Lands

Thursday, June 11, 1981, 8:45 a.m. The Board for Lease of Land Owned by Texas Parks and Wildlife of the Board for Lease of State-Owned Lands will meet in Room 201-B of the Texas Parks and Wildlife headquarters building, 4200 Smith School Road, Austin. According to the agenda, the board will consider approval of the minutes of the previous board meeting and discuss easement applications on proposed wastewater tunnel easement by the City of Austin and proposed easement to Brown County for paving a public right-of-way.

Information may be obtained from Linda K. Fisher, 1700 North Congress, Austin, Texas, (512) 475-2071.

Filed: June 3, 1981, 11:45 a.m.
Doc. No. 813655

Natural Fibers and Food Protein Commission

Tuesday, June 16, 1981, 9 a.m. The Industry Advisory Committee of the Natural Fibers and Food Protein Commission will meet at the Texas A&M Research and Extension Center, 17360 Coit Road, Dallas. According to the agenda, the committee will make budgeting and project recommendations for the biennium years 1981-82 and 1982-83.

Information may be obtained from J. L. VandeLune, 17360 Coit Road, Dallas, Texas 75252, (214) 231-0852.

Filed: June 3, 1981, 9:24 a.m.
Doc. No. 813659

Texas Optometry Board

Thursday, June 11, 1981, 11 a.m. The Texas Optometry Board will meet at the Marriott Hotel near the Astrodome, 2100 South Braeswood, Houston. According to the summarized agenda, the board will conduct a formal hearing and hold a general business meeting to consider the following: reports of secretary-treasurer, legal counsel, and committee chairmen; discussions regarding Senate Bill 109 (amendments to the Texas Optometry Act) and the attorney general's opinion in regard to the separation of offices, cancellation of licenses, correspondence regarding data collection by the Texas Department of Health and correspondence from licensees. The board will also meet in executive session to discuss contemplated and pending litigation with board attorney in compliance with §2(e), Article 6252-17. The Investigation-Enforcement Subcommittee will meet at 10:30 a.m. on the same date.

Information may be obtained from Lois Ewald, 5555 North Lamar, Commerce Park, H-101, Austin, Texas 78751, (512) 458-2141 or 820-1493 (Tex-An).

Filed: June 3, 1981, 2:12 p.m.
Doc. No. 813658

Board of Nurse Examiners

Wednesday and Thursday, June 17 and 18, 1981, 8 a.m. daily. The Board of Nurse Examiners will meet in the Highland Room of the Austin Hilton Inn, 6000 Middle Fiskville Road, Austin. According to the summarized agenda, the board will conduct disciplinary and informal hearings; consider education report on survey visits, progress reports, and report of executive secretary and discuss request for initial accreditation from Wharton College, examination, and new business.

Information may be obtained from Margaret L. Rowland, R.N., 510 South Congress, Room 216, Austin, Texas 78740, (512) 478-9602.

Filed: June 3, 1981, 2:30 p.m.
Doc. No. 813665

Texas Parks and Wildlife Department

Thursday, June 11, 1981. The commission of the Texas Parks and Wildlife Department will meet in Building B of the Parks and Wildlife Headquarters Complex, 4200 Smith School Road, Austin, at the following times:

9 a.m. The commission will consider the following matters: approval of April 22, 1981, public hearing court reporter minutes; presentation of service plaques; reconsideration of Schleicher County's deer and turkey hunting regulations; contractor's presentation concerning a construction contract for Garner State Park; grazing lease contract terms and conditions, Chaparral Wildlife Management Area; Hill Country State Natural Area, additional donation by Louise L. Merrick, Bandera and Medina Counties; proposed naming and classification of Palmetto Bend Park site; request for nomination of a portion of Palmetto State Park for oil and gas leasing, Gonzales County; park facilities, Choke Canyon Reservoir, McMullen and Live Oak Counties; fiscal year 1981 Boat Ramp Construction Program amendment; capital improvement projects for Blanco State Recreation Area, Blanco County, Lockhart State Recreation Area, Caldwell County; development and repair program for San Jacinto Battleground State Historical Park and Sheldon Wildlife Management Area, Sheldon County; facilities development funding, Lyndon B. Johnson State Historical Park, Gillespie County; computer processing requirements; adjustments to fiscal year 1981 operating budget; and bulkhead repair, Lake Livingston State Recreation Area, Polk County.

In conjunction with June 11, 1981, public hearing. The commission will discuss proposed 1981-82 Migratory Game Bird Proclamation and the Parks and Wildlife Department magazine.

Noon or at the call of the chairman. The commission will discuss potential donations, acquisitions, and/or land offers regarding historic sites or state parks; and settlement of pending litigation matters.

Information may be obtained from Maurine Ray, 4200 Smith School Road, Austin, Texas 78744, (512) 475-4954.

Filed: June 3, 1981, 8:42 a.m.
Doc. Nos. 813634-813636

Tuesday, June 16, 1981, 2 p.m. The Fisheries Division/Resource Protection Branch of the Texas Parks and Wildlife Department will conduct a hearing in Room A-200, 4200 Smith School Road, Austin, on an application by Richard M. White to remove approximately 20,000 cubic yards of sand and 2,000 cubic yards of gravel per month from the Brazos River by means of suction dredge for commercial use. The work site would be located approximately six miles west of Rosharon, Brazoria County. The adjacent property owners are Alan W. Vencil and Diamond J. Land and Cattle Company.

Information may be obtained from Chester Harris, 4200 Smith School Road, Austin, Texas 78744, (512) 475-4831.

Filed: June 3, 1981, 2:29 p.m.
Doc. No. 813664



Polygraph Examiners Board

Tuesday and Wednesday, June 30 and July 1, 1981, 9 a.m.-4 p.m. daily. The Polygraph Examiners Board will meet at the Texas Department of Public Safety office, Lamar Boulevard, Austin. According to the agenda, the board will study, discuss, and decide on methods and times for changes required in implementing the revised Polygraph Examiners Act to comply with the wishes of the legislature as recently passed.

Information may be obtained from Ryerson D. Gates, 111 West Laurel, Suite 115, San Antonio, Texas 78212, (512) 227-6100.

Filed: June 3, 1981, 9:25 a.m.
Doc. No. 813660

Wednesday-Saturday, July 29-31 and August 1, 1981, 9 a.m. to 4 p.m. daily. The Polygraph Examiners Board will meet at the Stouffer's Greenway Plaza Hotel, Southwest Freeway at Eldoe Street, Houston. According to the agenda, the board will consider and act upon applications for internship/reciprocity licensure; hear scheduled administrative hearings and take required action; consider any complaints received or in abeyance for necessary action; interview interns failing last state board examination and their sponsors for remedial action necessary; implement any other changes required by new Polygraph Act legislation, and consider additional polygraph-related business deemed appropriate by the chairman.

Information may be obtained from Ryerson D. Gates, 111 West Laurel, Suite 115, San Antonio, Texas 78212, (512) 227-6100.

Filed: June 3, 1981, 9:25 a.m.
Doc. No. 813661

Texas State Board of Examiners of Psychologists

Thursday-Saturday, June 11-13, 1981, 9 a.m. daily. The Texas State Board of Examiners of Psychologists will meet in Suite H-126, 5555 North Lamar, Austin. According to the agenda, the board will consider the following items: rules and regulations; board opinion letters; complaint files; application files; interviews and hearings; administrative matters; legislative matters; budget; board meeting dates; minutes; goals and objectives; exams; recertification requirements; newsletter; ethical and legal actions; ethical standards; and supervision guidelines.

Information may be obtained from Patti Bizzell, 5555 North Lamar, Suite H-126, Austin, Texas 78751, (512) 458-3295.

Filed: June 2, 1981, 4:30 p.m.
Doc. No. 813633

Public Utility Commission of Texas

Thursday, July 23, 1981, 9 a.m. The Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3879—application of West Texas Utilities Company, Central Power and Light Company, and Public Service Company of Oklahoma for certificate amendments to include Generating Unit 1 of the Oklaunion Power Station (electric).

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: June 3, 1981, 9:22 a.m.
Doc. No. 813666

Monday, July 27, 1981, 10 a.m. The Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3742—application of McDade Estates Water Department for a rate increase within Montgomery County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: June 3, 1981, 9:22 a.m.
Doc. No. 813669

Tuesday, August 11, 1981. The Public Utility Commission of Texas will conduct hearings in the following dockets in Suite 450N, 7800 Shoal Creek Boulevard, Austin, at the times listed below:

9 a.m. Docket 3877—application of Snug Harbor Water Supply Company for a rate increase within Franklin County (water);

1:15 p.m. Docket 3793—application of Water Works for a rate increase within Llano County (water).

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: June 4, 1981, 9:25 a.m./June 2, 1981, 1:49 p.m.
Doc. Nos. 813674 and 813627

Regional Agencies

Meetings Filed June 2, 1981

The High Plains Underground Water Conservation District 1, Board of Directors, will meet in the conference room, 2930 Avenue Q, Lubbock, on June 9, 1981, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

Doc. No. 813629

Meetings Filed June 3, 1981

The Austin-Travis County MH/MR Center, Executive Committee, held an emergency rescheduled meeting at 1430 Collier Street, Austin, on June 1, 1981, at 5 p.m. Information may be obtained from Debbie Sandoval, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 39.

The Central Appraisal District of Taylor County, Board of Directors, will meet in the commissioners' courtroom, second floor, Taylor County Courthouse, Abilene, on June 11, 1981, at 7:30 p.m. Information may be obtained from Richard Petree, P.O. Box 3738, Abilene, Texas 79604, (915) 676-9381.

The Central Texas Council of Governments, Water Quality Advisory Council, will meet at 302 East Central, Belton, on June 29, 1981, at 3 p.m. Information may be obtained from Morrison J. Parrott, P.O. Box 729, Belton, Texas, (817) 939-1801.

The Central Texas Manpower Consortium, Planning Council and Youth Council, met in the Central Texas College dining room, Central Texas College, Highway 190 West, Killeen, on June 8, 1981, at 7 p.m. Information may be obtained from Dr. Ike Tennison, 103 North Bell, Hamilton, Texas, (817) 386-8197.

The Child Study Clinic in Victoria will meet at 2008 North Navarro, Victoria, on June 15, 1981, at 4 p.m. Information may be obtained from Eva Seger, M.D., 2008 North Navarro, Victoria, Texas 77901, (512) 575-0681.

The Gulf Bend MH/MR Center, Board of Trustees, will meet at 2105 Port Lavaca Drive, Victoria, on June 11, 1981, at noon. Information may be obtained from the Gulf Bend MH/MR Center, 2105 Port Lavaca Drive, Victoria, Texas 77901, (512) 578-5262.

The Education Service Center, Region 14, Board of Directors, will meet at 1850 State Highway 351, Abilene, on June 11, 1981, at 5 p.m. Information may be obtained from Dr. Thomas Lawrence, P.O. Box 3258, Abilene, Texas, (915) 676-8201.

The West Central Texas Council of Governments, Manpower Consortium, will meet in Suite 405, Taylor County Manpower office, 104 Pine, Abilene, on June 12, 1981, at 10 a.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

Doc. No. 813668

Meetings Filed June 4, 1981

The Hansford County Appraisal District will meet in the Pittman-Shieldknight Building, 511 West 11th Street, Spearman, on June 10, 1981, at 3 p.m. Information may be obtained from Alice Peddy, P.O. Box 650, Gruver, Texas 79040, (806) 733-2821.

The Trinity River Authority of Texas, Utility Services Committee, will meet in the executive conference room, 5300 South Collins, Arlington, on June 10, 1981, at 10 a.m. Information may be obtained from Geri Elliott, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

Doc. No. 813675

The following documents are required to be published in the *Register*: applications to purchase control of state banks filed by the Banking Commissioner of Texas pursuant to Texas Civil Statutes, Article 342-401a(B)(6); changes in interest rate filed by the Savings and Loan Commissioner of Texas pursuant to Texas Civil Statutes, Article 5069-1.07; and consultant proposal requests and awards filed by state agencies, regional councils of government, and the Texas State Library pursuant to Texas Civil Statutes, Article 6252-11c. In order to allow agencies to communicate information quickly and effectively, other information of general interest to the public of Texas is published as space allows.

State Banking Board

Public Hearing

The hearing officer of the State Banking Board will conduct a hearing on Wednesday, June 10, 1981, at 9 a.m. at 2601 North Lamar, Austin, on the proposed domicile change for King State Bank, Houston, to the corner of Wayside Drive and Brookhill Drive in Houston.

Additional information may be obtained from O. A. Cassity, assistant general counsel, Banking Department of Texas, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

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

Doc. No. 813631 O. A. Cassity
Assistant General Counsel
Banking Department of Texas

Filed: June 2, 1981, 2:50 p.m.

For further information, please call (512) 475-4451.

Texas Department of Community Affairs

Request for Proposal

Continuation of a Peer Counseling Program for Preventing Drug Abuse

Notice of Acceptance of Applications. The Texas Department of Community Affairs (TDCA), under the authority of its enabling act, Texas Civil Statutes, Article 4413(201), and the Texas Controlled Substances Act, Texas Civil Statutes, Article 4776-15, §5.11, is seeking to continue a program of peer counseling in high schools and junior high schools in Austin. Currently, the development of a peer counseling program in schools in Austin has been done under the direction of the contractor Austin Child Guidance Center (ACGC). The department is satisfied with the work of the current contractor (ACGC); however, if other interested contractors are interested in making application to continue the peer counseling program, they may do so by contacting the department for an application package.

General Information. Applicants should propose a peer counseling program for a period of 12 months beginning August 1, 1981. The successful applicant will be required to

provide approximately 15% of the total proposed cost as match. TDCA reserves the right to accept or reject any or all applications submitted under this amendment and to negotiate modifications to improve the quality or cost effectiveness of any application.

TDCA is under no legal requirement to execute a resulting contract, if any, on the basis of this announcement and intends the material provided herein only as a means of identifying the services sought by TDCA. TDCA will base its selection of contractors on factors such as the capacity of the offeror to manage and deliver the services, quality of the application, documentation of the need for services, availability of the offeror match, and the availability of funds.

TDCA intends to continue the peer counseling program with the current contractor, Austin Child Guidance Center, unless a new applicant proposes a superior program. In addition, applications are subject to review by the Central Texas Health Systems Agency, as required by the National Health Planning and Resources Development Act, Public Law 93-64. This announcement does not commit TDCA to pay for any costs incurred prior to the execution of a contract and is subject to the availability of appropriate funds. Issuance of this material in no way obligates TDCA to award a contract.

Deadline for Submission of Applications. The deadline for the receipt of applications to TDCA is June 19, 1981, at 5 p.m.

Contact. To obtain an application preparation package, contact chief, Program Development Branch, Drug Abuse Prevention Division, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711, (512) 475 5566.

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

Doc. No. 813599 Jeanne Marcus
General Counsel
Texas Department of Community Affairs

Filed: June 1, 1981, 1:24 p.m.

For further information, please call (512) 475-6903.

Texas Department of Health

Correction of Error

Adopted §§301.51-301.62 (301.79.05.001-.013) submitted by the Texas Department of Health and published in the May 15, 1981, issue of the *Texas Register* (6 TexReg 1774) contained several errors as published.

The "catch line" for subparagraph (A) of §301.54(h)(1) (301.79.05.004(h)(1)) should read: "Activated sludge units." (6 TexReg 1786)

The first sentence of subparagraph (B) of §301.55(d)(2) (301.79.05.005(d)(2)) should read: "Filtrate. The filtrate from the filters shall be returned to the incoming raw sewage for treatment." (6 TexReg 1792)

A portion of paragraph (1) of §301.58(b) (301.79.05.008(b)) was inadvertently published following the second column of text at 6 TexReg 1794. Paragraph (1) of subsection (b) of this section should therefore read as follows:

"(1) Facilities. Laboratory capability for operational control testing shall be provided. The extent of the equipment to be provided and the specific tests to be performed will vary according to capacity and type of plant. All plants shall include equipment for performing such tests as settleable solids (Imhoff cone), 30-minute settleability, dissolved oxygen, pH, and chlorine residual. For plants with a design flow of 1.0 mgd to 5.0 mgd, equipment shall also be provided to determine suspended solids concentration. All plants with a design flow in excess of 5.0 mgd shall have the facilities to provide all permit compliance monitoring requirements, volatile suspended solids concentration, nitrogen series, and alkalinity (if anaerobic sludge digestion is used). Provisions shall be made in all cases to provide for the requirements of the Texas Department of Water Resources self-reporting system procedures and for proper monitoring of significant industrial connections. These requirements are minimum requirements only; additional provisions may be needed to insure optimum plant operations. Raw waste characterization is recommended for all facilities with a design flow in excess of 5.0 mgd and for all facilities anticipating a plant expansion."

Texas Health Facilities Commission

Applications for Declaratory Ruling, Exemption Certificate, and Transfer and Amendment of Certificate

Notice is hereby given by the Texas Health Facilities Commission of application (including a general project description) for declaratory ruling, exemption certificate, transfer of certificate, and amendment of certificate accepted during the period of June 1-3, 1981.

Should any person wish to become a formal party to any of the above-stated applications, that person must file a request to become a party to the application with the chairman of the commission within 25 days after the application is accepted. The first day for calculating this 25-day period is the first calendar day following the date of acceptance of the application. The 25th day will expire at 5 p.m. on the 25th consecutive day after the date said application is accepted. If the 25th day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, or state holiday. A request to become a party should be mailed to the chairman of the commission, P.O. Box 15023, Austin, Texas 78761, and must be received at the commission no later than 5 p.m. of 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 an application for a declaratory ruling, exemption certificate, transfer of certificate, or amendment of certificate must meet the minimum criteria set out in §511.5 (315.20.01.050). Failure of a party to supply the minimum necessary information in the correct form will result in a defective request to become a party and such application will be considered uncontested.

The fact that an application is uncontested will not mean that it will be approved. The application will be approved only if the commission determines that it qualifies under the criteria of Texas Civil Statutes, Article 4418(h), §3.02 or §3.03, and §§505.81 and §505.82 (315.17.04.010 and .030), §§505.91-505.93 (315.17.05.010, .020, and .030), §§507.81-507.83 (315.18.04.010, .020, and .030), and §§507.91-507.93 (315.18.05.010, .020, and .030).

In the following list, the applicant and date of acceptance are listed first, the file number second, the relief sought third, and description of the project fourth. EC indicates exemption certificate, DR indicates declaratory ruling, TR indicates transfer of ownership of certificate, AMD indicates amendment of certificate, and CN indicates certificate of need.

Shoal Creek Hospital, Austin (6/2/81)
AH81-0527-019

ER—Request to relocate the departments of purchasing, billing and collecting, accounting, data processing, general stores, business office manager, and the assistant controller and acquire furniture, etc., and a transport van in order to make room to set up 15 additional licensed beds as adult psychiatric beds, with no increase in the licensed capacity of the facility

Memorial Hospital of Garland, Garland (6/2/81)
AH81-0527-009

EC—Request to acquire a PAS+ microcomputer system for use in medical records

Highland Park Hospital, El Paso (6/3/81)
AH79-1219-016A (052981)

AMD/CN—Request to extend the completion deadline in Certificate of Need AH79-1219-016, as amended, which authorized the expansion and renovation of the hospital's kitchen and acquisition of new equipment

Brownwood Regional Hospital, Brownwood (6/2/81)
AH77-0311-023A (052981)

AMD/DR—Request to extend the completion deadline in Declaratory Ruling AH77-0311-023 issued on May 12 1977, as amended on June 7, 1979, which authorized the certificate holder to complete the fourth floor and add 50 acute care beds and 10 intensive care beds

Wylie Hospital, Inc., Wylie (6/3/81)
AH79-0427-029T (052881)

T/EC—Request to transfer Exemption Certificate AH79-0427-029 which authorized the construction of a 37-bed replacement hospital facility in Wylie from the Wylie Hospital, Inc., to American Healthcare Management

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

Doc. No. 813654 Linda E. Zatopek
Assistant General Counsel
Texas Health Facilities Commission

Filed: June 3, 1981, 9:47 a.m.

For further information, please call (512) 475-6940.

Each issue of the *Register* includes a conversion table of *Texas Administrative Code* titles affected for that issue. Once a month a guide to agency activity for the previous month is published, as well as a cumulation of TAC titles affected for the previous month. Quarterly and annual indexes to the *Texas Register* are published separately and bound in light blue for distinction.

TAC Titles Affected in This Issue

The following is a list of the chapters of each title of the *Texas Administrative Code* affected by documents published in this issue of the *Register*. The listings are arranged in the same order as the table of contents of the *Texas Administrative Code*.

TITLE 13. CULTURAL RESOURCES

Part III. Texas Commission on the Arts

13 TAC §37.21 (353.04.02.001) 2052

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §3.9 (051.02.02.009)..... 2052

16 TAC §3.46* (051.02.02.046)..... 2054

16 TAC §3.71 (051.02.02.074)..... 2056

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

22 TAC §235.10 (390.03.01.010) 2066

Part XXIII. Texas Real Estate Commission

22 TAC §535.65 (402.03.07.005) 2057

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

25 TAC §§97.63, 97.64, 97.67
(301.41.04.003, .004, .007) 2058

25 TAC §§97.68, 97.69 (301.41.04.008, .009) 2059

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

31 TAC §57.42 (127.30.04.002) 2066

31 TAC §57.101 (127.30.07.001) 2068

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

Noncodified (326.15.23.026, .027, .036) 2060

Noncodified (326.15.35.014) 2068

Noncodified (326.15.35.019) 2069

Noncodified (326.15.41.039, .059) 2069

Noncodified (326.15.42.009) 2069

Noncodified (326.15.54.001-.004) 2069

Noncodified (326.15.57.002, .010) 2069

Noncodified (326.33.99.200, .203, .204) 2060

Noncodified (326.33.99.201, .205, .206) 2065

Table of TAC Titles

TITLE 1. ADMINISTRATION
TITLE 4. AGRICULTURE
TITLE 7. BANKING AND SECURITIES
TITLE 10. COMMUNITY DEVELOPMENT
TITLE 13. CULTURAL RESOURCES
TITLE 16. ECONOMIC REGULATION
TITLE 19. EDUCATION
TITLE 22. EXAMINING BOARDS
TITLE 25. HEALTH SERVICES
TITLE 28. INSURANCE
TITLE 31. NATURAL RESOURCES AND CONSERVATION
TITLE 34. PUBLIC FINANCE
TITLE 37. PUBLIC SAFETY AND CORRECTIONS
TITLE 40. SOCIAL SERVICES AND ASSISTANCE
TITLE 43. TRANSPORTATION

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