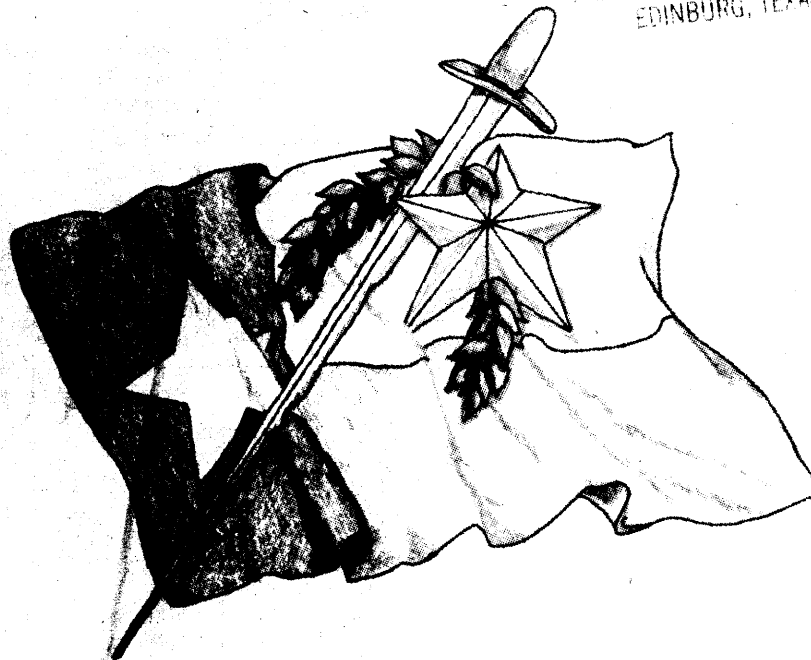


Texas Register

U.S. GOVERNMENT DOCUMENT
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Highlights

- r Texas Water Development Board renews the effectiveness of emergency adoptions concerning the Water Loan Assistance Fund; Expiration date - August 17..... page 2224
- r The State Board of Insurance proposes amendments to sections concerning prepaid legal services; proposed date of adoption - July 12 page 2227
- r The final segment of a three-part serialization of adoptions submitted by the Texas Department of Human Resources appears in this issue; effective date - July 1..... page 2250

How To Use the Texas Register

Texas Register

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

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

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

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register Division six months after proposal publication date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

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

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which

that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

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

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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

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

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Emergency Rules

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

An agency must submit written reasons, published in the *Register*, for emergency action on a rule. The submission must also include a statement of the legal authority under which the emergency action is promulgated and the text of the emergency adoption. Following each published emergency document is certification information containing the effective and expiration dates of the action and a telephone number from which further information may be obtained.

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 355. Water Loan Assistance Fund

Introductory Provisions

31 TAC §§355.1-355.3

The Texas Department of Water Resources is renewing the effectiveness of the emergency adoption of new §§355.1-355.3 for a 60-day period, effective June 18, 1982. The text of the new rules, as adopted on an emergency basis, was published in the February 23, 1982, issue of the *Texas Register* (7 TexReg 711).

Issued in Austin, Texas, on June 1, 1982.

TRD-824621 M. Reginald Arnold II
General Counsel
Texas Department of Water
Resources

Effective date: June 18, 1982
Expiration date: August 17, 1982
For further information, please call (512) 475-7836.

Policy Declarations

31 TAC §§355.31-355.33

The Texas Department of Water Resources is renewing the effectiveness of the emergency adoption of new §§355.31-355.33 for a 60-day period, effective June 18, 1982. The text of the new rules, as adopted

on an emergency basis, was published in the February 23, 1982, issue of the *Texas Register* (7 TexReg 713).

Issued in Austin, Texas, on June 1, 1982.

TRD-824622 M. Reginald Arnold II
General Counsel
Texas Department of Water
Resources

Effective date: June 18, 1982
Expiration date: August 17, 1982
For further information, please call (512) 475-7836.

Applications to the Board

31 TAC §§355.51-355.60

The Texas Department of Water Resources is renewing the effectiveness of the emergency adoption of new §§355.51-355.60 for a 60-day period, effective June 18, 1982. The text of the new rules, as adopted on an emergency basis, was published in the February 23, 1982, issue of the *Texas Register* (7 TexReg 714).

Issued in Austin, Texas, on June 1, 1982.

TRD-824623 M. Reginald Arnold II
General Counsel
Texas Department of Water
Resources

Effective date: June 18, 1982
Expiration date: August 17, 1982
For further information, please call (512) 475-7836.

Closing of Loans

31 TAC §§355.71-355.76

The Texas Department of Water Resources is renewing the effectiveness of the emergency adoption of new §§355.71-355.76 for a 60-day period, effective June 18, 1982. The text of the new rules, as adopted on an emergency basis, was published in the February 23, 1982, issue of the *Texas Register* (7 TexReg 718).

Issued in Austin, Texas, on June 1, 1982.

TRD-824824 M. Reginald Arnold II
General Counsel
Texas Department of Water
Resources

Effective date: June 18, 1982
Expiration date: August 17, 1982
For further information, please call (512) 475-7836.

Construction Phase

31 TAC §§355.81-355.85

The Texas Department of Water Resources is renewing the effectiveness of the emergency adoption of new §§355.81-355.85 for a 60-day period, effective June 18, 1982. The text of the new rules, as adopted on an emergency basis, was published in the February

23, 1982, issue of the *Texas Register* (7 TexReg 721).

Issued in Austin, Texas, on June 1, 1982.

TRD-824825 M. Reginald Arnold II
General Counsel
Texas Department of Water
Resources

Effective date: June 18, 1982
Expiration date: August 17, 1982
For further information, please call (512) 475-7836.

**Post-Construction Responsibilities
Compliance Procedure**

31 TAC §355.91

The Texas Department of Water Resources is renewing the effectiveness of the emergency adoption of new §355.91 for a 60-day period, effective June 18, 1982. The text of the new rule, as adopted on an emergency basis, was published in the February 23, 1982, issue of the *Texas Register* (7 TexReg 722).

Issued in Austin, Texas, on June 1, 1982.

TRD-824826 M. Reginald Arnold II
General Counsel
Texas Department of Water
Resources

Effective date: June 18, 1982
Expiration date: August 17, 1982
For further information, please call (512) 475-7836.

Proposed Rules

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

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

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

TITLE 22. EXAMINING BOARDS Part XXIV. State Board of Veterinary Medical Examiners Chapter 573. Rules of Professional Conduct

22 TAC §573.28

The State Board of Veterinary Medical Examiners proposes an amendment to §573.28 concerning advertising time requirements.

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

Mr. Shipman has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be to align the rules of professional conduct with the Veterinary Practice Act as amended by the 67th Legislature.

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

Comments on the proposal may be submitted to Roger D. Shipman, executive secretary, Texas Board of Veterinary Medical Examiners, 3810 Medical Parkway, Suite 119, Austin, Texas 78758, (512) 458-1183.

The amendments are proposed under Texas Civil Statutes, Article 7465a, §8, which provides the State Board of Veterinary Medical Examiners with the authority to adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the profession of veterinary medicine.

§573.28. Advertising.

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

(d) Advertising time requirements. Any advertisement of price for routine veterinary services permitted under board rule shall be valid and binding on the advertising veterinarian for not less than six months following the date it is last offered and the veterinarian offering same shall honor all client requests for such veterinary service made by veterinary clients within the sixth month period following the last date such advertisement was presented to the public unless there is contained in the advertisement a specific time limitation on the availability of the service or product at the advertised price; further, all such services must be completed within a reasonable

time from the first patient appointment or such patient's request for veterinary service.]

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

Issued in Austin, Texas, on June 3, 1982.

TRD-824668 Roger D. Shipman
Executive Secretary
State Board of Veterinary
Medical Examiners

Proposed date of adoption: July 12, 1982
For further information, please call (512) 458-1183.

vote on any action as any other member of the council.

(b) (No change.)

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

Issued in Austin, Texas, on June 3, 1982.

TRD-824666 Clift Price, M.D.
Associate Commissioner
Personal Health Services
Texas Department of Health

Proposed date of adoption: July 12, 1982
For further information, please call (512) 458-7321.

TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention Program

Conduct of Council Meetings

25 TAC §621.4

The Early Childhood Intervention Program proposes amendments to §621.4, concerning the transaction of business at council meetings. The amendment will give the council chairperson the right to vote on any action as any other member of the council.

Clift Price, M.D., associate commissioner for Personal Health Services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Price has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be to allow the chairperson, as the Texas Department of Health representative, a more active role in voting on all matters before the council.

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

Comments on the proposal may be submitted to Clift Price, M.D., Associate Commissioner for Personal Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be received for 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, 4413(43a), which provides the Interagency Council on Early Childhood Intervention with the authority to adopt rules governing the conduct of council meetings.

§621.4. Transaction of Business.

(a) All meetings will be conducted according to Roberts Rules or Order except that the chairperson may

TITLE 28. INSURANCE

Part I. State Board of Insurance

(Editor's note: Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register Division numbers. However, the rules will be published under the agency's correct TAC title and part.)

Prepaid Legal Services

059.23.01.001-.004, .006, .007

The State Board of Insurance proposes amendments to Rules 059.23.01.001-.004, .006, and .007, concerning prepaid legal services. The amendments are described as follows.

Surplus and unnecessary language is deleted and other nonsubstantive editorial changes are made.

In Rule 059.23.01.002, the name reservation procedure for Chapter 23 corporations is modified. A provision for a waiting period for protests of names and consideration of such protests by the commissioner is eliminated. A requirement is added that the name be not so similar to insurers or other Chapter 23 corporations as to be likely to mislead the public.

Rule 059.23.01.003(h) is amended to conform to Texas Insurance Code, Article 23.26.

In Rule 059.23.01.004(a)(1), a requirement that an insurer seeking authorization to write prepaid legal services contracts file its advertising material, policy forms, and rates with its application is eliminated so that an insurer may obtain the authority to write prepaid legal services contracts even though it does not necessarily plan to presently do so. (Forms and rates are still required to be reviewed before the insurer may use them; an insurer's advertising is available to the agency for inspection at any time.)

The provisions of Rule 059.23.02.002 are incorporated in Rule 059.23.01.004 as subsection (d). Rule 059.23.02.002 is an amendment to the main

body of prepaid legal rules which was adopted under a different rule number and therefore never formally incorporated into these rules. The contents of Rule 059.23.02.002 are shown as new language as required by the *Texas Register*. Simultaneously with the incorporation of this provision, Rule 059.23.02.002 will be repealed. This process does not alter the effective law.

The rules have seven appendices attached which are specifically incorporated by reference in Rule .007. The appendices are lettered A-G. The appendices replace the appendices originally filed with the prepaid legal rules. Changes are minor except that the fee schedule specified in Article 23.23 is added and the appendices are made to refer specifically in some instances to prepaid legal companies or agents.

The State Board of Insurance expects no fiscal implications from these rule changes to units of state or local government. Activity in the prepaid legal area is minimal and no increase or reduction in employees is expected. The State Board of Insurance relies on A.W. Pogue, division manager, Policy Approval Division, in making this determination.

A public benefit is expected from these rule changes. The rules are made clearer from the nonsubstantive editorial changes and the business of prepaid legal services is facilitated. There may be a savings for individuals required to comply with the rules. The major substantive rule change in this area relieves insurers of filing policy forms, rates, and advertising material before they are actually interested in writing the business. This should cause a reduction in cost. The State Board of Insurance relies on A.W. Pogue, division manager, Policy Approval Division, in making this determination.

Comments on the proposal may be submitted to A.W. Pogue, division manager, Policy Approval Division, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786.

These rule amendments are proposed pursuant to various authorities. Chapter 23 of the Texas Insurance Code generally, and Article 23.02 specifically, place Chapter 23 corporations under the direct regulatory supervision of the State Board of Insurance; Article 5.13-1, Texas Insurance Code, authorizes and requires the board to review rates and forms to be used by insurers issuing prepaid legal services contracts; Article 23.26 specifies other articles in the code which are applicable to Chapter 23 corporations; Article 23.26 makes Article 21.21 of the Insurance Code applicable to Chapter 23 corporations; Article 21.21 prohibits deceptive acts and practices, including a misleading name; Article 5.13-1, §(d) authorizes the board to promulgate, after notice and hearing, rules and regulations concerning the application of Article 5.13-1 to the insurers specified in that statute for such clarification, argumentation, and amplification as in the discretion of the board is deemed necessary to accomplish the purposes of Article 5.13-1. These amendments are also proposed under the board's

authority in Texas Civil Statutes, Article 6252-13a, §4, the Insurance Code, Article 1.04, and elsewhere for the board to make nonsubstantive editorial changes and clarifications to its rules and to pass procedural rules necessary for it to perform its statutory duties and authority; and under the board's authority to repeal any rule or portion of a rule it has previously adopted.

(Editor's note: In addition to the text changes noted in the bold type below, the Texas Register Division and State Board of Insurance have made administrative numbering changes to reformat the following rule which do not change the content or meaning of the rule.)

.001. Scope and Definitions.

(a) **Scope.** These [The following] rules and regulations [are hereby adopted by the State Board of Insurance to] govern the business of prepaid legal services corporations acting pursuant to Chapter 23, Texas Insurance Code, and the issuance of prepaid legal services contracts pursuant to Texas Insurance Code, Article 5.13-1 [organization of prepaid legal services corporations and the issuance of contracts by nonprofit prepaid legal services corporations, by insurance companies governed by Subchapter B of Chapter 5 of the Texas Insurance Code, and by insurance companies governed by Chapter 3, as amended, of the Texas Insurance Code].

(b) (No change.)

.002. Procedures for Issuance of a Certificate of Authority for Chapter 23 Corporations.

(a) **Name reservation.**

(1) A corporate name for use in Texas will [shall] be reserved by submitting a Chapter 23 Name Application Form (Appendix A) together with application fee of \$100.

(2) The commissioner will [shall] forward a certified copy of the Name Application Form to the secretary of state upon receipt of the application fee.

(3) **Thereafter, the commissioner will approve or disapprove the application. The name selected may not be so similar to that of any insurance company or Chapter 23 corporation as to be likely to mislead the public. [After the commissioner has forwarded the Name Application Form to the secretary of state, there shall be a 10-day waiting period to provide time for submission to the commissioner of objections to the Name Application Form. At the end of the 10-day period, the commissioner shall consider any objections and may either approve or disapprove the Name Application Form. The commissioner may require a public hearing before taking either of the above actions.]**

(b) **Incorporation.**

(1) (No change.)

(2) Any seven or more persons, on application to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act as a nonmembership corporation, may be incorporated for the sole purpose of establishing, maintaining, and operating a nonprofit legal services corporation, whereby legal services may be provided by such corporation through contracting attorneys as provided by law.

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

.003. General Provisions for Chapter 23 Corporations.

(a) (No change.)

(b) Examination. The commissioner shall, once in each six months for the first three years after the issuance of a certificate of authority, once in each year for the fourth through sixth years after issuance of a certificate of authority, and thereafter once in each three years, or more often [oftener], if the commissioner deems necessary, in person or by one or more examiners commissioned by the commissioner in writing, visit each corporation and examine its financial condition and its ability to meet its liabilities, as well as its compliance with the laws of Texas affecting [effecting] the conduct of its business; and the commissioner shall, similarly, in person or by one or more commissioned examiners, visit and examine, either alone or jointly with representatives of the insurance supervising departments of other states, each corporation not organized under the laws of this state but authorized to transact business in this state. The commissioner or his commissioned examiners shall have free access to all the books and papers of the corporation or agents thereof relating to the business and affairs of such corporation, and shall have power to summon and examine under oath the officers, agents, and employees of such corporation and any other person within the state relative to the affairs of such corporation. The commissioner may revoke or modify any certificate of authority issued by the commissioner or by any predecessor in office when any condition or requirement prescribed by law for granting it no longer exists. The commissioner shall give the corporation at least 10 days written notice of intention to revoke or modify such certificate of authority stating specifically the reason for the proposed action.

(c)-(g) (No change.)

(h) Application of other laws.

(1) (No change.)

(2) The following provisions of the code shall, where not in conflict with Chapter 23 [the chapter] apply to corporations complying with the provisions of Chapter 23 [the chapter] to the same extent as they apply to insurers and to those doing the business of insurance: Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 3.14, 21.21, 21.21-2, 21.25, 21.28, 21.28A, and 21.47, and §§1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of the code.

.004. Authorized Insurers.

(a) Any authorized insurer permitted by the purpose clause of its articles of incorporation to engage in the business of prepaid legal services shall surrender its existing certificate of authority and secure a new certificate of authority prior to engaging in the business of prepaid legal services.

(1) Any authorized insurer permitted by the purpose clause of its articles of incorporation to engage in the business of prepaid legal services shall give written notification to the board of any intention to file an application for a certificate of authority to engage in such business. [The written notification shall be accompanied by the documents required to be filed pursuant to Rule

059.23.01.002(c)(2)(G), (H), and (I) of these rules in accordance with said provisions.]

(2) Subsequent to submission of the notification [documents] required by subsection (1) of this section, the insurer shall submit an application for a certificate of authority to engage in the business of prepaid legal services together with their current lines of insurance which shall be accompanied by a \$1.00 filing fee. Insurers licensed under the provisions of Chapter 3 of the code shall submit the standard coverages page with the application for a certificate of authority.

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

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

(d) Every insurance corporation authorized to issue prepaid legal services contracts shall complete the same annual statement blank as is required to be completed by every prepaid legal services corporation. Such completed annual statement shall be attached to the annual statement filed by the insurance company and shown as separate accounts business in the insurance corporation's annual statement.

.006. Forms, Rates, and Advertising.

(a) (No change.)

(b) Filing. All policy forms, application forms, identification cards, rate schedules, and endorsements thereto shall be submitted in duplicate in accordance with the following procedure:

(1)-(6) (No change.)

(7) correspondence shall be addressed to: Policy Approval Division, State Board of Insurance, [Box 28,] 1110 San Jacinto, Austin, Texas 78786.

(c) Content.

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

(9) Franchise policies.

(A) "Franchise policies" means individual policies that are issued to five or more employees of any corporation, copartnership, or individual employer or any governmental corporation, agency, or department thereof, or 10 or more members or employees of any trade or professional association or of a labor union or any other association having had an active existence for at least two years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance.

(B)-(D) (No change.)

(d) Disapproval. The commissioner shall disapprove any form or withdraw any previous approval if:

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

(e) Submission of additional information. The commissioner may require the submission of any other relevant information deemed necessary in determining whether to approve or disapprove a filing made pursuant to this section. [The board shall promulgate rules with respect to cancellation provision requirements.]

.007. Appendices A-G. Appendices A-G are adopted and made a part of these rules [this order] by reference. Copies of Appendices A-C may be obtained from the Corporate Custodian and Tax Division of the State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786. Copies of Appendices D-G may be obtained from the Agents' License Section of the State Board of Insurance, 1110 San Jacinto, Austin Texas 78786. [This

order shall remain open for the purpose of any amendments, corrections, additions, or other changes which may be made and ordered by the board.]

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824711 James W. Norman
Chief Clerk
State Board of Insurance

Proposed date of adoption: July 12, 1982
For further information, please call (512) 475-2950.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board Chapter 101. General Provisions

31 TAC §101.1

The Texas Air Control Board proposes amendments to §101.1, concerning definitions. The modification to this rule is proposed in order to include new and revised definitions that are made necessary by changes being proposed concurrently to Chapter 115, concerning volatile organic compounds. New definitions are proposed for component; drum; leak (for fugitive emission control in petroleum refineries and synthetic organic chemical, polymer, and resin manufacturing plants); pail; polymer and resin manufacturing plant; pounds of VOC per gallon of coating (minus water); and synthetic chemical manufacturing plant.

Also, a revised definition of volatile organic compound (VOC) is proposed. The revised definition excludes methylene chloride and six chlorofluorocarbons (CFC) or fluorocarbons (FC) that are of negligible photochemical reactivity. See the July 22, 1980, issue of the *Federal Register* (45 FedReg 48941). Whether, and to what extent, methylene chloride is a human carcinogen or has other toxic effects, and to what extent the CFC's deplete the ozone layer, are issues of considerable debate. The Texas Air Control Board proposes this revised definition to hear both sides of the issue concerning whether or not compounds that are negligibly photochemically reactive should be included in a regulation concerned primarily with VOC control to reduce ozone. In particular, are benefits from reduced control requirements outweighed by the possible increase in emissions of compounds that may be environmentally harmful?

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that the benefits accruing to the

public as a result of this proposal are better understanding of regulatory requirements due to clearer and more easily understood language. There are no increased costs resulting from the rule as proposed.

Public hearings on this proposal are scheduled for the following times and places:

July 13, 1982, 3 p.m. and 7 p.m.
Environmental Pollution Control Laboratories
auditorium
7411 Park Place, Houston

July 12, 1982, 7 p.m.
Texas Air Control Board auditorium
6330 Highway 290 East, Austin

Copies of the proposed rule changes are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and at all Texas Air Control Board regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. Written testimony received by July 20, 1982, will be included in the hearing record. The Texas Air Control Board would appreciate receiving 20 copies of testimony prior to the hearings, where possible. Written comments should be sent to the hearings examiner, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§101.1. Definitions. Unless specifically defined in the Act or in the rules of the board, the terms used by the board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by Texas Civil Statutes, Article 4477-5, the following terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

Component—A piece of equipment, including, but not limited to pumps, valves, compressors, and pressure relief valves which has the potential to leak volatile organic compounds.

Drum—Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).

Leak (for fugitive emission control in petroleum refineries and synthetic organic chemical, polymer, and resin manufacturing plants)—A volatile organic compound concentration greater than 10,000 parts per million by volume (ppmv) as shown by monitoring using EPA reference method 21 (46 Federal Register 1160, January 5, 1981) or by dripping of process fluid having a true vapor pressure greater than 0.147 psia (1.013 kPa) at 68°F (20°C).

Pail—Any cylindrical metal shipping container with a nominal capacity equal to or greater than one gallon (3.8 liters) but less than 12 gallons (45.4 liters) and

constructed of 29 gauge or heavier material.

Polymer and resin manufacturing plant—A facility that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrene-butadiene latex.

Pounds of VOC per gallon of coating (minus water)—Basis for emission limits of most surface coating processes. It is calculated by starting with one gallon of coating which contains a volume percentage of solids plus a remaining VOC and water volume percentage. The water percentage is removed and the remainder of the gallon is recalculated to an equivalent gallon of VOC and solids. The resulting new volume percentage of VOC times its density yields pounds of VOC per gallon of coating (minus water).

Synthetic organic chemical manufacturing plant—A facility that produces, as intermediates or final products, one or more of the chemicals listed in Appendix E (46 Federal Register 1164, January 5, 1981).

Volatile organic compound (VOC)—Any compound of carbon or mixture of carbon compounds excluding methane, ethane, 1,1,1-trichloroethane (methyl chloroform), methylene chloride (dichloromethane), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), [methyl chloroform, Freon 113,] carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824686 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711, ext. 354.

Chapter 115. Volatile Organic Compounds

Storage of Volatile Organic Compounds in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio and Travis Counties

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Air Control Board, 6330 Highway 290 East, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

31 TAC §§115.11-115.13

The Texas Air Control Board (TACB) proposes repeal of §§115.11-115.13, which are grouped under the

undesignated heading Storage of Volatile Organic Compounds in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties. The board simultaneously proposes new sections as replacements in a tabular format consistent with that used in the rules concerning Storage of Volatile Organic Compounds in Brazoria, Dallas, El Paso, Galveston, Gregg, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. The undesignated heading for the rules remains the same.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period there will be no fiscal implications to state or local government as a result of the repeal.

Roger Wallis, deputy director for standards and regulations, has determined that the benefit that will accrue to the public and to the state will be in the form of clearer and more easily understood regulatory language. There is no economic cost to individuals required to comply with the rule.

The repeal of §§115.11-115.13 is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.11. Containers Over 25,000 Gallons.

§115.12. Containers Over 1,000 Gallons.

§115.13. Exemptions.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824687 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711, ext 354.

31 TAC §§115.11-115.14

New §§115.11-115.14 are proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.11. Control Requirements. No person may place, store, or hold in any stationary tank, reservoir, or other container any volatile organic compound (VOC) with a true vapor pressure equal to or greater than 1.5 psia (10.3 kPa) unless such container is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is designed and equipped with at least the control device specified in Table

1 (for VOC other than crude oil and condensate), or any other control device which will provide substantially equivalent control and is approved by the executive director in accordance with the provisions of §115.401 (relating to Procedure).

(See Table 1 following this chapter.)

§115.12. Floating Roof Storage Tank Requirements. For floating roof storage tanks subject to the provisions of §115.11 of this title (relating to Control Requirements), the following requirements shall apply.

(1) The roof shall rest or float upon the surface of the liquid contents and have a closure seal or seals to close the space between the roof or cover edge and tank wall.

(2) There shall be no visible holes, tears, or other openings in the seal or seal fabric.

(3) All tank gauging and sampling devices shall be vapor-tight except when gauging and sampling is taking place.

§115.13. Exemptions.

(a) Crude oil or condensate storage containers are exempt from the provisions of §115.11 of this title (relating to Control Requirements).

(b) Slotted sampling and gauge pipes installed in any floating roof storage tank are exempt from the provisions of §115.11 of this title (relating to Control Requirements).

(c) Storage tanks with nominal capacities between 1,000 gallons (3,785 liters) and 25,000 gallons (94,635 liters) are exempt from the requirements of §115.11 of this title (relating to Control Requirements) if construction began before May 12, 1973.

§115.14. Compliance. All persons required to be in compliance with previous versions of these rules adopted March 30, 1979, shall remain in compliance with these rules in this revised format.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824688 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711, ext. 354.

Water Separation in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties

31 TAC §115.31

The Texas Air Control Board proposes amendments to §115.31, concerning required control devices, to

exempt certain volatile organic compound (VOC) water separators on the basis of gallons of VOC separated rather than on the volume of VOC received in order to facilitate measurements to determine compliance. Additional minor editorial changes are also proposed.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit as a result of enforcing the rule as proposed will be in the form of improved ability to determine compliance. There is no identifiable cost to the public.

This amendment is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.31. Required Control Devices. No person shall use any compartment of any single or multiple compartment volatile organic compound water separator, which compartment separates [receives] 200 gallons (757 liters) or more a day of volatile organic compounds [a day] having a true vapor pressure equal to or greater than 1.5 psia (10.3 kPa) from any equipment which is processing, refining, treating, storing, or handling volatile organic compounds, unless such compartment is controlled in one of the following ways:

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

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824689 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711, ext. 354.

Vent Gas Control in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties

31 TAC §115.41

The Texas Air Control Board (TACB) proposes amendments to §115.41, concerning vent gas control in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties. The proposed amendment concerning ethylene from low-density polyethylene production revises the emission limit to one based on a 24-hour average.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that the benefit that will accrue to the public and to the state as a result of enforcing the rule as proposed will be a more equitable emission limit since emissions normally fluctuate about an average value. Emissions should stay the same. However, the number of violations should be reduced since a short term exceedence will no longer be a technical violation. There is no identifiable cost to the public.

This amendment is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.41. Ethylene From Low-Density Polyethylene Production. No person may allow to be emitted more than 1.1 pounds of ethylene per 1,000 pounds (1.1 kg/1000 kg) of low-density polyethylene plant product averaged over any consecutive 24-hour period when sampled at least one time per working shift from all vent gas streams associated with the formation, handling, and storage of solidified product unless the vent gas streams are burned at a temperature equal to or greater than 1,300°F (704°C) in a smokeless flare or a direct-flame incinerator or are controlled by an approved substantially equivalent alternate method.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824690 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

Storage of Volatile Organic Compounds in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §115.105, §115.106

The Texas Air Control Board proposes amendments to §115.105, concerning exemptions and §115.106, concerning counties and compliance schedules. The proposed amendment to §115.105 exempts welded tanks storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia from

certain secondary seal requirements if specified primary seal requirements are met. The proposed amendment to §115.106 clarifies the original intent to have December 31, 1982, as the final compliance date for §§115.101-115.104. The exemption for welded tanks meets the U.S. Environmental Protection Agency (EPA) 5.0% demonstration requirement in all but Galveston County which would have a 6.0% increase in volatile organic compound (VOC) emissions, four tons per year above the 5.0% demonstration level. The cost of control devices required without the exemption would be in excess of \$9,000 per ton according to data received from Texas Mid-Continent Oil and Gas Association and Exxon Pipeline Company.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be more cost effective control of VOC emissions without significant deterioration in the current level of air quality. There is anticipated to be a net economic gain to individuals who are required to comply with the rule as proposed because of relief from requirements that are not cost effective. Changes now occurring in the standard calculation methods for storage tank emissions make cost calculations infeasible at this time.

This amendment is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.105. Exemptions. The following are exemptions to the requirements of §115.101 of this title (relating to Control Requirements) and §115.102 of this title (relating to Floating Roof Storage Tank Requirements).

(1)-(6) (No change.)

(7) Any welded tank storing crude oil having a true vapor pressure equal to or greater than 4.0 psia (27.6 kPa) and less than 6.0 psia (41.4 kPa) is exempt from any external secondary seal requirement of §115.101 of this title (relating to Control Requirements) if any of the following types of primary seals have been installed before the effective date of this rule:

- (A) a metallic-type shoe seal,
- (B) a liquid-mounted foam seal, or
- (C) a liquid-mounted liquid filled type seal.

§115.106. Counties and Compliance Schedules.

(a) (No change.)

(b) All persons affected by §115.101 of this title (relating to Control Requirements), §115.102 of this title (relating to Floating Roof Storage Tank Requirements), §115.103 of this title (relating to Inspection Requirements), and §115.104 of this title (relating to

Record Keeping Requirements) shall submit a final control plan for compliance no later than December 31, 1979, and shall be in compliance as soon as practicable but no later than December 31, 1982, with the exception noted in subsection (c) of this section.

(c) All persons required by §115.101 of this title (relating to Control Requirements) to retrofit tanks with secondary seals shall submit a final control plan to the Texas Air Control Board no later than December 31, 1980, and shall be in compliance as soon as practicable but no later than December 31, 1982, with the provisions of §115.101 of this title (relating to Control Requirements), §115.102 of this title (relating to Floating Roof Storage Tank Requirements), §115.103 of this title (relating to Inspection Requirements), and §115.104 of this title (relating to Record Keeping Requirements).

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824691 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

Facilities for Loading and Unloading of Volatile Organic Compounds in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §115.111, §115.113

The Texas Air Control Board proposes amendments to §115.111, concerning throughput and control requirements, and §115.113, concerning compliance schedule and counties. In §115.111, the proposed amendments will affect gasoline terminals in Harris County with a daily throughput of 500,000 gallons or more. The affected terminals will be required to reduce emissions of volatile organic compound (VOC) vapors to a level not to exceed 0.33 pounds of VOC per 1,000 gallons of gasoline transferred, approximately half the emission rate presently allowed after December 31, 1982. In §115.113, proposed amendments add a final compliance date of December 31, 1986, and final control plan submittal date of December 31, 1983, for the new control requirements of §115.111 that apply to affected gasoline terminals in Harris County.

These proposed amendments are part of a series of draft revisions to Chapter 115 to provide in Harris County the additional VOC emissions reductions needed to satisfy U.S. Environmental Protection Agency (EPA) requirements for 1982 State Implementation Plan (SIP) revisions. These amendments are based on technical information contained in the Re-

dian Corporation report, "Assessment of the Feasibility and Costs of Controlling VOC Emissions from Stationary Sources in Harris County, Texas," submitted to the Texas Air Control Board September 11, 1981.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the proposed amendment.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule will be improved air quality as a result of a reduction of 1,666 tons per year of VOC emissions in Harris County after December 31, 1986. In addition, these and other VOC emission reductions proposed elsewhere will help satisfy EPA requirements for 1982 SIP's and help to avoid possible growth sanctions in Harris County. The economic cost (credit) to individuals who are required to comply with the rules as proposed will be zero for 1983; \$16,000-\$35,000 for 1984; \$53,000-\$114,000 for 1985; \$116,000-\$251,000 for 1986; and (\$32,000)-\$7,000 for 1987 for each facility affected, adjusting for 10% annual inflation. For the 15 facilities affected by the proposed rule change, the net annualized cost will be \$550,000-\$2,330,000 in February 1981 dollars.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.111. Throughput and Control Requirements. No person shall permit the loading or unloading to or from any facility having 20,000 gallons (75,708 liters) or more throughput per day (averaged over any consecutive 30-day period) of volatile organic compounds with a true vapor pressure equal to or greater than 1.5 psia (10.3 kPa) under actual storage conditions, unless the following emission control requirements are met by the dates specified in §115.113 of this title (relating to Compliance Schedule and Counties):

(1) (No change.)

(2) Gasoline terminal size and additional emission control requirements are as follows:

(A) Volatile organic compound vapors from gasoline terminals shall be reduced to a level not to exceed 0.67 pounds of volatile organic compounds per 1,000 gallons (80 mg/liter) of gasoline transferred.

(B) Volatile organic compound vapors from gasoline terminals located in Harris County and having 500,000 gallons (1,892,706 liters) or more throughput per day (averaged over any consecutive 30-day period) shall be reduced to a level not to exceed 0.33 pounds of volatile organic compounds per 1,000 gallons (40 mg/liter) of gasoline transferred.

(C) Prior to December 31, 1982, affected

gasoline terminals other than those located in Gregg County shall remain in compliance with paragraph (1) of this section.

(D) After December 31, 1982, but before December 31, 1986, gasoline terminals located in Harris County and affected by paragraph (2)(B) of this section shall remain in compliance with paragraph (2)(A) of this section.

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

§115.113. Compliance Schedule and Counties. All affected persons in the counties and for the facilities specified below shall be in compliance with the rule paragraphs specified below as soon as practicable but no later than the date shown.

(See Table 2 following this chapter.)

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824892 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

Water Separation in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §§115.141, 115.142, 115.144

The Texas Air Control Board proposes amendments to §§115.141, 115.142, and 115.144, contained under the undesignated heading Water Separation in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties.

The amendments to §115.141, concerning facilities other than petroleum refineries, and §115.142, concerning petroleum refineries, will exempt certain volatile organic compound (VOC) water separators on the basis of gallons of VOC separated rather than on the volume of VOC received in order to facilitate measurements to determine compliance. Other amendments to §115.142 are proposed to remove the exemption for separators handling VOC material having a true vapor pressure of less than 0.5 psia (3.4 kPa). Measurement of the true vapor pressure of such low vapor pressure VOC material has been difficult, hampering enforcement by compliance personnel. However, the anticipated reductions in VOC emissions are not expected to be cost effective. If testimony is received concerning a reliable method to measure the true vapor pressure of the low vapor pressure VOC material separated that will be acceptable to com-

pliance personnel, the Texas Air Control Board will not adopt this proposed amendment.

In §115.144, concerning compliance schedule and counties, proposed amendments add a final compliance date of December 31, 1986, and final control plan submittal date of December 31, 1983, for those VOC water separators previously exempted. Additional minor editorial changes are also proposed.

Bennis Engeike, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implication to state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be the ability to enforce compliance on an equal basis. The economic cost to individuals who are required to comply with the rule as proposed is none in 1983; \$14,000 in 1984; \$42,000 in 1985; \$85,000 in 1986; and \$20,000 in 1987, on the basis of cost per typical VOC water separator.

This amendment is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.141. Facilities Other Than Petroleum Refineries. No person shall use any compartment of any single or multiple compartment volatile organic compound water separator, which compartment separates [receives] 200 gallons (757 liters) or more a day of volatile organic compounds [a day] having a true vapor pressure equal to or greater than 1.5 psia (10.3 kPa) from any equipment in a facility other than a petroleum refinery which is processing, treating, storing, or handling volatile organic compounds, unless such compartment is controlled in one of the following ways.

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

§115.142. Petroleum Refineries. No person shall use any compartment of any single or multiple compartment volatile organic compound water separator, which compartment separates [receives] 200 gallons (757 liters) or more a day of volatile organic compounds [a day having a true vapor pressure of 0.5 psia (3.4 kPa) or greater] from any equipment in a petroleum refinery which is processing, refining, treating, storing, or handling volatile organic compounds, unless such compartment is controlled in one of the following ways.

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

§115.144. Compliance Schedule and Counties. All persons in the counties listed as follows will be in compliance with the provisions of §115.141 of this title (relating to Facilities Other Than Petroleum Refineries) and §115.142 of this title (relating to Petroleum

Refineries) as soon as practicable but no later than the dates shown.

(See Table 3 following this chapter.)

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824693 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

Vent Gas Control in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §115.161, §115.162

The Texas Air Control Board proposes amendments to the rules contained under the heading Vent Gas Control in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. The proposed amendment to §115.161, concerning ethylene from low-density polyethylene production revises the emission limit to one based on a 24-hour average since emissions normally fluctuate about an average value. The proposed amendment to §115.162, concerning general vent gas streams adds a reference to proposed new §115.163, concerning general vent gas streams in Harris County. The board simultaneously proposes to repeal the old §115.163, concerning compliance schedule and replace it with a new §115.164, concerning compliance schedule and counties. Minor editorial changes are also proposed.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule will be retention of currently applicable vent gas emission limit with no increased enforcement requirements. There is no anticipated additional economic cost to individuals who are required to comply with the rule as proposed.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and pur-

poses of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.161. Ethylene from Low-Density Polyethylene Production. No person may allow to be emitted more than 1.1 pounds of ethylene per 1,000 pounds (1.1 kg/1,000 kg) of low-density polyethylene plant product averaged over any consecutive 24-hour period when sampled at least one time per working shift [(1.1 kg/1,000 kg)] from all vent gas streams associated with the formation, handling, and storage of solidified product unless the vent gas streams are burned at a temperature equal to or greater than 1,300°F (704°C) in a smokeless flare, a direct-flame incinerator, or are controlled by an approved substantially equivalent alternate method.

§115.162. General Vent Gas Streams. Except for process vent gas streams affected by the provisions of §115.161 of this title (relating to Ethylene from Low-Density Polyethylene Production) and §115.163 of this title (relating to General Vent Gas Streams in Harris County), no person may allow a vent gas stream to be emitted from any process vent containing one or more of the specific volatile organic compounds listed in paragraph (1) of this section or one or more compounds which are members of one or more of the classes of volatile organic compounds listed in paragraph (2) of this section unless the vent gas stream is burned properly at a temperature equal to or greater than 1,300°F (704°C) in a smokeless flare or a direct-flame incinerator before it is allowed to enter the atmosphere; alternate means of control may be approved by the executive director in accordance with §115.401 of this title (relating to Procedure).

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

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824694 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

Vent Gas Control in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §115.163

The Texas Air Control Board (TACB) proposes repeal of existing §115.163, concerning compliance

schedule. In the following submission, §115.163 is proposed for adoption in amended form as a new §115.164, concerning compliance schedule and counties, and new §115.163, concerning general vent gas streams in Harris County, is proposed.

Bennie Engelke, deputy director for Administrative Services, has determined that for the first five-year period there will be no fiscal implications to either state or local government as a result of the repeal.

Roger Wallis, deputy director for standards and regulations, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be retention of the currently applicable compliance schedules for the presently affected counties. There is no anticipated additional economic cost to individuals who are required to comply with the rule. The adoption of new §115.164, contemporaneously filed, will effectively act to replace this rule.

The repeal of §115.163 is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.163. Compliance Schedule and Counties.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824895 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

31 TAC §115.163, §115.164

The Texas Air Control Board (TACB) proposes new §115.163, concerning general vent gas streams in Harris County, and new §115.164, concerning compliance schedule and counties.

The addition of new §115.163 is proposed to require that, in Harris County, certain vent gas streams containing volatile organic compounds (VOC) be burned properly in a smokeless flare or a direct flame incinerator. Certain exemptions are proposed for low emission rates or concentration limits as previously contained in §115.162, concerning general vent gas streams. However, the exemptions are based on all VOC in the vent gas stream instead of on certain specified compounds in the vent gas stream. In addition, an exemption is proposed for vent gas streams containing acetylene emitted from carbon black manufacturing processes. Such streams will continue to be subject to the provisions of §115.162. This ex-

emption for certain carbon black manufacturing vent gas streams is based on economic analysis contained in the Radian Corporation report referenced in this submission. This report indicated that the imposition of vent gas controls would have a severe economic impact on the carbon black manufacturing industry in Harris County even though such controls would be cost effective on the basis of dollars per ton of VOC controlled. In Harris County, additional VOC reductions of about 6,425 tons per year are potentially achievable if the exemption for vent gas streams from carbon black manufacturing processes is not adopted. The Texas Air Control Board hopes to receive testimony concerning whether or not this exemption should be granted. The Texas Air Control Board specifically reserves the right not to grant this exemption from additional controls based on any information received as testimony.

The addition of new §115.164 is proposed to renumber the old §115.163 concerning compliance schedule and counties in order to add the new §115.163 concerning general vent gas streams in Harris County which is being proposed concurrently. All existing compliance deadlines and affected counties remain unchanged. However, a new final compliance date of December 31, 1986, and a new final control plan submittal date of December 31, 1983, are given for the new provisions of §115.163.

These proposed new sections are part of a series of draft revisions to Chapter 115 to provide, in Harris County, the additional VOC emissions reductions needed to satisfy Environmental Protection Agency (EPA) requirements for 1982 State Implementation Plan (SIP) revisions. These new sections are based on technical information contained in the Radian Corporation report, "Assessment of the Feasibility and Costs of Controlling VOC Emissions from Stationary Sources in Harris County, Texas" submitted to the Texas Air Control Board September 11, 1981.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be improved air quality as a result of a reduction of about 9,292 tons per year of VOC emissions in Harris County after December 31, 1986. In addition, these and other VOC emissions reductions proposed elsewhere will help satisfy EPA requirements for 1982 SIP's and help to avoid possible growth sanctions in Harris County. The possible economic cost to individuals who are required to comply with the rules as proposed will be: none in 1983; \$1,000-\$75,000 in 1984; \$3,000-\$248,000 in 1985; \$6,000-\$542,000 in 1986; and \$1,000-\$142,000 in 1987. This cost is for typical sources affected, adjusting for 10% annual inflation.

For all sources affected by the proposed rule change, the net annualized cost will be \$1.4-\$6.4 million in February 1981 dollars.

Also, the possible additional economic cost to individuals who are required to comply with the rules without the exemption for certain vent gas streams from carbon black manufacturing processes will be: none in 1983; \$2.1 million in 1984; \$7.0 million in 1985; \$15.3 million in 1986; and \$3.1 million in 1987. This cost is for the one carbon black manufacturing plant affected, adjusting for 10% annual inflation. The net annualized cost will be \$5.5 million in February 1981 dollars.

These new sections are proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.163. General Vent Gas Streams in Harris County.

(a) Except for process vent gas streams affected by the provisions of §115.161 of this title (relating to Ethylene from Low-Density Polyethylene Production), no person may allow a vent gas stream to be emitted from any process vent located in Harris County containing volatile organic compounds unless the vent gas stream is burned properly at a temperature equal to or greater than 1,300°F (704°C) in a smokeless flare or a direct-flame incinerator before it is allowed to enter the atmosphere; alternate means of control may be approved by the executive director in accordance with §115.401 of this title (relating to Procedure).

(b) The following vent gas streams are exempt from the requirements of this section.

(1) A vent gas stream having a combined weight of volatile organic compounds equal to or less than 100 pounds (45.4 kg) in any consecutive 24-hour period.

(2) A vent gas stream having a combined weight of volatile organic compounds greater than 100 pounds (45.4 kg) in any consecutive 24-hour period but less than 250 pounds (113.4 kg) per hour averaged over any consecutive 24-hour period and having a true vapor pressure of volatile organic compounds less than 0.44 psia (3.0 kPa).

(3) A vent gas stream containing acetylene emitted from a carbon black manufacturing process. Such a stream shall be subject to the provisions of §115.162 of this title (relating to General Vent Gas Streams).

§115.164. Compliance Schedule and Counties.

(a) The provisions of §115.161 of this title (relating to Ethylene from Low-Density Polyethylene Production) and §115.162 of this title (relating to General Vent Gas Streams) shall apply in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties.

(1) All affected persons within Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, and Victoria Counties shall be in compliance with §115.161 of this title (relating to Ethylene from Low-Density Polyethylene Production) and §115.162 of this

title (relating to General Vent Gas Streams) by May 31, 1975.

(2) All affected persons in Tarrant County shall be in compliance with §115.161 of this title (relating to Ethylene from Low-Density Polyethylene Production) and §115.162 of this title (relating to General Vent Gas Streams) by February 29, 1980.

(b) The provisions of §115.163 of this title (relating to General Vent Gas Streams in Harris County) shall apply in Harris County.

(1) All persons in Harris County affected by the provisions of §115.163 of this title (relating to General Vent Gas Streams in Harris County) shall submit a final control plan to the Texas Air Control Board no later than December 31, 1983, and shall be in compliance with this section as soon as practicable but no later than December 31, 1986.

(2) All persons in Harris County affected by the provisions of §115.163 of this title (relating to General Vent Gas Streams in Harris County) shall remain in compliance with the provisions of §115.162 of this title (relating to General Vent Gas Streams) until compliance is achieved with the provisions of §115.163 of this title (relating to General Vent Gas Streams in Harris County).

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824896

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982

For further information, please call (512) 451-5711, ext. 354.

Surface Coating Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §115.191, §115.193

The Texas Air Control Board (TACB) proposes amendments to §115.191, concerning emission limitations, and §115.193, concerning exemptions. In §115.191 a proposed amendment to §115.191(9)(A)(i) will allow pail and drum interior coatings to have an emission limit of 4.3 pounds of volatile organic compounds (VOC) per gallon of coating (minus water) even though such coatings are not a true clear coat because the shipping container industry does not have a low-VOC interior coating to withstand the harsh and toxic nature of many chemicals shipped in pails and drums. In §115.193 proposed amendments will exempt from the emission limitation provisions of §115.191(9) coating operations for the exterior of fixed offshore structures and other high performance coatings applied under conditions that are not easily controlled, subject to approval by the executive director. The Texas Air Control Board may adopt this proposed

amendment with changes to grant additional specific exemptions for certain coating operations using high-performance coatings applied under conditions where emission control is unreasonable. This action will be taken only if sufficient information is presented as testimony to enable the Texas Air Control Board to determine if a request for exemption is approvable by the executive director and if the Texas Air Control Board determines that the likely effective date of the adopted rule changes will not allow sufficient time for a request for exemption to be made and acted upon in time to approve such a request before the final date of December 31, 1982 for complying with the provisions of §115.191(9).

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the proposed amendment.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule will be more cost effective reasonably available control technology. There will be no additional economic costs to individuals who are required to comply with the rule as proposed.

This amendment is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.191. Emission Limitations. No person may cause, suffer, allow, or permit volatile organic compound emissions from the surface coating processes (defined in §101.1 of this title (relating to Definitions)) affected by paragraphs (1)-(10) of this section to exceed the specified emission limits, which are based on a daily weighted average, except for those in paragraph (10) of this section which are based on paneling surface area.

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

(9) Miscellaneous metal parts and products coating.

(A) Volatile organic compound emissions from the coating (prime and topcoat, or single coat) of miscellaneous metal parts and products shall not exceed the following limits for each surface coating type:

(i) 4.3 pounds per gallon (0.52 kg/liter) of coating (minus water) applied as a clear coat; or as an interior protective coating for pails and drums.

(ii)-(iv) (No change.)

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

(10) (No change.)

§115.193. Exemptions.

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

(c) The following coating operations are exempt from the application of §115.191(9) of this title (relating to Emission Limitations):

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

(3) customized top coating of automobiles and trucks, if production is less than 35 vehicles per day; [and]

(4) (No change.)

(5) exterior of fixed offshore structures; and

(6) other high performance coatings which are applied under conditions for which control is determined by the executive director to be unreasonable.

(d) (No change.)

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824697

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982

For further information, please call (512) 451-5711, ext. 354.

Fugitive Emission Control in Petroleum Refineries in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §§115.251-115.255

The Texas Air Control Board proposes amendments to §§115.251-115.255, under the undesignated heading Fugitive Emission Control in Petroleum Refineries in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties.

The amendment to §115.251, concerning control requirements, is proposed to clarify the definition of a leak.

Amendments to §115.252, concerning inspection requirements, are proposed to clarify the definition of a leak and to exempt components in continuous vacuum service from certain monitoring requirements.

The amendment to §115.253, concerning recording requirements, is proposed to clarify the definition of a leak.

Amendments to §115.254, concerning exemptions, are proposed to exempt components which contact process fluids containing less than 10% volatile organic compounds (VOC) by weight; components which contact process liquids containing VOC having a true vapor pressure of less than 0.147 psia at 68° F; and petroleum refineries or individual process units in a temporary nonoperating status from certain requirements of this subchapter.

Amendments to §115.255, concerning counties and compliance schedule, clarify the original intent to have December 31, 1982, as the final compliance date for the requirements of §§115.251, 115.252, and

115.253. Additional minor editorial changes are also proposed.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be more cost effective control of fugitive VOC emissions without significantly affecting air quality. There are anticipated to be economic savings for those required to comply with the rules as proposed as compared to the cost of complying with the rules now in force.

The amendments are proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.251. Control Requirements. No person shall operate a petroleum refinery without complying with the following requirements.

(1) No component shall be allowed to leak volatile organic compounds (VOC) with a VOC concentration exceeding 10,000 parts per million by volume (ppmv) [(ppm)] as defined in §101.1 of this title (relating to Definitions). The leak detection equipment shall be calibrated so the meter readout is in terms of parts per million by volume (ppmv) hexane.

(2)-(5) (No change.)

§115.252. Inspection Requirements.

(a) The owner or operator of a petroleum refinery shall conduct a monitoring program consistent with the following provisions.

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

(4) Measure (with a hydrocarbon gas analyzer) the emissions from any pump seal from which liquids having a true vapor pressure greater than 0.147 psia (1.013 kPa) at 68°F (20°C) are observed dripping. [In lieu of such a measurement, VOC concentrations shall be assumed to exceed 10,000 ppm.]

(5)-(6) (No change.)

(b) Pressure relief devices connected to an operating flare header, components in continuous vacuum service, inaccessible valves, storage tank valves, and valves that are not externally regulated (such as in-line check valves) are exempt from the monitoring requirement of subsection (a) of this section.

(c) The owner or operator of a petroleum refinery upon the detection of a component leaking more than 10,000 ppmv [ppm] of VOC shall affix to the leaking component a weatherproof and readily visible tag, bearing an identification number and the date the leak was located. This tag shall remain in place until the leaking component is repaired.

(d)-(e) (No change.)

§115.253. Recording Requirements.

(a) The owner or operator of a petroleum refinery shall maintain a leaking-components monitoring log for all leaks of more than 10,000 ppmv [ppm] of VOC detected by the monitoring program required by §115.252(c) of this title (relating to Inspection Requirements). This log shall contain, at a minimum, the following data:

(1)-(9) (No change.)

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

§115.254. Exemptions.

(a) Values with a nominal size of two inches (5 cm) or less are exempt from the requirements of §115.251 of this title (relating to Control Requirements), §115.252 of this title (relating to Inspection Requirements), and §115.253 of this title (relating to Recording Requirements) provided allowable emissions at any refinery from sources affected by these sections after controls are applied with exemptions will not exceed by more than 5.0% such allowable emissions with no exemptions. Any person claiming an exemption for valves two inches (5 cm) nominal size or smaller under this section shall at the time he provides his control plan also provide the following information.

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

(b) Components which contact a process fluid that contains less than 10% VOC by weight are exempt from the requirements of §115.251 of this title (relating to Control Requirements), §115.252 of this title (relating to Inspection Requirements), and §115.253 of this title (relating to Recording Requirements).

(c) Components which contact a process liquid containing VOC having a true vapor pressure less than 0.147 psia (1.013 kPa) at 68°F (20°C) are exempt from the monitoring requirements of paragraphs (1) and (2) of §115.252(a) of this title (relating to Inspection Requirements) if the components are inspected visually according to the inspection schedules specified within these same paragraphs.

(d) Petroleum refineries or individual process units in a temporary nonoperating status during the specified compliance dates in subsections (b) and (c) of §115.255 of this title (relating to Counties and Compliance Schedule) shall submit a plan for compliance with the provisions of §115.251 of this title (relating to Control Requirements), §115.252 of this title (relating to Inspection Requirements), §115.253 of this title (relating to Recording Requirements), and subsection (b) of §115.255 of this title (relating to Counties and Compliance Schedule) within six months after start-up and be in compliance as soon as practicable but no later than one year after start-up. All affected petroleum refineries shall notify the Texas Air Control Board of any nonoperating refineries or individual process units when they are shut-down and dates of any start-ups as they occur.

§115.255. Counties and Compliance Schedule.

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

(c) All persons affected by §115.251 of this title (relating to Control Requirements), §115.252 of this title (relating to Inspection Requirements), and §115.253 of this title (relating to Recording Requirements) shall be

In compliance as soon as practicable but no later than December 31, 1982.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824698 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 461-5711,
ext. 354.

Fugitive Emission Control in Synthetic Organic Chemical, Polymer, and Resin Manufacturing Plants in Harris County

31 TAC §§115.271-115.275

The Texas Air Control Board proposes new §§115.271-115.275, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing plants in Harris County.

These proposed new rules prescribe monitoring, maintenance, and record keeping requirements to reduce the fugitive emission of volatile organic compounds (VOC) into the atmosphere from certain plants in Harris County. These new rules are similar in many respects to §§115.251-115.255, concerning fugitive emission control in petroleum refineries, with proposed amendments except for the following: the exemption for storage tank valves is removed; operators of plants have the option to install certain emission control devices in lieu of monitoring; the monitoring schedule for certain valves may be revised after two quarterly inspections; and the compliance schedule is revised to set the final compliance date and the control plan submittal date as December 31, 1987, and December 31, 1984, respectively.

These proposed new rules are part of a series of draft revisions to Chapter 115 to provide in Harris County the additional VOC emissions reductions needed to satisfy U.S. Environmental Protection Agency requirements for 1982 State Implementation Plan (SIP) revisions. These new rules are based on technical information contained in the Radian Corporation report, "Assessment of the Feasibility and Costs of Controlling VOC Emissions from Stationary Sources in Harris County, Texas," submitted to the Texas Air Control Board September 11, 1981.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public

benefit anticipated as a result of enforcing the rule as proposed will be improved air quality as a result of a reduction of 16,250 tons per year of VOC emissions in Harris County after December 31, 1987. In addition, these and other VOC emission reductions proposed elsewhere will help satisfy EPA requirements for 1982 SIP's and help to avoid possible growth sanctions in Harris County. The possible economic cost to individuals who are required to comply with the rules as proposed will be as follows: none for 1983-1985; \$7,000-\$106,000 for 1986; and \$33,000-\$464,000 for 1987 for typical model units affected, adjusting for 10% annual inflation. For all plants affected by the proposed new rule, the net annualized cost will be \$820,00-\$7,420,000 in February 1981 dollars.

The new sections are proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.271. Control Requirements. No person shall operate a synthetic organic chemical, polymer, or resin manufacturing plant without complying with the following requirements:

(1) No component shall be allowed to leak volatile organic compounds (VOC) with a VOC concentration exceeding 10,000 parts per million by volume (ppmv) as defined in §101.1 of this title (relating to Definitions). The leak detection equipment shall be calibrated so the meter readout is in terms of parts per million by volume (ppmv) methane.

(2) Every reasonable effort shall be made to repair a leaking component, as specified in paragraph (1) of this section, within 15 days after the leak is found. If the repair of a component would require a unit shutdown which would create more emissions than the repair would eliminate, the repair may be delayed until the next scheduled shutdown.

(3) All leaking components, as defined in paragraph (1) of this section, which cannot be repaired until the unit is shutdown for turnaround shall be identified for such repair by tagging. The executive director at his discretion may require early unit turnaround or other appropriate action based on the number and severity of tagged leaks awaiting turnaround.

(4) Except for safety pressure relief valves, no valves shall be installed or operated at the end of a pipe or line containing volatile organic compounds unless the pipe or line is sealed with a second valve, a blind flange, a plug, or a cap. The sealing device may be removed only while a sample is being taken, or during maintenance operations.

(5) Pipeline valves and pressure relief valves in gaseous volatile organic compound service shall be marked in some manner that will be readily obvious to monitoring personnel.

§115.272. Inspection Requirements.

(a) The owner or operator of a synthetic organic chemical, polymer, or resin manufacturing plant shall conduct a monitoring program consistent with the following provisions.

(1) Measure yearly (with a hydrocarbon gas analyzer) the emissions from all:

- (A) pump seals;
- (B) pipeline valves in liquid service; and
- (C) process drains.

(2) Measure quarterly (with a hydrocarbon gas analyzer) the emissions from all:

- (A) compressor seals;
- (B) pipeline valves in gaseous service; and
- (C) pressure relief valves in gaseous service.

(3) Visually inspect, weekly, all pump seals.

(4) Measure (with a hydrocarbon gas analyzer) the emissions from any pump seal from which liquids having a true vapor pressure greater than 0.147 psia (1.013 kPa) at 68°F (20°C) are observed dripping.

(5) Measure (with a hydrocarbon gas analyzer) emissions from any relief valve which has vented to the atmosphere within 24 hours.

(6) Measure (with a hydrocarbon gas analyzer) immediately after repair, the emissions from any component that was found leaking.

(b) The following items are exempt from the monitoring requirements of subsection (a) of this section:

(1) pressure relief devices connected to an operating flare header, components in continuous vacuum service, inaccessible valves, and valves that are not externally regulated (such as in-line check valves);

(2) pressure relief valves that are downstream of a rupture disk which is intact;

(3) pumps in liquid service that are equipped with dual pump seals, barrier fluid system, seal degassing vents, and vent control systems kept in good working order; and

(4) compressors that are equipped with degassing vents and vent control systems kept in good working order.

(c) The owner or operator of a synthetic organic chemical, polymer, or resin manufacturing plant upon the detection of a component leaking more than 10,000 ppmv of VOC shall affix to the leaking component a weatherproof and readily visible tag, bearing an identification number and the date the leak was located. This tag shall remain in place until the leaking component is repaired.

(d) The monitoring schedule of subsection (a)(1)-(3) of this section may be modified as follows:

(1) After at least two complete annual checks, the operator of a plant may request in writing to the Texas Air Control Board that the monitoring schedule be revised. This request shall include data that have been developed to justify any modification in the monitoring schedule.

(2) After at least two complete quarterly checks of pipeline valves in gaseous service, the operator of a plant may request in writing to the Texas Air Control Board that the monitoring schedule for pipeline valves in gaseous service be revised. This request shall include data that have been developed to justify any modification in the monitoring schedule.

(3) If the executive director of the Texas Air Control Board determined that there is an excessive number of leaks in any given process area, he may re-

quire an increase in the frequency of monitoring for that process area of the plant.

(e) The executive director of the Texas Air Control Board may approve an alternative monitoring method if the plant operator can demonstrate that the alternate monitoring method is equivalent to the method required by this rule. Any request for an alternate monitoring method must be made in writing to the executive director.

§115.273. Recording Requirements.

(a) The owner or operator of a synthetic organic chemical, polymer, or resin manufacturing plant shall maintain a leaking-components monitoring log for all leaks of more than 10,000 ppmv of VOC detected by the monitoring program required by §115.272 of this title (relating to Inspection Requirements). This log shall contain, at a minimum, the following data:

(1) the name of the process unit where the component is located;

(2) the type of component (e.g., valve or seal);

(3) the tag number of the component;

(4) the date on which a leaking component is discovered;

(5) the date on which a leaking component is repaired;

(6) the date and instrument reading of the recheck procedure after a leaking component is repaired;

(7) a record of the calibration of the monitoring instrument;

(8) those leaks that cannot be repaired until turnaround; and

(9) the total number of components checked and the total number of components found leaking.

(b) Copies of the monitoring log shall be retained by the owner or operator for a minimum of two years after the date on which the record was made or the report prepared.

(c) Monitoring records shall be maintained for two years and be made available for review by authorized representatives of the Texas Air Control Board or local air pollution control agencies.

§115.274. Exemptions.

(a) Valves with a nominal size of two inches (5.0 cm) or less are exempt from the requirements of §115.271 of this title (relating to Control Requirements), §115.272 of this title (relating to Inspection Requirements), and §115.273 of this title (relating to Recording Requirements) provided allowable emissions at any plant from sources affected by these sections after controls are applied with exemptions will not exceed by more than 5.0% such allowable emissions with no exemptions. Any person claiming an exemption for valves two inches (5.0 cm) nominal size or smaller under this section shall at the time he provides his control plan also provide the following information:

(1) Identification of valves or classes of valves to be exempted.

(2) An estimate of uncontrolled emission from exempted valves and an estimate of emissions if controls were applied plus an explanation of how the estimates were derived.

(3) An estimate of the total VOC emissions within the plant from sources affected by §115.271 of this

title (relating to Control Requirements), §115.272 of this title (relating to Inspection Requirements), and §115.273 of this title (relating to Recording Requirements), after controls are applied and assuming no exemptions for small valves, plus an explanation of how the estimate was derived.

(b) Components which contact a process fluid that contains less than 10% VOC by weight are exempt from the requirements of §115.271 of this title (relating to Control Requirements), §115.272 of this title (relating to Inspection Requirements), and §115.273 of this title (relating to Recording Requirements).

(c) Components which contact a process liquid containing VOC having a true vapor pressure less than 0.147 psia (1.013 kPa) at 68°F (20°C) are exempt from the monitoring requirements of §115.272(a)(1)-(2) of this title (relating to Inspection Requirements) if the components are inspected visually according to the inspection schedules specified within these same paragraphs.

(d) Synthetic organic chemical, polymer, and resin manufacturing plants or individual process units in a temporary non-operating status during the specified compliance dates in §115.275 (b)-(c) of this title (relating to Counties and Compliance Schedule) shall submit a plan for compliance with the provisions of §115.271 of this title (relating to Control Requirements), §115.272 of this title (relating to Inspection Requirements), §115.273 of this title (relating to Recording Requirements), and §115.275(b) of this title (relating to Counties and Compliance Schedule) within six months after start-up and be in compliance as soon as practicable but no later than one year after start-up. All affected synthetic organic chemical, polymer, and resin manufacturing plants shall notify the Texas Air Control Board of any nonoperating or individual process units when they are shut-down and dates of any start-ups as they occur.

§115.275. Counties and Compliance Schedule.

(a) The provisions of §115.271 of this title (relating to Control Requirements), §115.272 of this title (relating to Inspection Requirements), and §115.273 of this title (relating to Recording Requirements) shall apply only within Harris County. All affected persons shall submit a final control plan to the Texas Air Control Board no later than December 31, 1984, and shall be in compliance with these provisions as soon as practicable but not later than December 31, 1987, with the exceptions noted in subsection (b) of this section.

(b) The owner or operator of an affected synthetic organic chemical, polymer, or resin manufacturing plant shall:

(1) Submit to the executive director a monitoring program plan as soon as practicable but no later than the date specified in subsection (a) of this section for submitting a final control plan. This plan shall contain, at a minimum, a list of the plant units and the quarter in which they will be monitored, a copy of the log book format, and the make and model of the monitoring equipment to be used.

(2) Complete the first weekly, quarterly, and annual monitoring as soon as practicable but not later than December 31, 1987.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824699 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

Alternate Means of Control

31 TAC §115.401

The Texas Air Control Board proposes an amendment to §115.401, concerning procedure. The proposed amendment changes a reference to conform to the new numbers that would result from adoption of proposals published elsewhere.

Bennie Engelke, deputy director for Administrative Services, has determined that, for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule as proposed.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated to result from the amendment is improved clarity of the regulation. There are no increased costs resulting from the rule as proposed.

This amendment is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.401. Procedure.

(a) (No change.)

(b) Direct-flame incineration specified for vent gas control in §§115.41-115.45 of this title (relating to Vent Gas Control in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties) and in §§115.161-115.164 [115.163] of this title (relating to Vent Gas Control in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties) is not intended as an exclusive emission control method for volatile organic compounds. In no event shall a vent gas stream be direct-flame incinerated without heat recovery if the incineration will have no practical effect in reducing the emission of air contaminants or will result in an actual degradation of air quality. In all such cases, application shall be made to the executive director for approval of an alternate method of control. The executive director

may approve such alternate method if it represents the best alternative.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824700 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

Volatile Organic Compound Exemption Status in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

31 TAC §115.411

The Texas Air Control Board proposes repeal of §115.411, concerning specific exemptions from §§115.411-115.413, concerning volatile organic compound exemption status in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties.

Section 115.411 is redundant because it exempts compounds that are already specifically excluded from the definition of volatile organic compound (VOC) con-

tained in §101.1, concerning definitions. In a separate unrelated action proposed elsewhere, the definition of VOC contained in §101.1 is proposed for revision.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the repeal.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of this repeal are clearer and more easily understood regulatory requirements. There are no increased costs resulting from this repeal.

This repeal is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

§115.411. Specific Exemptions.

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

Issued in Austin, Texas, on June 4, 1982.

TRD-824701 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 14, 1982
For further information, please call (512) 451-5711,
ext. 354.

Table 1

REQUIRED CONTROL DEVICES FOR STORAGE TANKS FOR
VOC OTHER THAN CRUDE OIL AND CONDENSATE

True Vapor Pressure of Compound at Storage Conditions	Nominal Storage Capacity	Emission Control Requirements
<1.5 psia (10.3 kPa)	Any	None
>1.5 psia (10.3 kPa) and <11 psia (75.8 kPa)	<1,000 gal (3,785 L)	None
	>1,000 gal (3,785 L) and <25,000 gal (94,635 L)	Submerged fill pipe
	>25,000 gal (94,635 L)	Internal or external floating roof (any type) or vapor recovery system
>11 psia (75.8 kPa)	>25,000 gal (94,635 L)	Submerged fill pipe and vapor recovery system

Table 2

Rule Paragraphs	Affected Facility	Counties Where Rule Is Applicable	Final Compliance Date	Final Control Plan Submittal Date
Paragraphs (1) and (3) of §115.111 of this title (relating to Throughput and Control Requirements).	Volatile Organic Compound Loading Facilities	Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, and Victoria.	12/31/73	Previously Submitted
		Tarrant	2/29/80	Previously Submitted
Paragraphs (2)(A), (2)(C), and (3) of §115.111 of this title (relating to Throughput and Control Requirements).	Gasoline Terminals	Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Orange, Nueces, Tarrant, and Victoria.	12/31/82	12/31/79
Paragraph (4) of §115.111 of this title (relating to Throughput and Control Requirements).	Gasoline Terminals	Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria.	12/31/82	7/1/81

Table 2 (continued)

Rule Paragraphs	Affected Facility	Counties Where Rule Is Applicable	Final Compliance Date	Final Control Plan Submittal Date
Paragraph (5) of §115.111 of this title (relating to Throughput and Control Requirements).	Gasoline Terminals	Harris	12/31/82	7/1/81
<u>PARAGRAPHS (2)(B) AND (2)(D) OF §115.111 OF THIS TITLE (RELATING TO THROUGHPUT AND CONTROL REQUIREMENTS)</u>	<u>GASOLINE TERMINALS >500,000 GAL/DAY THROUGHPUT</u>	<u>HARRIS</u>	<u>12/31/86</u>	<u>12/31/83</u>

Table 3

Rule	Counties Where Rule Is Applicable	Final Compliance Date	Final Control Plan Submittal Date
§115.141 of this title (relating to Facilities Other Than Petroleum Refineries)	Brazoria Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange and Victoria	12/31/73	Previously Submitted
	Tarrant	2/29/80	Previously Submitted
§115.142 of this title (relating to Petroleum Refineries) FOR SEPARATORS SEPARATING VOC WITH A TRUE VAPOR PRESSURE <u>≥0.5</u> PSIA	Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant and Victoria	12/31/82	12/31/79
§115.142 OF THIS TITLE (RELATING TO PETROLEUM REFINERIES) FOR SEPARATORS SEPARATING VOC WITH A TRUE VAPOR PRESSURE <u><0.5</u> PSIA	BRAZORIA, DALLAS, EL PASO, GALVESTON, GREGG, HARRIS, JEFFERSON, NUECES, ORANGE, TARRANT, AND VICTORIA	<u>12/31/86</u>	<u>12/31/83</u>

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule becomes effective 20 days after the agency files the correct document with the Texas Register Division, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

The document, as published in the *Register*, must indicate whether the rule is adopted with or without changes to the proposal. The notice must also include paragraphs which: explain the legal justification for the rule; how the rule will function; contain comments received on the proposal; list parties submitting comments for and against the rule; explain why the agency disagreed with suggested changes; and contain the agency's interpretation of the statute under which the rule was adopted.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. The text of the rule, as appropriate, will be published only if final action is taken with alterations to the proposal. The certification information, following the submission, contains the effective date of the final action, the proposal's publication date, and a telephone number to call for further information.

Adopted Rules

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards

Chapter 65. Boiler General Requirements

16 TAC §65.45

The Boiler Division of the Texas Department of Labor and Standards adopts amendments to §65.45, without changes to the proposed text published in the April 13, 1982, issue of the *Texas Register* (7 Tex-Reg 1508).

The amended section will allow the use of newly developed prototype low-water fuel cut-offs in boilers.

The department received no comments concerning the adoption of this amendment.

The amendments are adopted pursuant to the Texas Boiler Inspection Law, Article 5221c, §6, which provides the commissioner of the Texas Department of Labor and Standards with the authority to enforce a code of rules and regulations for the operation of boilers in the State of Texas.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 4, 1982.

TRD-824776 Lias B. "Bubba" Steen
Commissioner
Department of Labor and
Standards

Effective date: June 25, 1982
Proposal publication date: April 13, 1982
For further information, please call (512) 475-0155.

Chapter 69. Manufactured Housing Division Titling

16 TAC §§69.201-69.205

The Manufactured Housing Division of the Texas Department of Labor and Standards adopts new §§69.201-69.205, without changes to the proposed text published in the April 30, 1982, issue of the *Texas Register* (7 TexReg 1675).

The rules cover fees and documents for titling, reports from manufacturers and retailers, changing the information on a title document, liens, and survivorship rights.

The department received no comments concerning the adoption of these new sections.

These sections are adopted, as required by Texas Civil Statutes, Article 5221f, §19, to comprehensively and effectively implement the titling of manufactured homes sold in Texas.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 4, 1982.

TRD-824677 Lias B. "Bubba" Steen
Commissioner
Texas Department of Labor and Standards

Effective date: June 25, 1982
Proposal publication date: April 30, 1982
For further information, please call (512) 475-0155.

TITLE 22. EXAMINING BOARDS
Part X. State Board of Morticians
Chapter 203. Licensing and Enforcement-Specific Substantive Rules

22 TAC §203.19

The State Board of Morticians adopts new §203.19 without changes to the proposed text published in the April 30, 1982, issue of the *Texas Register* (7 Tex-Reg 1679).

This rule will provide a procedure by which persons or organizations can request changes, additions, or deletions to the agency's consumer brochure. The rule will establish a procedure for the collection, tabulation, and dissemination of information of consumer interest.

No comments were received regarding adoption of the new section.

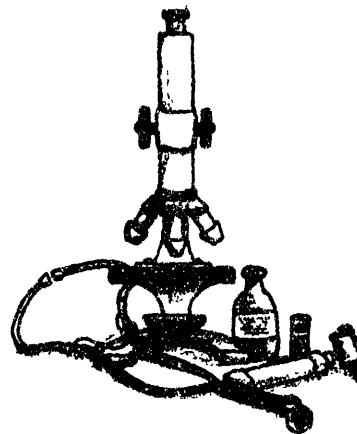
The new section is adopted under Texas Civil Statutes, Article 4582b, §5, which provides the State Board of Morticians with the authority to promulgate rules and regulations.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 1, 1982.

TRD-824584 John W. Shocklee
Executive Secretary
State Board of Morticians

Effective date: June 24, 1982
Proposal publication date: April 30, 1982
For further information, please call (512) 442-8721.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Resources

(Editor's note: Because the Texas Department of Human Resources' rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register Division numbers. However, the rules will appear under the agency's correct title and part.)

This is the final segment of a three-part serialization of adoptions submitted by the Texas Department of Human Resources. A list of the rules, containing the publication date of the proposed rules and the effective date of the adopted rules, appeared in the June 4, 1982, issue of the *Texas Register*.

New Rules
ICF/SNF

The rules in this chapter were proposed in the December 4, 1981, issue of the *Texas Register*; effective date for the rules is July 1, 1982.

Purpose

Rule 326.29.10.001

Definitions

Rules 326.29.12.001-.029

Compliance with Federal Laws

Rules 326.29.14.001-.004

Compliance with State and Local Laws

Rules 326.29.16.001-.009

Governing Body and Management

Rules 326.29.20.001-.019

Physician Services

Rules 326.29.30.001-.008

Nursing Services

Rules 326.29.31.001-.017

Food and Nutrition Services

Rules 326.29.32.001-.007

Pharmacy Services

Rules 326.29.33.001-.012

Laboratory and Radiology Services

Rules 326.29.34.001-.004

Social Services

Rules 326.29.35.001-.004

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

ICF/SNF Pharmacy Services 326.29.33.001-.012

The Texas Department of Human Resources adopts new Rules 326.29.33.001-.012 with changes to the proposed text published in the December 4, 1981, issue of the *Texas Register* (6 TexReg 4429).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing pharmacy services as part of the services to recipient-patients in nursing facilities.

The department received 58 comments from individuals and organizations about the rules. The organizations commenting were Texas Nursing Home Association, Mastercare Health Systems, Inc., Texas Pharmaceutical Association, David Harmon Enterprises, Texas Department of Health, Centex Healthcare Centers, and National Living Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rule:

326.29.33.001 (General Requirements)—One commentor suggested that the wording in subsection (a) be revised to require the facility to provide "written" rather than "appropriate" methods and procedures for obtaining and administering drugs and biologicals. The department agrees with this comment and has changed the wording as suggested.

Two comments were received on subsection (c) concerning freedom of choice of pharmacy provider. One commentor suggested that choice of pharmacy be required to be recorded on all appropriate forms maintained by the nursing facility. The department agrees and has included this wording. Another commentor stated that the definition of freedom of choice of pharmacy provider was too extreme. The department disagrees with this comment since the freedom of choice definition does not exceed the federal definition. The definition of freedom of choice of pharmacy provider has been removed from subsection (c) since it duplicates the explanation in Rule 326.29.62.016, Recipient-patient Rights.

Subsection (c) has been revised to include the documentation required to ensure that a recipient-patient's freedom of choice of pharmacy provider has been protected if a facility chooses a unit dose and related distribution equipment system.

Subsection (d) has been changed to subsection (e). In the new subsection (e), the requirement that the facility be able to obtain prescribed drugs and biologicals from a pharmacy "within a reasonable time" has been changed to "as needed."

A new subsection (d) has been added which explains the facility's responsibility to document the recipient-patient's choice to accept or not accept a less expensive generic drug substitution. This is based on a new requirement by the State Board of Pharmacy which became effective January 1, 1982.

326.29.33.004 (Pharmacist Consultant)—One commentor recommended that subsection (a) be changed to require the pharmacist consultant to report any irregularities in the drug regime of a recipient-patient to the attending physician or the administrator. The department disagrees and has chosen to accept the suggestion of the Blue Ribbon Committee on Standards Review which requires reporting to the attending physician and the administrator. The department believes it is important for the administrator to be aware of drug regime irregularities to decide appropriate corrective actions.

Several comments were received on the pharmacy consultant hours. Two commentors requested that consultant hours for ICFs be increased to coincide with the SNF requirements. Another commentor suggested that the consultant hours be jointly determined by the consultant and the administrator. Several commentors indicated that the ICF consultant hours are less than those required by the Texas Department of Health Minimum Licensing Standards for Nursing Homes. The department has decided to change the ICF pharmacy consultant hours to coincide with the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

One comment was received on subsection (d) to delete the requirement that a pharmacy consultant comply with all department requirements for administration of the Texas Medical Assistance program. The department does not agree with this comment because if pharmacy consultants do not comply with these requirements, the facility will be out of compliance with the standards. The wording of subsection (d) has been clarified to indicate that the pharmacy consultant need not be a Medicaid vendor.

326.29.33.005 (Drug Security)—One commentor suggested requiring a medication cart to be secured in a locked medication room if not in use. The department agrees and this wording has been included. Several commentors indicated that the administrator is not directly responsible for disposing of discontinued or expired drugs. The wording has been changed to require that these drugs be disposed of in accordance with federal and state law.

One commentor requested that requirements for labeling small multiple dose containers be included. The department concurs and has explained this labeling requirement in subsection (k). The requirement corresponds with current labeling requirements in the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

Another commentor requested that drug storage requirements be clarified to indicate that poisons must be stored separately from all drugs as required by the Texas Department of Health Minimum Licensing Standards for Nursing Homes. The department concurs and has included this clarification.

A commentor requested that facilities be allowed to store other controlled or dangerous drugs, in addition to Schedule II drugs, under separate lock. The department agrees and has added this allowance.

326.29.33.006 (Drug Records)—One comment was received which requested that "detailed records" be defined. The department believes that the word "detailed" is unnecessary and has deleted it.

326.29.33.007 (Drug Orders)—Several comments were received which noted that the time requirements for the physician's signature on verbal orders were a duplication of the same requirements in Rule 326.29.31.017(c)(2). The department agrees and these requirements have been removed from this rule.

326.29.33.008 (Drug Release)—Several comments were received about the requirement that drugs be released to the recipient-patient, responsible party, or family if the recipient-patient is discharged or furloughed, unless otherwise requested by the physician. The commentors stated that this requirement is in conflict with the Texas Department of Health Minimum Licensing Stan-

dards for Nursing Homes which require a physician's order before release of drugs to patients. The department has decided to retain the requirement in response to the recommendation of the Nursing Home Drug Destruction Study Group. This group recommended that the nursing home licensing and certification standards be changed to allow release of drugs without a physician's order to patients on discharge or furlough. A representative of the Texas Department of Health participated in the Nursing Home Drug Destruction Study Group which developed the recommendation. The department realizes that facilities must adhere to the Texas Department of Health Minimum Licensing Standards for Nursing Homes. The department, however, wishes to be responsive to the recommendation of the study group that the certification standards be changed.

One commentor requested that an in and out inventory be maintained on all medications released to patients on furlough. The department does not think that this is necessary for all drugs and has retained the inventory requirement for scheduled drugs only. The requirement has been clarified to state that the facility must release enough legend drugs to last throughout the furlough. Also, the proposed requirement that drugs must be released in their original containers has been deleted. The department believes that facilities should have the flexibility to obtain separate containers of furlough medications for recipient-patients if desired.

326.29.33.009 (Drug Administration)—One commentor requested that paragraph (1) be clarified to indicate that in ICFs, the facility establishes the drug administration procedures rather than the pharmacy services committee, which is a requirement in SNFs only. The department agrees and has added the clarification.

Another commentor suggested that different wording be used for paragraph (5) since incident reports are usually separate from the recipient-patient's record. The department agrees and has added the clarification.

326.29.33.011 (Emergency Drug Kit)—Several comments were received which requested that an emergency drug kit not be required for ICFs. This would be a new requirement for ICFs and commentors did not support it. The department agrees and has revised this rule to indicate emergency drug kits are required for SNFs only. Another commentor said the statement that the SNF emergency drug kit is placed in the facility through authorization by a physician is redundant. The SNF emergency drug kit must be approved by the pharmacy services committee which must have at least one physician member. The department agrees and has deleted the reference to authorization by a physician.

326.29.33.012 (Drug Monitoring)—One comment was received which stated that subsection

(c) conflicted with subsection (a) by requiring the pharmacist consultant to notify the physician, rather than the director of nursing, if changes in the medication regime are appropriate. The department agrees with the comment and subsection (c) is deleted.

The department made minor technical wording changes other than those made because of public comments.

New Rules 326.29.33.001-.012 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. General Requirements.

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

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

(c) The recipient-patient's choice of pharmacy provider and any changes in that choice must be recorded on appropriate forms maintained by the nursing facility. To ensure compliance with Rule 326.29.62.016(e), the nursing facility must provide, upon request, to the Texas Department of Human Resources and the Texas Department of Health, any or all of the following documentation if a unit dose and related distribution equipment system is chosen in a nursing facility.

(1) Copies of facility admission policies (agreements) outlining any unit dose and related distribution equipment system used.

(2) Copies of any written agreements between the nursing facility and the pharmacy supplying the Medicaid recipient-patients' medications.

(3) Documentation that each Medicaid recipient-patient has been advised in writing about any unit dose and related distribution equipment system chosen for the facility. This includes information that the distribution system might be more expensive for those drugs which are not covered by Medicaid or for those that exceed the maximum number allowed under the Medicaid Vendor Drug Program.

(4) Documentation that each Medicaid recipient-patient has accepted or not accepted the current facility's chosen unit dose and related distribution equipment system. If the recipient-patient is incapable of making this decision, the concurrence must be given by a responsible party as defined in Rule 326.29.62.002(b). The recipient-patient agreement to accept the system must allow for and notify the recipient-patient or responsible party that the recipient-patient has the right to change his mind if not satisfied with the services provided by the pharmacy(ies) participating in the facility's chosen unit dose and related distribution equipment system.

(5) Documentation that all participating pharmacies being used by Medicaid recipient-patients have been given 30-days notice before the facility's selection and implementation of a unit dose and related distribution equipment system to give pharmacists the opportunity to change to a similar system. This is to ensure that

the facility maintains uniformity of dispensing procedures in the event the recipient-patient(s) or any of the pharmacists, accept the system.

(d) The facility must record the recipient-patient's choice to accept or not accept the use of a less expensive generic substitution on appropriate forms maintained by the nursing facility. If the recipient-patient is incapable of making this decision, the choice must be made by a responsible party as defined in Rule 326.29.62.002(b). The facility must allow in the documentation that the recipient-patient has the right to change his mind concerning the use of generic substitution at any time.

(e) If the facility has a licensed pharmacy, a licensed pharmacist must administer it. If it does not have a pharmacy, it must be able to obtain prescribed drugs and biologicals from a pharmacy as needed.

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

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

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

(2) meet at least quarterly;

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

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

.004. Pharmacist Consultant.

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

(b) The facility must ensure that consultant hours are provided as follows.

Pharmacy Consultant Hours Per Month

SNF	ICF	ICF II	Facility Population
4 hours	4 hours	2 hours	Less than 60 patients
5 hours	5 hours	3 hours	61 to 150 patients
6 hours	6 hours	5 hours	Over 150 patients

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

(d) The consultant, who does not need to be a Medicaid vendor, must comply with all department requirements for administration of the Texas Medical Assistance program. Besides the usual pharmaceutical consultant duties, he will advise and educate professional staff on pharmacy matters.

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

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

(1) Medications must be properly labeled and stored in a locked medication room, cabinet, or cart. The facility must secure the medication cart in a locked medication room if not in use. Only authorized personnel have access to the keys. The facility must ensure that the label of each recipient-patient's individual drug container shows:

(A) Recipient-patient's full name.
(B) Prescribing physician's name.
(C) Pharmacy prescription file number.
(D) Name, strength, and amount of the drug dispensed.

(E) Expiration date of all time-dated drugs.
(F) Date of issuance (date the prescription was filled or refilled).

(G) Warning labels if needed.
(H) If the label is on the container of a Controlled Substances Act drug, the label has to have the following warning: "Caution: federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

(I) Physician's directions for use.
(J) Name, address, and telephone number of issuing pharmacy.

(K) Small multiple dose containers are placed into another container and the pharmacy's regular label, properly completed, will be affixed to it. Also, if multiple dose containers of drugs are too small for a regular prescription label to be affixed, a strip label will be attached containing the name of the recipient-patient and the prescription number. If the two containers become separated, the small drug container will still have the recipient-patient identification.

(2) The facility must ensure that containers with illegible, incomplete, or missing labels are returned to the pharmacist for relabeling.

(3) The facility must store the drugs of each recipient-patient in their original containers.

(4) The facility must use separately locked, permanently affixed compartments to store controlled drugs classified in Schedule II of the Controlled Substances Act. Other controlled and dangerous drugs may be stored under separate lock as determined by the facility.

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

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

(7) The facility must store drugs used externally separately from internal drugs. The facility must store

poisons separately from all drugs.

(8) Medications of deceased recipient-patients, medications which have passed the expiration date, or medications which have been discontinued are sent to the administrator's office. These medications must be disposed of in accordance with federal and state laws.

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

.007. Drug Orders.

(a) All drugs must be ordered in writing by the recipient-patient's physician. If drug orders are verbal, they must be taken by a licensed nurse, pharmacist, or a physician, and immediately recorded and signed by the person receiving the order.

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

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

.008 Drug Release.

(a) The facility must release drugs to the recipient-patient, responsible party, or family if the recipient-patient is discharged or furloughed, unless otherwise requested by the physician.

(b) If a recipient-patient is leaving the facility on a furlough, enough legend drugs to last throughout the furlough must be released. The facility must inventory Schedules II, III, and IV drugs in and out. Nonscheduled drugs should be listed by name. The pharmacist must handle any division of the legend prescription, and all information on the original prescription label must appear on the furlough medication supply.

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

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

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

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

(C) each recipient-patient has an individual medication record and that the dose of drug administered is properly recorded after administration in that record by the person who administered the drug.

(2) The facility must ensure that drugs and biologicals are prepared and administered by the same person during a shift, except under unit-of-use package distribution systems.

(3) Drugs prescribed for one recipient-patient

must not be administered to any other person.

(4) The recipient-patient must not possess or administer legend and nonlegend drugs, except for emergency drugs on special order of the recipient-patient's physician or in a predischarge program under the supervision of a licensed nurse.

(5) The facility must report drug errors and adverse drug reactions immediately to the recipient-patient's physician and record them in the recipient-patient's record. An incident report must be completed in accordance with Rule 326.29.20.007.

(6) Nursing facilities must have current medication reference texts or sources.

.010. Controlled Substances. The facility must adhere to the Texas Department of Health Minimum Licensing Standards for Nursing Homes concerning procedures governing the use of drugs covered by the Controlled Substances Act.

.011. Emergency Drug Kit.

(a) In a SNF an emergency drug kit, approved by the facility's pharmacy services committee, must be kept readily available. It is the property of the pharmacy.

(b) The attending physician or the emergency physician may keep a stock of emergency drugs in a nursing facility in a sealed kit with the physician's name on it. It is the physician's responsibility to ask the nurse to administer a dose from the drug container to the recipient-patient.

(c) The attending physician or emergency physician may give other treating physicians written permission to use his emergency drugs.

(d) If a physician orders the use of any drugs from the emergency kit or the seal on the kit is broken, the director of nursing or the charge nurse must notify the pharmacist consultant. When drugs are received from the pharmacy, the consultant pharmacist may authorize the director of nursing or the charge nurse to replace the drugs in the kit and reseal it.

.012. Drug Monitoring

(a) The pharmacist consultant's monthly review of the drug regimen of each recipient-patient must be conducted in the facility. Any irregularities detected must be reported to the director of nursing who reports to the attending physician. The pharmacist must prepare a record of drug regimen reviews and maintain them in the facility. Drug regimen review activities must be integrated, as necessary, into recipient-patient care planning.

(b) The physician must review the recipient-patient's medication at least monthly in a SNF and every 60 days in an ICF.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982

TRD-824484

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Laboratory and Radiology Services

326.29.34.001-.004

The Texas Department of Human Resources adopts new Rules 326.29.34.001-.004 with changes to the proposed text published in the December 4, 1981, issue of the *Texas Register* (6 TexReg 4429).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing laboratory and radiology services as part of the services to recipient-patients in nursing facilities.

The department received one comment from an individual about the rules. No organizations commented on this section.

The commentor was neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decision about incorporation of the comment is stated in the discussion that follows:

326.29.34.003. (Availability of Results)—A commentor suggested that it is not necessary for nursing facilities to receive lab reports since they are sent to physicians, who give orders for patients. The requirement that reports be made available to nursing facilities for inclusion in the recipient-patient's medical record is a federal requirement and is part of current rules, therefore no change is made in the proposed rule.

Minor editing changes were made in the text of these rules.

New Rules 326.29.34.001-.004 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Written Policies. The facility must have written policies for routine and emergency laboratory and radiology services to meet the needs of recipient-patients.

.002. Provision of Services.

(a) The facility may furnish laboratory and radiology services or have written agreements and procedures for referring recipient-patients to qualified outside resources.

(b) If the facility provides its own laboratory or radiology services, it must meet the applicable conditions established for certification of hospitals that are contained in 42 Code of Federal Regulations (CFR) 405.1028 and 405.1029.

.003. Availability of Results. The facility must ensure that laboratory and radiology services, performed on a recipient-patient, are noted in the recipient-patient's medical record by the physician who orders the service. The facility must ensure that the physician receives prompt notification of test results. Test results must be

authenticated, dated, and made a part of the recipient-patient's medical record.

.004. *Blood and Blood Products.* If the facility stores and transfuses blood or blood products, the facility must meet the conditions established for certification of hospitals that are contained in 42 CFR 405.1028(j), (k), and (l).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

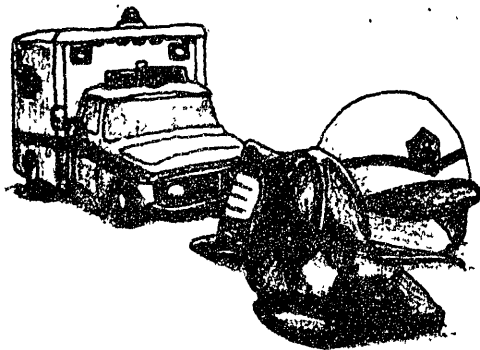
Issued in Austin, Texas, on May 26, 1982.

TRD-824485 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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



Social Services

326.29.35.001-.004

The Texas Department of Human Resources adopts new Rules 326.29.35.001-.004 with changes to the proposed text published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing social services as part of the services to recipient-patients in nursing facilities.

The department received 15 comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, the Texas Department of Health, National Living Centers, and Cantex Healthcare Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received

after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.35.001 (Social Services and the Social Care Plan)—Commentors felt that written agreements or contracts between facilities and every social services provider in the area would be cumbersome and unnecessary. The department agrees and this requirement has been removed. A commentor asked if a social care plan is necessary for each recipient-patient and said that the rule was not clear in this regard. The intent is that a social care plan is to be prepared for each recipient-patient. The rule has been clarified to state that explicitly.

326.29.35.002 (Social History)—Several commentors said that filing the social care plan in the medical record is cumbersome. The department agrees and has amended the standard to state that the social care plan is part of the medical record, but each facility may determine where and how it is to be filed. A commentor requested that the department delete the requirement of documenting the alternate care considerations in the social care plan because they would have been made before nursing facility placement. The department disagrees. Alternate care planning may become necessary for a recipient-patient unexpectedly. The information on file would be of use to staff who are responsible for developing alternate care plans. Considerations given to certain plans, rejections of other plans, or barriers to use of alternate care are important pieces of information to consider. This requirement remains in the rules.

326.29.35.003 (Social Care Plan)—Several commentors said the requirement that the physician approve the social care plan places an undue burden on the physician. The department agrees and has amended the rule to require approval and signature by the social services director or the activities director.

326.29.35.004 (Direct Delivery of Social Services)—Commentors disagreed that the social services plan has to be maintained in the medical record. The department agrees and has amended the rule to give facilities that decision. Several commentors felt that the qualifications of the social services directors and activity directors were unclear. This rule has been reworded to give clear specifications and additional flexibility to the requirements. One commentor pointed out that there are no specific requirements for the amount of consultation required. This is not specified because the Texas Department of Health, long-term care units provide as much consultation as requested or needed by each facility. Facilities with their own social services consultants may also use Texas Department of Health consultants if necessary.

326.29.35.005 (Referring for Social Services)—A commentor asked that the requirement to identify which social services resource in the community will

provide which specific services be eliminated because of the lack of certainty which often exists about service provision. The department agrees and the rule has been rewritten to require that specific services and providers are documented only as parts of the service plans developed specifically for each recipient-patient. The Texas Department of Health commented that the function of liaison with health agencies in the community was inappropriate for the social services director or activities director. The rule has been rewritten to give the facility staff flexibility in performance of the liaison function. In facilities providing services by referral, the activity director is responsible for management and arrangement of the referrals.

Besides the changes made based on public comment, the department has rewritten and reorganized these rules.

Rule 326.29.35.001 was rewritten to clarify the requirements for meeting the recipient-patient's social services needs and formulation of the social plan and the social history. The information in proposed subsection (c) is adequately covered in adopted Rule 326.29.35.003(b).

Besides the changes made based on public comment, the department has rewritten and reorganized these rules. Rule 326.29.35.001 was rewritten to clarify the requirements for meeting the recipient-patient's social services needs and formulation of the social plan and the social history. The information in proposed subsection (c) is adequately covered in adopted Rule 326.29.35.002 contains the requirements which were in proposed Rule 326.29.35.004 concerning a facility providing social services directly. Rule 326.29.35.003 contains the requirements which were in proposed Rule 326.29.35.005 concerning a facility referring recipient-patients to outside resources for social services. Rule 326.29.35.004 contains elements of proposed Rules 326.29.35.002 and .003 and portions of the other proposed rules. Rule 326.29.35.004 contains the composite requirements about the social care plan and the social history.

Rules 326.29.35.001-.004 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. General Requirements.

(a) The facility must identify the social and emotional needs of each recipient-patient and provide services to meet those needs. The facility may provide social services directly or may arrange for social services to be provided through referral of recipient-patients to outside resources, including the social services staff of the Texas Department of Health, long-term care units.

(b) The facility must develop a plan with written policies and procedures which describe the means of meeting the social and emotional needs of the recipient-patients. The facility must include in the procedures, provisions for the development of a social services plan of care for each recipient-patient which contains a social history and a social needs assessment. The social services plan of care is used in developing the overall medical-

social plan of care for the recipient-patient.

.002. Direct Delivery of Social Services by the Facility.

(a) If the facility chooses to provide social services, the facility must designate, in writing, a facility employee as the social services director.

(b) A social services director must have the following qualifications:

- (1) a masters degree in social work, or
- (2) a bachelors degree in social work from a college or university accredited by the Council of Social Work Education and at least one year of social work experience in a health care setting.

(3) If the person designated as a social services director does not have the above qualifications, he must receive consultation from a social work consultant who is qualified and who has at least one year of social service experience in geriatric or long-term care services.

(c) A facility or the controlling entity may employ a consultant, or may use consultation provided by the Texas Department of Health, long-term care units. If the facility employs its own consultant, Texas Department of Health staff will be available for assistance if necessary.

.003. Referral for Social Services.

(a) If the facility chooses to arrange for social service needs to be met by outside resources, the facility must designate, in writing, the activities director as the person responsible for providing social services through the referral process. The activities director is responsible for developing the social history, the social needs assessment, and the social services plan of care, and arranging for and documenting all referrals. The facility must have written procedures identifying how the referral process is accomplished, what kinds of services may be provided, and what resources may be used.

(b) Facilities may use the Texas Department of Health, long-term care unit as a referral resource to provide social services to recipient-patients. Facility administrators must inform staff that they may call the Texas Department of Health if recipient-patients need social services.

.004. Social Services Plan of Care.

(a) Social history. The facility must begin a recipient-patient's social history at admission and complete it within 45 days after admission. The facility may use documentation from previous health care facilities if the information is still accurate. The facility must include in the social history at least information about the following areas.

(1) Background:

- (A) age, sex, and marital status;
- (B) birthplace;
- (C) religion;
- (D) cultural and ethnic background;
- (E) occupation;
- (F) education;
- (G) special training or skills;
- (H) habits;
- (I) language commonly used.

(2) Social:

- (A) hobbies and leisure time activities;
- (B) living situation before admission;
- (C) relationship with family and friends;

- (D) involvement with organizations and individuals within the community;
 - (E) factors and feelings about placement in the nursing facility;
 - (F) alternate care considerations;
 - (G) future planning.
- (3) Psychological:
- (A) emotional and mental status before admission;
 - (B) behavior problems.
 - (C) special coping mechanisms;
 - (D) personal view of old age;
 - (E) orientation to time, person, place.
- (4) Physical functioning:
- (A) communication; type and effectiveness, verbal, nonverbal;
 - (B) self-help skills;
 - (C) sight and hearing;
 - (D) mobility;
 - (E) prosthetic devices and adjustments.
- (b) Identification of needs and problems (social needs assessment). The person responsible for social services must document the needs and problems of each recipient-patient. Types of needs may include, but are not limited to: one-to-one relationships; family and social interaction; reality orientation; intellectual stimulation; financial and emotional security; dealing with feelings about disability, death or dying; or other emotional, mental, environmental or physical limitations which impair the ability of the recipient-patient to meet his full potential. The documentation may include statements about the recipient-patient's strengths and his ability to participate in the care planning process.
- (c) Social services plan. The person responsible for social services must write a social services plan after the social history and social assessment are completed, and within 45 days after admission. The person must include in the plan long- and short-term goals, approaches to achieve those goals, social services to be used to accomplish the approaches, and resources that will provide the services. Long-term goals are general statements of desired outcomes. Short-term goals are measurable, time limited, expected results which provide the means to evaluate the recipient-patient's progress toward achieving the long-term goals. Approaches identify the services that will be provided and by whom. The social services director must sign and date the social service plan if the facility provides social services. The activities director must sign and date the plan if social services are provided by referral.
- (d) Review and updates. The facility must ensure that the social services plan is reviewed and updated every 90 days or more often if necessary. At each review the facility must document a reassessment of the recipient-patient's status and of the long- and short-term goals. The facility must evaluate outcomes and approaches to determine if the plan was implemented and whether it achieved the desired results. In this process, the person responsible for social services must change the social services plan if necessary. The facility must involve the recipient-patient in this process as much as possible and must document the involvement. The activities director or social services director must sign and date each review.

(e) Filing of the plan. The social services plan of care is a component of the recipient-patient's overall medical-social plan of care and is part of the medical record. The facility must file the social services plan in accordance with the facility's medical record procedures.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824486

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Rehabilitation Services/Goal-Directed Therapy

326.29.36.001-.007

The Texas Department of Human Resources adopts new Rules 326.29.36.001-.007 with changes to the proposed text published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing rehabilitation services/goal-directed therapy as part of the services to recipient-patients in nursing facilities.

The department received nine comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association and National Living Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

Some commentors addressed the rules in general. One commentor requested that a pilot project be done to determine costs of the program. The Goal-Directed Therapy Program has been approved by the Texas Board of Human Resources as a

statewide program and it is already in operation, so a pilot project is not appropriate. Commentors stated that the program "deprives a skilled recipient-patient under Part B Medicare." The department disagrees. Part B Medicare therapy benefits are to be used if the recipient-patient is eligible, before Medicaid can be used to pay for goal-directed therapy. Other commentors addressed the potential cost of transporting patients to therapists or the problems involved with patients who cannot easily be transported. The department has decided that if a facility cannot provide necessary services to meet the health needs of a recipient-patient, then the facility should not admit or retain that recipient-patient. If a recipient-patient is admitted and retained and requires therapy, then the facility must provide transportation as stated in the rules. Transportation arrangements should be discussed with the therapy providers at the time a contract is negotiated. Through discussion and negotiation, problems can be anticipated and addressed through contractual arrangements.

326.29.36.001 (Provision of Services)—One commentor asked if these services apply only to SNF facilities. Services apply to both ICF and SNF facilities. Another commentor stated that a facility could not be held accountable for the condition of a therapist's space and equipment. Safe and adequate space and equipment can be ensured through careful negotiation of the contract between the facility and the provider of therapy. The requirement is retained as proposed.

326.29.36.002 (Staff and Qualifications)—One commentor asked if these requirements applied to only SNF facilities. The staff requirements apply to both SNF and ICF facilities.

326.29.36.004 (Goal-directed Therapy)—One commentor asked if these requirements applied to only SNF facilities. These standards apply to both ICF and SNF facilities. Based on the recommendation of the Blue Ribbon Committee on Standards Review, the department has changed the requirement that all ICFs and SNFs must either provide goal-directed therapy services or have a contract with a Title XVIII provider of these therapy services. The department has changed the wording to require goal-directed therapy or goal-directed therapy contracts only for those ICF/SNF facilities which admit or retain recipient-patients in need of physician-ordered rehabilitative services. One commentor asked that the 50-mile radius for transportation be changed to 25 or 30 miles because of potential cost. The department has deleted the 50-mile radius requirement. It is not necessary if all facilities are not required to have goal-directed therapy contracts. A commentor suggested that some evaluations may not be necessary and would be a cost to the facility. Costs for evaluations are not a loss to facilities since all evaluations are paid for by the program.

Therefore, this part of the rule remains as proposed.

326.29.36.005 (Screening)—Commentors objected to the requirement that a registered nurse must do the therapy screening. They said the procedure will consume too much of the nurse's time, and will make the program too costly. The department believes that a registered nurse must do the evaluations to achieve accuracy in the assessment. The savings achieved by accurately assessing the need for therapy will offset the cost of using the time of a registered nurse. Commentors requested that 10 days be allowed to complete the screening process. The department has reworded the rule to allow 10 days for screening in ICFs, since registered nurse consultants are frequently used in ICFs and may not be at the facility when recipient-patients are admitted.

The department added clarification to Rule 326.29.36.004(a) to explain that the administrative fee paid to facilities is based on one unit of service, and defined a unit of service. The fee per unit of service is \$1.25. The Texas Board of Human Resources approved payment of the administrative fee to facilities for services provided on or after April 16, 1982.

The department made minor wording changes other than changes made based on public comment.

New Rules 326.29.36.001-.007 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Provision of Services. The facility must ensure that written objectives, policies, and procedures for rehabilitation services are established by the facility's therapists and representatives of the medical, administrative, and nursing staff.

(1) The facility must meet the rehabilitation needs either by the facility's staff or contract with qualified outside resources.

(2) The facility must ensure that safe and adequate space and equipment are available for the services offered.

(3) The facility must ensure that services are provided under a written plan of treatment based on the physician's diagnosis and orders, and that services are documented in the recipient-patient's medical record.

(4) The facility must ensure that an assessment and evaluation of the recipient-patient's rehabilitation needs are integrated into the recipient-patient's overall plan of care.

.002. Staff and Qualifications.

(a) The facility must ensure that services are provided within specific disciplines by qualified therapists, assistants, and supporting personnel supervised by the qualified therapist.

(b) A qualified therapist is:

(1) A speech-language pathologist who:

(A) has a certificate of clinical competence in

speech-language pathology granted by the American Speech-Language-Hearing Association, in effect on January 17, 1974; or

(B) meets the educational requirements for certification and has or is in the process of accumulating the supervised clinical experience required for certification.

(2) An audiologist who:

(A) has a certificate of clinical competence in audiology granted by the American Speech-Language-Hearing Association, in effect on January 17, 1974; or

(B) meets the educational requirements for certification and has or is in the process of accumulating the supervised clinical experience required for certification.

(3) An occupational therapist (qualified consultant) who:

(A) is a graduate of an occupational therapy curriculum accredited by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association;

(B) is certified by the American Occupational Therapy Association under its requirements in effect on the publication of these rules; or

(C) has two years experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination approved by the Secretary of Health and Human Services, except that this determination of proficiency does not apply to persons initially licensed by a state or seeking initial qualifications as an occupational therapist after December 31, 1977.

(4) An occupational therapy assistant who:

(A) is certified as an occupational therapy assistant by the American Occupational Therapy Association under its requirements in effect on the publication of these rules; or

(B) has two years of experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination approved by the secretary of Health and Human Services, except that this determination of proficiency will not apply to persons initially licensed by a state or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

(5) A physical therapist who:

(A) is a graduate of a program in physical therapy approved by the American Physical Therapy Association or by the Council on Medical Education of the American Medical Association;

(B) has two years experience as a physical therapist and has achieved a satisfactory grade on a proficiency examination approved by the secretary of Health and Human Services, offered until December 31, 1977;

(C) was licensed or registered before January 1, 1966, and has had 15 years of full-time experience as a physical therapist before January 1, 1970;

(D) has graduated from a state-approved, four-year college program in physical therapy before January 1, 1966; or

(E) is currently licensed as a physical therapist by the Texas Board of Physical Therapy Examiners.

(6) A physical therapist assistant who:

(A) is a graduate of a two-year college level

program approved by the American Physical Therapy Association;

(B) has equivalent training and experience; or

(C) Is licensed as a physical therapy assistant by the Texas Board of Physical Therapy Examiners.

(c) A physical therapy aide is a person who aids in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by the physical therapist. A physical therapy aide is not a certified corrective therapist or an adaptive or corrective physical education specialist.

.003. *Therapist Responsibilities.* Therapists must:

(1) ensure the safety, effectiveness, and cleanliness of the equipment used;

(2) perform assessments and develop required care plans and progress reports;

(3) submit reports of the recipient-patient's progress to the physician within two weeks after initial therapy and at least every 30 days thereafter as necessary.

.004. *Goal-Directed Therapy.*

(a) If a facility admits or retains recipient-patients who require physician-prescribed rehabilitation services, the facility must either furnish goal-directed therapy (physical therapy, occupational therapy, speech pathology) as a certified Title XVIII provider of services or must have written agreements with Title XVIII providers of rehabilitation services. The facility must ensure that this agreement provides a basis for effective working arrangements under which goal-directed therapy is made available to recipient-patients if needed and ordered by the attending physician.

(b) The goal-directed therapy system includes physical therapy, occupational therapy, and speech pathology services. The attending physician must order these services.

(c) Payment for therapy services for recipient-patients with Medicare coverage is billed to Medicare. Prior authorization by the Texas Department of Human Resources is required for recipient-patients with only Medicaid coverage.

(d) The Texas Department of Human Resources will pay facilities for therapy services provided to recipient-patients who are eligible for Medicaid but are not eligible for Medicare. Payment is determined by selecting the lower of the following rates:

(1) the maximum allowable Medicaid rate per visit as determined by the Texas Board of Human Resources;

(2) the therapy provider's interim rate per visit as determined by Medicare;

(3) the provider's customary charge per visit.

(e) The department pays contracted facilities an administrative fee per approved unit of service, as determined by the Texas Board of Human Resources, for activities associated with processing claims for payment for physical services. A unit of service is defined as one physical therapy service, one occupational therapy service, or one speech therapy service performed for one recipient patient.

(f) Coverage for physical therapy includes evaluation and treatment concerning improvement or restoration of functions which have been impaired by illness or injury. The purpose is to improve and restore the

recipient-patient's ability to perform transfer or ambulation activities. The services must be provided with the expectation that the recipient-patient's functioning will improve measurably in 30 days.

(g) Coverage for occupational therapy includes evaluation and treatment concerning improvement or restoration of functions which have been impaired by illness or injury. The purpose is to improve or restore the recipient-patient's ability to perform self-care activities. The services must be provided with the expectation that the recipient-patient's functioning will improve measurably in 30 days.

(h) Coverage for speech pathology includes evaluation and treatment of communication disorders that have been acquired or are related to loss of hearing. Treatment must be provided with the expectation that the recipient-patient's communication will improve measurably in 30 days.

.005. *Screening.* A registered nurse must screen recipient-patients within 10 days of admission or readmission in ICFs and on admission or readmission in SNFs. If an evaluation by a therapist is indicated by the screening process, the registered nurse contacts the attending physician by telephone or by mail to discuss the findings on the date of the screening.

.006. *Staff Training.* In-service educational training is required for facility staff assigned to the goal-directed therapy system.

.007. *Qualifications for Outpatient Physical Therapy and Speech Pathology.* If the facility provides outpatient physical therapy or speech pathology services, it must meet health and safety regulations pertaining to those services specified in 42 Code of Federal Regulations Subpart Q, 405.1717, 405.1719, 405.1723, and 405.1726.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824487 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Services and Supplies Included in the Vendor Payment

326.29.39.001-.006

The Texas Department of Human Resources adopts new Rules 326.29.39.001-.006 with changes to the proposed text published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing services and supplies included in the vendor payment as part of the services to recipient-patients in nursing facilities.

The department received eight comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, David Harmon Enterprises, and National Living Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.39.001 (Vendor Payment)—One commentor requested deleting the service of trimming male patient's hair. The department disagrees. This has been a requirement since 1969 in the standards. A commentor also suggested that the exception list to regular laundry be expanded to include ironing and special finishes. The department feels that excluding dry cleaning is a sufficient exclusion. This rule has been in the standards since 1969. Based on recommendations of the Blue Ribbon Task Force on Standards Review, the department revised subsection (d) to clarify department intent on payment for services in the facility and services and items purchased outside the facility.

326.29.39.004 (Penalties for Supplementation)—Several commentors requested that facilities should not be responsible for overcharges and collections because of wrong billing information from the department. Penalties for supplementation allow for felony conviction for anyone in the facility who knowingly and willfully charges, solicits, accepts, or receives money or other consideration in excess of the vendor rate. The department does not intend to seek a conviction because of overcharges as a result of erroneous billing information provided by this department. The department disagrees with inserting any qualifiers to this rule because it is unnecessary. Further, the penalties will be imposed upon the individual found guilty of breaking this law. This rule will remain as proposed.

The department rewrote portions of these rules for clarification purposes. Based on recommendations of the Blue Ribbon Task Force on Standards Review, the department revised Rule 326.29.39.002 to add subsection (d). This states that the facility can charge for transportation other than normal transportation. Rule 326.29.39.005 was retitled and rewritten for clarification about payment for medical equipment, supplies, and prosthetic devices. Rule 326.29.39.006 was

changed to clarify that the facility must submit a discharge form on the first day after a three-day therapeutic home visit if the recipient-patient's visit extends beyond three days.

New Rules 326.29.39.001-.006 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Vendor Payment.

(a) A nursing facility provides, under the terms of the contract, for the total medical, nursing, and psychosocial needs of each recipient-patient.

(b) The daily rate is compatible with reasonable charges consistent with efficiency, economy, and quality of total care. The facility must ensure that care meets the health needs and promotes maximum well-being of recipient-patients. It includes:

(1) social care;

(2) regular, special, and supplemental diets;

(3) nonlegend drugs (This reference does not include alcoholic beverages unless prescribed for medicinal purposes. Alcoholic beverages not prescribed for medicinal purposes are at the expense of the recipient-patient or the family. To determine if the alcoholic beverage is prescribed for medicinal purposes, the medical record has to include the amount of alcohol prescribed for the recipient-patient, the frequency the alcohol is to be administered to the recipient-patient, and the medical reason for the alcohol. Vendor payment will not be made for any deviation from this required documentation.);

(4) medical accessories, equipment, and supplies.

(c) Other services included in the daily rate, but not all inclusive are:

(1) hygienic care of the hair (including trimming male patient's hair);

(2) regular laundry services (except dry cleaning).

(d) If services are provided in the facility for the recipient-patient which are not included in the daily rate, payment will be arranged between the recipient-patient and the provider of services. Exceptions to this are listed in Rule 326.29.39.002. It is permissible for the facility to collect payment from the recipient-patient to purchase services and items outside the facility.

.002. Additional Charges.

(a) A SNF or ICF may charge for oxygen. In ICF facilities, parenteral fluids, if ordered by the physician, may be charged at the usual and customary rate for the unaltered fluid content only. This charge may only be made if the parenteral fluids are used therapeutically or for supplementary feedings. The facility must chart this in the recipient-patient's medical record as to frequency and quantity, and enter in the recipient-patient's financial record the quantity and amount charged. If prescribed by the physician, the cost of oxygen may be charged to the recipient-patient at a rate determined by the Department of Human Resources. Oxygen, so used, must be charted in the recipient-patient's medical record as to time and quantity. Also, to substantiate the amount charged, the facility must document in the recipient-patient's financial record the time, quantity, and amount charged.

(b) The Texas Department of Human Resources will not make vendor payments when a Title XIX

recipient-patient is absent from the facility due to:

(1) hospitalization;

(2) therapeutic home visits that extend beyond three days.

(c) The facility may enter into a written agreement with the recipient-patient or responsible party to reserve a bed. The facility may charge the recipient-patient an amount not to exceed the Texas Department of Human Resources' daily vendor rate according to the recipient-patient's classification at the time the individual leaves the facility. The facility must document all bed-hold charges in the recipient-patient's financial record at the time the bed-hold reservation service was provided.

(d) The facility may charge for transportation beyond normal transportation as defined in Rule 326.29.20.016 (b).

.003. Supplementation of Vendor Payments.

(a) Participation will be limited to providers of services who accept, as payment in full, the amounts paid in accordance with the fee structure approved by the Texas Department of Human Resources.

(b) Providers who have a contract with the Texas Department of Human Resources and who solicit contributions, donations, or gifts from Medicaid recipient-patients or family members will be in noncompliance with federal requirements.

(c) The facility must inform Medicaid recipient-patients and their families, in writing, that their right to nursing facility services is not contingent upon contributions. The facility must give copies of this notice to the recipient-patient, family, and responsible party.

(d) If a recipient-patient, family member, or guardian does make a free-will contribution, the nursing facility administrator executes a statement for signature by both the contributor and the administrator. It will state that the services provided in the nursing facility are not predicated upon contributions and that the gifts are free-will contributions.

.004. Penalties for Supplementation. A felony conviction with a fine of not more than \$25,000 or imprisonment for not more than five years or both, can be imposed on anyone in the facility who knowingly and willfully:

(1) accepts from the recipient-patient money or other considerations in excess of rates established by the state for services provided under a state plan approved under Title XIX; or

(2) charges, solicits, accepts, or receives any gifts, money, donation, or other consideration in addition to amounts required to be paid under a state plan approved under Title XIX (other than charitable donations from an organization or a person unrelated to the recipient-patient) as a precondition for admitting or keeping a recipient-patient in the nursing facility if the cost of services is paid for under the state plan.

.005. Provision of Certain Medical Equipment, Supplies, and Prosthetic Devices.

(a) Facilities are required to furnish and maintain, in good repair, equipment necessary to meet the needs of the recipient-patient such as the following:

(1) equipment which can be used by more than one person, such as wheelchairs, adjustable chairs,

walkers, crutches, and canes;

(2) assistive devices that are used to assist individuals in accomplishing a task.

(b) Facilities are also required to furnish medical supplies necessary to meet the needs of the recipient-patient.

(c) Payment for these types of equipment and supplies is an allowable cost and is reimbursable under the cost-related reimbursement methodology if the recipient-patient occupies a bed in the facility that meets the definition of 1861(j)(1) of the Social Security Act. If the recipient-patient does not occupy a bed that meets the definition of 1861(j)(1) and the recipient-patient is a beneficiary of Part B Medicare, the recipient-patient must use Title XVIII, Part B as a third party resource to provide this equipment.

(d) Indwelling catheters, ileostomy bags, colostomy bags, and other related supplies are considered prosthetic devices and must be provided by the facility. For recipient-patients that have Part B Medicare benefits, this equipment must be paid for by Medicare if the facility is not participating as a Medicare facility. For Medicare facilities, this equipment is an allowable cost and is reimbursed under the Medicaid cost-related reimbursement methodology.

(e) Coverage of certain medical equipment and supplies as a Part B benefit is applicable only if the Medicare beneficiary is residing in his own home or in a bed in an institution which can be defined as his own home.

(f) If a recipient-patient desires equipment for full-time use as a convenience rather than a documented need, its purchase is the responsibility of the recipient-patient. In these cases, only the recipient-patient can use the equipment, and it becomes the personal property of the recipient-patient and is so identified.

(g) Upon discharge from the facility, the recipient-patient must retain the equipment which he has purchased. If the recipient-patient dies, the purchased equipment must be transferred to the estate. If it is donated or sold to the facility by the recipient-patient or the estate, the transaction must be documented.

.006. Therapeutic Home Visits Away from the Facility.

(a) The nursing facility must have written policies and procedures governing recipient-patient therapeutic home visits away from the facility for the purpose of visiting with relatives and friends.

(b) The following conditions must be met for the facility to receive vendor payment:

(1) the recipient-patient's plan of care provides for physician-authorized therapeutic visits.

(2) A visit must not exceed three days. If it does, the facility will submit a discharge form effective the first day. Situations that require a discharge form effective the first day include:

(A) alternate care living arrangements, including at home;

(B) transfer or discharge to other living arrangements covered under Title XIX.

(3) The facility must maintain a record of each therapeutic visit away from the facility. These records will be available for review by Texas Department of Human Resources staff and a quarterly summary of visits will

be completed by this staff.

(4) Verification that therapeutic visits took place and were documented will be a part of the audit procedures during the Texas Department of Human Resources' audit of the facility. The department will not pay for therapeutic visits which were not documented.

(c) The Texas Department of Human Resources will not make vendor payments for any time a Title XIX recipient-patient is away from the nursing facility because of hospitalization.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824488

Marin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Medical Records

326.29.40.001-.003

The Texas Department of Human Resources adopts new Rules 326.29.40.001-.003 with changes to the proposed text published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing medical records services as part of the services to recipient-patients in nursing facilities.

The department received 22 comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, the Texas Department of Health, and National Living Centers.

The commentators were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.40.001 (General Requirements) -- One commentator pointed out that subsection (b) was unclear. The department agrees that the statement is unclear and redundant and has omitted it in the final rules. Commentors said that subsection (d) does not conform with the Texas open

records law. The department agrees and has clarified the statement to read that records may be released by authorization of the recipient-patient unless contraindicated, as documented by the attending physician. Commentors said that subsection (a) would involve record keeping above and beyond what is currently required of facilities. The department does not intend to increase record keeping responsibilities in this area. Subsection (a) has been deleted. All subsections in this rule have been renumbered.

326.29.40.002 (Staff and Qualifications in a Skilled Nursing Facility)—There were numerous comments about this rule pointing out confusing and inconsistent terminology about consultants and supervisors. The department agrees and has made major changes in this rule to clarify the roles and functions of supervisors of medical records in skilled facilities and consultants for medical records. The title of this rule has been changed to state that it specifically addresses medical records supervisors in skilled facilities, and the rule has been reworded to clarify the meaning of the term "supervisor of medical records." Subsection (b) has been changed to clarify the requirements if consultation is provided to a facility through a contract or agreement. Several commentors pointed out that subsection (c) was confusing because it seemed to mix the roles and functions of supervisors and consultants. The department agrees. This material is not included in current standards and is not necessary to ensure the health and safety of the recipient-patients. Therefore, subsection (c) has been deleted entirely.

326.29.40.003 (Content)—Commentors stated that subsection (b)(1) conflicts with Rule 326.29.30.003 about the time period within which admission records must be completed. The department agrees and has deleted the second sentence from this subsection. The third sentence, which refers to the time within which information may be received from hospitals, has been moved to subsection (b)(2) where it is more appropriate. A commentor asked if subsection (b)(4) referred to DHR Form 1214, and if so, would we reference the form number. Forms used by the department change from time to time and their numbers may also change. Standards of care are expected to remain in use for longer periods of time. Therefore, rules and standards do not reference specific forms or form numbers to avoid rules becoming outdated due to procedural changes of the department. This subsection refers to an alternate care plan and the words alternate care have been added to the third sentence for clarification. A commentor asked that the department clarify the meaning of medical-social plan in subsection (b)(4). The department agrees and has added a definition in the Rules 326.29.12.001-.029 to clarify that the medical-social plan includes components of several different plans such as nurs-

ing, social services, and activities. A commentor wondered if subsection (b)(5) means that a physician must write progress notes at each visit, even though he may visit three or four times a month. The answer is yes. Federal regulation requires documentation of progress notes by the physician at each visit. A commentor asked that subsection (b)(7) make an allowance for 24-hour charting in intermediate care facilities. To clarify this subsection the words "at least" have been added to the second sentence. There were several other comments about subsection (b)(7). It was noted that subsection (b)(7)(B)(iv) conflicted with documentation requirements for the nutrition system. The department agrees and has reworded this to require documentation of only deviations from normal in the dietary area. Subsection (7)(C) was noted to be redundant since discharge information is discussed in subsection (d)(2). The information under this subsection has been moved to subsection (d)(2) and subsection (b)(7)(C) merely references that subsection. Subsection (b)(8) was noted to be redundant since these responsibilities are stated in Rule 326.29.31.012. Subsection (b)(8) has been deleted, and subsection (b)(9) was renumbered to be (b)(8). Subsection (d) has been reworded to remove redundancies and to clarify the requirements of discharge planning since several commentors asked for clarification. In subsection (d), the last sentence has been deleted since it refers to procedures and is inappropriate in rules. Subsection (d)(1) has also been deleted for that reason. Subsection (d)(2) has been rewritten to conform with federal requirements which state that the discharge plan must be developed within seven days after admission and include certain information. Subsection (d)(2) was renumbered to be (d)(1). Subsection (d)(2) describes the information required in the discharge summary.

The department made minor technical wording changes other than those changes based on public comment.

New Rules 326.29.40.001-.003 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. General Requirements.

(a) The facility must maintain medical records that include clinical, medical, and psychosocial information on every recipient-patient.

(b) The facility must protect records against loss, damage, destruction, and unauthorized use.

(c) The facility must safeguard the confidentiality of medical record information. The facility must release confidential medical information under court order or by written authorization of the recipient-patient unless contraindicated as documented by the attending physician in the recipient-patient's medical record.

(d) The facility must retain records until:

- (1) audited and all audit questions are resolved;
- (2) in the case of a minor, three years after he

comes of age under state law; or

(3) three years after the date the recipient-patient is discharged, whichever period is longer.

(e) The facility must make medical records available for review by the Texas Department of Human Resources, the Texas Department of Health, and the Department of Health and Human Services.

.002. Staff and Qualifications in a Skilled Nursing Facility.

(a) Qualifications. The skilled nursing facility must designate a supervisor of medical records to be responsible for developing and guiding the implementation of a plan for the overall operation of the medical record services. The person designated as supervisor must be a full-time employee and must:

(1) be a registered record administrator (RRA) or an accredited record technician (ART); or

(2) have experience, training, and demonstrated supervisory competency appropriate to the scope and complexity of services performed, as determined by the state survey agency, and receive consultation from a medical record consultant who is a RRA or ART.

(b) Consultation. If consultation is used, the facility must ensure that the agreement between the facility and the consultant complies with Rule 326.29.20.010, Use of Outside Resources.

(c) Frequency. The facility must determine the frequency of medical records consultation by the status of the records. If a facility has adequate records, a consultant would be needed less often than in a facility with poor records, or one that is newly opened and needs help in establishing a medical record system. For facilities with good records, a visit every 180 days is sufficient. If poor records are cited as a deficiency, the consultant must visit the facility as required by the plan of correction.

(d) Written reports. The consultant must inform the administrator through written, signed reports retained by the administrator, of recommendations, plans for implementation, and continuing assessment. The consultant must include in each report:

- (1) objectives of the visit;
- (2) scope of investigation;
- (3) findings;
- (4) conclusions with recommendations.

(e) The consultant must also include the date, time of arrival, and time of departure in each report. The consultant must share the information contained in each report with the records supervisor and personnel.

.003. Content.

(a) The facility must ensure that the medical record includes the following identification information:

- (1) full name of recipient-patient;
- (2) home address, including street address, city, county, and state;
- (3) social security number;
- (4) Texas Department of Human Resources recipient number, if applicable;
- (5) Medicare claim number, if applicable;
- (6) marital status;
- (7) date of birth;
- (8) sex;
- (9) religious preference;

(10) ethnic group;

(11) usual occupation (kind of work engaged in most of working life, even if retired);

(12) birthplace;

(13) father's name;

(14) mother's maiden name;

(15) dates of service in U.S. armed forces;

(16) name, address, and telephone number of referral agency or hospital from which admitted;

(17) personal physician and alternate, if applicable;

(18) name of dentist;

(19) name and address of next of kin or other responsible party;

(20) admitting diagnosis;

(21) final diagnosis;

(22) disposition;

(23) name of funeral home, if appropriate;

(24) other useful identifying data.

(b) The facility must ensure that the medical record contains the following medical information. The documentation outlined in paragraphs (1) and (2) of this subsection must be obtained. Either, however, will be acceptable for compliance at the time of survey by the state survey agency.

(1) The record must contain an initial medical evaluation, including history, physical examination, diagnoses, and an estimate of restoration potential.

(2) The record must include the authentication of any hospital diagnoses. This may be in the form of a hospital discharge summary sheet, a report from the recipient-patient's hospital or attending physician, or a transfer form. The facility will be allowed seven working days to receive this information from the hospital.

(3) The record must contain the physician's signed and dated orders, including medication, treatment, diet, and restorative and special medical procedures required for the safety and well-being of the recipient-patient.

(4) The record must contain a comprehensive, interdisciplinary, medical-social plan explaining the precise reasons for placement and containing documentation showing that the plan is reassessed periodically. If alternate care is feasible, a qualified social worker (social services staff from the nursing facility, outside agency, or long-term care unit) must consult with the nursing facility staff to develop an alternate care plan for the physician's approval. The alternate care plan must also specify the medical-social plan of treatment for the recipient-patient. The facility must indicate in the medical record that care is authorized only by a physician.

(5) The record must contain physician's progress notes signed by the physician for each visit or consultation.

(6) The record must include arrangements for the medical care of the recipient-patient in the physician's absence, and specific instructions about how such care may be obtained.

(7) The medical record must contain observations made by nursing personnel. In intermediate care facilities, observations must be recorded at least daily. In skilled nursing facilities, observations must be recorded on each of the three shifts for a 24-hour period. The

observations must show at least the following.

(A) Admitting or accessing information including:

(i) date, hour, how transported, and who accompanied;

(ii) known allergies, adverse drug reactions, and idiosyncrasies;

(iii) physical condition, including hygiene, appearance, height and weight (if obtainable), vital signs, age, skin condition (abrasions, lesions, decubiti), deformities, mobility status, and vision, hearing, and continence status;

(iv) mental status (alert, labile, oriented, disoriented, comatose) including response to nursing facility placement;

(v) prosthetic devices or other appliances such as eyeglasses, dentures, hearing aids, walkers, colostomy or ileostomy bags, and indwelling catheters.

(B) Current information including:

(i) PRN medications and results;

(ii) treatments and any notable results;

(iii) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;

(iv) flow sheet items which may include bathing, restraint documentation, elimination, fluid intake, deviations from normal diet, vital signs, ambulation status, positioning, continence status and care, and weight.

(C) Discharge information as required in Rule 326.29.40.003, subsection (d)(2).

(8) The record must contain the date and hour of all drugs administered and treatments. Special procedures performed for the safety and well-being of the recipient-patient must be included in the medical record and may include:

(A) laboratory and x-ray reports;

(B) consultation reports;

(C) dental reports;

(D) social service notes;

(E) recipient-patient care referral reports.

(c) The facility must ensure that the medical record contains a written nursing care plan for each recipient-patient, based upon the medical-social care plan. The nursing care plan will describe nursing action for continuity of care on a 24-hour basis. In formulating and maintaining a nursing care plan:

(1) Initiate the plan after the recipient-patient has been observed and his needs have been assessed.

(2) Enter the date initiated.

(3) Keep the plan as a permanent record.

(4) Keep the plan as long as other clinical records are kept.

(5) Include at least the following in the plan.

(A) identification data--name, age, diagnosis, attending physician, room number;

(B) recipient-patient problems and needs;

(C) approaches or actions to meet needs;

(D) long-term goals and short-term objectives.

(6) The plan must be reviewed, revised, and documented if a recipient-patient's needs change or at least every 30 days for the first 90 days and every 90 days thereafter in SNFs, and every 90 days in ICFs.

(7) The plan must be available to all direct recipient-patient care staff

(d) The SNF must have a centralized, coordinated program for each recipient-patient for continuing care after discharge. If alternate care is considered, the facility must consult with the attending physician and a qualified social worker.

(1) The written discharge plan must be developed within seven days after admission and include:

(A) which facility staff or which outside agency is responsible for discharge planning;

(B) how the facility staff or outside agency will perform this function, including the outside agency's authority and its relationship with the facility staff;

(C) when each individual's need for discharge planning will be determined (not later than seven working days after admission);

(D) when re-evaluations of each individual's discharge plan will be made;

(E) the local resources available to the facility, the individual, and the attending physician to assist in developing and implementing individual discharge plans;

(F) the provisions for periodic review and re-evaluation of the facility's discharge planning program.

(2) If the recipient-patient is discharged, the facility must provide to the person responsible for post-discharge care, pertinent information which will ensure the optimal continuity of care. This may include, but is not limited to:

(A) recipient-patient name;

(B) date of admission and discharge;

(C) current information relating to diagnosis;

(D) prior treatment;

(E) rehabilitation potential;

(F) physician advice concerning immediate physical care;

(G) pertinent social information;

(H) date and hour of discharge, how transported, and who accompanied the recipient-patient;

(I) description of physical condition;

(J) disposition of personal effects and drugs;

(K) name of family members notified;

(L) reason for discharge

(3) The recipient-patient's discharge plan, results of the plan, and information on alternate community resources to which the recipient-patient may be referred must be available to the utilization review committee.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824489

Marlin W. Johnston
Commissioner

Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Medical Direction

326.29.42.001-.003

The Texas Department of Human Resources adopts Rules 326.29.42.001-.003 without any changes to the proposed text published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing medical direction as part of the services to recipient-patients in nursing facilities.

The department did not receive any comments about the rules during the comment period. One comment was received after the end of the comment period.

New Rules 326.29.42.001-.003 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824490 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Physical Environment

326.29.50.001-.010

The Texas Department of Human Resources adopts new Rules 326.29.50.001-.010 with changes to the proposed text published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in determining the physical environment requirements to be met by facilities providing services to recipient-patients.

The department received 23 comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, Cantex Healthcare Centers, National Living Centers, and the Texas Department of Health.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they

have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.50.001 (Introduction)—One commentor suggested the deletion of the requirement for facilities to meet all applicable federal, state, and local codes governing construction. The department disagrees with deleting this requirement because it has been in the standards since 1969. No change has been made to the proposed material.

326.29.50.002 (Sleeping Rooms)—It was requested that this rule be rewritten to clarify the floor space requirement for beds in rooms with multibeds, and the waiver allowances for square footage requirements. The department agrees with these comments. Therefore, a clarifier has been added to explain that the 80 square feet of floor space in rooms with multibeds refers to "each bed." Additionally, the waiver allowance has been clarified to apply to existing buildings. Several commentors suggested that a cost impact would be felt by facilities if they were required to put cubicle curtains around every bed in multi-patient bedrooms. The requirement as stated means that the curtains must be available if requested by a recipient-patient. A qualifier has been added to this rule to clarify this requirement. Several comments were received concerning the department's requirement to have bedrails, if ordered by the attending physician, affixed to both sides of the bed. Although this requirement conflicts with an interpretive letter of the Texas Department of Health, this department feels that the requirement is necessary to ensure the safety of the recipient-patients. This requirement remains as proposed. Several commentors suggested expanding the section on toilet, bathing, and hand-washing facilities to detail requirements found in the Texas Department of Health Minimum Licensing Standards for Nursing Homes. The department disagrees with this request because it is unnecessary to duplicate licensing rules.

Also, the requirements in this rule do not exceed current standard requirements. No changes have been made to this requirement. One commentor questioned whether operable windows should be screened. Another commentor requested that the Texas Department of Health Licensing Regulations be cited in reference to the locking of recipient-patient doors. Since both of these subjects are covered in the Life Safety Code and monitored by the Texas Department of Health, the department has decided to delete these two requirements to avoid duplicating rules.

326.29.50.003 (Multipurpose Rooms)—One commentor suggested that the word "adequate" in relation to the required size for facility dining, social, and recreational activities be defined more

specifically. The department agrees with this comment and has added the words "as specified in the Texas Department of Health Minimum Licensing Standards for Nursing Homes."

326.29.50.004 (Kitchen and Dietetic Service Areas)— Commentors suggested that the word "adequate" in relation to size of the kitchen and dietetic service area be defined more specifically. The department agrees, and has added "as specified in the Texas Department of Health Minimum Licensing Standards for Nursing Homes."

326.29.50.005 (Communication)— Several commentors suggested adding the requirement that call cords must be accessible to the recipient-patient. The department agrees with this comment, and has incorporated wording to reflect this change in the final rules.

326.29.50.006 (Comfort)— The department has deleted references to lighting and noise levels in facilities as requested by some commentors since this material is covered under Life Safety Codes monitored by the Texas Department of Health. Several commentors requested deletion of the term "humidity" since it would be costly for facilities to provide humidifiers. The department agrees with this request and has deleted the requirement to maintain humidity within a normal comfort range. One commentor requested deletion of the item allowing gravity ventilation as an acceptable form of mechanical ventilation. The department disagrees with deleting this option since this was an approved recommendation of the Blue Ribbon Task Force on Standards Review.

326.29.50.008 (Infection Control)— Several commentors stated that intermediate care facilities would have difficulty meeting the requirement for an isolation room. The department agrees that requiring an isolation room in an ICF facility exceeds current standards and has deleted this requirement.

326.29.50.009 (Engineering and Maintenance)— Commentors suggested that maintaining recipient-patient care equipment in accordance with the manufacturer's recommendations be deleted because it is often difficult to obtain this information. The department concurs with this recommendation and has deleted the requirement. Several commentors suggested rewording the requirement concerning water supply systems since the requirement that water must be at sufficient pressure to operate all fixtures was considered an impractical application. The department has deleted this requirement since this is covered in the Texas Department of Health Minimum Licensing Standards for Nursing Homes. Reference to the proper temperatures of hot water has been deleted since it is also covered in the Texas Department of Health Minimum Licensing Standards for Nursing Homes. The department does not agree with requests to delete the requirement

to maintain laundry facilities separate from recipient-patient units. This requirement is in the current standards. The department has added a qualifier that makes this requirement applicable only if laundry services are provided. As requested in some comments, the requirement concerning elevators has been deleted since it is covered at length in the Texas Department of Health Minimum Licensing Standards for Nursing Homes. As requested by a commentor reference to a single utility room has been changed to "rooms" to conform to the Texas Department of Health Minimum Licensing Standards for Nursing Homes. The requirement for utility rooms has been rewritten as requested by some commentors to conform to the Texas Department of Health Minimum Licensing Standards for Nursing Homes. One commentor stated that it was unreasonable to expect a facility to have a contingency plan to ensure a supply of potable water in an emergency. The department disagrees with this statement. This requirement has been in the standards since 1975, and the department feels that it is necessary to ensure recipient-patient safety in an emergency. This requirement was not changed.

326.29.50.010 (Housekeeping)— One commentor suggested clarifying the term "trash container" since some surveyors could interpret this to mean dumpsters. The department agrees with this comment and has added "excluding city commercial dumpsters" to this rule.

The department also made minor technical wording changes other than changes based on public comments.

New Rules 326.29.50.001-.010 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. *Introduction.* The facility must provide a physical environment that promotes the health, safety, and well-being of the recipient-patients and others. The facility must comply with all applicable federal, state, and local codes governing construction to ensure safety.

.002. *Sleeping Rooms.*

(a) The facility must ensure that sleeping rooms are designed and equipped for the individual's comfort. There must be a minimum of 100 square feet of floorspace for each bed in single rooms and 80 square feet of floorspace for each bed in rooms with multibeds. For existing buildings, the secretary of the Department of Health and Human Services may waive the square footage requirement for Medicare-only and Medicare/Medicaid participating facilities, if rigid enforcement would result in unreasonable hardship on the facility. The waiver must not adversely affect the health and safety of the recipient-patients. For Medicaid-only facilities, the state survey agency may waive the square footage requirement for existing buildings. A facility may request a waiver by contacting the Texas Department of Health.

(b) The facility must not have wards that contain more than four beds. The total number of beds in wards

must not exceed the total number of beds in single or semiprivate rooms. In multipatient bedrooms, the equivalent of flameproof cubicle curtains must be available for recipient-patient privacy. In multipatient bedrooms, the facility must have enough cubicle dividers to provide privacy to individuals who require or request them.

(c) The facility must ensure that rails, if ordered by the attending physician, are affixed to both sides of the recipient-patient's bed.

(d) The facility must have toilet, sink, and handwashing facilities located in or near recipient-patients' rooms and appropriate in number, size, and design to meet the needs of the recipient-patients as determined by the state survey agency. Bathtubs and showers must be in a separate room or compartment large enough to accommodate a wheelchair and an attendant. The facility must have at least one toilet, enclosed in a separate room or stall, for every eight beds. Secured grab bars must be installed in toilet rooms and bathing compartments.

.003. *Multipurpose Rooms.* The facility must have clear, orderly, and suitably furnished areas of adequate size for dining, social, and recreational activities as specified in the Texas Department of Health Minimum Licensing Standards for Nursing Homes. If an area is used for several purposes, there must be enough space to accommodate all activities and to prevent their interference with each other as specified in the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

.004. *Kitchen and Dietetic Service Areas.* The facility must have kitchen and dietetic service areas adequate to meet the food service needs as specified in the Texas Department of Health Minimum Licensing Standards for Nursing Homes. These areas must be vented, arranged, and equipped for sanitary refrigeration, storage, preparation, and serving of food, as well as for dish and utensil cleaning and refuse storage and removal.

.005. *Communication.* Each nursing station must be equipped to register recipient-patients' calls through a communication system from patient areas including bed, toilet, and bathing facilities. The call cord does not have to be accessible in all parts of the room, but must be accessible to the recipient-patient. The system must be connected to on and off switches operable at each bed, toilet unit, and bathing area.

.006. *Comfort.* The facility must provide a functional, safe, sanitary, and comfortable environment for recipient-patients, personnel, and others.

(1) *Pest control.* The facility must have an effective, safe, and continuing pest control system against insects and rodents. A contract with a licensed pest control company is acceptable.

(2) *Temperature.* For all areas occupied by recipient-patients, the facility must maintain indoor temperature within a normal comfort range by heating, cooling, or other means. Beds must be placed so that recipient-patients are not exposed to uncomfortable temperatures.

(3) *Ventilation.* All areas within the facility must be ventilated. Gravity ventilation is an acceptable form

of mechanical ventilation. Bathrooms, areas for soiled materials, and odor-producing rooms must have mechanical ventilation to the outside.

(4) *Furnishings.* The facility must provide furnishings and interior decorations which promote a homelike atmosphere. Recipient patients must be permitted and encouraged to have personal possessions in their rooms that do not interfere with their care, treatment, or well-being, or that of other recipient-patients. Floors must have a nonslip finish. Loose floor coverings, such as throw or scatter rugs may not be used. Entrance mats and mats for recipient-patients' rooms must be nonslip.

.007. *Linens or Clothing.* The facility must ensure that every recipient-patient has clean linen at all times. There must be three sets of linen for normal recipient-patient occupancy, with a set of bed sheets defined as two sheets. Usually, occupancy does not mean bed capacity. Soiled linen and clothing must not be sorted, laundered, rinsed, or stored in bedrooms, patient rooms, kitchens, or food storage areas. Soiled linen and clothing may be rinsed in a bathroom commode. Mobile hampers or related equipment may be used, provided they are emptied and cleaned as necessary.

.008. *Infection Control in SNFs.* A skilled nursing facility must establish a program for identifying, investigating, preventing, and controlling infections; maintaining a sanitary environment; and reporting to appropriate authorities. Written procedures in aseptic and isolation techniques must be reviewed and revised annually by the infection control committee. The committee is composed of the medical and nursing staff, administration, dietetic, pharmacy, housekeeping, maintenance, and other service staff responsible for infection control in the facility. The committee meets as needed, but at least semiannually. The program must include infection control procedures for:

(1) food handling, laundry, disposal of environmental and patient wastes, pest control, traffic control, visiting rules, and patient care practices for possible sources of infection;

(2) monitoring the health status of employees;

(3) monitoring staff performance to ensure that policies and procedures are being followed;

(4) ensuring that aseptic procedures and isolation techniques are followed. Provisions must be made for isolating patients with infectious diseases in well-ventilated, single bedrooms with separate toilet and bathing units.

.009. *Engineering and Maintenance.*

(a) *Patient care equipment.* The facility must maintain and service recipient-patient care equipment to ensure that it is kept safe, sanitary, and operational.

(b) *Facility equipment.* The facility must maintain plumbing, heating, electrical, mechanical, water, kitchen appliances and equipment, and other systems in a safe operating condition.

(1) The facility must have a water supply system that is safe and meets the needs of the facility as specified in the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

(2) Laundry facilities, if provided, must be

located in areas separate from recipient-patients' units.

(3) Each nursing unit must have the following service areas: nursing station, drug storage and preparation area, access to a refrigerator for drugs requiring it, and utility rooms. The nursing unit must provide equipment for charting and record keeping.

(4) The drug preparation area must be well lighted and have hot and cold running water. This does not apply in the case of a unit-of-use distribution cart.

(5) The utility rooms must meet the requirements in the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

(6) Corridors must be equipped with firmly secured handrails on each side.

(c) Emergency power, heat, and water. The facility must have a contingency plan to ensure a constant supply of power, heat, and potable water. An emergency electrical system must be adequate to power lights at nursing stations, telephone switchboard, night lights, exit and corridor lights, boiler room, and fire alarm system until other arrangements can be made.

.010. Housekeeping. The facility must have enough housekeeping personnel and equipment to ensure that the interior and exterior of the building are clean, sanitary, and orderly. Walls and ceilings must be kept clean and well maintained. The grounds must be reasonably free of refuse and litter. Garbage and trash containers, excluding city and commercial dumpsters, must be cleaned inside and out daily. In a skilled facility, an employee must be designated as responsible for these services and for supervision and training of housekeeping personnel as specified in the Texas Department of Health Minimum Licensing Standards for Nursing Homes. The facility may have a contract with an outside resource for housekeeping services. Nursing personnel are not to be assigned routine housekeeping duties.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 28, 1982.

TRD-824491 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982
Proposal publication date: December 4, 1981
For further information, please call (512) 441-3355,
ext. 2037.

Safety

326.29.52.001, .002

The Texas Department of Human Resources adopts new Rules 326.29.52.001 and .002 with changes to the proposed text published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in determining safety requirements to be met by facilities providing services to recipient-patients.

The department received nine comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, National Living Centers, and the Texas Department of Health.

The commenters were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.52.001 (Fire Safety)—From comments received and the recommendations of the Texas Department of Health, the fire safety requirements have been rewritten to eliminate duplication with Texas Department of Health Minimum Licensing Standards for Nursing Homes and legislative amendments. This rule has been simplified to state that fire safety requirements must meet applicable federal regulations as currently published or amended by the U. S. Department of Health and Human Services and all applicable state regulations.

326.29.52.002 (Disaster Plan)—As recommended by commentors, the requirement to post the disaster plan throughout the facility has been deleted and replaced with the requirement to maintain the plan and procedures at the nurses station. Also, the requirement to post fire and explosion evacuation routes has been added to this rule as a result of comments.

The department made minor technical changes to the wording other than changes based on public comments.

New Rules 326.29.52.001 and .002 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Fire Safety. The facility must ensure that it meets the fire safety requirements and related building construction requirements in accordance with applicable federal regulations, currently published or amended by the Department of Health and Human Services, and all applicable state regulations. The state survey agency will monitor facilities for compliance.

.002. Disaster Plan. The facility must have a written plan with procedures to be followed in an internal or external disaster and for the care of casualties. The facility must maintain the plan and procedures at the nurses station and with department managers within the facility. The facility must ensure that the plan and procedures are reviewed periodically and rehearsed on each shift each

quarter. The plan must be submitted initially and every two years thereafter to the Texas Department of Health for evaluation and approval.

(1) The facility must include in the disaster plan, evacuation routes and procedures to be followed in the event of fire, explosion, or other disaster. The plan must also include procedures for the prompt transfer of casualties, medical records, medications, and notification of appropriate persons.

(2) All employees must be familiar with the disaster plan and must be instructed in the location and use of the facility's alarm systems, fire-fighting equipment, and procedures. The facility must post fire and explosion evacuation routes prominently throughout the facility and must rehearse these on each shift quarterly.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824492 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Recipient-Patient Activities

326.29.60.001-.003

Texas Department of Human Resources adopts new Rules 326.29.60.001-.003 with changes to the proposed text published in the December 4, 1981, issue of the *Texas Register* (6 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing recipient-patient activities as part of the services to recipient-patients in nursing facilities.

The department received 42 comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, the Texas Department of Health, and National Living Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.60.001 (General Requirements)—One commentor requested that the rules allow the ad-

ministrator or other professional designated to serve as activities director in the activities director's absence for a period of not more than three months. The department disagrees because of the heavy responsibilities of all nursing care professionals. Therefore, no changes were made to this requirement.

326.29.60.002 (Activities Director Requirements)—Commentors pointed out that the requirements for continuing education for activities directors were not specified. The requirement for continuing education for the activities director has been clarified in the final rule. One commentor pointed out that almost anyone can qualify as an activities director. If a person meets the stated requirements, he may be appointed as an activities director, according to department rules.

326.29.60.003 (Individual Activity Plan)—Commentors asked that the department delete the requirement that the director of nursing and other appropriate staff must sign the activities plan. They also asked that the requirement to file the plan in the medical record be changed. The text has been changed to require only the activities director to sign the activities plan. Also, the rule has been changed to state that the activities plan is part of the recipient-patient's medical record and must be filed in accordance with the facility's medical record procedures. These changes are designed to give flexibility to the facility in management of recipient-patient records.

Besides the changes made based on public comments, the department has rewritten and reorganized Rules 326.29.60.001-.003 for clarification.

In Rule .001., the wording was changed to clearly state the purpose of the activities program. Subsection (b), which was proposed as subsection (c) was expanded to cover the general requirements of the written plan and procedures for developing the recipient-patient activities plans. Subsection (b) contains requirements which were proposed in subsection (d).

In Rule .002, the proposed subsections (b) and (c) were switched.

Rule .003, was rewritten and reorganized to clarify the specific requirements for the recipient-patient's activities plan and to provide more detail to help the facilities comply with the requirements.

Requirements in proposed Rules .004 and .005 have been added to Rule .003 for final rules because they specify requirements of the activities plan and should be included in the rule on activities plans.

These rules are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. General Requirements.

(a) The facility must provide an ongoing activities program designed to stimulate and promote the physical,

social, emotional, and intellectual well-being of each recipient-patient.

(b) The facility must develop a plan with written policies and procedures which describe the means of meeting the activity needs of the recipient-patients. The facility must ensure that the plan identifies how the activities program is managed and implemented, and identifies sufficient recreational areas, equipment, and materials used to support the program. The facility must ensure that the written procedures address the development of an activities plan for each recipient-patient which includes an activities interest list, an activities needs assessment, and approaches to be used in meeting the recipient-patient's needs. The activities plan is used in developing the overall medical-social plan of care for the recipient-patient.

(c) The nursing facility administrator must designate a qualified, full-time employee of the facility to be responsible for the activities program.

.002. Activities Director Requirements.

(a) Qualifications. The person designated as activities director must meet one of the following criteria:

(1) The person is a therapeutic recreation specialist who:

(A) has completed a four-year course in an accredited college or university with a major study in or related to therapeutic recreation, and

(B) is registered as a therapeutic recreation specialist under the requirements set by the National Therapeutic Recreation Society; or

(2) The person is an occupational therapist who:

(A) is certified as an occupational therapist by the American Occupational Therapy Association, and

(B) is a graduate of an occupational therapist educational program accredited jointly by the American Occupational Therapy Association and the Committee on Allied Health Education and Accreditation of the American Medical Association; or

(3) the person is an occupational therapy assistant who:

(A) is certified as an occupational therapy assistant by the American Occupational Therapy Association, and

(B) is a graduate of an occupational therapy assistant program accredited by the American Occupational Therapy Association; or

(4) The person has:

(A) a master of social work degree,

(B) a bachelor of social work degree, or

(C) a graduate degree in social or behavioral sciences with a specialty in gerontology; or

(5) The person has completed 60 or more college credits toward a degree in social work or a degree in social or behavioral sciences and has completed the state-approved activities director course; or

(6) The person has:

(A) a high school diploma or equivalency certificate, and

(B) completed a state-approved activities director course, and

(C) one year of full-time experience in a patient activities program in a health care setting.

(7) Persons qualifying under paragraph (5) or

(6), but who lack the state-approved course or the experience requirements may serve as an activities director, with consultation, until the full requirements are met for no longer than one year from the date of employment.

(b) Continuing Education.

(1) Activities directors must successfully complete eight hours of approved continuing education or equivalent continuing education units each year from the date of employment, in addition to any continuing education required by the Texas Department of Health.

(2) A person is exempt from completion of the state-approved course if:

(A) the person was employed full time as an activities director continuously since January 1, 1976, or

(B) the person has successfully completed a 36-clock hour activities director's course before November 1, 1978, which was sponsored by an accredited educational institution or professional group or association.

(c) Consultation.

(1) Consultation, if required, must be provided by a person who is a qualified activities consultant. A qualified activities consultant is one who meets all qualifications and requirements of an activities director, and has at least one year of experience as director of a long-term care activities program.

(2) Consultation, if required, must be provided at least four hours every two months for facilities with an average daily occupancy of 60 or fewer recipient-patients. For facilities with an average daily occupancy of over 60 recipient-patients, consultation must be provided at least eight hours every two months.

.003. Recipient-patient Activities Plan.

(a) The facility must ensure that an activities plan is developed for each recipient-patient within 45 days after admission. The plan must be a coordinated component of the recipient-patient's overall plan of care and must be signed and dated by the activities director.

(b) The plan must be developed within the activities level approved by the recipient-patient's attending physician and must encourage the recipient-patient to return to normal activities and self-care.

(c) The facility must ensure that the activities plan contains the following items:

(1) Activities interest list. The interest list is to be started upon admission of the recipient-patient and completed within 45 days. Past and current activities interests must be documented and the information updated as interests change. A check list may be used.

(2) Activities assessment. An assessment of each recipient-patient's activities needs must be completed within 45 days. The assessment should be based upon information gathered through the activities interest list, the social history, the social assessment, and the assessment of functional level. The assessment should consider needs for one-to-one relationships, social group interaction, reality orientation, intellectual stimulation, recreation, self-expression, and activities related to daily living. The assessment should indicate the degree to which the recipient-patient participates in the care planning process. The Texas Department of Health, social services staff may be contacted to provide consultation on the assessment process.

(3) Long-term and short-term goals. The activities plan must contain long- and short-term goals and the approaches and activities which are designed to achieve the goals. The approaches and activities should be based upon the recipient-patient's interests and needs. Long-term goals are general statements of desired outcomes. Short-term goals are measurable, time-limited expected results which provide the means to evaluate the recipient-patient's progress toward achieving the long-term goals. Approaches identify the activities that will be provided and by whom.

(d) Review and update. The facility must ensure that the activities plans are reviewed and updated every 90 days, or more often if necessary. At each review, the activities director must document the reassessment of the recipient-patient's status and the progress made toward achieving long- and short-term goals. Approaches used should be evaluated to determine if the planned activities were implemented and whether they achieved the desired results. On the basis of the reassessment and review, the activities director must update the plans and document the recommended changes.

(e) Recipient-patient participation. The recipient-patient must participate in the development, the reviews, and the updates of the activities plan to the fullest extent possible, and his participation must be documented in the plan.

(f) Filing of the activities plan. The activities plan is part of the recipient-patient's overall medical-social plan of care and is part of the medical record. The facility must file the activities plan in accordance with the facility's medical record procedures.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 28, 1982.

TRD-824493 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Recipient-Patient Rights

326.29.62.001-.017

Texas Department of Human Resources adopts new Rules 326.29.62.001-.017 with changes to the proposed text published in the December 8, 1981, issue of the *Texas Register* (5 TexReg 4519).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in protecting recipient-patients' rights as part of the services provided to recipient-patients in nursing facilities.

The department received 37 comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, Texas Department of Aging, Mastercare Health Systems, Inc., Texas Department of Health, Cantex Healthcare Centers, and National Living Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here, however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.62.003 (Policies and Procedures)—One commentor suggested eliminating the requirement to post facility policies and procedures. The department only partially agrees with this request since recipients should be allowed access to facility policies. Therefore, the department has changed the title and text of this rule to delete the word "Procedures."

326.29.62.004 (Freedom of Association) — One commentor expressed concern about allowing incompetent unmarried individuals to interact sexually. Although an individual can only be adjudicated incompetent by court action, the department has clarified this rule by stating "recipient-patients must be assured privacy for visits with his or her spouse."

326.29.62.005 (Access to Facility) - Several commentors stated that it is not feasible or appropriate to permit the federally mandated ombudsman access to the recipient-patient at all times. The department agrees and has changed this rule to allow access during normal visiting hours or as requested by the recipient-patient.

326.29.62.007 (Privacy) - One commentor suggested that there would be a cost impact if facilities had to provide privacy in all areas. The department has revised this rule to eliminate a cost impact by requiring privacy in care for personal needs. One commentor opposed, because of a cost impact, the requirement to provide sound amplification equipment for one telephone used by recipient-patients in the facility. Although there would be a minimal cost impact to facilities, the department has deleted this requirement from the rule.

326.29.62.009 (Property)—A number of comments were received concerning inventories of recipient-patients' personal property. Some commentors requested changing the 24-hour requirement to 72 hours to allow more time to accomplish this requirement. Additionally, it was requested that clothing be excluded from this inventory since families constantly take clothing in and

out of the facility. It was further requested that the inventory should only be revised if requested by the recipient-patient. The department agrees with these comments and has revised this rule to incorporate the suggestions.

326.29.62.011 (Protection of Funds)—Several commentors stated that the facilities should not have accountability of funds or valuables that are not deposited with the facility. This rule refers to the requirement that the admission agreement must include a statement that the recipient-patient is under no obligation to deposit funds with the facility. The department feels that a statement that facilities are not accountable for undeposited funds or valuables is unnecessary. Therefore, no change has been made to the proposed text. Some commentors requested that facilities should not be obligated to take care of the recipient-patients' personal funds. The department disagrees with these comments because it is the facility's responsibility to meet the total needs of the recipient-patient. This includes managing a trust fund if requested by the recipient-patient. Facility handling of recipient-patient trust funds has been a requirement in the current standards. No change has been made to the requirement. One commentor requested that facilities should not be required to arrange for the management of a recipient-patient's funds if the individual has no responsible party and becomes incapable of managing his own funds. The department has revised this requirement. The revision directs the facility to notify the Department of Human Resources, regional Medicaid eligibility worker if an individual becomes incapable of managing his funds. Also the department has deleted subsection (b) of Rule 326.29.62.011 because it was redundant. Some commentors stated that requiring signatures on both withdrawals and receipts by the recipient-patient is unnecessary. The department has changed this rule to allow for the option of signed receipts or recording the transaction in a ledger. One commentor requested the deletion of the requirement for intermediate care facilities to do quarterly accounting of trust funds. The department has revised this rule to reflect current regulations. A skilled facility must provide quarterly accounting. Commentors stated confusion over the requirement to include the difference between the ending balance and the SSI or MAO benefit eligibility level. The department has deleted this requirement. Several commentors stated that the requirement to separate funds from any person other than another Medicaid recipient-patient is burdensome and unnecessary. Based on the attorney general's opinion on this matter, the department will retain this requirement. Wording has been added to this rule to allow a facility a waiver if approved by the Department of Human Resources. Some commentors felt it was unreasonable to require a facility to allow daily access to recipient-patient funds. The department agrees with this comment and has deleted this re-

quirement. Several commentors were concerned with time frames associated with accounting requirements after the death of a recipient-patient. The department has changed the 10-day time frame to a 45-day time frame as requested. Additional allowances have been made for facilities which do not choose to keep the recipient-patients' money in trust to send the money to the department for handling.

326.29.62.012 (Transfers)—Many commentors disagreed with the required time frames as well as the differentiation between types of transfers (voluntary and involuntary). To clarify this rule, the department has deleted the terms voluntary and involuntary transfers, and has changed the proposed requirements to state that five days notice is required before any transfer, except in an emergency. A few commentors disagreed with the requirement to notify one spouse if the other spouse is being transferred and requiring facilities to transfer both spouses at the same time. The department disagrees with the objection to this requirement since the facility is required to meet this requirement pending availability of accommodations. The department deleted the second sentence in subsection (a)(3) because it does not have authority to set requirements concerning patients in a private-pay status.

326.29.62.013 (Care Involvement)—One commentor requested the deletion of the word "quality" since this cannot be adequately defined. The department agrees with this request and has deleted the term from the final rule. One commentor suggested the inclusion of the recipient-patient's right to refuse treatment because of religious beliefs. The department agrees and has added the requirement that a facility must respect the religious beliefs of the recipient-patient in accordance with Public Law 90-248, §1907.

326.29.62.015 (Restraints)—Several commentors requested that physicians' orders for restraints need not be written, but could be received by telephone. The department agrees that physicians' orders can be received by the physician within 48 hours for a skilled facility and 72 hours for an intermediate care facility and returned to the chart within seven days. This allowance has been added to the rule. Commentors requested a definition of chemical restraints. Although a definition of chemical restraint was included in the proposed text, several commentors disagreed with the definition. Therefore, the department has deleted references to chemical or physical restraints.

326.29.62.016 (Statement of Services and Bills)—Commentors requested deletion of the requirement that a written notice of the facility's basic daily or monthly rate be provided to recipient-patients. The department has deleted this statement in the final rule. One commentor stated that the requirement to post charges should

be deleted as impractical. The department agrees with this request and has deleted this requirement from the final rule. Several commentors disagreed with the requirement that facilities may not require recipient-patients to purchase services or supplies including pharmaceutical supplies from the facility itself or any particular vendor. The department disagrees with these comments and has revised this rule to define more clearly the recipient-patients' rights to freedom of choice. The federal definition of freedom of choice has been included.

The department made minor technical changes to the wording other than changes based on public comments.

These rules are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Introduction. The facility must protect and promote each recipient-patient's right to a dignified existence, self-determination, communication with and access to persons and services inside and outside the facility, and to exercise his legal rights.

.002. Exercise of Rights.

(a) The facility must permit each recipient-patient to exercise the rights and pursue the interests described in these rules without restraint, interference, coercion, discrimination, or reprisal.

(b) If a recipient-patient has been adjudicated incompetent, has been found by the attending physician to be medically incapable of understanding these rights, or has a communication barrier, the recipient-patient's rights may be exercised by his legal guardian or next of kin, sponsoring agency, or the representative payee (except if the facility itself is the representative payee).

.003. Policies.

(a) The facility must make accessible a written copy of the facility's policies to each recipient-patient, family, or legal guardian upon admission, request, and if revised. The facility must make copies available to representatives of any federally mandated ombudsman.

(b) The facility must obtain written confirmation from each recipient-patient, family, or legal guardian that the recipient-patient has seen the copy and is aware of its contents.

(c) The facility must post a copy of these policies in a conspicuous location.

.004. Freedom of Association.

(a) Each recipient-patient must be permitted to receive visitors and to associate freely inside or outside the facility with persons and groups of the recipient-patient's choice unless medically contraindicated (as documented by the attending physician in the recipient-patient's medical record).

(b) A recipient-patient must be ensured privacy for visits with his spouse. The request of a married couple to share a room should be honored unless medically contraindicated (as documented by the attending physician in the medical record).

.005. Access to Facility. Each recipient-patient's representative and representatives of any federally man-

dated ombudsman must be permitted access to the recipient-patient during normal visiting hours or as requested by the recipient-patient.

.006. Recipient-patient Council. The facility must permit the formation of a recipient-patient council by interested recipient-patients, must provide space for meetings, and must assist recipient-patients to attend meetings.

.007. Privacy. The facility must ensure the recipient-patient's right to privacy, particularly in the following areas:

(1) **Accommodations.** Living quarters must provide the recipient-patient privacy for care of personal needs.

(2) **Medical treatment.** The facility must provide privacy to each recipient-patient during examinations, treatment, case discussions, and consultations. Staff must treat these matters confidentially.

(3) **Telephone.** The facility must:

(A) Maintain at least one telephone for recipient-patients. The telephone must be in an accessible location and be available to recipient-patients at all times.

(B) Permit recipient-patients to contract for private telephones at their own expense. The facility must not require private telephones to be connected to a central switchboard.

(4) **Mail.**

(A) The facility must not open or read a recipient-patient's incoming or outgoing mail without his written permission.

(B) If requested by a recipient-patient, the facility must help open and read incoming mail, and help address and post outgoing mail.

.008. Confidentiality of Records. The facility must maintain the confidentiality of a recipient-patient's personal and medical records and refuse their release to any individual outside the facility without the recipient-patient's written consent. Exceptions are in case of transfer to another facility, during Medicare and Medicaid surveys, or as otherwise required by law or third-party payment contract.

.009. Property.

(a) The facility must permit each recipient-patient to maintain and use his personal property. The number of personal possessions may be limited for health and safety reasons which are documented in the recipient-patient's medical record.

(b) Within 72 hours of admission, the facility must prepare a written inventory of the personal property a recipient-patient brings to the facility such as furnishings, jewelry, televisions, prostheses, personal medical equipment, radios, and sewing machines. The facility is not required to inventory a recipient-patient's clothing. For recipient-patients residing in facilities at the time these rules are adopted, the inventory must be completed within 30 days of adoption.

(c) The facility administrator or delegate must sign and retain the written inventory and must give a copy to the recipient-patient and the responsible party.

(d) The facility must revise the written inventory

to show if property is lost, destroyed, damaged, replaced, or supplemented, if requested by the recipient-patient, family, or responsible party.

.010. Right to Manage Personal Funds. The facility must allow the recipient-patient to manage his personal financial affairs, to designate another person to manage them, or to authorize in writing the facility to hold, safeguard, and account for his personal funds. The facility will act as a fiduciary agent if the facility holds, safeguards, and accounts for the recipient-patient's personal funds. If the Social Security Administration has determined that a Title II and Title XVI (SSI) benefit to which the recipient-patient is entitled should be paid through a representative payee, the provisions in 20 Code of Federal Regulations 404.1601-404.1610 (for OASDI benefits) and 20 Code of Federal Regulations 416.601-416.690 (for SSI benefits) apply.

.011. Protection of Funds.

(a) The facility must provide each recipient-patient and responsible party with a written statement at the time of admission that:

(1) lists all services provided by the facility, distinguishing between services included in the facility's basic rate and those excluded and, if used, are charged to the recipient-patient.

(2) states that the recipient-patient is under no obligation to deposit funds with the facility.

(3) describes the recipient-patient's right to select how personal funds will be handled. The following alternatives must be included:

(A) the right of the recipient-patient to receive, retain, and manage personal funds or to have this done by a legal guardian.

(B) the recipient-patient's right to apply to the Social Security Administration to have a representative payee designated for federal or state benefits to which he may be entitled.

(C) except if subparagraph (B) of this paragraph applies, the recipient-patient's right to designate in writing another person to manage personal funds.

(D) the facility's obligation, upon written authorization of the recipient-patient, to hold, safeguard, and account for the recipient-patient's personal funds.

(4) states that any charge for the facility handling a recipient-patient's personal funds is included in the facility's basic rate.

(5) states that the facility must have written permission from the recipient-patient or responsible party to handle his personal funds.

(6) states that if the recipient-patient becomes incapable of managing his personal funds and does not have a representative payee or responsible party, the facility is required to notify the Department of Human Resources regional Medicaid eligibility worker.

(b) The facility must maintain current, written, individual records of all financial transactions involving the recipient-patient's personal funds which the facility is holding, safeguarding, and accounting. The facility must keep these records in accordance with the American Institute of Certified Public Accountants' generally accepted accounting standards. The facility must also keep records

in accordance with requirements of law for a trustee in a fiduciary relationship which exists for these financial transactions. The facility must include at least the following in the records:

(1) recipient-patient's name.

(2) identification of recipient-patient's representative payee or responsible party, if any.

(3) admission date.

(4) transactions. The facility may choose (A) or (B):

(A) date and amount of each deposit and withdrawal, the name of the person who accepted the withdrawn funds, and the balance after each transaction. Each withdrawal must be signed by the recipient-patient. If the recipient-patient cannot sign, the transaction must be signed by at least one witness.

(B) signed receipts indicating the purpose for which any withdrawn funds were spent, the date of expenditure, and the amount spent. The receipt must be signed by the person responsible for the funds and the recipient-patient. If the recipient-patient is unable to sign his name, a witness must sign the receipt.

(5) recipient-patient's earned interest, if any.

(c) The facility must provide each recipient-patient reasonable access to his financial records.

(d) A skilled nursing facility must provide a written statement, at least quarterly, to each recipient-patient, representative payee, or responsible party. The statement must reflect any recipient-patient funds which the facility has deposited in an account as well as any recipient-patient's funds held by the facility in a petty cash account. The statement must include at least the following:

(1) balance at the beginning of the statement period.

(2) total deposits and withdrawals.

(3) interest earned, if any.

(4) identification number and location of any account in which the recipient-patient's personal funds have been deposited.

(5) ending balance.

(e) The facility must keep any funds received from a recipient-patient for holding, safeguarding, and accounting separate from the facility's funds, and from the funds of any person other than another Medicaid recipient-patient in that facility. This requirement may be waived if approved by the Texas Department of Human Resources.

(f) Types of accounts; distribution of interest.

(1) Petty cash. The facility may keep a recipient-patient's money in a non-interest bearing account or petty cash fund.

(2) Interest-bearing accounts. The facility may deposit any recipient-patient's funds in an interest bearing account.

(3) These accounts may be individual to the recipient-patient or be pooled with funds of other recipient-patients in the facility. If a pooled account is used, each recipient-patient must be individually identified. The facility must ensure that the account clearly indicates that the facility does not have an ownership interest in the funds. The account must be insured under federal or state law.

(4) The interest earned on any pooled interest

bearing account must be distributed in one of the following ways, at the election of the facility:

(A) prorated to each recipient-patient on an actual interest-earned basis, or

(B) prorated to each recipient-patient on the basis of his end-of-quarter balance.

(g) Banking charges.

(1) Charges for checks, deposit slips, and services for pooled checking accounts are the responsibility of the facility and may not be charged to the recipient-patient, family, or responsible party. These costs, however, may be reported as allowable costs by the facility on its cost report.

(2) Bank service charges and charges for checks and deposit slips may be deducted from individual checking accounts since this type of account preserves the dignity and independence of the recipient-patient and is for his personal use.

(3) The facility may not charge the recipient-patient, family, or responsible party for the administrative handling of either type of account. These costs may be reported as allowable costs by the facility on its cost report.

(4) If the facility places any part of the recipient-patient's money in savings accounts, certificates of deposit, or any other plan whereby interest or other benefits are accrued, the facility must distribute the interest or benefit to participating recipient-patients on an equitable basis in either pooled checking accounts or individual checking accounts.

(h) Access to funds.

(1) Funds held in the facility. Upon a recipient-patient's request or if he is transferred or discharged, the facility must return to the recipient-patient, the legal guardian, responsible party, family, or the representative payee the full balance of the recipient-patient's personal funds that the facility has received for holding, safeguarding, and accounting.

(2) Funds held outside the facility. Upon request or if a recipient-patient is transferred or discharged, the facility must, within five business days, return to the recipient-patient, the legal guardian, the representative payee, the responsible party, or family the full balance of a recipient-patient's personal funds that the facility has deposited in an account.

(i) Handling of monthly benefits. If a facility is a recipient-patient's representative payee and directly receives monthly benefits to which the recipient-patient is entitled, it must fulfill its duties as representative payee in accordance with 20 Code of Federal Regulations 416.620 and 404.1603 which define those duties.

(j) Change of ownership. If the ownership of a facility changes, the old owner must transfer the bank balances or trust funds to the new owner with a list of the recipient-patients and their balances. The old owner must get a receipt from the new owner for the transfer of these funds. The old owner must keep this receipt for audit purposes.

(k) Without prior written approval of the Department of Human Resources, alternate forms of documentation, including affidavits, will not be accepted by the department to verify the recipient-patient's personal fund expenditures or as proof of compliance with any re-

quirements specified in these rules for recipient-patients' personal funds.

(l) After the death of a recipient-patient, the facility must make a bona fide effort to locate the responsible party or heir to the estate. Within 45 days of the recipient-patient's death, the facility must use the following procedures to clear the recipient-patient's account.

(1) The facility should set up a trust fund for the deceased recipient-patient or deposit the money to already existing accounts.

(2) Once the Department of Human Resources regional medical facilities consultant verifies that the money owed the deceased recipient-patient is on hand and held in trust, the department will consider the account cleared if the facility supplies the department a notarized affidavit outlining the facility's intentions. The affidavit must contain:

(A) the recipient-patient's name;

(B) amount of money being held;

(C) the facility's efforts to locate the responsible party or heirs;

(D) a facility statement acknowledging that this money is not the property of the facility, but the property of the deceased person's estate; and

(E) a statement that the facility will hold the money in trust until the legal heir or responsible party is located or the money escheats to the state. Money held in trust in the facility is subject to future audit and will be reviewed each time the facility is audited.

(3) Facilities choosing not to hold this money in trust may send the money to the Texas Department of Human Resources, Fiscal Division, at any time before the money escheats to the state. The money must be identified as escheat money. The facility must include the notarized affidavit described in subsection (l)(2)(A)-(D) with the money for identification.

.012. Transfers.

(a) A facility may transfer a recipient-patient only in the following situations:

(1) The recipient-patient's attending physician determines that failure to transfer the recipient-patient will threaten the health or safety of the recipient-patient or others, and documents that determination in the recipient-patient's medical record.

(2) The facility ceases to operate or participate in the program which reimburses for the recipient-patient's care.

(3) Nonpayment of allowable fees by the recipient-patient has occurred.

(4) If the findings of a Medicare or Medicaid medical necessity review determine that the recipient-patient no longer requires the level of care provided at the facility.

(b) If the facility ceases to operate or participate in the program which reimburses for the recipient-patient's care, the facility must cooperate fully with the Texas Department of Human Resources and the Texas Department of Health in the implementation of any transfer planning and counseling conducted by these agencies.

(c) Except in an emergency, the facility must notify the recipient-patient, responsible party, and the attending physician at least five days before any transfer. This notice

must be in writing and contain:

- (1) the reasons for the proposed transfer.
- (2) the effective date of the proposed transfer.
- (3) the location to which the facility proposes to transfer the recipient-patient.

(d) If two recipient-patients in a facility are married and the facility proposes to transfer one spouse to another facility at a similar level of care, the facility must give the other spouse notice of his right to be transferred to the same facility. If the spouse notifies a facility, in writing, that he wishes to be transferred, the facility must transfer both spouses on the same day, pending availability of accommodations.

.013. Care Involvement. The facility must provide appropriate care, treatment, and services. The facility may not interfere with the recipient-patient's right to:

(1) choose and retain an attending physician, subject to that physician's compliance with the facility's standard operating procedures for physician practices in the facility.

(2) receive complete, accurate, and current information regarding his medical condition, including diagnosis, proposed treatment, and prognosis in terms and language the recipient-patient can understand unless medically contraindicated (as documented by his physician in his medical record).

(3) participate in the planning of care, treatment, and service.

(4) refuse treatment and medication for other than religious reasons. The recipient-patient must be informed of the consequences of his decision. The refusal and the reason for refusal must be documented in the recipient-patient's medical record.

(5) observe his religious beliefs. The facility must respect the religious beliefs of the recipient-patient in accordance with Public Law 90-248, §1907.

(6) refuse to participate as a subject in experimental research. An informed written consent must be obtained and retained in the recipient-patient's medical record if the recipient-patient is to participate in experimental research.

.014. Work Activity.

(a) The facility must not require a recipient-patient to perform services for the facility.

(b) The facility may permit a recipient-patient to perform personal housekeeping tasks or other services at the facility if the recipient-patient so requests, and if the attending physician documents in the recipient-patient's medical record that the tasks would be therapeutic.

.015. Restraints. The facility may not mentally or physically abuse recipient-patients or subject them to corporal punishment. The facility may not subject any recipient-patient to restraints for purposes of discipline or convenience.

(1) Imposition of restraints. The facility may subject a recipient-patient to restraints:

(A) only during an emergency in which failure to use restraints is likely to endanger the health or safety of the recipient-patient or others, and

(B) only upon the written order of a physician.

(i) The physician's written order for restraints must be for a specified period of time and must

document the necessity of the restraint. If the facility takes a physician's verbal order for restraints, it must be in accordance with Rule 326.29.31.017(c)(2).

(ii) The facility may not re-impose restraints except upon the written order of a physician.

(2) Observation. The nursing staff must observe restrained recipient-patients for possible side effects and complications and must record the observation in the medical record.

.016. Statement of Services and Bills.

(a) At the time of admission, the facility must provide the recipient-patient with a written statement of all facility services. This includes those offered on a needed basis, and related charges, including any extra charges for services not covered under Medicare or Medicaid or by the facility's basic daily or monthly rate.

(b) Upon request from a recipient-patient, family member, responsible party, or representative payee, the facility must provide a list of all services and charges.

(c) The facility must inform each recipient-patient, in writing, at least 30 days in advance of the effective date of any changes in rates for services not covered by Medicaid.

(d) A facility must bill for charges not covered by Medicaid at least once a month. Each bill must itemize all extra charges by general category.

(e) The recipient-patient must be allowed complete freedom of choice to obtain any Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to perform the services, unless the provider causes the facility to be out of compliance with the standards for participation. A facility must not require recipient-patients to purchase supplies or services, including pharmaceutical supplies or services, from the facility itself or from any particular vendor. The recipient-patient has the right to be informed of prices before purchasing any item or services from the facility, except in an emergency.

.017. Religious Activities. Recipient-patients, who are able and wish to do so, must be assisted to attend religious services. Recipient-patients' requests to see members of the clergy must be honored and privacy must be provided during visits.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824494

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: December 4, 1981

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

Medical Review and Re-evaluation

326.29.72.001-.004

Texas Department of Human Resources adopts new Rules 326.29.72.001-.004 with changes to the pro-

signs stating that standards of care will be met. Contract management is administrative procedure and is not included in rule material. Several commentors asked that subsection (h)(2)(B) be changed to allow a physician five days instead of two days to respond to the findings of a utilization review committee. Federal regulations require the two-day period so it has not been changed.

326.29.72.004 (Medical Care Evaluation Studies)—Commentors asked if both Title XVIII and Title XIX certified facilities are required to do medical care evaluation studies. The answer is yes, according to federal regulations. Several commentors asked how files of medical care evaluation studies are supposed to be maintained by Texas Department of Health, long-term care units and why. This is federal requirement, so the files must be maintained. Texas Department of Health may outline a procedure and format of its choice for filing these studies and for reviewing the results of the studies after they are forwarded to the long-term care units, as specified.

The department revised some of the language in Rules 326.29.72.001-.004 for clarification purposes.

These rules are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Utilization Review. The facility must have a written utilization review plan that provides for a review of each Medicaid recipient-patient's services that are provided. The facility must ensure that the plan meets utilization review plan requirements.

(1) The Texas State Plan for Title XIX requires a process of utilization review for nursing facilities participating in the Texas Medical Assistance program.

(2) Utilization reviews may be performed by a facility utilization review committee or an independent professional group representing the medical care or service to be reviewed. Determination of the facility utilization review committee composition and selection of members are made by the facility.

(3) The utilization review plans and procedures are in accordance with the policies of the Department of Health and Human Services as required by 42 Code of Federal Regulations 456.

(4) Utilization review encompasses patterns of care and services within a nursing facility. This review is within the context of medical necessity, appropriateness, and availability of facilities and services.

(5) The Department of Human Resources is responsible for approving utilization review plans and procedures under Title XIX for participating nursing facilities which use their own utilization review committees.

(6) The long-term care units of the Texas Department of Health, acting as independent professional review units, may perform utilization review functions if necessary.

(7) Independent medical reviews, as a utilization review function, are performed by medical review teams composed of health and social service personnel. The medical reviews are under the direct supervision of a

posed text published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4519).

The rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing medical review and re-evaluation as part of the services to recipient-patients in nursing facilities.

The department received nine comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, David Harmon Enterprises, and National Living Centers.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.72.001 (Utilization Review)—One commentor asked that the level-of-care criteria be included as part of the utilization review standards. The department disagrees because the criteria for levels of care are used in determining the eligibility of a recipient for nursing facility care. They are not facility standards. One commentor felt that the word "common" in this rule was ambiguous. The department agrees and it has been deleted.

326.29.72.002 (Periodic Medical Review and Inspections)—One commentor pointed out that the requirement for participation by social service personnel of the Texas Department of Health, long-term care units is in conflict with Rule 326.29.72.003(v)(1)(C) which requires input by medical social consultants. This has been corrected in the latter referenced rule to read "social workers in the unit."

326.29.72.003 (Utilization Review Plan)—A commentor asked if two or more nursing facilities can use the same utilization review committee. The department will decide this at the time the facility's utilization review committee is reviewed and approved. Another commentor felt that subsection (a) conflicts with Rule .001(2) which says utilization review may be performed by a facility utilization review committee. This is not a conflict because federal regulation allows both options. A commentor asked if a physician could have ownership in any nursing facility. The answer is no, according to federal regulations. Texas Department of Health staff asked that wording in subsection (f)(3) be changed to reflect "state office bureau" instead of "state office division." This change has been made. A commentor asked that subsection (g)(7) state the penalty imposed on a facility for not submitting forms on time. The penalty would be a breach of contract, since the contract is the agreement which the facility

Texas Department of Health, long-term care unit physician.

.002. Periodic Medical Review and Inspections.

(a) The Texas Department of Health provides a periodic medical review for recipient-patients residing in intermediate care or skilled nursing facilities.

(b) The regular medical review of care and services is conducted based on the policies of the Department of Health and Human Services.

(c) The long-term care units of the Texas Department of Health are responsible for all independent medical review evaluation procedures under Title XIX for participating skilled nursing and intermediate care facilities.

(d) Medical reviews are performed by the Texas Department of Health long-term care units, composed of physicians and other health and social service personnel.

(e) Medical review includes review of the level of care and services required and supplied to recipient-patients by the nursing facility. The medical review determines if the care and service provided by the facility staff meet the health needs of recipient-patients. The written medical care plan, the rehabilitation plan, and any alternate care plan are also reviewed.

(f) Facility staff must cooperate with and fully support independent professional review team members during periodic on-site reviews for the purpose of personal contact with and observation of each recipient-patient receiving medical assistance, and the review of each recipient-patient's records, including the individual plan of care.

.003. Utilization Review Plan.

(a) Each Title XIX nursing facility may choose whether an approved utilization review committee or the Texas Department of Health, long-term care units will conduct utilization review activities for the Title XIX Medicaid recipient-patients.

(b) The facility must obtain approval of the utilization review committee from the single state agency before being reimbursed for the services.

(c) Professionally developed written criteria are used to evaluate the necessity for continued stay. Criteria are based on current regional health care delivery norms and are developed and maintained by the single state agency.

(d) Plan objectives:

(1) to promote high quality recipient-patient care which meets the needs of the recipient-patient;

(2) to determine if needed services are available and provided on a continuing basis;

(3) to ensure that services provided are necessary;

(4) to review the plan of care and post-care planning activities;

(5) to identify patterns of care that are ineffective and to assist in establishing efficient provision of services through educational programs.

(e) Facility utilization review committee.

(1) The facility determines committee membership in accordance with bylaws of the facility and rules and regulations of the Title XIX program including:

(A) Appointment authority for committee membership.

(B) The committee must have at least two physicians currently licensed to practice medicine or osteopathy in Texas, as members.

(C) Committee membership also must include other professional representatives such as staff from medical, administrative, nursing, medical records, social, and pharmacy services. The number of participants and a description of the nature and extent of their participation is included in the plan.

(D) Members of the review committee must certify that they have no financial interest in this or any other nursing facility and will accept responsibilities as outlined in this plan.

(E) A member of the committee may not participate in the review of care for any recipient-patient with which he is professionally involved.

(F) The committee may select nonphysician reviewers who are qualified to carry out the duties of patient care coordinator. The patient care coordinator must be educated and trained in medical terminology to evaluate medical care against established criteria.

(G) A physician committee member is available for consultation about utilization review committee activities.

(H) The committee chairman must report any changes in the composition of the utilization review committee, such as resignations, to the Texas Department of Human Resources.

(I) All contracts are negotiated with the utilization review committee. The negotiated rate is based either on an hourly basis or on a per patient basis at the discretion of the Texas Department of Human Resources.

(2) The utilization review committee as a whole must meet:

(A) Monthly (not less than 21-day interval between regular meetings).

(B) Special meetings may be called any time the chairman of the committee finds it necessary. Subcommittee meetings of the utilization review committee may be called any time the chairman of the committee finds it necessary.

(3) Internal records and reports. The secretary of the utilization review committee must maintain information and data required to ensure confidentiality and compliance with applicable regulations.

(A) The facility must ensure that minutes, worksheets, or records of each committee or subcommittee meeting, including actions recommended and their reasons, are maintained. The proceedings and minutes of the utilization review committee are open for review by fiscal intermediaries, state agencies, and the Department of Health and Human Services, as necessary for the administration of the Medical Assistance program.

(B) Records are maintained on problem areas requiring special committee considerations.

(C) Utilization review committee reports are distributed only to the administrator and the specific department involved.

(4) External records and reports. The secretary of the utilization review committee must maintain information and data as required to ensure confidentiality and

compliance with applicable regulations.

(A) Copies of reports from utilization review committee continued stay reviews are forwarded to the long-term care unit of the Texas Department of Health on the prescribed forms.

(B) Ideas, procedures, and techniques for health care delivery that may be recommended for use in other areas are forwarded to the long-term care unit of the Texas Department of Health. This is not limited to medical care evaluation studies.

(f) Long-term care unit, utilization review committee.

(1) Each long-term care unit, utilization review committee will consist of the following:

(A) All physicians in the unit. If the unit has one physician, then a Texas Department of Health, state office physician will be the second physician member.

(B) Registered nurses in the unit.

(C) Social workers in the unit.

(D) Other staff as needed.

(2) A physician is available for consultation about utilization review activities.

(3) The long-term care unit physician receives technical and administrative supervision from the appropriate Texas Department of Health, state office bureau staff.

(g) Requirements of the review process. A continued-stay review is the determination of the need for continuing nursing facility care and a re-evaluation of the established level of care.

(1) The review process is initiated when the field-based, long-term care unit of the Texas Department of Health is notified that a Medicaid applicant or recipient is requesting vendor assistance for care in a contracted nursing facility. This review includes an initial assessment of the feasibility of an alternate care placement for the individual. An admission or pre-admission review is accomplished by the long-term care unit. The pre-admission level of care is valid until admission into a nursing facility or up to 30 days. Then, the admission level of care (certification for necessity of health care services) remains valid for up to 180 days from the date of admission for intermediate care recipient-patients and 30 days for skilled care recipient-patients.

(2) Physicians' 60-day recertification statements to document the necessity for continued health care are placed in each recipient-patient's medical record and reviewed on a regular basis during the utilization review process. The recertification should state, "I hereby certify that this patient continues to require nursing facility care."

(3) Continued-stay reviews are the responsibility of the long-term care unit if the facility has not been approved for the facility-based utilization review option. Reviews are based on facility documentation required by the Department of Human Resources. The continued stay review is done every 30 days for the first 90 days and every 90 days thereafter for skilled care recipient-patients and every 180 days for intermediate care recipient-patients.

(4) For facility-based utilization review committees, the patient care coordinator may be delegated the responsibility of the review of patient care activities and establishment of continued stay in accordance with pro-

fessionally developed written criteria. The patient care coordinator must ensure that the plan of care shown on the required forms conforms to criteria for the diagnosis of the problem involved. For conditions not listed in the criteria, a physician member of the utilization review committee must determine the continued stay.

(5) All utilization review committee continued-stay reviews must be accomplished by using forms required by the Texas Department of Human Resources. The committee must send the completed forms to the long-term care unit before the expiration of the continued stay date.

(6) Independent professional reviews by the long-term care unit serve as a continued-stay review.

(7) For long-term care unit utilization reviews:

(A) The facility must ensure that all forms are submitted to the local long-term care unit serving the facility before the expiration of the continued-stay review date.

(B) All forms must be fully completed and contain all current information.

(C) Any forms that are returned for proper completion must be received by the long-term care unit office before the expiration of the continued-stay date.

(D) The facility may submit the medical-nursing care evaluation requesting a change in level of care whenever there are changes in diagnosis or substantial change in the plan of care. This will serve as a continued-stay review and will establish a new continued-stay date.

(E) Periodic medical reviews by the long-term care unit serve as a continued-stay review.

(8) Continued-stay reviews are initiated by facility staff or the long-term care unit staff during a visit to the facility, if the recipient-patient's condition has significantly improved or worsened. If a substantial change in the medical plan of care is indicated, a new level of care is required, based on an evaluation of the recipient-patient's current medical needs. This level of care establishes a new continued-stay date.

(9) Continued-stay reviews are accomplished not later than the established continued-stay date and establish a new continued-stay date.

(10) If the recipient-patient is discharged or transferred to another section of the facility, the administrator of the facility must submit a patient transaction notice showing the change.

(h) If a determination is made that criteria for continued stay are not met:

(1) Facility-based utilization review:

(A) If a non-physician representative determines that the written criteria for continued stay are not met, the case must be referred to the committee, or a subgroup thereof, which contains at least one physician. If, after review, the committee or subgroup agrees that continued stay is not medically necessary or appropriate, the attending physician is notified within two working days and allowed an opportunity to present his views and any additional information about the recipient-patient's need for continued stay. This notification must be documented. If a physician member of the committee does the continued-stay review, instead of a nonphysician reviewer, and he finds that continued stay is not

necessary, no referral to the committee or subgroup is necessary, and the physician may notify the attending physician directly.

(B) If, after referral of a questioned case to the committee or sub-group thereof, the physician determines that continued stay is justified, the attending physician is notified, and a continued-stay is justified, the attending physician is notified, and a continued-stay review date is established.

(C) During the continued-stay review process, the utilization review committee should determine those cases in which treatment and service are ineffective. Steps should be taken to ensure that those cases receive closer professional scrutiny by the physician reviewer.

(2) Long-term care unit utilization review.

(A) If the long-term care unit nurse determines that the written criteria for continued stay are not met, the nurse's decision is reviewed by the long-term care unit physician. If the physician agrees, the attending physician is notified within two working days, and allowed an opportunity to present his views and any additional information about the recipient-patient's need for continued stay. This notification must be documented. If the long-term care unit physician performs the continued-stay review instead of the long-term care unit nurse and finds that the continued stay is not necessary, he may notify the attending physician directly.

(B) If the attending physician does not respond or contest the findings of the committee or sub-group or those of the physician who performed the continued-stay review within two working days, then the findings are final. Written notification of final determination must be sent to the attending physician, the recipient-patient (or the next of kin), the facility administrator, and the state office of the Texas Department of Human Resources no later than two days after the determination, and in no event later than three working days after the end of the assigned continued-stay period. If possible, the written notification should be received by all parties within the stated time period.

(C) If the attending physician contests the findings of the committee or subgroup, or those of the physician who performed the continued-stay review, or if he presents additional information about the need for continued stay, at least one additional physician member of the utilization review committee must review the case. If the two physician members determine that the recipient-patient's stay is not medically necessary or appropriate after considering all of the evidence, their determination becomes final. Written notification of this decision must be sent to the attending physician, recipient-patient (or next of kin), facility administrator, and the state office of the Texas Department of Human Resources no later than two days after the decision, and in no event later than three working days after the end of the assigned continued-stay period.

(D) A nonphysician must not make a final determination that a recipient-patient's stay is not medically necessary or appropriate.

(E) A "working day" is defined as any 24-hour period, Monday through Friday, excluding state and federal holidays.

(F) Recipient-patient's appeals will be process-

ed as outlined in the Fair Hearings, Fraud, and Civil Rights Handbook of the Texas Department of Human Resources.

(i) Confidentiality. If the facility-based utilization review option is selected, all information that contains personal identification or descriptions which would identify a recipient-patient or provider of health care is personal and private and must be kept confidential.

(1) Personal identifying information (except for PCN numbers) must be deleted from all records, reports, and minutes of formal studies or utilization review meetings which are forwarded to the Texas Department of Human Resources.

(2) Records, reports, and minutes which have been de-identified must still be treated as confidential.

(3) All confidential material will be mailed to the Texas Department of Human Resources in a sealed envelope marked "Confidential."

.004. *Medical Care Evaluation Studies.* A medical care evaluation study is required in SNFs and is defined as a form of health care review in which an in-depth assessment is made of the quality of the delivery and organization of health care services. It is designed to ensure that health care services are appropriate to the recipient-patient's needs and are of optimal quality within available resources and consistent with achievable goals and health care organization. Studies should be capable of identifying deficiencies in the quality of care so that specific improvement programs will be directed at their causes.

(1) Medical care evaluation studies are done by each facility according to the requirements and procedures established by the Texas Department of Human Resources and consistent with federal requirements. A facility must have at least one study in progress at all times and must complete at least one study each year.

(2) The long-term care unit of the Texas Department of Health maintains a file of medical care evaluation studies that includes:

- (A) topic of study selected;
- (B) data source;
- (C) criteria for the study;
- (D) parameters of the sample;
- (E) results;
- (F) recommendations.

(3) Results of the medical care evaluation studies are forwarded to the long-term care unit of the Texas Department of Health.

(4) The medical care evaluation process is to improve care by ensuring that acceptable or proven measures are being used by health care practitioners and providers.

(5) Process overview.

(A) Begin short duration studies which focus on a particular problem area in health care.

(B) Study the topic based on a carefully defined number of recipient-patients' medical records.

(C) Some studies may focus on a problem area or topic which involves physician care only.

(D) Perform the study in a single facility. Staff of the facility develop criteria for the study.

(E) Collect data from current or past recipient-patients' medical records. Analyze the data retrospectively.

(F) Note data abstracted for the study, which do not meet the established criteria, as a variation.

(G) The medical care evaluation, when carried to its logical conclusion, contains recommendations for the development of specific educational programs designed to improve practitioner knowledge, practitioner performance, or administrative efficiency. Medical care evaluations should establish a plan for correcting deficiencies which require activity other than educational programs.

(6) Specific requirements for project selection and development include:

- (A) Select a topic.
- (B) Define the topic.
- (C) Write the criteria.
- (D) Select the sample and collect the data.
- (E) Analyze the data.
- (F) Develop recommendations.
- (G) Implement recommendations.
- (H) Perform another audit.
- (I) Report results.

(7) Establishment of specific milestones include:

- (A) Progress report timing.
- (B) Final completion date.
- (C) Report distribution and expected feedback time.

(D) Final date for action taken as a result of this study.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 28, 1982.

TRD-824495 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982
Proposal publication date: December 4, 1981
For further information, please call (512) 441-3355
ext. 2037.

**Intermediate Care II Facility
Intermediate Care III Facility
Skilled Nursing Facility**

The Texas Department of Human Resources adopts the repeal of the following rules in the ICF II, ICF III, and Skilled Nursing Facility rule chapters without change to the proposed notices of repeal proposed in the January 13, 1982, issue of the *Texas Register* (7 TexReg 143). A new rule chapter which is a combination of ICF and SNF requirements based on federal regulations is being adopted simultaneously. The serialization of the adopted ICF/SNF rules began in the June 4 issue of the *Register*, and is completed in this issue. The combining of the ICF and SNF requirements necessitates the repeal of the department's current ICF II, ICF III, and SNF rules.

No comments were received on the proposed repeals and no changes were made to the proposals.

The following repeals are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance.

Intermediate Care II Facility

- Introduction to Standards
Rules 326.30.01.001-.005
- Definition of Terms
Rules 326.30.02.001-.006
- Eligibility of Homes for Participation
Rules 326.30.03.001, .002
- Admission Policies
Rules 326.30.04.001-.006, .009
- Administrative Management
Rules 326.30.05.001-.007
- Professional Consultants
Rules 326.30.06.001-.004
- Personnel Policies
Rules 326.30.07.001, .003-.005
- Attendant Personnel
Rules 326.30.08.001-.007
- Resident Care and Rehabilitation
Rules 326.30.09.001-.005
- Medical Review and Re-Evaluation
Rules 326.30.10.001-.019, .021-.026, .028

Pharmacy Service

- Rules 326.30.11.001, .002
- Maintenance of Recipient Daily Activity Record
Rules 326.30.12.001
- Transfer Agreement
Rule 326.30.13.001
- Dietary
Rules 326.30.14.001-.003
- Housekeeping and Maintenance Service
Rules 326.30.15.001-.003
- Physical Environment
Rules 326.30.16.001-.007
- Change in Status of Facility
Rules 326.30.17.001-.007
- Compliance with Title VI of the Civil Rights Act
Rule 326.30.18.001

Medical Review and Re-Evaluation

- Rules 326.31.10.001-.019, .021-.026
- Pharmacy Service
Rules 326.31.11.001, .002
- Clinical Records
Rule 326.31.12.001
- Transfer Agreement
Rule 326.31.13.001
- Dietary
Rules 326.31.14.001-.003
- Housekeeping and Maintenance Services
Rules 326.31.15.001-.003
- Physical Environment
Rules 326.31.16.001-.009
- Change in Status of Facility
Rules 326.31.17.001-.007
- Compliance with Title VI of the Civil Rights Act
Rule 326.31.18.001
- Services and Supplies Included in the Vendor Payment
Rules 326.31.19.001-.003
- Visits Away from Facility
Rules 326.31.20.001, .002, .004, .005
- Patient Activities and Social Services
Rules 326.31.21.001-.007

TRD-824437-824457

Services and Supplies Included in the Vendor Payment

- Rules 326.30.19.001-.003
- Visits Away from Facility
Rules 326.30.20.001, .002, .004, .005
- Patient Activities and Social Services
Rules 326.30.21.001-.007
- TRD-824416-824436

Intermediate Care III Facility

- Introduction to Standards
Rules 326.31.01.001-.005
- Definitions in Standards
Rules 326.31.02.001-.008
- Eligibility of Homes for Participation
Rules 326.31.03.001, .002
- Admission Policies
Rules 326.31.04.001-.007
- Administrative Management
Rules 326.31.05.001-.007
- Professional Consultants
Rules 326.31.06.001-.004
- Personnel Policies
Rules 326.31.07.001, .003-.005
- Nursing Personnel
Rules 326.31.08.001-.005
- Patient Care and Rehabilitation
Rules 326.31.09.001-.004

Skilled Nursing Facility

- Conditions and Eligibility for Participation
Rules 326.32.01.001, .002
- Definitions in Standards
Rules 326.32.02.001-.012
- Administrative Management
Rules 326.32.03.001-.008
- Admission Policies
Rules 326.32.04.001-.011
- Nursing Services
Rules 326.32.05.001-.009
- Dietary
Rules 326.32.06.001-.006
- Patient Care and Rehabilitation
Rules 326.32.07.001-.008, .010
- Pharmaceutical Services
Rules 326.32.08.001-.003
- Personnel Policies
Rules 326.32.09.001-.003, .005, .030
- Professional Consultants
Rules 326.32.10.001-.011
- Utilization and Medical Review of Care and Services
Rule 326.32.11.001-.009, .011-.016, .018
- Transfer Agreement with Hospitals
Rules 326.32.12.001-.003, .007
- Clinical Records
Rules 326.32.13.001-.012
- Change in Status of Facility
Rules 326.32.14.001-.004
- Physical Environment
Rules 326.32.15.001-.013
- Housekeeping and Maintenance Services
Rules 326.32.16.001-.003
- Services and Supplies Included in the Vendor Payment
Rules 326.32.17.001-.008
- Compliance with Title VI of the Civil Rights Act
Rules 326.32.18.001, .002
- TRD-824458-824475

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824416-
824475
Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982
Proposal publication date: January 13, 1982
For further information, please call (512) 441-3355,
ext. 2037.

**Legal Services
Contract Appeals
326.79.17.005-.009**

The Texas Department of Human Resources adopts Rules 326.79.17.005-.009, concerning the Contract Appeals Committee to its chapter entitled Legal Services, with changes to the proposed text published in the February 16, 1982, issue of the *Texas Register* (7 TexReg 648).

Rule 326.79.17.008 has been changed to specify that the Contract Appeals Committee membership is comprised of one member appointed by the deputy commissioner for support operations plus two members appointed by the deputy commissioner for programs. This rule also is amended to specify that once appointed, these members cannot be changed except by the appropriate deputy commissioner. Members in the position of reviewing their own or their supervisor's decisions must request that someone else be appointed. Rules 326.79.17.006 and .007 are amended to update titles of the general counsel and deputy commissioner for medical specialties. Subsection (c) of Rule 326.79.17.005 and subsection (b) of Rule 326.79.17.009 contain minor editorial clarifications.

These amendments to the department's legal services rules are needed to clarify the procedure for appointing contract appeals committee members to conform with the department's administrative structure.

These rules will function in that the department's staff and contractors will operate under these procedural clarifications.

No comments were received and the amendments are adopted with only minor editorial changes to the proposed text.

The following amendments are adopted under Human Resources Code, Title 2, Chapters 22, 31, and 32, which authorizes the department to administer public assistance.

.005. Notice of Adverse Action.

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

(c) If the department is unable to state the matters in detail at the time the initial notice of adverse action is served, the initial notice may be limited to a statement of the issues involved. Later, and with a timely applica-

tion from the appellant, a more definite and detailed statement must be furnished by the department's legal representative to the appellant not less than three days before the date set for the hearing.

.006. Request for Appeal.

(a) A contractor may appeal an adverse action by filing a written request within 10 days after receipt of the official notice of the action from the department. The request for an appeal hearing must be addressed to: general counsel, Legal Division. The request for the hearing may be in the form of a formal petition or a letter setting forth the reasons why the contractor considers he was not in violation of the contract provisions as alleged by the department.

(b) (No change.)

.007. Effective Dates of Contract Cancellation.

(a) If the department proposes to cancel a Title XIX contract with a provider of medical assistance and the contractor has asked for a hearing, the department may not carry out its proposed action before the completion of a hearing. This is true except when federal matching funds for continued contract payments are no longer available or when the contract expires by its own terms. If a nursing facility contract is to be denied, terminated, or not renewed before a requested hearing is completed, a designee of the deputy commissioner for medical specialties must offer the facility an informal reconsideration of the action before the effective date of the action and attempt to resolve the dispute. Payment may be withheld pending the hearing, but must be reinstated retroactively if the hearing decision is favorable to the contractor.

(b) Contracts with contractors other than Title XIX providers may be cancelled before the completion of the hearing process as indicated in Rule 326.79.17.005, Notice of Adverse Action.

.008. Contract Appeals Committee.

(a) A contract appeals committee has been

established to hear appeals by contractors. It is composed of:

(1) A chairman without vote. This is the general counsel of the department or designee.

(2) Three department employees each with one vote. One member is appointed by the deputy commissioner for support operations and two members are appointed by the deputy commissioner for programs. Once appointed, these members cannot be changed except by the appropriate deputy commissioner.

(b) All three voting members of the committee are required for a quorum. A majority vote is required to make a finding, conclusion, or determination.

(c) Members of the committee will not review any of their own decisions nor will they review any of their immediate supervisor's decisions. Members in this position must notify the deputy commissioner who appointed them and request that someone else be appointed in their place.

.009. Hearing Guidelines.

(a) (No change.)

(b) Notice of hearing. Within 30 days after the department's receipt of an appellant's request for a hearing, the chairman of the committee selects a date for a hearing. The appellant must be notified of the hearing date set, at least 10 days before the date of hearing.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 26, 1982.

TRD-824496

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 5, 1982

Proposal publication date: January 16, 1982

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

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Although some notices may be received too late for publication before the meeting is held, all those filed are published in the *Register*. Notices concerning state agencies, colleges, and universities must contain the date, time, and location of the meeting, and an agenda or agenda summary. Published notices concerning county agencies include only the date, time, and location of the meeting. These notices are published alphabetically under the heading "Regional Agencies" according to the date on which they are filed.

Any of the governmental entities named above must have notice of an emergency meeting, or an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published. However, notices of emergency additions or revisions to a regional agency's agenda will not be published since the original agenda for the agency was not published.

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

Texas Commission on Alcoholism

Monday, June 21, 1982, 10:30 a.m. The Texas Commission on Alcoholism will meet in the eighth floor conference room, Sam Houston Building, Austin. Items on the agenda include approval of minutes; approval of state plan; grant appeals; budget update; budget request submission; certification issues; regional Alcoholism Advisory Committee guidelines; and executive director's report. The commission will also meet in executive session.

Contact: Jane C. Maxwell, Texas Commission on Alcoholism, Sam Houston Building, Austin, Texas, (512) 475-2577.

Filed: June 7, 1982, 3:35 p.m.
TRD-824732

Texas Coastal and Marine Council

Friday, June 18, 1982, 9 a.m. The Texas Coastal and Marine Council will meet in Room 301, conference room, Ramada Inn, Hobby Airport, Houston. According to the agenda, the council will consider the following: approval of minutes of April 16, 1982, meeting; reports from Artificial Reef, Navigation Risk Management Program, and Fisheries Committees; report on Liberty Ship Artificial Reefs; biennium budget for 1984-1985; past/future projects; public

testimony; and location of August 20, 1982, meeting.

Contact: Charles L. Branton, P.O. Box 13407, Austin, Texas 78711-3407, (512) 475-4578.

Filed: June 7, 1982, 9:28 a.m.
TRD-824712

Texas Employment Commission

Tuesday, June 15, 1982, 9 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 15th and Congress, Austin. Items on the agenda summary include prior meeting notes; reports of administrative staff on Attorney General Opinion MW-474, status of Texaco case, federal legislation, ICESA meeting; fiscal year 1982 funding, fiscal year 1983 targets, E.S. and U.I. program activities, proposed procedures for filing initial claims by mail, and public information and media update; proposal for Port Brownsville placement office; staffing for Office of Commission Appeals; experimental plan for combining Corpus Christi and San Antonio districts; funding alternative for possible computer acquisition; state budget for 1984-1985 biennium; P&I fund expenditures; award of the construction project for McAllen; and agenda items for June 29, 1982, meeting. The commission will also

meet in executive session to consider premises leases and contracts, personnel matters, status report on litigation relating to outstanding suits, and attorney general opinion requests.

Contact: Pat Joiner, TEC Building, Room 656, Austin, Texas, (512) 397-4514.

Filed: June 7, 1982, 3:15 p.m.
TRD-824731

Firemen's Pension Commissioner

Monday, June 14, 1982, 1 p.m. The Administrative Division of the Firemen's Pension Commissioner will meet in Room 205-206, in the civic center auditorium, Abilene. The Firemen's Pension Commissioner will conduct workshops to discuss the pension plans under House Bill 258 and Senate Bill 411 in conjunction with the 106th annual convention of the State Firemen's and Fire Marshals' Association of Texas. The Board of Trustees for the Firefighter's Relief and Retirement Fund of Senate Bill 411, as prescribed by Texas Civil Statutes, Article 6243e.3, will also meet to discuss the retirement system.

Contact: Hal H. Hood, 503-F Sam Houston Building, Austin, Texas, (512) 475-5879.

Filed: June 3, 1982, 3:03 p.m.
TRD-824634

Office of the Governor

Tuesday, June 15, 1982, 10 a.m. The Governor's Task Force on the Incarceration of Inmates Pending Appeal of the Office of the Governor will meet at One Main Place, Strasburger and Price, attorneys and counselors, Dallas. Items on the agenda include: approval of minutes, subcommittee reports, and decision of final report to the governor.

Contact: Mark Martin, One Main Place, Dallas, Texas 75250, (214) 658-1500.

Filed: June 4, 1982, 3:13 p.m.
TRD-824679

Friday, June 18, 1982, 10 a.m. The Governor's Mayors Advisory Committee of the Office of the Governor will meet in Room 206-207, State Bar of Texas, Texas Law Center, 1414 Colorado Street, Austin. Colonel James B. Adams will give a speech on DWI legislation and anticrime legislation. Also on the agenda are general discussion and a tour of the Texas Industrial Commission.

Contact: John Sammons, P.O. Box 486, Temple, Texas 76501.

Filed: June 7, 1982, 9:20 a.m.
TRD-824713

Texas Department of Health

Saturday, June 12, 1982, 9:30 a.m. The Texas Board of Health of the Texas Department of Health will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. Items on the agenda include: minutes of the April 30 and May 1, 1982, meetings; commissioner's report; cancer risk assessment test; drinking water programs in the Texas Department of Health; proposed rules for the administration of Emergency Medical Services System Program under the preventive health care block grant and proposed rules for denial and revocation of certification of emergency medical service personnel and course instructors, examiners, and coordinators; final adoption of a fee increase for the Sanitarian Registration Program; Legislative Committee report on additions to the department's legislative package for the 68th Legislature; Budget Committee report on request to transfer funds to the Bureau of Laboratories, approval of the 1984-1985 fiscal years budget request, and salary policy for the 1984-1985 fiscal years budget request; Personnel Committee report on appointments to the Emergency Medical Service Advisory Council; announcements and comments; and meeting dates for July and August 1982. The board will also meet in executive session.

Contact: Lillie Gilligan, 1100 West 49th Street, Austin, Texas, (512) 458-7375.

Filed: June 4, 1982, 3:48 p.m.
TRD-824685

Texas Health Facilities Commission

Friday, June 18, 1982, 9:30 a.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will consider the following applications:

Certificate of Need

Parkland Memorial Hospital, Dallas
AH82-0212-009

The Community Hospital of Brazosport, Lake Jackson
AH81-1218-024

Applications for Amendment of Certificate of Need Orders

Buckner Baptist Ryburn, Dallas
AN81-0601-015A(041682)

Hillcrest Baptist Hospital, Waco
AH79-1129-040A(050782)

Spohn Hospital, Corpus Christi
AH81-0430-033A(050782)

Applications for Declaratory Ruling

North Central Texas Medical Foundation/Wichita Falls Family Practice Residency Program, Wichita Falls
AO82-0507-018
City of Lubbock
AO82-0505-005

Motion for Reconsideration/Rehearing

Vacationers Dialysis Facility, South Padre Island
AS81-0623-011

A routine business meeting will be held immediately following the open meeting.

Contact: John L. Darrouzet, P.O. Box 15023, Austin, Texas 78761, (512) 475-6940.

Filed: June 7, 1982, 9:18 a.m.
TRD-824706

Texas Department of Human Resources

Wednesday, June 16, 1982, 10 a.m. The Texas Board of Human Resources of the Texas Department of Human Resources will meet in Room 1B, 706 Bannister Lane, Austin. Items on the agenda summary include approval of fiscal 1983 operating plan and budget, and legislative appropriations request for fiscal 1984-1985; adjustments to fiscal 1982 operating plan and budget; report on Vendor Drug Program co-payments; final rules—weatherization pro-

gram, home energy assistance program, recipient utilization control policies and procedures in the Medicaid program, federally mandated changes in Medicaid eligibility and the Food Stamp program; technical amendments to program policies and procedures; various reports; and commissioner's report.

Contact: Bill Wood, P.O. Box 2960, Austin, Texas 78769, (512) 441-3355.

Filed: June 8, 1982, 9:35 a.m.
TRD-824740

State Board of Insurance

Tuesday, June 15, 1982, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, in Docket 6853—application for admission of Modern Service Insurance Company, Arden Hills, Minnesota.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: June 7, 1982, 1:19 p.m.
TRD-824719

Wednesday, June 16, 1982. The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin. Times and dockets are as follows:

9 a.m. Docket 6846—application for admission by BLC National Insurance Company, Wilmington, Delaware.

1:30 p.m. Docket 6796—consideration of alleged violations of the Texas Insurance Code by Callahan Abstract Company.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: June 7, 1982, 1:19 p.m.
TRD-824720, 824721

Friday, June 18, 1982. The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin. Times and dockets are as follows:

9 a.m. Docket 6830—consideration of collateral loan to Lone Star Ranch by North America Life Insurance Company, Juliff.

1:30 p.m. Docket 6851—application of Western Preferred Corporation, Denver, Colorado, to acquire control of United Fidelity Life Insurance Company, Dallas.

Contact: John Brady for Docket 6830, J. C. Thomas for Docket 6851, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287 and 475-4353, respectively.

Filed: June 7, 1982, 1:20 p.m.
TRD-824722, 824723

Monday, June 21, 1982, 2 p.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, in Docket 6849—consideration of charter amendments to Texas Compensation Insurance Company, Dallas, increasing its authorized capital stock from \$150,000 to \$2.5 million.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4353.

Filed: June 7, 1982, 1:20 p.m.
TRD-824724

Wednesday, June 23, 1982, 9 a.m. The State Board of Insurance will hold a public hearing in Room 414, 1110 San Jacinto Street, Austin, to consider the request of Esco Elevators, Inc., for revision of liability insurance modifier.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, (512) 475-2950.

Filed: June 4, 1982, 9:05 a.m.
TRD-824644

Thursday, June 24, 1982, 3 p.m. The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. Items on the agenda include: a presentation of annual report by Texas Workers' Compensation Assigned Risk Pool, and motion for rehearing filed by council of co-owners of Saida Towers I Condominium Association.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: June 4, 1982, 9:05 a.m.
TRD-824645

Texas Commission on Jail Standards

Wednesday, June 23, 1982, 8:30 a.m. The Texas Commission on Jail Standards will meet in Room 206, Law Center, 1414 Colorado, Austin. Items on the agenda include reading and approval of minutes of last meeting, May 28, 1982; director's report; old business—Dallas update, Midland County, Waller, Jim Hogg, Bell, Hockley, Maverick, Hunt, Rains, Brooks, Montgomery, balanced diets rule,

adoptions of rules; new business—Randall, Crockett, Callahan, Smith, Mitchell, and Stonewall Counties; and application for variances for Hemphill, Hudspeth, Lipscomb, Randall, Sutton, Tarrant, Fisher, and Reeves. The commission will also meet in executive session.

Contact: Robert O. Viterna, 411 West 13th, Suite 900, Austin, Texas, (512) 475-2716.

†: June 8, 1982, 8:59 a.m.
TRD-824738

Texas Juvenile Probation Commission

Wednesday, June 16, 1982, 11 a.m. The Texas Juvenile Probation Commission will conduct a public hearing in the north hall of the El Paso Convention Center, El Paso. Items on the agenda include: public hearing on standards for juvenile boards, probation officers, and facilities; approval of minutes of May 14, 1982, meeting; staff reports regarding operations, 1982-1983 budget, extension of contract expenditure period, salary increase for unclassified position, and allocation of unexpected funds; determining the 1984-1985 budget request; and designation of time and location of next public hearing.

Contact: Judy Culpepper, P.O. Box 13547, Austin, Texas 78711, (512) 475-2563.

Filed: June 3, 1982, 2:03 p.m.
TRD-824633

Addition to the above agenda:

The commission will also consider the educational stipend amendment.

Contact: Judy Culpepper, P.O. Box 13547, Austin, Texas 78711, (512) 475-2563.

Filed: June 4, 1982, 10:40 a.m.
TRD-824649

Lamar University

Wednesday, June 9, 1982, 10:30 a.m. The Lamar University Board of Regents made an addition to the agenda of meeting held at L.U. Orange, 410 Front Street, Orange. The addition concerns approval of annual application for federally funded vocational education programs—school year 1982-1983.

Contact: Andrew J. Johnson, P.O. Box 10014, Beaumont, Texas 77710, (713) 838-8403.

Filed: June 4, 1982, 2:19 p.m.
TRD-824670

**Texas Board of Land Surveying
Thursday and Friday, June 24 and 25, 1982,
2 p.m. and 8 a.m., respectively.** The Texas Board of Land Surveying will meet in Suite 210W, 1106 Clayton Lane, Austin. According to the agenda, the board will approve minutes of previous meeting; consider new applications; reconsider old applications and correspondence, discuss examination procedures, questions, and preparation of August exam; consider the Surveyor in Training Committee report, interviews; and new business.

Contact: Betty J. Pope, 1106 Clayton Lane, 210 West, Austin, Texas 78723.

Filed: June 4, 1982, 9:03 a.m.
TRD-824647

Board of Law Examiners

**Friday and Saturday, June 11 and 12, 1982,
8:30 a.m., daily.** The Board of Law Examiners will meet at the Texas Law Center, 1414 Colorado, Austin. Items on the agenda include: minutes of the April 1982 meeting, review current budget, approve state appropriation request, consideration of individual questions of eligibility, hearings on moral character and fitness, discussion of examination procedures and preparation of July 1982 examination questions, policy on applicants convicted and on probation, policy on what constitutes lawful practice, and policy on how long bar exam results are valid.

Contact: Wayne E. Denton, Texas Law Center, Suite 505, Austin, Texas 78701, (512) 475-4137.

Filed: June 3, 1982, 12:52 p.m.
TRD-824631

Texas Department of Mental Health and Mental Retardation

Friday, June 11, 1982, 1 p.m. The Ad Hoc Committee on Educational Programs (TDMHMR System) of the Board of the Texas Department of Mental Health and Mental Retardation (MHMR), has made additions to the agenda of a meeting to be held in the State Board of Education hearings room, 150 East Riverside Drive, Austin. The additions concern ICF/MR Program and education services; publicly funded MHMR services for emotionally disturbed children and adolescents; development of a coordinate assessment/evaluation and referral effort between school districts' admissions, referral, and discharge process and TDMHMR's diagnostic and evaluation process; funding for educational services in state schools for the mentally retarded, and pending and contemplated litigation.

Contact: Gary E. Miller, M.D., P.O. Box 12668, Austin, Texas 78711, (512) 465-4588.

Filed: June 3, 1982, 1:40 p.m.
TRD-824632

Texas Municipal Retirement System

Saturday, June 19, 1982, 9 a.m. The Board of Trustees of the Texas Municipal Retirement System will meet at Lakeway, World of Tennis, Lakeway. According to the agenda summary, the board will hear and approve minutes of March 29, 1982, regular meeting and May 17, 1982, special meeting; review service, disability, and supplemental disability retirements; review supplemental death benefits payments; review and approve financial statements; present 1981 annual report; present 1981 actuarial reports and approve contribution rates for 1982; review and approve supplemental benefits and supplemental death benefits contribution rates for 1982; hear audit report for 1981; consider and act upon proposed amendment to the rules regarding calculation and types of benefits; initial discussion of possible amendments to the TMRS Act; consider action in response to proposed federal pension legislation; selection of auditor for fiscal year 1982 operations; hear reports of actuary, legal counsel, and director; and consider any other business to be heard.

Contact: Jimmie L. Mormon, 1200 IH 35 North, Austin, Texas 78701, (512) 476-7577.

Filed: June 3, 1982, 3:17 p.m.
TRD-824638

Texas State Board of Pharmacy
Wednesday and Thursday, June 22 and 23, 1982, 8 a.m., daily. The Texas State Board of Pharmacy will meet in the city coliseum, Bouldin Avenue and Riverside Drive, Austin. According to the agenda, the board will be conducting examinations for licensure of pharmacists. The Texas Jurisprudence and NABPLEX Examination will be administered.

Contact: Priscilla Jarvis, 211 East Seventh, Suite 1121, Austin, Texas 78701, (512) 478-9827.

Filed: June 4, 1982, 9:04 a.m.
TRD-824646

Texas State Board of Podiatry Examiners

Thursday-Monday, June 17-21, 1982.

June 17, 1982, 11 a.m. The Texas State Board of Podiatry Examiners will meet in Suite 503, Executive Office Building, Austin, to conduct a routine business meeting which includes discussion and possible adoption of rules on anesthesia. The board will also discuss the budget for the 1984-1985 fiscal years, have orientation of the new board members, and inspect credentials of the candidates to take the examination.

The Texas State Board of Podiatry examiners will meet at the Sheraton Crest Hotel, 111 East First Street, Austin, on the following dates. Times and agendas are also listed below:

June 18, 9 a.m.—examination for licensure

June 19, 8 a.m.—continue examinations, to be followed by oral examinations

June 20, 9 a.m.—oral examinations to be completed

June 21, 9 a.m.—compiling of the grades by the board members

Contact: J. C. Littrell, D.P.M., 411 West 13th Street, Austin, Texas, (817) 754-1811.

Filed: June 7, 1982, 1:40 p.m.
TRD-824725

Texas Pork Producers Board

Wednesday, June 16, 1982, 7:30 p.m. The Texas Pork Producers Board of the Texas Department of Agriculture will meet in the conference room, Texas Tech Livestock Arena, Indiana Avenue and Brownfield Highway, Texas Tech campus, Lubbock. Items on the agenda include committee reports; approval of proposed 1982-1983 budget; election of board officers; and induction of new board members.

Contact: Ken Horton, 8330 Burnet Road, Northwest Office Building, Room 108, Austin, Texas 78758, (512) 453-0615.

Filed: June 3, 1982, 4:40 p.m.
TRD-824642

Public Utility Commission of Texas

Tuesday, June 15, 1982, 2 p.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800

Shoal Creek Boulevard, Austin, for a prehearing conference in Docket 4401—application of William Holloman doing business as Cedar Shores Water Service for a rate increase.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 3, 1982, 4:11 p.m.
TRD-824641

Thursday, June 17, 1982, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin, to hold a rescheduled prehearing conference in Docket 4480—application of Luella Water Supply Corporation for a cease and desist order against the City of Sherman. This prehearing conference was originally scheduled for June 1, 1982.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 4, 1982, 9:03 a.m.
TRD-824648

Monday, August 2, 1982, 9:30 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin, to conduct a hearing in Docket 4488—application of Cherokee County Electric Cooperative Association for a systemwide rate increase.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 7, 1982, 1:57 p.m.
TRD-824729

State Purchasing and General Services Commission

Thursday, June 17, 1982, 1:30 p.m. The State Purchasing and General Services Commission will meet in Room 916, L.B.J. Building, 111 East 17th Street, Austin. Items on the agenda include a status report on and review of budget submission for fiscal years 1984 and 1985; select name for old American Bank building; review vendor performance procedures; status reports on G. J. Sutton Complex, William B. Travis Building, and the John H. Winters Human Services Center; report on bidders mailing list on 3.09 purchase transaction; review tabulation of questionnaires on copying machines; monthly reports; and set date and time for next regular meeting of

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the commission. The commission will also meet in executive session to review personnel matters and staffing requirements.

Contact: Homer Foerster, P.O. Box 13047, Austin, Texas 78711, (512) 475-2211.

Filed: June 8, 1982, 9:17 a.m.
TRD-824736

Railroad Commission of Texas

Monday, June 14, 1982, 9 a.m. The following divisions of the Railroad Commission of Texas will meet at 1124 IH 35 South, Austin. The agendas and meeting rooms follow.

The Administrative Services Division will meet in the first floor auditorium to consider and act on the divisions director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 475-1211.

Filed: June 4, 1982, 11:09 a.m.
TRD-824650

The Automatic Data Processing Division will meet in the first floor auditorium to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1204.

Filed: June 4, 1982, 11:11 a.m.
TRD-824651

The Flight Division will meet in Room 107 to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1103.

Filed: June 4, 1982, 11:10 a.m.
TRD-824652

The Gas Utilities Division will meet in Room 107 to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 475-0461.

Filed: June 4, 1982, 11:13 a.m.
TRD-824653

The Office of Information Services will meet in the first floor auditorium to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711.

Filed: June 4, 1982, 11:13 a.m.
TRD-824654

The Liquefied Petroleum-Gas Division will meet in the first floor auditorium to consider §9.7 proposed amendment relating to general applicability and requirements-Division 5; §§9.171-9.194 proposed for publication in the *Texas Register* for public comments; and §§9.181-9.192, Division 5, relating to motor and mobile fuel installations, proposed for repeal. The division will also consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Hugh F. Keepers, P.O. Drawer 12967, Austin, Texas 78711.

Filed: June 4, 1982, 11:14 a.m.
TRD-824655

Addition to the above agenda:

Consideration of new §§9.171-9.194 proposed for emergency adoption, and emergency repeal of §§9.181-9.192.

Contact: Hugh F. Keepers, P.O. Drawer 12967, Austin, Texas 78711.

Filed: June 4, 1982, 11:14 a.m.
TRD-824656

The Oil and Gas Division will meet in the first floor auditorium for consideration of various matters falling within the Railroad Commission's oil and gas regulatory jurisdiction.

Contact: Jan Burris, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1307.

Filed: June 4, 1982, 11:12 a.m.
TRD-824657

Additions to the above agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Madalyn J. Girvin, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1273.

Filed: June 4, 1982, 11:12 a.m.
TRD-824658

Consideration of NGPA Docket F-10-030688, application of Pioneer Production Corporation for a seasonally affected determination on the M. W. Broyles Well Number 1, ID 022397, in the Mammoth Creek, North (Cleveland) Field, Lipscomb County.

Contact: Priscilla Hubenak, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1292.

Filed: June 4, 1982, 11:12 a.m.
TRD-824659

The Personnel Division will meet in the first floor auditorium to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Herman L. Wilkins, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1120.

Filed: June 4, 1982, 11:10 a.m.
TRD-824660

The Office of Special Counsel will meet in the third floor conference room to consider and act on the division director's report relating to pending litigation and other budget, administrative, and personnel matters.

Contact: Walter Earl Lillie, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1186.

Filed: June 4, 1982, 11:10 a.m.
TRD-824661

The Surface Mining and Reclamation Division will meet in Room 107 to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: J. Randel (Jerry) Hill, 104 West Riverside Drive, Austin, Texas, (512) 475-8751.

Filed: June 4, 1982, 11:10 a.m.
TRD-824662

The Transportation Division will meet in the first floor auditorium, Room 107, for consideration of various matters falling within the Railroad Commission's transportation regulatory jurisdiction.

Contact: Owen T. Kinney, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1330.

Filed: June 4, 1982, 11:11 a.m.
TRD-824664

Additions to the above agenda:

Consideration of Docket 004441A1N (United Parcel Service).

Contact: Owen T. Kinney, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1330.

Filed: June 4, 1982, 11:09 a.m.
TRD-824665

School Land Board

Tuesday, June 15, 1982, 10 a.m. The School Land Board will meet in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Items on the agenda include approval of the minutes of the previous board meeting; pooling agreement amendment, pooling applications; excess acreage application; coastal public lands—cabin permit transfer request; and coastal public lands report—cabin permit renewals.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 835, Austin, Texas, (512) 475-2071.

Filed: June 7, 1982, 3:39 p.m.
TRD-824733

Texas A&M University System

Wednesday, June 9, 1982. Committees of the Board of Regents of the Texas A&M University System met at MSC annex, Texas A&M University, College Station. The committees, times, and agenda summaries follow.

10:30 a.m. The Committee for Service Units considered authorization for lease agreements for Southton Farm Property in San Antonio—TEEX; establishment of two distinguished research chairs—TEES; designation of a TEES distinguished research chair in honor of Dr. Fred J. Benson—TEES; establishment of the Texas Engineering Experiment Station research fellows program—TEES; and establishment of the Institute for Ventures in New Technology (INVENT)—TEES.

11:30 a.m. The Committee on Mineral Leases considered authorization for seismic survey permits on system property—TAMUS, made recommendation to the board of regents, and received a briefing on the Tom Slick Trust—Mineral Classified Land in Starr County.

2 p.m. The Planning and Building Committee considered cancellation of unexpended balances of appropriations; contract action report; report of construction project appropriations/authorizations; action on bids, appropriation for design, and revision to budget—TAMU; appropriation for detailed design—TSU; action on bids—PVAMU; appropriation for preliminary design—TAES; facility needs for TSU; and interim report of

physical facilities comparability study—PVAMU.

Contact: Robert G. Cherry, Texas A&M University System, College Station, Texas, 77843-1123, (713) 845-4334.

Filed: June 3, 1982, 2:55 p.m.
TRD-824635, 824636, 824637

Thursday, June 10, 1982, 8:30 a.m. The Texas A&M University System Board of Regents, Committee of the Whole, will meet in the Memorial Student Center Annex, Texas A&M University, College Station. Items on the agenda include consideration of the following for recommendation to the board: construction for the Texas A&M University System; appointment of administrative personnel; funding for computer equipment—TAMU; authority to operate revolving fund—TAMUS; authority to supplement budgets—TAMU; approval of policy guidelines for legislative budget requests—TAMUS; perquisites for presidents at TSU and PVAMU: authority to approve travel reimbursements—TAMUS; renewal of insurance program—TAMUS; agreement to construct an aviation facility—TAMU; request for approval of holiday schedule—TAMUS; honorary resolution; confirmation of budget and fiscal changes and personnel actions, appointments, promotions, terminations, gifts, grants, loans, and bequests—TAMUS; and proposed study of faculty salaries and proposed study of physical facilities—PVAMU.

Contact: Robert G. Cherry, Texas A&M University System, College Station, Texas 77843-1123, (713) 845-4334.

Filed: June 4, 1982, 2:15 p.m.
TRD-824675

Friday, June 11, 1982, 8:30 a.m. The Texas A&M University System Board of Regents will meet in the Memorial Student Center Annex, Texas A&M University, College Station. Items on the agenda summary include consideration of planning and construction projects; lease agreements; designation of research chair; establishment of Institute for Ventures in New Technology; statement of purpose—TAMU; consideration of various fees; honorary title; appointment of administrative personnel; authority to operate revolving fund; supplement budgets; approval of policy guidelines for legislative budget requests; authority to approve travel reimbursement; renewal of insurance programs; holiday schedule; honorary resolu-

tion; confirmation of budget and fiscal changes and personnel actions, appointments and promotions, terminations and gifts, grants, loans, and bequests.

Contact: Robert G. Cherry, Texas A&M University System, College Station, Texas 77843-1123, (713) 845-4334.

Filed: June 4, 1982, 2:14 p.m.
TRD-824671

Texas Southern University

Friday, June 11, 1982. The following committees of the Texas Southern University Board of Regents will meet in Room 117, Hannah Hall, Texas Southern University, Houston. Meeting times and agendas follow.

9 a.m. According to the agenda, the Finance Committee will consider monthly financial reports and approval of short-term investments.

10 a.m. According to the agenda, the Building and Grounds Committee will consider approval of contracts for payments, acquisition of real estate, and the awarding of construction contracts.

Contact: Everett O. Bell, Texas Southern University, 3100 Cleburne, Houston, Texas 77004, (713) 589-8911.

Filed: June 4, 1982, 2:17 p.m.
TRD-824673, 824674

University of Texas System

Thursday and Friday, June 10 and 11, 1982, 1 p.m. and 9 a.m., respectively. The University of Texas System Board of Regents and standing committees will meet in the second floor hallway, Main Building, the University of Texas at Austin Marine Science Institute, Port Aransas. Items on the agenda summary include proposed policies for preparing legislative budget requests for the biennium 1984-1985; bank depository agreements; buildings and grounds matters including authorization for projects, approval of preliminary and final plans, authorization for bids and award of contracts; amendments to 1981-1982 budgets; chancellor's docket (index submitted by system administration); 1982-1983 operating budgets; insurance policies; private fund development campaigns for Schools of Architecture and Nursing and Colleges of Communication and Education—U. T. Austin; appointments to endowed positions; nominees to development boards and advisory councils; rates

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for residence halls and student apartments—U. T. El Paso; in absentia registration fee—Permian Basin; student services fee (required), registration deposit and late registration fee—U. T. Galveston Medical Branch; affiliation agreements; student services fee (required)—U. T. Health Science Center—San Antonio; amendments to rules and regulations; land and investment matters; acceptance of gifts, bequests and estates; establishment of endowed positions and funds; oil and gas leases; sale of real property; pending litigation; land acquisition and negotiated contracts; and personnel matters.

Contact: Arthur H. Dilly, P.O. Box N, Austin, Texas 78712, (512) 471-1265.

Filed: June 4, 1982, 1:58 p.m.
TRD-824663

Texas Water Commission

Monday, June 7, 1982, 2 p.m. The Texas Water Commission held an emergency meeting in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission considered a motion of the executive director for an emergency order to require action to correct unsafe conditions and certain dams and reservoirs associated with Permit 3776 of W. Brown Custom Builders, Tarrant County, Trinity River Basin. The emergency status was necessary due to the structural unsoundness of the dams, and the necessity to require immediate dewatering to protect downstream lives and property.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 4, 1982, 3:21 p.m.
TRD-824684

Monday, June 14, 1982, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. Items on the agenda summary include water district escrow releases, use of surplus funds, setting hearing date for creation of district, water quality permits, renewals and amendments, final decision on water right applications, voluntary withdrawal and dismissal of claim, and the filing and setting of hearing dates.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 4, 1982, 3:12 p.m.
TRD-824678

Tuesday, July 6, 1982, 10 a.m. The Texas Water Commission will meet in Room

124A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on application by H. B. Heath (RE-0193) seeking approval of preliminary plans for the construction of certain improvements on Leon Creek, a tributary of the Medina River, in Bexar County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 4, 1982, 3:09 p.m.
TRD-824681

Wednesday, July 7, 1982, 10 a.m. The Texas Water Commission will conduct a hearing in Room 124A, Stephen F. Austin Building, 1700 North Congress, Austin, on an application by Dimension Development Company (RE-0197) for approval of preliminary plans for the construction of certain improvements on Furneaux Creek, tributary of the Elm Fork of the Trinity River, in Dallas and Denton Counties.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 4, 1982, 3:10 p.m.
TRD-824682

Friday, July 16, 1982, 10 a.m. The Texas Water Commission will conduct a hearing in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin, on an application by Renal B. Rosson for an amendment to Certificate of Adjudication 14-1006 to remove special condition stipulating that "Owner is authorized to divert water only during such periods as the City of Snyder shall be discharging sewage effluent into Deep Creek," Colorado River Basin, Scurry County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 3, 1982, 3:16 p.m.
TRD-824640

Tuesday, July 20, 1982, 10 a.m. The Texas Water Commission will conduct a hearing in Room 124A, Stephen F. Austin Building, 1700 North Congress, Austin, on an application of David Wallace and Kaiser Cement Corporation (RE-0199) for approval of preliminary plans for the construction of certain improvements on Perrin-Beitel Creek, tributary of Salado Creek in Bexar County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 4, 1982, 3:11 p.m.
TRD-824680

Regional Agencies Meetings Filed June 3

The Bell County Appraisal District, will meet in the commissioners' courtroom, second floor of the Bell County courthouse, Belton, on June 23, 1982, at 7 p.m. Information may be obtained from Tolly Moore, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-3521, ext. 294.

The Capital Area Rural Transportation System (CARTS), Board of Directors, met in Suite 100, Capital Area Planning Council (CAPCO), 2520 IH 35 South, Austin. Information may be obtained from Jace Graf, 1000 North Lamar, Austin, Texas 78703, (512) 443-0904.

The Kendall County Appraisal District, Board of Review, met in Room 101, Boerne City Utilities Building, 402 East Blanco, Boerne, and the Board of Directors met in the appraisal district office, Professional Building, 207 East San Antonio Street, Boerne, on June 10, 1982, at 2 p.m. and 8 p.m., respectively. Information may be obtained from Sue R. Wiedenfield, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Leon County Central Appraisal District, Board of Directors, will meet in the Leon County courtroom, Centerville, on June 14, 1982, at 6:30 p.m. Information may be obtained from Mabel Watson, P.O. Box 536, Centerville, Texas 75833, (214) 536-2911.

TRD-824630

Regional Agencies Meetings Filed June 4

The Bell County Appraisal District, Appraisal Review Board, will meet in the commissioner's courtroom, second floor, Bell County courthouse, Belton, on June 22, 1982, at 9 a.m. and 1:30 p.m. Information may be obtained from Tolly Moore, P.O. Box 930, Belton, Texas 76513-0390, (817) 939-3521, ext. 294.

The Cherokee County Appraisal District, Board of Directors met at 527 North Main Street, Rusk, on June 10, 1982, at 2:30 p.m. Information may be obtained from S. R. Danner, P.O. Box 494, Rusk, Texas 75785.

The Hansford County Appraisal District, board, met in the conference room, 13 West Kenneth Avenue, Thurman, on June 9, 1982, at 3 p.m. Information may be obtain-

ed from Alice Peddy, 13 West Kenneth Avenue, Thurman, Texas 79081, (806) 659-5575.

The Texas Municipal Power Agency, Board of Directors, met in the agency offices, 2225 East Randol Mill Road, Arlington, on June 10, 1982, at 10 a.m. Information may be obtained from Frank H. Bass, Jr., 2225 East Randol Mill Road, Arlington, Texas 76011.

The Palo Pinto Appraisal District, Board of Directors, met at 603 South Oak, Mineral Wells, on June 10, 1982, at 7 p.m. Information may be obtained from H. H. Quillen, 100 Southeast Fifth Street, Mineral Wells, Texas 76067, (817) 325-6871.

The South Plains Association of Governments, Executive Committee and Board of Directors, met at 1709 26th Street, Lubbock, on June 8, 1982, at 9 a.m. and 10 a.m., respectively. Information may be obtained from Jerry D. Casstevens, 1709 26th Street, Lubbock, Texas 79411, (806) 762-8721.

The West Central Texas Council of Governments, Regional Alcohol Abuse Advisory Committee (RAAC), will meet at 1025 Eastnorth 10th Street, Abilene, on June 16, 1982, at 10 a.m. Information may be obtained from Sue Smith, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544
TRD-824643

Meetings Filed June 7

The Coryell County Appraisal District, Board of Directors, met in the Coryell County courtroom, Coryell County courthouse, Gatesville, on June 10, 1982, at 7 p.m. Information may be obtained from Joan Blanchard, P.O. Box 6, Gatesville, Texas 76528, (817) 865-5412.

The Region VI Education Service Center, Board of Directors, met at 3332 Montgomery Road, Huntsville, on June 10, 1982, at 5 p.m. Information may be obtained from M. W. Schlotter, 3332 Montgomery Road, Huntsville, Texas, (713) 295-9161.

The Region VIII Education Service Center, Board of Directors, will meet in Room 107, 100 North Riddle Street, Mt. Pleasant, on June 17, 1982, at 7 p.m. Information may be obtained from Scott Ferguson, 100 North Riddle, Mt. Pleasant, Texas 75455, (214) 572-6676.

The Region X Education Service Center, Board of Directors, will meet in the board room, 400 East Spring Valley, Richardson, on June 15, 1982, at 12:30 p.m. Information may be obtained from H. W. Goodgion, 400 East Spring Valley, Richardson, Texas, (214) 231-6301.

The Central Appraisal District of Erath County, Board of Review, will meet in the city council room, 354 North Belknap, Stephenville, on June 15, 1982, at 1:30 p.m. Information may be obtained from James Bachus, 313 North Belknap, Stephenville, Texas, (817) 965-7301.

The Hood County Appraisal District, Appraisal Review Board, will meet in the district office, 1902 West Pearl, Granbury, on June 14, 1982, at 9:30 a.m. Information may be obtained from Ben H. Griffin, P.O. Box 819, Granbury, Texas 76048, (817) 573-5595.

The Lamar County Appraisal District, Board of Directors, will meet at 1523 Lamar Avenue, Paris, on June 14, 1982, at 3 p.m. Information may be obtained from L. F. Ricketson, 1523 Lamar Avenue, Paris, Texas, (214) 785-7822.

The Lamb County Appraisal District, Board of Directors, will meet at 318 Phelps Avenue, Littlefield, on June 17, 1982, at 8:30 p.m. Information may be obtained from Jack Samford, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

The Nortex Regional Planning Commission, General Membership Committee, will meet in Room 217, Wichita Falls Activity Center, 1001 Indiana Street, Wichita Falls, on June 17, 1982, at noon. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

The North Texas State Planning Region Consortium, Nortex Regional Planning Commission, will meet in Room 217, Wichita Falls Activity Center, 1001 Indiana, Wichita Falls, on June 17, 1982, at 1 p.m. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

The San Antonio River Authority, Board of Directors, will meet in the conference room, 100 East Guenther Street, San Antonio, on June 16, 1982, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, San Antonio, Texas 78204, (512) 227-1373.

The Trinity River Authority of Texas, Utility Services Committee, will meet at 5300 South Collins, Arlington, on June 15, 1982,

at 9:30 a.m. Information may be obtained from Geri Elliott, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.
TRD-824714

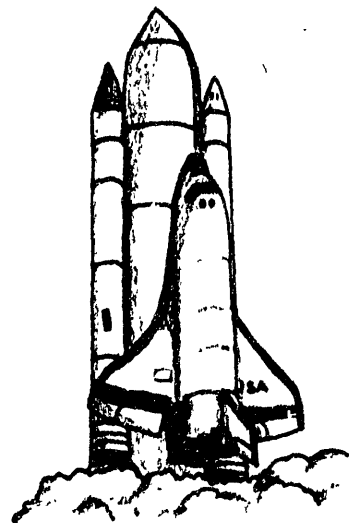
Meetings Filed June 8

The Atascosa County Appraisal District, Board of Directors, will meet at 1010 Zanderson, Jourdanton, on June 14, 1982, at 1 p.m. Information may be obtained from Ernest Dunnagan, 1010 Zanderson, Jourdanton, Texas 78026, (512) 769-2730.

The Capital Area Planning Council, General Assembly, will meet at Quality Inn South, 2200 IH 35 South, Austin, on June 15, 1982, at 10 a.m. Information may be obtained from Richard G. Bean, 2520 IH 35 South, Austin, Texas 78704, (512) 443-7653.

The Lampass County Appraisal District will meet at 403 East Second Street, Lampasas, on June 11, 1982, at 3 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550.

The Central Counties Center for Mental Health and Mental Retardation Services, Board of Trustees, will meet at 302 South 22nd Street, Temple, on June 17, 1982, at 7:45 p.m. Information may be obtained from Steven B. Schnee, Ph.D., P.O. Box 518, Temple, Texas 76503-0518.
TRD-824741



In Addition

The *Register* is required by statute to publish applications to purchase control of state banks (filed by the banking commissioner); notices of rate ceilings (filed by the consumer credit commissioner); changes in interest rate and applications to install remote service units (filed by Texas Savings and Loan commissioner); and consultant proposal requests and awards (filed by state agencies, regional councils of government, and the Texas State Library and Archives Commission).

In order to aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows. This often includes applications for construction permits (filed by the Texas Air Control Board); applications for amendment, declaratory ruling, and notices of intent (filed by the Texas Health Facilities Commission); applications for waste disposal permits (filed by the Texas Water Commission); and notices of public hearing.



Texas Air Control Board Applications for Construction Permits

Notice is hereby given by the Texas Air Control Board of applications for construction permits received during the period of May 24-28, 1982.

Information relative to the applications listed below, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the address stated above, and at the regional office for the Air Quality Control Region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Firestone Synthetic Rubber and Latex Company, Orange; houdry thermal incinerator; FM Road 1006; 9104; new source

Big Chief Environmental Services, Inc., Houston; wastewater treatment plant; 7726 Easthaven; 9105; new source

Bower Industries, Inc., Houston; sandblasting; 612 Berry Road; 9106; new source

Rice Belt Warehouse, Inc., Ganado; bulk rice storage and fertilizer storage; Business Highway 59; 2605B; new source

Pioneer Concrete of Texas, Inc., Galveston; concrete batch plant; 5711 Port Industrial; 4705A; new source

Issued in Austin, Texas, on May 28, 1982.

TRD-824808

Ramon Dasch
Director of Hearings
Texas Air Control Board

Filed: June 2, 1982, 1:36 p.m.
For further information, please call (512) 461-5711, ext. 354.

Notice is hereby given by the Texas Air Control Board of applications for construction permits received during the period of June 1-4, 1982.

Information relative to the applications listed below, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the address stated above, and at the regional office for the Air Quality Control Region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; loca-

tion of the facilities (if available); permit numbers; and type of application—new source or modification.

H. B. Zachary Company, Fate; drum mix asphalt plant; across IH 30 from Fate; 9107; new source

APAC-Texas, Inc., Gulf Division, Humble; production of asphaltic concrete; Old River Road; 9108; new source

Dix Shipping Company, Inc., Brownsville; rail car unloader; Port of Brownsville; 9109; new source

Anglo Iron and Metal Company, Harlingen; automobile shredding equipment; (location not available); 9110; new source

Goodman Manufacturing Corp., Houston; fiberglass manufacturing; 6440 Bingle Road and 601 West Sixth Street; 9111 and 9112; new sources

W. R. Grace and Company, Organic Chemicals Division, Deer Park; nitroparaffin plant; Texas Route 134 and Texas Route 225; 9113; new source

Cam-on of Texas, Inc., Houston; waste oil processing plant; 14549 Minetta; 9114; new source

Issued in Austin, Texas, on June 4, 1982.

TRD-824705 Ramon Dasch
Director of Hearings
Texas Air Control Board

Filed: June 7, 1982, 8:07 a.m.
For further information, please call (512) 451-5711,
ext. 354.

Public Hearings

(Editor's note: The proposed new rules, amendments, and repeals are being published in the Proposed Rules section in this issue of the Texas Register and are available at the central office of the TACB located at 6330 Highway 290 East, Austin, Texas 78723, and at the regional offices of this agency. Copies of the proposed 1982 SIP revision are available at the central office and all regional offices of the TACB.)

Pursuant to the requirements of §3.09 of the Texas Clean Air Act, Texas Civil Statutes, Article 4477-5, and 40 Code of Federal Regulations 51.4 of the Environmental Protection Agency regulations concerning state implementation plans (SIP), an examiner for the Texas Air Control Board (TACB) will conduct public hearings to receive testimony concerning the additions of, amendments to, and repeal of certain TACB rules as well as the proposed 1982 SIP revision for Harris County.

Specifically, the TACB proposes to add new 31 TAC §§115.11-115.114, concerning storage of volatile organic compounds in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Coun-

ties; new 31 TAC §115.163, concerning general vent gas streams in Harris County; 31 TAC §115.164, concerning compliance schedule and counties; and new 31 TAC §§115.271-115.275, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing plants in Harris County.

The TACB proposes to amend 31 TAC §101.1, concerning definitions, to include new definitions for component; drum; leak (for fugitive emission control in petroleum refineries and synthetic organic chemical, polymer, and resin manufacturing plants); pail; polymer and resin manufacturing plant; pounds of VOC (volatile organic compound) per gallon of coating (minus water); and synthetic organic chemical manufacturing plant, and a revised definition of VOC.

The TACB also proposes to amend the following rules which apply to Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties: 31 TAC §115.31 and §115.32, concerning water separation and 31 TAC §§115.41-115.45 concerning vent gas control.

In addition, the TACB proposes to amend the following rules which apply to Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties: 31 TAC §115.105, concerning exemptions, and 31 TAC §115.106, concerning counties and compliance schedules; 31 TAC §§115.111-115.113, concerning facilities for loading and unloading of volatile organic compounds; 31 TAC §§115.141-115.144, concerning water separation; 31 TAC §§115.161-115.163, concerning vent control; 31 TAC §§115.191-115.194, concerning surface coating processes; 31 TAC §§115.251-115.255, concerning fugitive emission control in petroleum refineries; and 31 TAC §115.421, concerning superseded rules.

Finally, the TACB proposes to amend 31 TAC §115.401, concerning procedure.

The TACB proposes to repeal 31 TAC §§115.11-115.13, concerning storage of volatile organic compounds in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties; and the following rules which apply to Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties; 31 TAC §115.163, concerning compliance schedule and counties; and 31 TAC §115.411, concerning specific exemptions.

The TACB proposes to revise the ozone control strategy for Harris County to require additional VOC emission reductions to satisfy Environmental Protection Agency requirements for demonstration of attainment of the Nation Ambient Air Quality Standard for Ozone in Harris County by December 31, 1987. The proposed strategy includes some of the above-cited proposed additional rules, amendments, and repeals as well as preparation of a VOC emission inventory for Harris County, calculations of the emission reductions required to meet the ozone standard, identification of measures available to reduce emissions, implementation of a motor vehicle parameter inspection and maintenance program in Harris County, and a com-

mitment by affected local governments to fund and implement certain transportation control measures.

Hearings will be held at the following times and places:

July 12, 1982—7 p.m.
Texas Air Control Board auditorium
6330 Highway 290 East, Austin

July 13, 1982—3 p.m. and 7 p.m.
Environmental Pollution Control Laboratories
auditorium
7411 Park Place, Houston

Public comment, both oral and written, on the proposed new rules, amendments, and repeals and the 1982 SIP is invited, both at the public hearings and by submission of written comments. Written comments received by July 20, 1982, will be entered into the record and considered by the board prior to any final decision on the proposed changes. If both oral and written testimony are presented, oral testimony should supplement or highlight but not repeat written testimony. Twenty copies of all written material would be helpful to the board in reviewing the comments received. For further information, call Beverly Fowler at (512) 451-5711.

Issued in Austin, Texas, on June 4, 1982.

TRD-824704 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Filed: June 7, 1982, 8:09 a.m.
For further information, please call (512) 451-5711,
ext. 354.

Extension of Time for Receipt of Written Comments

*Regarding Proposed New Rules Establishing Permit
Fees for Regulation VI*

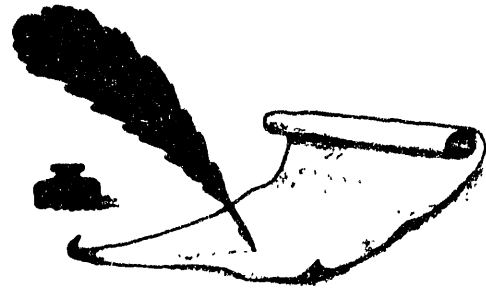
In view of the importance of the matter being considered and the extent of interest demonstrated at the public hearings in Austin and Odessa, the date for receipt of written comments regarding proposed new rule 31 TAC §116.11, concerning permit fees, to Regulation VI is hereby extended to June 2, 1982.

The proposed new §116.11, published in the April 23, 1982, issue of the *Texas Register* (7 TexReg 1620), would establish a schedule of fee payment, based on the estimated capital cost of the project, to accompany a request for construction permit submitted to the Texas Air Control Board.

Issued in Austin, Texas, on June 2, 1982.

TRD-824620 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Filed: June 3, 1982, 9:05 a.m.
For further information, please call (512) 451-5711,
ext. 354.



Request for Proposals

*Technical Study To Identify Procedures and Methods
To Enhance The Effectiveness of Current
Technology Motor Vehicle Emission Control
Systems*

This request for proposals is not filed under the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation for Proposals. The Texas Air Control Board (TACB) invites all interested parties to submit technical proposals to provide professional engineering services to the agency. The last day for receipt of offers shall be July 12, 1982. The contract shall become effective after being signed by the executive director of the TACB and the selected firm. It shall terminate on December 31, 1982. Funds expended under this contract for these services will not exceed \$150,000.

Description. The purpose of this contract is to prepare technical material to assist the Texas Air Control Board to determine the critical emission-related systems and components to be included in a vehicle parameter inspection and maintenance program; also to define specific inspection methods and protocols which would be effective in determining functional status of emission-related vehicle parameters and define the level of effort which would be necessary to prepare training materials, curricula, and field operator instructions necessary to effectively implement and manage a vehicle parameter inspection and maintenance program. The project will include a determination, using appropriate EPA guidelines and policies, of the emission reduction credit which should be assigned to implementation of a Vehicle Parameter Inspection and Maintenance Program in Harris County and identify a record-keeping and reporting process which could be carried out to monitor effectiveness of the program and satisfy EPA reporting requirements. The project will be carried out as six discrete but related tasks listed as follows.

(1) Conduct an analysis of emission control systems and components on light-duty motor vehicles in Harris County to determine those parameters which are primarily responsible for excess hydrocarbon emissions when a vehicle is subject to normal use and typical maintenance. The contractor shall consider public attitude, gasoline pricing, skill level, and attitude of automotive repair technicians and mechanics as well as emission control systems and devices which are likely to contribute to excess

hydrocarbon emissions as a result of deliberate tampering, improper maintenance, or faulty design.

(2) Determine from the results of Task 1 the extent to which vehicle operating parameters may reasonably be modified to reduce excessive hydrocarbon emissions and shall identify any agencies or organizations which possess authority or responsibility to implement appropriate corrective programs. The contractor shall identify those vehicle parameters which reasonably could be considered as part of a vehicle parameter inspection and maintenance program and could also be part of the existing annual safety inspection program administered by the Texas Department of Public Safety.

(3) The contractor shall identify specific procedures, methods, and protocols which may be available as are necessary to determine the operational status of each vehicle parameter identified in Task 2 as suitable for inclusion in the existing safety inspection program administered by the Texas Department of Public Safety. The contractor shall consider checking manufacturer-recommended maintenance schedules, emission-related recall records, and on-board diagnostics as well as direct vehicle inspections or other mechanisms which would be appropriate to encourage motorists and mechanics to properly maintain vehicle emission control systems.

(4) The contractor shall assess the level and depth of training that would be necessary to ensure that inspectors, field investigators and program administrators can properly manage, identify, and/or determine the operational status of parameters which may be feasible for inclusion in a vehicle parameter inspection and maintenance program in Harris County. This task should include identification of instructions, tools, and protocols necessary to conduct actual vehicle inspections as well as specific vehicle specifications or data which would be necessary to include in an inspector's handbook and/or program manual. The contractor shall identify potential sources of all necessary information and estimate the level of effort which would be required to prepare for and implement an effective inspector training and management program.

(5) The contractor shall determine, using appropriate EPA guidelines, policies, and models, the emission reduction credit that should be assigned to a vehicle parameter inspection and maintenance program in Harris County which includes an effective public awareness and mechanic training program.

(6) The contractor shall develop a possible reporting and data collection system which could be implemented to verify program effectiveness and satisfy EPA reporting requirements. Detailed development of mechanic training and public information aspects of the program are not within the scope of this project. The production of a technical support document which would be used as the basis for developing a training program and instructors' manual is also not within the scope of the project and shall be dealt with separately.

Procedure for Selecting Consultant. The TACB shall select and award such contracts and engage such services on the basis of qualifications, history of similar work,

references, ability to complete the work in the designated time frame, key personnel assignable to the project, and reasonableness of cost estimates.

Contact Person. Any private consultant interested in providing the described services should contact Denise Darcy, Standards and Regulations Program, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, for a copy of the statement of work.

Issued in Austin, Texas, on June 4, 1982.

TRD-824703 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Filed: June 7, 1982, 8:08 a.m.
For further information, please call (512) 441-5711,
ext. 354.

State Banking Board Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing at 9 a.m., Monday, June 14, 1982, at 2601 North Lamar, Austin, on the matter of the charter application for the Allied Bank-Brookhollow, to be located in Dallas, Dallas County.

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

Issued in Austin, Texas, on June 2, 1982.

TRD-824592 O. A. Cassity III
Assistant General Counsel
Banking Department of Texas

Filed: June 2, 1982, 10:21 a.m.
For further information, please call (512) 475-4451.

Public Hearing

The hearing officer of the State Banking Board will conduct a hearing at 9 a.m. Monday, June 21, 1982, at 2601 North Lamar, Austin, on the charter application for the Bank of the Brazos, to be located in Brookshire, Waller County.

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

Issued in Austin, Texas, on June 7, 1982.

TRD-824715 O. A. Cassity III
Assistant General Counsel
Banking Department of Texas

Filed: June 7, 1982, 9:52 a.m.
For further information, please call (512) 475-4451.

**Banking Department of Texas
Application To Purchase Control of
a State Bank**

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On June 3, 1982, the banking commissioner received an application to acquire control of Citizens Bank and Trust, Manvel, by Gayle L. Schroder of Baytown.

Additional information may be obtained from Robert E. Stewart, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on June 3, 1982.

TRD-824869 O. A. Cassity III
Assistant General Counsel
Banking Department of Texas

Filed: June 4, 1982, 2:10 p.m.
For further information, please call: (512) 475-4451.

**Comptroller of Public Accounts
Comptroller's Decision 11,799
(Sales Tax)**

For copies of the following opinion selected and summarized by the administrative law judges, contact the administrative law judges, P. O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with confidentiality statutes.

Summary of Decision: Exemptions claimed by retailers under exemption certificates obtained from purchasers after the time of sale are subject to challenge by the comptroller; after-the-sale exemption certificates do not shift the burden of proof under Articles 20.021(F) and (G), and 20.04(B) from the retailer to the comptroller, but are only some evidence of exemption. For purchases of materials to be used in the operation or maintenance of a ship to be exempt under Article 20.04(P)(2), the ship or vessel must operate "exclusively in foreign or interstate coastwise commerce." That phrase requires the vessels to exclusively carry commodities from a Texas port to a foreign or out-of-state port or vice versa. Shrimp boats that leave a Texas port to fish in state, federal, or international waters before returning to the same Texas port do not qualify.

Issued in Austin, Texas, on May 28, 1982.

TRD-824819 Bob Bullock
Comptroller of Public Accounts

Filed: June 3, 1982, 9:05 a.m.
For further information, please call (512) 476-1938.

**Office of Consumer Credit
Commissioner
Rate Ceilings**

Pursuant to the provisions of House Bill 1228, 67th Legislature of Texas, 1981, the consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Article 1.04, Title 79, as amended Texas Civil Statutes, Article 5069-1.04.

Effective Period ⁽¹⁾	Type of Transaction	
	Commercial ⁽³⁾ Consumer ⁽²⁾ /thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated Rate		
Weekly Rate Ceiling		
6/14/82-6/20/82	24%	24.25%
Monthly Rate Ceiling (Variable Commercial Only)		
6/01/82-6/01/82	24%	24.15%
Quarterly Rate Ceiling		
7/01/82-9/30/82	24%	25.02%
Annual⁽⁵⁾ Rate Ceiling		
7/01/82-9/30/82	24%	26.62%

- (1) Dates set out above are inclusive.
- (2) Credit for personal, family, or household use.
- (3) Credit for business, commercial, investment, or other similar purpose.
- (4) Same as (3) above, except excluding credit for agricultural use.
- (5) Only for open end as defined in Texas Civil Statutes, Article 5069-1.01(f).

Issued in Austin, Texas, on June 7, 1982.

TRD-824708 Sam Kelly
Consumer Credit Commissioner

Filed: June 7, 1982, 9:23 a.m.
For further information, please call (512) 475-2111.

**Texas Employment Commission
Correction of Error**

A proposal submitted by the Texas Employment Commission Commission, concerning unemployment insurance, contained several errors as published in the June 1, 1982, issue of the *Texas Register* (7 TexReg 2107). Corrections for the submission which involved Rules 327.10.00.001-.029 follow.

At 7 TexReg 2108, the first sentence of subsection (a) of Rule 327.10.00.003 should read:

Each employing unit which has or had persons in "employment" so defined in the Act shall notify the commission of its correct address and of any change in its correct address, and each such employing unit shall promptly notify the commission of any change of address.

At 7 TexReg 2109, Rule 327.10.00.005 should read:

Allowances, advances of reimbursements paid to a person in employment for traveling, and other bona fide expenses

incurred or reasonably expected to be incurred in the business of his employer shall not be treated as wages, provided a separate payment is made for such expenses, or specific accounting records are kept indicating the separate amounts where a single payment covers both wages and expenses combined, and provided further that the amount of payments for expenses excluded from wages shall not exceed the amount allowable as deductible expenses by Income Tax Regulations under §62(2) and §162(a)(2) of the United States Internal Revenue Code.

At 7 TexReg 2112, paragraph (5) of Rule 327.10.00.007(b) should read:

Services "customarily performed" by an individual in more than one jurisdiction—Services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

At 7 TexReg 2113, the last sentence of the implied (a) of Rule 327.10.00.016 should read:

As used in this rule and Rules 327.10.00.017 and .018, "party" means an individual or organization entitled to receive a copy of the determination made by the examiner under the terms of subsection (b) of §6 of the Act. †

Texas Energy and Natural Resources Advisory Council Consultant Contract Award Project 82-L-1-1

In compliance with Texas Civil Statutes, Article 6252-11c, the Texas Energy and Natural Resources Advisory Council furnishes this notice of contract award. The consultant proposal request appeared in the January 1, 1982, issue of the *Texas Register* (7 TexReg 33).

Description. Project 82-L-1-1 covers deep lignite drilling and coring in East Texas Sabine Uplift region of Wilcox, and forms a part of the ongoing project (80-L-7-9c) for the evaluation of deep lignite resources (deeper than 200 feet) by establishing their hydrologic setting and characterization of their chemical and physical properties.

Services. The contractor will provide the following services.

(1) Drilling for exploration logging of approximately 20 holes at sites to be determined by University of Texas at Austin/Bureau of Economic Geology (UT/BEG), project director who is managing the TENRAC deep basin lignite evaluation program.

(2) Drilling for coring of approximately 10 holes at sites to be determined by UT/BEG project director.

(3) Coring of lignite and over- and underburden strata with a 4-½ inch outer diameter core barrel of 10 to 20 feet length.

Contractor. The contractor is Andrews and Foster Drilling Company, Inc., of Athens. The total value of the contract is \$165,000. The beginning date of the contract is

May 27, 1982. The ending date of the contract is December 31, 1982.

Due Dates of Reports. A driller's log for each drilled hole is due within three days of completion of drilling of each hole; daily time sheets and progress sheets are due on the following day; and a work summary for each 10-day period is due at the end of the work period.

Issued in Austin, Texas, on June 4, 1982.

TRD-824710

M. Lee Wilson
Director
Technology Development
Division
Texas Energy and Natural
Resources Advisory Council

Filed: June 7, 1982, 9:11 a.m.

For further information, please call (512) 475-0414.

Texas Health Facilities Commission Applications Accepted for Amendment, Declaratory Ruling, and Notices of Intent

Notice is hereby given by the Texas Health Facilities Commission of applications accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance; NIE indicates notice of intent to acquire major medical equipment; NIEH indicates notice of intent to acquire existing health care facilities; NIR indicates notice of intent regarding a research project; and NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party to any of the above-stated applications, that person must file a proper request to become a party to the application within 15 days after the date of this publication of notice. If the 15th day is a Saturday, Sunday, state or federal holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, state or federal holiday. A request to become a party should be mailed to the chair of the commission at P.O. Box 15023, Austin, Texas 78761, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to any of these applications must meet the criteria set out in 25 TAC §515.9. Failure of a party to supply the necessary information in the correct form may result in a defective request to become a party.

The Diocese of Brownsville, doing business as San Juan Nursing Home, Inc., San Juan
AN79-0828-015A(060182)

CN/ADM—Request for a second amendment of Certificate of Need AN79-0828-015 which authorized the addition of eight skilled beds to an existing 52-bed skilled nursing home facility with no construction; and the expansion of the facility through the construction of a new addition for 60 intermediate care beds, additional kitchen and laundry space, purchase equipment to provide physical therapy and occupational therapy, add administrative and storage areas, and upgrade the facility to correct LSCD. The certificate holder requests an extension of the completion deadline and an increase in the project cost from \$1,308,460 to \$2 million.

Methodist Affiliated Hospitals, Arlington
AN82-0525-022

NIEH—Request for a declaratory ruling that a certificate of need is not required for Methodist Affiliated Hospitals to acquire on or after August 6, 1982, Marks English Hospital, an existing 26-bed acute care general hospital located in Glen Rose, from Marks English Hospital, Inc.

Dallas County Hospital District/Parkland Memorial Hospital, Dallas
AH82-0602-014

DR—Request for a declaratory ruling that a certificate of need is not required for Parkland Memorial Hospital to designate 10 of the existing 67 pediatric beds as a pediatric trauma intensive care unit.

Methodist Affiliated Hospitals, Arlington
AN82-0603-020

NIEH—Request for a declaratory ruling that a certificate of need is not required for Methodist Affiliated Hospitals to acquire on or after August 6, 1982, Glen Rose Nursing Home, an existing 42-bed ICF-III facility located in Glen Rose, from Glen Rose Nursing Home, Inc.

Stamford Hospital District, Stamford
AH82-0604-001

DR—Request for a declaratory ruling that a certificate of need is not required for Stamford Hospital District to construct a medical clinic building to be used for offices for medical doctors only. The medical clinic building will be constructed on land owned by Stamford Hospital District and located opposite Stamford Memorial Hospital.

Issued in Austin, Texas, on June 7, 1982.

TRD-824707 John L. Darrouzet
Assistant General Counsel
Texas Health Facilities
Commission

Filed: June 7, 1982, 9:21 a.m.
For further information, please call (512) 475-8940.

Texas Department of Mental Health and Mental Retardation Consultant Proposal Request

This request for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The Texas Developmental Disabilities Program (TDDP), under the authority of its enabling legislation, Public Law 95-602 and Public Law 97-35, is seeking to continue a contract for the coordination of the program's planning cycle and the development of the resultant state plan for coordination of services to the developmentally disabled in the State of Texas

This invitation for offers is for a continuation of services currently performed by David Lindsey. The TDDP intends to award the contract to the present contractor unless a better offer is submitted.

Description. In order to fulfill the terms and conditions of the contract the contractor will be responsible for the following.

(1) Design and coordination of the Texas Developmental Disabilities Program planning cycle and preparation of the formal three year state plan, its summaries, revisions, and related reports, of which the following activities are integral as required by law:

(a) collecting and analyzing statistical and other data about developmentally disabled persons,

(b) maintaining liaison with private and public agencies and organizations in order to gather data concerning the needs of developmentally disabled persons and the behavior of the service delivery system,

(c) assessing the service needs and resources of developmentally disabled persons to determine gaps and barriers in the service delivery system,

(d) developing long-range goals, specific annual objectives, priorities and action plans for the Developmental Disabilities Program as required by federal regulation.

(2) Assuring that all publications described meet appropriate professional, stylistic, and editorial standards, for which a professional knowledge of writing, editing, design, layout, printing, distribution, and all other technical aspects of publishing is required.

(3) Assuring that all publications described satisfy state and federal laws, rules, and regulations, for which a thorough working knowledge of developmental disabilities legislation is required.

Evaluation Criteria. Before TDDP can consider any submitted application from a potential consultant, the consultant must demonstrate expertise in all activities required by the contract. Evidence of such expertise should include products, where appropriate, and indications by previous funding agencies of satisfactory performance.

The TDDP reserves the right to accept or reject any or all applications submitted under this announcement and to negotiate modifications to improve the quality or cost effectiveness of any application. The TDDP will base its selection of a consultant on the capacity of the consultant to perform as specified and evidenced by documented experience.

Contact Person. Prospective offerors should contact Kathy Sandusky, Texas Developmental Disabilities Program, Box 12668, Austin, Texas 78711.

Closing Date. The closing date for receipt of offers is July 19, 1982.

Issued in Austin, Texas, on June 7, 1982.

TRD-824-18 W. Kent Johnson
Chief of Legal Services
Texas Department of Mental
Health and Mental Retardation
Developmental Disabilities
Program

Filed: June 7, 1982, 9:53 a.m.
For further information, please call (512) 465-4591.

The Prosecutor Council Consultant Contract Award

Pursuant to Texas Civil Statutes, Article 6252-11c, the Prosecutor Council furnishes this notice of consultant contract award. The consultant proposal appeared in the May 7, 1982, issue of the *Texas Register* (7 TexReg 1784).

Description. The consultant will provide educational material for regional meetings. The material will be presented by the consultant at six locations in the state.

Name and Address of Consultant. The consultant is the Texas District and County Attorneys Association, 1210 Nueces, Suite 200, Austin, Texas 78701.

Contract Value and Period. The total value of the contract is \$11,000. The beginning date of the contract is June 2, 1982; ending date is August 31, 1982.

Due Dates of Documents. All documents, films, recordings, or reports of the intangible results of the services performed by the consultant shall be available to the Prosecutor Council on or before August 31, 1982.

Issued in Austin, Texas, on June 3, 1982.

TRD-824667 John C. Cook
Legal Counselor
The Prosecutor Council

Filed: June 4, 1982, 12:55 p.m.
For further information, please call (512) 475-6825.

Office of the Secretary of State Texas Register Correction of Error

The page numbers of the June 4 issue of the *Texas Register* were renumbered incorrectly in a correction published in the June 8 issue. The correct page numbers for the June 4 issue are 2131 through 2176.

Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of May 31-June 4, 1982.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain (1) the name, mailing address, and phone number of the person making the request; and (2) a brief description of how the requester, or person represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by writing Larry R. Soward, assistant chief hearings examiner, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 475-1311.

Listed are the names of the applicants and the cities in which the facilities are located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of May 31-June 4, 1982

South Texas Savings Association, Victoria; Pirate's Cove Condominiums sewage treatment plant; approximately 1,250 feet south of State Highway 185 between 15th and 16th Streets in Port O-Connor, Calhoun County; 12553-01; new permit

Double Diamond Corp., Dallas; mobile home subdivision; adjacent to Lake Granbury, approximately two miles northeast of the intersection of FM Roads 2425 and 3210 in Walters Bend in Hood County; 12480-01; new permit

Dorchester Pipeline Company, Mount Pleasant; bulk handling/storage facility for gasoline and diesel fuel and aviation gas; one mile north of U.S. IH 30 on FM Road 36 in Hunt County; 02579; new permit

Texas Tech University, Lubbock; feedlot operation; adjacent to FM Road 1729 at a point approximately 1.75 miles east of the intersection of FM Roads 2902 and 1729 in Lubbock County; 02572; new permit

Eddie V. Gray, Baytown; Woodland Acres subdivision; south of Woodland Lane about 1,000 feet west of FM Road 1409 and approximately 500 feet north of Old River in Chambers County; 11720-01; renewal

Johnson Inn, Inc., doing business as Holiday Inn IH 10 East, Houston; adjacent to the northwest quadrant of the intersection of IH 10 and Mercury Drive at 10155 East Freeway, Harris County; 11848-01; renewal

City of Friendswood/Gulf Coast Waste Disposal Authority, Houston; Blackhawk Regional Plant; three miles southeast of the City of Friendswood and three miles southwest of IH 45 at the NASA 1 exit on the northeast bank of Clear Creek in Harris County; 11571-01; renewal

City of Hallsville; sewage treatment plant; approximately 6,200 feet east of the intersection of FM Road 450 and U.S. Highway 80 and 1,100 feet south of U.S. Highway 80 in Harrison County; 10460-01; renewal

The Permian Corp., Corpus Christi; crude oil terminal; on Navigation Boulevard in the City of Corpus Christi, Nueces County; 02578; new permit

Issued in Austin, Texas, on June 4, 1982.

TRD-824683 Mary Ann Hefner
 Chief Clerk
 Texas Water Commission

Filed: June 4, 1982, 3:21 p.m.
For further information, please call (512) 475-4514.

Public Information Office of the Secretary of State

Secretary of State David A. Dean has released the first edition of the *Texas Business and Commercial Quarterly*. This is a publication analyzing business and commercial data compiled by the Secretary of State's office from several sources including those data filed with the Statutory Filings Division of the Office of the Secretary of State.

The first edition includes a comparison of the business climate in Texas with those in six other states. This publication is designed to assist Texas decision makers and business and community leaders in projecting future resource needs and will be updated on a quarterly basis by the Secretary of State's office.

Copies of the *Texas Business and Commercial Quarterly* are available to the public at no charge and may be obtained by calling the Statutory Filings Division at (512) 475-5891 or by completing the form below and mailing it to the address shown on the form.

If you wish to receive future issues of this newsletter, please check the box below, correct the mailing label, if necessary, and return this page to:

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Corporations Section
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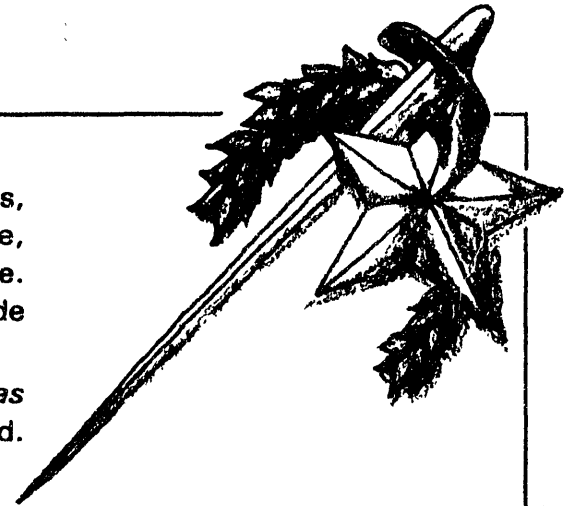
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