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Texas Register

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How to Use the Texas Register

Information Available: The 11 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative 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 the 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 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 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* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (*TAC*) is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, publishes on an annual basis.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: 1-800-328-9352.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section 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*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Update by FAX: An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of $2.00 per page (VISA, MasterCard). (512) 463-5561.

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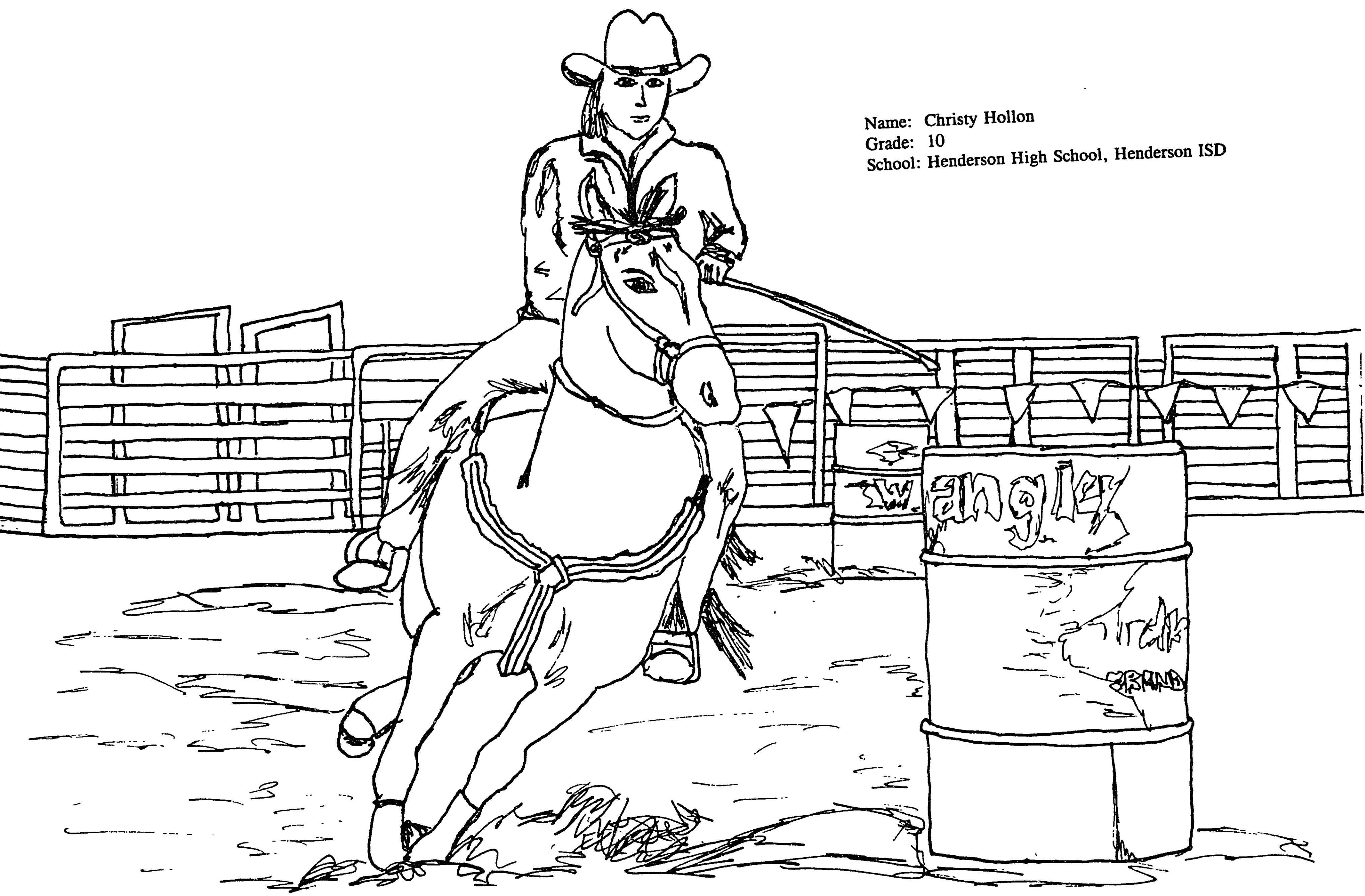

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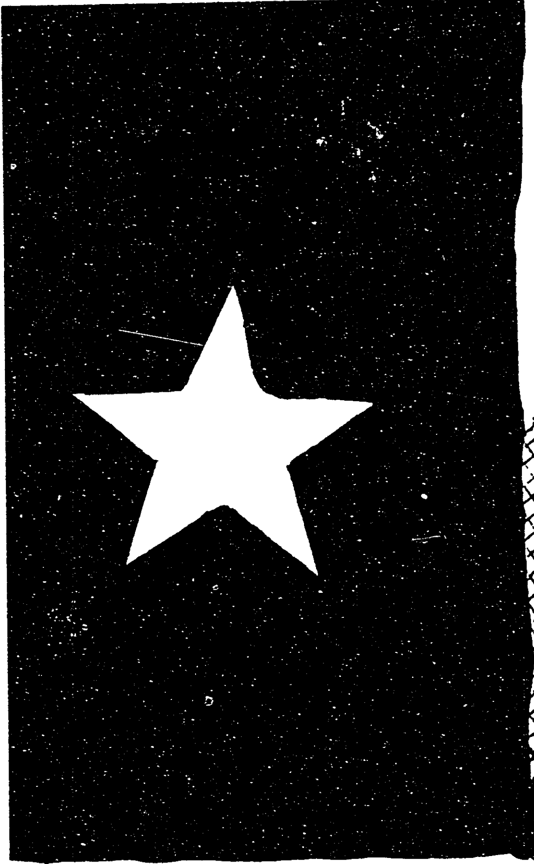
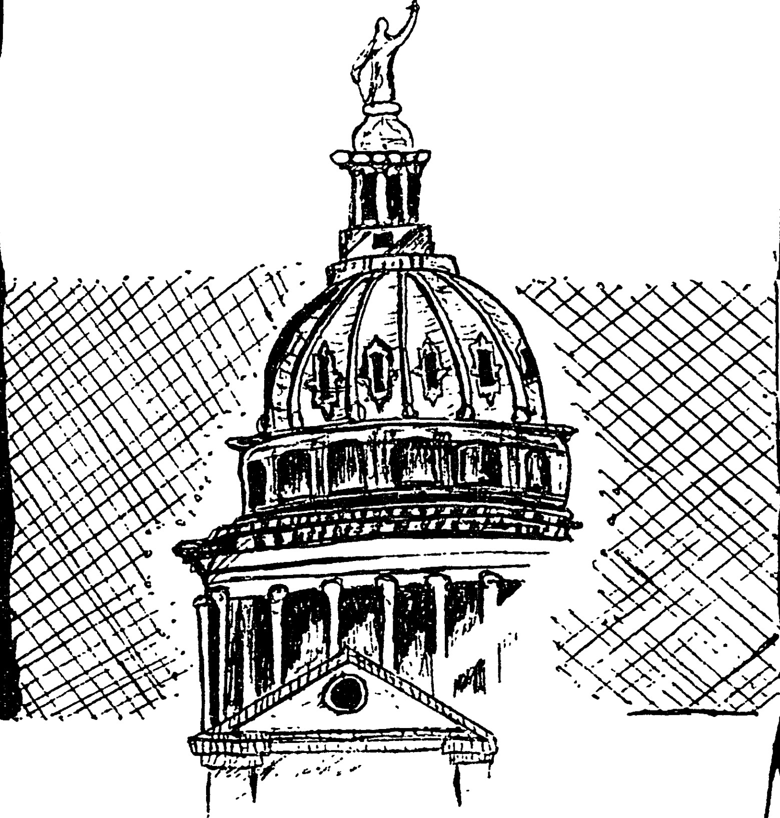
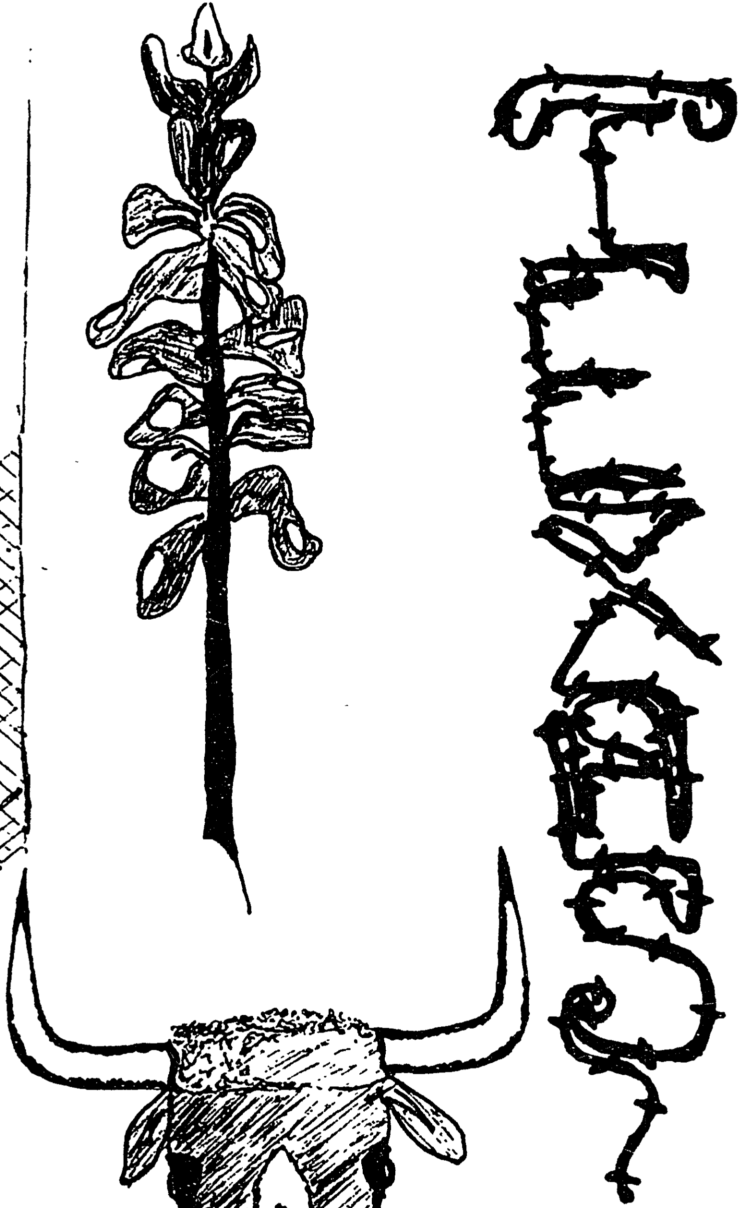
Grade: 10
School: Henderson High School, Henderson ISD

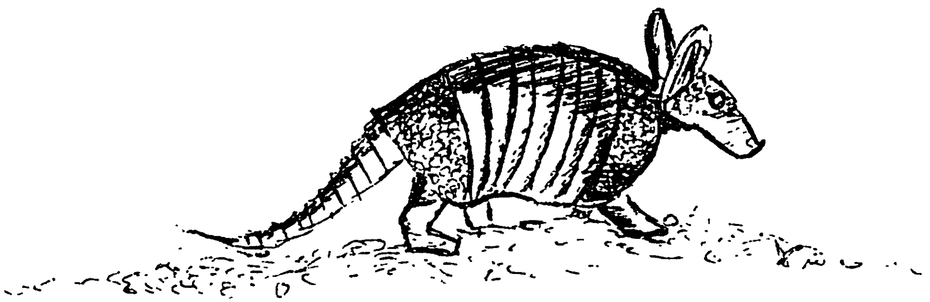
Name: Michcael Adams
Grade: 11
School: Henderson High School, Henderson ISD



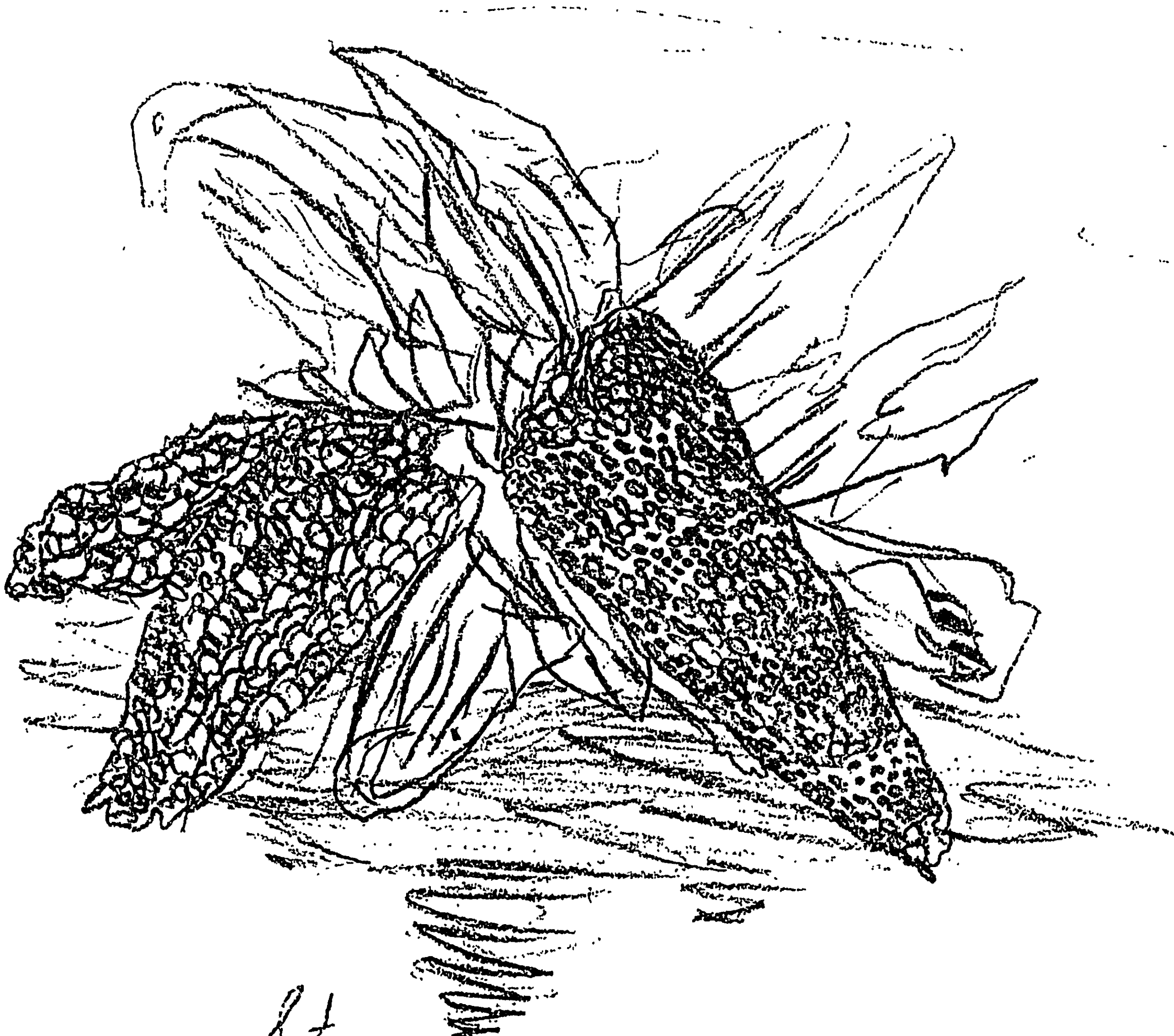




Name: Eric Campanella
Grade: 11
School: Henderson High School, Henderson ISD

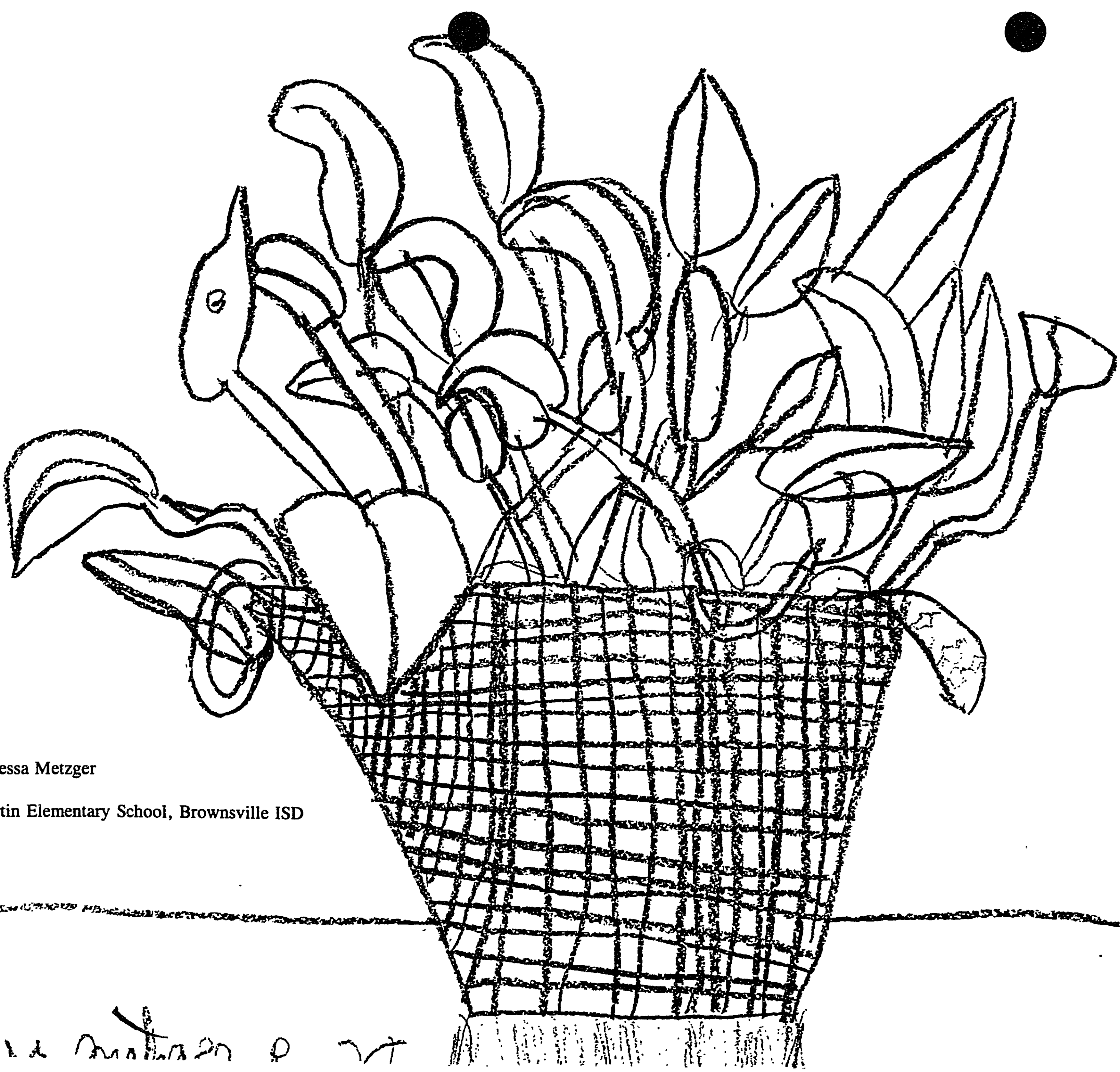


Name: Stevie Cuevas
Grade: 4
School: Martin Elementary School, Brownsville ISD



Stevie Cuevas 4 30

Name: Ivan Sanchez
Grade: 4
School: Martin Elementary School, Brownsville ISD



Name: Vanessa Metzger
Grade: 4
School: Martin Elementary School, Brownsville ISD

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made April 5, 1995

To be **Judge of the 88th Judicial District Court, Hardin and Tyler Counties**, until the next General Election and until his successor shall be duly elected and qualified: William D. Beggs, P.O. Box 355, Sour Lake, Texas 77659. Mr. Beggs will be replacing Judge Earl B. Stover who was elected to the Ninth Court of Appeals in Beaumont.

To be a member of the **Texas Board of Architectural Examiners** for a term to expire January 31, 2001: Paula C. Day, 2813 Hartwood Drive, Fort Worth, Texas 76109-1236. Mrs. Day will be replacing Jerry E. Yancey of Plano whose term expired.

To be a member of the **Texas Board of Architectural Examiners** for a term to expire January 31, 2001: John Only Greer, 506 East Brookside, Bryan, Texas 77801. Mr. Greer will be replacing Theodore S. Maffitt, Jr. of Palestine whose term expired.

To be a member of the **Texas Board of Architectural Examiners** for a term to expire January 31, 2001: Cleveland Turner, III, 2808 South Lipscomb Street, Amarillo, Texas 79109-3532. Mr. Turner is being reappointed.

Issued in Austin, Texas, on April 6, 1995.

TRD-9504162 George W Bush
Governor of Texas

♦ ♦ ♦

Appointments Made April 6, 1995

To be **Justice of the Court of Appeals, Eleventh Court of Appeals District**, until the next General Election and until his successor shall be duly elected and qualified: The Honorable Jim R. Wright, Route 2, Box 1024, Eastland, Texas 76448. Judge Wright will be replacing the Honorable Bud Arnot who was elected to the position of Chief Justice of the court.

To be a member of the **Texas Department of Housing and Community Affairs Board** for a term to expire January 31, 2001: Donald R. Bethel, 216 Highland Drive, Lamesa, Texas 79331. Mr. Bethel will be replacing Susan Sharlot of Austin who resigned.

To be a member of the **Texas Department of Housing and Community Affairs Board** for a term to expire January 31, 2001: Margie Lee Bingham, 3525 Sage #209, Houston, Texas 77056. Ms. Bingham will be replacing Judith McDonald of Nacogdoches who resigned.

To be a member of the **Texas Department of Housing and Community Affairs Board for a term to expire January 31, 2001: Florita Bell Griffin, Ph. D., P.O. Box 0, College Station, Texas 77841. Dr. Griffin will be replacing Elizabeth Flores of Laredo whose term expires.**

To be a member of the **State Securities Board** for a term to expire January 20, 2001: Nicholas C. Taylor, 1203 Country Club Drive, Midland, Texas 79701. Ms. Taylor will be replacing Duncan E Boeckman of Dallas whose term expired.

Issued in Austin, Texas, on April 6, 1995.

TRD-9504184 George W Bush
Governor of Texas

♦ ♦ ♦

To be members of the **Dental Hygiene Advisory Committee** for terms to expire February 1, 1997: Gloria Zacek, R.D.H., 2800 Jeanetta, #2008, Houston, Texas 77063, (713) 783-5442; Joe Lowery, 108 Oak Valley, Lufkin, Texas 75904, (409) 422-3315. For terms to expire February 1, 1999: Lisa Cooper, R.D.H., 225 Plantation, Coppell, Texas 75019, (817) 481-1041; Bea Wohleb, 2701 Stratford Drive, Temple, Texas 76502, (817) 724-2546. For a term to expire February 1, 2001: Lana Crawford, R.D.H., 1512 Barclay Drive, Carrollton, Texas 75007, (214) 239-1147. Please issue commissions to these appointees as soon as they have qualified.

Issued in Austin, Texas, on April 10, 1995.

TRD-9504303 George W Bush
Governor of Texas

♦ ♦ ♦

Appointments Made April 10, 1995

To be a member of the **Texas Southern University Board of Regents** for a term to expire February 1, 2001: Enos M Cabell, Jr, 4103 Frost Lake Court, Missouri City, Texas 77459. Mr Cabell will be replacing Odysseus M Lanier of Houston whose term expired.

To be a member of the **Texas Southern University Board of Regents** for a term to expire February 1, 2001: Gene A. Moore, Sr., Ph.D., 8730 South Acres Drive, Houston, Texas 77047. Dr. Moore will be replacing Walter H. Criner of Houston whose term expired.

To be a member of the **Texas Southern University Board of Regents** for a term to expire February 1, 2001: Preston Moore, Jr., 5823 Indian Trail, Houston, Texas 77057. Mr. Moore will be replacing Frank H. Richardson of Houston whose term expired.

Appointments Made April 11, 1995

To be a member of the **Texas Board of Mental Health and Mental Retardation** for a term to expire January 31, 2001: Rodolfo (Rudy) Arrendondo, Jr, Ed.D., 3212 40th Street, Lubbock, Texas 79413. Dr. Arredondo will be replacing Dr. Fermin Sarabia of San Antonio whose term expired.

To be a member of the **Texas Board of Mental Health and Mental Retardation** for a term to expire January 31, 2001: Charles M. Cooper, 6331 Chesley Lane, Dallas, Texas 75214. Mr. Cooper will be replacing Dr Anne Rinker Race of Dallas whose term expired.

To be a member of the **Texas Board of Mental Health and Mental Retardation** for a term to expire January 31, 2001: James I. Perkins, P.O. Box 288, Rusk, Texas 75785. Mr. Perkins will be replacing J. L. Huffines of Lewisville whose term expired.

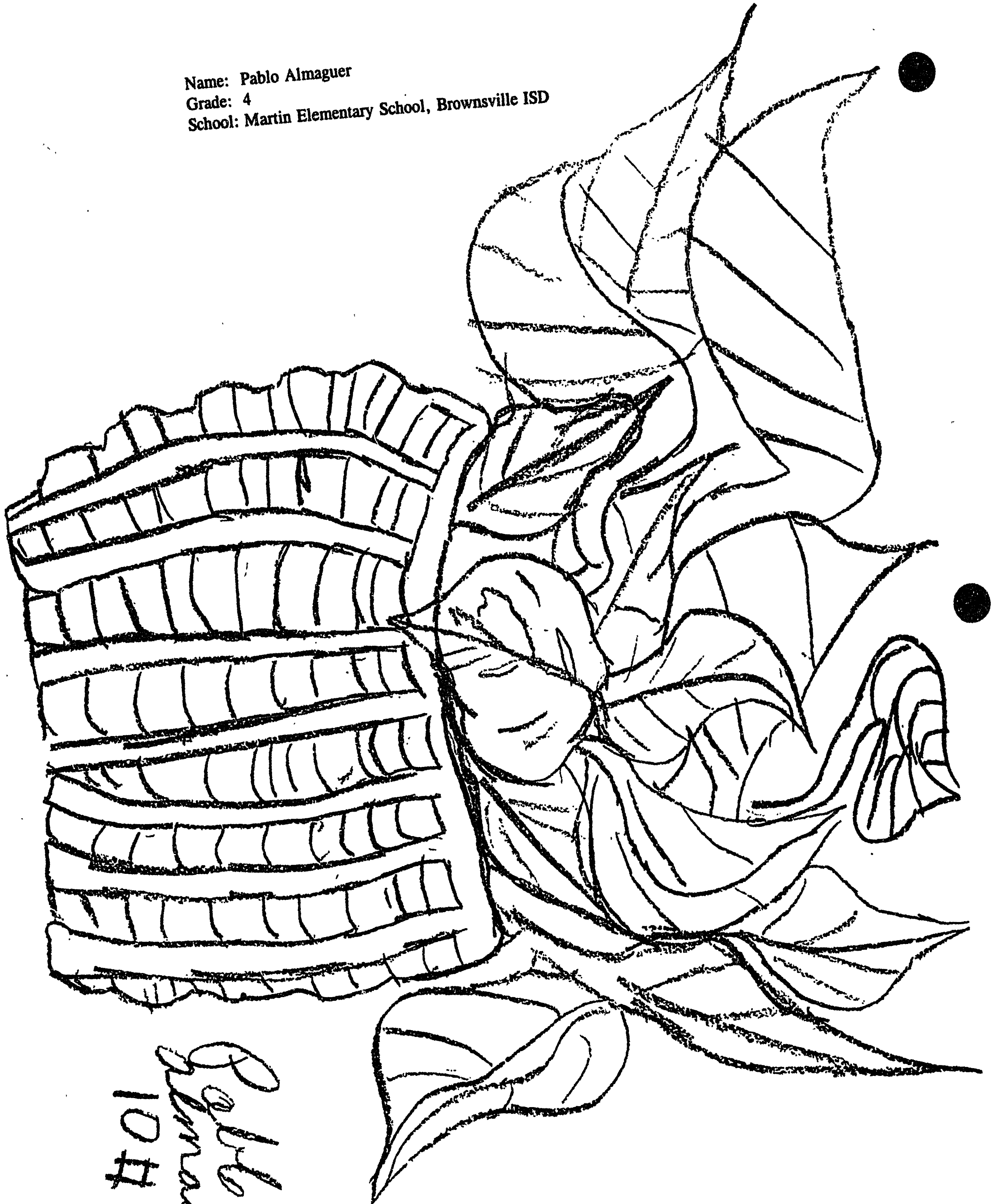
To be **Presiding Judge of the Sixth Administrative Judicial Region** for a term to expire four years from date qualification: The Honorable Stephen B. Ables, 506 Oakland Hills Lane, Kerrville, Texas 78028. Judge Ables will be replacing Judge William E. Moody of El Paso whose term expired.

Issued in Austin, Texas, on April 12, 1995.

TRD-9504474 George W Bush
Governor of Texas

♦ ♦ ♦

Name: Pablo Almaguer
Grade: 4
School: Martin Elementary School, Brownsville ISD



Attorney General

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Letter Opinions

LO-95-001 (ID #27010). Request from Lyndon Olson, President Brazos River Authority, P.O. Box 7555, Waco, Texas 76714-7555 concerning whether an employee of a state university may be compensated for service on the board of directors of the Brazos River Authority.

Summary of Opinion. A professor at a state-supported university is an employee of the state. Thus, pursuant to article XVI, section 40 of the Texas Constitution, he is not barred from serving as a member of the Board of Directors of the Brazos River Authority, a local governmental district within that provision. If he does serve, he may not receive the "fees of office" established as compensation for that position pursuant to §50.059 of the Water Code.

TRD-9504331

LO-95-002 (ID #26895). Request from Honorable Joe F. Grubbs, County and District Attorney, Ellis County Courthouse, Waxahachie, Texas 75165-3759, concerning propriety of Ellis County Treasurer's making payments from the county treasury without prior approval by the commissioners court and related questions.

Summary of Opinion. The Ellis County Treasurer may not properly make payments from the county treasury without prior approval by the commissioners court. If he does so, he is subject to personal liability for such payments if they are not subsequently ratified by the commissioners court.

TRD-9504332

LO-95-003 (RQ-773). Request from Honorable Debra Danburg, Chair, Committee on Elections, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether the term "corporation" in §22(a) of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, refers to a nonprofit or municipal corporation.

Summary of Opinion. The term "corporation" in section 22(a) of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, does not refer to a nonprofit corporation organized under the Texas Non-Profit Corporation Act, Texas Civil Statutes, Article 1396-1.01 to -11.01, or to a municipal corporation.

TRD-9504333

LO-95-004 (ID #30789). Request from Janie D. Fields, Executive Director, Children's Trust Fund of Texas Council, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854, concerning whether the children's trust fund created pursuant to Chapter 74 of the Human Resources Code may be abolished under §403.094 of the Government Code, and related questions.

Summary of Opinion. Under §403.094 of the Government Code, the dedicated revenue source for the children's trust fund set forth in §118.022 of the Local Government Code will cease to exist on August 31, 1995, unless the legislature takes certain action before that date. The children's trust fund, and the corpus of that fund as of August 31, 1995, are not subject to abolition under §403.094 and will continue to exist after that date. The children's trust fund is excepted from §403.095(b) of the Government Code by operation of subsection (b)(2).

TRD-9504334

LO-95-005 (RQ-697). Request from DeAnn Friedholm, Interim Commissioner, Texas Health and Human Services, Commission, P.O. Box 13247, Austin, Texas 78711 concerning whether the Texas Health and Human Services Commission has statutory authority to pursue Medicaid estate recoveries in accordance with 42 U.S.C. section 1396p(b)(1).

Summary of Opinion. The Texas Health and Human Services Commission does not have authority to pursue "Medicaid estate recoveries" in accordance with 42 U.S.C. §1396p(b)(1) . Legislation that is consistent with 42 U.S.C. §1396p(b)(1) and regulations adopted under that provision must be in effect by July 1, 1995, if the commission is to comply with requirements of the federal Medicaid program.

TRD-9504335

LO-95-006 (ID# 31742). Request from Honorable Keith Oakley, Chair, House Committee on Public Safety, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a public school district must obtain a payment bond on a public work contract for more than $25,000 that its insurer makes, under authority of the insurance contract between it and the insurer, with the prime contractor on a public work consisting of repairs to be performed on damaged school district property.

Summary of Opinion. A public school district must obtain a payment bond on a public work contract for more than $25,000 that its insurer makes, under authority of the insurance contract between it and the insurer, with the prime contractor on a public work consisting of repairs to be performed on damaged school district property.

TRD-9504336

LO-95-007 (ID #28637). Request from Honorable Bill Ratliff, Chair, Committee on Education, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning disposition of debts and assets in the dissolution of the Morris County Hospital District.

Summary of Opinion. The point at which the duty to provide indigent health care shifts back to the county upon dissolution of the Morris County Hospital District is when the district's board of directors, after the election to dissolve the district, orders the dissolution. Costs incurred by the county thereafter in providing care should not be considered the responsibility of the district.

That the costs of the district's redistributing unused tax funds to taxpayers exceeds the amount of such funds does not in itself preclude such distribution, especially if the district retains other assets from which the costs could be paid.

TRD-9504337

LO-95-008 (ID #29868). Request from Honorable Hugo Berlanga, Chair, Committee on Public Health, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning disposition of a municipal health authority's assets upon dissolution.

Summary of Opinion. The authority of a municipal health authority, under Health and Safety Code, Chapter 262, to transfer assets upon dissolution "to the municipality or to another person" is circumscribed by the public purpose requirements of article III, section 52 of the Texas Constitution. Whether a given transfer is sufficiently related to the public purposes of an authority-the provision and operation of hospitals-would involve fact questions.

TRD-9504338

LO-95-009 (ID #28385). Request from David R. Smith, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, concerning whether the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments may promulgate rules establishing criteria for the licensure of nonindividual persons to fit and dispense hearing instruments.

Summary of Opinion. Title 71, Texas Civil Statutes, Chapter 10A, does not authorize the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to establish criteria for the issuance to a nonindividual of a temporary training permit, apprentice permit, or license to fit and dispense hearing instruments.

TRD-9504339

LO-95-010 (ID #25758). Request from Honorable Jose R. Rodriguez, El Paso County Attorney, 500 East San Antonio, Room 203, El Paso, Texas 79901, concerning scope of performance bond requirement for developer participation contracts under Chapter 212, Subchapter C, Local Government Code, and related questions.

Summary of Opinion. Developer must execute a performance bond for the total cost of improvements to be constructed pursuant to a developer participation contract under Local Government Code, Chapter 212, Subchapter C. The provisions of former Texas Civil Statutes, Article 5160, now Government Code, Chapter 2253 which require a performance bond on public works contracts only where the latter are in excess of stated amounts, are inapplicable to the bond requirement under Chapter 212, Subchapter C. If a developer participation contract does not comply with the requirements of Chapter 212, Subchapter C, but calls for expenditures of municipal funds in excess of the amount stated in Local Government Code, Chapter 252, and is not within any of the listed exceptions to the chapters requirements, the contract must be let in compliance with the notice, bidding, and other requirements of Chapter 252.

TRD-9504340

LO-95-011 (ID #25694). Request from Dr. James Corbin, Chair, Texas Antiquities Committee, P.O. Box 12276, Austin, Texas 78711-2276, concerning whether the Fort Bend Flood Control Water Supply Corporation is a political subdivision and whether its development actions are subject to the Texas Antiquities Code.

Summary of Opinion. The Fort Bend Flood Control Water Supply Corporation, established under Texas Civil Statutes, Article 1434a, and incorporated under the Nonprofit Corporation Act, is not a "political subdivision" of the state within §191.092 of the Natural Resources Code. Land owned by the water supply corporation is not subject to the requirements of Natural Resources Code §191.093.

TRD-9504341

LO-95-013 (ID #29417). Request from Honorable James D. Ross, Midland County Auditor, 200 West Wall, Midland, Texas 79701, concerning whether county funds may be used as "flash money" in a "drug sting" operation.

Summary of Opinion. The expenditure of county funds for "flash money" in a "drug sting" operation is not unauthorized as a matter of law.

TRD-9504342

LO-95-014 (ID #25651). Request from James A. Collins, Executive Director, Texas Department of Criminal Justice, P.O. Box 99, Huntsville, Texas 77342-0099, concerning whether the Texas Department of Criminal Justice ("TDCJ") may release certain information about inmates incarcerated in the Institutional Division of TDCJ to the Texas Council on Family Violence, Inc..

Summary of Opinion. The Texas Council on Family Violence, Inc., a nonprofit corporation, is not a state agency. The disclosure of confidential information by the Department of Criminal Justice to the TCFV would not be an authorized interagency sharing of data between state agencies.

Senate Concurrent Resolution Number 26 of the Seventy-second Legislature does not establish the Texas Council on Family Violence, Inc., as an agent of the governor for the purpose of gathering confidential information.

TRD-9504343

LO-95-015 (ID #26437). Request from Honorable John W. Berry, Karnes County Attorney, 101 North Panna Maria, Suite 10, Karnes City, Texas 78118, concerning effect of nepotism statute, Government Code, Chapter 573, when mayor's wife who furnished contractual services becomes part-time employee and then is offered full-time employment.

Summary of Opinion. An individual who provided janitorial services to a city under agreement was continuously employed by the city for purposes of the nepotism law. Since her contract work for the city predated her husband's election as mayor by more than six months, §573.062(a) of the Government Code permitted her to continue to perform services for the city after her husband's election. Pursuant to §573.062(b) of the Government Code, the nepotism law did not prevent the city commission from approving a change in her status and compensation to that of a part-time employee, if the mayor did not participate in the deliberations or voting on such action. The nepotism law does not prevent the city commission from approving a change in her status and compensation from part-time to full-time employee, if the mayor does not participate in the deliberations or voting on this action.

TRD-9504344

LO-95-016 (ID #29256). Request from Honorable Robert Hill Trapp, Criminal District Attorney, San Jacinto County, P.O. Box 430, Coldspring, Texas 77331, concerning whether a person must be a resident of a rural fire prevention district in order to be eligible to be appointed to the board of fire commissioners under §794.033 of the Health and Safety Code.

Summary of Opinion. A person appointed to a rural fire prevention district board of fire commissioners under §794.033 of the Health and Safety Code is a county officer for purposes of Article XVI, §14 of the Texas Constitution, and therefore must reside in the county in which the district is located but need not reside in the district. This conclusion does not apply to a board member appointed under subsection (e) of §794.033, who must be a resident of the district pursuant to the terms of that subsection.

TRD-9504345

LO-95-017 (ID #25341). Request from Honorable Paul Sadler, Chair, Committee on Public Education, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a municipality is responsible for preparing an accurate map of municipal boundaries after the municipality has annexed territory.

Summary of Opinion. Section 41.001(a) of the Local Government Code requires a municipality to prepare a map indicating the boundaries of the municipality. If a municipality annexes territory, section 41.001(b) requires the municipality immediately to correct the map to include the annexed territory.

TRD-9504346

LO-95-018 (ID #29262). Request from Honorable Allen Ray Moody, Edwards County Attorney, P.O. Box 707, Rocksprings, Texas 78880, concerning procedure for setting annual salaries of elected county officers.

Summary of Opinion. Given the failure to provide notice of the proposed salary increases prior to the adoption of the county budget for the 1995 fiscal year as required by §152.013 of the Local Government Code, Edwards County elected officers are not entitled to the salary increase. With this exception, the remainder of the county budget, assuming that it was adopted in conformity with statutory requirements, remains in effect.

TRD-9504347

LO-95-019 (ID #31827). Request from Honorable Keith Oakley, Chair, House Committee on Public Safety, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether terms of an agreement between a public employer and a collective bargaining agent representing fire fighters pursuant to Local Government Code, Chapter 174 prevail over provisions of Local Government Code, Chapter 143.

Summary of Opinion. A city that has adopted Local Government Code, Chapters 143 and 174 may agree with the collective bargaining agent representing its fire fighters to include provisions on entry-level employment in the collective bargaining agreement that will prevail over Local Government Code, §143.026, if the agreement specifically provides that its provisions prevail over the statute.

TRD-9504348

LO-95-020 (ID #30360). Request from Honorable Tim Curry, Tarrant County Criminal District Attorney, Justice Center, 401 West Belknap, Fort Worth, Texas 76196-0201, concerning whether state nepotism laws prohibit an elected district official from hiring the son of his former spouse's sister.

Summary of Opinion. Title 5, Government Code, Chapter 573, the prohibition against nepotism, does not prohibit an elected official from hiring the son of his former spouse's sister.

TRD-9504349

LO-95-021 (ID #30383). Request from Todd K. Brown, Executive Director, Texas Workers' Compensation Commission, Southfield Building, MS-4D, 400 South IH-35, Austin, Texas 78704, concerning whether the Workers' Compensation Commission may promulgate a rule defining "separate business entity" for purposes of Labor Code, Chapter 407.

Summary of Opinion. The Texas Workers' Compensation Commission may adopt a rule to define "separate business entity" for purposes of Labor Code, Chapter 407 if such a rule is necessary for the implementation and enforcement of Title 5, Subtitle A of the Labor Code. The commission's rule must comport with the relevant statutory provisions.

TRD-9504350

LO-95-022 (ID #31810). Request from Honorable Hugo Berlanga, Chair, Committee on Public Health, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a member of the legislature is precluded by Article XVI, §40 of the Texas Constitution from working as an independent contractor on a part-time basis for a county government.

Summary of Opinion. Article XVI, section 40 of the Texas Constitution, as interpreted by Letter Opinion Number 93-31 (1993), does not preclude a legislator from working as an independent contractor on a part-time basis for a county government.

TRD-9504353

LO-95-023 (ID #32338). Request from Honorable Allen D. Place, Jr., Chair, Criminal Jurisprudence Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether §12.36 of the Education Code prohibits the president of a school board from accepting employment as an attorney with a law firm in which other attorneys represent a textbook publishing company.

Summary of Opinion. Section 12.36 of the Education Code prohibits only an attorney who is in an agency, or fiduciary, relationship with a textbook publishing company selling textbooks in Texas from holding a position as a trustee of an independent school district. Section 12.36 does not prohibit an attorney who works for the same law firm as the attorney or attorneys representing the textbook publishing company from holding office on the board of trustees of an independent school district if the textbook publishing company has established an agency relationship with other specific attorneys in the firm, as opposed to the firm as a whole.

Thus, §12.36 does not prohibit the president of the board of an independent school district from becoming an employee of a law firm in which one or more other attorneys represent a textbook publishing company selling textbooks in Texas where the textbook publishing company has designated a particular attorney or attorneys in the firm, other than the school board president, as its agent.

TRD-9504354

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Open Records Decisions

ORD-632 (RQ-649). Request from Melissa Winblood, Assistant City Attorney, City of El Paso, 2 Civic Center Plaza, El Paso, Texas 79901-1196 concerning availability of the emergency medical services records of deceased persons and related questions.

Summary of Opinion. The term "personal representative," as that term is used in Health and Safety Code, §773.093 signifies "personal representative" as defined in Probate Code, 3(aa).

A governmental body may not require a person seeking records under Health and Safety Code, §773.093 to produce letters testamentary or of administration when such letters, upon the city's request, have not been offered, but rather the governmental body must accept other evidence establishing an individual's personal representative status.

TRD-9504374

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Opinions

DM-320 (RQ-651). Request from Doyne Bailey, Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127, concerning whether justice courts have jurisdiction of prosecutions for violations of Alcoholic Beverage Code, §§106.02, 106.04, and 106.05.

Summary of Opinion. Section 19 of Article V of the Texas Constitution grants jurisdiction to justice courts in criminal matters in which the only possible sanction is a fine. Therefore, the justice courts do not have jurisdiction of prosecutions under Alcoholic Beverage Code, §§106. 02, 106.04, and 106.05 because those sections provide for the nonfine sanction of alcohol awareness education and because the legislature has not granted to the justice courts jurisdiction of prosecutions in which such a sanction may be imposed.

TRD-9504355

DM-321 (RQ-686). Request from Rebecca E. Forkner, Executive Director, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, concerning whether a person who practices psychotherapy, hypnosis for health care purposes, hypnotherapy, or biofeedback without a license violates the Psychol-

ogists' Certification and Licensing Act, Texas Civil Statutes, Article 4512c.

Summary of Opinion. A person who, for compensation, practices psychotherapy, hypnosis for health care purposes, hypnotherapy, or biofeedback without a license under the Psychologists' Certification and Licensing Act, Texas Civil Statutes, Article 4512c, violates that act unless such practice falls within one of the exceptions set out in the act. The act authorizes the Texas State Board of Examiners of Psychologists to take action to enjoin such violations, as well as other actions against violators authorized by law.

TRD-9504356

DM-322 (RQ-368). Request from D. C. "Jim" Dozier, Executive Director, Texas Commission on Law Enforcement, Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752, concerning whether a constable who has not met the licensure requirements of the Commission on Law Enforcement Officer Standards and Education may run for re-election and related questions.

Summary of Opinion. Government Code, §415. 053 does not preclude a constable running for re-election to the office of constable in the same or, provided he or she satisfies the statutory residence requirements, a different precinct even if the constable did not, within two years of the date the constable took office in a previous term, obtain from the Commission on Law Enforcement Officer Standards and Education a license to serve as a peace officer. Likewise, §415.053 does not preclude a county commissioners court from appointing an individual to the office of constable although that person during a previous term as constable, failed, within two years of the date he or she took office, to become licensed to serve as a peace officer. Section 415.053 provides the re-elected or appointed constable with two years from the date he or she assumed office to obtain from the Commission on Law Enforcement Officer Standard and Education a license to serve as a peace officer.

The members of a commissioners court are not subject to prosecution for violating §415.065 of the Government Code for appointing to the office of constable an individual who failed, during a previous term serving as constable, to become licensed in accordance with §415.053 of the Government Code. Once such an appointee assumes office, he or she is not subject to prosecution under §37.11 of the Penal Code for impersonating a public servant Additionally, once the appointee assumes office, he or she may invoke the peace officer exception, Penal Code §46.03(a)(6), to §46.02 of the Penal Code, which criminalizes the intentional, knowing, or reckless carrying of certain weapons.

TRD-9504357

DM-323 (RQ-676). Request from D. C. "Jim" Dozier, Executive Director, Texas Commission on Law Enforcement, Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752, concerning whether the Texas Commission on Law Enforcement Officer Standards and Education may establish requirements for the revocation of licenses of law-enforcement officers elected under the Texas Constitution, including sheriffs and constables, and related question.

Summary of Opinion. Government Code, §415.053 and §415.060 do not conflict irreconcilably. Rather, §415.060 requires the Texas Commission on Law Enforcement Officer Standards and Education to establish procedures by which it may revoke the license of a nonconstitutional law-enforcement officer who has violated the statute or a rule promulgated pursuant to a statute. On the other hand, §415.053 requires TCLEOSE to establish requirements for the revocation of a license belonging to a law-enforcement officer elected under the constitution, including a sheriff and a constable.

TCLEOSE must establish requirements for the revocation of a peace officer license belonging to a constable or sheriff, but the requirements may not apply to a constable who was elected prior to September 1, 1985, or to a sheriff who took office prior to January 1, 1994

TRD-9504358

DM-324 (RQ-489). Request from Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002-1891, whether a justice of the peace may contract with his or her employees to assume liability for shortages, and related questions.

Summary of Opinion. A justice of the peace is strictly liable for paying to the county treasury fees and other funds actually collected by him, subject to statutory remedies. A justice of the peace may not free himself of his liability for collecting funds and paying them to the county treasury by attempting to transfer this liability to his employees, by agreement or delegation. However, if a justice of the peace must reimburse the county for shortages of public funds caused by an employee's negligence or misconduct, the employee is liable to the justice of the peace for the loss. The justice of the peace may require the employee to provide, as a condition of employment, a written acknowledgment and acceptance of liability for shortages in collections that are caused by the employee's own negligence or misconduct. Local Government Code, §154.025 does not authorize enforcement of this agreement by withholding the employee's salary warrant, nor do we find any provision for enforcing it by payroll deduction.

TRD-9504359

DM-325 (RQ-680). Request from Honorable Senfronia Thompson, Chair Judicial Affairs Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether Education Code, §21.939 restricts school districts from using local funds to employ persons to monitor the activities of and supply information to legislators and state administrative agencies.

Summary of Opinion. The prohibitions set out in subsections (a) and (b) of Education Code, §21.939 on school districts' "employing" lobbyists or persons whose "primary duties" relate to proposed legislation or administrative action, apply regardless of whether a district's funds used to compensate such persons are from local or other sources. A school district does not itself possess the personal rights of free speech and equal protection under the state or federal constitutions.

TRD-9504360

DM-326 (RQ-742). Request from Honorable Kim Brimer, Chair, Committee on Business & Industry, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether the legislature constitutionally may establish a guaranty association for the workers' compensation liabilities of political subdivisions in which the membership would be mandatory and as to which the funding would come through assessments imposed on the membership.

Summary of Opinion. A proposal to establish a guaranty association, to require public insurance pools and public self-insurers to join the association, and to fund the association through assessments on the members would, if enacted, violate Article III, §52(a) of the Texas Constitution for two reasons. First, the obligation to pay assessments to a mutual insurance company, such as the guaranty association, constitutes an unconstitutional lending of credit. Second, membership in a mutual insurance company that operates on the basis of assessments is tantamount to holding stock in a corporation, association, or company.

TRD-9504361

DM-327 (RQ-699). Request from Honorable John B. Holmes, Jr., Harris County District Attorney, 201 Fannin, Suite 200, Houston, Texas 77002-1901, concerning whether private security guards and off-duty peace officers are prohibited from carrying firearms on the premises of racetracks by Penal Code, §46.03.

Summary of Opinion. Private security guards and off-duty peace officers are prohibited from carrying firearms on the pre-

mises of racetracks by Penal Code, §46.03. Peace officers, including investigators employed by the Texas Racing Commission, may carry firearms on the premises of racetracks while in the actual discharge of their official duties. See Penal Code, §46.03(b); Code of Criminal Procedure, Article 2. 12(21).

TRD-9504362

DM-328 (RQ-721). Request from Carl Mullen, Deputy Director, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047, concerning whether the General Services Commission has the authority to promulgate a rule to deem businesses owned by individuals with disabilities as "historically underutilized businesses" as that term is defined in Texas Civil Statutes, Article 601b, §1.02(3).

Summary of Opinion. The General Services Commission does not have the authority to promulgate a rule to deem businesses owned by individuals with disabilities as "historically underutilized businesses" as that term is defined in Texas Civil Statutes, Article 601b, §1.02(3), because the legislature did not intend that term to refer to businesses other than those owned by persons who are socially disadvantaged because of their identification as members of groups defined by gender, race, or ethnicity.

TRD-9504363

DM-329 (RQ-684). Request from Catherine A. Ghiglieri, Commissioner, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, concerning whether state and private university debit card programs are subject to the Sale of Checks Act, Texas Civil Statutes, Article 489d, and related questions.

Summary of Opinion. It is unlikely that a court would conclude that a university debit card program which does not involve the transfer of funds via written instruments is subject to the Sale of Checks Act, Texas Civil Statutes, Article 489d. It is also unlikely that a court would conclude that a university that offers a debit card program among its many and various activities engages in banking.

Private universities are authorized to operate debit card programs, provided that the programs are consistent with the educational mission set forth in their corporate charters and do not violate the Sale of Checks Act or constitute unauthorized banking. Although we have found no statute which expressly authorizes a state university to operate a debit card program, we believe that it is likely that a court would probably construe the broad powers of a board of regents to impliedly authorize a state university do to so.

TRD-9504364

DM-330 (RQ-696). Request from Honorable Clyde Alexander, Chair, Committee on Transportation, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910. Whether a statutorily mandated sign furnished by a towing company to a parking facility constitutes "anything of value" in contravention of Texas Civil Statutes, Article 6701g-2, and a related question.

Summary of Opinion. A sign of the sort required to be posted at a parking facility by Texas Civil Statutes, Article 6701g-2, is a thing of value for the purposes of §8 and §9 of that statute. The responsibility for posting such a sign rests, pursuant to §3 and §4 of the statute, on the owner of the parking facility concerned, rather than upon the towing company.

TRD-9504365

DM-331 (RQ-644). Request from Honorable David H. Cain, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether a city's expenditures of community development block grant funds are subject to state competitive bidding laws.

Summary of Opinion. Expenditures by a city of Federal Community Development Block Grant Funds on "contracts" exceeding the threshold amounts set out in the state's municipal competitive bidding laws and not falling within any of the exceptions to the bidding requirements set out there or elsewhere in state law are subject to competitive bidding.

TRD-9504366

DM-332 (RQ-724). Request from Honorable Kenny Marchant, Chair, Committee on Investments and Banking, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether certain subordinated debt of a pawnshop must be included in the calculation of net assets for purposes of determining eligibility for a pawnshop license under the Texas Pawnshop Act, Texas Civil Statutes, Title 79, Chapter 51.

Summary of Opinion. Assuming that under a subordination agreement, a bank forfeits its security priority as well as any rights it may have as an unsecured creditor to current assets of a pawnshop-borrower in the amount of $150,000, a subordination agreement would not render the pawnshop's current assets unavailable for use in the pawnshop business. Accordingly, debt that is subject to a lender's subordination agreement generally is not an applicable liability for the purpose of calculating the pawnshop's net assets under Texas Civil Statutes, Article 5069-50.02(g).

TRD-9504367

DM-333 (RQ-750). Request from Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002-1891, concerning Harris County Sheriff's authority to call up reserve deputy sheriffs to provide security personnel to separate governmental or private entities, and related questions.

Summary of Opinion. Local Government Code, §85.004, which generally empowers a commissioners court to authorize the sheriff to appointment reserve deputies and to call them "into service if the sheriff considers it necessary to have additional officers to preserve the peace and enforce the law," does not in itself authorize the Harris County Sheriff to call a reserve deputy sheriff into service for the purpose of providing security personnel to a separate governmental or private entity that will pay the deputies on an employee or independent contractor basis.

TRD-9504368

DM-334 (RQ-728). Request from Honorable D. August Boto, Cooke County Attorney, 3rd Floor, Courthouse, Gainesville, Texas 76240, concerning whether a victim of delinquent conduct by a child may be a person having a "legitimate interest in the proceeding" for purposes of §51.14(a)(4) of the Family Code, and related questions.

Summary of Opinion. In some circumstances the public policy in favor of compensating property owners for the malicious destruction of their property may justify a juvenile court's determination that a victim of vandalism seeking access to court files and records under §51.14(a)(4) of the Family Code for use in a civil action for damages caused by the vandalism is a "person . . . having a legitimate interest" in a proceeding adjudicating a child to have engaged in delinquent conduct or conduct indicating a need for supervision.

The provision in §51.14(a) that the "files and records of a juvenile court . . . are open to inspection only by [the persons and entities set forth in subsection (a)]" means that only those persons and entities may inspect juvenile files and records, not that those persons and entities may only inspect juvenile files and records. A grant of access to records under §51. 14(a)(4) does not include permission to copy the records unless the public interest requires that the requestor have copies.

TRD-9504369

DM-335 (RQ-722). Request from Honorable Warren Chisum, Chair, Committee on Environmental Regulation, Texas of House of Representatives, P.O. Box 2061, Pampa, Texas 79066-2061, concerning whether an entity that contracts with an independent school district to provide educational services to the district under Education Code, §23.34 must comply with various statutory requirements imposed on school districts.

Summary of Opinion. Education Code, §23.34 which permits school districts to contract with public or private entities to provide educational services, does not relieve school districts that enter into such contracts from complying with statutory requirements applicable to school districts. School districts must ensure compliance with statutory requirements when contracting with other entities under §23.34.

TRD-9504370

DM-336 (RQ-748). Request from Bruce A. Levy, M.D., J D , Executive Director, Texas State Board of Medical Examiners, P O. Box 149134, Austin, Texas 78714-9134, concerning whether the Texas State Board of Acupuncture Examiners may promulgate a rule authorizing acupuncturists to hold themselves out as "doctor," "Oriental Medical Doctor," or "O.M D." and related questions

Summary of Opinion. Subchapter F of the Medical Practice Act, Texas Civil Statutes, Article 4495b, authorizes the Texas State Board of Acupuncture Examiners to recommend to the Texas State Board of Medical Examiners rules authorizing acupuncturists to use certain titles Conversely, the board may recommend a rule limiting acupuncturists' use of such titles Of course, pursuant to §6.11(a)(7) of the Medical Practice Act, the Texas State Board of Acupuncture Examiners may not recommend to the Texas State Board of Medical Examiners a rule authorizing an acupuncturist to use the title "physician" or "surgeon" or a combination or derivative of those terms, nor may the board recommend a rule that is contrary to other law Likewise, if, regardless of whether the board promulgates rules approving or limiting the titles an acupuncturist may use, an acupuncturist may not select a designation that contravenes Article 4459b, §6.11(a)(7) or any other law

A healing art practitioner's proper use of the title "doctor" under §4 of the Healing Art Identification Act, Texas Civil Statutes, Article 4590e, does not constitute a violation of Texas Civil Statutes, Article 4512p, §4. An acupuncturist may use the title "doctor" in accordance with §4 of the Healing Art Identification Act. However, the board may not recommend to the Texas State Board of Medical Examiners a rule regarding an acupuncturist's use of the title "doctor."

Whether an acupuncturist's use of the titles "Oriental Medical Doctor" and "O.M.D." would mislead or tend to deceive the public so as to violate Article 4512p, §4, for example, §4(b)(5), is a question involving the determination of fact issues. The board may, of course, recommend to the Texas Board of Medical Examiners a rule limiting acupuncturists' use of the titles "Oriental Medical Doctor" and "O.M.D."

TRD-9504371

DM-337 (RQ-624). Request from Honorable Sonya Letson, Potter County Attorney, 303 Courthouse, Amarillo, Texas 79101, concerning whether Local Government Code, §157.002 authorizes a county to provide medical coverage for district officers and related questions.

Summary of Opinion. Local Government Code, §157.002(a)(2) does not prohibit a county from phasing out its provision of medical coverage to district officers by covering only those district officers who hold office as of a certain date. Unless a suspect class is involved, such a plan violates the equal protection clause of the 14th Amendment to the United States Constitution only if the county commissioners court lacks a legitimate purpose for phasing out medical coverage for district officers in this way and if the commissioners court's belief that distinguishing between incumbent and new office-holders will promote that purpose is unreasonable.

Terminating medical coverage under §157.002(a)(2) for all district officers on a certain date violates the Americans with Disabilities Act, 42 U. S.C. Chapter 126, only if the termination discriminates on the basis of disability against a qualified individual.

TRD-9504372

DM-338 (RQ-342). Request from Honorable Tim Curry, Criminal District Attorney, Justice Center, 401 West Belknap, Fort Worth, Texas 76196-0201, concerning whether an expanded county civil service system established under Local Government Code, §158.007 covers sheriff's and constable's deputies when the sheriff's department has not established a separate civil service system under Chapter 158, subchapter B, and whether a county civil service system has authority to adopt subpoena power.

Summary of Opinion. In a county whose sheriff's department has not established a separate civil service system under subchapter B of Local Government Code, Chapter 158 a county civil service system resulting from an expansion election under Local Government Code, §158.007 does include deputy sheriffs and deputy constables.

Local Government Code, §158.009 does not authorize a county civil service commission to endow itself with subpoena power by its own rule.

TRD-9504373

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Requests for Opinions

(RQ-780). Request from The Honorable Daniel C. Rice, District Attorney, 9th Judicial District, 301 North Thompson, Suite 106, Conroe, Texas 77301-2824 concerning scope of the Open Records Act, Government Code, Chapter 552, applicable to particular information held by a district attorney.

(RQ-781). Request from Susan Smith, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494 concerning whether an independent school district may purchase, lease, rent, or use, for the purpose of transporting students, buses and other motor vehicles that do not meet federal standards, and related questions.

(RQ-782). Request from William G. Burnett, P.E., Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 concerning whether revenues recovered by the State of Texas as oil and gas royalties should be credited to the State Highway Fund.

(RQ-783). Request from Dr. Ann Dixon, Superintendent, Somerset Independent School District, P.O. Box 278, Somerset, Texas 78069, concerning whether the Open Records Act applies to documentation of official communications and activities occurring at the workplace, where the documentation was prepared by a public employee on his or her own time for purposes of defending against possible allegations of wrongdoing and is being kept at the employee's residence.

(RQ-784). Request from Honorable Kenneth H. Ashworth, Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, concerning whether the Coordinating Board is required to issue a partial release of a student loan judgment lien on real property which the judgment debtor claims as a homestead, and related questions

(RQ-785). Request from Honorable David Sibley, Chair, Economic Development Committee, P.O. Box 12068, Austin, Texas 78711 concerning whether a partial redistricting constitutes a "reapportionment" pursuant to Article III, section 3, of the Texas Constitution, and related questions.

(RQ-786). Request from David W. Myers, Executive Director, Texas Commission for the Blind, P.O. Box 12904, Austin, Texas 78711, concerning use of an interpreter for deaf and hearing-impaired persons in administative and judicial proceedings.

(RQ-787). Request from Ray Farabee, Vice Chancellor and General Counsel, The University of Texas System, 201 West Seventy Street, Austin, Texas 78701-2981, concerning meaning of the term "The Cold War" in Education Code, §54.203, for purposes of exempting veterans from payment of tuition and fees at a state institution of higher education.

(RQ-788). Request from Linda Young, Executive Director, Texas Automobile Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78779-0001, concerning whether the Texas Automobile Theft Prevention Authority (ATPA) may grant to an insurance company a refund from the automobile theft prevention fund.

(RQ-789). Request from Honorable Doyle Willis, Chair, Select Committee on Veterans Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether police officers of a home rule city must be "sworn in" every two years.

(RQ-790). Request from Robert L. Dillard, III, Nichols, Jackson, Dillard, Hager & Smith, L.L.P., 1800 Lincoln Plaza, 500 North Akard, Dallas, Texas 75201, duty of governmental body to timely inform this office of changed circumstances when raising Government Code, §552.103.

(RQ-791). Request from Carole Wayland, Acting Midland County Auditor, Midland County, 200 West Wall, Midland, Texas 79701, concerning whether a county attorney's "hot check fund" is subject to review by the county auditor.

(RQ-792). Request from David R. Smith, M.D., Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199 concerning whether Family Code, §14.52(d) which requires bidders on state contracts to file sworn statements regarding child support obligations, is applicable to medicaid providers which operate in Texas.

(RQ-793). Request from Commissioner Rick Perry, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, concerning authority of the Texas Department of Agriculture to implement a field citation program for assessment of administrative penalties.

TRD-9504330

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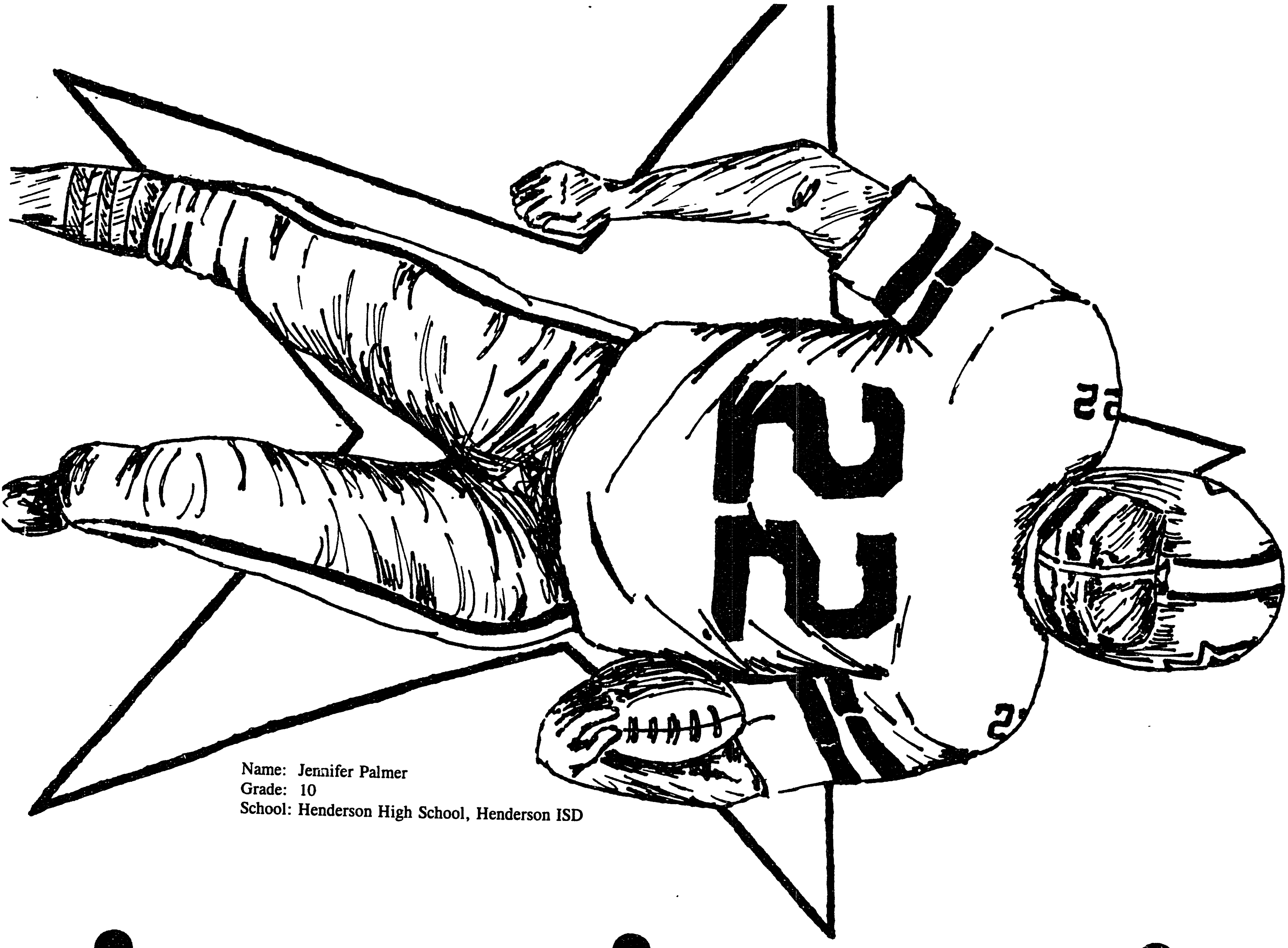

Name: Jennifer Palmer
Grade: 10
School: Henderson High School, Henderson ISD

Texas Ethics Commission

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Texas Ethics Commission

Advisory Opinion Requests

AOR-288 The Ethics Commission has been asked to consider the following questions: 1. Notwithstanding the specific language of Chapter 305, Government Code, may a lobby registrant pay for the lodging and travel of a spouse who is a member or staffer of the legislative or executive branch? If the answer is "yes," are there any filing requirements associated with the lodging and transportation expenditures? 2 Similarly, may a lobby registrant pay for the lodging and travel of a person with whom the lobbyist is engaged in a personal relationship (long-term friendship or romantic) who is a member or staffer of the legislative or executive branch? If the answer is "yes," are there any filing requirements associated with the lodging and transportation expenditures?

AOR-289 The Texas Ethics Commission has been asked to consider whether a candidate may reimbursement himself for political expenditures made from personal funds if the candidate reported a loan to himself rather than reporting the expenditures on Schedule G of the filing form.

Issued in Austin, Texas, on April 6, 1995.

TRD-9504172 Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: April 6, 1995

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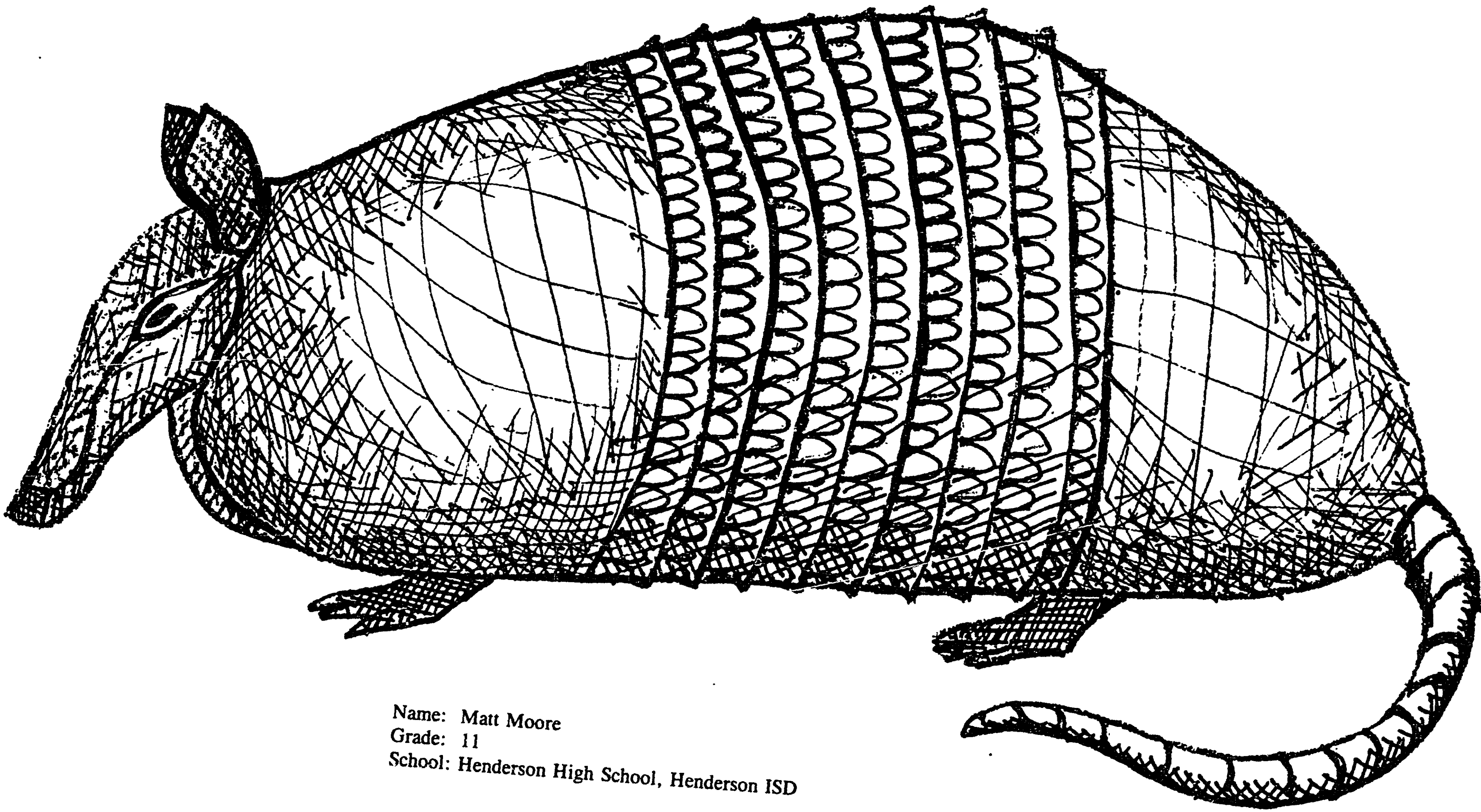

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Grade: 11
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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

Library Services Construction Act Annual Program and Long Range Plan

• **13 TAC §1.21**

The Texas State Library and Archives Commission proposes an amendment to §1.21, concerning the federal Library Services and Construction Act Long Range Plan and Annual Program. The documents describe the types of financial assistance and services available to libraries and systems of libraries and the qualifications and procedures for receiving, administering and reporting on these funds. The Commission proposes to adopt long range plans for fiscal years 1994-1999 and annual programs for fiscal years 1994, 1995, and 1996 by reference.

Edward Seidenberg, Director, Library Development Division, has determined that there will be fiscal implications as a result of administering or enforcing this section. The effect on state government for the first five-year period the rule will be in effect will be the following estimated increases in revenue: in 1994: $413,879; in 1995: $434,131; in 1996 $465,122; in 1997: $414,255; in 1998. $425,000. The effect on local government for the first five-year period the rule will be in effect will be the following estimated increases in revenue: in 1994: $6,639,347; in 1995: $6,746,193; in 1996: $7, 052,104; in 1997: $7,102,971; in 1998: $7,075,000.

Mr. Seidenberg also 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 enhanced library services through the addition of library materials to public library collections; continuing education for library staff; interlibrary loan services for public, academic, and special libraries; construction of new public libraries; and renovation of existing public libraries There will be no effect on small businesses. There will be no economic cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Edward Seidenberg, Library Development Division, Texas State Library, Box 12927, Austin, Texas 78711-2927, within 30 days of publication in the *Texas Register.*

The amendment is proposed under Government Code, §441.009, that provides Texas State Library and Archives Commission with the authority to adopt a state plan for improving library services in Texas.

Government Code §441.009 is affected by the proposed amendment.

§1.21. Library Services and Construction Act Application for Federal Funding. The Texas State Library and Archives Commission adopts by reference the Library Services and Construction Act Annual Program, 1994, **the Library Services and Construction Act Annual Program, 1995, and the Library Services and Construction Act Annual Program, 1996** [1993], and Long Range Plan 1994-1997, **Long Range Plan 1994-1997 (amended July 1994), and Long Range Plan 1996-1999** [1992-1995 (revised July 1992)]. Copies may be obtained from the Library Development Division of the Texas State Library, P.O. Box 12927, Austin Texas 78711.

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

Issued in Austin, Texas, on April 10, 1995

TRD-9504327 Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission

Earliest possible date of adoption. May 19, 1995

For further information, please call. (512) 463-5460

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• **16 TAC §3.14**

The Railroad Commission of Texas proposes an amendment to §3.14, concerning well plugging. Adoption of the proposed amendment will reduce the regulatory burden on operators of wells more than 25 years old by permitting operators to conduct certain types of casing integrity tests without prior notice or approval from the district office. Specifically, fluid level tests would no longer require prior notice or approval from the district office and the results could be filed directly with the commission in Austin. The amendment will also reduce from three days to two days, the amount of notice that an operator must give the district office before running an annual mechanical integrity test

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule

Jeffrey T Pender, hearings examiner, Legal Division, has determined that the public will benefit because the amendment will encourage compliance with Rule 14 thereby reducing the likelihood that old, inactive wells will cause pollution of surface or subsurface water There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeff Pender, Hearings Examiner, Legal Division-Oil and Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 The deadline for filing comments is 30 days after publication in the *Texas Register* The docket number of this proposed rule amendment is 20-0200438.

The amendment is proposed pursuant to the Natural Resources Code, Title 3, §91.101, Chapters 85, 89, and 91 that provide the Railroad Commission with authority to prevent pollution and determine plugging responsibility.

The following are the codes that is affected by this rule: Texas Natural Resources Code, §91.101.

§3.14. Plugging.

(a) (No change.)

(b) Plugging: commencement of operations, extensions, and responsibility.

(1) (No change.)

(2) Plugging operations on each dry or inactive well must be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed. For good cause, a reasonable extension of time in which to start the plugging operations may be granted pursuant to the following procedures.

(A)-(D) (No change.)

(E) All wells more than 25 years old that become inactive and subject to the provisions of this paragraph shall be pluged or tested annually to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. In general, a test is a sufficient test for purposes of this subparagraph. However, the commission or its delegate may require alternate methods of testing, and more frequent tests, if it is necessary to ensure the well does not pose a potential threat of harm to natural resources. Wells that are returned to continuous production, as evidenced by three consecutive months of production, within a year after the well becomes inactive need not be tested. Alternate methods of testing may be approved by the commission or its delegate by written application and upon a showing that such a test will provide information sufficient to determine that the well does not pose a threat to natural resources. No test **other than a fluid level test** shall be conducted without prior approval from the district office. The district office shall be notified at least **two** [three] days before **any test other than a fluid level** [the] test is conducted. **Mechanical Integrity** [The] test results shall be filed with the district office **and fluid level test results shall be filed with the commission in Austin. Test results shall be filed**[,] on a commission-approved form, within 30 days of the completion of the test. Fluid level tests shall be conducted on an annual basis according to the following schedule.

(i)-(iv) (No change.)

(F) As of January 1, 1997, all wells that are, or become, both more than 25 years old and inactive for more than ten years, shall be tested for mechanical integrity so long as the well remains inactive. Such tests shall be conducted every five years. However, the commission or its delegate may require that a well undergo a mechanical integrity test more frequently than every five years if conditions indicate that more frequent testing is necessary to prevent the threat of harm to natural resources. A hydraulic pressure test is a sufficient mechanical integrity test for purposes of this section. Alternate methods of testing for mechanical integrity may be approved by the commission or its delegate upon written application and a showing that such alternate method of testing will provide information sufficient to determine that the casing is sound and not subject to leakage. No test shall be conducted without prior approval from the district office. The district office shall be notified at least **two** [three] days before the test is conducted. The test results shall be filed with the district office, on a commission-approved form, within 30 days of the completion of the test. Wells for which mechanical integrity tests are conducted pursuant to this subparagraph are not subject to the annual test requirements of subparagraph (E) of this paragraph.

(3) (No change.)

(c)-(j) (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 April 7, 1995.

TRD-9504269 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 463-7008

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Subchapter AA. Rail Safety

• 16 TAC §§5.611-5.618, 5.620, 5.621, and 5.625

(Editor's note. The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of Subchapter AA, §§5.611-5.618, 5.620, 5.621, and 5.625, concerning clearances of structures over and alongside railway tracks, reports of railroad accidents/incidents, railroad safety requirements, right to inspect railroad property, enforcement of railroad safety requirements, reporting/filing requirements, safety equipment, wayside detector map, list or chart, visual obstructions at public grade crossings, severability clause, and hazardous materials reporting requirements. This proposal is made in order to provide for the reorganization of the Commission's Chapter 5 rules into concise subchapters and to allow adoption of new §§5.601 and 5.603-5.620 within new Subchapter H concerning vehicle storage facilities; the proposal of which was published in the February 7, 1995, issue of the *Texas Register* (20 TexReg 867).

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as the result of the proposed repeals.

Craig H. Smith, assistant director-transportation section, Legal Division has determined that for each of the first five years the proposed repeals are in effect the public benefit anticipated will be better organized rules that will enable more efficient use. There is no anticipated cost of compliance for small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments may be submitted to Craig H. Smith, assistant director, Transportation Section, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Title 112 Articles 6259, et seq, which authorize the commission to prescribe rules and regulations for the safe operation of railroads in this state.

The following articles are affected by these repeals: §§5.611-5.618, 5. 620, 5.621, and 5.625, Texas Civil Statutes, Title 112, Articles 6259, et seq.

§5.611. Clearances of Structures Over and Alongside Railway Tracks.

§5.612. Reports of Railroad Accidents/Incidents.

§5.613. Railroad Safety Requirements.

§5.614. Right to Inspect Railroad Property.

§5.615. Enforcement of Railroad Safety Requirements.

§5.616. Reporting/Filing Requirements.

§5.617. Safety Equipment.

§5.618. Wayside Detector Map, List or Chart.

§5.620. Visual Obstructions at Public Grade Crossings.

§5.621. Severability Clause.

§5.625. Hazardous Materials Reporting 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 April 11, 1995.

TRD-9504504 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption. May 19, 1995

For further information, please call: (512) 463-7094

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Subchapter J. Rail Safety

• 16 TAC §§5.801-5.811

The Railroad Commission of Texas proposes new §§5.801-5.811, concerning clearances of structures over and alongside railway tracks, reports of railroad accidents/incidents, railroad safety requirements, right to inspect railroad property, enforcement of railroad safety requirements, reporting/filing requirements, safety equipment, wayside detector map, list or chart, visual obstructions at public grade crossings, severability clause, and hazardous materials reporting requirements. The proposed rules are substantially the same rules as those previously contained in §§5.611-5.618, and 5.625. This proposal will allow the adoption of new §5.601 and §5. 603-5.620, within a new Subchapter H, concerning vehicle storage facilities, the proposal of which was published in the February 7, 1995, issue of the *Texas Register* (20 TexReg 867).

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for each year of the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing the sections.

Craig H. Smith, assistant director-transportation section, Legal Division, has determined for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of the proposed rules will be greater ease of use and thus greater compliance by reorganizing the commission's rules into a concise subchapter for each category. There is no anticipated cost to small businesses as a result of enforcing the sections as proposed. There is no anticipated cost to persons required to comply with the proposed sections because the requirements are already contained in §§5. 611-5.618, 5.620, 5.621 and 5.625.

Comments may be submitted to Craig H. Smith, assistant director, Transportation Section, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Title 112, Articles 6259, et seq which authorize the commission to prescribe rules and regulations for the safe operation of railroads in this state.

The following is the article that is affected by the proposed sections: Texas Civil Statutes, Title 112, Articles 6259, et seq.

§5.801. Clearances of Structures Over and Alongside Railway Tracks

(a) Mail cranes, turn tables, cattle guards, icing racks and coal chutes. Mail cranes, turn tables, cattle guards, icing racks, and coal chutes shall be exempt from provisions of the Texas Clearance Law, Texas Civil Statutes, Article 6559(a)-(f).

(b) Water cranes and oil cranes. Present standards for water cranes and oil cranes may be maintained as refers to the respective railway companies with a minimum clearance of seven feet from center line of tract.

(c) Through truss and girder bridges

(1) The minimum horizontal clearance in bridges shall be seven feet six inches from the center line of the track, over a distance between a point four feet above the top of rail and a point 17 feet above the top of the rail.

(2) Upper diagonal bracing in bridges shall not encroach within a line extending from a point seven feet six inches from center line of track at a height of 17 feet above top of rail to a point three feet from center line of track, at a height of 22 feet above top of rail.

(3) Lower diagonal bracing in bridges and walkway railings on bridges shall not encroach within a line extending from a point seven feet six inches outside of center line of track at a height of four feet above top of rail to a point five feet nine inches outside of center line of track at top of rail elevation.

(d) Switch stands interlocking plants.

(1) The minimum horizontal clearance for switch stands and dwarf signals, two feet six inches or less above top of rail, shall be five feet six inches from center of track.

(2) Interlocking apparatus not exceeding six inches above top of rail shall have a minimum horizontal clearance from center of track of four feet.

(e) Passenger train sheds and platform. Passenger train sheds where only passenger equipment is handled are exempted. The minimum horizontal clearance between the center line of track and passenger station platform, one foot or less in height above top of rail, shall be four feet six inches.

(f) Round house and shop building doors. The provisions of the Texas Clearance Law, Texas Civil Statutes, Article 6559(a)-(f), shall not apply to engine houses or buildings into which locomotives or cars are moved for terminal inspection, attention or repairs.

(g) Stock yards and loading chutes. Minimum horizontal clearance for stock yards and loading chutes shall be six feet six inches, except where such structures are constructed on main line tracks.

§5.802. Reports of Railroad Accidents/Incidents.

(a) Each railroad shall promptly furnish the Commission with a copy of each accident/incident report filed with the Federal Railroad Administration pursuant to 49 Code of Federal Regulations §225, within 30 days after expiration of the month during which the accident/incident occurred. Only copies of reports which concern accidents/incidents occurring in the State of Texas should be filed with the Commission.

(b) A railroad must report immediately by telephone to the Commission at (512) 463-6788, whenever it learns of the occurrence of any collision, derailment, fire, explosion, act of God, or other event occurring in the State of Texas and involving operation of railroad on-track equipment (standing or moving) which:

(1) results in the death of any railroad passenger or railroad employee;

(2) results in the death or injury of two or more persons;

(3) involves a passenger train; or

(4) involves a commodity classified as a hazardous material under 49 Code of Federal Regulations Part 172.

(c) Each report filed pursuant to subsection (b) of this section must state the:

(1) name of the railroad;

(2) name, title and telephone number of the individual making the report;

(3) time, date, and location of accident/incident;

(4) circumstances of the accident/incident;

(5) number of persons killed or injured; and

(6) name of hazardous commod-

ity or commodities involved.

§5.803. Railroad Safety Requirements.

(a) Governing statutes. Railroads operating within the State of Texas are subject to safety requirements contained in or adopted pursuant to the following statutes:

(1) the Federal Railroad Safety Act of 1970, as amended (45 United States Code §§421, 431-441);

(2) the Safety Appliance Acts, as amended (45 United States Code §§1-16);

(3) the Locomotive Inspection Act, as amended (45 United States Code §§22-34);

(4) the Signal Inspection Act, as amended (49 United States Code §26);

(5) the Accident Reports Act, as amended (45 United States Code §§38-42);

(6) the Hours of Service Act, as amended (45 United States Code §§61-64b); and

(7) the Hazardous Materials Transportation Act, as amended (49 United States Code, §1801 et seq)[Texas Civil Statutes, Article 6444, et seq];

(8) Texas Civil Statutes, Article 6448a; and

(9) Texas Civil Statutes, Article 6492a.

(b) Federal regulations adopted by reference. The following federal railroad safety requirements as they exist on September 30, 1985, are hereby adopted as the minimum railroad safety requirements of the Railroad Commission of Texas, and all railroads operating within the State of Texas shall be governed thereby:

(1) track safety standards codified at 49 Code of Federal Regulations, Part 213;

(2) rules, standards, and instructions for railroad signal systems codified at 49 Code of Federal Regulations, Part 236;

(3) freight car safety standards codified at 49 Code of Federal Regulations, Part 215;

(4) safety glazing standards codified at 49 Code of Federal Regulations, Part 223;

(5) locomotive safety standards codified at 49 Code of Federal Regulations, Part 229;

(6) safety appliance standards codified at 49 Code of Federal Regulations, Part 231;

(7) power brake standards codified at 49 Code of Federal Regulations Part 232;

(8) federal operating practice regulations codified at 49 Code of Federal Regulations, Parts 217, 218, 220, 221, 225, and 228;

(9) transportation workplace drug testing programs codified at 49 Code of Federal Regulations, Part 40;

(10) bridge-worker safety standards codified at 49 Code of Federal Regulations, Part 214;

(11) control of alcohol and drug use codified at 49 Code of Federal Regulations, Part 219;

(12) qualifications and certification of locomotive engineers codified at 49 Code of Federal Regulations, Part 240; and

(13) hazardous materials regulations codified at 49 Code of Federal Regulations, Parts 171-179.

§5.804. Right to Inspect Railroad Property. Authorized personnel of the Railroad Commission of Texas shall have the right to enter onto the property of any railroad operating within the State of Texas for the purpose of conducting inspections, investigations, and surveillance of railroad track, facilities, equipment, records, and operations in order to determine the railroad's compliance with relevant safety requirements. Any such inspection, investigation, or surveillance shall be conducted at a reasonable time and in a reasonable manner.

§5.805. Enforcement of Railroad Safety Requirements.

(a) Federal enforcement action. The director of transportation may refer violations of railroad safety requirements adopted under §5.803(b) of this title (relating to Railroad Safety Requirements) to the Federal Railroad Administration (FRA) with a recommendation that the FRA seek either imposition of civil penalties or an injunction against further railroad safety violations, or both

(b) State enforcement action. The Commission may, through the attorney general of Texas, bring an action in any court of competent jurisdiction and proper venue seeking either imposition of a civil penalty or an injunction, or both, against violation of a railroad safety regulation or order issued under the provisions of Texas Civil Statutes, Article 6448a. The Commission may also, through the attorney general of Texas, bring an action in the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office seeking either imposition of a civil penalty or an injunction, or both, against violation of a railroad safety violation adopted under the provisions of §5.803(b) of this title (relating to Railroad Safety Requirements), if the director of transportation has requested such action and the FRA has failed to take timely action on a request. Federal Railroad Administration action on a request that it seek to impose a civil penalty is timely if, within 60 days after receipt of the request, FRA has either assessed a civil penalty or determined, in writing, that no violation has occurred. Federal Railroad Administration action on a request that it seek an injunction against further violation of a rail safety requirement is timely if, within 15 days after receipt of the request, the FRA has referred the matter to the United States attorney general for institution of litigation, has undertaken other enforcement action, or has determined, in writing, that no violation has occurred.

§5.806. Reporting/Filing Requirements.

(a) Each railroad corporation shall file with the Commission:

(1) a copy of monthly reports of excess service filed with the Federal Railroad Administration pursuant to 49 Federal Code of Regulations 228.19. Initial filings shall be made within 30 days after the calendar month in which the instance occurs;

(2) a copy of its program for periodic conduct of operational tests and inspections filed with the Federal Railroad Administration pursuant to 49 Code of Federal Regulations 217.9. Initial filings shall be made within 30 days after the effective date of this requirement. Each amendment to a railroad's program for periodic conduct of operational tests and inspections shall be filed within 30 days after it is issued;

(3) a copy of its program for periodic instruction of its employees filed with the Federal Railroad Administration pursuant to 49 Code of Federal Regulations 217.11. Initial filings shall be made within 30 days after the effective date of this requirement. Each amendment to a railroad's program for periodic instruction of its employees shall be filed within 30 days after it is issued; and

(4) its code of operating rules, timetables, and timetable special instructions as follows.

(A) The operating rules, timetables, and timetable special instructions shall be filed with the Commission not later than 30 days after the effective date of this requirement.

(B) Each amendment to a railroad's code of operating rules, each new timetable, and each new timetable special instruction shall be filed with the Commission within 30 days after it is issued.

(b) Filings required by subsection (a)(1)-(3) of this section may include only information pertaining to railroad operations conducted in the State of Texas.

(c) Filings required by this section shall be filed with the Railroad Commission of Texas, Transportation/Gas Utilities Division, P.O. Box 12967, Austin, Texas 78711.

§5.807. Safety Equipment. Each railroad corporation shall provide and maintain a first aid kit and an operable fire extinguisher in a plainly designated, accessible location on each of its cabooses

§5.808. Wayside Detector Map, List or Chart.

(a) Each railroad corporation shall file and maintain a map, list or chart with the Commission indicating the current locations within the State of Texas of the following wayside detectors:

(1) hot box indicators;

(2) dragging equipment detectors;

(3) high water indicators;

(4) shifted load detectors; and

(5) other wayside detectors.

(b) If the line of the railroad or the locations of the wayside detectors are changed, maps, lists, or charts of the new line or wayside detectors must be filed with the Commission.

(c) Filings required by this section shall be filed with the Railroad Commission of Texas, Transportation Division, P.O. Box 12967, Austin, Texas 78711.

§5.809. Visual Obstructions at Public Grade Crossings.

(a) The following words or terms, when used in this subsection, shall have the following meanings, unless the context indicates otherwise.

(1) Unprotected public grade crossing–A crossing or intersection of railroad track by a publicly maintained road or highway at which there are no electronic devices (such as flashers or gates) to provide an active warning to motorist of the approach of a train to the crossing.

(2) Vegetation–Grass, bushes, shrubbery, and trees having a trunk diameter of six inches or less.

(b) No railroad corporation shall cause or allow trains, railway cars, or equipment to stand less than 250 feet from the centerline of any unprotected public grade crossing unless a closer distance cannot be avoided.

(c) At unprotected public grade crossings, each railroad corporation shall control vegetation on its right-of-way (except for the roadbed and areas immediately adjacent thereto) for a distance of 250 feet each way from the centerline of said crossings so that vegetation does not block the vehicular highway traffic's view of approaching trains. The 250 feet shall be measured from the point where the centerline of the railroad crosses the centerline of the public road. Where the subject right-of-way is fenced, this section shall be deemed complied with if vegetation is controlled up to two feet from said fence.

(d) At unprotected public grade crossings, each railroad corporation shall keep its right-of-way clear of unnecessary permanent obstructions, such as billboards and signs which are not authorized by the railroad and which are not required for the safe operation of the railroad, for a distance of 250 feet each way from said crossing so that the obstructions do not block the vehicular highway traffic's view of approaching trains. Billboards and signs which are legally permitted by the state or a political subdivision are not unnecessary permanent obstructions, so long as they do not block the vehicular highway traffic's view of approaching trains. Permanent buildings, such as warehouses and equipment facilities, which existed prior to the effective date of this section are exempted from the requirements of this subsection. The 250 feet shall be measured from the point where the centerline of the railroad crosses the centerline of the public road.

(e) Railroad corporations shall have three months from the effective date of this section to bring their effected grade crossing rights-of-way into compliance with subsections (c) and (d) of this section.

(f) A railroad corporation may apply for a variance from the requirements of subsections (c) and (d) of this section on a form to be prescribed by the Commission. Such application shall be governed by the general and special rules of practice and procedure before the Railroad Commission of Texas, as they may be from time to time amended. The Commission may approve such application for good cause shown.

§5.810. Severability Clause. If any part or application of these regulations is held invalid, the remainder of these regulations or of its applications to other situations or persons shall not be affected.

§5.811. Hazardous Materials Reporting Requirements.

(a) Policy. It is the policy of the Railroad Commission of Texas to provide information regarding the type and quantity of hazardous materials transported within the state to local emergency planning agencies in areas containing reported railroad operations. It is also commission policy to collect such information in order for the commission to more efficiently allocate hazardous materials inspection resources. To accomplish these policies, each railroad company that transports a hazardous material through the state is required to adhere to certain reporting requirements relating to the transportation of hazardous materials.

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

(1) Emergency management program–An emergency management program established under the Government Code, Chapter 418, Subchapter E.

(2) Hazardous material–Any substance transported by railroad which is included within the requirements of the railcar placarding regulations adopted by the federal Department of Transportation and published in Code of Federal Regulations, Title 49.

(3) Railroad line segment–A length of railroad line over which hazardous materials are transported between two or more municipalities within the state which are also identified as stations on a current railroad timetable. A line segment will terminate at the nearest municipality where the frequency of cars- per-year transporting hazardous materials changes from one category, as defined in subsection (c)(5)(B) of this section, to another.

(4) Reporting year–Calendar year (January 1-December 31) preceding the year the report is to be submitted.

(c) Reporting requirements. A railroad company that transports hazardous materials in or through the state is required to file the following information with the commission:

(1) a copy of the report of each hazardous materials incident occurring within the State of Texas that the railroad company files with the federal Department of Transportation in accordance with 49 Code of Federal Regulations §171.116;

(2) a map delineating the geographical limits of the railroad company operating divisions or districts and the principal operating officer for the railroad company in each operating division or district in the state;

(3) a primary and secondary telephone number, which are manned 24 hours per day, for the railroad company dispatcher responsible for train operations in each operating division or district in the state;

(4) the name and address of the

railroad company employee in charge of managing hazardous materials transportation for the railroad company; and

(5) a list of each type of hazardous material (sorted by hazard class, quantity, and peak density season) transported over each railroad line segment owned, leased, or operated by the railroad company in the state during the reporting year

(A) The type of hazardous material transported will be identified by hazard class as defined by 49 Code of Federal Regulations §173 or 40 Code of Federal Regulations §262 and will further be classified as either being transported by loaded rail car, residue rail car, trailer-on-flat car/container-on-flat car/intermodal portable tank (TOFC/COFC/IMPT shipments), or mixed loads transported by trailer-on-flat car/container-on-flat car

(B) The quantity of hazardous materials transported will be classified into the following five categories depending on the number of shipments of hazardous materials transported in a year:

(i) more than 10,000 cars-per-year;

(ii) 5,001 to 10,000 cars-per-year;

(iii) 1,001 to 5,000 cars-per-year;

(iv) 501 to 1,000 cars-per-year;

(v) 51 to 500 cars-per-year;

(vi) one to 50 cars-per-year;

(C) Peak density season shall be defined as that portion of the calendar year in which the preponderance of the year's total shipments occurred. There may be no obvious peak density season for all hazard classes. The portions of the calendar year are broken down as follows:

(i) spring-April-June;

(ii) summer-July-September;

(iii) fall-October-December;

(iv) winter-January-March;

(v) N/A-No obvious peak density season.

(D) Texas counties traversed by each railroad line segment shall be identified.

(E) The applicable railroad operating division or district shall be identified for each railroad line segment. A railroad line segment shall not traverse more than one railroad operating division or district.

(d) Reporting dates. Reports required by subsection (c)(2-(5) of this section shall be filed with the commission not later than April 1 of each year.

(e) Effective dates. A railroad company required to file a report under this rule shall file its first report not later than April 1, 1990, except:

(1) the requirements for reporting number of cars-per-year containing the residue of a hazardous material will not become effective until April 1, 1991;

(2) the requirement for reporting numbers of trailer-on-flat car, container-on-flat car, or intermodal portable tank shipments will not become effective until April 1, 1991,

(3) the requirement for reporting the peak density season of a hazard class will not become effective until April 1, 1991.

(f) Forms. Reporting will be made on a form or a facsimile thereof as prescribed by the commission.

(g) Exceptions. If a railroad company seeks to be excepted from any of the above requirements, a written application must be made to the commission. Such application shall be governed by the rules contained in Subchapter I of this chapter (relating to General and Special Rules of Practice and Procedure), as they may be from time to time amended. The commission may approve such application for exception for good cause shown. Any exception granted by the commission shall be valid for a period not to exceed two years.

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 April 11, 1995.

TRD-9504505

Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: May 19, 1995

For further information, please call (512) 463-7094

Chapter 7. Gas Utilities Division

Substantive Rules

• 16 TAC §7.70, §7.81

The Railroad Commission of Texas proposes amendments to §7.70, concerning minimum safety standards and regulations applicable to natural gas pipeline facilities and natural gas transportation within the state of Texas; and §7.81, relating to the transportation of hazardous liquids within the state. By these amendments, the commission proposes to adopt by reference new rules recently issued by the Department of Transportation in 49 Code of Federal Regulations (CFR), Parts 192 and 195, concerning natural gas and hazardous liquids pipeline safety rules. The commission also proposes to adopt by reference, 49 CFR, Part 193, concerning federal safety standards for liquified natural gas facilities.

A new federal rule, which applies to both 49 CFR, Parts 192 and 195, concerns the new requirements for operation and maintenance procedural manuals. This new federal rule requires natural gas operators to prepare more detailed manuals and to review and update their manuals each calendar year This federal rule now also requires both natural gas and hazardous liquids pipeline operators to prepare and follow procedures to safeguard personnel from the hazards associated with the unsafe accumulation of vapor or gas in excavated trenches

An amended rule is found in 49 CFR, Part 195. Previously, all steel hazardous liquid pipelines operating at less than 20% of specified minimum yield strength (SMYS) were exempt from the hazardous liquid pipeline safety regulations. The amended rule removes the percent SMYS exemption and extends the hazardous liquid pipeline safety regulations to all pipelines that transport highly volatile liquids, all pipelines or pipeline segments in populated areas, and all pipelines or pipeline segments in navigable waterways regardless of their maximum operating pressure.

Part 193 of 49 CFR contains the federal regulations for liquified natural gas (LNG) facilities. The commission has not previously adopted these federal regulations because of the absence of LNG facilities in Texas. Last year an LNG facility was built in Texas; therefore, there is need for state regulation of LNG facilities. The federal regulations proposed to be adopted by reference cover the siting, design, construction, equipment, operations, maintenance, personnel qualifications and training, and security.

Mary L. McDaniel, P.E., manager of the pipeline safety section, Transportation/Gas Utilities Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The fiscal implications will result from the need for increased inspections of newly-written operations and maintenance manuals and of additional pipelines that will be within the commission's jurisdiction. How-

ever, Ms McDaniel has determined that the net fiscal implications for state government will be zero because the funds used for enforcing the sections will come from current funds, and no new employees will be hired.

Ms. McDaniel has further determined that for the first five-year period the sections are in effect there will be fiscal implications for local government The fiscal implications will be for those municipalities that operate and maintain natural gas distribution systems in the state. The cost will be incurred for the development of new operations and maintenance manuals. The fiscal implications for these municipalities cannot be determined because they will be different for each one and will vary with the size of the municipally-owned natural gas distribution systems.

Ms. McDaniel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced public safety and increased awareness of safety requirements in the transportation of natural gas, carbon dioxide, and hazardous liquids. The anticipated economic cost to persons who are required to comply with the proposed sections will result from the development of new operations and maintenance manuals and from bringing the newly jurisdictional pipelines into compliance with the hazardous liquid pipeline safety regulations. The cost of compliance with these sections will be the same for small and large businesses, but the cost cannot be determined because it will depend on the number, size, and length of pipelines in operation at the time the rule takes effect.

Comments on the proposal may be submitted to Mary McDaniel, P.E., Manager, Pipeline Safety Section, Transportation/Gas Utilities Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*

The amendments are proposed under Texas Civil Statutes, Article 6053-1, which authorize the commission to adopt safety standards and practices applicable to the transportation of gas and all gas pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, the Natural Gas Pipeline Safety Act of 1968, §5(a), 49 United States Code Annotated, §1674(a) (West 1968 and Supplement 1995).

The amendmonts are also proposed under the Texas Natural Resources Code, §§117.001-117.101, which authorizes the commission to regulate the pipeline transportation of hazardous liquids and facilities related thereto under, and to take any other requisite action in accordance with, the Hazardous Liquid Pipeline Safety Act of 1979, §205, 49 United States Code Annotated, §2004 (West Supplement 1995.)

The following are the statutes, articles, and codes affected by the proposed amendments-Texas Civil Statutes, Article 6053-1; Texas Natural Resources Code, §§117.001-117.101; Natural Gas Pipeline Safety Act of 1968, 49 United States Code Annotated, §1674(a); and Hazardous Liquid Pipeline Safety Act of 1979, 49 United States Code Annotated, §2004.

§7.70 General and Definitions

(a) Minimum safety standards. All gas pipeline facilities and the transportation of gas within this state, except those facilities and that transportation of gas which are subject to exclusive federal jurisdiction under the Natural Gas Pipeline Safety Act [of 1968], 49 United States Code Annotated, §§**60101** [1674(a)] et seq, shall be designed, constructed, maintained, and operated in accordance with the Minimum Safety Standards **for Natural Gas**, 49 Code of Federal Regulations (CFR), Part 192, **and Liquified Natural Gas Facilities, 49 CFR, Part 193,** and the Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations, 49 CFR, Part 199, with amendments, effective **February 11, 1995** [August 8, 1994], and with the additional regulations set out in this section

(b)-(k) (No change.)

§7.81. Safety Regulations Adopted. The Commission adopts by specific reference the provisions (except as modified herein or hereafter) established by the United States Secretary of Transportation under the Pipeline Safety Act of 1979 (Public Law 96-129) and set forth in 49 CFR, Part 195, Regulations For Transportation of Hazardous Liquids by Pipeline, and 49 CFR, Part 199, Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations, effective **February 11, 1995** [August 8, 1994]. Nothing in this section shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in individual situations Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

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 April 11, 1995.

TRD-9504441 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 463-7008

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 75. Curriculum

Subchapter G. Other Provisions

• **19 TAC §75.175**

The Texas Education Agency (TEA) proposes new §75.175, concerning the Texas Academy of Leadership in the Humanities. The rule allows a secondary student selected to attend the academy under the Texas Education Code, Chapter 108, Subchapter E, to enroll in the program at Lamar University-Beaumont. It also sets out requirements concerning granting credit for courses completed through the academy.

Geoffrey Fletcher, acting executive deputy commissioner for curriculum, assessment and professional development, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Fletcher and Criss Cloudt, executive associate commissioner for policy planning and information management, have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that students who qualify will be offered an accelerated academic program and may earn up to two years of both college and high school graduation credit. There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Information Management, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed rule submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rule has been published in the *Texas Register.*

The new rule is proposed under the Texas Education Code, §21.117, which directs the State Board of Education to adopt rules allowing secondary school students selected under the Texas Education Code, Chapter 108, Subchapter E, to enroll in the Texas Academy of Leadership in the Humanities.

The new rule implements the Texas Education Code, §21.117.

§75.175. Texas Academy of Leadership in the Humanities.

(a) A secondary school student selected under the Texas Education Code, Chapter 108, Subchapter E, to attend the Texas Academy of Leadership in the Humanities may enroll in the program at Lamar University-Beaumont.

(b) A school district shall grant credit to a student who successfully completes the two-year program at the academy according to the provisions of the Texas Education Code, §21.117.

(c) If a student returns to a school district before completing the program, the district shall grant credit for any courses successfully completed at the academy.

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 April 10, 1995

TRD-9504297 Criss Cloudt
Executive Associate Commissioner, Policy Planning and Information Management
Texas Education Agency

Earliest possible date of adoption May 19, 1995

For further information, please call (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

• 22 TAC §461.4

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Examiners of Psychologists or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Examiners of Psychologists proposes the repeal of §461.4, concerning Replacement of Certificate/License. The repeal is being proposed as the Board is replacing the current rule with a rule which more accurately reflects the Board's requirements and professional standards

Rebecca E. Forkner, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms Forkner also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the public will be better informed if certificands and licensees will no longer have to adhere to this rule There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The repeal is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed repeal does not affect other statutes, articles, or codes.

§461.4 Replacement of Certificate/License

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 April 7, 1995

TRD-9504208 Rebecca E Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 19, 1995

For further information, please call. (512) 835-2036

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The Texas State Board of Examiners of Psychologists proposes new §461.4, concerning Replacement and Duplicate Certificates/Licenses The new rule is being proposed in order to more accurately reflect the Board's requirements and professional standards and to allow for duplicate licenses.

Rebecca E Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Ms Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow those professionals with more than one office to have duplicate licenses at each location where the professional may practice so that the general public will be better informed of the professional's certification/licensure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The new rule is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§461.4. Replacement and Duplicate Certificates/Licenses. Replacement and duplicate certificates and licenses may be obtained upon application and payment of the appropriate fee.

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

Issued in Austin, Texas, on April 7, 1995.

TRD-9504209 Rebecca E Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 835-2036

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• 22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.11, concerning Continuing Education. The amendment is being proposed in order to state the number of continuing education hours that will be given for authoring a published book, editing a book or writing a book chapter and to include the necessity for a Continuing Education Declaration Form to be submitted with annual renewal forms from all certificands/licensees.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that all certificands/licensees are aware of the exact number of continuing education hours awarded in specific areas and to ensure that the information submitted by certificands/licensees to comply with the continuing education requirement is uniform, thereby making it easier to understand by the general public There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules,

not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§461.11. Continuing Education.

(a) Requirements. All certificands/licensees of the Board are obligated to continue their professional education beyond the years of formal degree related training. Each certificand/licensee is required to obtain 12 hours of continuing education credits per year. These 12 hours must be received from programs as detailed in paragraphs (1) and (2) of this subsection with a minimum of four hours of continuing education received from a formal continuing education program as defined in paragraph (1) of this subsection.

(1) (No change.)

(2) Other Continuing Education Experiences. The Board will accept a maximum of eight hours of continuing education received from the five categories of continuing education experiences found in this paragraph. The categories of continuing education experiences and the number of hours of continuing education for each category are as follows.

(A) (No change)

(B) Workshops, seminars and courses. [Registered attendance] **Attendance** at relevant non-accredited workshops, seminars or academic courses. Number of actual attendance hours.

(C) Publications. [Books, articles] **Articles** published by applicant in relevant professional books, journals, or periodicals. Three hours in a non-refereed journal; six hours in a refereed journal. **Books authored or co-authored and published by a publishing company-nine hours. Editing a book or writing a book chapter-six hours.**

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

(3) (No change.)

(b) (No change.)

(c) Documentation. The Board will accept as documentation of continuing education:

(1) (No change.)

(2) for hours received from other continuing education experiences (see subsection (a)(2) of this section) **documentation** [a registration receipt] from the workshop, seminar, course and/or meeting will be required; the table of contents or the article in its entirety will be required for publications/presentations.

(d) Audit. Licensees/certificands will sign **and submit a completed Continuing Education Declaration Form with the annual** [a declaration on their] renewal form **specifying the continuing education they received.** [stating that they have met the continuing education requirements, and they] **Licensees/certificands shall** [will] maintain continuing education records for five years. The Board will audit 10% of licensees/certificands each year for compliance with the continuing education requirements. Upon receipt of an audit notification, the requested compliance documentation will be mailed to the Board's office along with the annual renewal notice and renewal fees in order to renew and avoid noncompliance penalties.

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 April 7, 1995

TRD-9504210 Rebecca E Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 835-2036

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Chapter 463. Applications

• 22 TAC §463.6

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.6, concerning experience. The amendment is being proposed in order to permit interrupted, rather than continuous, supervised experience for good cause, to require that school psychologist trainees have an organized internship program, and to ensure that supervised experience received from a psychologist under an Agreed Board Order shall not qualify as supervised experience for licensure purposes regardless of the setting.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to permit otherwise qualified supervisees to count interrupted supervision experience for good cause, to guarantee that school psychologist trainees have successfully completed an organized internship program, and to prohibit a supervisee from obtaining supervisory experience from a psychologist under an Agreed Board Order, thereby ensuring that the general public receive quality psychological services at the earliest possible date. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it

The proposed amendment does not affect other statutes, articles, or codes.

§463.6. Experience. Supervision may be obtained only in a full-time or half-time setting.

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

(5) When supervised experience is interrupted, the Board may waive in accordance with established Board policy, upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months.

(6)[(5)] A rotating internship organized within a doctoral program is considered to be one placement.

(7)[(6)] The experience requirement must be obtained after official enrollment in a doctoral program.

(8)[(7)] At least one year of experience must be received after the doctoral degree is officially conferred.

(9)[(8)] All supervised experience must be received from a psychologist licensed at the time supervision is received.

(10)[(9)] The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(11)[(10)] No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered for licensure as a psychologist or licensure as a psychological associate.

(12)[(11)] For applications for licensure as a psychologist received after August 31, 1995, one year of experience must be an internship certified by the Director of Internship Training and must be satisfied by either:

(A) The successful completion of an internship program accredited by the American Psychological Association.

(B) The successful completion of an organized internship meeting the following criteria

(i) An organized training program, in contrast to supervised experience or on-the-job training, is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose is assuring breadth and quality of training

(ii) The internship agency had a clearly designated staff psychologist who was responsible for the integrity and quality of the training program and who was actively licensed/certified by the State Board of Examiners in Psychology and present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency had two or more full-time equivalent psychologists on the staff as primary supervisors, at least one of whom was actively licensed as a psychologist by the State Board of Examiners in Psychology.

(iv) Internship supervision was provided by a staff member of the internship agency or by an affiliate of that agency who carried clinical responsibility for the cases being supervised At least half of the internship supervision was provided by one or more psychologists.

(v) The internship provided training in a range of assessment and intervention activities conducted directly with patients/clients;

(vi) at least 25% of trainee's time was in direct patient/client contact (minimum 375 hours)

(vii) The internship included a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also have been at least two additional hours per week in learning activities such as case conferences involving a case in which the intern was actively involved, seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training was post-clerkship, post-practicum and post-externship level.

(ix) The internship agency had a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship level psychology trainees have titles such as "intern", "resident", "fellow", or other designation of trainee status

(xi) The internship agency had a written statement or brochure which described the goals and content of the internship, stated clear expectations for quantity and quality of trainee's work and was made available to prospective interns

(xii) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 consecutive calendar months in not more than two placements. A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements. One calendar year from the beginning of ten consecutive calendar months of employment/experience in a school district constitutes one year of supervised experience

(xiii) Consortia may be created if they follow the guidelines of the current American Psychological Association Committee on Accreditation Handbook, or

(C) For School Psychologist trainees, the successful completion of an organized [pre-doctoral] internship program in a school district meeting the following criteria:

(i) The internship experience shall be provided at or near the end of the formal training period

(ii) The internship experience shall occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience shall be consistent with a written plan and shall meet the specific training objectives of the program

(iv) The internship experience shall occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience shall occur in a school setting and shall provide a balanced exposure to regular and special educational programs.

(vi) The internship experience shall be provided appropriate recognition through the awarding of academic credit.

(vii) The internship experience shall occur under conditions of appropriate supervision. Field-based internship supervisors shall hold a valid credential as a school psychologist for that portion of the internship that is in a school setting. That portion of the internship which appropriately may be in a non-school setting shall require supervision by an appropriately credentialed psychologist.

(viii) Field-based internship supervisors shall be responsible for no more than two interns at any given time University internship supervisors shall be responsible for no more than 12 interns at any given time.

(ix) Field based internship supervisors shall provide at least two hours per week of direct supervision for each intern. University internship supervisors shall maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(x) The internship placement agency shall provide appropriate support for the internship experience which shall include

(I) a written contractual agreement specifying the period of appointment and the terms of compensation;

(II) a schedule of appointments consistent with that of agency school psychologists (e.g. calendar, participation in in-service meetings, etc.);

(III) provision for participation in continuing professional development activities,

(IV) expense reimbursement consistent with policies pertaining to agency school psychologists;

(V) an appropriate work environment including adequate supplies, materials, secretarial services, and office space;

(VI) release time for internship supervisors; and

(VII) a commitment to the internship as a training experience.

(xi) The internship experience shall be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xii) The internship experience shall be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xiii) The internship agency will have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiv) The internship agency will have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is

employed full time at the agency and is a school psychologist.

(xv) Consortia may be created to meet the criteria in this section

(D) Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from this paragraph of this section.

(13)[(12)] All applicants obtaining experience for the purpose of certification and licensure must adhere to the Board's supervision guidelines currently in effect in §465.18 of this title (relating to Time Period for Appealing a Decision) regardless of setting.

(14)[(13)] Persons under supervision for the purpose of meeting the criteria guidelines for defining supervised experience in an organized health service training program (see §469.2 of this title (relating to Criteria for Health Service Provider in Psychology)) must adhere to paragraph **(12)** [(11)](A) or (B) of this section, relating to experience. Those individuals who have not been trained under paragraph **(12)** [(11)](A) or (B) of this section are not eligible to represent themselves as Health Service Providers Those trained under paragraph **(12)** [(11)](C) of this section must practice only school psychology

(15)[(14)] Experience received from a psychologist **while the psychologist is practicing subject to** [who is simultaneous under] an Agreed **Board** Order or **Board** Order [of the Board] **shall** [does] not, **under any circumstances,** qualify as **supervised experience for licensure purposes regardless of the setting in which it was received** [for licensure consideration, regardless of setting]. **Psychologists who become subject to an Agreed Board Order or Board Order shall** [The psychologist must] inform all supervisees of the Agreed **Board** Order or **Board** Order and assist **all** [his/her] supervisees in finding appropriate alternate supervision.

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 April 7, 1995

TRD-9504211 Rebecca E Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption. May 19, 1995

For further information, please call (512) 835-2036

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Chapter 465. Rules of Practice

• 22 TAC §465.34

The Texas State Board of Examiners of Psychologists proposes an amendment to §465 34, concerning Legal Actions reported The amendment is being proposed in order to simplify the reporting requirements and to allow additional explanation if the licensee and/or certificand so desires

Rebecca E Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure compliance with the reporting requirement and to better inform the public of the nature of the action. There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted to Janice C Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes

§465 34. Legal Actions Reported. Any legal action, civil or criminal in nature, taken against **the person or practice of a licensee and/or certificand** [a licensee/certificand and/or a licensee's practice of psychology] must be reported to the Board's office **by sending a copy of the initial pleadings to the Board** within 20 days of the filing of such action with the court. **The licensee and/or certificand may if desired submit any further documentation and/or a written explanation along with a copy of the pleadings.** [The initial report will contain certified copies of the documents filed in connection with the proceedings. A certified copy of documents subsequently filed will be submitted within 20 days of filing.]

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 April 7, 1995.

TRD-9504212 Rebecca E Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption May 19, 1995

For further information, please call (512) 835-2036

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Chapter 466. Procedure

• 22 TAC §466.2

The Texas State Board of Examiners of Psychologists proposes an amendment to §466.2, concerning Definitions The amendment is being proposed in order to correct and add to the definitions so that they more closely follow the Board's procedure and use of terms

Rebecca E Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section rule will be to better inform the public of the process by which the Board conducts informal settlements There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it

The proposed amendment does not affect other statutes, articles, or codes.

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

[Chief clerk–The chief clerk of the Board]

Complainant–A party bringing a complaint under the Act.

Complaint–An action over which the Board has jurisdiction filed against any individual who violates the Act and/or Rules of the Board.

Respondent–An individual licensed and/or certified by the Board against whom a complaint is filed or any non-licensee and/or certificand over whom the Board has jurisdiction and against whom a complaint is filed.

Staff–Any and all employees of the Agency.

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 April 7, 1995.

TRD-9504213 Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 835-2036

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• 22 TAC §466.15

The Texas State Board of Examiners of Psychologists proposes an amendment to §466.15, concerning Informal Disposition. The amendment is being proposed in order to more fully outline the procedure for informal settlement conferences.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to better inform the public of the process by which the Board conducts informal settlements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§466.15. Informal Disposition.

(a) Pursuant to the Act, §25C and the Administrative Procedure Act, Government Code, §2001.054 and §2001.56, informal disposition of any case **arising from a complaint against a licensee or certificand or matter, including an application for licensure or certification,** [complaint or matter] relating to the Act [or of any contested case] may be made by stipulation, agreed settlement, consent order, **default or any other disposition not precluded by law** [or default].

(b) **In the event that the staff determines that there are not grounds to establish a violation of the Act, the matter shall be referred to the Complaint Review Committee for disposition.** [A psychologist assigned by the chair to assist in complaints review may determine that the public interest might be served by attempting to resolve a complaint or other matter pending before the Board through an informal settlement conference prior to a formal disciplinary proceeding. In that event, the matter shall be set by the chief clerk for an informal settlement conference.]

(c) **Any complaint against a licensee or certificand (the Respondent) which is not referred to the Complaints Review Committee for disposition shall be set for an informal settlement conference before the Disciplinary Review Panel. If the Respondent declines to participate in the informal settlement, the complaint shall be set for a formal hearing before the State Office of Administrative Hearings.** [In the event the consulting psychologist determines that a violation of the Act does not exist, the matter shall be referred to the Complaints Review Committee for disposition.]

(d) The following procedures shall be followed in an informal settlement conference[s] **arising from a complaint.**

(1) **The Chair of the Disciplinary Review Panel** [One or more members of the Board and/or representatives of the Board] shall conduct the settlement conference [as the Board's representative, one of which shall be a licensed psychologist.] **In the absence of the Chair, the members of the panel shall designate a member of the panel to act as chair by consensus.**

(2)-(3) (No change.)

(4) **All** [The] settlement **conferences** [conference] shall be informal. **The** [and will not follow the] **procedures** [procedure] established **elsewhere** in this chapter, **portions of the Administrative Procedure Act concerning** [for] contested cases [or follow], **and** the Texas Rules of Civil Evidence **shall not apply**. The licensee or certificate holder **(the Respondent) and the complaining witness (the Complainant)** [, his or her representative, representatives of the Board and Board staff and legal counsel] may **personally or through a representative present** [question] witnesses, make relevant statements, present affidavits, letters, reports, **and relevant** [or] statements of persons not in attendance and may present such other information as may be appropriate for the **Board's consideration during the conference.**

(5) The **Panel** [Board's representative] may call upon the Board's attorney at any time for assistance in conducting the settlement conference **and upon the Staff at any time for information to assist it in conducting the settlement conference. The Panel and the Board's attorney** [and] may question any person in attendance. **The Respondent and Complainant** [Each participant in the settlement conference] shall **both** have the [an] opportunity to make a statement.

(6) **Nothing in this rule shall be construed to waive any legal privileges held by the Board.** [The Board's representative shall prohibit or limit access to the Board's investigative file and attorney work product to the licensee, certificate holder or complainant.]

(7) **The Panel may take any and all steps necessary to ensure the confidentiality of the informal settlement conference.** [The Board's representative shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee or certificate holder, the licensee's or certificate holder's representative, Board members and Board staff.]

(8) At the conclusion of the settlement conference, the **Panel** [Board's representative] may make **proposals** [recommendation's] to the **Respondent and/or the Respondent's Representative for settlement of the complaint** [licensee or certificate holder for resolution of the issues]. Such **proposals** [recommendations] may include any disciplinary actions authorized by the Act and Board rules. **The Panel may make any other recommendations that the Panel deems to be appropriate.**

(9) **If a settlement proposal is accepted by the Respondent,** [The licensee or certificate holder may either accept or reject the settlement recommendations proposed by the Board representative. An **an** agreed order **reflecting the settlement shall be tendered to the Respondent and/or the Respondent's representative** [drafted by Board counsel as soon thereafter as is practicable and mailed, certified mail, return receipt requested, to the licensee or certificate holder or his or her representative]. The **Respondent** [licensee or certificate holder] shall have ten days **from** [after] receipt of the **offer** [agreed order] to accept [or reject] the Board's offer [of settlement. Notice of rejection shall be in writing].

(10)-(13) (No change.)

(e) **Informal Settlement of Application Disputes.**

(1) **If an applicant disputes the decision of the Board concerning an application for licensure or certification under the Act, the matter shall be referred to the Application Dispute Committee for**

an informal settlement conference. The Committee shall be appointed by the Chair of the Board and shall consist of a psychologist member, a psychological associate member and a public member of the Board.

(2) The Applicant shall be notified in writing by certified mail of the time, place and location of the informal settlement conference. If the applicant declines to attend or fails to appear, the matter will be set for a contested hearing before the State Office of Administrative Hearings.

(3) The following procedure will be followed in these informal settlement conferences:

(A) The Chair of the Application Dispute Committee shall conduct the settlement conference. In the absence of the Chair, the members of the Committee shall designate a member of the panel to act as chair by consensus.

(B) All settlement conferences shall be informal. The procedures established elsewhere in this chapter, portions of the Administrative Procedure Act concerning contested cases, and the Texas Rules of Civil Evidence shall not apply. The Applicant, his or her representative, representatives of the Board and Board staff and legal counsel may personally, or through a representative, present witnesses, relevant statements, present affidavits, letters, reports, and relevant statements of persons not in attendance and may present such other information as may be appropriate for the Board's consideration during the conference.

(C) The Committee may call upon the Board's attorney at any time for assistance in conducting the settlement conference and upon the Staff at any time for information to assist it in conducting the settlement conference. The Committee and the Board's attorney may question any person in attendance.

(D) Nothing in this rule shall be construed to waive any legal privileges held by the Board.

(E) The Committee may take any and all steps necessary to ensure the confidentiality of the informal settlement conference.

(F) At the conclusion of the settlement conference, the Committee may make whatever proposals and/or recommendations that the Committee finds to be appropriate.

(G) If the settlement proposal is accepted by the Applicant, the full Board shall either accept or reject the Committee's proposals and recommendations for settlement.

(H) In the event that the Applicant does not accept the settlement or that the Board votes to reject the settlement, the matter shall be set for a contested case before the State Office of Administrative Hearings.

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 April 7, 1995.

TRD-9504214 Rebecca E. Forkner
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 835-2036

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Chapter 473. Fees

• 22 TAC §473.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.5, concerning Miscellaneous Fees. The amendment is being proposed in order to include those fees charged for duplicate certificates/licensees and those fees charged for duplicate renewal permits and notices.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to generate adequate funds to function efficiently and to ensure that the Board has an adequate cash balance to carry out the mandates of the Psychologists' Certification and Licensing Act. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be in direct proportion to the benefit received from the requested duplicate certificate/license and/or renewal permit and/or renewal notice.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§473.5. Miscellaneous Fees (Not refundable).

(a) Duplicate or Replacement [for lost, destroyed or stolen] certificate or license-$25.

(b)-(j) (No change.)

(k) **Cost of destroyed, lost or stolen annual renewal permits-$10.**

(l) **Cost of a replacement renewal notice-$10.**

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 April 7, 1995.

TRD-9504215 Rebecca E. Forkner
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: May 19, 1995

For further information, please call. (512) 835-2036

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Part XXXII. State Board of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech-Language Pathologists and Audiologists

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §741 2 and §741.87; repeal of existing §741 32; and new §741.32, concerning extended recheck, a 30-day trial period following the sale of a hearing instrument and hearing screening. The amendments clarify the definitions of extended recheck following a hearing screening and of the 30-day trial period so that the purchaser of a hearing instrument will be allowed to actually use the instrument for 30-days following purchase. The repeal is proposed to allow for the adoption of a new §741.32 which sets out the board's definition of "hearing screening" for the purposes of Texas Civil Statutes, Article 4512j, §9(h) and (k). The exact language of this section was agreed upon during a meeting of the board, representatives of the Texas Department of Health hearing screening program, representatives of the Texas Nurses Association and representatives of the Texas School Nurses Association. The only change made

to the agreed-upon language was to use ANSI-1989, instead of the ANSI-1969. The board requests comments on several concerns which may need to be addressed in the final adoption of §741.32. First, the board anticipates defining "licensed professional" as a licensed physician or licensed audiologist. Second, the board is considering revising §741.32(b) to reference "two failures in one ear or one failure in each ear", instead of "two failures in the same ear." Third, the board is seeking suggestions on ambient noise levels in hearing screening environments.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Underwood also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify that the purchaser of a hearing instrument will be allowed a full 30-day trial period in which to actually use the instrument. The clarification is necessary to notify audiologists and consumers what may be expected following the purchase of a hearing instrument. Since an individual who sells hearing instruments has been required by the Federal Food and Drug Administration to provide a 30-day trial period for a number of years, there should be no additional economic cost at this time. The amendment to define extended recheck sets out the procedures a hearing screener must follow after failures of hearing screening and recommendation for a professional evaluation. The new section which defines hearing screening will allow the Texas Department of Health and registered nurses to resume hearing screening at 25 dB. There is no anticipated cost to small businesses. There will be no impact on local employment.

Comments on the proposal may be submitted to Dorothy Cawthon, State Board of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6627. Public comments will be accepted for 60 days after publication of the sections in the *Texas Register*.

Subchapter A. Introduction

• 22 TAC §741.2

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 and §9A, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j, and to regulate licensees who fit and dispense hearing instruments.

The amendment affects Texas Civil Statutes, Article 4512j. New §741.32 will also affect the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et seq, relating to registered nurses.

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

Extended recheck–Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 500, 1,000, 2,000, and 4,000 hertz (Hz).

Thirty-day trial period–The purchaser of a hearing instrument has possession of an appropriately-fitted hearing instrument for a total of 30 days.

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 April 11, 1995.

TRD-9504463 Gene R Powers, Ph D
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology

Proposed date of adoption: June 17, 1995

For further information, please call: (512) 458-7236

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Subchapter C. Testing Procedures and Equipment

• 22 TAC §741.32

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Civil Statutes, Article 4512j, §5 and §9A, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j, and to regulate licensees who fit and dispense hearing instruments.

The proposed repeal affects Texas Civil Statutes, Article 4512j. New §741. 32 will also affect the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et seq, relating to registered nurses.

§741.32. Hearing Screening.

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 April 11, 1995.

TRD-9504464 Gene R. Powers, Ph D
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology

Proposed date of adoption: June 17, 1995

For further information, please call: (512) 458-7236

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The new section is proposed under Texas Civil Statutes, Article 4512j, §5 and §9A, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j, and to regulate licensees who fit and dispense hearing instruments.

The proposed new section affects Texas Civil Statutes, Article 4512j. New §741.32 will also affect the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Article 4513 et seq, relating to registered nurses.

§741.32. Hearing Screening.

(a) Hearing screening is a manually administered individual pure-tone air conduction screening with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication. Hearing screening will be conducted as follows: 25 dB HL (re ANSI-1989) at the frequencies of 500, 1,000, 2,000, and 4,000 hertz (Hz). No response at the screening level at any two frequencies in either ear is the criterion for failure.

(b) Two failures in the same ear would be followed with a second pure-tone air conduction screening of the same frequencies at 25 dB HL (re ANSI-1989) within three to four weeks.

(c) If the second pure-tone air conduction screening described in subsection (b) of this section is failed, a recommendation shall be made for a professional evaluation of hearing by an appropriately licensed professional. If the person tested was a minor, the recommendation shall be made to a parent or guardian. At that time an extended recheck may be performed by the screener.

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 April 11, 1995.

TRD-9504465 Gene R. Powers, Ph D.
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology

Proposed date of adoption: June 17, 1995

For further information, please call: (512) 458-7236

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Subchapter F. Requirements for Registration of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments

• 22 TAC §741.87

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5 and §9A, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j, and to regulate licensees who fit and dispense hearing instruments

The amendment affects Texas Civil Statutes, Article 4512j New §741.32 will also affect the Special Senses and Communication Disorders Act, Health and Safety Code, Chapter 36, and Texas Civil Statutes, Articles 4513 et seq, relating to registered nurses

§741.87. Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments

(a)-(f) (No change)

(g) An audiologist or intern in audiology must comply with the following concerning a 30-day trial period on every hearing instrument purchase.

(1) (No change.)

(2) Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument. less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the 30-day trial period [ending 30 days from the date of delivery] Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee

(h)-(i) (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 April 11, 1995.

TRD-9504466 Gene R Powers, Ph D
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology

Proposed date of adoption. June 17, 1995

For further information, please call (512) 458-7236

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 289. Radiation Control

The Texas Department of Health (department) proposes the repeal of existing §289.111; and proposes new §289.201, concerning the control of radiation The section proposed for repeal adopts by reference Part 11, titled "General Provisions" of the Texas Regulations for Control of Radiation (TRCR). The proposed new section incorporates language from Part 11 that has been re-written in Texas Register format and covers general provisions and adds requirements for persons who inspect medical, podiatric medical, dental, veterinary, and chiropractic electronic products to have specialized training in the design and use of the products The Bureau of Radiation Control (BRC) has developed a training curriculum for new x-ray inspectors and a continuing education/training curriculum for current x-ray inspectors Also, a paragraph was added to specify the subjects covered in the curriculum. These requirements are added in order to implement House Bill 781, which states that the Board of Health, by regulation, shall require this training for inspectors of electronic devices.

The repeal and new section are part of the first phase in the process for converting existing sections that adopt by reference the various parts of the TRCR to Texas Register format.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mrs. McBurney also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that persons performing inspections of medical, podiatric medical, dental, veterinary, and chiropractic electronic products are knowledgeable in the design and use of the products through the establishment and maintenance of training curriculum for new x-ray inspectors and continuing education/training curriculum for current x-ray inspectors There will be no impact on small businesses and persons who are required to comply with the sections No impact is anticipated on local employment as a result of implementing the sections.

Comments on the proposal may be presented in writing to Ruth E. McBurney, C. H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688. Public comments will be accepted for 30 days following publication of these proposed changes in the *Texas Register.* In addition, a public hearing will be held at 1:30 p m., Wednesday, May 17, 1995, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

Texas Regulation for the Control of Radiation

• 25 TAC §289.111

(Editor's note. The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The repeal is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 401.

§289.111 General Provisions.

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 April 11, 1995.

TRD-9504461 Susan K Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: May 19, 1995

For further information, please call (512) 458-7236

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General

• 25 TAC §289.201

The new section is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The new section affects the Health and Safety Code, Chapter 401.

§289.201. General Provisions.

(a) Scope. Except as otherwise specifically provided, this section applies to all persons who receive, possess, use, transfer, or acquire any source of radiation, provided, however, that nothing in this section shall apply to any person to the extent such person is subject to regulation by the United States Nuclear Regulatory Commission (NRC) or to sources of radiation in the

possession of federal agencies. Attention is directed to the fact that regulation by the state of source material, byproduct material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the NRC and to Part 150 of the commission's regulations (10 Code of Federal Regulations (CFR), Part 150). Nothing in §289.113 of this title (relating to Standards for Protection Against Radiation), shall be interpreted as limiting the intentional exposure of patients to radiation for the purpose of medical diagnosis, therapy, or research; provided, however, that no radiation may be deliberately applied to human beings except by or under the supervision of an individual authorized by and licensed in accordance with Texas' statutes to engage in the healing arts.

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

(1) Absorbed dose-The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) Accelerator-produced material-Any material made radioactive by exposing it to the radiation from a particle accelerator.

(3) Act-Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(4) Activity-The rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

(5) Adult-An individual 18 or more years of age.

(6) Agency-The Texas Department of Health.

(7) Agreement state-Any state with which the NRC has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(8) Airborne radioactive material-Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(9) Airborne radioactivity area-A room, enclosure, or area in which airborne radioactive materials exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in Appendix 21-B, Table I, Column 1 of Texas Regulations for Control of Radiation (TRCR) Part 21 as adopted by reference in §289.113 of this title; or

(B) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the annual limit on intake (ALI) or 12 DAC-hours.

(10) As low as is reasonably achievable (ALARA)-Making every reasonable effort to maintain exposures to radiation as far below the dose limits in these regulations as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed or registered sources of radiation in the public interest.

(11) Background radiation-Radiation from cosmic sources; non-technologically enhanced naturally occurring radioactive material, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices. "Background radiation" does not include sources of radiation from radioactive materials regulated by the agency.

(12) Becquerel (Bq)-The SI unit of activity. One becquerel is equal to one disintegration or transformation per second (dps or tps).

(13) Bioassay-The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of this section, "radiobioassay" is an equivalent term.

(14) Brachytherapy-A method of radiation therapy in which sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(15) Byproduct material-Byproduct material is defined as:

(A) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(B) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings (or wastes) having similar radiological characteristics.

(16) CFR-Code of Federal Regulations.

(17) Certificate of registration-A form of permission given by the agency to an applicant who has met the requirements for registration or mammography system certification set out in the Act and this chapter.

(18) Collective dose-The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(19) Commercial-Having financial profit as the primary aim.

(20) Commission-The United States Nuclear Regulatory Commission or its duly authorized representatives.

(21) Committed dose equivalent ($H_{T,50}$)-The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(22) Committed effective dose equivalent ($H_{E,50}$)-The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = w_T H_{T,50}$).

(23) Curie (Ci)-A unit of measurement of radioactivity. One curie (Ci) is that quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie and the microcurie. One millicurie (mCi) = 1×10^{-3} curie = 3.7×10^{7} dps. One microcurie (μCi) = 1×10^{-6} curie = 3.7×10^{4} dps. One nanocurie (nCi) = 1×10^{-9} curie = 3.7×10^{1} dps. One picocurie (pCi) = 1×10^{-12} curie = 3.7×10^{-2} dps.

(24) Decommission-To remove safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and/or termination of license.

(25) Deep dose equivalent (H_d), that applies to external whole body exposure-The dose equivalent at a tissue depth of one centimeter (1,000 mg/cm^2).

(26) Depleted uranium-The source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. De-

pleted uranium does not include special nuclear material.

(27) Distribution-The physical conveyance of commodities from producers to consumers and any intermediate persons involved in that conveyance.

(28) Dose-A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of this chapter, "radiation dose" is an equivalent term.

(29) Dose equivalent (H_T)-The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest The units of dose equivalent are the sievert (Sv) and rem.

(30) Dose limits-The permissible upper bounds of radiation doses established in accordance with this chapter. For purposes of this chapter, "limits" is an equivalent term.

(31) Effective dose equivalent (H_E)-The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = w_T H_T$).

(32) Embryo/fetus-The developing human organism from conception until the time of birth.

(33) Entrance or access point-Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered sources of radiation. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(34) Exposure-The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The SI unit of exposure is the coulomb per kilogram (C/kg). See subsection (o) of this section for the special unit. For purposes of this chapter, this term is used as a noun.

(35) Exposure rate-The exposure per unit of time.

(36) External dose-That portion of the dose equivalent received from any source of radiation outside the body.

(37) Extremity-Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(38) Eye dose equivalent-The external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 mg/cm²).

(39) Generally applicable environmental radiation standards-Standards issued by the United States Environmental Protection agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material

(40) Gray (Gy)-The SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram (100 rad).

(41) High radiation area-An area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (one millisievert) in one hour at 30 centimeters from any source of radiation or from any surface that the radiation penetrates.

(42) Human use-The internal or external administration of radiation or radioactive material to human beings for healing arts purposes or research and/or development specifically authorized by the agency.

(43) Individual-Any human being.

(44) Individual monitoring-The assessment of:

(A) dose equivalent by the use of individual monitoring devices; or

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. (See the definition for DAC-hours in §289.113 of this title); or

(C) dose equivalent by the use of survey data.

(45) Individual monitoring devices-Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this chapter, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal air sampling devices.

(46) Inspection-An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Act and rules, orders, requirements, and conditions of the agency.

(47) Internal dose-That portion of the dose equivalent received from radioactive material taken into the body.

(48) Ionizing radiation-Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles

(49) Land disposal facility-The land, buildings, and equipment that are intended to be used for the disposal of radioactive wastes into the subsurface of the land

(50) License-A form of permission given by the agency to an applicant who has met the requirements for licensing set out in the Act and this chapter.

(51) Licensed material-Radioactive material received, possessed, used, or transferred under a general or specific license issued by the agency.

(52) Licensee-Any person who is licensed by the agency in accordance with this chapter and the Act.

(53) Licensing state-Any state with rules equivalent to the *Suggested State Regulations for Control of Radiation* relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(54) Lost or missing source of radiation-A source of radiation whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(55) Mammography system certification-An authorization for the use of a mammography system.

(56) Manufacture-To fabricate or mechanically produce.

(57) Member of the public-Any individual, except an individual who is performing assigned duties for a licensee or registrant involving exposure to sources of radiation.

(58) Minimal threat-That during the operation of electronic devices capable of generating or emitting fields of radiation:

(A) no deliberate exposure of an individual occurs;

(B) the radiation is not emitted in an open beam configuration; and

(C) no known physical injury to an individual has occurred.

(59) Minor-An individual less than 18 years of age.

(60) Misadministration-The administration of:

(A) a radiopharmaceutical or radiation from a sealed source other than the one intended,

(B) a radiopharmaceutical or radiation from a sealed source to the wrong patient;

(C) a radiopharmaceutical or radiation from a sealed source by a route of administration other than that intended by the prescribing physician;

(D) a diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than 50%;

(E) a therapeutic dosage of a radiopharmaceutical differing from the prescribed dosage by more than 10%; or

(F) a therapeutic radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry result in a calculated total treatment dose differing from the final prescribed total treatment dose by more than 10%.

(61) Monitoring-The measurement of radiation, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms

(62) NARM-Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(63) Natural radioactivity-Radioactivity of naturally occurring nuclides whose location and chemical and physical form have not been altered by man.

(64) Occupational dose-The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to sources of radiation. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(65) Particle accelerator-Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and designed to discharge the resultant particulate or other associated radiation into a medium at energies usually in excess of one MeV.

(66) Person-Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the commission, and other than federal government agencies licensed or exempted by the commission

(67) Personnel monitoring equipment (See definition for individual monitoring devices)

(68) Pharmacist-An individual licensed by the Texas State Board of Pharmacy, and with license in good standing, to compound and dispense drugs, prescriptions, and poisons

(69) Physician-An individual licensed by the Texas State Board of Medical Examiners, with license in good standing.

(70) Public dose-The dose received by a member of the public from exposure to sources of radiation from licensed or registered operations. It does not include occupational dose, dose received from background radiation, dose received as a patient from medical practices, or dose from voluntary participation in medical research programs

(71) Quality factor (Q)-The modifying factor listed in subsection (o) (3) and (4) of this section that is used to derive dose equivalent from absorbed dose.

(72) Quarter (Calendar Quarter)-A period of time equal to one-fourth of the year observed by the licensee or registrant, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(73) Rad-The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram (0.01 gray).

(74) Radiation-One or more of the following:

(A) gamma and x rays; alpha and beta particles and other atomic or nuclear particles or rays;

(B) stimulated emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(75) Radiation area-Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(76) Radiation machine-Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(77) Radiation safety officer (RSO)-An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, and who must be specifically authorized on a certificate of registration or radioactive material license.

(78) Radioactive material-Any material (solid, liquid, or gas) that emits radiation spontaneously.

(79) Radioactivity-The disintegration of unstable atomic nuclei with the emission of radiation.

(80) Radiobioassay (See definition for bioassay.)

(81) Registrant-Any person issued a certificate of registration by the agency pursuant to this chapter and the Act.

(82) Regulation (See definition for rule.)

(83) Regulations of the United States Department of Transportation (DOT) -The requirements in 49 CFR, Parts 100-189.

(84) Rem-The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (one rem = 0.01 sievert).

(85) Research and development-Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(86) Restricted area-An area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(87) Roentgen (R)-The special unit of exposure. One roentgen (R) equals 2.58×10^{-4} coulombs/kilogram of air. (See definition for exposure.)

(88) Rule (as defined in the Government Code, Chapters 2001 and 2002, as amended)-Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The word "rule" was formerly referred to as "regulation. "

(89) Sealed source-Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(90) Shallow dose equivalent (H_s), (that applies to the external exposure of the skin or an extremity)-The dose equivalent at a tissue depth of 0.007 centimeter ($7mg/cm^2$) averaged over an area of one square centimeter.

(91) SI-The abbreviation for the International System of Units.

(92) Sievert-The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (one Sv = 100 rem).

(93) Site boundary-That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(94) Source material-Source material is defined as:

(A) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain by weight 0.05% or more of uranium, thorium, or any combination thereof; and

(C) does not include special nuclear material.

(95) Source of radiation-Any radioactive material, or any device or equipment emitting or capable of producing radiation.

(96) Special form-Any of the following physical forms of licensed material of any transport group:

(A) the material is in solid form having no dimension less than 0.5 millimeter or at least one dimension greater than five millimeters; does not melt, sublime, or ignite in air at a temperature of 1,000 degrees Fahrenheit; will not shatter or crumble if subjected to the percussion test described in subsection (q)(2) of this section; and is not dissolved or converted into dispersible form to the extent of more than 0.005% by weight by immersion for one week in water at 68 degrees Fahrenheit or in air at 86 degrees Fahrenheit; or

(B) the material is securely contained in a capsule that has no dimension less than 0.5 millimeter or at least one dimension greater than five millimeters; that will retain its contents if subjected to the tests prescribed in subsection (q)(2) of this section; and that is constructed of materials that do not melt, sublime, or ignite in air at 1,475 degrees Fahrenheit, and do not dissolve or convert into dispersible form to the extent of more than 0.005% by weight by immersion for one week in water at 68 degrees Fahrenheit or in air at 86 degrees Fahrenheit.

(97) Special nuclear material-Special nuclear material is defined as:

(A) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(98) Special nuclear material in quantities not sufficient to form a critical mass-Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained U-235; U-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of them in accordance with the following formula.

(A) "For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity)."

(B) For example, the following quantities in combination would not exceed the limitation and are within the formula:
Figure 1: 25 TAC §289.201(b)(98)(B)

(99) Special units-The conventional units historically used by licensees and registrants, i.e., curie (activity), rad (absorbed dose), and rem (dose equivalent).

(100) Survey-An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examination of location of materials and equipment, and measurements of levels of radiation or concentration of radioactive material present

(101) Termination-A release by the agency of the obligations and authorizations of the licensee or registrant under the terms of the license or certificate of registration. It does not relieve a person of duties and responsibilities imposed by law.

(102) Test-A method of determining the characteristics or condition of sources of radiation or components thereof.

(103) These rules-All sections of the *Texas Regulations for Control of Radiation* (TRCR).

(104) Total effective dose equivalent (TEDE)-The sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(105) Total organ dose equivalent (TODE)-The sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in 21.1107(a)(6) of TRCR Part 21 as adopted by reference in §289.113 of this title.

(106) Transport index-The dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined by the number expressing the maximum radiation level in millirem per hour at one

meter from the external surface of the package.

(107) Type A quantity-A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in subsection (q)(5) of this section or may be determined by procedures described in subsection (q) (5) of this section.

(108) Type B quantity-A quantity of radioactive material greater than a type A quantity

(109) Unrefined and unprocessed ore-Ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining

(110) Unrestricted area (uncontrolled area)-An area, access to which is neither limited nor controlled by the licensee or registrant. For purposes of this chapter, "uncontrolled area" is an equivalent term.

(111) Veterinarian-An individual licensed by the Texas Board of Veterinary Medical Examiners, with license in good standing

(112) Week-Seven consecutive days starting on Sunday

(113) Whole body-For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee

(114) Worker-An individual engaged in work under a license or certificate of registration issued by the agency and controlled by a licensee or registrant, but does not include the licensee or registrant.

(115) Working level (WL)-Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1 3 x 10^5 MeV of potential alpha particle energy The short-lived radon daughters are-for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214, and for radon-220 polonium-216, lead-212, bismuth-212, and polonium-212

(116) Working level month (WLM)-An exposure to one working level for 170 hours-2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month

(117) Year-The period of time beginning in January used to determine compliance with the provisions of this chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(c) Exemptions.

(1) General provision. The agency may, upon application therefor or upon its own initiative, grant such exemptions or exceptions from the requirements of this chapter as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

(2) Carriers. Common and contract carriers, freight forwarders, and warehousemen, who are subject to the rules and regulations of the DOT or the United States Postal Service (39 CFR, Parts 14 and 15), are exempt from this chapter to the extent that they transport or store sources of radiation in the regular course of their carriage for another or storage incident thereto. Private carriers who are subject to the rules and regulations of the DOT are exempted from this chapter to the extent that they transport sources of radiation. Common, contract, and private carriers who are not subject to the rules and regulations of the DOT or the United States Postal Service are subject to applicable sections of this chapter.

(3) United States Department of Energy (DOE) contractors and commission contractors. Any DOE contractor or subcontractor and any commission contractor or subcontractor of the following categories operating within Texas is exempt from this chapter, with the exception of §289.126 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), to the extent that such contractor or subcontractor under that individual's contract receives, possesses, uses, transfers, or acquires sources of radiation:

(A) prime contractors performing work for the DOE at United States government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation,

(B) prime contractors of the DOE performing research in, or development, manufacture, storage, testing, or transportation of, atomic weapons or components thereof,

(C) prime contractors of the DOE using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(D) any other prime contractor or subcontractor of the DOE or of the NRC when the state and the commission jointly determine that:

(i) the exemption of the prime contractor or subcontractor is authorized by law; and

(ii) in accordance with the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety and the environment.

(d) Records. Each licensee and registrant shall maintain records showing the receipt, transfer, and disposal of all licensed or registered sources of radiation. These records shall be maintained by the licensee or registrant until disposal is authorized by the agency. Additional record requirements are specified elsewhere in this chapter. All records required by this section shall be accurate and factual.

(e) Inspections.

(1) Each licensee and registrant shall afford the agency, at all reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

(2) Each licensee and registrant shall make available to the agency for inspection, upon reasonable notice, records maintained in accordance with this chapter.

(3) Routine inspection of radiation machines and services.

(A) Routine inspections by agency personnel will be made no more frequently than the intervals specified in subsection (q) (3) of this section. Registrants having certificates of registration authorizing multiple uses will be inspected at the most frequent interval specified for the uses authorized.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, for those radiation machines determined by the agency to constitute a minimal threat to human health and safety, the routine inspection interval will be five years. The applicable categories are listed in subsection (q)(4) of this section.

(C) Notwithstanding the inspection intervals specified in this section, the agency may inspect registrants more frequently due to:

(i) the persistence or severity of violations found during an inspection;

(ii) investigation of an incident or complaint concerning the facility;

(iii) a request for an inspection by a worker(s) in accordance with

22.16 of TRCR Part 22 as adopted by reference in §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections);

(iv) any change in a facility or equipment that might cause a significant increase in radiation output or hazard; or

(v) a mutual agreement between the agency and registrant.

(4) Routine inspection of mammography systems.

(A) The agency shall inspect each mammography system that receives a certification in accordance with this chapter not later than the 60th day after the date the certification is issued.

(B) The agency shall inspect, at least once annually, each mammography system that receives a certification.

(C) To protect the public health, the agency may conduct more frequent inspections than required in accordance with this section.

(D) The agency shall make reasonable attempts to coordinate inspections in accordance with this section with other inspections required in accordance with this section for the facility where the mammography system is used.

(E) After each satisfactory inspection, the agency shall issue a certificate of inspection for each mammography system inspected. Satisfactory inspection for the purposes of mammography is one in which no violations of Severity Levels I, II, or III, as defined in 13.9 of TRCR Part 13 as adopted by reference in §289.112 of this title (relating to Hearing and Enforcement Procedures), are identified. The certificate of inspection must be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection shall:

(i) specifically identify the mammography system inspected;

(ii) state the name and address of the facility where the mammography system was used at the time of the inspection; and

(iii) state the date of the inspection.

(F) Any Severity Level I and/or II violation as described in 13.9 of TRCR Part 13 as adopted by reference in §289.112 of this title, found by the agency, constitutes ground for posting a failure of the mammography system to satisfy agency requirements.

(i) Notification of such failure shall be posted:

(I) on the mammography x-ray unit at a conspicuous place if the violation is machine-related; or

(II) near the place where the mammography system practices if the violation is personnel-related; and

(III) in a sufficient number of places to permit the patient to observe the notice.

(ii) The notice of failure shall remain posted until the facility is authorized to remove it by the agency. A facility may post documentation of corrections of the violations submitted to the agency along with the notice of failure until approval to remove the notice of failure is received from the agency.

(G) The agency may require registrants to notify patients whose health or safety may have been or may be adversely affected by failure of a mammography system to meet the requirements of the Act or this section.

(i) The patient notification, if required, shall include:

(I) explanation of the mammography system failure to the patient; and

(II) the potential consequences to the patient.

(ii) The registrant shall maintain a record of the patients notified in accordance with this subparagraph for inspection by the agency. The records shall include the name and address of each patient notified, date of notification, and a copy of the text sent to the individual.

(5) A mammography system that has been issued a certification under §42.24(c) of TRCR Part 42 as adopted by reference in §289.122 of this title (relating to Registration of Radiation Machine Use and Services) is exempt from the inspection requirements of paragraph (4)(A) of this subsection.

(6) Training for agency inspectors of electronic products.

(A) The agency will conduct inspections of medical, podiatric medical, dental, veterinary, and chiropractic electronic products in a manner designed to cause as little disruption of a medical, podiatric medical, dental, veterinary, or chiropractic practice as is practicable.

(B) A person who inspects medical, podiatric medical, dental, veterinary, or chiropractic electronic products will have training in the design and uses of the products.

(C) A person performing inspections of electronic products for the uses described in paragraph (4)(A) of this subsection will receive training specified in subsection (q)(6) of this section.

(f) Tests. Each licensee and registrant shall perform, upon instructions from the agency, or shall permit the agency to perform such reasonable tests as the agency deems appropriate or necessary including, but not limited to, tests of:

(1) sources of radiation;

(2) facilities wherein sources of radiation are used or stored;

(3) radiation detection and monitoring instruments; and

(4) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

(g) Tests for leakage and/or contamination of sealed sources.

(1) The licensee in possession of any sealed source shall assure that:

(A) each sealed source, except as specified in paragraph (2) of this subsection, is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee;

(B) each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the agency, after evaluation of information specified in §289.252(h)(7)(D) and (E) of this title (relating to Licensing of Radioactive Material), or by the commission, an agreement state, or a licensing state;

(C) each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the agency, after evaluation of information specified in §289.252(h)(7)(D) and (E) of this title, or

by the commission, an agreement state, or a licensing state;

(D) for each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee shall assure that the sealed source is tested for leakage or contamination before further use;

(E) tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 0.005 microcurie (185 becquerels) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted where contamination might accumulate. For a sealed source contained in a device, test samples are obtained when the source is in the "off" position;

(F) the test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 0.001 microcurie (37 becquerels) of radon-222 in a 24-hour period when the collection efficiency for radon-222 and its daughters has been determined with respect to collection method, volume, and time; and

(G) tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 0.005 microcurie (185 becquerels) of a radium daughter that has a half-life greater than four days.

(2) A licensee need not perform tests for leakage or contamination on the following sealed sources:

(A) sealed sources containing only radioactive material with a half-life of less than 30 days;

(B) sealed sources containing only radioactive material as a gas;

(C) sealed sources containing 100 microcuries (3.7 megabecquerels) or less of beta or photon-emitting material or ten microcuries (370 kilobecquerels) or less of alpha-emitting material;

(D) sealed sources containing only hydrogen-3;

(E) seeds of iridium-192 encased in nylon ribbon; and

(F) sealed sources, except teletherapy and brachytherapy sources, which are stored, not being used, and identified as in storage. The licensee shall, however, test each such sealed source for leakage or contamination and receive the test results before any use or transfer unless it has been tested for leakage or contamination within six months before the date of use or transfer.

(3) Analysis of tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the agency, the commission, an agreement state, or a licensing state, to perform such services.

(4) Test results shall be kept in units of microcurie or becquerel and maintained for inspection by the agency.

(5) The following shall be considered evidence that a sealed source is leaking:

(A) the presence of 0.005 microcurie (185 becquerels) or more of removable contamination on any test sample;

(B) leakage of 0.001 microcurie (37 becquerels) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium; or

(C) the presence of removable contamination resulting from the decay of 0.005 microcurie (185 becquerels) or more of radium.

(6) The licensee shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or transferred for disposal in accordance with this section.

(7) Reports of test results for leaking or contaminated sealed sources shall be made in accordance with 21.1208 of TRCR Part 21 as adopted by reference in §289.113 of this title.

(h) Additional requirements. The agency may, by rule, order, or condition of license, certificate of registration, or general license acknowledgement, impose upon any licensee or registrant such requirements in addition to those established in this chapter as it deems appropriate or necessary to minimize danger to public health and safety or property or the environment.

(i) Violations. An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any rule or order issued thereunder. Any person who willfully violates any provision of the Act or any rule or order issued thereunder may be guilty of a misdemeanor and upon conviction, may be punished by fine or imprisonment or both, as provided by law.

(j) Impounding. Sources of radiation shall be subject to impounding in accordance with §401.068 of the Act and §289.112 of this title.

(k) Prohibited uses.

(1) A hand-held fluoroscopic screen shall not be used with x-ray equipment unless it has been listed in the Registry of Sealed Sources and Devices maintained by the agency or the commission, or accepted for certification by the United States Food and Drug Administration (FDA), Center for Devices and Radiological Health.

(2) A shoe-fitting fluoroscopic device shall not be used.

(l) Communications. Except where otherwise specified, all communications and reports concerning this chapter and applications filed under them should be addressed to the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3189. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(m) Interpretations. Except as specifically authorized by the agency in writing, no interpretation of the meaning of this chapter by any officer or employee of the agency other than a written interpretation by the Office of General Counsel, Texas Department of Health, will be considered binding upon the agency.

(n) Open records.

(1) Subject to the limitations provided in the Texas Open Records Act, Government Code, Chapter 552, all information and data collected, assembled, or maintained by the agency are public records open to inspection and copying during regular office hours.

(2) Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Open Records Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

(A) Documents containing information that is claimed to be an exception to the Texas Open Records Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

(i) The words "NOT AN OPEN RECORD" shall be placed conspicuously at the top and bottom of each page containing information claimed to fall within one of the exceptions.

(ii) The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page: Figure 2: 25 TAC §289.201(n)(2)(A)(ii)

(B) The agency requests, whenever possible, that all information submitted under the claim of an exception to the Texas Open Records Act be extracted from the main body of the application and submitted as a separate annex or appendix to the application.

(C) Failure to comply with any of the procedures described in subparagraphs (A) and (B) of this paragraph may result in all information in the agency file being disclosed upon an open records request.

(3) Whether information falls within one of the exceptions to the Texas Open Records Act shall be determined by the agency. The Office of General Counsel will be queried as to whether or not there has been a previous determination that the information falls within one of the exceptions to the Texas Open Records Act. If there has been no previous determination and the agency believes that the information falls within one of the exceptions, an opinion of the Attorney General will be requested. If the agency agrees in writing to the request, the information shall not be open for public inspection unless the Attorney General's office subsequently determines that it is not an exception.

(4) Requests for information.

(A) All requests for open records information must be in writing and refer to documents currently in possession of the agency.

(B) The agency will ascertain whether the information may be released or whether it falls within an exception to the Texas Open Records Act.

(i) The agency may take a reasonable period of time to determine whether information falls within one of the exceptions to the Texas Open Records Act.

(ii) If the information is determined to be public, it will be presented for inspection and/or copies of documents will be furnished within a reasonable period of time. A fee will be charged for copies.

(C) Original copies of public records may not be removed from the agency. Under no circumstances shall material be removed from existing records.

(o) Units of exposure and dose.

(1) As used in this chapter, the unit of exposure is the coulomb per kilogram (C/kg) of air. One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

(2) As used in this chapter, the units of dose are as follows:

(A) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram or 0.01 joule per kilogram (0.01 gray). Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram (100 rads).

(B) Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (one rem = 0.01 sievert).

(C) Sievert is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (one sievert = 100 rems).

(3) As used in this chapter, the quality factors for converting absorbed dose to dose equivalent are shown in the following table:
Figure 3: 25 TAC §289.201(o)(3)

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in subsection (e)(3) of this section, one rem (0.01 sievert) of neutron radiation of unknown energies may, for purposes of this section, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from the following table to convert a measured tissue dose in rad (gray) to dose equivalent in rem (sievert).
Figure 4: 25 TAC §289.201(o)(4)

(p) Units of activity. For purposes of this chapter, activity is expressed in the special unit of curie (Ci) (becquerel (Bq)), or its multiples, or disintegrations or transformations per second (dps or tps).

(1) One curie (Ci) = 3.7×10^{10} disintegrations or transformations per second (dps or tps) = 3.7×10^{10} (Bq) = 2.22×10^{12} disintegrations or transformations per minute (dpm or tpm).

(2) One becquerel (Bq) = one disintegration or transformation per second (dps or tps).

(q) Appendices.

(1) Transport grouping of radionuclides. (For use in §289.254(d) of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities).)
Figure 5: 25 TAC §289.201(q)(1)

(A) Any radionuclide not specifically listed in this paragraph shall be assigned to one of the groups in accordance with the following table:
Figure 6: 25 TAC §289.201(q)(1)(A)

(B) For mixtures of radionuclides, the following shall apply.

(i) If the identity and respective activity of each radionuclide are known, the permissible activity of each radionuclide shall be such that the sum, for all groups present, of the ratio between the total activity for each group to the permissible activity for each group will not be greater than unity.

(ii) If the groups of the radionuclides are known but the amount in each group cannot be reasonably determined, the mixture shall be assigned to the most restrictive group present.

(iii) If the identity of all or some of the radionuclides cannot be reasonably determined, each of those unidentified radionuclides shall be considered as belonging to the most restrictive group that cannot be positively excluded.

(iv) Mixtures consisting of a single radioactive decay chain where the radionuclides are in the naturally occurring proportions shall be considered as consisting of a single radionuclide. The group and activity shall be that of the first member present in the chain, except that if a radionuclide "X" has a half-life longer than that of that first member and an activity greater than that of any other member, including the first, at any time during transportation, the transport group shall be that of the nuclide "X" and the activity of the mixture shall be the maximum activity of that nuclide "X" during transportation.

(2) Tests for special form licensed material.

(A) Free drop. A free drop through a distance of 30 feet onto a flat essentially unyielding horizontal surface, striking the surface in such a position as to suffer maximum damage.

(B) Percussion. Impact of the flat circular end of a one inch diameter steel rod weighing three pounds, dropped through a distance of 40 inches. The capsule or material shall be placed on a sheet of lead, of hardness number 3.5 to 4.5 on the Vickers scale, and not more than one inch thick, supported by a smooth, essentially unyielding surface.

(C) Heating. Heating in air to a temperature of 1, 475 degrees Fahrenheit and remaining at that temperature for a period of ten minutes.

(D) Immersion. Immersion for 24 hours in water at room temperature. The water shall be at pH 6-pH 8, with a maximum conductivity of ten micromhos per centimeter.

(3) Routine inspection intervals for registrants.
Figure 7: 25 TAC §289.201(q)(3)

(4) Minimal threat radiation machines. The following radiation machines are considered to be of minimal threat:

(A) electron microscope;

(B) x-ray fluorescence (machine);

(C) x-ray gauges radiography-certified cabinet x-ray only;

(D) particle size analyzer (x-ray);

(E) baggage or package x-ray;

(F) electron beam welding;

(G) ion implantation devices; and

(H) cathodoluminescence devices.

(5) Determination of A_1 and A_2.

(A) Single radionuclides.

(i) For a single radionuclide of known identity, the values of A_1 and A_2 are taken from subparagraph (C) of this paragraph if listed there. The values A_1 and A_2 in subparagraph (C) of this paragraph are also applicable for the radionuclide contained in (α,n) or (γ,n) neutron sources.

(ii) For any single radionuclide whose identity is known but which is not listed in subparagraph (C) of this paragraph, the value of A_1 and A_2 are determined according to the following procedure.

(I) If the radionuclide emits only one type of radiation, A_1 is determined according to the following method. For radionuclides emitting different kinds of radiation, A_1 is the most restrictive value of those determined for each kind of radiation. However, in either case, A_1 is restricted to a maximum of 1,000 curies (37 terabecquerels). If a parent nuclide decays into a shorter lived daughter with a half-life not greater than ten days, A_1 is calculated for both the parent and the daughter, and the more limiting of the two values is assigned to the parent nuclide.

(-a-) For gamma emitters, A_1 is determined by the expression:
Figure 8: 25 TAC §289.201(q)(5)(A)(ii)(I)(-a-)

(-b-) For x-ray emitters, A_1 is determined by the atomic number of the nuclide:
Figure 9: 25 TAC §289.201(q)(5)(A)(ii)(I)(-b-)

(-c-) For beta emitters, A_1 is determined by the maximum beta energy (E_{max}) according to subparagraph (D) of this paragraph; and

(-d-) For alpha emitters, A_1 is determined by the expression:
Figure 10: 25 TAC §289.201(q)(5)(A)(ii)(I)(-d-)

(II) A_2 is the more restrictive of the following two values:

(-a-) the corresponding A_1; and

(-b-) the value A_2 obtained from subparagraph (E) of this paragraph.

(iii) For any single radionuclide whose identity is unknown, the value of A_1 is taken to be two curies (74 gigabecquerels) and the value of A_2 is taken to be 0.002 curie (74 megabecquerels). However, if the atomic number of the radionuclide is known to be less than 82, the value of A_1 is taken to be ten curies (370 gigabecquerels) and the value of A_2 is taken to be 0.4 curie (14.8 gigabecquerels).

(B) Mixtures of radionuclides, including radioactive decay chains.

(i) For mixed fission products, the activity limit may be assumed if a detailed analysis of the mixture is not carried out.
Figure 11: 25 TAC §289.201(q)(5)(B)(i)

(ii) A single radioactive decay chain is considered to be a single radionuclide when the radionuclides are present in their naturally occurring proportions and no daughter nuclide has a half-life either longer than ten days or longer than that of the parent nuclide. The activity to be taken into account and the A_1 or A_2 value from paragraph (5)(C) of this subsection to be applied are those corresponding to the parent nuclide of that chain. When calculating A_1 or A_2 values, radiation emitted by daughters must be considered. However, in the case of radioactive decay chains in which any daughter nuclide has a half-life either longer than ten days or greater than that of the parent nuclide, the parent and daughter nuclides are considered to be mixtures of different nuclides.

(iii) In the case of a mixture of different radionuclides, where the identity and activity of each radionuclide are known, the permissible activity of each radionuclide R_1, R_2 . . . R_n is such that F_1 + F_2 + ... F_n is not greater than unity, where:
Figure 12: 25 TAC §289.201(q)(5)(B)(iii)

(iv) When the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the formula given in clause (iii) of this subparagraph is applied to establish the values of A_1 or A_2 as appropriate. All the radionuclides whose individual activities are not known (their total activity will, however, be known) are classed in a single group and the most restrictive value of A_1 and A_2 applicable to any one of them is used as the value of A_1 or A_2 in the denominator of the fraction.

(v) Where the identity of each radionuclide is known but the individual activity of none of the radionuclides is known, the most restrictive value of A_1 or A_2 applicable to any one of the radionuclides present is adopted as the applicable value.

(vi) When the identity of none of the nuclides is known, the value of A_1 is taken to be two curies (74 gigabecquerels) and the value of A_2 is taken to be 0.002 curie (74 megabecquerels). However, if alpha emitters are known to be absent, the value of A_2 is taken to be 0.4 curie (14.8 gigabecquerels).

(C) A_1 and A_2 values for radionuclides.
Figure 13: 25 TAC §289.201(q)(5)(C)

(D) Relationship between A_1 and E_{max} for beta emitters.
Figure 14: 25 TAC §289.201(q)(5)(D)

(E) Relationship between A_3 and the atomic number of the radionuclide.
Figure 15: 25 TAC §289.201(q)(5)(E)

(F) Activity-mass relationships for uranium/thorium.
Figure 16: 25 TAC §289.201(q)(5)(F)

(6) Training for agency inspectors of electronic products.

(A) Objectives. Training of agency inspectors of electronic products will be conducted by the agency. Upon completion of training, the inspector will be able to:

(i) select and operate the necessary testing equipment use to perform an inspection of electronic products;

(ii) utilize radiation protection principles;

(iii) operate radiation detection instruments;

(iv) define basic regulatory terminology;

(v) apply this section regarding electronic products;

(vi) perform routine agency inspections of electronic products;

(vii) complete agency inspection documentation;

(viii) demonstrate knowledge of agency ethics, professional, and technical policies; and

(ix) successfully achieve the objectives in this subparagraph.

(B) Initial training program.

(i) Initial training will be conducted during a six month period.

(ii) All training evaluation instruments will be developed by the agency.

(iii) Instruments to be used in determining a proficiency level are as follows:

(I) evaluation of each inspectors training needs prior to initial training;

(II) evaluation of knowledge obtained and verification of tasks performed by each inspector subsequent to training received by the agency; and

(III) evaluation of each inspector's task performance by the agency.

(C) Continuing education.

(i) The agency inspector of electronic products will accumulate 24 hours of continuing education regarding electronic products, at intervals not to exceed 12 months. These hours of continuing education may be acquired as follows:

(I) documented continuing education earned in an agency-accepted training format; and

(II) agency staff meetings.

(ii) Failure to obtain 24 hours of continuing education within each 12 month interval may result in a reassessment by the agency of an agency inspector's proficiency level.

(iii) After the initial training period, each inspector of electronic products will be evaluated by the agency, at intervals not to exceed 12 months.

(D) Agency proficiency standards. The agency proficiency standards for agency inspectors of electronic products are as follows.

(i) Level I. The agency inspector has not successfully achieved the objectives in subparagraph (A) of this paragraph after the initial training period. Additional training is required. Unsupervised inspections will not be performed.

(ii) Level II. The agency inspector has partially achieved the objectives in subparagraph (A) of this paragraph, but has not achieved the objective in subparagraph (A)(ix) of this paragraph after the initial training period. Additional training is required. Unsupervised inspections are not permitted for the type of electronic products for which the objectives of subparagraph (A)(ix) of this paragraph have not been achieved. Unsupervised inspections may be performed for the type of electronic products for which the objectives in subparagraph (A)(ix) of this paragraph have been successfully achieved.

(iii) Level III. The agency inspector has successfully achieved the objectives in subparagraph (A) of this paragraph. Supervision is not required for routine inspections.

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 April 11, 1995.

TRD-9504462 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 458-7236

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The Texas Department of Health (department) proposes the repeal of existing §289.121; and proposes new §289.252, concerning the control of radiation. The section proposed for repeal adopts by reference Part 41, titled "Licensing of Radioactive Material" of the Texas Regulations for Control of Radiation (TRC). The proposed new section has been re-written in *Texas Register* format and includes requirements for licensees to report to the department incidents involving events that prevent immediate protective actions necessary to avoid exposures to or releases of radioactive materials that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.). The requirements for the amounts of financial assurance needed for decommissioning based upon the quantity of radioactive material possessed are clarified. These are items of compatibility with the United States Nuclear Regulatory Commission (NRC), and as an agreement state, Texas must adopt them.

The section has been expanded to add an option for required supervised clinical experience for certain medical uses of radioactive material to be obtained under an authorized physician in a medical teaching institution that also provides appropriate training programs that have been accredited by the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association. The rule is clarified to specify the classroom and laboratory training initiated before the effective date of the rule and completed two years from the effective date of the rule will be accepted if obtained in an accredited medical school, a federal teaching hospital, or a training program for medical use of radioactive material that has been accepted by the department, NRC, or another agreement state. The rule also allows the department to accept alternative training if it provides an equal or greater level of training than that specified. The section is also amended to provide clarification for the types of supervised clinical experience required for unspecified radiopharmaceuticals for therapeutic treatment.

The amendments and new section are part of the first phase in the process for converting existing sections that adopt by reference the various parts of the TRCR to *Texas Register* format.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mrs. McBurney also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that licensees will report to the department incidents involving releases of or expo-

sures to radioactive materials The rules also assures that physicians who use radioactive material have the appropriate training and experience for certain medical uses of radioactive material. No impact is anticipated on small businesses, persons who are required to comply with these rules, or on local employment as a result of implementing the sections.

Comments on the proposal may be presented in writing to Ruth E. McBurney, C. H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688. Public comments will be accepted for 30 days following publication of these proposed changes in the *Texas Register.* In addition, a public hearing will be held at 1:30 p.m., Thursday, May 18, 1995, in Conference Room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

Texas Regulations for Control of Radiation

• 25 TAC §289.121

(Editor's note The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 401.

§289.121. Licensing of Radioactive Material.

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 April 11, 1995.

TRD-9504459 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 458-7236

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License Regulations

• 25 TAC §289.252

The new section is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§289.252. Licensing of Radioactive Material.

(a) Purpose. This section and §289.115 of this title (relating to Radiation Safety, Requirements and Licensing and Registration Procedures for Industrial Radiography), §289.127 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements), and §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities) provide for the licensing of radioactive material. Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific license issued in accordance with this section, or as otherwise provided in this section, in a specific license issued in accordance with §§289.115, 289.127, or 289.254 of this title, or in a general license or general license acknowledgement issued in accordance with §289.251 of this title.

(b) Scope. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.113 of this title (relating to Standards for Protection Against Radiation), and §289.114 of this title (relating to Notices, Instructions, and Reports to Workers), §289.126 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), and §289.201 of this title (relating to General Provisions). Licensees engaged in industrial radiographic operations are subject to the requirements of §289.115 of this title; licensees using sealed sources in the healing arts are subject to the requirements of §289.117 of this title (relating to Use of Sealed Radioactive Sources in the Healing Arts); and licensees engaged in well logging service operations and tracer studies are subject to the requirements of §289.120 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies).

(c) Types of licenses. Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in §289.251 of this title are effective without the filing of applications with the agency or the issuance of licensing documents to the particular persons, although the filing of an application for acknowledgement with the agency may be required by the particular general license. The general licensee is subject to any other applicable portions of this chapter and any limitations of the general license.

(2) Specific licenses require the submission of an application to the agency and the issuance of a licensing document by the agency. The licensee is subject to all applicable portions of this chapter as well as any limitations specified in the licensing document.

(d) Filing application for specific licenses.

(1) Applications for specific licenses shall be filed in duplicate on a form prescribed by the agency.

(2) The agency may, at any time after the filing of the original application and before issuance of the license, require further statements in order to enable the agency to determine whether the application should be granted or denied.

(3) Each application shall be signed by the applicant or licensee, or a person duly authorized to act for and on the applicant's or licensee's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities. The agency may require the issuance of separate specific licenses for those activities.

(5) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with §289.201(n) of this title. The agency may also request additional information after the license has been issued to enable the agency to determine whether the license should be modified or revoked.

(6) Each application for a specific license, other than a license exempted from §289. 126 of this title, shall be accompanied by the fee prescribed in §12.21 of Texas Regulations for Control of Radiation (TRCR) Part 12 as adopted by reference in §289.126 of this title.

(7) If the applicant is a corporation under the Texas Business Corporation Act, TRC Form 12-2 shall be submitted with the application to confirm that no tax owed the state in accordance with Tax Code, Chapter 171, is delinquent.

(8) Applications for licenses shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and

Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 30 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Government Code, Chapters 2001 and 2002.

(9) Notwithstanding the provisions of §12.11(a) of TRCR Part 12 as adopted by reference in §289.126 of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (8) of this subsection, the applicant has the right to request of the director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the formal hearing procedures of the Texas Department of Health, §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

(1) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with this chapter in such a manner as to minimize danger to public health and safety or the environment;

(2) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or the environment;

(3) the issuance of the license will not be inimical to the health and safety of the public;

(4) the applicant satisfies any applicable special requirement in this section;

(5) the radiation safety information submitted for requested sealed source(s) or device(s) containing radioactive material is in accordance with subsection (i) of this section;

(6) qualifications of the designated radiation safety officer (RSO) as specified in subsection (g) of this section are adequate for the purpose requested in the application;

(7) the applicant submits an adequate operating, safety, and emergency procedures manual;

(8) the applicant's permanent facility is located in Texas (if the applicant's permanent facility is not located in Texas, reciprocal recognition must be sought as required by subsection (s) of this section); and

(9) all personnel who will be handling radioactive material have adequate training and experience in the handling of radioactive material.

(f) Special requirements for issuance of certain specific licenses for radioactive material by specific groups.

(1) Human use of radioactive material. In addition to the requirements set forth in subsection (e) of this section, a specific license for human use of radioactive material will be issued if:

(A) the applicant possesses adequate facilities for the clinical care of patients;

(B) the physician designated on the application as the individual user has completed the training and experience requirements in subsection (w)(5) of this section as applicable;

(C) the application is for a license authorizing unspecified forms and/or multiple types of radioactive material for medical research, diagnosis and therapy, (i.e., a broad medical license); and

(D) the agency determines that:

(i) the applicant's staff has substantial experience in the use of a variety of radioactive materials for a variety of human uses;

(ii) the applicant has appointed a radiation safety committee that includes adequate professional and technical representation from multiple applicable medical specialties. Representatives on this committee should include authorized users from each specialty using radioactive material (including research, diagnostic, and therapeutic uses), technical staff from each specialty, a senior administrative representative, representation from affected nursing staff, and other special services that may be affected (E.R., O.R., I.C.U., etc.) and the RSO; and

(iii) a full-time RSO and/or staff has been appointed.

(2) Specific licenses for medical uses of radioactive material.

(A) Subject to the provisions of subparagraphs (B), (C), and (D) of this paragraph, an application for a specific license in accordance with paragraph (1) of this subsection for any medical use or uses of radioactive material specified in one or more of Groups I, II, and III, defined in subsection (w)(2) of this section, will be approved for all of the medical uses within the group or groups, that include the use or uses as specified in the application, if:

(i) the applicant satisfies the requirements of paragraphs (1) of this subsection and the requirements of this paragraph;

(ii) the applicant, or the physician designated in the application as the individual user, has completed the training and experience requirements in subsection (w) (5) of this section as applicable;

(iii) the applicant or the physicians and all other personnel who will be involved in the preparation and use of the radioactive material have adequate training and experience in the handling of radioactive material appropriate to their participation in the uses included in the group or groups;

(iv) the applicant's radiation detection and measuring instrumentation is appropriate for conducting the procedures involved in the uses included in the group or groups; and

(v) the applicant's radia-

tion safety operating procedures are adequate for handling and disposal of the radioactive material involved in the uses included in the group or groups.

(B) Any licensee who is authorized to use one or more of the medical use groups of radioactive material in accordance with subparagraph (A) of this paragraph and subsection (w)(2) of this section is subject to the following conditions.

(i) For Groups I and II of subsection (w)(2) of this section, no licensee shall receive, possess, or use radioactive material except as a radiopharmaceutical manufactured in the form to be administered to the patient, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(10) of this section or by the commission, another agreement state, or a licensing state.

(ii) For Group III of subsection (w)(2) of this section, no licensee shall receive, possess, or use generators or reagent kits containing radioactive material or shall use reagent kits that do not contain radioactive material to prepare radiopharmaceuticals containing radioactive material, except:

(I) reagent kits not containing radioactive material that are approved by the agency, the commission, an agreement state, or a licensing state for use by persons licensed in accordance with this paragraph and subsection (w)(2) of this section or equivalent regulations; and

(II) generators or reagent kits containing radioactive material that are manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(11) of this section or a specific license issued by the commission, an agreement state, or a licensing state in accordance with equivalen regulations.

(iii) For Group III of subsection (w)(2) of this section, any licensee who uses generators or reagent kits shall:

(I) elute the generator or process radioactive material with the reagent kit in accordance with instructions that are approved by the agency, the commission, an agreement state, or a licensing state, and furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit;

(II) before administration to patients, cause each elution or extraction of technetium-99m from a molybdenum-99/technetium-99m generator to be tested to determine either the total molybdenum-99 activity or the concentration of molybdenum-99. This testing shall be conducted according to written procedures and by personnel who have been specifically trained to perform the test;

(III) prohibit the administration to patients of technetium-99m containing more than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m; and

(IV) maintain for three years for agency inspection records of the molybdenum-99 test conducted on each elution from the generator.

(iv) Except as specified in subparagraph (G) of this paragraph, for uses of radioactive material within Groups I, II, and III of subsection (w)(2) of this section, the licensee shall comply with the product labeling (package insert) specifications and recommendations.

(v) For Groups I, II, and III of subsection (w)(2) of this section, any licensee using radioactive material for clinical procedures other than those specified in the product labeling (package insert) shall comply with the product labeling regarding:

(I) chemical and physical form;

(II) route of administration; and

(III) dosage range.

(C) Any licensee who is licensed in accordance with subparagraph (A) of this paragraph for one or more of the medical use groups in subsection (w)(2) of this section is also authorized to use radioactive material in accordance with the general license in §289. 251(j)(2) of this title for the specified in vitro uses without filing an application for acknowledgement with the agency as required by §289.251(j)(2)(B) of this title; provided the licensee is subject to the other provisions of §289.251(j)(2) of this title.

(D) Any licensee who is licensed in accordance with subparagraph (A) of this paragraph for one or more of the medical use groups in subsection (w)(2) of this section is also authorized, subject to the provisions of this subparagraph and subparagraph (E) of this paragraph, to receive, possess, and use for calibration and reference standards:

(i) any radioactive material listed in Group I, II, or III of subsection (w)(2) of this section with a half-life not longer than 100 days, in amounts not to exceed 15 millicuries total;

(ii) any radioactive material listed in Group I, II, or III of subsection (w)(2) of this section with half-life greater than 100 days in amounts not to exceed 200 microcuries total;

(iii) technetium-99m in amounts not to exceed 30 millicuries; and

(iv) any radioactive material, in amounts not to exceed six millicuries per source, contained in calibration or reference sources that have been manufactured, labeled, packaged, and distributed in accordance with a specific license issued by the agency in accordance with subsection (h)(7) of this section, a specific license issued by the commission in accordance with 10 Code of Federal Regulations (CFR) 32.74, or a specific license issued to the manufacturer by an agreement state or a licensing state in accordance with equivalent regulations.

(E) Any licensee or registrant who possesses and uses calibration and reference sources in accordance with subparagraph (D)(iv) of this paragraph shall:

(i) follow the radiation safety and handling instructions approved by the agency, the commission, an agreement state, or a licensing state, and furnished by the manufacturer on the label attached to the source, or permanent container thereof, or in the leaflet or brochure that accompanies the source, and maintain such instruction in a legible and conveniently available form; and

(ii) conduct a physical inventory at intervals not to exceed six months to account for all sources received and possessed. Records of the inventories shall be maintained for inspection by the agency and shall include the quantities and kinds of radioactive material, source identification numbers, location of sources, and the date of the inventory.

(F) The use of gases, gas solutions, and aerosols shall be specifically requested in a license application.

(G) In addition to the requirements set forth in subsection (e) of this section, an application for a specific license to prepare and dispense radiopharmaceuticals for human use will be approved if the nuclear pharmacist designated in the application as the individual user has completed the training and experience requirements specified in the rules of the Texas State

Board of Pharmacy, contained in Title 22, Texas Administrative Code §291.52. Nuclear pharmacists identified as authorized users on a nuclear pharmacy license issued by the agency in accordance with paragraph (2) of this subsection before September 1, 1994, need not comply with the training and experience requirements specified in this section.

(H) Any licensee who processes and prepares radiopharmaceuticals for human use shall do so according to:

(i) instructions that are approved by the agency, the commission, an agreement state, or a licensing state that are furnished by the manufacturer on the label attached to a generator or reagent kit, or contained in the accompanying leaflet or brochure;

(ii) procedures approved by the agency; or

(iii) the provisions of the practice of pharmacy, as recognized by the Texas State Board of Pharmacy, by an authorized nuclear pharmacist.

(I) If the authorized nuclear pharmacist elutes generators or processes radioactive material with the reagent kit in a manner that deviates from instructions furnished by the manufacturer on the label attached to the generator or reagent kit or in the accompanying leaflet or brochure, a complete description of the deviation shall be made and maintained for inspection by the agency for a period of three years.

(3) Release of patients containing radiopharmaceuticals, temporary implants, or permanent implants.

(A) Any individual to whom more than 30 millicuries of a radiopharmaceutical is administered shall be confined to an agency-approved inpatient facility and shall not be released from confinement until the activity of the administered radiopharmaceutical in the patient is less than 30 millicuries, or until the measured dose rate from the patient is less than five millirems per hour at a distance of one meter.

(B) Immediately after removing the last temporary implant source or retraction of a source(s) from a remote control brachytherapy device at the conclusion of treatment, and before the patient is released from the therapy room, the licensee shall perform a radiation survey of the patient with an appropriate survey instrument. The licensee shall not release from confinement for medical care a patient treated by temporary implant or remote control brachytherapy device until all sources have been removed.

(C) Any individual containing permanent implant sources shall remain hospitalized and shall not be released from confinement until the exposure rate from the patient is less than six milliroengtens per hour at a distance of one meter from the implant location.

(4) Records and reports of misadministrations.

(A) When a misadministration involves any therapy procedure, the licensee shall notify the agency. The licensee shall also notify the referring physician of the affected patient and the patient or a responsible relative or guardian, unless the referring physician agrees to inform the patient or believes, based on medical judgment, that telling the patient or the patient's responsible relative or guardian would be harmful to one or the other, respectively. These notifications must be made within 24 hours after the licensee discovers the misadministration. If the referring physician, patient, or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of this.

(B) Within 15 days after an initial therapy misadministration report to the agency, the licensee shall report, in writing, to the agency and to the referring physician, and furnish a copy of the report to the patient or the patient's responsible relative or guardian if either was previously notified by the licensee as required by subparagraph (A) of this paragraph. The written report must include the licensee's name; the referring physician's name; a brief description of the event; the effect on the patient; the action taken to prevent recurrence; whether the licensee informed the patient or the patient's responsible relative or guardian, and if not, why not. The report to the agency must not include the patient's name or other information that could lead to identification of the patient.

(C) When a misadministration involves a diagnostic procedure, the RSO shall promptly investigate its cause, make a record for agency review, and retain the record in accordance with subparagraph (D) of this paragraph. The licensee shall also notify the referring physician and the agency in writing within 15 days if the misadministration involved the use of radioactive material not intended for medical use, administration of dosage five-fold different from the intended dosage, or misadministration of radioactive material such that the patient is likely to receive an individual organ dose greater than 50 rems dose equivalent or a whole body dose greater than five rems effective dose equivalent. Licensees may use dosimetry tables in package inserts, corrected only for amount of radioactivity administered, to determine whether a report is required.

(D) Each licensee shall retain a record of each misadministration for ten years. The record must contain the name of all individuals involved in the event, including the physician, allied health personnel, the patient, and the patient's referring physician; the patient's social security number or identification number if one has been assigned; a brief description of the event; the effect on the patient; and the action taken, if any, to prevent recurrence.

(E) Aside from the notification requirement, nothing in subparagraphs (A)-(D) of this paragraph shall affect any rights or duties of licensees and physicians in relation to each other, patients, or responsible relatives, or guardians.

(5) Use of sealed sources in industrial radiography. In addition to the requirements set forth in subsection (e) of this section, a specific license for use of sealed sources in industrial radiography will be issued if the applicant submits to the agency the items in accordance with §289.115 of this title.

(6) Multiple quantities or types of radioactive material for use in research and development.

(A) In addition to the requirements set forth in subsection (e) of this section, a specific license for multiple quantities or types of radioactive material for use in research and development (i.e., a broad license), not to include the internal or external administration of radiation or radioactive material to humans, will be issued only if each item below is adequately addressed:

(i) the applicant's staff has substantial experience in the use of a variety of radioisotopes for a variety of research and development uses;

(ii) the applicant has established a radiation safety committee (composed of such persons as an RSO, a representative of senior management, and one or more persons trained or experienced in the safe use of radioactive materials) that will review and approve proposals for such uses in advance of purchase of radioisotopes;

(iii) the applicant has appointed an RSO in accordance with subsection (g) of this section;

(iv) the applicant has a full-time RSO and/or staff; and

(v) the applicant submits the names and qualifications of the committee and designated RSO.

(B) Unless specifically authorized, persons licensed according to subparagraph (A) of this paragraph shall not conduct tracer studies involving direct release of radioactive material to the environment.

(C) Unless specifically authorized, in accordance with a separate license, persons licensed according to subparagraph (A) of this paragraph shall not:

(i) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies or more of radioactive material in sealed sources used for irradiation of materials;

(ii) conduct activities for which a specific license issued by the agency in accordance with subsection (h) of this section and §§289.115, 289.127, and 289.254 of this title is required;

(iii) add or cause the addition of radioactive material to any food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being; or

(iv) commercially distribute radioactive material.

(g) Radiation safety officer.

(1) An RSO shall be designated for every license issued by the agency.

(2) The RSO's documented qualifications shall include as a minimum:

(A) possession of a high school diploma or a certificate of high school equivalency based on the GED test;

(B) completion of the training and testing requirements specified in this chapter for the activities for which the license application is submitted; and

(C) training and experience necessary to supervise the radiation safety aspects of the licensed activity.

(3) The specific duties of the RSO include, but are not limited to, the following:

(A) to establish and oversee operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(B) to oversee and approve all phases of the training program for operations and/or personnel so that appropriate and effective radiation protection practices are taught;

(C) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(D) to ensure that personnel monitoring is used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §289.114 of this title;

(E) to investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(F) to investigate and cause a report to be submitted to the agency for each known or suspected case of release of radioactive material(s) to the environment in excess of limits established by this chapter;

(G) to have a thorough knowledge of management policies and administrative procedures of the licensee;

(H) to assume control and have the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(I) to ensure that records are maintained as required by this chapter;

(J) to ensure the proper storing, labeling, transport, and use of sources of radiation, storage, and/or transport containers;

(K) to ensure that inventories are performed in accordance with the activities for which the license application is submitted; and

(L) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee.

(h) Special requirements for a specific license to manufacture, assemble, repair, or commercially distribute commodities, products, or devices that contain radioactive material.

(1) Introduction of radioactive material into products in exempt concentrations.

(A) In addition to the requirements set forth in subsection (e) of this section, a specific license authorizing the introduction of radioactive material into a product or material in the possession of the licensee or another to be transferred to persons exempt from this chapter in accordance with §289.251(d)(1)(A) of this title will be issued if:

(i) the applicant submits a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material, and estimated concentration of the radioactive material in the product or material at the time of transfer; and

(ii) the applicant provides reasonable assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in §289. 251(q)(1) of this title, that reconcentration of the radioactive material in concentrations exceeding those in §289.251(q)(1) of this title is not likely, that the use of lower concentrations is not feasible, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human.

(B) Each person licensed in accordance with this paragraph shall file with the agency an annual report that identifies the type and quantity of each product or material into which radioactive material has been introduced during the reporting period; name and address of the person who owned or possessed the product or material when the radioactive material was introduced; the type and quantity of radionuclide introduced into each such

product or material; and the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee. If no transfers of radioactive material have been made in accordance with this paragraph during the reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within 30 days thereafter.

(2) Commercial distribution of radioactive material in exempt quantities.

(A) Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the United States Nuclear Regulatory Commission, Washington, DC 20555.

(B) In addition to the requirements set forth in subsection (e) of this section, an application for a specific license to distribute naturally occurring or accelerator-produced radioactive material (NARM) to persons exempt from this chapter in accordance with §289. 251(d)(2) of this title will be approved if:

(i) the radioactive material is not contained in any food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human;

(ii) the radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product, or device intended for commercial distribution; and

(iii) the applicant submits copies of prototype labels and brochures and the agency approves such labels and brochures.

(C) The license issued in accordance with subparagraph (B) of this paragraph is subject to the following conditions.

(i) No more than ten exempt quantities shall be sold or commercially distributed in any single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantity provided the sum of the fractions shall not exceed unity.

(ii) Each exempt quantity shall be separately and individually packaged. No more than ten such packaged exempt quantities shall be contained in any other package for commercial distribution to persons exempt from this chapter in accordance with §289.251(d)(2) of this title. The outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem per hour.

(iii) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label that:

(I) identifies the radionuclide and the quantity of radioactivity; and

(II) bears the words "Radioactive Material."

(iv) In addition to the labeling information required by clause (iii) of this subparagraph, the label affixed to the immediate container, or an accompanying brochure, shall:

(I) state that the contents are exempt from the commission, agreement state, or licensing state requirements;

(II) bear the words "Radioactive Material-Not for Human Use-Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited-Exempt Quantities Should Not Be Combined"; and

(III) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.

(D) Each person licensed in accordance with this paragraph shall maintain records identifying, by name and address, each person to whom radioactive material is commercially distributed for use in accordance with §289.251(d)(2) of this title or the equivalent regulations of an agreement state or a licensing state, and stating the kinds and quantities of radioactive material commercially distributed. An annual summary report stating the total quantity of each radionuclide commercially distributed in accordance with the specific license shall be filed with the agency. Each report shall cover the year ending June 30, and shall be filed within 30 days thereafter. If no commercial distributions of radioactive material have been made in accordance with this paragraph during the reporting period, the report shall so indicate.

(3) Incorporation of NARM into gas and aerosol detectors. In addition to the requirements set forth in subsection (e) of this section, an application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt from this chapter in accordance with §289. 251(d)(3)(C) of this title will be approved if the application satisfies requirements equivalent to those contained in 10 CFR 32.26. The maximum quantity of radium-226 in each device shall not exceed 0.1 microcurie.

(4) Licensing the manufacture and commercial distribution of devices to persons generally licensed in accordance with §289.251(j)(1) of this title.

(A) An application for a specific license to manufacture or commercially distribute devices containing radioactive material to persons generally licensed in accordance with §289.251(g)(1)(C) and (j)(1) of this title or equivalent regulations of the commission, an agreement state, or a licensing state will be approved if:

(i) the applicant satisfies the general requirements of subsection (e) of this section;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(I) the device can be safely operated by persons not having training in radiological protection;

(II) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one calendar quarter a dose in excess of 10% of the limits specified in 21.201 of TRCR Part 21 as adopted by reference in §289.113 of this title; and

(III) under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:

(-a-) 15 rems to the

whole body; head and trunk; active blood-forming organs; gonads; or lens of eye;

(-b-) 200 rems to the hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter; or

(-c-) 50 rems to other organs;

(iii) each device bears a durable, legible, clearly visible label or labels approved by the agency, which contain in a clearly identified and separate statement:

(I) instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(II) the requirement, or lack of requirement, for leak testing, or for testing any "on-off" mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and

(III) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(-a-) For radioactive materials other than NARM, the following statement is appropriate:
Figure 1: 25 TAC §289.252(h)(4)(A)(iii)(III)(-a-)

(-b-) For NARM, the following statement is appropriate:
Figure 2: 25 TAC §289.252(h)(4)(A)(iii)(III)(-b-)

(-c-) The model, serial number, and name of manufacturer or distributor may be omitted from this label provided they are elsewhere stated in labeling affixed to the device.

(B) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for radioactive material leakage, the agency will consider information that includes, but is not limited to:

(i) primary containment (source capsule);

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical devices or similarly designed and constructed devices.

(C) In the event the applicant desires that the general licensee in accordance with §289.251(g)(1)(C) and (j)(1) of this title or in accordance with equivalent regulations of the commission, an agreement state, or a licensing state be authorized to mount the device, collect the sample to be analyzed by a specific licensee for radioactive material leakage, perform maintenance of the device consisting of replacement of labels, rust and corrosion prevention, and for fixed gauges, repair and maintenance of source holder mounting brackets, test the "on-off" mechanism and indicator, device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices in accordance with the general license, is unlikely to cause that individual to receive a calendar quarter dose in excess of 10% of the limits specified in 21.201 of TRCR Part 21 as adopted by reference in §289.113 of this title.

(D) Each person licensed in accordance with this subparagraph to commercially distribute devices to generally licensed persons shall:

(i) furnish a copy of the general license in §289.251(g)(1)(C) and (j)(1) of this title to each person to whom the licensee directly or through an intermediate person commercially distributes radioactive material in a device for use in accordance with the general license in §289.251(g)(1)(C) and (j)(1) of this title;

(ii) furnish a copy of the general license in the commission's, agreement state's, or licensing state's regulation equivalent to §289.251(g)(1)(C) and (j)(1) of this title, or alternatively, furnish a copy of the general license in §289.251(g)(1)(C) and (j)(1) of this title to each person to whom the licensee directly or through an intermediate person commercially distributes radioactive material in a device for use in accordance with the general license of the commission, the agreement state, or the licensing state. If a copy of the general license in §289.251(g)(1)(C) and (j)(1) of this title is furnished to such a person, it shall be accompanied by an explanation that the use of the device is regulated by the commission, agreement state, or licensing state in accordance with requirements substantially the same as those in §289.251(g)(1)(C) and (j)(1) of this title;

(iii) report to the agency all commercial distributions of such devices to persons for use in accordance with the general license in §289.251(g)(1)(C) and (j)(1) of this title, or equivalent regulations of another agreement state or licensing state. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type, model, serial number of device and serial number of source commercially distributed, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall also include identification of each intermediate person by name, address, contact, and relationship to the intended user. If no commercial distributions have been made to persons generally licensed in accordance with §289.251(g) (1)(C) and (j)(1) of this title during the reporting period, the report shall so indicate. The report shall cover each calendar quarter and shall be filed within 30 days thereafter;

(iv) report to the commission all commercial distributions of such devices to persons for use in accordance with the commission general license in 10 CFR 31.5;

(v) report to the appropriate agreement state or licensing state all transfers of devices manufactured and commercially distributed in accordance with this paragraph for use in accordance with a gen-

eral license in that state's regulations equivalent to §289.251(g)(1)(C) and (j)(1) of this title;

(vi) identify in such reports each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type, model, serial number of the device and serial number of source commercially distributed, and the quantity and type of radioactive material contained in the device. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall also include identification of each intermediate person by name, address, contact, and relationship to the intended user. The report shall be submitted within 30 days after the end of each calendar quarter in which such a device is commercially distributed to the generally licensed person;

(vii) report to the commission information indicating no commercial distributions have been made to the commission licensees during the reporting period if no such commercial distributions have been made; and

(viii) keep records showing the name, address, and the point of contact for each general licensee to whom the licensee directly or through an intermediate person commercially distributes radioactive material in devices for use in accordance with the general license provided in §289.251(g)(1)(C) and (j)(1) of this title, or equivalent regulations of the commission, an agreement state, or a licensing state. The records should show the date of each commercial distribution, the isotope and the quantity of radioactivity in each device commercially distributed, the identity of any intermediate person, and compliance with the reporting requirements of this subparagraph.

(5) Special requirements for the manufacture, assembly, or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for commercial distribution to persons generally licensed in accordance with §289.251(g)(4) of this title, will be approved subject to the following conditions:

(A) the applicant satisfies the general requirements specified in subsection (e) of this section; and

(B) the applicant satisfies the requirements of 10 CFR 32.53, 32. 54, 32.55, 32.56, and 32.101 or their equivalent.

(6) Special requirements for license to manufacture calibration sources containing americium-241, plutonium, or radium-226 for commercial distribution to persons generally licensed in accordance with §289.251(g)(6) of this title. An application for a specific license to manufacture calibration sources containing americium-241, plutonium, or radium-226 to persons generally licensed in accordance with §289.251(g)(6) of this title will be approved subject to the following conditions:

(A) the applicant satisfies the general requirement of subsection (e) of this section; and

(B) the applicant satisfies the requirements of 10 CFR 32.57, 32.58, 32.59, and 32.102 and 10 CFR 70.39 or their equivalent.

(7) Manufacture and commercial distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and commercially distribute sources and devices containing radioactive material to persons licensed for use of sealed sources in the healing arts or in accordance with subsection (f)(2) of this section for use as a calibration or reference source will be approved if:

(A) the applicant satisfies the general requirements in subsection (e) of this section;

(B) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form, and amount;

(ii) details of design and construction of the source or device;

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(iv) for devices containing radioactive material, the radiation profile of a prototype device;

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(vi) procedures and standards for calibrating sources and devices; and

(vii) instructions for handling and storing the source or device from the radiation safety standpoint. These instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device, provided that instructions that are too lengthy for such label may be summarized on the label and printed in detail on a brochure that is referenced on the label;

(C) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the name of the source or device is licensed by the agency for commercial distribution to persons licensed for use of sealed sources in the healing arts or in accordance with subsection (f)(2) of this section or equivalent licenses of the commission, an agreement state, or a licensing state, provided that such labeling for sources that do not require long-term storage may be on a leaflet or brochure that accompanies the source,

(D) in the event the applicant desires that the source or device be required to be tested for radioactive material leakage at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the source; and

(E) in determining the acceptable interval for testing radioactive material leakage, the agency will consider information that includes, but is not limited to:

(i) primary containment or source capsule;

(ii) protection of primary containment;

(iii) method of sealing containment;

(iv) containment construction materials;

(v) form of contained radioactive material;

(vi) maximum temperature withstood during prototype tests;

(vii) maximum pressure withstood during prototype tests;

(viii) maximum quantity of contained radioactive material;

(ix) radiotoxicity of contained radioactive material; and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(8) Manufacture and commercial distribution of radioactive material for certain in vitro clinical or laboratory testing in accordance with the general license. An application for a specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(j)(2) of this title will be approved if:

(A) the applicant satisfies the general requirements specified in subsection (e) of this section;

(B) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding ten microcuries each,

(ii) iodine-131 in units not exceeding ten microcuries each;

(iii) carbon-14 in units not exceeding ten microcuries each;

(iv) hydrogen-3 (tritium) in units not exceeding 50 microcuries each;

(v) iron-59 in units not exceeding 20 microcuries each;

(vi) cobalt-57 in units not exceeding ten microcuries each;

(vii) selenium-75 in units not exceeding ten microcuries each; or

(viii) mock iodine-125 in units not exceeding 0.05 microcurie of iodine-129 and 0.005 microcurie of americium-241 each;

(C) each prepackaged unit bears a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed ten microcuries of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 microcuries of hydrogen-3 (tritium); 20 microcuries of iron-59; or mock iodine-125 in units not exceeding 0.05 microcurie of iodine-129 and 0. 005 microcurie of americium-241; and

(ii) displaying the radiation caution symbol in accordance with 21.901(a) and (b) of TRCR Part 21 as adopted by reference in §289.113 of this title and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals";

(D) one of the following statements, as appropriate, or a substantially similar statement that contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

(i) option 1:
Figure 3: 25 TAC §289.252(h)(8)(D)(i)

(ii) option 2:
Figure 4: 25 TAC §289.252(h)(8)(D)(ii)

(E) the label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such radioactive material. In the case of a mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements of 21.1001 of TRCR Part 21 as adopted by reference in §289.113 of this title.

(9) Licensing the manufacture and commercial distribution of ice detection devices. An application for a specific license to manufacture and commercially distribute ice detection devices to persons generally licensed in accordance with §289.251(g)(8) of this title will be approved subject to the following conditions:

(A) the applicant satisfies the general requirements of subsection (e) of this section; and

(B) the criteria of 10 CFR 32.61, 32.62, and 32.103 are met.

(10) Manufacture and commercial distribution of radiopharmaceuticals containing radioactive material for medical use in accordance with group licenses.

(A) An application for a specific license to manufacture and commercially distribute radiopharmaceuticals containing radioactive material for use by persons licensed in accordance with subsection (f)(2) of this section for the medical uses listed in Groups I and II defined in subsection (w)(2) of this section will be approved if:

(i) the applicant satisfies the general requirements specified in subsection (e) of this section;

(ii) the applicant submits evidence that:

(I) the radiopharmaceutical containing radioactive material will be manufactured, labeled, and packaged in accordance with the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act, such as a new drug application (NDA) or a product license application (PLA) approved by the United States Food and Drug Administration (FDA), or a "Notice of Claimed Investigational Exemption for a New Drug" (IND) that has been accepted by the FDA; or

(II) the manufacture and commercial distribution of the radiopharmaceutical containing radioactive material is not subject to the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act;

(iii) the applicant submits information on:

(I) the radionuclide, chemical and physical form;

(II) packaging including maximum activity per package; and

(III) shielding provided by the packaging of the radioactive material that is appropriate for safe handling and storage of radiopharmaceuticals by group licensees; and

(iv) the label affixed to each package of the radiopharmaceutical contains information on the radionuclide, quantity, and date of assay; and

(v) the label affixed to each package, or the leaflet or brochure that accompanies each package, contains a statement that the radiopharmaceutical is licensed by the agency for commercial distribution to persons licensed in accordance with subsection (f)(2) of this section and for medical uses listed in Groups I and II defined in subsection (w)(2) of this section, as appropriate, or in accordance with equivalent licenses of the commission, an agreement state, or a licensing state.

(B) The labels, leaflets, or brochures required by this paragraph are in addition to the labeling required by the FDA and they may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

(11) Manufacture and commercial distribution of generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material.

(A) An application for a specific license to manufacture and commercially distribute generators or reagent kits

containing radioactive material for preparation of radiopharmaceuticals by persons licensed in accordance with subsection (f)(2) of this section for the medical uses listed in Group III defined in subsection (w)(2) of this section will be approved if:

(i) the applicant satisfies the general requirements specified in subsection (e) of this section;

(ii) the applicant submits evidence that:

(I) the generator or reagent kit is to be manufactured, labeled, and packaged in accordance with the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act, such as a NDA or a PLA approved by the FDA, or a IND that has been accepted by the FDA; or

(II) the manufacture and commercial distribution of the generator or reagent kit are not subject to the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act;

(iii) the applicant submits information on the radionuclide, chemical and physical form, packaging including maximum activity per package, and shielding provided by the packaging of the radioactive material contained in the generator or reagent kit;

(iv) the label affixed to the generator or reagent kit contains information on the radionuclide, quantity, and date of the assay, and

(v) the label affixed to the generator or reagent kit, or the leaflet or brochure that accompanies the generator or reagent kit contains:

(I) adequate information, from a radiation safety standpoint, on the procedures to be followed and the equipment and shielding to be used in eluting the generator or processing radioactive material with the reagent kit; and

(II) a statement that this generator or reagent kit (as appropriate) is approved for use by persons licensed by the agency in accordance with subsection (f)(2) of this section and for the medical uses listed in Group III defined in subsection (w)(2) of this section or in accordance with equivalent licenses of the commission, an agreement state, or a licensing state.

(B) The labels, leaflets, or brochures required by this paragraph are in addition to the labeling required by FDA and they may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

(C) Although the agency does not regulate the manufacture and commercial distribution of reagent kits that do not contain radioactive material, it does regulate the use of such reagent kits for the preparation of radiopharmaceuticals containing radioactive material as part of its licensing and regulation of the users of radioactive material. Any manufacturer of reagent kits that do not contain radioactive material who desires to have the reagent kits approved by the agency for use by persons licensed in accordance with subsection (f)(2) of this section and for the medical uses in Group III defined in subsection (w)(2) of this section should submit the pertinent information specified in this paragraph.

(12) Manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

(A) An application for a specific license to manufacture products and devices containing depleted uranium for use in accordance with §289.251(f)(5) of this title or equivalent regulations of the commission or an agreement state, will be approved if:

(i) the applicant satisfies the general requirements specified in subsection (e) of this section;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the product or device to provide reasonable assurance that possession, use, or commercial distribution of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one calendar quarter a radiation dose in excess of 10% of the limits specified in 21.201 of TRCR Part 21 as adopted by reference in §289.113 of this title; and

(iii) the applicant submits sufficient information regarding the product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(B) In the case of a product or device whose unique benefits are questionable, the agency will approve an application for a specific license in accordance with this paragraph only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(C) The agency may deny any application for a specific license in accordance with this paragraph if the end use(s) of the product or device cannot be reasonably foreseen.

(D) Each person licensed in accordance with subparagraph (A) of this paragraph shall:

(i) maintain the level of quality control required by the license in the manufacture of the product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(I) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device, and

(II) state that the receipt, possession, use, and commercial distribution of the product or device are subject to a general license or the equivalent and the regulations of the commission or of an agreement state;

(iii) assure that before being installed in each product or device, the depleted uranium has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

(iv) furnish a copy of the general license in:

(I) §289.251(f)(5) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license in §289.251(f)(5) of this title, or

(II) the commission's or agreement state's regulation equivalent to the general license in §289. 251(f)(5) of this title and a copy of the commission's or agreement state's certificate, or alternatively, furnish a copy of the general license in §289. 251(f)(5) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license of the commission or an agreement state;

(v) report to the agency all commercial distributions of products or devices to persons for use in accordance with the general license in §289. 251(f)(5) of this title. Such report shall identify each general licensee by name and address, an individual by name and/or position who may constitute a point of contact between the agency and the general licensee, the type and model number of device commercially distributed, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is commercially distributed to the generally licensed person. If no commercial distributions have been made to persons generally licensed in accordance with §289.251(f)(5) of this title during the reporting period, the report shall so indicate;

(vi) report to the commission and each responsible agreement state agency all commercial distributions of industrial products or devices to persons for use in accordance with the general license in the commission's or agreement state's equivalent rule to §289.251(f)(5) of this title. Such report shall meet the provisions of clause (v) of this subparagraph; and

(vii) keep records showing the name, address, and point of contact for each general licensee to whom the licensee commercially distributes depleted uranium in products or devices for use in accordance with the general license provided in §289.251(f)(5) of this title or equivalent regulations of the commission or of an agreement state. The records shall be maintained for a period of two years and shall show the date of each commercial distribution, the quantity of depleted uranium in each product or device commercially distributed, and compliance with the report requirements of this section.

(13) Processing of loose radioactive material for manufacture and commercial distribution. An application to process loose radioactive material for manufacture and commercial distribution of radioactive material to persons authorized to possess such radioactive material in accordance with this chapter will be approved if:

(A) the applicant satisfies the general requirements specified in subsection (e) of this section;

(B) the applicant submits sufficient information relating to the radionuclides to be used, including the chemical and/or physical form and the maximum activity of each radionuclide;

(C) the applicant submits sufficient information relating to the intended use of each radionuclide and the sealed sources and/or other products to be manufactured that includes:

(i) receipt of radioactive material;

(ii) chemical or physical preparations;

(iii) sealed source construction;

(iv) final assembly or processing;

(v) quality assurance testing;

(vi) quality control program;

(vii) leak testing;

(viii) American National Standard (ANSI) testing procedures;

(ix) transportation containers; and

(x) shipping procedures;

(D) the applicant submits information related to the facility(ies) scaled drawings to include, but not limited to:

(i) air filtration;

(ii) ventilation system;

(iii) plumbing; and

(iv) radioactive material handling systems and, when applicable, remote handling hot cells;

(E) the applicant submits details of the environmental monitoring program;

(F) the applicant submits documentation of training as specified in subsection (w)(1) of this section for all personnel who will be handling radioactive materials; and

(G) the applicant submits the name and qualifications of the full-time RSO as specified in subsection (g) of this section.

(14) Other manufacture and commercial distribution of radioactive material. An application to manufacture and commercially distribute radioactive material to persons authorized to possess such radioactive material in accordance with this chapter will be approved if:

(A) the applicant satisfies the general requirements specified in subsection (e) of this section;

(B) the applicant submits sufficient information relating to the radionuclides to be used, including the chemical and/or physical form and the maximum activity of each radionuclide;

(C) the applicant submits sufficient information relating to the intended use of each radionuclide and the sealed sources and/or other products to be manufactured that includes:

(i) receipt of radioactive material;

(ii) chemical or physical preparations;

(iii) sealed source construction;

(iv) final assembly or processing;

(v) quality assurance testing;

(vi) quality control program;

(vii) leak testing;

(viii) ANSI testing procedures;

(ix) transportation containers; and

(x) shipping procedures;

(D) the applicant submits scaled drawings of radioactive material handling systems;

(E) the applicant submits documentation of training as specified in subsection (w)(1) of this section for all personnel who will be handling radioactive material; and

(F) the applicant submits the name and qualifications of the full-time RSO as specified in subsection (g) of this section.

(i) Sealed source or device evaluation. No sealed source or device containing radioactive material shall be authorized on a specific license or general license until radiation safety information for that sealed source or device has been evaluated by the agency, the commission, another agreement state, or a licensing state.

(1) Any manufacturer or initial distributor of a sealed source or device containing a sealed source licensed by the agency shall submit a request to the agency for evaluation of radiation safety information about the sealed source or device containing a sealed source.

(2) The request for review shall be submitted in duplicate.

(3) The request for review shall contain sufficient information about the sealed source or device to include:

(A) the radioactive material contained, its chemical and physical form, and amount;

(B) details of design and construction;

(C) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(D) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(E) labeling;

(F) proposed uses; and

(G) procedures for leak testing.

(4) For a device containing radioactive material, the request shall also contain sufficient information about the device to include:

(A) the radiation profile of a prototype device;

(B) method of installation;

(C) service and maintenance requirements; and

(D) operating and safety instructions

(5) After review of the request, the agency may issue an evaluation documenting the information in paragraph (3) of this subsection for sealed sources and paragraph (4) of this subsection for devices containing radioactive material.

(6) The manufacturer/distributor submitting the request for evaluation of the safety information about the product shall manufacture and distribute the product in accordance with:

(A) the statements and representations contained in the request;

(B) documentation required to support the request; and

(C) the provisions of the evaluation.

(j) Issuance of specific licenses.

(1) Upon a determination that an application meets the requirements of the Act and the rules of the agency, the agency will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

(2) The agency may incorporate in any license at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to this section as it deems appropriate or necessary in order to:

(A) minimize danger to public health and safety or the environment;

(B) require such reports and the keeping of such records, and to provide for such inspections of activities in accordance with the license as may be appropriate or necessary; and

(C) prevent loss or theft of material subject to this section.

(k) Specific terms and conditions of licenses.

(1) Each license issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to applicable rules and orders of the agency.

(2) No license issued or granted in accordance with this section and no right to possess or utilize radioactive material granted by any license issued in accordance with this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act, now or hereafter in effect, and to applicable rules and orders of the agency, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy in accordance with any Chapters of Title 11 (Bankruptcy) of the United States Code (11 U.S.C.) by or against:

(A) a licensee;

(B) an entity, as that term is defined in 11 U.S.C. 101(14), controlling a licensee or listing the license or licensee as property of the estate; or

(C) an affiliate, as that term is defined in 11 U.S.C. 101(2), of the licensee

(5) The notification in paragraph (4) of this subsection must indicate:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(l) Expiration and termination of licenses.

(1) Except as provided in paragraph (6) of this subsection and subsection (m)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license.

(2) Each licensee shall notify the agency within 30 days, in writing, and request termination of the license when the licensee decides to terminate all activities involving materials authorized in accordance with the license. This notification and request for termination of the license must include a written commitment to submit reports and information specified in paragraph (4)(C) of this subsection and a plan for completion of decommissioning if required by paragraph (7)(A) of this subsection or by license condition no less than 60 days after date of decision to terminate. The licensee is subject to the provisions of paragraphs (4) and (7) of this subsection, as applicable.

(3) No less than 30 days before the expiration date indicated in a specific license, the licensee shall either:

(A) submit an application for license renewal in accordance with subsection (m) of this section; or

(B) notify the agency in writing, in accordance with paragraph (2) of this subsection, if the licensee decides to discontinue all activities involving radioactive material.

(4) If a licensee does not submit an application for license renewal in accordance with subsection (m) of this section, the licensee shall on or before the expiration date specified in the license:

(A) terminate use of radioactive material;

(B) properly dispose of radioactive material;

(C) submit a record of disposal of radioactive material and radiation survey(s) of the licensee's permanent location(s) of use and/or storage. Levels of radiation shall be reported in units as required by 21.1302 and 21.1303 of TRCR Part 21 as adopted by reference in §289.113 of this title. The survey or measurement instrument(s) used for conducting the survey shall be specified; and

(D) pay any outstanding fees in accordance with §289.126 of this title and resolve any outstanding notices of violations of this chapter or of license conditions.

(5) If no radiation attributable to activities conducted in accordance with the license is detected, the licensee shall submit a certification that no detectable radioactive contamination of the location(s) was found. If the information submitted in accordance with this paragraph and paragraph (4)(C) of this subsection is adequate, the agency will notify the licensee in writing that the license is terminated.

(6) If radiation levels or radioactive material in excess of the limits of 21.1302 or 21.1303 of TRCR Part 21 as adopted by reference in §289.113 of this title are found, the license continues in effect beyond the expiration date, if necessary, with respect to possession of residual radioactive material until the agency notifies the licensee in writing that the license is terminated. During this time, the licensee is subject to the provisions of paragraph (13) of this subsection. In addition to the information submitted in accordance with paragraph (4)(C) of this subsection, the licensee shall submit a plan, if appropriate, for decontaminating the location(s).

(7) If the licensee does not submit an application for license renewal in accordance with subsection (m) of this section, in addition to the information required in accordance with paragraph (4)(C) of this subsection, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the agency and could increase potential health and safety impacts to workers or to the public such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(8) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan by the agency.

(9) The proposed decommissioning plan, if required by paragraph (7) of this subsection or by license condition, must include:

(A) a description of planned decommissioning activities;

(B) a description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(C) a description of the planned final radiation survey; and

(D) an updated, detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(10) The proposed decommissioning plan will be approved by the agency if the information therein demonstrates that the decommissioning will be completed as soon as is reasonable and that the health and safety of workers and the public will be adequately protected.

(11) Upon approval of the decommissioning plan by the agency, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (4)(C) of this subsection.

(12) If the information submitted in accordance with paragraphs (4)(C) or (11) of this subsection does not adequately demonstrate that the premises are suitable for release for unrestricted use, the agency will inform the license of the appropriate further actions required for termination of license.

(13) Each licensee who possesses residual radioactive material in accordance with paragraph (6) of this subsection, following the expiration date specified in the license, shall:

(A) be limited to actions, involving radioactive material, related to preparing the location(s) for release for unrestricted use; and

(B) continue to control entry to restricted areas until the location(s) are suitable for release for unrestricted use and the agency notifies the licensee in writing that the license is terminated.

(14) Each licensee shall submit to the agency all records required by 21.1103(b) of TRCR Part 21 as adopted by reference in §289.113 of this title before the license is terminated.

(m) Renewal of license.

(1) Requests for renewal of specific licenses shall be filed in accordance with subsection (d) of this section.

(2) In any case in which a licensee, not less than 30 days prior to expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the request has been finally determined by the agency.

(n) Amendment of licenses at request of licensee.

(1) Requests for amendment of a license shall be filed in accordance with subsection (d) of this section and shall specify the respects in which the licensee desires a license to be amended and the grounds for such amendment.

(2) Requests for amendments to delete a subsite from a license shall be filed in accordance with subsections (d), (l)(4), and (l)(7) of this section.

(o) Agency action on requests to renew or amend. In considering a request by a licensee to renew or amend a license, the agency will apply the criteria set forth in subsections (e) and (f).

(p) Transfer of material.

(1) No licensee shall transfer radioactive material except as authorized in accordance with this chapter.

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A) to the agency (A licensee may transfer material to the agency only after receiving prior approval from the agency.);

(B) to the United States Department of Energy (DOE);

(C) to any person exempt from this section to the extent permitted in accordance with such exemption;

(D) to any person authorized to receive such material in accordance with the terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the agency, the commission, any agreement state, or any licensing state, or to any person otherwise authorized to receive such material by the Federal government or any agency thereof, the agency, any agreement state, or any licensing state; or

(E) as otherwise authorized by the agency in writing.

(3) Before transferring radioactive material to a specific licensee of the agency, the commission, an agreement state, or a licensing state, or to a general licensee who is required to register with the agency, the commission, an agreement state, or a licensing state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by paragraph (3) of this subsection are acceptable.

(A) The transferor may possess and have read a current copy of the transferee's specific license or certificate of registration.

(B) The transferor may possess a written certification by the transferee that the transferee is authorized by the license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date.

(C) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days.

(D) The transferor may obtain other sources of information compiled by a reporting service from official records of the agency, the commission, or the licensing agency of an agreement state or a licensing state as to the identity of licensees and the scope and expiration dates of licenses and registrations.

(E) When none of the methods of verification described in subparagraphs (A)-(D) of this paragraph are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the agency, the commission, or the licensing agency of an agreement state or a licensing state that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of subsection (t) of this section.

(q) Modification and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification. A license may be suspended or revoked by reason of amendments to the Act, or by reason of rules and orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required in accordance with provisions of the Act, or because of conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an original application, or for violation of, or failure to observe applicable terms and conditions of the Act, or of the license, or of any rule or order of the agency.

(3) Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(r) Notification of incidents.

(1) Immediate report. Each licensee shall notify the agency as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(2) Twenty-four hour report. Each licensee shall notify the agency within 24 hours after the discovery of any of the following events involving radioactive material:

(A) an unplanned contamination event that:

(i) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix 21-B of TRCR Part 21 as adopted by reference in §289.113 of this title for the material; and

(iii) has access to the area restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination.

(B) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required to be available and operable when it is disabled or fails to function; and

(iii) no redundant equipment is available and operable to perform the required safety function.

(C) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(D) an unplanned fire or explosion damaging any radioactive material or any device, container, or equipment containing radioactive material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix 21-B of TRCR Part 21 as adopted by reference in §289.113 of this title for the material; and

(ii) the damage affects the integrity of the radioactive material or its container.

(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of paragraphs (1) and (2) of this subsection shall be made as follows.

(A) Licensees shall make reports required by paragraphs (1) and (2) of this subsection by telephone to the agency. To the extent that the information is available at the time of notification, the information provided in these reports shall include:

(i) the caller's name and call back telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the isotopes, quantities, and chemical and physical form of the radioactive material involved; and

(v) any personnel radiation exposure data available.

(B) Each licensee who makes a report required by paragraphs (1) and (2) of this subsection shall submit to the agency a written follow-up report within 30 days of the initial report. Written reports prepared in accordance with other requirements of this chapter submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. The reports must include the following:

(i) a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the isotopes, quantities, and chemical and physical form of the radioactive material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) the extent of exposure of individuals to radioactive materials without identification of individuals by name.

(s) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from the commission, any agreement state, or any licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within the state of Texas provided that:

(A) the licensing document does not limit the activity authorized by such document to specified installations or locations;

(B) the out-of-state licensee notifies the agency in writing at least three working days prior to engaging in such activity. If, for a specific case, the three working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities in accordance with the general license provided in this subsection. Such notification shall include:

(i) the exact location, start date, duration, and type activity to be conducted;

(ii) the identification of the sources of radiation to be used;

(iii) the name(s) and in-state address(es) of the individual(s) performing the activity;

(iv) a copy of the pertinent license;

(v) a copy of the licensee's operating, safety, and emergency procedures; and

(vi) an annual fee as specified in 12.11(c) of TRCR Part 12 as adopted by reference in §289.126 of this title.

(C) the out-of-state licensee complies with all applicable rules of the agency and with all the terms and conditions of the licensee's licensing document, except any such terms and conditions that may be inconsistent with applicable rules of the agency;

(D) the out-of-state licensee supplies such other information as the agency may request; and

(E) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this section except by transfer to a person:

(i) specifically licensed by the agency, the commission, another agreement state, or another licensing state to receive such material, or

(ii) exempt from the requirements for a license for such material in accordance with §289.251(d) (1) of this title.

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by the commission, an agreement state, or a licensing state authorizing the holder to manufacture, transfer, install, or service a device described in §289.251(g) (1)(C) and (j)(1) of this title, within areas subject to the jurisdiction of the licensing body, is hereby granted a general license to install, transfer, demonstrate, or service such a device in the state of Texas provided that:

(A) such person shall file a report with the agency within 30 days after the end of each calendar quarter in which any device is transferred to or installed in the state of Texas. Each such report shall identify each general licensee to whom such device is transferred by name and address, the type of device transferred by manufacture's name, model number, serial number of the device and serial number of the sealed source, and the quantity and type of radioactive material contained in the device;

(B) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to such person by the commission, an agreement state, or a licensing state;

(C) such person shall assure that any labels required to be affixed to the device in accordance with regulations of the authority that licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(D) the holder of the specific license shall furnish to each general licensee to whom the holder of the specific license transfers such device or on whose premises the holder of the specific license installs such device a copy of the general license contained in §289.251(g)(1)(C) and (j)(1) of this title.

(3) The agency may withdraw, limit, or qualify its acceptance of any specific license or equivalent licensing document issued by another agency, or any product distributed in accordance with such licensing document, upon determining that such action is necessary in order to prevent undue hazard to public health and safety or the environment.

(t) Preparation of radioactive material for transport.

(1) No licensee shall deliver any radioactive material to a carrier for transport, unless:

(A) the licensee complies with the applicable requirements of the regulations, appropriate to the mode of transport, of the United States Department of Transportation (DOT) insofar as such regulations relate to the packing of radioactive material, and to the monitoring, marking, and labeling of those packages;

(B) the licensee has established procedures for opening and closing packages in which radioactive material is transported to provide safety and to assure that, prior to the delivery to a carrier for transport, each package is properly closed for transport; and

(C) prior to delivery of a package to a carrier for transport, the licensee shall assure that any special instructions needed to safely open the package are sent to, or have been made available to, the consignee.

(2) For the purpose of this subsection, licensees who transport their own licensed material as private carriers are considered to have delivered such material to a carrier for transport.

(u) Financial assurance and record keeping for decommissioning.

(1) Each applicant for a specific license authorizing the possession and use of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in subsection (w)(6) of this section shall submit a decommissioning funding plan as described in paragraph (5) of this subsection. The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than one (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in subsection (w)(6) of this section.

(2) Each applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in paragraph (4) of this subsection shall either:

(A) submit a decommissioning funding plan as described in paragraph (5) of this subsection; or

(B) submit a certification that financial assurance for decommissioning has been provided in the amount in accordance with paragraph (4) of this subsection using one of the methods described in paragraph (6) of this subsection. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued, but prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection is to be submitted to the agency.

(3) Each holder of a specific license issued:

(A) on or after January 1, 1995, which is of a type described in paragraph (2) of this subsection, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section;

(B) before January 1, 1995, and of a type described in paragraph (1) of this subsection shall submit, on or before January 1, 1995, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to $750,000, in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal,

(C) before January 1, 1995, and of a type described in paragraph (2) of this subsection shall submit, on or before January 1, 1995, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(4) The required amounts of financial assurance for decommissioning are determined by quantity of material and are as follows:

(A) $750,000 for quantities of material greater than 10^4 but less than or equal to 10^5 times the applicable quantities in subsection (w)(6) of this section in unsealed form. (For a combination of isotopes, if R, as defined in paragraph (1) of this subsection, divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to 1.);

(B) $150,000 for quantities of material greater than 10^3 but less than or equal to 10^4 times the applicable quantities in subsection (w)(6) of this section in unsealed form. (For a combination of isotopes, if R, as defined in paragraph (1) of this subsection, divided by 10^3 is greater than one but R divided by 10^4 if less than or equal to 1.); or

(C) $75,000.00 for quantities of material greater than 10^{10} times the applicable quantities in subsection (w)(6) of this section in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in paragraph (1) of this subsection, divided by 10^{10} is greater than 1.)

(5) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (6) of this subsection, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(6) Financial assurance for decommissioning must be provided by one or more of the following methods.

(A) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (w)(3) of this section. A parent company guarantee may not be used in combination

with other financial methods to satisfy the requirements of this section. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions.

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the agency. An acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(iii) The surety method or insurance must remain in effect until the agency has terminated the license.

(C) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions must be in accordance with subparagraph (B) of this paragraph.

(D) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount in accordance with paragraph (4) of this subsection, and indicating that funds for decommissioning will be obtained when necessary.

(7) Each person licensed in accordance with this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of:

(A) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations; and

(C) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(v) Emergency plan for responding to a release.

(1) Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (w)(4) of this section must contain either:

(A) an evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(B) an emergency plan for responding to a release of radioactive material.

(2) One or more of the following factors may be used to support an evaluation submitted in accordance with paragraph (1)(A) of this subsection:

(A) the radioactive material is physically separated so that only a portion could be involved in an accident;

(B) all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(C) the release fraction in the respirable size range would be lower than the release fraction in subsection (w)(4) of this section due to the chemical or physical form of the material;

(D) the solubility of the radioactive material would reduce the dose received;

(E) facility design or engineered safety features in the facility would cause the release fraction to be lower than that in subsection (w)(4) of this section;

(F) operating restrictions or procedures would prevent a release fraction as large as that in subsection (w)(4) of this section; or

(G) other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive material submitted in accordance with paragraph (1)(B) of this subsection must include the following information.

(A) Facility description. A brief description of the licensee's facility and area near the site.

(B) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(C) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(D) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(E) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(F) Assessment of releases. A brief description of the methods and

equipment to assess releases of radioactive materials.

(G) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the agency; also, responsibilities for developing, maintaining, and updating the plan.

(H) Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the agency immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees of complying with the requirements in accordance with the Emergency Planning and Community Right-to-Know-Act of 1986, Title III, Publication L. 99-499 or other state or federal reporting requirements.

(I) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the agency.

(J) Training. A brief description of the frequency, performance objectives, and plans for the training that the licensee will provide workers on how to respond to an emergency, including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(K) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(L) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(M) Hazardous chemicals A certification that the applicant has met its responsibilities in accordance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Publication L. 99-499, if applicable to the applicant's activities at the proposed place of use of the byproduct material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the agency. The licensee shall provide any comments received within the 60 days to the agency with the emergency plan.

(w) Appendices.

(1) Subjects to be included in training courses:

(A) fundamentals of radiation safety:

(i) characteristics of radiation;

(ii) units of radiation dose (rem) and activity of radioactivity (curie);

(iii) significance of radiation dose;

(I) radiation protection standards; and

(II) biological effects of radiation;

(iv) levels of radiation from sources of radiation;

(v) methods of controlling radiation dose;

(I) time;

(II) distance; and

(III) shielding;

(vi) radiation safety practices, including prevention of contamination and methods of decontamination; and

(vii) discussion of internal exposure pathways;

(B) radiation detection instrumentation to be used:

(i) radiation survey instruments:

(I) operation;

(II) calibration; and

(III) limitations;

(ii) survey techniques;

(iii) personnel monitoring equipment·

(I) film badges;

(II) thermoluminescent dosimeters (TLDs); and

(III) pocket dosimeters;

(C) equipment to be used:

(i) handling equipment and remote handling tools;

(ii) sources of radiation;

(iii) storage, control, disposal, and transport of equipment and sources of radiation;

(iv) operation and control of equipment; and

(v) maintenance of equipment;

(D) the requirements of pertinent federal and state regulations;

(E) the licensee's written operating, safety, and emergency procedures; and

(F) the licensee's record keeping procedures.

(2) Groups of medical uses of radioactive material.

(A) Group I.

(i) Medical uses under Group I include the use of prepared radiopharmaceuticals for certain diagnostic studies involving measurements of uptake, dilution, and excretion as follows:

(I) iodine-123, iodine-125, and iodine-131, as sodium iodide (NaI) for measurement of thyroid uptake;

(II) iodine-125 and iodine-131 as iodinated human serum albumin (IHSA) for determinations of blood and blood plasma volume and for studies of cardiovascular function and protein turnover;

(III) iodine-131 as labeled rose bengal for liver function studies;

(IV) iodine-125 and iodine-131 as labeled fats or fatty acids for fat absorption studies;

(V) iodine-125 as labeled sodium iothalamate for kidney function studies;

(VI) iodine-123 and iodine-131 as labeled sodium iodohippurate for kidney function studies;

(VII) cobalt-57, cobalt-58, and cobalt-60 as labeled cyanocobalamin for intestinal absorption studies;

(VIII) chromium-51 as sodium chromate for determination of red blood cell volume and studies of red blood cell survival time and gastrointestinal blood loss;

(IX) chromium-51 as labeled human serum albumin for gastrointestinal protein loss studies;

(X) iron-59 as citrate for iron turnover studies;

(XI) potassium-42 as chloride for potassium space determinations;

(XII) sodium-24 as chloride for sodium space determinations;

(XIII) technetium-99m as pertechnetate for blood flow studies; or

(XIV) any radioactive material contained in a pharmaceutical used for diagnostic purpose involving the measurement of uptake, dilution, or excretion for which a NDA or PLA has been approved by the FDA when the product is used in accordance with the manufacturer's product package insert for the purposes specified therein.

(ii) This group does not include uses involving imaging and tumor localizations.

(B) Group II. Medical uses under Group II include the use of prepared radiopharmaceuticals for diagnostic studies involving imaging and tumor localizations as follows:

(i) fluorine-18 in solution for bone imaging;

(ii) indium-111 as disodium pentetate for cisternography;

(iii) indium-111 as oxyquinoline (oxine) for preparation of labeled autologous leukocytes for focal inflammatory lesion imaging;

(iv) indium-113m as indium chloride for placenta localization and blood pool imaging;

(v) iodine-123, I-125, and I-131 as sodium iodide (NaI) for thyroid imaging;

(vi) iodine-125 as labeled fibrinogen (human) for use as an aid in the diagnosis of deep-vein thrombosis of the legs;

(vii) iodine-131 as iodinated human serum albumin (IHSA) for brain tumor localizations, cardiac imaging, and placenta localization;

(viii) iodine-131 as macroaggregated IHSA for lung imaging;

(ix) iodine-131 as colloidal (microaggregated) IHSA for liver imaging;

(x) iodine-131 as labeled rose bengal for liver imaging;

(xi) iodine-131 as sodium iodohippurate for kidney imaging;

(xii) chromium-51 as labeled human serum albumin for placenta localization;

(xiii) gallium-67 as citrate for tumor imaging and diagnosis of acute inflammatory lesions;

(xiv) gold-198 in colloidial form for liver imaging;

(xv) mercury-197 as labeled chlormerodrin for kidney and brain imaging;

(xvi) selenium-75 as labeled selenomethionine for pancreas imaging;

(xvii) strontium-85 as nitrate for bone imaging;

(xviii) technetium-99m as pertechnetate for brain, thyroid, salivary gland, blood pool, placenta localization, cystography, and dacryocystography;

(xix) technetium-99m as labeled sulfur colloid for liver, spleen, esophageal, and bone marrow imaging;

(xx) technetium-99m as labeled macroaggregated human serum albumin for lung imaging;

(xxi) ytterbium-169 as pentetate calcium trisodium for cisternography;

(xxii) thallium-201 as chloride for myocardial and myocardial perfusion imaging;

(xxiii) any radioactive material in a radiopharmaceutical prepared from a reagent kit listed in subparagraph (C)(iii) of this paragraph; or

(xxiv) any radioactive material contained in a pharmaceutical for diagnostic purposes involving imaging for which a NDA or PLA has been approved by the FDA when the product is used in accordance with the manufacturer's product package insert for the purposes specified therein.

(C) Group III. Medical uses under Group III include the use of generators and reagent kits for the preparation and use of radiopharmaceuticals containing radioactive material for certain diagnostic uses as follows:

(i) molybdenum-99/technetium-99m generators for the elution of technetium-99m as pertechnetate for:

(I) brain imaging;

(II) thyroid imaging;

(III) salivary gland imaging;

(IV) blood pool imaging including placenta localization;

(V) blood flow studies;

(VI) cystography;

(VII) dacryocystography; or

(VIII) use with reagent kits for preparation and use of radiopharmaceuticals containing technetium-99m as provided in clauses (iii) and (iv) of this subparagraph;

(ii) tin-113/indium-113m generators for the elution of indium-113m as chloride for:

(I) blood pool imaging;

(II) placenta localization; or

(III) use with reagent kits for preparation and use of radiopharmaceuticals containing indium-113m as provided in clause (iv) of this subparagraph;

(iii) reagent kits for preparation of technetium-99m labeled:

(I) sulfur colloid for liver, spleen, gastroesophageal, and bone marrow imaging;

(II) pentetate sodium for brain and kidney imaging and kidney function studies;

(III) human serum albumin microspheres for lung imaging and diagnosis of deep vein thrombosis of the legs;

(IV) polyphosphates for bone imaging;

(V) macroaggregated human serum albumin for lung imaging;

(VI) etidronate sodium for bone imaging;

(VII) stannous pyrophosphate for bone and cardiac imaging;

(VIII) human serum albumin for heart blood pool and pericardial imaging;

(IX) medronate sodium for bone imaging;

(X) gluceptate sodium for brain and renal perfusion imaging;

(XI) oxidronate sodium for bone imaging;

(XII) disofenin for hepatobiliary imaging;

(XIII) succimer for renal imaging; or

(XIV) albumin colloid for liver, spleen, and bone marrow imaging; or

(iv) any generator or reagent kit used for the preparation of radiopharmaceuticals for which the FDA has approved a NDA or PLA when used in accordance with the manufacturer's product package insert for the purposes specified therein.

(3) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This paragraph establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(B) Financial test.

(i) To pass the financial test, the parent company must meet the criteria of either subclause (I) or (II) of this clause.

(I) The parent company must have:

(-a-) two of the following three ratios:

(-1-) a ratio of total liabilities to net worth less than 2.0;

(-2-) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and

(-3-) a ratio of current assets to current liabilities greater than 1.5;

(-b-) net working capital and tangible net worth each at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used.)

(II) The parent company must have:

(-a-) a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(-b-) tangible net worth at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if certification is used).

(ii) The parent company's independent certified public accountant must have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(iii) After the initial financial test, the parent company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iv) If the parent company no longer meets the requirements of clause (i) of this subparagraph, the licensee must send notice to the agency of intent to establish alternate financial assurance as specified in the commission's regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Parent company guarantee. The terms of a parent company guarantee that an applicant or licensee obtains must provide that:

(i) the parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the agency, as evidenced by the return receipts;

(ii) if the licensee fails to provide alternate financial assurance as specified in the agency's regulations within 90 days after receipt by the licensee and the agency of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee;

(iii) the parent company guarantee and financial test provisions must remain in effect until the agency has terminated the license; and

(iv) if a trust is established for decommissioning costs, the trustee and trust must be acceptable to the agency. An acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(4) Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.
Figure 5: 25 TAC §289.252(w)(4)

(5) Acceptable training and experience for medical uses of radioactive material.

(A) Training for uptake, dilution, and excretion studies.

(i) The licensee shall require the authorized user of a radiopharmaceutical listed in Group I of subsection (w)(2) of this section, to be a physician who:

(I) is certified in:

(-a-) nuclear medicine by the American Board of Nuclear Medicine (ABNM);

(-b-) diagnostic radiology by the American Board of Radiology (ABR);

(-c-) diagnostic radiology or radiology by the American Osteopathic Board of Radiology (AOBR); or

(-d-) nuclear medicine by the Royal College of Physicians and Surgeons of Canada (RCPSC); or

(II) has classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals and supervised clinical experience as follows:

(-a-) 40 hours of classroom and laboratory training that includes:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity;

(-4-) radiation biology; and

(-5-) radiopharmaceutical chemistry; and

(-b-) 20 hours of supervised clinical experience under the supervision of an authorized user and that includes:

(-1-) examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(-2-) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(-3-) administering dosages to patients and using syringe radiation shields;

(-4-) collaborating with the authorized user in the interpretation of radioisotope test results; and

(-5-) patient follow-up; or

(-c-) has successfully completed a six-month training program in nuclear medicine as part of a residency program that has been accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the Committee on Postdoctoral Training of the American Osteopathic Association (CPTAOA) and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in this subclause.

(ii) Training in all the topics identified in clause (i)(II)(-a-) of this subparagraph, which is not a part of a residency program as in clause (i)(II)(-c-) of this subparagraph, shall be obtained in an ACGME- or CPTAOA-accredited medical teaching institution. The clinical experience described in clause (i)(II)(-b-) of this subparagraph shall be supervised by a physician licensed for the full scope of diagnostic nuclear medicine procedures or by an authorized physician in an ACGME-accredited medical teaching institution.

(iii) Notwithstanding the requirements of clauses (i) and (ii) of this subparagraph, proof of alternative training that includes the topics and hours listed in subparagraph (B)(i)(II) of this paragraph may be accepted on a case-by-case basis if the agency determines that the alternative training would give an equal or greater level of training to the standards in clauses (i) and (ii) of this subparagraph.

(B) Training for imaging and localization studies.

(i) The licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit listed in Groups II and III of paragraph (2)(B) and (C) of this subsection, to be a physician who:

(I) is certified in:

(-a-) nuclear medicine by the ABNM;

(-b-) diagnostic radiology or radiology by the ABR;

(-c-) diagnostic radiology or radiology by the AOBR; or

(-d-) nuclear medicine by the RCPSC; or

(II) has successfully completed classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(-a-) 200 hours of classroom and laboratory training that includes:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity;

(-4-) radiopharmaceutical chemistry; and

(-5-) radiation biology; and

(-b-) 500 hours of supervised work experience under the supervision of an authorized user that includes:

(-1-) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(-2-) calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(-3-) calculating and safely preparing patient dosages;

(-4-) using administrative controls to prevent the misadministration of byproduct material;

(-5-) using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and

(-6-) eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and

(-c-) 500 hours of supervised clinical experience under the supervision of an authorized user that includes:

(-1-) examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(-2-) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(-3-) administering dosages to patients and using syringe radiation shields;

(-4-) ollaborating with the authorized user in the interpretation of radioisotope test results; and

(-5-) patient follow-up; or

(-d-) has successfully completed a six-month training program in nuclear medicine as part of a residency program that has been accredited by the ACGME or CPTAOA and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in this subclause.

(ii) Training in all the topics identified in clause (i)(II)(-a-) of this subparagraph, which is not a part of a residency program as in clause (i)(II)(-d-) of this subparagraph, shall be obtained in a medical teaching institution that provides appropriate training programs that have been accredited by the ACCME or the CPTAOA. The work and clinical experience described in clause (i)(II)(-b-) and (-c-) of this subparagraph shall be supervised by a physician licensed for the full scope of diagnostic nuclear medicine procedures or by a licensed authorized physician in a medical institution that also provides appropriate training programs that have been accredited by the ACGME or the CPTAOA. The experience in clause (i)(II)(-b-) and (-c-) of this subparagraph may be obtained concurrently.

(iii) Classroom and laboratory training identified in clause (i)(II)(-a-) of this subparagraph that was initiated before (the effective date of this rule) and completed by (two years from the effective date of the rule) will be accepted if it is obtained in an accredited medical school, a federal teaching hospital, or a training program for medical use of radioactive material that has been accepted by the agency, the commission, or another agreement state.

(iv) Notwithstanding the requirements of clauses (i) and (ii) of this subparagraph, proof of alternative training that includes the topics and hours listed in clause (i)(II) of this subparagraph may be accepted on a case-by-case basis if the agency determines that the alternative training would give an equal or greater level of training to the standards in clauses (i) and (ii) of this subparagraph.

(C) Training for the therapeutic use of radiopharmaceuticals.

(i) The licensee shall require the authorized user of radiopharmaceuticals for therapeutic use to be a physician who:

(I) is certified in:

(-a-) nuclear medicine by the ABNM;

(-b-) radiology or therapeutic radiology by the ABR;

(-c-) diagnostic radiology, therapeutic radiology, or radiology by the AOBR; or

(-d-) nuclear medicine by the RCPSC; or

(II) has classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals and supervised clinical experience as follows:

(-a-) 80 hours of classroom and laboratory training that includes:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity; and

(-4-) radiation biology; and

(-b-) supervised clinical experience under the supervision of an authorized physician user for the type of therapy authorization requested from the following list:

(-1-) use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism in ten individuals;

(-2-) use of iodine-131 for treatment of thyroid carcinoma in three individuals;

(-3-) use of colloidal phosphorus-32 for intracavitary treatment in three patients;

(-4-) use of phosphorus-32 for treatment of polycythemia vera, leukemia and/or bone metastasis in three patients;

(-5-) use of colloidal gold-198 for intracavitary treatment in three patients; or

(-6-) use of radiopharmaceuticals not listed in subitems (-1-)-(-5-) of this item for therapeutic treatment in three patients; or

(-7-) has successfully completed a six-month training program in nuclear medicine as part of a residency program that has been accredited by the ACGME or the CPTAOA and that included classroom and laboratory training, work experience and supervised clinical experience in all the topics identified in this subclause.

(ii) Training in all the topics identified in clause (i)(II) of this subparagraph, which is not a part of a residency program as in clause (i)(II)(-b-) of this subparagraph, shall be obtained in a medical teaching institution accredited by the ACCME or the CPTAOA.

(D) Training for use of brachytherapy sources (except for beta applicators-See subparagraph (E) of this paragraph).

(i) The licensee shall require the authorized user of a brachytherapy source to be a physician who:

(I) is certified in:

(-a-) therapeutic radiology, radiation oncology, or radiology by the ABR; or

(-b-) therapeutic radiology, radiation oncology, or radiology by the AOBR; or

(-c-) radiology with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(-d-) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(II) is in the active practice of therapeutic radiology, has had classroom training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, and supervised clinical experience as follows:

(-a-) 200 hours of classroom and laboratory training that includes:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity; and

(-4-) radiation biology; and

(-b-) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(-1-) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(-2-) checking survey meters for proper operation;

(-3-) preparing, implanting, and removing sealed sources;

(-4-) maintaining running inventories of material on hand;

(-5-) using administrative controls to prevent the misadministration of byproduct material; and

(-6-) using emergency procedures to control byproduct material; and

(-c-) three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the ACGME or the CPTAOA, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(-1-) examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

(-2-) selecting the proper brachytherapy sources and dose and method of administration;

(-3-) calculating the dose; and

(-4-) post-administration follow-up and review of case histories in collaboration with the authorized user.

(ii) Training in all the topics identified in clause (i)(II)(-a-) this subparagraph shall be accredited by the ACGME or the CPTAOA. The clinical experience described in clause (i)(II) (-b-) and (-c-) of this subparagraph should be supervised by a physician licensed to use brachytherapy sources. The experience in clause (i)(II)(-b-) and (-c-) of this subparagraph may be obtained concurrently.

(E) Training for ophthalmic use of strontium-90.

(i) The licensee shall require the authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who:

(I) is certified in:

(-a-) radiology or therapeutic radiology by the ABR;

(-b-) radiation oncology by the AOBR;

(-c-) radiology with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(-d-) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(II) is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(-a-) 24 hours of classroom and laboratory training that includes:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity; and

(-4-) radiation biology; and

(-b-) supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

(-1-) examination of each individual to be treated;

(-2-) calculation of the dose to be administered;

(-3-) administration of the dose; and

(-4-) follow-up and review of each individual's case history.

(ii) Training in all the topics identified in clause (i)(II)(-a-) of this subparagraph shall be obtained in a medical teaching institution or shall be accredited by the CPTAOA. The clinical experience described in clause (i)(II) (-b-) of this subparagraph shall be supervised by a physician licensed for the use of sealed sources in therapy.

(F) Training for use of sealed sources for diagnosis.

(i) The licensee shall require the authorized user of a sealed source in the devices listed in clause (ii) of this subparagraph, to be a physician, dentist, or podiatrist who:

(I) is certified in:

(-a-) radiology, diagnostic radiology, or therapeutic radiology by the ABR;

(-b-) nuclear medicine by the ABNM;

(-c-) diagnostic radiology or radiology by the ABR; or

(-d-) nuclear medicine by the RCPSC; or

(II) has had eight hours of classroom and laboratory training in radioisotope handling techniques specifically applicable to the use of the device that includes:

(-a-) radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(-b-) radiation biology;

(-c-) radiation protection; and

(-d-) training in the use of the device for the uses requested.

(ii) The following sealed sources shall be used in accordance with the manufacturer's radiation safety and handling instructions:

(I) iodine-125, americium-241, or gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(II) iodine-125 as a sealed source in a portable imaging device.

(iii) Training in all the topics identified in clause (i)(II) of this subparagraph shall be obtained in a medical teaching institution or shall be accredited by the CPTAOA. The clinical experience shall be supervised by a physician, dentist, or podiatrist licensed to use the devices.

(G) Training for teletherapy.

(i) The licensee shall require the authorized user of a sealed source in a teletherapy unit to be a physician who:

(I) is certified in:

(-a-) radiology or therapeutic radiology by the ABR;

(-b-) radiation oncology by the AOBR;

(-c-) radiology with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(-d-) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(II) is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:

(-a-) 200 hours of classroom and laboratory training that includes:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity; and

(-4-) radiation biology; and

(-b-) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(-1-) review of the full calibration measurements and periodic spot checks;

(-2-) preparing treatment plans and calculating treatment times;

(-3-) using administrative controls to prevent misadministration;

(-4-) implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(-5-) checking and using survey meters; and

(-c-) three years of supervised clinical experience that includes one year in a formal training program accredited by the ACGME or the CPTAOA and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(-1-) examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment; and any limitations or contraindications;

(-2-) selecting the proper dose and how it is to be administered;

(-3-) calculating the therapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(-4-) post-administration follow-up and review of case histories.

(ii) Training in all the topics identified in clause (i)(II)(-a-) of this subparagraph shall be accredited by the ACGME or the CPTAOA. The clinical experience described in clause (i)(II)(-b-) and (-c-) of this subparagraph shall be supervised by a physician licensed for teletherapy procedures. The experience in clause (i)(II)(-b-) and (-c-) of this subparagraph may be obtained concurrently.

(H) Training for experienced authorized users. Physicians, dentists, or podiatrists identified as authorized users for the medical, dental, or podiatric use of radioactive material on a commission or agreement state license issued before (the effective date of this section) who perform only those methods of use for which they were authorized on that date need not comply with the training requirements in this paragraph.

(I) Recentness of training.

(i) The training and experience specified in this paragraph must have been obtained within the five years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

(ii) If active board certification required by this paragraph does not include continuing education and experience, the individual must have had related continuing education and experience since the board certification was obtained.

(6) Isotope quantities (For use in subsection (u) of this section).
Figure 6: 25 TAC §289.252(w)(6)

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 April 11, 1995

TRD-9504460 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 458-7236

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter A. General Rules

• 34 TAC §3.4

The Comptroller of Public Accounts proposes new §3.4, concerning tax refunds for wages paid to an employee receiving financial assistance. The new section sets out eligibility requirements, taxes available for refund, and procedures for filing for refunds with the state.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Joe A. Galvan, Jr., Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2

The new section implements the Tax Code, §111.109.

§3.4. Tax Refunds for Wages Paid to an Employee Receiving Financial Assistance.

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

(1) Eligible employee–In order to qualify, an employee must meet the following criteria:

(A) must be a resident of this state; and

(B) must be a recipient of Aid to Families with Dependent Children (AFDC) on or before the beginning date of employment with the employer seeking a refund.

(2) Eligible taxes–Taxes eligible to be refunded under this section are limited to the following taxes, either paid or collected and remitted in the calendar year for which the refund of wages is sought.

(A) State Sales and Use Tax. (Note: City, county, transit, special purpose district taxes or any other local sales and use taxes do not qualify for refund.)

(B) Franchise Tax.

(C) Inheritance Tax.

(D) Public Utility Gross Receipts Tax.

(E) Boat and Boat Motor Sales and Use Tax.

(F) Manufactured Housing Sales and Use Tax.

(G) Hotel Occupancy Tax.

(3) Refund application–Claim for refund must be filed on a Department of Human Services (DHS) Form 1098–Application for Refund of Taxes Paid to the State of Texas.

(4) Eligible wages–For purposes of this section, eligible wages has the meaning assigned to "wages" under §51(c)(1), (2), and (3), Internal Revenue Code of 1986 (26 United States Code, §51).

(b) Refund available.

(1) An employer who employs an eligible employee, on or after January 1, 1994, may file for a refund, beginning in January of 1995, of eligible taxes paid to either the state or a seller of taxable items. The amount of refund an employer may receive is limited to a maximum of $2,000 per eligible employee. The refund is calculated by taking 20% of the eligible wages, up to a maximum of $10,000 in eligible wages for each eligible employee, paid or incurred by an employer for services rendered by an eligible employee during the period beginning with the date the employee begins work for the employer and ending on the first anniversary of that date. EXAMPLE: ABC Company hires John Smith, an otherwise eligible employee, on August 1, 1994. For the period August 1, 1994, to December 31, 1994, ABC Company pays Mr. Smith $6,000. For the period January 1, 1995, to August 1, 1995 (the first anniversary of Mr. Smith's employment), ABC Company pays Mr. Smith $9,000. ABC Company paid in more than $25,000 in state sales taxes it collected in each of the calendar years 1994 and 1995. ABC Company may file a claim for $1,200 ($6,000 x .20) in 1995 for eligible wages paid to Mr. Smith in 1994 and a separate claim in 1996 for $800 ($4,000 x .20), for eligible wages paid to Mr. Smith in 1995, for a total refund of $2,000.

(2) The refund claimed for a calendar year may not exceed the amount of the net tax, after any other applicable tax credits, paid or collected and remitted by the employer to this state in that calendar year.

(3) An otherwise valid refund claim may not be taken by an employer as a credit against a current tax report.

(c) Employer eligibility. In order to qualify for a refund of eligible taxes paid the employer must:

(1) have the refund claim certified by DHS;

(2) provide and pay for the benefit of the eligible employee at least 80% of the cost of major medical health insurance coverage that provides for:

(A) a maximum $300 deductible to the employee; and

(B) payment by the insurance provider of at least 70% of insurance claims during the claim year in excess of the deductible; and

(3) provide the same insurance coverage to the eligible employee that is provided to other employees in its employment.

(d) Filing of refund claims.

(1) A separate application for refund form must be filed for each eligible employee hired and for each calendar year that the employee is eligible.

(2) An application for refund filed by a third-party representative for an eligible employer must be accompanied by a valid power of attorney or other written authorization.

(3) An application for refund must first be submitted to the DHS for certification. Properly completed forms will be accepted by the DHS only if postmarked on or after January 1, but before April 1, of the year following the calendar year in which the wages and taxes were paid. DHS will certify that an employee was a recipient of AFDC benefits on or before the beginning date of employment.

(4) DHS will then forward certified claims to the comptroller's office for verification that sufficient eligible taxes were paid by the employer to cover the refund request. The comptroller's office will issue refund checks to employers filing timely and valid claims.

(5) An employer requesting a refund of eligible taxes must maintain records supporting their refund request. These records are subject to audit verification. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(e) Hearings request. Only employers whose refund claims are denied in full or partially denied by the comptroller's office are entitled to request a refund hearing. Employers whose requests are not certified by DHS will not be entitled to a refund hearing through the comptroller's office.

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 April 10, 1995.

TRD-9504273 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 463-4028

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Subchapter GG. Insurance Tax

• 34 TAC §3.809

The Comptroller of Public Accounts proposes an amendment to §3.809, concerning the overpayment of premium liability. The amendment revises the method the taxpayer uses to have an overpayment applied to future prepayments. The amendment also eliminates the requirement that the taxpayer indicate that either all or a portion of a particular prepayment premium tax liability will be exhausted or reduced by the existing overpayment carried forward from the previous tax year.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in simplifying both tax administration and the process for taxpayers to obtain refunds for overpayments. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Joe A. Galvan, Jr., Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Insurance Code, Article 4.10, §6(b); Article 4.11, §13; and Article 9.59, §3(b).

§3.809. [Taxpayer Election in Instances of] Overpayment of Premium Tax Liability. **Commencing with the tax return due on March 1, 1995, if the sum of the semiannual prepayments exceeds the actual tax due as determined by the accurate and correct filing of the original or amended annual tax return, the overpayment will be automatically refunded to the taxpayer unless the taxpayer notifies the comptroller to apply the overpayment to another period. The notification should be written on the face of the tax return.**

[(a) Whenever an overpayment of the actual annual premium tax liability occurs as determined by the accurate and correct filing of the original or amended annual tax return by the taxpayer with the tax administration section, the taxpayer may elect to apply the amount of the overpayment to the first and any and all subsequent tax quarter(s) of the following tax year until such overpayment has been exhausted. Once a taxpayer has made the aforementioned election, it cannot be reversed and the Tax Administration Section of the State Board of Insurance will continue to apply the existing overpayment to meet quarterly prepayment tax obligations through the fourth quarter or until the overpayment is exhausted. Should a balance remain following the fourth quarterly prepayment, the balance will be refunded at that time by warrant to the taxpayer as allowed by the state comptroller. Overpayment credits may not be applied beyond the fourth quarterly prepayment of a single tax year. All taxpayers applying overpayments to quarterly prepayments must file a timely quarterly prepayment tax form as required by the Insurance Code, as amended.

[(b) Commencing with adoption of annual premium tax forms for tax year 1989, all premium tax forms will contain language and other appropriate visual indices by which a prospective taxpayer can indicate, on such forms, whether it will avail itself of this election concerning the disposition of the overpayment of annual premium tax liability.

[(c) Commencing with the quarterly prepayments for premium tax year 1990, all quarterly premium tax forms will contain language and other appropriate visual indices by which a taxpayer, having previously made the election concerning the disposition of the overpayment of annual premium tax liability, may indicate that either all or a portion of a particular quarterly prepayment premium tax liability will be exhausted or reduced by the existing overpayment carried forward from the previous tax year.]

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 April 10, 1995.

TRD-9504274 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

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For further information, please call: (512) 463-4028

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• 34 TAC §3.810

(Editor's note: The text of the following section proposed for repeal will not be published. The

section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.810, concerning use of reproduction or facsimile copies of tax forms. House Bill 1461, 73rd Legislature, 1993, transferred tax collection to the Comptroller of Public Accounts and created the Insurance Code, Article 1 04D, which gives the comptroller the authority to prescribe appropriate report forms. This section is obsolete and is not consistent with policies of the comptroller that allow taxpayers to file using copies of report forms. There are no restrictions regarding color, size, weight, or margins in order to file tax reports.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Reissig also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be in removing restrictions regarding the color, size, weight, and margins of the forms used to file insurance tax reports. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed repeal

Comments on the repeal may be submitted to Joe A. Galvan, Jr., Manager, Tax Administration Division, P O Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The repeal implements the Insurance Code, Article 1.04D.

§3.810. Use of Reproduction or Facsimile Copies of Tax Forms.

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

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Comptroller of Public Accounts

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Vehicle Inspection Station Licensing

• 37 TAC §§23.1-23.14, 23.16

The Texas Department of Public Safety proposes amendments to §§23.1-23. 3, §§23.12-23.14, §23.16 and new sections §§23.4-23.11, concerning Vehicle Inspection Station Licensing. Amendments to §§23.1, 23.3, 23.12-23. 14 change license to certificate of appointment in order to make the rule consistent with authorizing statutes. Amendment to §23.3 deletes specific requirements for commercial inspection stations and adds governmental vehicle inspection station requirements. Amendments to §23.16 simplifies the interpretation of the date in which a person can be certified to become a vehicle inspector following a criminal conviction. The department is proposing new §§23.4-23.11 to accommodate the changes in station endorsements, certificates of appointment, display area, station sign, and manpower due to substantive amendments and adding new sections. This action is filed simultaneous with a proposal for repeal of existing sections concerning classification of stations, station licenses, station signs, display area, and manpower. The new sections clarify actual classes of stations, adds language of endorsements to clarify types of inspections and makes the rule consistent with authorizing statutes.

Tom Haas, Chief of Finance, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the sections. There will be no effect on local employment or the local economy.

Mr. Haas also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the sections will be a more efficient administration of the Motor Vehicle Inspection Program regarding consistency with existing statutes, clarity in identifying the types of inspection stations and a clearer interpretation of eligibility for inspector licensing following a criminal conviction. The anticipated economic cost to persons who are required to comply with the sections as proposed will be the $30 statutory certificate of appointment fee. There is no anticipated cost to large or small businesses.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2890.

The amendments and new sections are proposed under Texas Civil Statutes, Article 6701d, Article XV, §142 (c), which provide the Texas Department of Public Safety with the authority to adopt rules necessary for the administration and enforcement of this Act.

Texas Civil Statutes, Article 6701d, Article XV, §142 (c) is affected by this proposal.

§23.1. New Applications.

(a) Request for appointment. Persons may request **certificate of appointment** [license] as a vehicle inspection station by notifying a department representative by telephone, letter, or through another vehicle inspection station.

(b) Investigation. Each request for **certificate of appointment** [licensing] will be investigated by the Department of Public Safety, and the person making application will be informed at that time of the minimum **certification** [licensing] requirements.

(c) Forms. Applicants for station **certificate of appointment** [licenses] shall complete and submit the following forms:

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

(3) Statutory **certificate of appointment** [licensing] fee of $30.

(d) (No change.)

(e) Withdrawal of application. An application for a **certificate of appointment** [license] as a vehicle inspection station may be withdrawn by the applicant at any time. No person may apply for a **certificate of appointment** [license] as a vehicle inspection station within one year from the date of the withdrawal of the application by the applicant.

(f) Frequency of application. Except as provided in §23.13 of this title (relating to Reissue of Inspection Station **certificate of appointment** [License] After Suspension), no person may apply for a **certificate of appointment** [license] as a vehicle inspection station within one year from the date of denial by the director of an application from the same person.

§23.2. General Space Requirements. To qualify for a **certificate of appointment** [license] physical facilities must meet the following standards:

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

(4) Inspection area. Every vehicle inspection station shall have an inspection area within the vehicle inspection station set aside, clearly marked and approved by the department, for conducting the inspection of vehicles. When a vehicle inspection station desires to have more than one inspection area, the space requirements for each lane must be met. For [trailer] vehicle inspection stations, **with trailer endorsement,** see specific requirements.

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

(5) (No change.)

§23.3. Specific Requirements For Public, [Commercial,] Fleet, And Governmental Vehicle Inspection Stations.

(a) (No change.)

(b) Specific requirements for fleet vehicle inspection stations:

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

(3) Firms open to the public will not be issued a fleet vehicle inspection station **certificate of appointment** [license] unless such firms are currently **certified** [licensed] as a public vehicle inspection station and desire a fleet vehicle inspection station **certificate of appointment** [license] for "new care make ready."

(4) (No change.)

(c) Specific requirements for **public** [commercial] inspection stations. **Public inspection stations shall inspect all vehicles presented for the purpose of inspection, if the station is certified to inspect that type vehicle.**

[(1) Commercial inspection stations shall inspect trucks and trailers only.

[(2) Buses and school buses may be inspected under this classification.

[(3) Cars, motorcycles, motor driven cycles, mopeds, and no-peds shall not be inspected under this classification.

[(4) Commercial inspection stations shall meet the requirements as prescribed for a public vehicle inspection station.]

(d) Specific requirements for **governmental** [public] inspection stations. [Public inspection stations shall inspect all types of vehicles presented for the purpose of inspection.]

(1) A governmental vehicle inspection station shall meet the requirements as prescribed for a public vehicle inspection station.

(2) Governmental vehicle inspection stations shall not inspect the personal vehicles of officers, employees, or the general public, even though personal vehicles are used part or full-time for business.

(3) Governmental vehicle inspection stations will not be approved when free access to the vehicle inspection station grounds is not granted to representatives of the department.

§23.4. Station Endorsements. Each public, fleet or governmental vehicle inspection station shall qualify for one or more of the following endorsements which indicate the type of inspection certificates the station is certified to issue and the type of vehicle the station is certified to inspect.

(1) 1Y. May inspect any vehicle requiring a one-year windshield certificate.

(2) 2Y. May inspect any vehicle requiring a two-year windshield certificate.

(3) CW. May inspect any vehicle requiring a commercial windshield certificate.

(4) CT. May inspect any vehicle requiring a commercial trailer certificate.

(5) TL. May inspect any vehicle requiring a trailer certificate.

(6) MC. May inspect any vehicle requiring a motorcycle certificate.

§23.5. Specific Requirements For Vehicle Inspection Stations With Trailer Endorsement. The building shall be of a permanent type suitable for display area, tools, and storage for records and necessary supplies. The inspection area may be any hard surfacing material, and the brake test area must be paved.

(1) Vehicle inspection stations with trailer endorsements which sell as well as service that type vehicle must have a tow truck capable of handling the type vehicles they sell.

(2) Vehicle inspection stations with trailer endorsements must have 1/4 inch round hole paper punch for punching trailer inspection certificates.

§23.6. Specific Requirements For Vehicle Inspection Stations With Motorcycle Endorsement. The inspection area shall be at least eight feet by ten feet. Vehicle inspection stations with motorcycle endorsements must have a 1/4 inch round hole paper punch for punching motorcycle inspection certificates.

§23.7. Specific Requirements For Vehicle Inspection Stations With Commercial Endorsements.

(a) C.W. Endorsement shall meet all the requirements as prescribed for a public station.

(b) C.T. Endorsement-Trailer inspection area: the building shall be of a permanent type suitable for display area, tools, and storage for records and necessary supplies. The inspection area may be any hard surfacing material and the brake test area must be paved.

§23.8. Equipment Requirements For All Classes Of Vehicle Inspection Stations.

(a) Applicant shall be informed of the required equipment including such items as approved testing devices, tools, measuring devices, display board, brake machines, marked brake test area, and marked inspection test area.

(b) The minimum tools, equipment, and approved testing devices shall be kept and maintained in proper working condition at all times in the vehicle inspection station area.

(c) All testing equipment shall be approved by the department. All testing equipment shall be installed and used in accordance with the manufacturer's and department's recommendation. Equipment shall be arranged and located at or near the approved inspection area to obtain maximum efficiency.

(d) If equipment is used during the inspection procedure, the vehicle inspection station owner shall be responsible for its use, accuracy, and general maintenance. When equipment adjustments and calibrations are needed, the manufacturer's and department's specifications shall be followed. Defective equipment shall not be used until such deficiencies are corrected.

(e) Every certified inspector shall have a working knowledge of all testing devices used during inspections.

(f) Each vehicle inspection station is required to own and maintain, as a minimum, the equipment listed in paragraphs (1)-(9) of this subsection:

(1) tools for making tests, repairs, and adjustments ordinarily encountered on those types of vehicles to be inspected;

(2) a measured and marked brake test area which has been approved by the department, or an approved brake inspecting device;

(3) a measuring device clearly indicating measurements of 12 inches, 15 inches, 20 inches, 24 inches, 54 inches, 60 inches, 72 inches and 80 inches to measure reflector height, clearance lamps, side marker lamps and turn signal lamps on all vehicles–vehicle inspection stations with only a motorcycle endorsement are not required to have an 80 inch measure;

(4) a laundry marking pen for completing the reverse side of the windshield inspection certificate;

(5) a scraping device for removing the old inspection certificate;

(6) a gauge for measuring tire tread depth;

(7) a 1/4 inch round hole punch if motorcycle-trailer certificates are issued;

(8) a brake pedal reserve checker with on-inch and two-inch clearances (except vehicle inspection stations with only a motorcycle endorsement); and

(9) a department approved device for measuring the light transmission of sunscreening devices. This paragraph does not apply to government stations or fleet stations which have provided the department annual written certification that the governmental entity or fleet station has no vehicles equipped with a sunscreening device. This requirement does not apply to vehicle inspection stations with only a motorcycle and/or trailer endorsement. The effective date for implementation of this paragraph is January 1, 1994.

§23.9. Manpower.

(a) Each public vehicle inspection station shall have at least one certified inspector on duty to perform inspections promptly during the normal working hours of the vehicle inspection station. It is recommended that every vehicle inspection station have more than one certified inspector available to ensure prompt inspection service to the public at all times. Vacation and days off should be anticipated by the management.

(b) A vehicle inspection station shall have sufficient certified inspectors to perform the inspection service.

(c) Vehicle inspection stations will not be issued a Certificate of Appointment or permitted to inspect unless inspections are available eight hours each business day.

(d) Inspection station owners shall furnish information as may be required by the department pertaining to inspectors employed at that station on Form VI-3a within three working days of a change in the inspector's employment.

§23.10. Inspection Station Display Area.

(a) Display. All required equipment shall be mounted on the wall, or on a four-foot by four-foot pegboard, plywood board, or similar substance, and displayed.

(b) Certificate of appointment and procedure chart. Fleet and governmental vehicle inspection stations are only required to display the certificate of appointment and procedure chart.

(c) Posting information. Each vehicle inspection station shall display in a conspicuous place such certificate of appointment, vehicle inspection station sign, procedure chart, posters, or other informational material as directed by the department.

§23.11. Vehicle Inspection Station Sign.

(a) Every vehicle inspection station, except fleet and governmental vehicle inspection stations, are required to display the vehicle inspection station sign.

(b) The sign and replacements are provided by the state at no cost to the vehicle inspection station and shall always remain the property of the department as a means of identification of the vehicle inspection station.

(c) The department will issue only one sign per public vehicle inspection station certificate of appointment issued. Dissimilar signs may be displayed.

(d) Signs shall be displayed from the vehicle inspection station building so that the sign is clearly visible.

(e) Signs shall be solidly mounted on the wall or framework of the vehicle inspection station in a location designated by the department.

(f) When the material on the building wall or framework permits, screws shall be utilized to attach the sign to the wall; otherwise, adhesive tape will be used.

(g) The sign may be displayed at or near the service entrance or inspection area entrance to the building. The sign will cover no part of any other sign or advertisement nor will any other sign or advertisement cover any portion of the vehicle inspection station sign.

(h) The sign shall not be altered in any manner.

(i) Failure to display the vehicle inspection station sign is grounds for inspection station suspension. The sign shall be surrendered upon demand of the department.

§23.12. Expiration Of Appointment During Suspension.

(a) (No change.)

(b) An owner seeking reinstatement shall:

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

(3) submit the statutory **Certificate of Appointment** [licensing] fee of $30.

*§23.13. Reissue of Inspection Station **Certificate Of Appointment*** [License] after Suspension.

(a) General. After expiration of a period of suspension, a vehicle inspection station owner desiring reinstatement may request reinstatement by notifying in writing the appropriate service commander.

(b) Forms required. An owner seeking reinstatement shall submit a properly completed inspection station application, Form VI-2.

*§23.14. Vehicle Inspection Station **Certificate of Appointment** [License] Renewal*

(a) Forms required. To obtain renewal of the vehicle inspection station **Certificate of Appointment** [license] the following shall be submitted to the department:

(1) (No change.)

(2) The statutory **certificate of appointment** [licensing] fee of $30; and

(3) (No change.)

(b) Consistent name, number, and location. Renewal certification may not be obtained unless the station **Certificate of Appointment** [license] is renewed in exactly the same name, number, and location as currently **certified** [licensed]. If name, number, or location is changed, a base application must be made under §23.1 of this title (relating to New Applications), §23.2 of this title (relating to General Space Requirements), §23.3 of this title (relating to Specific Requirements for Public, [Commercial,] Fleet, and Governmental Vehicle Inspection Stations), §23.4 of this title (relating to **Station Endorsements** [Specific Requirements for Trailer Vehicle Inspection Stations], §23.5 of this title (relating to Specific **Requirements** [Instructions] for [Motorcycle] vehicle inspection stations **with Trailer Endorsement**, §23.6 of this title (relating to Specific Requirements for [Governmental] Vehicle Inspection Stations **with Motorcycle Endorsements**), §23.7 of this title (relating to Specific Requirements for [All Classes of] Vehicle Inspection Stations **with Commercial Endorsements**), §23.8 of this title (relating to **Equipment Requirements for All Classes of Vehicle Inspection Stations**) [Manpower: Certified Inspection], §23.9 of this title (relating to **Manpower** [Inspection Station Display Area]), §23.10 of this title (relating to [Vehicle] Inspection Station **Display Area** [Sign], and §23.11 of this title (relating to Vehicle Inspection Station Sign).

(c) (No change.)

(d) Deadline. Vehicle inspection stations which fail to file a complete application for renewal by October 1 of each **renewal** year **must** file a new application only.

(e) (No change.)

§23.16. Persons With A Criminal Background.

(a)-(d) (No change.)

(e) A conviction for a felony offense will not be considered by the department, under this subsection, if a period of more than 10 years has elapsed since the date of the conviction [or the release of the person from confinement or supervision imposed for that conviction, whichever is the later date]. An offense other than a felony will not be considered by the department, under this subsection, if a period of more than five years has elapsed since the date of the conviction [or supervision imposed for that conviction, whichever is the later date]. For the purposes of this section, a person is convicted of an offense when an adjudication of guilt on an offense is entered against the person by a court of competent jurisdiction, whether or not:

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

(f)-(h) (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, March 28, 1995.

TRD-9504145 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 465-2890

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• 37 TAC §§23.4-23.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §§23.4-23. 10, concerning vehicle inspection station licensing. These sections are proposed for repeal with simultaneous proposal of new sections that are amended, reformatted, and renumbered to provide for changes made to accommodate additions in classification of vehicles.

Tom Haas, Chief of Finance, has determined that for the first five years the repeals are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There will be no effect on local employment or the local economy.

Mr. Haas also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to change language in order to comply with existing statutory requirements. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There is no anticipated costs to large or small businesses.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2890.

The repeals are proposed pursuant to Texas Civil Statutes, Article 6701d, Article XV, §142(c), which provide the Texas Department of Public Safety with the authority to adopt rules necessary for the administration and enforcement of this Act.

Texas Civil Statutes, Article 6701d, Article XV, §142(c) is affected by the proposed repeals.

§23.4. Specific Requirements For Trailer Vehicle Inspection Stations.

§23.5. Specific Requirements For Motorcycle Vehicle Inspection Stations.

§23.6. Specific Requirements For Governmental Vehicle Inspection Stations.

§23.7. Equipment Requirements For All Classes Of Vehicle Inspection Stations.

§23.8. Manpower.

§23.9. Inspection Station Display Area.

§23.10. Vehicle Inspection Station Sign.

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, March 28, 1995.

TRD-9504146 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 465-2890

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General Inspection Requirements

• 37 TAC §23.26

The Texas Department of Public Safety proposes an amendment to §23.26, relating to general inspection requirements. The amendment to the section removes trailer and motorcycle classifications for inspection stations and requires public inspection stations to have vehicle endorsements (trailer, motorcycle, commercial) for the type of vehicles they inspect. Subparagraph (C) is deleted.

Tom Haas, Chief of Finance, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section. There will be no effect on local employment or the local economy.

Mr. Haas also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification in identifying actual classes of stations and types of inspections. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated cost to large or small businesses.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2890.

The amendment is proposed under Texas Civil Statutes, Article 6701d, Article XV, §142 (c), which provide the Texas Department of Public Safety with the authority to adopt rules necessary for the administration and enforcement of this Act.

Texas Civil Statutes, Article 6701d, Article XV, §142 (c) is affected by this proposal.

§23.26. Repairs.

(a) (No change.)

(b) Inspection refusals.

(1) General. No vehicle inspection station shall refuse to inspect a vehicle that is presented for inspection during normal business hours. Vehicle inspection stations are required to inspect only those types of vehicles authorized by its class of certificate of appointment. Examples are as follows:

(A) (No change.)

(B) A **public** [trailer] vehicle inspection station shall inspect [trailers] only **those vehicles for which they have endorsements.**

[(C) A motorcycle vehicle inspection station shall inspect motorcycles only.]

(2) (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, March 28, 1995.

TRD-9504147 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 465-2890

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Inspection Items, Procedures, and Requirements

• 37 TAC §23.42

The Texas Department of Public Safety proposes an amendment to §23.42, relating to inspection items, procedures, and requirements. Subsection (e) is amended to also include exempting fleet stations from those inspection stations that must inspect sunscreening devices (glass tinting) upon providing the department annual written certification that the fleet station has no vehicles equipped with a sunscreening device.

Tom Haas, Chief of Finance, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section. There will be no effect on local employment or the local economy.

Mr. Haas also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to avoid unnecessary expenses for those institutions who maintain in-house vehicle inspections. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated cost to large or small businesses.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2890.

The amendment is proposed under Texas Civil Statutes, Article 6701d, Article XV, §142 (c), which provide the Texas Department of Public Safety with the authority to adopt rules necessary for the administration and enforcement of this Act.

Texas Civil Statutes, Article 6701d, Article XV, §142 (c) is affected by this proposal.

§23.42. Inspection Of Sunscreening Devices (Glass Tinting) By Official Vehicle Inspection Stations.

(a)-(d) (No change.)

(e) This section does not apply to government stations **or fleet stations** which have provided the department annual written certification that the governmental entity **or fleet station** has no vehicles equipped with a sunscreening device.

(f) (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, March 28, 1995.

TRD-9504148 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 465-2890

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Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.25

The Texas Youth Commission (TYC) proposes an amendment to §85.25, concerning minimum length of stay. The amendment clarifies creditable time for a classification minimum length of stay and makes rules on consecutive minimum length of stay apply to recommitted youth as well as to reclassified youth.

John Franks, Director of Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient use of minimum length of stay assignments. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.07, which provides the Texas Youth Commission with the authority to examine and make a study of each child committed to it according to rules established by the commission.

The proposed rule implements the Human Resource Code, §61.034.

§85.25. Minimum Length of Stay.

(a) Policy. The Texas Youth Commission (TYC) has established two types of minimum lengths of stay (MLOS) requirements for TYC youth **classification MLOS and disciplinary MLOS**. The classification MLOS is established on initial commitment, for youth recommitted for the commission of a felony or high-risk offense, and for youth found at an administrative level I hearing to have committed a felony or high-risk offense. **Classification** [Required] minimum lengths of stay may include creditable time prior to commitment. [Youth may be eligible for transition to medium restriction to complete the minimum length of stay requirement in accordance with GOP.47.09, §85.29 of this title (relating to Program Completion and Movement).] A disciplinary MLOS may be **assigned** [established] in accordance with GOP.63.11, §91.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences) and is subject to provisions herein. **Youth may be eligible for transition to medium restriction to complete the minimum length of stay requirement in accordance with GOP.47.09, §85.29 of this title (relating to Program Completion and Movement).**

(b) Rules.

(1) Classification Minimum Length of Stay.

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

[(J) A disciplinary assigned length of stay of up to six months may be assigned in accordance with GOP.63.11, §91. 11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences).

[(K) All MLOS's will run consecutively.]

(2) Disciplinary Assigned Minimum Length of Stay. A disciplinary assigned length of stay of up to six months may be assigned in accordance with GOP.63.11, §91.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences).

[(2) Creditable Time.

[(A) For a youth, except a sentenced offender whose classifying offense was found at the most recent due process hearing:

[(i) Minimum length of stay is counted from the first day the youth reaches any TYC operated or assigned facility following commitment, recommitment or a disciplinary hearing.

[(ii) After the count begins, time spent on furlough or in detention or jail counts toward meeting a minimum length of stay requirement.

[(iii) Time spent as an escapee from a placement assigned by TYC does not count toward meeting the minimum length of stay requirement.

[(B) For a youth, except a sentenced offender whose classifying offense was found at an earlier due process hearing:

[(i) Minimum length of stay is counted from the date of original disposition for the classifying offense.

[(ii) Time spent as an escapee from a TYC or probation placement does not count toward meeting the minimum length of stay requirement.

[(C) In no case will creditable time reduce the minimum length of stay while in TYC to less than six months.

[(D) For a sentenced offender youth, see GOP.47.15, §85.35 of this title (relating to Sentenced Offender Disposition).]

(3) Restrictions.

(A) All minimum lengths of stay will run consecutively.

(B) Classification MLOSs must be completed before any assigned disciplinary MLOS begins.

(C) For a sentenced offender youth, see GOP.47.15, §85.35 of this title (relating to Sentenced Offender Disposition).

(4) Creditable Time for Classification Minimum Length of Stay.

(A) All classification MLOS.

(*i*) After the count begins, all time spent in program, on furlough or in detention or jail counts toward meeting a minimum length of stay requirement.

(*ii*) Time spent as an escapee from a TYC or probation placement does not count toward meeting the minimum length of stay requirement.

(*iii*) In no case will creditable time reduce the minimum length of stay while in TYC to less than six months.

(B) Initial MLOS only.

(*i*) Except for a sentenced offender, classification minimum length of stay for a youth whose classifying offense was found at the most recent due process hearing, is counted from the first day the youth reaches any TYC operated or assigned facility following commitment.

(*ii*) Except for a sentenced offender, classification minimum length of stay for a youth whose classifying offense was found at an earlier due process hearing, is counted from the date of original disposition for the classifying offense.

(C) Reclassification/recommitment when no MLOS is remaining. Classification minimum length of stay is counted from the first day the youth reaches any TYC operated or assigned facility following reclassification or recommitment.

(D) Reclassification/recommitment when a MLOS is remaining. Classification minimum length of stay is counted from the completion of the previous MLOS.

(5)[(3)] Waivers and Reductions.

(A) For youth, except sentenced offenders and type A violent offenders, the classification minimum length of stay requirement may be reduced by the deputy executive director in extenuating circumstances when it is documented that the minimum length of stay is not justified because of the minor nature of the youth's classifying offense and offense history.

(B) The disciplinary assigned MLOS may be reduced in accordance with GOP.63.11, §91.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences).

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 April 10, 1995.

TRD-9504324 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 483-5244

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part VI. Texas Commission for the Deaf and Hearing Impaired

Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification

Subchapter E. Fees

• 40 TAC §183.573

The Texas Commission for the Deaf and Hearing Impaired proposes an amendment to §183.573, concerning Fees, to include separate fees for Intermediary candidate application and evaluation. This amendment is proposed to encourage increased participation of candidates who are deaf in the certification program through increased incentive.

David W. Myers, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Myers also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased numbers of persons who are deaf willing to become Intermediary Interpreters, strengthening the base of interpreter skill for the State and expertise necessary to the operation of the Board for Evaluation of Interpreters. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Angela Bryant, Board for Evaluation of Interpreters, Texas Commission for the Deaf and Hearing Impaired, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hearing Impaired the authority to adopt rules for administration and programs.

The proposed amendment affects Texas Administrative Code, Title 40, Chapter 183, Subchapter E.

§183.573. Fees. The commission shall charge the following fees:
Figure: 40 TAC §183.573

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 April 10, 1995.

TRD-9504311 David W. Meyers
Executive Director
Texas Commission for the Deaf and Hearing Impaired

Earliest possible date of adoption: May 19, 1995

For further information, please call: (512) 451-8494

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

• 22 TAC §461.11

The Texas State Board of Examiners of Psychologists has withdrawn from consideration for permanent adoption a proposed amendment to §461.11, which appeared in the March 3, 1995, issue of the *Texas Register* (20 TexReg 1502). The effective date of this withdrawal is April 7, 1995.

Issued in Austin, Texas, on April 7, 1995.

TRD-9504205 Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Effective date. April 7, 1995

For further information, please call: (512) 835-2036

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Chapter 463. Applications

• 22 TAC §463.6

The Texas State Board of Examiners of Psychologists has withdrawn from consideration for permanent adoption a proposed amendment to §463.6, which appeared in the March 7, 1995, issue of the *Texas Register* (20 TexReg 1608). The effective date of this withdrawal is April 7, 1995.

Issued in Austin, Texas, on April 7, 1995.

TRD-9504206 Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Effective date: April 7, 1995

For further information, please call: (512) 835-2036

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Chapter 473. Fees

• 22 TAC §473.5

The Texas State Board of Examiners of Psychologists has withdrawn from consideration for permanent adoption a proposed amendment to §473.5, which appeared in the March 3, 1995, issue of the *Texas Register* (20 TexReg 1506). The effective date of this withdrawal is April 7, 1995.

Issued in Austin, Texas, on April 7, 1995.

TRD-9504207 Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists

Effective date: April 7, 1995

For further information, please call: (512) 835-2036

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 17. Administrative License Revocation

Administrative License Revocation

• 37 TAC §17.16

The Texas Department of Public Safety has withdrawn from consideration for permanent adoption a proposed new §17.16 which appeared in the October 14, 1994, issue of the *Texas Register* (19 TexReg 8099). The effective date of this withdrawal is April 6, 1995.

Issued in Austin, Texas, on April 6, 1995.

TRD-9504144 James R. Wilson
Director
Texas Department of Public Safety

Effective date: April 6, 1995

For further information, please call: (512) 465-2890

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1995 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1995 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 7, November 10, November 28, and December 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 3	Wednesday, December 28	Thursday, December 29
2 Friday, January 6	Monday, January 2	Tuesday, January 3
3 Tuesday, January 10	Wednesday, January 4	Thursday, January 5
4 Friday, January 13	Monday, January 9	Tuesday, January 10
5 Tuesday, January 17	Wednesday, January 11	Thursday, January 12
Friday, January 20	1993 ANNUAL INDEX	
6 Tuesday, January 24	Wednesday, January 18	Thursday, January 19
7 Friday, January 27	Monday, January 23	Tuesday, January 24
8 Tuesday, January 31	Wednesday, January 25	Thursday, January 26
9 Friday, February 3	Monday, January 30	Tuesday, January 31
10 Tuesday, February 7	Wednesday, February 1	Thursday, February 2
11 Friday, February 10	Monday, February 6	Tuesday, February 7
12 Tuesday, February 14	Wednesday, February 8	Thursday, February 9
13 Friday, February 17	Monday, February 13	Tuesday, February 14
14 Tuesday, February 21	Wednesday, February 15	Thursday, February 16
15 Friday, February 24	*Friday, February 17	Tuesday, February 21
16 Tuesday, February 28	Wednesday, February 22	Thursday, February 23
17 Friday, March 3	Monday, February 27	Tuesday, February 28
18 Tuesday, March 7	Wednesday, March 1	Thursday, March 2
19Friday, March 10	Monday, March 6	Tuesday, March 7
20 Tuesday, March 14	Wednesday, March 8	Thursday, March 9
21 Friday, March 17	Monday, March 13	Tuesday, March 14
22 Tuesday, March 21	Wednesday, March 15	Thursday, March 16
23 Friday, March 24	Monday, March 20	Tuesday, March 21
24 Tuesday, March 28	Wednesday, March 22	Thursday, March 23
25 Friday, March 31	Monday, March 27	Tuesday, March 28
26 Tuesday, April 4	Wednesday, March 29	Thursday, March 30
27 Friday, April 7	Monday, April 3	Tuesday, April 4
28 Tuesday, April 11	Wednesday, April 5	Thursday, April 6
Friday, April 14	FIRST QUARTERLY INDEX	
29 Tuesday, April 18	Wednesday, April 12	Thursday, April 13
30 Friday, April 21	Monday, April 17	Tuesday, April 18
31 Tuesday, April 25	Wednesday, April 19	Thursday, April 20