

Texas Register

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Pages 139-207

In This Issue...

Emergency Rules

Texas Department of Commerce

144— Industrial Projects

Texas State Board of Physical
Therapy Examiners

144— Enforcement of Act

Texas Department of Health

145— Serialization Notice

145— Medical Radiologic Technologists

State Board of Insurance

155— Life, Accident, and Health Insurance and
Annuities

155— Property and Casualty Insurance

157— Agent's Licensing

160— Insurance Premium Finance

Comptroller of Public Accounts

160— Tax Administration

Proposed Rules

Texas Department of Health

167— Serialization Notice

167— Health Maintenance Organizations

171— Medical Radiologic Technologist

172— Water Hygiene

Texas Air Control Board

188— Permits

Texas Commission on Law
Enforcement Officer Standards and
Education

189— Administrative Division

Texas Department on Aging

191— State Delivery Systems

Withdrawn Rules

Public Utility Commission of Texas

192— Substantive Rules

Adopted Rules

State Board of Insurance

193— Property and Casualty Insurance

Texas Water Development Board

194— Research and Funding

Comptroller of Public Accounts

195— Tax Administration

Texas Department of Human
Services

196— Legal Services

Open Meetings

197— Texas Corn Producers Board

197— Texas Commission for the Deaf

197— Texas Education Agency

197— Employers Retirement System of Texas

197— Texas Department of Health

197— Texas Historical Commission

198— Texas State Board of Medical Examiners

198— Texas Board of Licensure for Nursing
Home Administrators

198— Board of Pardons and Paroles

198— Texas State Board of Pharmacy

198— Polygraph Examiners Board

198— Public Utility Commission of Texas

198— Railroad Commission of Texas

199— Texas Savings and Loan Department

200— Select Committee on Tax Equity

200— Texas Water Commission

200— Regional Agencies

In Addition

Texas Aeronautics Commission

202— Consultant Proposal Request

Texas Air Control Board

202— Public Hearing

Texas Department of Commerce

203— Private Activity Bond Allocation Report

Texas Department of Corrections

203— Consultant Proposal Request

Texas Register

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

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

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 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, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule number, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

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

- 1 indicates the title under which the agency appears in the *Texas Administrative Code*;
- TAC stands for the *Texas Administrative Code*;
- 27.15 is the section number of the rule (27 indicates that the rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).



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Texas Education Agency

204— Public Hearing

Texas Department of Health

204— Notice of Public Hearings

Texas Department of Human Services

204— Consultant Proposal Request

205— Request for Proposals

Texas Water Commission

205— Invitation for Bids

206— Request for Proposals

TAC Titles Affected

TAC Titles Affected—January

The following is a list of the administrative rules that have been published this month.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

4 TAC §7.13, §7.14	34
4 TAC §11.8	37

TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

7 TAC §3.27	54
7 TAC §3.31, §3.32	117
7 TAC §3.33	84, 94

Part II. Department of Banking

7 TAC §27.1	85, 94
7 TAC §31.5	117
7 TAC §31.7	85, 95
7 TAC §33.91, §33.92	117

TITLE 10. COMMUNITY DEVELOPMENT

10 TAC §180.1, §180.2	144
-----------------------	-----

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §3.48	38
16 TAC §5.501	8

Part II. Public Utility Commission of Texas

16 TAC §23.3	192
16 TAC §23.26	86, 96, 116
16 TAC §23.27	88, 96, 116
16 TAC §23.49	192

Part IV. Texas Department of Labor and Standards

16 TAC §62.1-62.10	8
16 TAC §65.15	39, 54
16 TAC §75.2	39, 55

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

19 TAC §25.32	40
19 TAC §25.33	55
19 TAC §25.72	40

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

22 TAC §3.26	41
22 TAC §3.48	41

Part IV. Texas Cosmetology Commission

22 TAC §89.33	53
---------------	----

Part XVI. Texas State Board of Physical Therapy Examiners

22 TAC §341.1-341.4	55
---------------------	----

Part XXIII. Texas Real Estate Commission

22 TAC §542.1	56
---------------	----

Part XXIX. Texas Board of Land Surveying

22 TAC §661.21	42
21 TAC §661.41, 661.42, 661.45	42

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

25 TAC §1.91	43, 96
25 TAC §25.712	160
25 TAC §37.62-37.71	43, 98
25 TAC §119.1-119.13	167
25 TAC §119.1-119.14	167
25 TAC §143.1-143.14	145, 171
25 TAC §337.201-337.211	172
25 TAC §337.201-337.213	173

Part II. Texas Department of Mental Health and Mental Retardation

25 TAC §402.201-402.222	43, 101
25 TAC §402.241-402.249	56, 117
25 TAC §402.281-402.301	119

25 TAC §§405.231-405.246	43, 111
25 TAC §§405.601-405.724	43, 112

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §1.704	8, 43
28 TAC §3.3039	155
28 TAC §5.2003, §5.2004	124
28 TAC §5.4001	155, 193
28 TAC §§5.4601-5.4603	156
28 TAC §7.72	44
28 TAC §§19.1001-19.1011	157

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

31 TAC §116.12	188
----------------	-----

Part IX. Texas Water Commission

31 TAC §§275.51-275.59	9
31 TAC §§291.1-291.7	9
31 TAC §§291.1-291.14	9
31 TAC §§291.21-391.37	9
31 TAC §§291.21-391.31	9
31 TAC §§291.41-291.44	9
31 TAC §§291.51-291.56	9
31 TAC §§291.51-291.62	10
31 TAC §§291.71-291.76	10
31 TAC §§291.71-291.75	10
31 TAC §§291.61-291.88	10
31 TAC §§291.91, 291.92	10
31 TAC §§291.91-291.95	10
31 TAC §§291.101-291.115	10
31 TAC §§291.101-291.118	10
31 TAC §§291.121-291.126	11
31 TAC §§291.131-291.136	11
31 TAC §§293.12-293.17	11
31 TAC §§313.61-313.66	11
31 TAC §§325.1, 325.4, 325.6, 325.7, 325.9, 325.14	53
31 TAC §331.107	45
31 TAC §§334.1-334.5	11
31 TAC §§334.21-334.23	11
31 TAC §§335.321, 335.323-335.325, 335.328, 335.329, 335.332	11

Part X. Texas Water Development Board

31 TAC §§355.31-355.40	194
31 TAC §§375.1-375.3	12
31 TAC §§375.11-375.21	15
31 TAC §§375.31-375.38	18
31 TAC §375.51	25
31 TAC §§375.61-375.63	25
31 TAC §375.71, §375.72	26
31 TAC §§375.81-375.88	27
31 TAC §§375.101-375.103	28

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

34 TAC §3.391	160
34 TAC §3.403	161
34 TAC §3.404	163
34 TAC §3.405	164
34 TAC §3.408	165, 195
34 TAC §3.413	165

Part IV. Employees Retirement System

34 TAC §71.1	28, 46
34 TAC §73.27	56
34 TAC §73.15	29, 47

Part X. Texas Public Finance Authority

34 TAC §221.1-221.4	92, 113
---------------------	---------

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

37 TAC §1.191	57
---------------	----

37 TAC §1.221	29, 47
37 TAC §3.101, §3.102	48
Part VII. Texas Commission on Law Enforcement Officer Standards and Education	
37 TAC §211.74	189
TITLE 40. SOCIAL SERVICES AND ASSISTANCE	
Part I. Texas Department of Human Services	
40 TAC §15.3204	57
40 TAC §§27.2401, 27.2402, 27.2404, 27.2406-27.2408	57, 125
40 TAC §27.2403, §27.2405	57, 125
40 TAC §27.4604	57, 125
40 TAC §29.502	113
40 TAC §29.1101	49, 114
40 TAC §43.23	49, 114
40 TAC §43.25	49, 114
40 TAC §48.5904	49, 115
40 TAC §48.5911	49, 115
40 TAC §§79.1605, 79.1607, 79.1610	196

Part II. Texas Rehabilitation Commission	
40 TAC §115.2	49
Part VI. Texas Commission for The Deaf	
40 TAC §181.900	30, 50
Part IX. Texas Department on Aging	
40 TAC §255.34	57
40 TAC §255.36	191

TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation	
43 TAC §§1.21, 1.23, 1.41, 1.43, 1.46, 1.48, 1.56, 1.59, 1.60, 1.62, 1.63	30, 50
43 TAC §1.68	32, 51
43 TAC §9.5	32, 51
43 TAC §11.41	52
43 TAC §17.7	32, 60
43 TAC §17.50	33, 61

Emergency

Rules

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

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

TITLE 10. COMMUNITY DEVELOPMENT

Part II. Texas Department of Commerce

Chapter 180. Industrial Projects General Rules and Industrial Revenue Bond Program

★ 10 TAC §180.1, §180.2

The Texas Department of Commerce is renewing the effectiveness of the emergency adoption of amended §180.1 and §180.2 for a 30-day period effective December 30, 1987. The text of amended §180.1 and §180.2 was originally published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4042).

Issued in Austin, Texas, on December 30, 1987.

TRD-8711853

Alexa Richter Ray
Administrative Assistant
Texas Department of
Commerce

Effective date: December 30, 1987
Expiration date: January 29, 1988
For further information, please call
(512) 472-5059.



TITLE 22. EXAMINING BOARDS

Part XVI. Texas State Board of Physical Therapy Examiners

Chapter 343. Enforcement of Act

★ 22 TAC §343.1

The Texas State Board of Physical Therapy Examiners adopts on an emergency basis an amendment to §343.1, concerning revocation of license or discipline of a licensee. An emergency amendment is necessary, as otherwise the section without these changes would take effect on December 30, 1987.

This amendment is adopted on an emergency basis pursuant to Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to

adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties in administering the Act.

§343.1. Revocation of License or Discipline of a Licensee.

(a) For the purpose of this section, license or licensee shall mean a license or a holder of a license issued pursuant to Texas Civil Statutes, Article 4512e, §§8-10, or a temporary license or a holder of a temporary license issued pursuant to Texas Civil Statutes, Article 4512e, §11.

(b) A license will be denied, suspended, or revoked for a period of not less than 30 days and a licensee or applicant will be appropriately disciplined if the applicant or licensee:

(1) [except as otherwise provided in paragraph (2) of this subsection,] provides treatment except upon the request of a physician licensed to practice medicine by the Texas State Board of Medical Examiners, or by a dentist licensed by the State Board of Dental Examiners, or a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners, or a podiatrist licensed by the Texas State Board of Podiatry Examiners, or by any other qualified, licensed health care person authorized to prescribe treatment of individuals; or in the case of a licensed physical therapist assistant, has provided physical therapy treatment other than upon the evaluation and plan of care provided by a licensed physical therapist in accordance with all the applicable Act and rule requirements;

(2) treats a patient other than upon the request of those indicated in paragraph (1) of this subsection, for more than 20 treatment sessions or 30 consecutive calendar days from the initial evaluation, whichever occurs first, and such treatment fails to indicate objective improvement of the patient's condition as determined by current measurable standards of practice, satisfactory to the board;

(2) [(3)] treats or continues to treat a patient whose condition upon initial, subsequent, and ongoing evaluation is determined to be, by current measurable standards of practice, beyond the ability or training of the physical therapist and is not referred immediately to a professional qualified to provide needed care;

(3) [(4)] practices, allows, condones, authorizes, or has practiced, allowed, condoned, or authorized physical therapy to be conducted under the licensee's care, super-

vision, and/or responsibility in a manner detrimental to the public's health and/or welfare;

(4) [(5)] does not supervise and maintain the supervision of supportive personnel, licensed or unlicensed, in compliance with the Act and rule requirements;

(5) [(6)] is practicing or has practiced with an expired temporary or permanent license;

(6) [(7)] has used drugs, chemicals, or intoxicating liquors to the extent that professional competence is affected;

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

(7) [(8)] has received a final conviction of a felony in this or any other state, territory, or nation. Final conviction as used in this subdivision includes one resulting from a plea of nolo contendere;

(8) [(9)] attempts to obtain or has obtained a license by fraud, falsification, or deception of an application or examination procedure;

(9) [(10)] has been judged mentally incompetent by a court of competent jurisdiction;

(10) [(11)] employs or agrees to employ, pays, or promises to pay, or rewards, or promises to reward, any person, firm, association of persons, partnership, or corporation, for securing, soliciting, or drumming patients or patronage. A physical therapist or physical therapist assistant may not accept or agree to accept any payment, fee, reward, or anything of value for securing, soliciting, or drumming for patients or patronage for any physical therapist or physical therapist assistant, physician, or surgeon. Each payment, reward, or fee or agreement to pay or accept a reward or fee is a separate offense. The preceding shall not be construed to prohibit advertising except that which is false, misleading, or deceptive or that which advertises professional superiority or the performance of professional service in a superior manner and that is not readily subject to verification.

Issued in Austin, Texas, on December 30, 1987.

TRD-8711850

Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: December 30, 1987
Expiration date: April 28, 1988
For further information, please call
(512) 835-1846.



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

The following sections adopted on an emergency basis that have been submitted by the Texas Department of Health will be serialized beginning in the January 12, 1988, issue of the *Texas Register*. The effective date of the emergency adoptions is January 1, 1988, and the expiration date is April 28, 1988.

Chapter 1. Texas Board of Health.

Formal Hearing Procedures.
§1.34 (new section)

Chapter 113. Special Health Services Permits.

§113.1 (new section)
§113.2 (new section)

Chapter 133. Hospital Licensing Permits.

§133.31 (new section)

Chapter 145. Long-Term Care.

Procedures on Long Term Care Facilities.
§145.95 (new section)

Chapter 157. Emergency Medical Care.

Emergency Medical Services.
§157.83 (new section)

Chapter 229. Food and Drug.

Permit Applications.
§229.281 (new section)

Chapter 265. General Sanitation.

Texas Youth Camp Safety and Health.
§265.23 (new section)
§265.34 (amendment)

Chapter 289. Occupational Health and Radiation Control.

Texas Regulations for Control of Radiation
§§289.121, 289.123, 289.124 (amendments)

Chapter 337. Water Hygiene.

Permit Applications.
§337.131 (new section)

Chapter 143. Medical Radiologic Technologists

★25 TAC §§143.1-143.14

The Texas Department of Health adopts on an emergency basis new §§143.1-143.14, concerning medical radiologic technologists. The new sections establish the minimum standards for certifying persons as medical radiological technologists and cover definitions, the medical radiologic application Advisory Board's operation, fees, exceptions to certification, application requirements and procedures, types of certificates, examinations, standards for curricula and instructor approval, certificate issuance and renewal, continuing

education, certifying persons with criminal backgrounds to be medical radiologic technologists' violations, complaints and subsequent actions, and instructor and curricula approval.

The new sections are adopted on an emergency basis to comply with Senate Bill 1439, 70th Legislature, 1987, which requires the Board of Health to adopt rules covering the standards for the certification of medical radiologic technologists by January 1, 1988. For the board to comply with the statutory mandate, the board is adopting the new sections on an emergency basis, effective January 1, 1988.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4512m, §2.05 (Senate Bill 1439, 70th Legislature, 1987), which authorize, the Board of Health to adopt rules establishing minimum standards for the certification of medical radiological technologists; Article 6252-13a, §5(d), which authorize state agencies to adopt emergency sections; and Article 6252-13d, §4, which authorize state agencies to adopt sections covering the eligibility of persons with criminal backgrounds for certification occupations, professions, and licenses.

§143.1. Purpose and Scope.

(a) Purpose These sections are intended to implement the provisions of the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m (Article II and Article III, §3.01 (a), (c), (d), and (e) of Senate Bill 1439, 70th Legislature, 1987).

(b) Scope. These sections cover definitions; the Medical Radiologic Technologist Advisory Board's operation; fees; exceptions to certification; application requirements and procedures; types of certificates; examinations; standards for curricula and instructor approval; certificate renewal; continuing education requirements; changes of name or address; certifying persons with criminal backgrounds to be medical radiologic technologists; violations, complaints, and subsequent actions.

§143.2. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

ACRRT—American Chiropractic Registry of Radiologic Technologist.

Act—Texas Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m (Article II and §3.01 (a), (c), (d), and (e) of Article III, Senate Bill 1439, 70th Legislature).

Administrator—The department employee designated as the administrator of certification activities authorized by the Act.

Advisory Board—The Medical Radiologic Technologist Advisory Board.

AMA—The American Medical Association.

Applicant—A person who applies to the Texas Department of Health for a cer-

tificate or temporary certificate, general or limited.

ARCRT—American Registry of Clinical Radiography Technologist and its successor organizations.

ARRT—The American Registry of Radiologic Technologists and its predecessor or successor organizations.

ASPA—The American Society of Podiatry Assistants.

BCE—The Texas Board of Chiropractic Examiners.

BDE—The Texas Board of Dental Examiners.

Biennial—Occurring every two years.
BME—The Texas State Board of Medical Examiners.

BNE—The Texas Board of Nurse Examiners.

Board—The Texas Board of Health.

BPE—The Texas Board of Podiatry Examiners.

CAHEA—Committee on Allied Health Education and Accreditation of the American Medical Association.

CCE—Chiropractic Council on Education.

Certificate—A medical radiologic technologist certificate issued by the Texas Department of Health.

Chiropractor—A person licensed by the Board of Chiropractic Examiners (BCE) to practice chiropractic.

DANB—Dental Assisting National Board.

Dentist—A person licensed by the Board of Dental Examiners (BDE) to practice dentistry.

Department—The Texas Department of Health.

General certification—An authorization to perform radiologic procedures.

Independent sponsor—An individual or group of individuals that offers or intends to offer a course of study in medical radiologic technology; provided, however, that the individual or group is not employed in the capacity of instructor by a sponsoring institution.

Instructor—An individual approved by the advisory board to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

JCAHO—The Joint Commission on Accreditation of Healthcare Organizations.

Limited certification—An authorization to perform radiologic procedures that are limited to specific parts of the human body.

Medical radiologic technologist (MRT)—A person certified under the Act, other than a practitioner, who, under the direction of a practitioner, intentionally administers radiation to other persons for medical reasons.

NMTCB—Nuclear Medicine Technology Certification Board and its successor organizations.

Physician—A person licensed by the Board of Medical Examiners (BME) to prac-

tice medicine.

Podiatrist—A person licensed by the Board of Podiatry Examiners (BPE) to practice podiatry.

Practitioner—A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons for medical reasons.

Radiation—Ionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures.

Radiologic procedure—Any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions in humans (including diagnostic x-rays or nuclear medicine) or the cure, mitigation, treatment, or prevention of disease in humans that achieves its intended purpose through the emission of radiation.

Registered nurse—A person licensed by the Board of Nurse Examiners (BNE) to practice professional nursing.

Sponsoring institution—A hospital, educational, or other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

Supervision—Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

Temporary certification, general or limited—An authorization to perform radiologic procedures for a limited period, not to exceed one year.

TRCR—Texas Regulations for the Control of Radiation (§§289.111-289.126 of this title (relating to Texas Regulations for Control of Radiation)) which are available from the Standards Branch, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189.

§143.3. *The Advisory Board's Operation.*

(a) Purpose. This section sets out the organization and administration and other general policies governing the operation of the advisory board.

(b) Officers.

(1) The chairperson shall preside at all advisory board meetings at which he or she is in attendance and perform all duties prescribed by these sections. The chairperson may serve as an ex-officio member of any committee.

(2) The vice chairperson shall perform the duties of chairperson in case of the absence or disability of the chairperson. In case the office of chairperson becomes vacant, the vice-chairperson will serve until a successor is elected.

(c) Elections.

(1) At the meeting held nearest to August 31 of each odd-numbered year, the advisory board shall elect by a majority vote of those members present and voting, a chairperson and a vice-chairperson.

(2) A vacancy which occurs in the offices of a chairperson and/or vice-chairperson may be filled by a majority vote of those members present and voting at the next advisory board meeting.

(d) Committees.

(1) The advisory board or the chairperson, with the approval of the advisory board, may establish committees necessary to assist the advisory board in carrying out its duties and responsibilities.

(2) The chairperson of the advisory board may appoint the members of the advisory board to serve on committees and may designate the committee chairperson.

(3) Committee chairpersons shall make regular reports to the advisory board in interim written reports and/or at regular meetings, as needed.

(4) Committees shall direct all reports or other materials to the administrator for distribution.

(5) Committees shall meet when called by the chairperson of the committee or when so directed by the advisory board.

(6) The following standing committees shall be appointed by the newly elected chairperson each odd-numbered year to serve a term of two years.

(A) The Program and Instructor Approval Committee shall be composed of two advisory board members who are MRT's, one public member of the advisory board, and one practitioner member of the advisory board.

(B) The Credentialing Committee shall be composed of two advisory board members who are MRT's, one public member of the advisory board, and one practitioner member of the advisory board.

(C) The Continuing Education Committee shall be composed of two advisory board members who are MRT's and one practitioner member of the advisory board.

(e) Meetings. Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Civil Statutes' Article 6252-17.

(f) Quorum. A quorum of the advisory board necessary to transact official business is a majority of the members appointed at the time.

(g) Transaction of official business.

(1) The advisory board is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(2) Advisory board action shall require a majority vote of those members present and voting.

(3) Roberts Rules of Order Revised shall be the basis of parliamentary decisions except where otherwise provided by these sections.

(h) Agendas.

(1) The administrator shall prepare and submit to each member of the advisory board, at least 10 calendar days prior to each meeting, an agenda approved by the chair-

person, which includes items requested by members; items requested by the board, the department, or the administrator; items required by law; old business; and other matters of advisory board business.

(2) The official agenda of a meeting shall be filed with the Texas Secretary of State in accordance with the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(i) Minutes.

(1) Drafts of the minutes of each meeting shall be forwarded to each member of the advisory board for review and comments prior to approval by the advisory board.

(2) After approval by the advisory board, the minutes are official only when affixed with the original signatures of the advisory board chairperson and the administrator.

(3) The official minutes of advisory board meetings shall be kept in the administrator's office and shall be available to any person desiring to examine them during regular office hours.

(j) Attendance.

(1) The policy of the advisory board is that members will attend regular and committee meetings as scheduled.

(2) Except in case of emergency, advisory board members shall notify the administrator at least 48 hours prior to the scheduled meeting if they are unable to be present.

(3) The department may report to the board and the Texas Sunset Advisor, Commission the attendance records of advisory board members.

(k) Reimbursement for expenses.

(1) An advisory board member is entitled to a per diem payment at the rate set by the legislature for state employees in the latest General Appropriations Act passed by the Texas Legislature.

(2) An advisory board member is entitled to compensation for transportation expenses as provided by the latest General Appropriations Act passed by the Texas Legislature.

(3) Payment to advisory board members of per diem and transportation expenses shall be requested on official state travel vouchers which have been approved by the administrator.

(4) Requests for out of state travel for advisory board activities must be approved in advance by the department on appropriate forms.

(5) Attendance at conventions, meetings, and seminars must be clearly related to the performance of advisory board duties and show a benefit to the state.

(l) Policy against discrimination. The advisory board shall make no decision in the discharge of its statutory authority with regard to any person's race, creed, sex, religion, color, national origin, geographical distribution, age, physical condition, or economic status.

§143.4. Fees.

(a) The fees established in this subsection must be paid to the department before any certificate is issued. All fees shall be submitted in the form of a certified check for guaranteed funds or a money order and are nonrefundable.

(b) The schedule of fees for general or limited certification as a medical radiologic technologist are as follows:

- (1) application processing fee—\$20;
- (2) certification fee—\$30 (prorated at \$2.50 per month);
- (3) biennial renewal fee—\$30;
- (4) 60-day late fee—\$25 (plus all unpaid renewal fees when the certificate is renewed within 60 days of expiration);
- (5) certificate and/or identification card replacement fee—\$10.

(c) The schedule of fees for a temporary certificate, general or limited, as a medical radiologic technologist is as follows:

- (1) combination application processing and temporary certificate fee—\$25;
- (2) temporary certificate and/or identification card replacement fee—\$10;
- (3) returned check fee—\$15.

(d) The schedule of examination fees is as follows.

(1) The general examination fee is the fee that will be determined by the ARRT or other agency approved by the department to administer the examination at the time the applicant is to be scheduled or rescheduled for an examination. If the exam applicant is ARRT eligible, the fee shall be paid to the ARRT.

(2) The limited examination fee is the fee determined by the ARRT and/or other agency approved by the department to administer the examination(s) for the specific limited category or categories.

(e) The fee for upgrading a temporary certificate to a renewable certificate, limited or general, will be \$24 (prorated at \$2.00 per month).

(f) The instructor approval fee will be \$15.

(g) The curriculum application and approval fees are as follows:

- (1) institutional or independent sponsor—\$100 per year per course of study;
- (2) site visit (if required)—a fee equal to the round trip travel expenses, including meals and lodging of the inspection committee members, not to exceed \$1,000.

§143.5. Exceptions to Certification.

(a) The purpose of this section is to describe who is exempt from certification under the Act and who must be certified under the Act.

(b) Except as specifically exempted by subsection (c) of this section, the provisions of the Act and these sections apply to any person representing that he or she performs medical radiologic procedures, including students outside of an academic setting.

(c) These sections do not prohibit the following:

- (1) the performance of a radiologic

procedure by a person if the person is a practitioner and performs the procedure in the course and scope of the profession for which that person holds the license;

(2) the performance of a radiologic procedure if the person performs the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act;

(3) the performance of a radiologic procedure by a person in a hospital that participates in the federal Medicare program or accredited by the JCAHO and has received appropriate instruction and training in the use and operation of diagnostic radiologic equipment consistent with either the federal Medicare standards for certification of hospitals or the accreditation standards of the JCAHO. A hospital that instructs and trains a person in the performance of radiologic procedures shall develop a protocol for the instruction and training;

(4) students of medicine, dentistry, podiatry, or chiropractic when under instruction or direction of a practitioner and if the student and the practitioner are in compliance with the rules adopted under the Act;

(5) the performance of an in vitro clinical or laboratory testing procedure as described in the TRCR.

(d) Effective January 1, 1989, all persons who apply to become certified or temporarily certified as a medical radiologic technologist, all persons who believe they are exempt under the Act and these sections, and all other persons interested in performing radiologic procedures need to be aware of the following.

(1) Any person who knowingly or intentionally violates a provision of the Act commits a Class B misdemeanor.

(2) Persons who are not certified under the Act may not use in connection with their practice or employment any words, letters, abbreviations, or insignia indicating or implying that the person is a certified medical radiologic technologist.

(3) There are radiologic procedures which have been identified as more dangerous or hazardous and may only be performed by a practitioner or by a medical radiologic technologist certified under the Act, in accordance with administrative rules adopted by the BCE, the BDE, the BME, and the BPE.

§143.6. Application Requirements and Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures for examination and certification.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.

(2) The department shall not consider an application as officially submitted until the applicant pays the application fee and the fee clears the appropriate financial

institution. The fee must accompany the application form.

(3) Within 30 days of receipt of the application forms and application fee, the department shall send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of notice shall be invalid.

(4) Applications will be accepted for a temporary certificate from students not more than 45 days prior to the date of graduation from an approved medical radiologic technologist education program.

(c) Required application materials.

(1) The application form shall contain the following items:

(A) specific information regarding personal data, social security number, birth date, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and these sections and agrees to abide by them;

(C) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;

(D) a statement that the applicant, if issued a general certificate, limited certificate, or temporary certificate (general or limited), shall return the certificate and identification card(s) to the department upon the expiration, revocation, or suspension of the certificate;

(E) a statement that the applicant understands that the fees submitted are nonrefundable;

(F) a statement that the applicant understands that the materials submitted become the property of the department and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;

(H) a statement that if issued a certificate the applicant shall keep the department advised of his or her current mailing address;

(I) the signature of the applicant which has been dated and notarized; and

(J) a full-face color photo signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two-year period prior to application to the department and the minimum size is two inch by two inch.

(2) Applicants for a certificate who do not qualify under the provisions of §143.7

(c) or (d) of this title (relating to Types of Certificates and Applicant Eligibility) must submit the following educational records:

(A) a photocopy which has been notarized as a true and exact copy of an unaltered official diploma or official transcript indicating graduation from high school; or a certificate of high school equivalency issued by the appropriate educational agency; or official transcript from an accredited college or university indicating that the applicant received a high school diploma or the equivalency;

(B) a photocopy which has been notarized as a true and exact copy of an unaltered certificate of completion from an approved medical radiologic technologist educational program in accordance with §143.9 (relating to Standards for the Approval of Curricula and Instructors). The certificate must contain the following items: the name of the program; the name of the graduate; the exact day and month applicant is recognized as a program graduate; and the signature of the program director or his designate; or if applying up to 45 days prior to graduation, an expected graduation statement signed by the program director or registrar. Within 30 days of the completion date noted in the expected graduation statement, the department must receive either:

(i) a notarized copy of the certificate of completion or letter on letterhead indicating graduation, as set out in subsection (b) of this section; or

(ii) a notarized statement signed by the program director or registrar indicating that the applicant officially completed the program.

(3) The policy for examination results is as follows.

(A) If the applicant is making application for a temporary certificate, an examination score release form shall be signed, allowing the department to obtain the applicant's examination results from the agency or organization administering the examination approved by the board.

(B) If an applicant for a general certificate is:

(i) registered by the ARRT or the ARCRT or certified by the NMTCB on September 1, 1987, or registered by the ARRT at the time of application, a photocopy of the certificate issued by that agency or organization shall be submitted by the applicant in lieu of examination results; or

(ii) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of the applicant's examination results, the applicant shall sign an examination score release form allowing the department to obtain the applicant's examination results from the ARRT or other agency administering the examination approved by the department.

(4) Employment/experience documentation report form requirements are as follows. Persons applying for a general or limited certificate under the special provi-

sions in accordance with §143.7(c) of this title (relating to Types of Certificates and Applicant Eligibility) must submit with their applications a properly completed employment/experience documentation report form(s) signed by a practitioner who has directed the applicant's practice or by an employer attesting that the applicant has the required experience during the period September 1, 1982, through August 31, 1987.

(d) Application approval.

(1) The administrator shall be responsible for reviewing all applications.

(2) Within 30 days after an application is considered complete, the administrator shall approve any application which is in compliance with subsections (b) and (c) of this section and which properly document applicant eligibility, unless the application is disapproved under provisions of subsection (e) of this section.

(e) Disapproved applications.

(1) The department shall disapprove the application if the person:

(A) has not completed the requirements in subsection (c) of this section;

(B) has failed to pass the examination prescribed in §143.8 of this title (relating to Examinations);

(C) was not recognized on September 1, 1987, by the ARRT, or the NMTCB, the ARCRT, or other national credentialing agency or organization acceptable to the department for waiving the examination or limited examination requirements, as set out in §143.7(d) of this title (relating to Types of Certificates and Applicant Eligibility);

(D) has failed to remit any applicable fees required;

(E) has failed or refused to properly complete or submit any application form(s) or endorsement(s), knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification;

(F) has been in violation of the Act, as set out in §143.14 of this title (relating to Violations and Subsequent Actions) or any other applicable provision of this chapter;

(G) has been finally convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medical radiologic technologist as set out in §143.13 of this title (relating to Certifying Persons with Criminal Background to be Medical Radiologic Technologist);

(H) is under restriction in another state, county, territory;

(I) is unable to document the experience required during the period September 1, 1982, through August 31, 1987, in accordance with the special provisions of §143.7(d) of this title (relating to Types of Certificates and Applicant Eligibility); or

(J) fails to postmark on or before January 1, 1990, an application as set in

§143.7(d) of this title (relating to Types of Certificates and Applicant Eligibility);

(2) If after review the administrator determines that the application should not be approved, the administrator shall ask the Credentialing Committee to review the application within 180 days after the application is considered complete. The committee shall take either one of the following actions.

(A) If the committee concurs that the application should not be approved, the committee shall instruct the administrator to give the applicant written notice of the reason for the disapproval and of the opportunity for a formal hearing in accordance with §§1.21-1.32 of this title (relating to Formal Hearing Procedures). Within 10 days after receipt of the written notice, the applicant shall give written notice to the administrator that the applicant either waives the hearing or wants the hearing. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the administrator that the hearing be waived, the department shall disapprove the application.

(B) If the committee determines that the application should be approved, the administrator shall approve the application.

(C) The advisory board shall ratify the decision of the Credentialing Committee at its next regular meeting.

(3) An applicant whose application has been disapproved under paragraph (1)(E) and (F) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication proof satisfactory to the department of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

§143.7. Types of Certificates and Applicant Eligibility.

(a) General. The purpose of this section is to set out the types of certificates issued, and the qualifications of applicants for certification as a medical radiologic technologist.

(1) The department shall prepare and provide to each radiologic technologist a general certificate, limited certificate, or temporary certificate (general or limited), with an identification card(s) which contain the applicant's name, certificate number, and date of certificate issue. The temporary certificate and all identification cards shall indicate an expiration date.

(2) Certificates shall be signed by the commissioner of the department and the chairperson of the advisory board. Identification cards shall bear the signature of the commissioner.

(3) Any certificate and identification card(s) issued by the department remain the property of the department and shall be surrendered to the department on demand.

(4) A person certified as an MR1 shall display his original certificate or have available a certified or notarized photocopy

at his place of employment.

(5) Employers shall keep on file a certified or notarized photocopy of the applicant's original certificate and current identification card.

(6) Neither the MRT nor anyone else shall display or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(7) Neither the MRT nor anyone else shall make any alteration on any certificate or identification card issued by the department.

(b) Special provisions for persons who were nationally certified on September 1, 1987. Upon payment of the application fee and approval by the department, the department shall issue an approval letter for a general certificate to a person who was certified by the ARRT or ARCRT as a radiographer, or was certified by the ARRT as a radiation therapy technologist, or was certified by the ARRT or NMTCB as a nuclear medicine technologist.

(c) Special provisions for persons who have performed radiologic procedures during the five year period, September 1, 1982, through August 31, 1987, and when the application is postmarked on or before January 1, 1990. Upon payment of the application fee and approval by the department, the department shall issue an approval letter for either:

(1) a general certificate to a person who has performed radiologic procedures for not less than two years, as documented on form(s) prescribed by the department; or

(2) a limited certificate to a person who has performed radiologic procedures for not less than one year, as documented on forms prescribed by the department. The category or categories of the limited certificate shall be based upon the type of documented radiologic procedures performed by the applicant. However, an approval letter for a limited certificate in the dental, chiropractic, or podiatric categories may be issued provided the applicant submits written evidence satisfactory to the department of at least one of the following items:

(A) for the dental limited certificate, that on September 1, 1987, the applicant:

(i) had passed the examination administered by the Dental Hygiene National Board;

(ii) was certified on September 1, 1987, as a dental assistant by the DANB;

(iii) had passed the dental radiation health and safety examination administered by DANB on or before September 1, 1987; or

(iv) was licensed on September 1, 1987, as a dental hygienist by the BDE or the appropriate regulatory agency in another state or territory;

(B) for the chiropractic limited certificate, that the applicant was certified by the ACRRT on September 1, 1987;

(C) for the podiatry limited certificate that the applicant was certified by the ASPA on September 1, 1987.

(d) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification under these sections who were not nationally certified on September 1, 1987, or who have not performed radiologic procedures for at least one year during the period September 1, 1982, through August 31, 1987, and persons who meet the special requirements set out in subsection (c) of this section but fail to meet the deadline of January 1, 1990, for postmarking an application to the department:

(1) graduation from high school or its equivalent as determined by the Texas Education Agency;

(2) attainment of 18 years of age;

(3) freedom from physical or mental impairment which could interfere with the performance of duties or otherwise constitute a hazard to the health or safety of patients;

(4) submission of a satisfactorily completed application on a form supplied by the department;

(5) payment of designated application fee and examination fee when appropriate; and

(6) eligibility for the specific certificate requested as set out in subsection (e) of this section.

(e) Specific licensing requirements.

(1) Medical radiologic technologist.

To qualify for a general certificate as an MRT, an applicant shall meet the following requirements in addition to those listed in subsection (d) of this section.

(A) The applicant have must successfully completed a course study in radiologic technology which is accredited by CAHEA or the equivalent as determined by the ARRT guidelines for special eligibility requirements or alternate but equivalent qualifications as determined by the advisory board on an individual basis.

(B) The applicant must possess a current national certification as a registered technologist by the ARRT or successfully complete the ARRT's examination in radiography, radiation therapy, or nuclear medicine; or the NMTCE examination in nuclear medicine.

(2) Limited medical radiologic technologist.

(A) A limited certificate shall be issued to an applicant to practice in a limited area of radiologic technology if the applicant meets the requirements in subparagraph (E) of this paragraph in addition to those listed in subsection (d) of this section.

(B) The categories of limited radiography shall be as follows: Category 1—chest; Category 2—spine; Category 3—extremities; Category 4—dental; Category 5—chiropractic; and Category 6—podiatry.

(C) Holding a limited certificate

in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

(D) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, and bedside radiography.

(E) To qualify for a certificate as a limited radiographer, an applicant must provide documentary evidence satisfactory to the department of:

(i) the successful completion of a limited course of study approved by the board which includes a clinical practicum, as set out in the §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors); and

(ii) the successful completion of the appropriate limited radiographer's examination, in accordance with §143.8 of this title (relating to Examinations).

(3) Temporary medical radiologic technologist (general or limited). To perform radiologic procedures after completion of an approved education program and prior to successful completion of the required examination, a person shall be certified as a temporary radiologic technologist. To qualify as a temporary radiologic technologist, an applicant shall meet the following requirements in addition to those listed in subsection (d) of this subsection.

(A) For the general certificate, an applicant must have successfully completed or be within up to 45 days of successful completion of a course of study in radiography, radiation therapy, or nuclear medicine, which is accredited by CAHEA or the equivalent as determined by the advisory board on an individual basis or the ARRT's special eligibility requirements.

(B) For the limited certificate an applicant must have successfully completed or be within up to 45 days of successful completion of a course of study in limited practice which is accredited by the Commission on Dental Accreditation of the American Dental Association, the CCE, or approved by the department.

§143.8. Examinations.

(a) Purpose. This section sets out the rules governing the administration, content, grading, and other examination procedures for certification.

(b) Examination eligibility. Holders of temporary certificates, limited or general, are allowed to take the appropriate examination provided the holder complies with the requirements of the Act and these sections. Persons who are certified as registered technologists by the ARRT at the time of application to the department are not required to be reexamined for state certification. Additionally, persons who qualify under §143.7(b) and (c) of this title (relating to Types of Certificates and Applicant Eligibility) are not required to be re-

examined for state certification as an MRT.

(c) Approved examination for the general certificate. A general certificate shall be issued upon successful completion of the appropriate examination of the ARRT. The three disciplines are radiography, nuclear medicine technology, and radiation therapy technology. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the general temporary certificate holder.

(d) Approved examination for the limited certificate. A limited certificate shall be issued upon successful completion of the appropriate examination, as follows.

(1) Chest. The ARRT examination for the limited scope of practice in radiography (chest) must be successfully completed.

(2) Spine. The ARRT examination for the limited scope of practice in radiography, excluding those specific sections concerning radiographic procedures of the chest or extremities plus an examination specific to radiographic procedures of the spine developed by or prescribed by the department must be successfully completed.

(3) Extremities. The ARRT examination for the limited scope of practice in radiography (extremities) must be successfully completed.

(4) Dental. The DANB examination on dental radiation health and safety examination or the certified dental assistant examination administered by the DANB must be successfully completed.

(5) Chiropractic. The ACRRT examination must be successfully completed.

(6) Podiatric. The radiation health and safety ASPA examination must be successfully completed.

(e) Standards of acceptable performance. The cut-score set by the board and utilized by the department to determine pass or fail performance shall be 75.

(f) Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the department or the agency or organization administering the examinations prescribed by the department.

(g) Results.

(1) Notification of examinees. Results of an examination prescribed by the board but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) Score release. The applicant is responsible for submitting a signed score release to the examining agency of organization or otherwise arranging to have examination scores forwarded to the department. If the score report does not come directly from the examining agency in writing or on data tape, the results shall be in the form

of a copy which has been notarized as a true and exact copy of the original of either:

(A) a letter or other official notification from the examining agency to the examinee; or

(B) the certificate issued by the ARRT.

(3) Deadlines. The department shall notify each examinee of the examination results within 14 days of the date the department receives the results.

(h) Refunds. Examination fee refunds will be in accordance with policies and procedures of the agency or organization approved by the board to administer an examination prescribed in this section. No refunds will be made to examination candidates who fail to appear for an examination.

§143.9. Standards for the Approval of Curricula and Instructors.

(a) Purpose. The purpose of this section is to establish the minimum standards for obtaining departmental approval of curricula, programs, and instructors to train individuals in performing any radiologic procedures and to qualify for the general or limited certificates, or both.

(b) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by the CAHEA.

(c) Limited certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be offered within the geographic limits of the State of Texas and must either:

(1) be accredited by the CAHEA, the Commission on Dental Accreditation of the American Dental Association, the Chiropractic Council on Education; or

(2) be approved by the department with the advice of the Program and Instructor Approval Committee.

(d) Institutional programs. All sponsoring institutions offering an institutional course of study for the limited certificate which are not accredited in accordance with subsection (c)(1) of this section shall obtain approval prior to the commencement of the program and shall:

(1) complete an application on a form prescribed by the department which includes data requested on administration and organization, faculty, physical facilities, student facilities, and student policies (all required materials shall be submitted to the department not less than six weeks prior to the commencement date of the program);

(2) designate the category(ies) of limited certificate for which training will be provided;

(3) provide a structured curriculum with clearly defined and written course descriptions, lesson plans, objectives, and evaluation techniques and criteria;

(4) primarily provide educational and training opportunities for the student(s) rather than primarily provide service to the institution or its clients/patients;

(5) have clearly defined admission and graduation requirements which are available in writing prior to registration to all prospective students, including the costs of the program, a refund policy, condition for dismissal and re-entrance, and attendance requirements;

(6) provide an adequate faculty qualified through academic preparation, training, or experience to teach the subjects assigned;

(7) designate as the program director one person who holds a certificate, other than a temporary certificate, as a medical radiologic technologist who has not less than three years of education or teaching experience in the appropriate field of practice and who is responsible for the curriculum, the organization of classes, the maintenance of the facilities and records, and all other procedures related to the administration of the program;

(8) designate as the medical director or advisor of the program a licensed practitioner in the appropriate field of practice who is knowledgeable in radiation safety and protection;

(9) provide a ratio of not more than three students to one full-time certified medical radiologic technologist engaged in clinical supervision of the students;

(10) provide instruction or direction by a licensed practitioner for students when performing radiologic procedures;

(11) prohibit students from being assigned to any situation where they would be required to apply radiation to a human being while not under the instruction or direction of a licensed practitioner;

(12) prohibit exposure to human beings from a source of radiation except for diagnostic purposes;

(13) provide appropriate facilities, sufficient volume of procedures, and a variety of diagnostic radiologic procedures to properly conduct the course. Facilities, agencies, or organizations utilized in the program shall be accredited or certified and licensed by the appropriate agencies. Equipment utilized in the program shall be licensed by the Texas Department of Health, Bureau of Radiation Control;

(14) keep a record of each student's attendance and participation, evaluation instruments and grades, clinical experience, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to examining boards, regulatory agencies, and other appropriate organizations, if requested;

(15) issue to each student, upon successful completion of the program, a written statement and a diploma or certificate of completion, which shall include the program's name, the student's name, the date of completion, and the signatures of the program director and medical director/advisor;

(16) permit site inspections by

departmental representatives to determine compliance and conformance to the provision of this section. In lieu of a site inspection, the department may accept the most recent site visit report from a recognized accrediting body as set out in subsection (c) of this section; and

(17) realize that the graduates, success rate on the prescribed examination will be monitored by the department and utilized as criteria for rescinding program approval. In addition to this criteria, the department may rescind program approval in accordance with §143.14 of this title (relating to Violations and Subsequent Actions).

(e) Independent education sponsors. Each independent education course must be approved prior to the commencement date of the course and shall be operated and administered by approved instructors in accordance with subsection (d) of this section. Approved instructors shall submit all required materials to the department not less than six weeks prior to the proposed starting date of the course of study. The completed course approval application shall indicate the limited category for which instruction and training will be provided, in accordance with §143.7(e) of this title (relating to Types of Certificates and Applicant Eligibility).

(1) Approved instructors shall sign

Type of Limited Certificate

Chest
Extremities
Spine
Dental
Chiropractic
Podiatric

and submit to the department the application and supporting materials which includes the following information:

- (A) the proposed starting and ending date of the course;
- (B) the names of the approved instructors and/or lecturers;
- (C) an outline of the curriculum and course content;
- (D) the location of the course;
- (E) the daily hours of the course;
- (F) a list of clinical facilities, letters of agreement from clinical facilities, and clinical schedules; and
- (G) the number of students enrolled.

(2) The student shall be required to complete the required hours of basic theory instruction and clinical hours for the category within 180 days of the program starting date. The approved course of study shall include:

(A) not less than 120 clock hours of basic theory instruction for each of the categories of chest, extremities, spine, dental, and chiropractic and not less than 60 clock hours of classroom instruction for podiatric. The following subject areas shall be included in the instructor directed course of study:

- (i) radiation protection for the patient, self, and others;
- (ii) radiographic equipment,

Clinical Instruction (# of clock hours)

6
30
25
0
60
0

including safety standards, operation, and maintenance;

(iii) image production and evaluation;

(iv) applied human anatomy and radiologic procedures;

(v) patient care and management essential to radiologic procedures; and

(vi) recognition of emergency patient conditions and initiating first aid, plus the requirements established in subparagraph (B) of this paragraph;

(B) a clinical practicum for each category of limited certificate which shall include clinical instruction or laboratory experience in radiologic procedures plus clinical experience under the instruction or direction of a practitioner or a certified MRT for each category of limited certificate, in accordance with the following chart. Clinical experience may be obtained at the student's place of employment, an alternate facility, or a combination thereof. The independent sponsor is responsible for providing or arranging for the required clinical experience and for providing or arranging appropriate student supervision. A student's clinical experience must be completed within 120 calendar days of the corresponding basic theory instruction, as set out subparagraph (A) of this paragraph.

Clinical Experience (# of clock hours)

100
100
100
100
100
50

(3) One approved instructor is required for every 10 students in the clinical environment.

(4) The approved instructor shall agree to have the supervisor of a student's clinical experience certify in writing that the student is or is not proficient in the category of limited certificate which is specified and the student has or has not successfully completed the required clinical experience. Such written documentation shall be provided to the student within 14 days of completion of the clinical experience. Students who successfully complete the required clinical experience shall submit such documentation to the department with the application for temporary certification.

(5) Provided the requirements are met, the approved instructor shall receive a letter from the department for the course(s) indicating approval.

(6) A course shall be denied approval if the application is incomplete or not submitted as required.

(7) If an applicant is denied, the applicant shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing. The formal hearing shall be conducted according to the hearing procedures in §§1.21-1.32 of this title (relating to Formal Hearing Procedures).

(f) Limited instructor qualifications.

(1) An instructor(s) shall meet one or more of the following qualifications:

(A) a certified medical radiologic technologist credentialed as a radiographer by the ARRT, who is qualified by education and experience, effective in teaching the subjects assigned, and meets the standards required by the sponsoring institution, if any;

(B) a certified medical radiologic technologist (excluding a temporarily certified MRT) whose limited certificate category(ies) matches the category(ies) of instruction and training; or

(C) a practitioner who is licensed

and in good standing with the appropriate regulatory agency.

(2) A limited certified medical radiologic technologist may not teach, train, or provide clinical instruction in a program or course different from the current level of certification. For example purposes, an MRT who holds a certificate limited to dental radiography may not teach, train, or provide clinical instruction in a limited course of study for chest radiography.

(3) Program directors for the limited certificate course of study shall have a minimum of three years of education or teaching experience and hold a medical radiologic technologist certificate (general or limited) or have equivalent qualifications approved by the department.

(4) Clinical experience supervisors for the limited certificate shall have a minimum of two years of practical work experience performing radiologic procedures.

(g) Limited instructor approval.

(1) All persons who plan to or who

provide instruction and training in the limited certificate courses of study shall:

(A) submit a satisfactorily completed application form prescribed by the department;

(B) pay the prescribed application fee in accordance with § 143.4 of this title (relating to Fees);

(C) document the appropriate instructor qualifications in accordance with subsection (f) of this section; and

(D) be eligible for instructor approval in accordance with subsection (f) of this section.

(2) Guest lecturers who are not full or part-time employees of the sponsoring institution are not required to apply for instructor approval.

(3) Approved instructors shall be issued a letter acknowledging the department's approval.

§143.10. *Certificate Issuance, Renewals, and Late Renewals.*

(a) Purpose. The purpose of this section is to set out the rules for issuing certificates (limited or general) and temporary certificates (limited or general) and certificate renewal.

(b) Issuance of certificates.

(1) The department shall send each applicant whose application has been approved for a general or limited certificate a form to complete and return with the prorated certification fee.

(2) Upon receiving the applicant's form and fee the department shall issue the person a general certificate or limited certificate and identification card(s) with an expiration date and a certificate number.

(3) The department shall send each applicant whose application has been approved for the temporary certificate (either general or limited) an appropriate temporary certificate and temporary identification card expiring one year from the date of issue.

(4) The department shall replace a lost, damaged, or destroyed general certificate, limited certificate, or temporary certificate (general or limited), and/or identification card(s) upon a written request from the applicant and payment of the replacement fee. Requests shall include a statement detailing the loss or destruction of the original certificate and/or identification card(s), or be accompanied by the damaged certificate or card(s).

(c) Temporary certificates. All temporary certificates, either general or limited, expire one year from the date of issue and are not subject to renewals or extensions for any reason. The department shall send with the temporary certificate information regarding examinations and application deadlines.

(d) Certificates. When issued, a certificate is valid through the MRT's next birth month except as provided by subsection (e)(3) of this section.

(e) Staggered renewals. The depart-

ment shall use a staggered system for certificate renewals.

(1) The renewal date of a certificate shall be on the last day of the MRT's birth month.

(2) Fees shall be prorated when the MRT's initial renewal date occurs less than 12 months after the original date of certification.

(3) Certificates issued within three months of an MRT's birth month shall be issued for that period of time plus the next full year.

(f) Certificate renewal.

(1) The MRT shall renew the certificate biennially.

(2) Each MRT is responsible for renewing the certificate before the expiration date and shall not be excused from paying late fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or late renewal.

(3) The department may not renew the certificate of an MRT who is in violation of the Act or these sections at the time of renewal.

(4) At least 60 days prior to the expiration of an MRT's certificate, the department shall send notice to the MRT at the address in the department's records at the time the notice is sent, of the expiration date of the certificate, the amount of renewal fee due, and a renewal form which the MRT must complete and return to the department with the required renewal fee.

(5) The renewal form shall require the provision of the MRT's preferred mailing address, primary employment address and phone number, category of employment, information regarding misdemeanor and felony convictions (if any since initial certification or last renewal), and continuing education completed in accordance with §143.11 of this title (relating to Continuing Education Requirements).

(6) An MRT has renewed the certificate when the renewal form and required renewal fee are mailed on or before the expiration date of the certificate and received by the administrator. The postmark date shall be considered the date of mailing.

(7) The department is not responsible for lost, misdirected, or undelivered renewal application forms and fees.

(8) The department shall issue renewal identification cards for the current renewal period to an MRT who has met all the requirements for renewal. The cards shall be sent to the preferred mailing address provided on the renewal application form. The department is not responsible for lost or undelivered cards which are not returned to the department by the United States Postal Service or any other mail carriers.

(9) Any certificate not renewed by the expiration date shall be subject to the provisions for late renewal. A certificate not renewed within 60 days after expiration may not be renewed.

(g) Late renewals.

(1) A person whose certificate has expired for not more than 60 days may renew the certificate by submitting to the department the renewal form, continuing education report forms (if required), and the renewal fee. Payment must be in the form of a certified check or money order if sent by mail. If submitted in person, cash will also be accepted by the department's cashier.

(2) The late renewal is effective if it is mailed to the department or personally delivered by the MRT or his/her agent to the department or if it is mailed to the department not more than 60 days after certificate expiration. If mailed, the postmark date shall be considered the date of mailing.

(h) Expired certificates.

(1) The department, by certified mail using the last address known, shall inform an MRT who has not renewed a certificate after a period of more than 60 days after the expiration of the certificate that the certificate has automatically expired. A person whose certificate automatically expires is required to surrender the certificate and identification cards to the department.

(2) A person whose certificate has expired may not use the title or represent or imply that he or she has the title of certified medical radiologic technologist, or use the letters M.R.T., or any facsimile thereof in any manner. Any person required to be certified under the Act who provides medical radiologic procedures without a certificate or with an expired certificate is in violation of the Act. An offense under the Act is a Class B misdemeanor, punishable by up to 180 days in jail or up to \$1,000 fine, or both.

§143.11. *Continuing Education Requirements.*

(a) Purpose. The purpose of this section is to establish the continuing education requirements which an MRT must complete periodically to maintain certification. The requirements are intended to maintain and improve the quality of professional services provided to the public and to keep the MRT knowledgeable of current research, techniques, and practice, and provide other resources which will improve skill and competency in performing radiologic procedures.

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period beginning on the first day of the month following each MRT's birth month and ending on the last day of each MRT's birth month two years hence.

(1) The initial continuing education period shall be voluntary and shall begin on the first day of the MRT's first biennial renewal period. The second period shall be mandatory and shall begin on the first day of the second biennial renewal period.

(2) An MRT who holds a general

certificate must complete 24 hours of continuing education acceptable to the department during each biennial renewal period. A clock hour shall be defined as 50 minutes of attendance and participation.

(3) An MRT who holds a limited certificate must complete 12 hours of continuing education acceptable to the department during each biennial renewal period. A clock hour shall be defined as 50 minutes of attendance and participation.

(4) Each MRT shall be notified of the continuing education requirements with the first biennial renewal period notice sent by the department.

(5) No more than 50% of the required number of hours may be satisfied through home or self-study.

(6) MRT's who hold temporary certificates, either general or limited, are not subject to these continuing education requirements.

(c) Types of acceptable continuing education. Continuing education undertaken by an MRT shall be acceptable if the experience or activity:

(1) is offered for semester hour or quarter hour credit by an institution accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools and is directly related to the disciplines of radiologic technology; or

(2) is offered for continuing education credit by an institution accredited by CAHEA or the Commission on Dental Accreditation of the American Dental Association or the CCE and is directly related to the disciplines of radiologic technology, or meets the following criteria:

(A) the experience or activity is an educational activity in which the content applies directly to the disciplines of radiologic technology or specific to the category of the limited certificate held by the MRT; and

(B) the experience or activity is approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations such as the American Society of Radiologic Technologists, the ARCRT, American Healthcare Radiology Administrators, the American Society of Podiatric Assistants, the Society of Nuclear Medicine, the Chiropractic Council on Education, the Texas Society for Radiologic Technologists, the American Podiatric Medical Association, the American Dental Hygiene Association, the American Medical Association (Category I Continuing Medical Education only), and the American Dental Association.

(d) Additional acceptable activities. Additional activities for which continuing education credit will be awarded are as follows:

(1) successful completion of or recertification in a cardiopulmonary resuscitation course or basic cardiac life

support course during the continuing education period. Such successful completion or recertification shall be awarded three hours credit.

(2) Instruction in approved continuing education activities.

(e) Reporting of continuing education. Each MRT is responsible for and shall complete and file with the department at the time of renewal a continuing education report form approved by the department for each activity for which credit is claimed. Each report form shall be accompanied by documentary evidence acceptable to the department such as official transcripts, certificates, or receipts plus agendas or programs. However, documentary evidence of any home or self-study must include a copy of the post-test or other evaluation in order for the MRT to receive credit.

(f) Determination of clock hour credits. The department shall credit continuing education experiences and activities as follows:

(1) semester hour or quarter hour credits as set in subsection (c)(1) of this section shall be credited for continuing education on the basis of 15 clock hour credits for each semester hour and 10 clock hour credits for each quarter hour successfully completed with a grade of C or better, evidenced by an official transcript;

(2) activities or experiences as set out in subsection (c)(2) and (3) of this section shall be credited on a one-for-one basis with one clock hour credit for each clock hour of attending and participation, or teaching, or instruction.

(g) Activities unacceptable as continuing education. The department may not grant credit for:

(1) education incidental to the regular professional activities of an MRT such as learning from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional association, society or other organization;

(3) any activities completed before or after the two-year continuing education period for which the credit is submitted;

(4) home-study or self-study activities which have no post-test or other measurement or evaluation instrument provided; or

(5) any activities or experiences which do not meet the criteria set out in subsection (c) of this section.

§143.12. Changes of Name and Address

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes.

(b) The certificate holder shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 days of such change(s).

(c) Notification of address changes shall be made in writing, including the

name, mailing address, and zip codes, and be mailed to the administrator.

(d) Before any certificate and identification cards will be issued by the department, notification of name changes must be mailed to the administrator and shall include a notarized copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The certificate holder shall return any previously issued certificate and identification cards and remit the appropriate replacement fee.

§143.13. Certifying Persons with Criminal Backgrounds to be Medical Radiologic Technologists.

(a) Purpose. This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain certificates or temporary certificates as medical radiologic technologists.

(b) Criminal convictions which directly relate to the profession of radiology.

(1) The department may suspend or revoke any existing certificate, disqualify a person from receiving any certificate, or deny to a person the opportunity to be examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an MRT.

(2) In considering whether a criminal conviction directly relates to the occupation of an MRT, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification as an MRT. The following felonies and misdemeanors relate to any certificate of an MRT because these criminal offenses indicate an inability or a tendency to be unable to perform as an MRT:

(i) the misdemeanor of knowingly or intentionally acting as an MRT without a certificate under the Act;

(ii) any misdemeanor and/or felony offense defined as a crime of moral turpitude by statute or common law;

(iii) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against the public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection;

(C) the extent to which any certificate might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of an MRT. In making this determination, the department will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7), the legal authority for the provisions of this section.

(3) The misdemeanors and felonies listed in paragraph (2)(B)(i)-(iii) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Act and these sections.

(c) Procedures for revoking, suspending, or denying a certificate or temporary certificate to persons with criminal backgrounds.

(1) The administrator shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary certificate after hearing in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the formal hearing procedures in §§1.21-1.32 of this title (relating to Formal Hearing Procedures).

(2) If the department denies, suspends, or revokes a certificate or temporary certificate under these sections after hearing, the administrator shall give the person written notice:

(A) of the reasons for the decisions;

(B) that the person, after exhausting administrative appeals, may file an action in a District Court of Travis County, Texas, for review of the evidence presented to the department and its decision; and

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable.

§143.14. Violations and Subsequent Actions.

(a) Disciplinary action.

(1) The department may suspend or revoke a certificate. In addition, the department may refuse to issue or renew any certificate for any of the following reasons:

(A) fraud—the practice of fraud or deceit in obtaining a certificate or in connection with service rendered within the scope of the certificate issued;

(B) substance abuse—habitual intemperance in the use of alcohols or the habitual use of narcotic or hypnotic or other drugs listed as controlled substances by the Drug Enforcement Administration, which has resulted in the MRT being unable to perform his duties or perform those duties in a manner which would endanger the health or safety of the patients to be served;

(C) mental incompetence—a medical finding of mental incompetency;

(D) aiding a violator—aiding or abetting a person not duly certified under

these sections and who represents himself to be so;

(F) incompetence—incompetence in the practice of radiography, nuclear medicine technology, or radiation therapy technology. An MRT shall be deemed incompetent in the practice if the certificate holder has:

(i) engaged in conduct which evidences a lack of ability or fitness to discharge the duty owed to a client, patient, or the general public; or

(ii) engaged in conduct which evidenced a lack of knowledge, or inability to apply principles or skills to carry out the practice for which he is certified;

(F) final conviction of certain crimes—subject to the limitations of §143.13 of this title (relating to Certifying Persons with Criminal Backgrounds to be Medical Radiologic Technologists); and

(G) failure to heed safety standards in the operation of radiologic equipment including the TRCR.

(2) The department may rescind independent sponsor or instructor approval if an instructor or independent sponsor

(A) is a medical radiologic technologist and fails to renew the certificate (limited or general) or if the department suspends or revokes the certificate (limited or general) for any of the reasons set out in paragraph (1)(A)-(D) and (1)(F) of this subsection;

(B) is a practitioner and fails to renew the license or has the license suspended or revoked by the appropriate regulatory agency;

(C) discriminates in decisions regarding student recruitment, selection of applicants, and student training or instruction on the basis of race, creed, sex, sexual preference, religion, or national origin;

(D) fails to maintain or uphold the standards required to properly instruct students by failing to comply with the provisions set out in §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors);

(E) abandons an approved course of study with currently enrolled students; or

(F) knowingly provides false or misleading information on the application for instructor or independent sponsor approval.

(3) The department may rescind institutional approval if the institution:

(A) is guilty of fraud or deceit in offering or obtaining approval for a training program;

(B) fails to heed safety standards in the operation of radiologic equipment, including TRCR;

(C) discriminates in decisions regarding student recruitment, selection of applicants, and student training or instruction on the basis of race, creed, sex, sexual preference, religion, or national origin; or

(D) fails to comply or maintain

the provisions as set out in §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors).

(b) Penalties.

(1) The range of disciplinary penalties which the department may impose includes the following:

(A) denial of an application;

(B) revocation;

(C) suspension of any certificate;

(D) nonrenewal of any certificate;

(E) rescission of institutional approval; or

(F) rescission of independent sponsor approval or instructor approval.

(2) In determining the appropriate action to be imposed in each case, the department shall take into consideration the following factors:

(A) the severity of the offense;

(B) the danger to the public;

(C) the number of repetitions of offenses;

(D) the length of time since the date of the violation;

(E) the number and type of previous disciplinary cases filed against the certificate holder;

(F) the length of time the certificate holder has practiced;

(G) the actual damage, physical or otherwise, to the patient or student, if applicable;

(H) the deterrent effect of the penalty imposed;

(I) the effect of the penalty upon the certificate holder's livelihood;

(J) any efforts for rehabilitation; and

(K) any other mitigating or aggravating circumstances.

(3) A certificate holder is guilty of unprofessional conduct when he commits any of the following:

(A) violates the confidentiality of information or knowledge concerning a patient;

(B) has inaccurately recorded, falsified, altered, or inappropriately duplicated any patient records, including, but not limited to, patient charts or medication administration records;

(C) has provided false or misleading information which is material on an application for employment as a medical radiologic technologist;

(D) discriminates on the basis of race, creed, sex, religion, color, national origin, age, physical condition, or economic status in the performance of radiologic procedures as it relates to human rights and the dignity of an individual;

(E) impersonates or acts as a proxy for an applicant in any examination required for certification or registration;

(F) impersonates another certified or registered technologist or permits another person to use his certificate or

registration for the purpose of practicing medical radiologic technology;

(G) has provided material information which is false or misleading to an employer regarding the status of the certification or registration.

(4) Unless exempt under the provisions of the Act, any person who performs radiologic procedures or holds himself or herself out as authorized to perform radiologic procedures in the state without a valid certificate issued by the department commits an offense which is punishable upon conviction by a Class B misdemeanor.

(c) Disciplinary procedures. Before the invocation of any disciplinary action or administrative penalty authorized by statute or in these sections, the applicant, certificate holder, instructor, independent sponsor, or institutional sponsor may request in writing a formal hearing. Hearings will be conducted according to the procedures set forth in accordance with §§ 211.32 of this title (relating to Formal Hearing Procedures).

Issued in Austin, Texas, on December 14, 1987

TRD-8711808

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

Effective date: January 1, 1988

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For further information, please call
(512) 458-7531

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter S. Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies

★ 28 TAC § 3.3039

The State Board of Insurance adopts on an emergency basis new § 3.3039, concerning mandatory policy provisions for individual policies of accident and sickness insurance. The new section is necessary to implement the provisions of the Insurance Code, Article 3.76, which provides that each individual or group policy of accident and sickness insurance that is delivered, issued for delivery, or renewed in Texas shall provide for payment or benefits on behalf of children to the Texas Department of Human Services (the department) under appropriate circumstances. The new section specifies the language which an insurance policy must use to require payment to the department, and specifies the circumstance under

which benefits must be paid to the department. An imminent peril to the public welfare requires adoption of the new section on an emergency basis in order to avoid denial of the benefits payable to the Texas Department of Human Services under individual policies of accident and sickness insurance.

The new section is adopted on an emergency basis under the Insurance Code, Article 3.76, § 3, which authorizes the State Board of Insurance to prescribe uniform policy provisions, riders, and endorsements for the policy requirements under the Article.

§ 3.3039. Mandatory Policy Provisions.

(a) Each individual policy of accident and sickness insurance that is delivered, issued for delivery, or renewed in Texas on or after January 1, 1988, including a policy issued by a company subject to the Insurance Code, Chapter 20, must contain a benefit provision which states: "All benefits paid on behalf of the child or children under the policy must be paid to the Texas Department of Human Services" whenever:

(1) the Texas Department of Human Services is paying benefits under the Human Resources Code, Chapter 31 or Chapter 32, for financial and medical assistance service programs administered pursuant to the Human Resources Code, and

(2) the parent who purchased the individual policy has possession or access to the child pursuant to a court order, or is not entitled to access or possession of the child and is required by a court to pay child support.

(b) The insurer or group nonprofit hospital service company must receive, at its home office, written notice affixed to the insurance claim when the claim is first submitted, and the notice must state that all benefits paid pursuant to this section must be paid directly to the Texas Department of Human Services.

(c) With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this section, the insurer is authorized to achieve compliance with this section by the use of endorsements or riders, provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this section and the provisions of the Insurance Code.

(d) All policies issued or renewed on and after January 1, 1988, will be considered in compliance with this section if they contain the language prescribed within subsection (a) of this section.

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TRD-8711878

Nicholas Murphy
Chief Clerk
State Board of Insurance

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For further information, please call
(512) 463-6327

Chapter 5. Property and

Casualty Insurance

Subchapter E. Texas Catastrophe Property Insurance Association Plan of Operation

★ 28 TAC § 5.4001

The State Board of Insurance adopts on an emergency basis an amendment to § 5.4001, concerning the plan of operation of the Texas Catastrophe Property Insurance Association (the association). An amendment to paragraph (a)(2)(I) is necessary to implement recent amendment of the Insurance Code, Article 21.49, § 5(c), by providing a basis for calculation of extended coverage for property insurance policies issued by nonadmitted insurance companies affiliated with licensed companies. This amendment is also necessary to provide a basis for calculation of extended coverage for property insurance policies issued using composite rates, and for property insurance policies issued not subject to rates promulgated or approved by the State Board of Insurance, under the Insurance Code, Articles 5.25, 5.26(a), 5.26(b), 5.31, and 5.81. The amendment corrects terminology in the definition of net direct premiums and provides that the extended coverage and other allied lines portion of premiums for certain policies shall be calculated as 40% of total policy premium or the combined actual extended coverage and other allied lines premium. An imminent peril to the public welfare requires adoption of the amendment on an emergency basis in order to provide an appropriate basis for calculation of percentages of participation for participants in the Texas Catastrophe Property Insurance Association.

The amendment is adopted on an emergency basis under the Insurance Code, Article 21.49, § 5, which provides for approval by the State Board of Insurance of the Plan of Operation of the Texas Catastrophe Property Insurance Association for providing catastrophe coverage by property insurance.

§ 5.4001. Plan of Operation.

(a) Definitions.

(1) (No change.)

(2) Definitions in the section. **The following words and terms, when used in this section, shall have the following meanings, unless [Unless] the context clearly indicates otherwise. [dictates the contrary.]**

(A)-(H) (No change)

(I) Net direct premium is--

(i) For association policies with inception dates on and after January 1, 1988, net direct premiums shall mean all statewide direct written premiums (excluding direct written premiums in the catastrophe area as designated by the State Board of Insurance [Tier I of the Seacoast Territory as described in the Texas General Basis Schedule, as promulgated by the board]) restored to manual level and[,] further[,] adjusted to the manual

rate level applicable to the catastrophe area as designated by the State Board of Insurance [Tier 1 of the Seacoast Territory as described in the Texas General Basis Schedule, as promulgated by the board] and shall be the sum of the following:

(I)-(III) (No change.)

(IV) the extended coverage and other allied lines portion of the following policies, which shall be calculated as follows:

(-a-) 40% of the total policy premium for any commercial policy written with a composite rate (premium) including, but not limited to, policies issued under the highly protected risk rating plan; or

(-b-) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is the greater, for any commercial policy written with a rate (premium) that has not been promulgated or approved by the board under the Insurance Code, Article 5.25, 5.26(a), 5.26(b), or 5.81, including, but not limited to, policies issued under an approved deviation plan pursuant to the Insurance Code, Article 5.26(c), and policies issued pursuant to the authority granted under the Insurance Code, Article 5.31; or

(-c-) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is greater, for any property insurance policy written by an insurance company that is not authorized to transact property insurance in Texas, and which is affiliated under common management or control of an insurance company licensed to transact property insurance in Texas.

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

(J)-(N) (No change.)

(b)-(f) (No change.)

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Nicholas Murphy
Chief Clerk
State Board of Insurance

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For further information, please call

(512) 463-6327

Inspections for Windstorm and Hail Insurance

★ 28 TAC §§5.4601-5.4603

The State Board of Insurance adopts on an emergency basis new §§5.4601-5.4603, concerning the implementation of a program of inspections of structures under consideration for windstorm and hail insurance coverage by the Texas Catastrophe Property Insurance Association. The inspections are necessary to provide a program for uniform inspection and cer-

tification procedures as a basis for encouraging the availability of windstorm and hail insurance in a catastrophe area. The new sections set requirements for requesting inspections, set the number of inspections that shall be performed, set standards for use during inspections, and specify forms for use concerning inspections. An imminent threat to the public welfare requires adoption of these new sections on an emergency basis in order to implement recent addition of §6A to the Insurance Code, Article 21.49, for mandatory inspections concerning windstorm and hail insurance.

The new sections are adopted on an emergency basis under the Insurance Code, Article 21.49, §6A, which authorizes the State Board of Insurance to promulgate rules and forms to effect inspections for windstorm and hail insurance and certifications of insurability for coverage by the Texas Catastrophe Property Insurance Association.

§5.4601. *Short Title* This section, §5.4602, and §5.4603, of this title (relating to Windstorm Inspection Manual; and Forms for Windstorm Inspections) contain rules and regulations governing and implementing inspections for windstorm and hail insurance written by the Texas Catastrophe Property Insurance Association, as provided in the Insurance Code, Article 21.49, and shall be known as the *Windstorm Inspection Manual*.

§5.4602. *Windstorm Inspection Manual* The following subsections are applicable to inspections for compliance with building specifications on all structures that are constructed or repaired, or to which additions are made, on or after January 1, 1988, and that are to be considered insurable property as defined in the Insurance Code, Article 21.49, for windstorm and hail insurance written by the Texas Catastrophe Property Insurance Association (the association).

(1) Building instruction requirements. Structures located in the designated catastrophe area must comply with the following codes set forth in the plan of operation of the association:

(A) Structures located inland of the Intracoastal Canal must comply with the Southern Standard Building Code, as amended, effective May 8, 1973. Subsequent amendments of that Code do not apply.

(B) Structures located seaward of the Intracoastal Canal must comply with the current Windstorm Resistant Construction Code.

(2) Operation.

(A) As soon as possible, the contractor or owner shall notify the Windstorm Inspection Section of the State Board of Insurance (the board), by Form WPI-1 or by letter, of any intention to build, add to, or repair a structure. Notification by letter must contain the same information required by Form WPI-1.

(B) Upon the receipt of notice, the information will be entered into the computer and a file number assigned. The contractor or owner shall be notified of this file number and of a toll free number to call for purposes of requesting an inspection date and time.

(C) Requests for inspections by using the toll free number will prompt an inspection request by facsimile machine, computer, or other appropriate manner. Requests will be received by the board during normal business hours. Upon receipt of notice, the proper field office will be notified of a request and shall conduct an inspection within 48 hours. This 48-hour period shall not include Saturdays, Sundays, or state holidays.

(D) All structures that meet building construction requirements and are inspected or approved by the board will be eligible for a certificate of compliance as evidence of insurability by the association.

(E) A fee of \$35 for each of the three inspections must be paid to the board prior to issuance of a certificate of compliance. An additional \$35 fee will be charged for a fourth inspection of mechanical structures, if required. An inspection fee will not exceed \$140. The fee must be paid by check or money order after the final inspection. Payment should be made payable to the State Board of Insurance, mailed to the Windstorm Inspection Section, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The assigned file number shall be indicated with each payment. Upon receipt of final payment, a certificate of compliance shall be mailed to the owner or contractor.

(F) If an inspection indicates that a structure fails to comply with a Building Construction Requirement, a Form WPI-6 shall be posted at job site noting the unsatisfactory items and the proper compliance procedure to be applied.

(3) Periodic inspections. Each required periodic inspection will be made after a request is received from the contractor or owner using the same process outlined in subparagraph (2)(C) of this section.

(4) Coordinating inspections. A copy of Form WPI-1 will be mailed to the proper governmental inspection authorities in the respective area. Each request by contractor or owner will alert the local office of the State Board of Insurance to notify governmental inspection authorities in order to coordinate inspections, when possible.

(5) Inspection schedule. Inspections shall be conducted in accordance with this manual to the best of the board's ability. Failure to comply with this manual shall not impede building progress. Inspections made subsequent to prescribed schedules shall keep disturbances at a minimum.

(6) Inspection standards.

(A) Buildings shall be inspected to determine compliance with the applicable building construction requirements under paragraph (1) of this section. The three

following inspections, under normal circumstances and normal building conditions, shall be adequate for certification.

(B) The three inspections shall be as follows.

(i) **Foundation.** Foundations shall be inspected for reinforcement and bolt tie downs on slab-foundations. Pilings or pier and beam foundations shall be inspected prior to installation of floor joists or other materials which would impede proper inspection process. The fee for this inspection shall be waived if a certificate of foundation design and construction, Form WPI-9, is furnished to the Board prior to inspection.

(ii) **Framing.** Framing, exterior siding underlayment, and roof decking shall be inspected after installation, but prior to the installation of any interior finish which would impede the ability to verify the connections of various members and/or the nailing pattern of various materials.

(iii) **Final framing.** The exterior finish, less any trim that would conceal the nailing pattern, and the roof covering shall be inspected. A fourth inspection of mechanical equipment may be required.

(C) To qualify for windstorm coverage by the association, all structures, additions or repairs, construction of which is commenced on or after January 1, 1988, must be inspected and certified in accordance with this manual or by a qualified engineer. A qualified engineer's certification must be submitted on the Building Certificate Form WPI-2.

(7) Education program.

(A) The board shall publish pamphlets that outline the necessary steps to meet the basic building construction requirements that deem to comply with the plan of operation of the association.

(B) Pamphlets shall be distributed to local government offices handling building permits or health and safety requirements in the designated catastrophe area.

(C) Pamphlets will be distributed to building trade associations and building supply outlets in the designated catastrophe area.

(D) The board shall utilize all news media, including public service announcements, to advertise the Windstorm Program.

(E) The board shall provide and promote a public speaking program to service clubs and professional organizations.

(F) The board shall provide educational programs relating to building construction requirements for contractors, owners, and other appropriate parties.

§5.4603. *Forms for Windstorm Inspections.*

(a) The State Board of Insurance adopts by reference the following forms for use in windstorm inspections.

(1) Application For Building Inspection Compliance with Wind Resistant Code, Form WPI-1;

(2) Building Certificate, Form WPI-2;

(3) Foundation Inspection, Form WPI-3;

(4) Framing Inspection, Form WPI-4;

(5) Final Framing Inspection, Form WPI-5;

(6) Mechanical Equipment Inspection, Form WPI-6;

(7) Field Form, Form WPI-7;

(8) Certificate of Compliance, Form WPI-8;

(9) Inspection Acknowledgement Form, Form WPI-9; and

(10) Foundation Certificate, Form WPI-10.

(b) These forms are published by and available from the State Board of Insurance. Copies of these forms may be obtained from the Windstorm Inspection Section of the Property Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

Issued in Austin, Texas, on December 31, 1987

TRD-8711915

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date December 31, 1987

Expiration date April 29, 1988

For further information, please call

(512) 463-6327

Chapter 19. Agent's Licensing Subchapter K. Continuing Education Requirements

★ 28 TAC §§ 19.1001-19.1011

The State Board of Insurance adopts on an emergency basis new §§ 19.1001-19.1011, concerning continuing education requirements for agents licensed under the provisions of the Insurance Code, Article 21.07-1 and Article 21.14. The new sections are necessary to comply with recent amendments to Article 21.07-1 and Article 21.14. The recent statutory amendments direct the State Board of Insurance to certify continuing education programs for agents and mandate agents' participation in the programs. New § 19.1001 summarizes the purpose and scope of these new sections for establishing continuing education requirements for certain agents under the Insurance Code. Section 19.1002 defines words and terms used in these new sections. New § 19.1003 provides a schedule for implementation of continuing education requirements and sets forth certain exemptions from applicability.

Section 19.1004 provides the details of the educational requirements. New § 19.1005 determines the consequences of failing to comply with education requirements. Section 19.1006 establishes a procedure for designating courses as approved for the purpose of meeting the continuing education requirements.

New § 19.1007 and new § 19.1008 set forth record keeping responsibilities in connection with this subchapter and provide for verification of the records by the board. Section 19.1009 enumerates the duties of the advisory council to be appointed by the board to furnish information and assistance in the conduct of the continuing education programs. New § 19.1010 directs that certain information be distributed upon request. New § 19.1011 approves various forms for required use with the program. An imminent peril to the public welfare requires adoption of these new sections on an emergency basis to comply with recently effective amendments prescribing a mandatory continuing education program for agents under the Insurance Code.

The new sections are adopted on an emergency basis under the Insurance Code, Article 21.07-1 § 3A and Article 21.14, § 5b, which direct the State Board of Insurance to adopt procedures for certifying continuing education programs for agents and to certify such programs.

§ 19.1001. *Purpose and Scope.* The purpose of this subchapter is to set forth a procedure for certifying continuing education programs for agents licensed under the Insurance Code, Article 21.07-1 and Article 21.14, and to establish requirements for implementation of the continuing education programs mandated in the Insurance Code, Article 21.14; § 5b and Article 21.07-1, § 3A.

§ 19.1002. *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Advisory Council—The Continuing Education Advisory Council as described in § 19.1009 of this title (relating to Texas Continuing Education Advisory Council).

Approved course of study—A course which has been deemed to meet the requirements in § 19.1006 of this title (relating to Approved Courses of Study).

Board—The State Board of Insurance.

Class hours—Contact hours of formal class instruction or the equivalent as may be defined and adopted by the Advisory Council.

Council—The Advisory Council.

Educational coordinator—The person in the Agent's License Division of the State Board of Insurance who is designated to work with the Advisory Council in administering the continuing education program and who may be addressed as follows: Educational Coordinator, Agent's License Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

Licensee—Any holder of a license under the authority of the Insurance Code, Article 21.07-1 or Article 21.14.

Provider—A statewide agents' association or a professional association, or a local chapter of a statewide agents' associa-

tion or professional association; an accredited college or university; a proprietary school; or an educational publisher; or an insurance company; or a Texas public school system.

Staff—Persons employed in the Agent's License Division of the State Board of Insurance.

§19.1003. Applicability of Requirement.

(a) The continuing education requirements shall apply to all individual licensees from the January 1, 1988, unless a licensee is directly exempted by statute or in this subchapter and makes proper application for such exemption. Instructions for applying for an exemption may be obtained from the educational coordinator.

(b) The continuing education requirement shall not apply to:

(1) persons who maintain a license solely for the purpose of receiving residual or renewal commissions. Such persons must certify as a condition of renewal of the license that they have performed none of the acts of an insurance agent as defined in the statute governing such license and that the sole reason for maintenance of the license is to receive residuals or renewals;

(2) licensed or unlicensed persons who share in the profits of a local recording agent under the provisions of the Insurance Code, Article 21.14, §3a;

(3) those persons holding a license under the authority of the Insurance Code, Article 21.07-1, §4A; or

(4) nonresident licensees who are subject to continuing education requirements in their home state, provided the residence state recognizes reciprocity with Texas continuing education requirements.

(c) These requirements shall apply from January 1, 1988; except that a licensee's initial liability for continuing education shall be determined as follows:

(1) A licensee whose license had an effective issue date or renewal date within 90 days prior to January 1, 1988, shall be liable for the entire requirement.

(2) Liability for continuing education of all other licensees may be determined by consulting the following subparagraphs of this paragraph.

(A) If the date the license was first issued or was last renewed is from January 1, 1985, to March 31, 1985, the number of hours of continuing education required before the next renewal is zero.

(B) If the date the license was first issued or was last renewed is from April 1, 1985, to June 30, 1986, the number of hours of continuing education required before the next renewal is zero.

(C) If the date the license was first issued or was last renewed is from July 1, 1986, to September 30, 1986, the number of hours of continuing education required before the next renewal is five hours.

(D) If the date the license was first issued or was last renewed is from October 1, 1986, to December 31, 1986, the

number of hours of continuing education required before the next renewal is 10 hours.

(E) If the date the license was first issued or was last renewed is from January 1, 1987, to March 31, 1987, the number of hours of continuing education required before the next renewal is 15 hours.

(F) If the date the license was first issued or was last renewed is from April 1, 1987, to June 30, 1987, the number of hours of continuing education required before the next renewal is 20 hours.

(G) If the date the license was first issued or was last renewed is from July 1, 1987, to September 30, 1987, the number of hours of continuing education required before the next renewal is 25 hours.

(H) If the date the license was first issued or was last renewed is from October 1, 1987, to December 31, 1987, the number of hours of continuing education required before the next renewal is 30 hours.

(3) All licenses issued or renewed after January 1, 1988, carry a continuing education requirement of 30 hours per renewal period unless otherwise exempted.

(4) Solicitors for local recording agents must use the original issue date of the license held on January 1, 1988, to calculate the cycle for reporting continuing education hours unless such a solicitor has written permission from the State Board of Insurance to use a new agency renewal date. In no case under this paragraph will liability be less than 30 hours.

§19.1004. Continuing Education Requirements.

(a) The licensee must successfully complete not less than 30 class hours in each 24-month period beginning on the issue date of the license and ending on the expiration date of the license except as follows:

(1) A licensee under the Insurance Code, Article 21.07-1, in the licensee's first year of licensure shall provide certification upon the first renewal of that license to the board of successful completion of at least 15 class hours done within the first year following the issuance of the license and 15 additional class hours.

(2) A Texas local recording agent who does not hold a license under the Insurance Code, Article 21.07-1, must provide certification to the board that 15 class hours have been successfully completed during the year immediately prior to the first renewal of that license. After the first renewal, the local recording agent is subject to the full requirement as described in this subchapter.

(b) If licenses are held both under the Insurance Code, Article 21.07-1, and under the Insurance Code, Article 21.14, only 30 class hours must be completed in each 24-month period, and these may be taken entirely from the list of courses approved for either license or may be divided between the lists in any way. The intent of these sections that will be enforced is that each licensee receive at least 30 hours of continuing education in each 24-month period.

§19.1005. Failure to Comply. Failure of a licensee to provide satisfactory evidence of successful completion of the required number of hours of continuing education at the time of license renewal, in the absence of an exemption, is a ground for refusing renewal of the license in accordance with the provisions of the Insurance Code, Article 21.07-1, §12, or Article 21.14, §16. No extensions of time will be granted. A licensee whose license renewal is refused shall not be entitled to file another application of the same type within one year from the effective date of the refusal.

§19.1006. Approved Courses of Study.

(a) An approved course of study is one that has been submitted to the board for approval on SBI Form LDCE-002, has been reviewed and approved by staff and has been placed on the list of approved courses, form LDCE-002, except that the council shall determine the hours of credit to be given for the several national examination certification programs. These programs include but are not limited to CIC, CLU, CPCU, and LUTC, and no further action on the part of staff or provider shall be required for approval of these courses. Further, any insurance course that is part of the degree curriculum of an accredited college or university shall be awarded 15 hours of continuing education credit for each semester hour earned.

(b) The list of approved courses shall clearly designate whether the courses require class attendance or not, and each license to which the course hours may be applied. The list shall be available to all interested parties on request made to the educational coordinator.

(c) To be considered for approval, the course of study must meet the following requirements:

(1) The content of the course must be intended to increase the licensee's knowledge and understanding of insurance principles and coverages; applicable laws; rules and regulations promulgated by the board; recent and prospective changes in coverages, law, regulation, and practice; management of the licensee's insurance business, or duties and responsibilities of the agent.

(2) Successful completion of the course by a licensee must be verifiable to the satisfaction of staff.

(d) The number of class hours for a course of study shall be assigned by staff in accordance with guidelines laid down by the Advisory Council, and any decision as to the number of hours assigned to a particular course by staff may be appealed to the Advisory Council by the provider of the course by making written application to the Chairman, Continuing Education Advisory Council, c/o State Board of Insurance, Agent's License Division, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

(e) In order for a course to remain on the list of approved courses, the provider

must agree:

(1) to maintain records of attendance and enrollment for a minimum of four years and to make these records available to the board at the time and place of the board's choosing; and

(2) to update course material as required by changes in statute, rule, or practice.

(f) A particular course may not be used by a licensee for continuing education credit more than once in any reporting period.

(g) A licensee who teaches an approved course may receive $\frac{1}{3}$ of the class hour credit toward meeting the continuing education requirement, but this credit may not be used more often than once in any one reporting period.

(h) The following types of courses shall not be considered for approval:

(1) a course that is used, or a course based on a text that is used, for pre-license training or qualifying examination preparation;

(2) any course or text used or approved for the local recording agents educational requirement under the Texas Insurance Code, Article 21.14, §5a;

(3) courses teaching general accounting or other general business skills, speed reading, or computer use;

(4) courses in motivation, goal-setting, time management, or communication;

(5) meetings held in conjunction with the regular business of the licensee; or

(6) training relating to the marketing practices of a specific company.

§19.1007. Licensee's Responsibility for Record Keeping. Licensees are responsible for maintaining their own continuing education records. This includes preserving for four years copies of the certifications received upon completion of an approved course. The accuracy of a licensee's records is subject to verification at any time, as more particularly set forth in §19.1008 of this title (relating to Records and Audit).

§19.1008. Records and Audit.

(a) The provider shall furnish to each licensee who successfully completes an approved course a certificate of completion, SBI Form LDCE-001, and shall make available a blank SBI Form LDCE-003, Licensee's Continuing Education Summary Report. The certificate of completion shall include the following information: the licensee's full name, address, State Board of Insurance file number, and license type, the course provider's name and the State Board of Insurance course number, the date of successful completion, the number of course hours credit being requested, and the signature of an approval official of the provider.

(b) The licensee shall furnish to the board as part of the license renewal, SBI Form LDCE-003, Licensee's Continuing Education Summary Report which the

board at any time may verify by requiring submission of the completion certificates.

(c) All continuing education reports and records submitted or maintained for the purpose of licensure or continued course approval are subject to audit or review by the board.

(d) If such records are audited or reviewed and are suspected of being falsified, incomplete, or in any way questionable, the licensee or provider shall have 30 days in which to correct the discrepancies or submit new documentation.

(e) If compliance has not been made within the 30-day period, the license may be revoked or not renewed, and if revoked or not renewed, the licensee shall not be entitled to file another application for a license of the same type within one year from the effective date of the revocation or non-renewal.

(f) In the case of a provider, if the required corrections have not been taken by the end of the 30-day period, approval may be withdrawn for any courses administered by the provider and that provider may be prevented from resubmitting or submitting any courses for approval for a period of 180 days.

§19.1009. Texas Continuing Education Advisory Council.

(a) The board shall create an Advisory Council to furnish the board with information and assistance in the conduct of the continuing education program for agents licensed either under the Insurance Code, Article 21.07-1, or under the Insurance Code, Article 21.14.

(b) The council shall be appointed by the board and serves at the board's pleasure. The board may, from time to time, make additional appointments to replace members who have resigned.

(c) The composition of the council shall be as follows: representatives of the several segments of the insurance community including, but not limited to, members of home office and agency force of legal reserve life insurance companies and companies writing property and casualty insurance, and educators and/or educational administrators. The educational coordinator shall be an ex officio member of the council, participating fully, but unable to vote.

(d) The primary role of the council shall be advisory, and it shall offer advice as to the following:

(1) method of course approval;

(2) qualifications of course instructors/graders; and

(3) method of establishing hourly equivalents for courses not involving class attendance.

(e) The council shall meet at least quarterly during the first year after adoption of this subchapter, and at least semi-annually thereafter. At the first meeting of the Advisory Council, the council shall do the following:

(1) elect a chairman and any other

officers it desires and establish rules as to internal procedure;

(2) develop a set of guidelines for use by the educational coordinator in approving courses and assigning credit hours to courses;

(3) assign credit hours to LUTC, CIC, CLU, and CPCU course parts leading to certification; and

(4) at that time or later designate any type of course that shall not receive approval in addition to those excluded by these sections.

(f) At a subsequent meeting, the chairman of the council may in the chairman's sole discretion divide the council into such subcommittees as the chairman deems may be required.

(g) The council may amend its guidelines as it sees fit. All rules and guidelines that this council passes shall be deemed procedural guidelines, not rules binding on the State Board of Insurance.

(h) At all meetings after the first, the council will hear appeals from providers who are not satisfied with hours assigned to their courses, and when possible, settle these appeals at the time of hearing them, or at least within 30 days, providing the educational coordinator with a written decision which shall be transmitted promptly to the provider.

(i) The council will serve without pay, but a reasonable per diem and travel allowance will be made available to each member of the council in order that the widest possible cross section of the insurance community be represented on the council.

§19.1010. Distribution of Rules and Attachments.

(a) A copy of this subchapter as promulgated by the State Board of Insurance shall be given to any interested person upon request made to the educational coordinator.

(b) No copy of this subchapter may be distributed without one copy of each form used in the administration of this subchapter being attached.

(c) A copy of the Insurance Code, Article 21.07-1, §3A, and Article 21.14 §5b, shall be distributed with every copy of this subchapter.

§19.1011. Forms Adopted by Reference.

The State Board of Insurance adopts by reference certain forms to be used in conjunction with the administration of this subchapter. These forms are published by the State Board of Insurance and copies of the forms may be obtained from the Educational Coordinator, Agent's License Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. Licensees and providers shall use such forms as are required by the provisions of this subchapter. The forms adopted by reference are specifically identified as follows:

(1) SBI Form LDCE-001, Continuing Education Certificate of Completion;

(2) SBI Form LDCE-002, Request

for Approval of Continuing Education Course; and

(3) SBI Form LDCE-003, Licensee's Continuing Education Summary Report.

Issued in Austin, Texas, on December 31, 1987.

TRD-8711916 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 31, 1987
Expiration date: April 29, 1988
For further information, please call
(512) 463-6327.

◆ ◆ ◆
Chapter 25. Insurance
Premium Finance
Subchapter H. Annual Reports,
Examinations, and Assessments
★28 TAC §25.712

The State Board of Insurance adopts on an emergency basis new §25.712, concerning assessment of insurance premium finance companies in 1988. This section is necessary to provide a rate of assessment sufficient to meet the expenses of performing the board's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under new §25.712, the board levies a rate of assessment for 1988 to cover general administrative expense and collects from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1987 calendar year. An imminent peril to the public welfare requires that the section be adopted on an emergency basis in order to continue the proper functioning of administrative regulation of insurance premium finance companies in Texas. The rate of assessment has recently been determined and companies must know the amount of assessment to pay before the due date. Timely payment of assessments is necessary for adequate support of regulation of insurance premium finance companies by the State Board of Insurance.

The new section is adopted on an emergency basis under the Insurance Code, Articles 24.06, §(c), which provides that each insurance premium finance company licensed by the board shall pay an amount assessed by the board to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies; and Article 24.09, which authorizes the State Board of Insurance to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies.

§25.712. *General Administrative Expense Assessment, 1988.* On or before April 1,

1988, each insurance premium finance company holding a license issued by the State Board of Insurance under the Insurance Code, Chapter 24, shall pay to the Texas State Board of Insurance an overhead charge which the board shall assess to cover the general administrative expense attributable to the regulation of insurance premium finance companies. Payment shall be by check, which shall be filed with the report required by the Insurance Code, Article 24.10(b), at the offices of the State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The assessment to cover general administrative expense shall be computed and paid as follows.

(1) Payment shall be in the amount of 0.00815 of 1.0% of the total loan dollar volume of the company for the calendar year 1987.

(2) Should the overhead charge, as computed under paragraph (1) of this section, produce an overhead assessment of less than \$250, a minimum overhead assessment of \$250 shall be levied and collected.

(3) The overhead assessments are to be based on the total loan dollar volume which the insurance premium finance company has reported to be the board, except where there has been an understating of total loan dollar volume.

Issued in Austin, Texas, on December 31, 1987.

TRD-8711914 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 31, 1987
Expiration date: April 29, 1988
For further information, please call
(512) 463-6327.

◆ ◆ ◆
TITLE 34. PUBLIC
FINANCE
Part I. Comptroller of
Public Accounts
Chapter 3. Tax Administration
Subchapter Q. Franchise Tax
★34 TAC §3.391

The Comptroller of Public Accounts adopts on an emergency basis the repeal of §3.391, concerning franchise tax—general information. The repeal is adopted on an emergency basis so that a substantially revised section may be adopted on an emergency basis.

This repeal is adopted on an emergency basis under the Texas 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 franchise tax.

§3.391. *Franchise Tax—General Information*

Issued in Austin, Texas, on December 30, 1987

TRD-8711848 Bob Bullock
Comptroller of Public
Accounts

Effective date: January 1, 1988
Expiration date: April 30, 1988
For further information, please call
(512) 463-4004

◆ ◆ ◆
The Comptroller of Public Accounts adopts on an emergency basis new §3.391, concerning accounting methods. The new section will replace existing §3.391, concerning franchise tax-general information, which is repealed. The new section incorporates major changes to the franchise tax law enacted by the 70th Legislature, 1987. With certain specified exceptions, all corporations must report their franchise tax using generally accepted accounting principles unless the corporation's surplus is less than \$1 million, as determined by the method used to compute its federal income tax, in which case the corporation may report its franchise tax using generally accepted accounting principles or the method used to compute its federal income tax. The new section clarifies which accounting methods should be used to determine the amount of franchise tax due. The new section is adopted on an emergency basis in order for it to be effective on January 1, 1988.

The new section is adopted on an emergency basis under the Texas 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.

§3.391. *Accounting Methods.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1988.

(b) General rules. The provisions of this subsection apply to both the generally accepted accounting principles (GAAP) and federal income tax methods.

(1) A corporation is required to use the same accounting method in computing gross receipts as it uses in computing surplus.

(2) Regardless of any requirements or allowances under GAAP or the Internal Revenue Code, the calculation of franchise tax shall be performed in accordance with all applicable provisions of the Tax Code, Chapter 171, and related sections of this title.

(3) The financial condition as of the date required by the Tax Code, §171.153, must reflect the use of GAAP or other methods required by the Tax Code, Chapter 171, for all transactions through such date.

(4) The filing of a report using either the GAAP method or the federal income tax method shall constitute an irrevocable election of such method for the reporting period.

(5) A change will be recognized prospectively only, unless it corrects an ac-

counting error. An accounting error results from a mathematical mistake, a mistake in the application of accounting principles, or an oversight or unintentional misuse of facts that existed on the date upon which the tax is based. Subsequent events (i.e., events or transactions occurring after the date upon which the report is based) will not be considered, even if the subsequent event provides additional evidence with respect to conditions that existed on the date upon which the tax is based.

(6) The cost method of accounting must be used for investments in other corporations. Cost must be the original valuation of the investment under GAAP, without reduction for amortization of goodwill or any write-downs. A transferee's cost must include pre-acquisition earnings of an investee. The cost of an investee may be reduced by legally declared dividends of the investee to the extent that such dividends exceed the investee's earnings, as determined under GAAP.

(7) Transfers of assets must be reported at the transferor's basis, as determined under the reporting method used for franchise tax, if allowed by GAAP. The transferor's basis may not, however, be reduced by unrealized, estimated, or contingent losses for the purposes of this subsection.

(c) Generally accepted accounting principles method.

(1) For purposes of this title, unless the context clearly requires otherwise, GAAP means those broad rules of accounting formally accepted by the American Institute of Certified Public Accountants (AICPA) or its designees through publication of a statement, interpretation, opinion, or research bulletin. If no such pronouncement has been published and is effective, such formal acceptance may be in the form of a written interpretation of a committee of the AICPA or its designee. In cases where no such interpretation has been published and is effective, formal acceptance may be through accepted industry accounting practices, publications of the Securities and Exchange Commission, publications of regulatory agencies, or any other means which may be shown by the taxpayer to indicate formal acceptance.

(2) A corporation may report its franchise tax using any allowable method without regard to accounting methods used for the general ledger, financial statements, or any other financial reports. However, factual assertions made for published financial statements will be presumed to be accurate unless the corporation or the comptroller can show the assertions are incorrect.

(3) If the majority of the voting stock of a corporation is acquired through a purchase, as described under GAAP, the assets and liabilities of the acquired corporation must be revalued by the purchaser based on the purchase price using GAAP (i.e., push-down accounting must be used).

(d) Federal income tax method.

(1) If a corporation is found to be ineligible to use the federal income tax method (e.g., as a result of an audit by the comptroller or the Internal Revenue Service), the corporation will be required to report its franchise tax using the GAAP method.

(2) In determining if surplus is less than \$1 million for purposes of the Tax Code, §171.109(c) and §171.112(c), a corporation must apply the methods used in the last federal income tax return originally due before the franchise tax report is originally due, unless another method is required under a specific provision of this title or the Tax Code, Chapter 171.

(3) Income exempt for federal income tax purposes must be included in surplus and receipts based on the same method used for similar items on the federal income tax return. Expenses which are non-deductible for federal income tax purposes may be excluded from surplus if they are allowable for franchise tax purposes, based on the same method used for similar items on the federal income tax return.

Issued in Austin, Texas, on December 30, 1987

TRD-8711849 Bob Bullock
Comptroller of Public
Accounts

Effective date: January 1, 1988
Expiration date: April 30, 1988
For further information, please call
(512) 463-4004

★ 34 TAC §3.403

The Comptroller of Public Accounts adopts on an emergency basis the repeal of §3.403, concerning gross receipts: determining percent of Texas business. The repeal is adopted on an emergency basis so that a substantially revised section may be adopted on an emergency basis.

This repeal is adopted on an emergency basis under the Texas 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 franchise tax.

§3.403. *Gross Receipts: Determining Percent of Texas Business.*

Issued in Austin, Texas, on December 30, 1987

TRD-8711846 Bob Bullock
Comptroller of Public
Accounts

Effective date: January 1, 1988
Expiration date: April 30, 1988
For further information, please call
(512) 463-4004

The Comptroller of Public Accounts adopts on an emergency basis new §3.403, concerning gross receipts: determining percent of Texas business. The new section more clearly and extensively delineates policy in regard to the types of transactions that result in gross receipts and in Texas receipts. The new section incorporates major changes to the franchise tax law enacted by the legislature in 1987. The new section refers to §3.391, concerning methods of accounting corporations are required to use for franchise tax purposes. The new section is adopted on an emergency basis in order for it to be effective on January 1, 1988.

The new section is adopted on an emergency basis under the Texas 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.

§3.403. *Gross Receipts: Determining Percent of Texas Business.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1988.

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

(1) Capital asset—Any depreciable asset, other than an investment, which is held for continued use in the production of income.

(2) Commercial domicile—The principal place from which the trade or business of the entity is directed.

(3) Investment—Any noncash asset not a capital asset and not held as inventory or proceeds from the sale of inventory.

(4) Generally accepted accounting principles (GAAP) method of accounting—That method of accounting defined under §3.391(c) of this title (relating to Accounting Methods).

(5) Revenue—Except as otherwise specifically provided for in this section, all amounts recognized by the corporation from whatever source, excluding items such as separately recorded reimbursements of actual expenses paid to third parties, bad debt recoveries, recovery of basis on sale or condemnation of a capital asset or investment, repayment of loan principal, amounts received for issuance of capital stock, refund of taxes (except interest thereon), equity earnings of an investee, foreign dividend gross ups allowed by the Internal Revenue Service, and intercorporate tax allocations.

(c) General rule for determining gross receipts (Texas and total). A corporation filing an annual report must report gross receipts based on its activities for its last accounting period ending in the previous calendar year or, if there is no accounting period ending in the previous calendar year, then for the 12-month period ending De-

ember 31 of the previous calendar year. See §3.412 of this title (relating to Survivors of Mergers) for information about corporations surviving mergers.

(d) Determining gross receipts. Specific rules for determining gross receipts (Texas and total) include, but are not limited to, the following:

(1) Sales of tangible personal property. Examples of transactions involving the sale of tangible personal property and which result in Texas receipts include, but are not limited to, the following:

(A) the sale of tangible personal property which is delivered in Texas to either the purchaser, a storage facility controlled by the purchaser, the transportation agent of an out-of-state purchaser, or a carrier under the control of the purchaser, with respect to the transport of the property. Delivery is complete upon transfer of possession or control of the property to the purchaser, an employee of the purchaser, or to transportation vehicles leased or owned by the purchaser. F.O.B. point, location of title passage, or other conditions of the sale are not relevant to the determination of Texas gross receipts. Notwithstanding any contrary provision in this subparagraph, the sale of tangible personal property which is delivered in Texas to an independent contract carrier, common carrier, freight forwarder hired by the purchaser, or to a storage facility controlled by the purchaser, does not result in Texas gross receipts if the carrier transports or forwards the property to the purchaser outside Texas, or if the property is delivered to such storage facility due solely to a necessary delay in transit;

(B) the sale of tangible personal property with delivery to a common carrier outside Texas and shipment by that common carrier to a purchaser in Texas;

(C) the sale of oil or related products to an interstate pipeline company, with delivery in Texas;

(D) the drop shipment of tangible personal property in Texas. A drop shipment is a shipment of tangible personal property from a seller directly to a purchaser's customer, at the request of the purchaser, without passing through the hands of the purchaser, and results in Texas gross receipts for the seller and the purchaser;

(E) sales to which the throwback rule applies. For reports due on or after October 2, 1984, each sale of tangible personal property shipped from Texas to a purchaser in another state in which the seller is not subject to taxation (i.e., the throwback rule). This subparagraph will control if it conflicts with any other provision of this section. Another state refers to a state of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States. If the corporation is doing business, has a certificate of authority, is incorporated in or required to pay tax to another state, or performs any of the activities listed in §3.406(c) of this title (relating

to Foreign Corporations Doing Business in Texas: Liability for Franchise Tax) in the other state, such corporation is subject to taxation in the other state. The corporation must be subject to taxation in the other state during the accounting year upon which the tax is based.

(2) Health care supplies and food. Deductions from Texas receipts for sales of health care supplies and food exempted from sales and use tax by the Texas Tax Code, §151.313 or §151.314(a), will be allowed only for the initial sale of items shipped from a location outside Texas directly to a purchaser in Texas. The deduction does not apply when the manufacturer ships the items from outside Texas to an outlet or storage facility in Texas and later sells them.

(3) Intercorporate expense allocations. Expense allocations by a parent corporation among one or more subsidiaries (other than allocations of income taxes for consolidated return purposes), whether recorded as management fees, administrative overhead, interest, or accounting and legal services, are gross receipts to the parent corporation regardless of whether cash is actually received from the subsidiaries, unless an agency relationship exists.

(4) Receivership. Gross receipts coming into the hands of the receiver of a corporation in receivership are gross receipts to the corporation.

(5) Regulatory agency. Temporary or bonded rate increases of a public utility corporation are gross receipts.

(6) Sales returns/allowances. Sales returns and allowances allowed by a seller are a reduction of gross receipts.

(7) State sales tax. State sales taxes collected by a seller are not gross receipts. However, discounts on sales taxes allowed a seller under the Texas Tax Code, §151.423 or §151.424, or other similar statutes are gross receipts to the seller.

(8) Demurrage charges. Demurrage charges for the detention or storage of equipment used in the transportation of goods and merchandise in interstate commerce are Texas receipts to the extent that the detention or storage occurs within Texas.

(9) DISC/FSC. A DISC (domestic international sales corporation) or a FSC (foreign sales corporation) is treated the same as any other corporation doing business in Texas, except that a commission DISC or FSC may elect to use the percentage of Texas business of its parent which does business in Texas. Receipts from the sale of tangible personal property by a corporation to a DISC or FSC located in Texas are not Texas receipts if the tangible personal property flows uninterrupted from the selling corporation to a foreign purchaser outside of Texas. If a DISC or FSC assembles, packages, repackages, modifies, stores, or otherwise takes physical delivery of tangible personal property in Texas, the receipts from the sale of the tangible personal property are Texas receipts to the selling corporation.

(10) Newspapers. All revenues, including out-of-state advertisements, of a newspaper transacting its primary business activities within Texas constitute Texas receipts, except revenues from the sale of newspapers outside Texas.

(11) Radio/television. All revenues of a radio or television operation which broadcasts or transmits from stations in Texas constitute Texas receipts, even though some of the listening or viewing audiences are outside Texas, except revenues from programs filmed or otherwise developed by a station in Texas which are sold or leased to the national media for broadcasting or transmitting by the national media.

(12) Telephone company receipts. All revenues of a telephone company in Texas are Texas receipts, except for receipts from interstate calls.

(13) Transactions in Texas waters. Receipts from transactions occurring in Texas waters are Texas receipts. The dividing line between Texas waters and international waters is established at 10.359 statute miles or nine nautical miles from the Texas coastline.

(14) Federal enclave. All receipts from a corporation's sales, services, leases, or other business activities transacted on a federal enclave located in Texas are Texas receipts unless otherwise excepted.

(e) Allocating gross receipts. Specific rules for allocating gross receipts (Texas and total) include, but are not limited to, the following:

(1) Capital assets and investments. Net gains and losses from sales of investments and capital assets shall be added together to determine the total receipts from such transactions. If the combination of net gains and losses results in a net loss, the corporation must report zero receipts from such transactions. If both Texas and out-of-state sales have occurred, a separate calculation must be made of net gains and losses on Texas sales. Net gain on sales of intangibles held as capital assets or investments is allocated to the location of the payor. Examples of intangibles include, but are not limited to, stocks, bonds, commodities, futures contracts, patents, copyrights, licenses, trademarks, franchises, goodwill, and general receivable rights.

(2) Club membership fees. Club membership fees are receipts for the service of providing access to benefits and are allocated to the place where the club's employees or agents perform the service.

(3) Computer services and programs. Receipts from the sale of computer software services are allocated to the location where the services are performed. Receipts from the sale of a computer program (as the term "computer program" is defined in §3.308 of this title (relating to Computers—Hardware, Software, Services, and Sales)) are receipts from the sale of an intangible asset and are allocated to the legal domicile of the payor.

(4) Debt retirement. Gains on the retirement of a corporation's own indebtedness, such as the purchase by a corporation of its own bonds at a discount, are gross receipts and are allocated to the corporation's state of incorporation.

(5) Dividends and interest.

(A) Dividends and interest paid by a corporation or a bank organized under the Texas Banking Code are allocated according to the state of incorporation (or organization) of the payor of the income. For purposes of this section, a national bank is considered located in Texas if its principal place of business is in Texas. See §3.411 of this title (relating to Banking Corporations) for allocation of dividends and interest received by banking corporations.

(B) When the payor of dividends or interest from Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), or Federal Home Loan Mortgage Corporation (FHLMC) mortgage-backed securities or certificates cannot be agreed upon, 15.78% of the interest or dividends are Texas receipts.

(6) Insurance proceeds.

(A) Business interruption insurance proceeds are gross receipts when the proceeds are to replace lost net profits, and are allocated based on the actual location of the business operations the interruption of which resulted in the proceeds being paid.

(B) Fire and casualty insurance proceeds in excess of the net book value of the damaged or destroyed property are gross receipts and are allocated to the location of the damaged or destroyed property.

(C) Any gain resulting from life insurance proceeds paid on the death of a corporate officer or other key personnel are gross receipts and are allocated to the corporation's commercial domicile.

(7) Leases and subleases.

(A) Receipts from the lease or sublease of real property are allocated to the location of the property.

(B) Receipts from the lease or sublease of tangible personal property are allocated to the location of the property. If the property is in Texas only part of the year, lease payments are allocated based on the number of days spent at the respective locations. If the amount of receipts due under the lease is based on mileage, then the allocation is based on the number of miles in Texas divided by the number of miles everywhere.

(C) When a lump sum is charged for property leased or subleased but only a portion of which is in Texas, the allocation of receipts is based on the rental value of each item of property. If the rental value of each item cannot be determined, the allocation is based on the cost of each item to the lessor (or sublessor).

(D) Receipts from the lease or sublease of a vessel engaging in commerce are allocated to Texas based on the number of days engaged in commerce in Texas waters divided by the number of days en-

gaged in commerce everywhere.

(E) If a lease, sublease, or rental of real or tangible personal property is treated as a sale or financing arrangement under GAAP, the receipts from the transaction are allocated in the same manner as a sale. Any portion of the payments designated as interest by the contracting parties is interest receipts.

(8) Litigation awards. All litigation awards are gross receipts, except those consisting of a recovery of compensatory damages for fire or other casualty losses on property, to the extent the recovery does not exceed the net book value of the property. Litigation awards are allocated to the commercial domicile of the recipient corporation.

(9) Partnership/joint venture.

(A) Receipts reflecting the corporation's share of the net profit from a partnership or joint venture, for partnership or joint venture periods ending during the 12 months ending on the date upon which the tax is based, are allocated to the principal place of business of the partnership or joint venture. A partnership's principal place of business is the location of its day-to-day operations. Where a partnership's day-to-day operations are conducted in more than one state, then its principal place of business is its commercial domicile.

(B) If the GAAP method (as opposed to the federal income tax method) is used to compute the corporation's share of the gross receipts of a partnership or joint venture, such method may be used in reporting such gross receipts. The receipts must be allocated based on normal allocation rules (e.g., location of payor for dividends and interest, place where service is performed, etc.) as though the partnership did not exist and the receipts passed through it directly to the corporation.

(10) Real property. Receipts from the sale, lease, or sublease of real property are allocated to the location of the property.

(11) Receipts from use of intangible rights. A patent is used in Texas to the extent that it is utilized in production, fabrication, manufacturing, or other processing in Texas. A copyright is used in Texas to the extent that printing or other publication originates in Texas. Receipts to the owner for the use of trademarks, franchises, and licenses are allocated according to the location where used.

(12) Sales and services. When a transaction involves elements of both a sale of tangible personal property and a service, and there is no documentation showing separate charges for the sale and service elements, the predominant aspect of the transaction controls how the charges are to be allocated.

(13) Service procurement. Receipts for the procurement of services are allocated to the place where the service is performed.

(14) Services. Service receipts are allocated to the location where the service is performed.

(15) Stocks. Receipts from the sale of securities are allocated based on the location of the payor. When securities are sold over a stock exchange and the seller and comptroller cannot agree upon the location of the buyer, 6.5% of the net gain (or gross sales price, if the securities were recorded by the seller as inventory) is a Texas receipt.

(16) Subsidies/grants. Subsidies or grants received by a corporation from a governmental agency are gross receipts, except when the funds are required to be expended dollar for dollar (i.e., passed through) to third parties on behalf of the agency. Receipts from a governmental subsidy or grant are allocated to the location where the activity which qualified for the subsidy or grant is performed.

(17) Transportation companies. Transportation companies transporting goods or passengers in interstate commerce must report Texas receipts from transportation services by:

(A) multiplying total transportation receipts by total mileage in transporting goods and passengers picked up and delivered within Texas divided by total mileage everywhere; or

(B) including receipts derived from the transportation of goods or passengers in intrastate commerce.

Issued in Austin, Texas, on December 30, 1987.

TRD-8711847 Bob Bullock
Comptroller of Public
Accounts

Effective date: January 1, 1988
Expiration date: April 30, 1988
For further information, please call
(512) 463-4004.

★34 TAC §3.404

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.404, concerning stated capital. The emergency amendment changes the definition of stated capital to reflect changes made to the Texas Business Corporation Act in House Bill 418, 70th Legislature, 1987. The emergency amendment also clarifies policy concerning treasury stock and redeemable preferred stock. This amendment is adopted on an emergency basis in order for it to be effective on January 1, 1988.

The amendment is adopted on an emergency basis under the Texas 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 franchise tax.

§3.404. Stated Capital.

(a) For franchise tax purposes, stated capital has the same meaning as defined in Texas Business Corporation Act, Article 1.02. [The definition is as follows:]

[(1)] Stated capital means, at any particular time, the sum of:

the surplus of the first member only if the related receivable account is included in the surplus of the second member. Intercompany tax accounts must be reported on a consistent basis among members of the same consolidated group.

(4) S corporations. An S corporation must calculate its franchise tax in the same manner as any other corporation. For example, accumulated and other adjustment accounts are included in surplus, as are previously taxed income, accumulated earnings and profits, and all other amounts included in the surplus of any other corporation.

(e) Specific rules. Specific rules of application include, but are not limited to, the following.

(1) Amortization of goodwill. The amortization of goodwill resulting from acquisition of an ownership interest in a subsidiary or other investee corporation is included in surplus.

(2) Deferred investment tax credit. Deferred investment tax credit is included in surplus.

(3) Foreign currency transactions. Realized gains, unrealized gains, and unrealized losses resulting from foreign currency transactions are included in surplus, while realized losses are excluded from surplus.

(4) Foreign currency translations. Unrealized gains resulting from translations of foreign currency are excluded from surplus.

(5) Income taxes payable. Amounts accrued in excess of actual liability for income taxes relating to current or prior periods (e.g., amounts accrued which relate to a period under IRS audit which has not been agreed to by the corporation) are included in surplus.

(6) Employee benefits. Liabilities for employee compensation and benefits (e.g., pensions, bonuses, vacations) are included in surplus to the extent that they are not debt.

(7) Public utility corporations. Revenue from temporary or bonded rate increases of a public utility company is included in surplus.

(8) Treasury stock. The amount paid for treasury shares is excluded from surplus only to the extent that credit balances in unrestricted equity accounts exceed accrued cumulative preferential dividends. See also §3.404 of this title (relating to Stated Capital).

(9) Unproved mineral properties. The potential decline in value of an unproved mineral property is included in surplus.

(10) Write-off of assets. A direct write-off of all or a portion of the cost of an asset to reflect a permanent decline in the asset's value, the direct cause of which is a specifically identifiable event, is excluded from surplus.

Issued in Austin, Texas, on December 30, 1987

TRD-8711844

Bob Bullock
Comptroller of Public
Accounts

Effective date: January 1, 1988
Expiration date: April 30, 1988
For further information please call
(512) 463-4004

★ 34 TAC §3.408

The Comptroller of Public Accounts adopts on an emergency basis the repeal of §3.408, concerning adjustments and changes to books and records. The repeal eliminates subject matter that is in new §3.391, concerning accounting methods, which is adopted simultaneously on an emergency basis elsewhere in this issue.

This repeal is adopted on an emergency basis under the Texas 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 franchise tax.

§3.408 *Adjustments and Changes to Books and Records*

Issued in Austin, Texas, on December 30, 1987

TRD-8711842

Bob Bullock
Comptroller of Public
Accounts

Effective date: January 1, 1988
Expiration date: April 30, 1988
For further information please call
(512) 463-4004

★ 34 TAC §3.413

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.413, concerning franchise tax reports and payments. The amendment clarifies a policy change that initial reports no longer need to be preprinted and clarifies policy concerning jeopardy determinations, which are the result of legislation by the 70th Legislature, 1987. The amendment states that the annual tax rate of \$6.70 and minimum tax of \$150 applies to tax periods from May 1, 1988-April 30, 1990. This amendment is adopted on an emergency basis in order for it to be effective on January 1, 1988.

The amendment is adopted on an emergency basis under the Texas 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 franchise tax.

§3.413 *Franchise Tax Reports and Payments*

(a) Reports and due dates.

(1) Except as provided in subsection (f) of this section, each domestic and foreign corporation subject to the franchise tax levied by the Texas Tax Code, §171.001, must

file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the corporation. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership. A debtor in possession or the appointed trustee or receiver of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax prior to confirming and consummating the plan of reorganization or arrangement.

(2) (No change.)

(b) Both the initial report and payment of the tax due in excess of the \$100 initial franchise tax deposit (payment), if any, are due no later than 90 days after the first anniversary date of the charter of a Texas corporation, or from the date of the certificate of authority or beginning of business in Texas of a foreign corporation, whichever is earlier. The initial franchise tax report and payment are for the periods beginning on the date of the charter, certificate of authority or beginning of business in Texas and ending on April 30 following the first anniversary of the charter, certificate, or beginning of business in Texas. For example, if a Texas corporation is chartered on June 1, 1985, the payment due with the initial report will be for the tax periods from June 1, 1985 through April 30, 1986. In addition, when the first anniversary occurs during the period from October 4 through April 30, there must also be computed and paid with the initial report an additional year's tax for the franchise tax year beginning on May 1 following the first anniversary and ending on April 30 of the succeeding year. For example, if a Texas corporation is chartered on November 1, 1985, the payment due with the initial report will be for the tax periods from November 1, 1985 through April 30, 1988. The report and tax (including the additional year's tax when applicable) must be based on and computed in accordance with the corporation's financial condition as of the end of the month nearest its first anniversary. This closing date may fall within the same calendar year as the normal annual closing date to be used for the corporation's first annual franchise tax report. On occasion, the date used for the corporation's first annual report will be prior to the date used for the corporation's initial franchise tax report. For example, if a Texas corporation is chartered on June 1, 1985, and has a normal year end of March 31, its annual report (due August 29, 1986) will be based on the financial condition of the corporation as of May 31, 1986. However, its first annual report (due March 15, 1987) will be based on the financial condition of the corporation as of March 31, 1986. Each of these reports covers a different tax period; no overlapping of liability or double taxation occurs. For example, in the

previous example, the initial report was for the tax periods from June 1, 1985, through April 30, 1987. The first annual report was for the tax period from May 1, 1987, through April 30, 1988. [The corporation must submit a final franchise tax report on the preliminary report form furnished by the comptroller. If the form is not received or is lost, an additional copy must be requested from the Administration Division, P.O. Box 12000, Austin, Texas 78711. (512) 463-4600 or toll free from anywhere in Texas 1-800-252-1111.]

(C)-(F) (No change.)

(2) (No change.)

(b) Penalty and interest

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

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for reconsideration is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the U.S. Postal Service. The amount of the

determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under §111.002, of 10% of the amount of tax and interest assessed will be added.

(5)[(4)] If the comptroller determines that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The corporation requesting waiver must furnish a detailed description of the circumstances which caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements.

(c)-(e) (No change.)

(6) If a jeopardy determination is issued to a corporation for an estimated tax liability on an annual reporting period, pay-

ment of the estimated liability, plus applicable penalty and interest, shall satisfy the reporting requirements set forth in §171.202.

(g) An annual tax rate of \$6.70 per \$1,000 of net taxable capital and an annual minimum tax of \$150 applies to May 1, 1988, through April 30, 1990, of any tax period.

Issued in Austin, Texas, on December 30, 1987.

TRD-8711840

Bob Bullock
Comptroller of Public
Accounts

Effective date: January 1, 1988
Expiration date: April 30, 1988
For further information, please call
(512) 463-4004.



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Proposed

Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 25. HEALTH SERVICES

Part 1. Texas Department of Health

The following proposals submitted by the Texas Department of Health will be serialized beginning in the January 12, 1988, issue of the *Texas Register*. The earliest possible date of adoption is February 6, 1988. The proposed date of adoption is April 16, 1988.

Chapter 1. Texas Board of Health.

Formal Hearing Procedures.
§134 (new section)

Chapter 113. Special Health Services

Permits
§113.1 (new section)
§113.2 (new section)

Chapter 133. Hospital Licensing.

Permits.
§133.31 (new section)

Chapter 145. Long Term Care.

Procedures on Long Term Care Facilities.
§145.95 (new section)

Chapter 157. Emergency Medical Care.

Emergency Medical Services.
§157.83 (new section)

Chapter 229. Food and Drug.

Permit Applications.
§229.281 (new section)

Chapter 265. General Sanitation.

Migrant Labor Housing Facilities.
§265.34 (amendment)
§266.23 (new section)

Chapter 289. Occupational Health and Radiation Control.

Texas Regulations for Control of Radiation
§§289.121, 289.123, 289.124
(amendments)

Chapter 337. Water Hygiene.

Permit Applications
§337.131 (new section)
§§337.2, 337.3, 227.9, 227.12, 337.14
(amendments)

Chapter 119. Health Maintenance Organizations

(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 Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Department of Health proposes the repeal of existing §§119.1-119.13 and new §§119.119.14, concerning health maintenance organizations (HMOs). The repeals and new sections strengthen the HMO quality assurance surveillance program by expanding the requirements of the HMO's quality assurance plan, providing an agenda for the survey process, providing for on-site visits to provider offices, including a compliance section; defining disciplinary action; and redefining the geographic service area.

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

Mr. Seale 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 strengthen the HMO quality assurance surveillance program. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Carroll Gregory, M.P.H., HMO Program Administrator, Texas Department of Health, 1100 West 49th, Austin, Texas 78756. Comments will be accepted for 30 days after publication in the *Texas Register*.

★25 TAC §§119.1-119.13

The repeals are proposed under Texas Civil Statutes, the Insurance Code, the Health Maintenance Organization Act, Article 20A.05, which authorize the Texas Board of Health to adopt rules covering an ongoing quality of health care assurance program concerning health care

processes and outcomes for health maintenance organizations.

§119.1 Introduction.

§119.2 Definitions.

§119.3 Organization.

§119.4 Geographical Service Area.

§119.5 Facilities and Environment.

§119.6 Basic Health Care Services (Required Services).

§119.7 Other Benefit Services.

§119.8 Single Health Care Services.

§119.9 Clinical Record.

§119.10 Statistical Information.

§119.11 Complaint Investigation.

§119.12 Preventive Health Education.

§119.13 Quality Assurance Plan.

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 December 30, 1987.

TRD-8711804

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption

March 6, 1988

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

★25 TAC §§119.1-119.14

The new sections are proposed under Texas Civil Statutes, the Insurance Code, the Health Maintenance Organization Act, Article 20A.05, which authorize the Texas Board of Health to adopt rules covering an ongoing quality of health care assurance program concerning health care processes and outcomes for health maintenance organizations.

§119.1 Definitions. In addition to the definitions in Texas Civil Statutes, the Insurance Code, the Health Maintenance Organization Act, Article 20A.02, the following words and terms, when used in

these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Basic health care plan - Health care services which an enrolled population might reasonably require in order to be maintained in good health, including as a minimum, emergency care, inpatient hospital and medical services, and outpatient services.

Certified facility - A health care provider which is certified by the federal government for participation in rendering care to Medicare and/or Medicaid beneficiaries.

Credentials - Certificates, diplomas, licenses, and other written documentation that establishes proof of training, education, and experience in a field of expertise.

Department - Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Inpatient medical care - Includes, but is not limited to, medical and surgical care received in a hospital or skilled nursing home environment.

Outpatient services - Services which may be rendered in, but are not limited to, clinics, private offices, hospital based outpatient departments, home health services, ambulatory surgical centers, hospices and kidney dialysis centers.

Primary hospitals - General hospitals that are equipped and staffed to handle the medical needs of an HMO's enrolled population.

Referral hospitals - May be primary hospitals which also are equipped and staffed to provide intensive medical and surgical care.

Referral specialists - Specialists who set themselves apart from the primary care physician or primary single service provider through specialized training and education in a health care discipline.

Single health care service plan - A health care service that an enrolled population might reasonably require in order to be maintained in good health with respect to a particular health care need. This service is for the purpose of preventing, alleviating, and curing human illness or injury of a single specified nature and is to be provided by one or more persons, each of whom is licensed by the state to provide that specific health care service.

§119.2. *The Certification Procedure.*

(a) Initial applications. Initial applications are made to the State Board of Insurance (SBI) in accordance with the following procedures:

(1) The SBI sends a copy of the application to the department.

(2) Information concerning the statutory clock of events produced by SBI, is mailed to the applicant and a copy is sent to the department.

(3) The department sets up a pre-survey conference with the applicant which will occur not less than two weeks prior to the department's on-site survey.

(4) All deficiencies stated during the

pre-survey conference will be corrected by the on-site survey date. An HMO application will not be certified by the department if the applicant has any deficiencies at the on-site survey conclusion.

(5) An on-site initial survey will occur not later than two weeks prior to the expiration of the statement date requiring department action.

(6) The chief officer of health reports to the chief officer of insurance the department's approval or disapproval of the application no later than the last day of the statutory time for department action.

(b) Service area expansion.

(1) Applications for geographic service area expansions are made to the SBI. A copy of the request for a geographic service area expansion will be immediately forwarded to the department.

(2) If the request for service area expansion is for the purpose of adding areas contiguous to the existing service area, the department requires pre-certification conference with the principal HMO officers involved in the request. This may be a phone conference or mail inquiry.

(3) If the request for service area expansion is for the purpose of adding areas which are not contiguous to the existing service area, the department requires that the request be processed as an initial on-site survey.

(c) On-site quality of care surveys.

(1) Subsequent to the issuance of the certificate of authority, the department will conduct on-site quality of care surveys.

(2) Complaints about the quality of care which, in the judgment of the department, represent a threat to the health and safety of enrollees will be investigated without notice to the HMO. Providers of care will not be contacted without the HMO's knowledge. Complaints determined to be valid may require a full survey, which will be unannounced.

(3) Requirements concerning a statement of deficiencies on resurveys and complaint investigations are as follows:

(A) The department will provide the HMO with a written statement of the survey outcome.

(B) If deficiencies are cited, a written plan to correct the deficiencies will be returned to the department within 30 days of the date appearing on the statement of deficiencies.

(C) Deficiencies which represent a threat to the health and safety of enrollees will be corrected within 30 days of the date of receipt by the HMO.

(D) Other deficiencies will be corrected within 90 days of the date appearing on the statement of deficiencies.

(d) Disciplinary action.

(1) The department will request that an HMO's certificate of authority be withdrawn in the following instances:

(A) the HMO failed to develop an acceptable plan of correction for deficien-

cies within the time frame given;

(B) the HMO failed to carry out its plan of correction within the time frame approved by the department; or

(C) the HMO failed to provide the department with its annual statement within 30 days of the March 31 deadline each year.

(2) The affected HMO will receive written notice of the department's request. A written response must be made to the department within 10 calendar days of receipt of the notice.

§119.3. *Organization.*

(a) There shall be a governing body, person or persons legally responsible for the operation of the HMO.

(b) There shall be a written quality assurance plan which provides administrative guidance in formulating a system which assures that services are furnished in a manner enhancing availability, accessibility, and continuity of care by providers of health care.

(c) The HMO shall maintain files of current contracts for all participating providers of care.

(d) The HMO shall maintain files of subcontracting providers which contains sufficient information to assure current licensure or other authorizations to practice in the State of Texas.

(e) There shall be a chief executive officer or operations officer for each service area of the HMO available on-site.

(f) There shall be a medical director or single service director for each service area of the HMO.

(g) Individual service areas shall maintain quality assurance and utilization review plans.

(h) An up-to-date list of all participating providers of care shall be maintained by the HMO and each service area for review by the department.

(i) A current provider manual shall be provided to each health care facility which details the rules by which the provider will be governed.

(j) The HMO and each service area shall assure that support services and supplies are furnished to providers of care in sufficient numbers and locations to insure that each enrolled member's health care services are available without unreasonable periods of delay.

§119.4. *Geographic Service Area.*

(a) The HMO and each division shall define its service area as follows:

(1) A narrative description shall identify all counties and parts of counties.

(2) An accompanying zip code description shall be required.

(3) A map, clearly legible and drawn to scale with an accurate mileage legend, shall be provided with the application.

(4) Each request for a service area expansion shall provide descriptions as re-

quired in paragraphs (1), (2), and (3) of this subsection. The map shall clearly indicate the existing service area and the area being requested.

(5) The maps shall identify the approximate locations of all providers of care.

(6) Separate maps should be used for primary care providers of care, such as one map for physicians (or single service providers) and hospitals, and another for pharmacies, home health agencies, nursing homes, etc.

(b) Members shall be required to live within the boundaries of the HMO's geographic service area at the time of enrollment in an HMO. An enrolled member shall not be required to travel in excess of 50 miles to reach a source of primary health care and acute hospital care except as provided in subsections (c), (e), and (f) of this section.

(c) Remote location may be secured if, primarily, the department, with documentation which precedes, in part, or traveling further distances. An example would be tracking data which indicates a normal pattern of seeking health services in the extended area.

(d) Members shall not be required to travel in excess of 100 miles to secure initial contact single service providers of care, referral physicians, referral single service providers of care, and specialty hospital care except as provided in subsections (c), (e), and (f) of this section.

(e) Members shall not be required to disenroll from the HMO due to permanently exiting the service area if that member has health care circumstances which would preclude securing adequate health care insurance coverage, unless there is a conversion policy. Such members shall receive basic health care from within the HMO's defined service area and the HMO shall be required to maintain documentation on file that the enrollee fully understands that basic care will not be furnished outside the service area.

(f) The HMO shall furnish documentation to the department covering names and addresses of members who live outside the service area.

§119.5 Ambulatory Health Care Service

(a) Primary care physician services.

(1) Primary care physician services shall be available and accessible 24 hours per day within the HMO's service area.

(A) Participating primary care physicians shall be available for emergency and urgent care after normal business hours.

(B) There shall be telephone access to participating primary care physicians at all times.

(C) The method by which enrollees may secure health care services after hours shall be clearly communicated in writing to enrollees.

(2) An adequate number of participating primary care physicians shall have admitting privileges at one or more participating general hospitals located within the HMO's service area to assure that necessary

admissions are made.

(3) There shall be a sufficient number of participating primary care physicians to meet the needs of the enrolled membership.

(b) Referral (specialty) physician services.

(1) Referral physician services shall be available and accessible 24 hours per day within the HMO's service area.

(2) There shall be sufficient number of referral physicians with appropriate hospital admitting privileges to meet the needs of the enrolled membership.

§119.6 Emergency Services

(a) An emergency medical condition manifests itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in

(1) placing the patient's health in serious jeopardy;

(2) serious impairment to bodily functions; or

(3) serious dysfunction of any bodily organ or part.

(b) Emergency medical care shall be available and accessible 24 hours per day, seven days per week, without restrictions as to where the service is rendered, except that the service should be provided by participating providers, if possible.

(c) Providers of care which employ triage nurses and/or physician extenders to assess the health care needs of HMO enrolled members shall have policies in effect which describe the exact duties of the involved professionals.

§119.7 Inpatient Hospital Medical Service.

(a) Primary hospital care shall be available and accessible 24 hours per day within the HMO's defined geographical service area.

(b) Tertiary hospital care shall be provided by the HMO according to the needs of its enrolled membership.

(c) Specialty hospital care shall be available and accessible within the service area.

(d) Hospitals which provide services to HMO enrollees shall have a current license by the State of Texas. An exception would be centers of excellence located in other states.

(e) Hospitals should be accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA).

(f) Hospitals which are not JCAH or AOA accredited will be Medicare certified.

§119.8 Diagnostic/Therapeutic Services.

(a) Laboratory.

(1) Reference laboratory services shall be provided by one of the following methods:

(A) reference clinical laboratories which are Medicare certified;

(B) JCAH or AOA accredited,

general, hospital, laboratory, or

(C) Medicare certified general hospital laboratories.

(2) The individual physician laboratory services shall meet the urgent and emergency needs of the enrolled population.

(3) The reference laboratory specimen services shall be convenient to provider physicians through the strategic location of drawing stations, through a courier service which is under the management of the reference laboratory.

(4) Pathology laboratory services shall be available and accessible.

(b) Diagnostic imaging.

(1) Diagnostic imaging service shall be available and accessible to all enrolled members.

(2) Diagnostic imaging procedures that require the injection/ingestion of radiopaque chemicals shall be performed only under the direction of physicians qualified to perform that procedure.

(3) Diagnostic imaging machines shall be registered and inspected according to state law.

(4) Technicians, physicians, and other personnel who work with imaging machines shall comply with state law regarding monitoring.

(c) Therapeutic oncological radiology and therapeutic oncological radiology services shall be available and accessible to an enrolled member.

§119.9 Optical Services

(a) General. The provisions in this section apply to categories of service by which HMOs, which are basic health care plans, may offer to meet the demands of its enrolled population. The services included are not a complete list of all possible benefit additions. If a benefit is added which is not included in this section, the HMO shall follow the provisions described in this section for compliance with subsections (b), (c), and (d) of this section.

(b) Nursing home care.

(1) Nursing home care shall be available and accessible to the enrolled population by one or a combination of the following facilities:

(A) a skilled nursing home that is licensed by the state and certified by Medicare or Medicaid, or both;

(B) a swing-bed hospital that is licensed by the state and certified by Medicare;

(C) a general hospital licensed by the state and certified by Medicare or Medicaid, or both, and a distinct part of which is a skilled nursing facility.

(2) Nursing home care shall be offered directly by facilities owned and operated by the HMO or by contract.

(c) Home health care.

(1) Home health care shall be available and accessible to the enrolled population through home health agencies, and their branches or sub-offices, that are licensed by the state.

(2) Home health care shall be offered directly by the HMO or through contracts.

(c) Hospices shall be appropriately licensed.

(d) Pharmacy services.

(1) Pharmacy services shall be available and accessible to the enrolled population through pharmacies that are directed by a licensed pharmacist and which appropriate licensed.

(2) Pharmacy services shall be offered directly by the HMO or through contracts.

(3) The quality of pharmacy services shall be regularly reviewed by a committee composed of physicians, pharmacists, and other professionals, as needed.

(A) The committee shall be responsible for assurance that drug utilization review is performed on a regular basis, and not less than quarterly.

(B) The committee shall assure that contracting pharmacies maintain drug profiles of the enrolled population and make use of such profiles to detect inappropriate drug use.

(C) The committee shall make recommendations on policies under which pharmacies provide patient instruction and education on correct use of medications.

(4) Other services.

(1) Health care services such as dental, podiatric, vision, hearing, speech, durable medical equipment, mental health, drug dependency, or any other health care services shall be offered through contracts with providers who are licensed or otherwise authorized to practice in the state.

(2) Health care services shall be of sufficient quality and quantity as to be readily available and accessible to the enrolled population.

(3) Such services shall be regularly reviewed by a committee composed of physician providers qualified to render decisions concerning the quality of the services and their utilization.

§119.10. Statistical Information

(a) The HMO will develop and maintain a statistical reporting system which allows for compiling, developing, evaluating, and reporting statistics relating to the cost of operation, the pattern of utilization of services, the accessibility, availability, and continuity of services.

(b) The HMO will submit directly to the department a copy of its annual report and its annual statement on or before March 1 of each year.

§119.11. Quality Assurance. The HMO shall develop a written quality assurance plan which, as a minimum, provides the following:

(1) the credentialing of all contracting physicians and providers of care, including an application which contains information on education and professional background, current relevant permit to prac-

tice, DEA certificate, and Texas Controlled substance certificate, if applicable;

(2) an effective peer review procedure;

(3) an ongoing quality assurance program which covers all services being provided.

(A) The quality assurance committee composed of physicians, dentists, and other providers, as applicable, shall be appointed to perform quality assurance functions;

(B) the quality assurance committee meets on a regular basis;

(C) the quality assurance committee assesses the quality of care and quality of service by determining the availability, accessibility, and adequacy of personnel and facilities, health care continuity, performing quality studies which are based upon health care processes and outcomes and reviewing quality of service, facility and environmental complaints, and analyzing quality of service complaint ratios per 1,000 per member.

(D) the committee regularly reports and makes recommendations concerning the quality of care and continuity of services to the HMO management.

(4) Utilization review.

(A) A utilization review committee composed of physicians, providers, and others, as necessary, shall be appointed to perform utilization review. The committee may be integrated with the quality assurance committee.

(B) The utilization review committee meets on a regular basis.

(C) The utilization review committee activities should include the following:

(i) the analysis of utilization statistics;

(ii) the analysis of referral trends;

(iii) the assessment of ambulatory treatment patterns;

(iv) the assessment of a pre-hospitalization admission program;

(v) the evaluation of a hospital inpatient monitoring program; and

(vi) the monitoring of the effectiveness of a discharge planning procedure.

(D) The utilization review committee regularly reports and makes recommendations to the HMO management concerning its activities.

§119.12. Texas Department Of Health On-Site Review

(a) On-site review at the HMO's administrative office by department surveyors.

(1) The surveyor shall review the following documents:

(A) the plan board of directors minutes, management committee minutes, if any, administrative policy manuals, provider manuals, enrollee information, enrollee newsletters, personnel manuals, organizational chart, provider contracts, and other items as required;

(B) the quality of care review standards, quality assurance committee meeting minutes, quality review audits, utilization review system data;

(C) the grievance log and individual grievances;

(D) the accessibility monitoring system data;

(E) the enrollee satisfaction surveys, disenrollment logs, etc.; and

(F) the complete listing of providers.

(2) During the opening meeting, the surveyor shall meet with HMO administrative personnel to explain nature of survey.

(3) The surveyor shall conduct interviews with administrative personnel, including plan president or chief executive officer, operations manager, medical (dental, vision, or mental health) director and/or quality assurance committee chairman, utilization review personnel, membership services officer, grievance officer, provider relations officer, etc.

(b) On-site review at provider offices by department surveyor. The surveyor shall:

(1) review patient charts;

(2) review appointment, referral logs, health education materials, policy/procedure manuals, etc.; and

(3) conduct a facility tour.

§119.13. Compliance With Texas Department Of Health Rules. In order to be in compliance with these sections, the HMO shall provide or make arrangements to provide the following:

(1) emergency care;

(2) outpatient medical care;

(A) primary physician care;

(B) specialty physician care;

(C) laboratory services;

(D) imaging services;

(E) radiology/cology services;

(3) inpatient hospital and medical services;

(4) single service in keeping with the single health care service being offered;

(5) a physically identifiable administrative headquarters office located within the State of Texas.

(A) basic health care plans shall provide administrative services such as a director of operations, membership relations personnel, and other employees needed to service the needs of the HMO's enrolled membership within its defined service area(s);

(B) single health care plans may fix their service area boundaries as the entire State of Texas;

(6) a governing body, person, or persons legally responsible for the operation of the HMO;

(7) an effective management information system;

(8) an effective quality assurance plan;

(9) an effective utilization review plan;

(10) an effective complaint resolution plan.

§119.14 Single Health Care Service.

(a) General. The provisions in this subsection apply to categories of service which a basic health care plan may choose to offer as defined in §119.9 of this title (relating to Optional Services) and the single health care service plan may offer to an enrolled population. The single health care service, except those specifically excluded by law, shall be offered directly by the HMO or by contract.

(b) Emergency HMO services. This subsection applies to those single health care services which deal with specific health care situations that may require emergency intervention as described in §119.6 of this title (relating to Emergency Services). Emergency care shall be available and accessible 24 hours per day, seven days per week.

(c) Inpatient hospital and single health care services. This provision applies to the covered single health care services which require hospital inpatient status for the management of the enrollees' single health care problem.

(1) Primary, acute, full service hospital care shall be available and accessible 24-hours per day within the single service HMOs defined geographical service area.

(2) Specialty hospital care may be used when such a facility is available.

(3) Hospitals providing single health care service to HMO enrollees shall be currently licensed by the State of Texas.

(4) Hospitals providing single health care service to HMO enrollees should be accredited by the Joint Commission on Accreditation of Hospitals (JCAH) or the American Osteopathic Association (AOA). If the hospitals are not JCAH or AOA accredited, they shall be Medicare certified.

(5) An adequate number of participating single health care providers shall have admitting privileges at one or more general or specialty hospitals located within the HMO's service area to ensure that necessary admissions are made.

(d) Outpatient single health care services.

(1) A sufficient number of single health care providers (initial contact and specialists, as appropriate or required) shall be available and accessible to meet the single health care needs of the enrolled population. Participating initial contact (primary care) providers will be available for emergency and urgent care after normal business hours, as such emergency or urgent care is appropriate to that single health care service.

(2) The method by which enrollees may secure single health care services that require after hours or urgent response by providers shall be clearly communicated in writing to enrollees.

(e) Diagnostic and therapeutic services.

(1) The single health care service that uses reference and pathological laboratory technologies in the care of patients shall provide those technologies according to §119.8(a) of this title (relating to Diagnostic and Therapeutic Services).

(2) The single health care service that uses diagnostic imaging and/or therapeutic radiology in the care of patients shall provide those procedures according to §119.8(b) of this title (relating to Diagnostic and Therapeutic Services).

(3) The single health care service that uses the expertise of an ancillary health care facility or service to fulfill its obligations to an enrolled population shall have in effect a written contract with each facility and shall comply with all other appropriate aspects of §119.9 of this title (relating to Optional Services).

(f) Other services. The following sections shall apply to single health care service plans:

(1) §119.1 of this title (relating to Definitions);

(2) §119.2 of this title (relating to The Certification Procedure);

(3) §119.3 of this title (relating to Organization);

(4) §119.4 of this title (relating to Geographic Service Area);

(5) §119.9 of this title (relating to Optional Services);

(6) §119.10 of this title (relating to Statistical Information);

(7) §119.11 of this title (relating to Quality Assurance);

(8) §119.12 of this title (relating to Texas Department of Health On-Site Review); and

(9) §119.13 of this title (relating to Compliance with Texas Department of Health Rules).

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 December 30, 1987

TRD-8711805

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption

March 6, 1988

For further information, please call

(512) 458-7245



**Chapter 143. Medical
Radiologic Technologist**

★ 25 TAC §§143.1-143.14

(Editor's note: The Texas Department of Health proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is

published in the Emergency Rules section of this issue.)

The Texas Department of Health proposes new §§143.1-143.14 concerning medical radiologic technologists. The new section implements the provisions of Senate Bill 1437, Article 1, and Article 2, Sec. 3.01 (a), (c), and (170B), of the Legislature of 1987. The new section covers the standards for certifying persons and for radiologic technologists, definitions, the medical radiologic technician advisory board, operational fees, exceptions to certification, applicable qualifications and procedure types, certificates issued, examinations, certificate issuance and renewal, continuing education, certifying persons with criminal backgrounds to be medical radiologic technologists, violations, complaints, and subsequent actions, and instructor and curricula approval.

Stephen Seale, chief accountant III, has determined that for the first five-year period that the section is proposed will be in effect there will be fiscal implications as a result of enforcing or administering the provisions. The effect on state government will be a projected additional cost of \$1,485,000 for fiscal year 1988, and \$194,000 each year for fiscal years 1989-1992. Additionally, it is estimated that there will be an increase in revenue of \$350,000 for fiscal year 1988, and \$162,000 each year for fiscal years 1989-1992. There will be no fiscal implications for local government.

The cost of compliance with the sections for small businesses will be if any small business offers to provide teaching or training programs to individuals to perform medical radiologic procedures. The additional costs will be the fee for instructor application fee of \$150, the curricula or program approval fee of \$100, as a site visit fee of \$100, or required to grant or deny approval for a small business using a practitioner as a independent sponsor with one instructor and one trainee. The cost of compliance would be estimated at \$300 when no site visit is required. The cost of compliance with the sections for a large business using a community college as an institutional sponsor with one instructor and three trainees, the cost per trainee would be estimated at \$383 when no site visit is required.

Mr. Seale 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 protection of the health and safety of citizens from the harmful effects of excessive radiation used for medical purposes by establishing minimum standards for the certification of medical radiologic technologists and identifying persons who meet the standards. The possible economic cost to individuals who are required to comply with the section as proposed will be the application

fee of \$20 in 1988 and \$0.00 in 1989-1992; the initial certification fee (prorated at \$2.50 per month) of \$30 in 1988, and \$0.00 in 1989-1992; the biennial approval fee of \$5 in 1988 and \$0.00 in 1989-1992; the annual certification approval fee (annual fee) of \$100 each year in 1988-1992; and the optional site visit fee of \$1,000 each year in 1988-1992.

Comments on the proposal may be submitted in writing to Donna S. Hardin, Programs Manager, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-5185. Comments will be accepted for 45 days from the date of publication of the proposed sections. A public hearing has been scheduled for Friday, January 29, 1988, 10 a.m., at the Texas Department of Health Auditorium, 1100 West 49th Street, Austin, Texas 78756.

The new sections are proposed under Texas Civil Statutes, Article 4512m, §2.05 (Senate Bill 1439, 49th Legislature, 1987) which provide the Texas Board of Health with the authority to adopt rules establishing the minimum standards for the certification of medical biologic technologists and Texas Civil Statutes Article 6211.03, §4 which authorizes state agencies to adopt rules covering the eligibility of persons with criminal backgrounds for certain occupations, professions, and licenses.

The 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 December 14, 1987

TRD-8711809

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

April 16, 1988

For further information, please call

(512) 458-7236



Chapter 337. Water Hygiene

(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 Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Department of Health proposes the repeal existing §337.201-337.211 and new §337.201-337.213, concerning public water systems. The major changes will include these following areas: the addition of a plumbing lead ban to meet new Federal regulations; the revision of state approval requirements to allow the qualification of additional systems; the reduc-

tion of quantity requirements which will lessen system expenses; the addition of new design parameters for public water systems; the addition of water wholesalers to the minimum water quantity requirements; and the addition of new requirements for pitless well units.

Mr. Stephen L. Seale, chief accountant III, has determined that there will be fiscal implications as a result of enforcing or administering the proposed sections and repeals. There will be no effect on state government for the first five-year period that the sections and repeals will be in effect. The effect on local government for the first five-year period the sections and repeals will be in effect is an estimated reduction in cost of \$800,100 for each increase in revenue. Public water systems owned and operated by local governmental entities will have a reduction in costs because of the relaxation of certain requirements in the proposed new sections. Pressure tank capacity, clearwell capacity, storage requirements and production requirements for some systems have been reduced. These are reflected in an estimated cost savings of \$1,066,900 or \$737 per system for each year of the first five years. Additional costs have been incurred in water storage requirements for new installations and an increase in the number of certified operators required of systems serving more than 1,000 connections. The additional costs are \$1,066,800 or \$427 per water system each year. The net result is a savings to local governments of \$800,100 or \$320 per water system. The cost of compliance with the proposed sections and repeals for small business will be an overall decrease in their cost of operations for the first five-year period the rules will be in effect. A number of changes have been made in the proposed new sections which will reduce operating expenses for all community public water systems. Repeals will be the same for investor-owned community water systems as for systems owned by local governments. The savings to investor-owned systems will be \$1,633,100 or \$747 per system each year. Expenses will be reduced by \$931,200 or \$427 per system. The overall net overall reduction of \$699,000 or \$320 per system. At the same time the increase of the new federal lead ban will increase materials expense for Texas plumbers which are small businesses. Plumbing material for each new house built in the state will increase by an average of \$1 per house. Statewide this would be an increase in costs of \$130,000 each year to the plumbing industry. The end result will be a net decrease in cost to Texas for all businesses of \$565,900. There will be no difference in compliance expenses between small and large businesses.

Mr. Seale has further determined that for each year of the five years the proposed sections and repeals are in effect, the following public benefit will result: There will be a reduction in operating expense for many public water systems. This

should benefit the public as customers, by bridling and decreasing water rates. Although the federal lead ban amendment may affect the cost of the cost of new homes and plumbing repairs, the long range health benefits are a positive factor. There will be no possible economic cost to individuals who are required to comply with the proposed sections and repeals.

Comments on the proposal may be submitted to Charles R. Maddox, PE, Director, Division of Water Hygiene, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7236. Comments will be received for 45 days from the date of publication of the proposed repeals and new sections in the *Texas Register*. In addition, the department will conduct a public hearing on February 2, 1988, at 10 a.m. at the Texas Department of Health Auditorium, 1100 West 49th Street, Austin.

Public Water Systems

★ 25 TAC §§337.201-337.211

The repeals are proposed under Texas Civil Statutes, Article 44711, §23, which provide the Texas Board of Health with the authority to adopt rules covering public drinking water systems.

§337.201. *Glossary of Terms.*

§337.202. *General Provisions.*

§337.203. *Water Sources.*

§337.204. *Water Treatment.*

§337.205. *Water Distribution.*

§337.206. *Water Storage.*

§337.207. *Water System Quantity Requirements.*

§337.208. *Minimum Acceptable Operating Practices for Public Drinking Water Systems.*

§337.209. *Appendix A—Notice of Appointment.*

§337.210. *Appendix B—"Approval" Requirements.*

§337.211. *Appendix C—Suggested Minimum Water Main Sizes.*

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 December 17, 1987

TRD-8711806

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

April 16, 1988

For further information, please call

(512) 458-7236



These rules shall be adopted under Chapter 171, Act 14771, §23 which provide the Texas Board of Health with the authority to adopt rules covering public drinking water systems

Section Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise. In addition, other technical terms used shall have the meaning or definition listed in the latest edition of "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

ASME standards—The standards of the American Society of Mechanical Engineers, 346 East 47th Street, New York, New York 10017.

ASTM standards—The standards of the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19102.

Auxiliary power—Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the department, dual primary electric services may be considered as auxiliary Power in areas which are not subject to large scale power outages due to natural disasters.

AWWA standards—The latest edition of the applicable standards as approved and published by the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235

Contamination—The presence of any foreign substance (organic, inorganic, radiological, or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water.

Cross connection—A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

Department—The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756

Drinking water—All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "drinking water" shall also include all water supplied for human consumption, or used by any institution catering to the public.

Drinking water standards—The department rules covering drinking water stan-

dards §§337.1337-1337.18 of the title relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems)

Health hazard—Any conditions, devices, or practice in the water supply system and/or its operation which create, or may create, a danger to the public health and well-being of the water consumer. An example of a health hazard is a structural defect in the water supply system, whether of location, design, or construction, which may regularly or occasionally prevent satisfactory purification of the water supply or cause it to be contaminated from extraneous sources.

Interconnection—A physical connection between two public water supply systems.

Intruder resistant fence—A fence six feet or more in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

mg/l—Milligrams per liter, a measure of concentration, equivalent to and replacing parts per million (ppm) in the case of dilute solutions.

NSF—The National Sanitation Foundation and refers to the listings developed by the Foundation, P.O. Box 1468, Ann Arbor, Michigan 48106.

psi—Pounds per square inch.

Public health engineering practices—Requirements in these sections or guidelines promulgated by the department.

Public water system—A system for the provision to the public of piped water for human consumption, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or regularly serve an average of at least 25 individuals daily at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities and the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more water systems with each having less than 15 connections but owned by the same person, firm, or corporation and located on contiguous land will be considered a public water system if the total connections of the systems are 15 or greater. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he resides in, uses as his place of employment, or works in a place to which drinking water is supplied from the system. A public water system is either a community water system or a non-community water system, and is further defined as follows:

(A) **Community water system**—A public water system which serves at least 15 service connections used by at least 15 residents or regularly serves at least 25 year-round residents. Service connections shall be counted as one for each one-family residential unit to which drinking water is supplied from the system.

(B) **Noncommunity public water system**—Any public water system which is not a community system.

Sanitary control easement—A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding.

Service connection—A single family residential unit or a commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When sufficient data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served.

Service pump—Any pump that takes treated water from storage and discharges to the distribution system.

Transfer pump—Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

§337.202. *General Provisions.*

(a) **Authority for requirements.** Texas Civil Statutes, Article 4477-1, prescribe the duties of the Texas Department of Health relating to the regulation and control of public drinking water systems in the state. These statutes require that the department review completed plans and specifications for all contemplated public water supplies, and that the department be notified of any subsequent material changes, improvements, additions, or alterations in existing systems. In order to properly discharge these duties, the Texas Board of Health is authorized to develop rules governing the design of system facilities, as well as minimum acceptable operating practices necessary to protect the public health.

(b) **Reason for sections.** These sections have been adopted to insure the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations, or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum ac-

ceptable operating practices must be specified to insure that facilities are properly designed, installed and distribute a safe, potable water.

(c) Authorization for examination of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a registered professional engineer. All engineering documents must have engineering seals, signatures and dates affixed in accordance with the rules of the Texas State Board of Registration for Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments, or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The department's Water Hygiene Division furnishes consultation services as a reviewing body only, and its registered engineers may neither act as design engineers nor furnish detailed estimates.

(B) The department's Water Hygiene Division does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Review will be of features covered by these sections.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities are constructed according to approved plans and must notify the department's Water Hygiene Division in writing upon completion of all work.

(D) The approval of plans and specifications shall not be construed as granting permission to erect signs or issue an advertisement which says "Public Water Supply Approved—Texas Department of Health." Such approval is of the establishment and maintenance of satisfactory operational practices, such as compliance with other applicable state statutes. See also §337.206 of this title (relating to minimum acceptable practices for public drinking systems) and §337.211 of this title (relating to Appendix A—State Approval Recognition).

(d) Submission of planning material. In general, the planning material submitted shall conform to the following requirements:

(1) The engineering report shall include at least coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site

and surroundings for the proposed facilities.

(F) type of treatment, equipment, and capacity of units.

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions, and

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) If stage construction is anticipated, the overall plan shall be presented, even though a portion of the construction is to be deferred.

(C) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the department's Water Hygiene Division may give limited approval. In such case, the owner is given a bonded guarantee covering acceptable performance. The specifications shall include a statement of fact, such as bonded guarantee will be provided the owner and shall also specify those conditions under which the bond will be forfeited.

(4) Copies of each sanitary control easement shall accompany plans for all wells. See §337.212 of this title (relating to Appendix C—Sample Sanitary Control Easement Document For a Public Water Well) for suggested form.

(e) Beginning and completion of work.

(1) The department's Water Hygiene Division shall be notified in writing by the design engineer or the owner when construction is started.

(2) Upon completion of the water works project, the engineer or owner will notify the Department's Water Hygiene Division in writing of its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the department.

(f) Changes in plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units and storage tanks, shall be submitted to the department for review and approval.

(g) Changes in existing systems or supplies. Changes or additions to existing systems which result in a 10% expansion or greater in production, treatment, storage or distribution capacity shall require written

notification to the department. The department shall determine whether engineering plans and specifications may be required after initial notification of the extent of the modifications.

(h) Planning material acceptance.

(1) Planning material for improvements to an existing system which does not meet the requirements of all portions of these regulations will not be considered unless the necessary modifications for correcting any deficiencies are included in the proposed improvements, or unless the department determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(2) Planning material which contains a request for an exception to one or more for these sections shall be considered on an individual basis. The burden of proof rests with the design engineer to demonstrate to the satisfaction of the department that the exception has been requested because conditions are such that the valient protection to the public health of the system's customers is to use of an alternate means. Any such request must be substantiated by verifiably documented engineering data. The exception should be requested in writing prior to the submission of final plans and specifications.

§337.203. Prohibitions.

(a) Construction and operation prohibition. No person may construct or operate a public drinking water system in violation of these sections or the drinking water standards.

(b) Distribution prohibition. No person may distribute drinking water to the public in violation of these sections or the drinking water standards.

§337.204. Water Sources

(a) Water quality. The quality of water to be supplied must meet the the quality criteria in these sections.

(b) Water quantity. Sources of supply, both ground and surface, shall have a safe yield capable of supplying the maximum daily demands of the distribution system during extended periods of peak usage and critical hydrologic conditions. The pipe lines and pumping capacities to treatment plants or distribution systems shall be adequate for such water delivery. Minimum capacities required are specified in §337.208 of this title (relating to Minimum Water System Capacity Requirements).

(c) Groundwater sources and development.

(1) Groundwater sources shall be so located that there will be no danger of pollution from flooding or from insanitary surroundings, such as privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites, or abandoned and improperly sealed wells.

(A) No well site which is within 50 feet of a tile or concrete sanitary sewer,

septic tank or storm sewer, or which is within the feet of a septic tank, perforated drainage, absorption bed, evapotranspiration field, or underground storage tank, shall be acceptable for use as a domestic drinking water supply well. Sanitary or storm sewers constructed of ductile iron or PVC pipe shall meet AWWA specifications, having a minimum working pressure of 150 psi or greater, and equipped with pressure type joints and gaskets at distances of less than 50 feet from a well. In all other cases, in no case shall the distance be less than ten feet. In situations where wells are to be located at distances of less than 50 feet from a septic tank, perforated drainage, absorption bed, evapotranspiration field, or underground fuel storage tanks within a 50-foot radius. In such cases, a surface casing shall be installed to a depth of 30 feet or greater, and the distance shall be less than 50 feet from the well.

(B) No well site shall be located within 50 feet of a sewage treatment plant or within 300 feet of a seepage wet well, cesspool, pump station or a drainage ditch which contains or discharges or discharges of the wastes from sewage treatment systems.

(C) All water wells shall be located within 500 feet of animal feed lots, stock waste disposal sites, lands irrigated by sewage or effluent.

(D) Livestock in pastures shall not be allowed within 50 feet of water supply wells.

(E) All water wells in the area of a proposed source shall be plugged and sealed properly to prevent possible contamination of freshwater strata. The procedures and methods to be followed in plugging and sealing wells shall be obtained from the Texas Water Commission in Austin.

(F) A sanitary control easement covering that portion of the lands within 150 feet of the well location shall be secured from all such property owners and recorded in the deed records at the county courthouse. The easement shall provide that none of the pollution hazards covered in subparagraphs (A)-(E) of this paragraph, or any facilities that might create a danger of pollution to the water to be produced from the well will be located thereon. Copies of the recorded easement shall be submitted with plans and specifications submitted for review in accordance with §337.21, of this title (relating to Appendix C - Sanitary Control Easement Document For a Public Water Well).

(2) The premises, materials, tools, and drilling equipment shall be maintained so as to minimize contamination of the underground water during drilling operation.

(A) Water used in any drilling operation shall be of safe sanitary quality. Water used in the mixing of drilling fluids or mud shall contain a chlorine residual of

at least 0.5 mg/l.

(B) The slush pit shall be constructed and maintained so as to minimize contamination of the drilling mud.

(C) No temporary toilet facilities shall be maintained within 150 feet of the well being constructed unless they are of a sealed, leakproof type.

(3) Special attention must be given to the construction, disinfection, protection, and testing of a well to be used as a public water supply source.

(A) The department shall be furnished a copy of well material setting data, geological log, and information (pressure, cementing and surface elevation), results of the 36 hour pump test, and the information, bacteriological sample results, and a chemical analysis report of a representative sample of water from the well.

(B) The casing to be used in the construction of a well for public use shall be new carbon steel, or length low-alloy steel, tandem steel, or pipe. The material shall conform to AWWA standards. The casing shall extend a minimum of 18 inches above the elevation of the finished floor of the pump house, natural ground surface and a minimum of 12 inches above the sealing block or pump motor foundation block when provided. The casing shall extend at least to the depth of the lowest water table, information to be developed from nearby wells, or, if necessary, in order to curtail undesirable water-bearing strata.

(C) The space between the casing and drill hole shall be sealed by using sufficient cement under pressure to provide for completely filling and sealing the annular space between the casing and the drill hole. The well casing shall be cemented in this manner from the top of the shallowest formation to be developed at the earth's surface. Or, as an alternate, and with prior approval, other materials for a permeability of less than 10^{-7} cm/sec may be used in sealing the annular space. Where the top of the water-bearing formation is less than 50 feet, special treatment facilities (in addition to chlorination) and/or storage with a minimum detention time of 36 hours) may be required depending on local conditions.

(D) When a gravel pack well is constructed, all gravel shall be of selected and graded quality and shall be thoroughly treated with a 50 mg/l chlorine solution to insure disinfection as it is added to the well cavity.

(E) In all cases, a concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the well head.

(F) Wellheads and pump bases shall be sealed by the use of gaskets or sealing compounds and properly vented to prevent the possibility of contamination of the

well water. A well casing vent shall be provided with the opening screened with 16-mesh or finer corrosion resistant screen, faced downward, elevated and located so as to minimize the drawing of contaminants into the well.

(G) Safety precautions shall be taken to prevent possible contamination of the water or damage by trespassers following the completion of the well and prior to installation of permanent pumping equipment.

Upon well completion, or after any work has been reworked, the well shall be disinfected in accordance with current AWWA Standards for disinfection except that the disinfectant shall remain in the well for at least six hours.

(H) Water containing chlorine is completely removed from the well, prior to placing the well in service. Samples of water shall be collected and submitted for bacteriological analysis. Three successive samples collected on the same day shall be free of all harmful organisms.

(I) Appropriate facilities for treatment of the water shall be provided where a satisfactory bacteriological record cannot be established after repeated disinfection. The extent of such treatment required will be determined on the basis of geological data, well construction, location of nearby sources of contamination and, perhaps, on the basis of quantitative bacteriological analyses.

(J) A complete physical and chemical analysis of the water produced from a new well shall be made after 36 hours of continuous pumping at the design withdrawal rate. Samples of water submitted to the department laboratory for chemical analyses. Tentative approval may be given on the basis of tests performed by in-plant or private laboratories but final acceptance by the department must be on the basis of results from the department laboratory. Appropriate treatment shall be provided if the analyses reveal that the water from the well fails to meet the water quality criteria in the drinking water standards. These criteria include turbidity, color, taste, odor, threshold odor limitations, and excess of hydrogen sulfide, carbon dioxide, or other constituents or minerals which make the water undesirable or unsuited for domestic use.

(K) A suitable sampling cock shall be provided on the discharge pipe of each well pump.

(L) If a well blow-off line is provided, it shall slope downward and terminate at a point which will not be subject to submergence by flood waters.

(M) Flow measuring devices shall be provided for each well to measure production yields and provide for the accumulation of water production data. These devices shall be so located as to facilitate ease of daily reading.

(N) All completed well units shall be protected by intruder resistant fences, the gates of which are provided with

locks or caps and in locked, unattended well houses to exclude possible contamination due to the fact of trespassers. The gates on wellhouses shall be locked during periods of darkness and when the plant is unattended.

(N) Subground level pump rooms and pump pits will not be allowed in connection with water supply installations. The pump room floor shall be at least two feet above the highest known watermark or 100 year flood elevation, if available, or protected adequately by levees from possible damage by flood waters.

(O) The well site shall be fine graded so that the site is free from depressions, reverse grades or areas too rough for proper ground maintenance so as to assure that surface water will drain away from the well. In all cases, arrangements shall be made to carry off the drainage from the well pump, leakage from packing glands and floor drainage. Suitable drain pipes located at the outer edge of the concrete floor shall be coupled to carry off this water and prevent seepage into the ground around the well head. This water shall not be disposed of in such a manner so that it will cause any nuisance from mosquito breeding or stagnation. Drains shall not be directly connected to storm drains or sewers.

(P) An all weather access road shall be provided to each well site.

(4) Pitless well units may be desirable in areas subject to vandalism or extended periods of subfreezing weather. The department may be contacted for approval of specific applications of pitless units prior to construction and installation.

(A) Pitless units shall be shop fabricated from the factory. Connection with the well casing to the unit or cover, be threaded or welded to the well casing, be of watertight construction throughout and be of materials and weight at least equivalent and compatible to the casing. The unit must have a field connection to the lateral discharge from the pitless unit of threaded flanged or mechanical joint connection. Each unit must terminate at least 18 inches above the concrete sealing collar and at least two feet above the highest known watermark or 100 year flood elevation, whichever is higher.

(B) The design of the pitless unit shall make provisions for an access to disinfect the well, a properly designed casing vent, a cover at the upper terminal of the well that will prevent the entrance of contamination, a contamination proof entrance connection for electrical cable, and at least one check valve within the well casing. The unit shall have an inside diameter as great as that of the well casing up to and including casing diameters of 12 inches to facilitate work and repair on the well, pump and well screen.

(C) If the connection to the casing is by field weld, the shop-assembled unit must be designed specifically for field

welding to the casing. The only field weld permitted will be to connect a pitless unit to the well casing.

(D) Completed pitless well unit installations must be equipped with above ground level raw water sampling cocks, concrete sealing blocks and flow measuring devices.

(E) The well casing and pitless unit must be properly sealed and cemented in accordance with paragraph (3)(C) of this subsection.

(d) Surface water sources and development.

(1) An evaluation shall be made of the proposed surface water impoundment or flowing supply in the area of diversion and its tributary streams to determine the degree of pollution from all sources within the watershed.

(A) Where surface water sources which are subject to continuous contamination by municipal or industrial wastes and/or treated effluent are contemplated for development for public water systems, the adverse effects of the contamination on the quantity of the raw water reaching the purification plant shall be determined by sanitary surveys and laboratory procedures. These findings shall be submitted with the planning material. The findings will then be used to determine whether or not the proposed raw water intake is adequately protected from all sources of contamination.

(B) The disposal of all liquid or solid wastes from any source on the watershed must be in conformity with applicable federal, state, and local regulations and state statutes.

(C) Spore installations, marinas, boats and all habitations on the watershed shall be provided with satisfactory sewage disposal facilities. Septic tanks and soil absorption fields, tile or concrete sanitary sewers, sewer manholes, or other approved toilet facilities shall not be located in an area within 75 feet horizontally from the lake water surface or 75 feet horizontally from the 50 year flood elevation, whichever is lower.

(D) Disposal of wastes from boats or any other watercraft shall be in accordance with the Texas Water Commission Order Number 74-0521-4 as amended or superseded.

(2) Intakes shall be so located and constructed as to permit a wide variation in depths from which the raw water is taken as well as to permit withdrawal of water when reservoir levels are very low. Fixed level intakes are acceptable if water quality data is available to establish that the effect on water quality will be minimal.

(A) Insofar as possible, intakes shall be located in areas not subject to excessive siltation and areas not subject to receiving immediate runoff from wooded sloughs and swamps.

(B) Water intake works shall be provided with screens or grates to minimize

the amount of debris entering the plant.

(C) No cesspools, leeching pits, fishing ramps, or other structures or fishing piers shall be located within 1000 feet of the raw water intake.

(D) A restricted zone of 200 feet radius from the raw water intake shall be established and all recreation activities and trespassing shall be prohibited in this area. Regulations governing this zone shall be in the city ordinances or the rules and regulations promulgated by a water district or similar regulatory agency. Provisions shall be made for the strict enforcement of such ordinances or regulations. The restricted zone shall be delineated with markers or buoys. Signs recouping these restrictions shall be maintained in plain view of the public on the intake structures, markers, and/or buoys.

(E) The department shall make an on-site evaluation of the proposed raw water intakes. The evaluation must be requested prior to final design and supported by preliminary design drawings.

(3) The water treatment plant and all pumping units shall be located in well-drained areas not subject to flooding and away from seepage areas or where the underground water table is near the surface.

(A) Water treatment plants shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage effluent. A minimum distance of 150 feet must be maintained between any septic tank drainfield line and any underground treatment or storage unit. Any sanitary sewers located within 50 feet of any underground treatment or storage units shall be constructed of ductile iron or PVC pipe with a minimum pressure rating of 150 psi with watertight joints.

(B) Plant site selection shall also take into consideration the need for disposition of all plant wastes in accordance with all applicable regulations and state statutes including both liquid and solid waste or by-product material from operation and/or maintenance.

(C) The water treatment plant and all appurtenances thereof shall be enclosed by an intruder resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended.

(D) An all weather road shall be provided to the treatment plant and to the raw water pump station.

(E) Flow measuring devices shall be provided to measure the raw water supplied to the plant and to measure the treated water discharged from the plant. These devices shall be located so as to facilitate ease of use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities.

(e) Springs and other water sources.

(1) Water obtained from springs, infiltration galleries, wells in fissured areas, and/or any other source subject to surface

or near surface contamination of recent origin shall be considered for the provision of treatment facilities. In the absence of unusual conditions, minimum treatment shall consist of coagulation, with direct filtration and disinfection.

(2) Any increase or decrease in the amount of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and both qualitative and quantitative microbiological and chemical analyses.

§337.205. *Water Treatment.*

(a) *Groundwaters.*

(1) Disinfection facilities shall be provided for all groundwater supplies for the purpose of bacteriological control and distribution protection and shall be in conformity with applicable disinfection requirements in subsection (c) of this section.

(2) Treatment facilities shall be provided for groundwater if the water does not meet the drinking water standards. The facilities provided shall be in accordance with established and approved standards.

(3) Filters provided for turbidity and bacteriological control shall be preceded by coagulation and shall conform with the requirements outlined for surface water treatment in accordance with subsection (b)(1) of this section. Filtration units for iron and manganese removal, regardless of the volume, shall be based on a maximum rate of five gallons per square foot per minute.

(B) The removal of iron and manganese may not be required if it can be demonstrated that they cannot be sequestered so that the discoloration problems do not exist.

(4) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage reservoirs. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds or other foreign material will be excluded from the water. Aerators and all other such devices shall be screened with 16-mesh or finer corrosion resistant screen.

(C) Appropriate laboratory facilities shall be provided for controls as well as to check the effectiveness of disinfection or any other treatment processes employed.

(b) *Surface water.*

(1) A detailed engineering report must be submitted for approval prior to completion of planning material for construction.

(2) All water secured from surface sources shall be given complete treatment at a plant which provides facilities for pretreatment, disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clear well storage and terminal disinfection of the water with chlorine or suitable chlorine compounds.

(3) Based on current acceptable de-

sign standards, the treatment capacity of a water plant shall always be in excess of the maximum expected draft on any day of the year.

(4) No cross-connection or direct connection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment. No conduit or basin containing raw water or any water in a prior stage of treatment shall be located directly above, or be permitted to have a single common provision with, another conduit or basin containing finished water.

(5) All storage conduits shall be constructed so as to be airtight, tight against leakage, return of the dechlorinated water and/or sludge to the raw water should be adequately controlled so that there will be a minimum of interference with the treatment process. Any discharge of wastewater shall be in accordance with the appropriate statutes and regulations.

(6) Reservoirs for pretreatment and/or selective quality control shall be provided where complete treatment facilities fail to operate satisfactorily at times of maximum turbidity or other abnormal raw water quality conditions. Existence of such reservoirs shall be prohibited.

(7) Treatment plants shall be provided with efficient devices for measuring and applying chemicals to the water under treatment.

(A) Each chemical feeder shall have a standby or reserve unit. Common standby feeders are permissible but generally more than one standby feeder must be provided due to the incompatibility of chemicals or the rate in which they are being fed (solid, liquid or gas).

(B) Accurate flow meters shall be provided for determining rate of treatment and total amount of water treated. All chemical feed equipment shall be capable of ready adjustment to variation in the flow of water being treated.

(C) Dry chemical feeders shall be in a separate room and be provided with suitable facilities for dust control.

(D) Chemical feeders shall be provided with dissolving tanks when applicable.

(E) Where practical, the transport of chemical solutions between the feeder and the application point should be accomplished through open channels. If enclosed feed lines must be used, they shall be designed and installed so as to prevent clogging and facilitate cleaning.

(F) Coagulants shall be applied to the water in the mixing basin or chambers so as to permit thorough mixing with the water.

(G) Chlorine and ammonia feed units and storage facilities shall be separated by solid, sealed walls.

(8) Provision for chemical application points at the raw water source and

beyond the mixing basin or chamber shall be provided for taste and odor control, stabilization, and disinfection for quality controls.

(9) Chemicals shall be stored above floor level in a separate area above ground level room and protected against flooding or wetting from floors and walls.

(10) Storage facilities at the plant shall be adequate to store at least one month's supply of chemicals. However, local resupply ability may dictate the requirements for plant inventories.

(11) Chemical storage facilities shall be located so as to facilitate the handling of bulk chemicals by operators and the transfer of chemicals to feeders. Also, the movement of chemical from storage to feed machines shall be such as to facilitate good housekeeping.

(12) When liquid chemicals are to be used, special precautions must be taken. Chemical storage and day tank installations must be provided with spill containment facilities. The following concerns must also be addressed during the plan review and approval process:

(i) as regards storage tanks the materials of construction, capacity (must be at least 1.5 times the size of truck delivery), overflow, and containment;

(ii) as regards transfer pumps, the storage tank, day tank capacity, type, materials of construction, and controls;

(iii) as regards day tanks, the materials of construction, overflow, containment, capacity, and controls;

(iv) as regards metering pumps, the materials of construction, calibration, controls, and capacity; and

(v) as regards piping and valves, their compatibility with solutions.

(10) Efficient mixing and flocculation equipment shall be provided which is capable of adequate flexibility or adjustment to provide optimum flocculation under varying raw water characteristics and rates of raw water treatment.

(A) Where special types of equipment for rapid mechanical mixing, softening, or sedimentation are proposed, the manufacturer shall be required to meet the design criteria in paragraph (11) of this subsection.

(B) Sufficient facilities for coagulation and sedimentation must be provided to clarify the water so that the settled water turbidity is at a level so as to produce a finished water which meets the turbidity limits established by the drinking water standards.

(i) Settled water turbidities of less than 10 turbidity units are generally required to produce a filtered water turbidity which meets the requirements of the drinking water standards.

(ii) All turbidity measurements must be made in accordance with the method specified in the drinking water standards.

(11) In order to ensure continuous

operation basins for flocculation and straight flow sedimentation of organic waters shall be at least two in number and shall be designed for parallel operation and shall provide a total detention period of at least six hours for clarification plants and 4 1/2 hours for softening plants. Where detention periods of less time are desired, engineering data shall be submitted to the department to justify the lesser approach. However, in no case shall the detention time in the clarification zone of a unit be less than two hours. The requirement for two parallel treatment plants (or tanks) will be extended only with specific approval of the department after the review and evaluation of supporting material submitted to substantiate the suspension.

(A) Facilities for sludge removal shall be provided by mechanical means or by the provision of hopper bottomed basins with valves capable of complete draining of the units.

(B) Basins shall be so designed as to prevent the short-circuiting of flow or the destruction or flow of recirculated water or water from aerulators shall be transported to sedimentation basins in such a manner as to prevent destruction of flow of tang and flumes shall be designed to prevent a flow velocity of 0.5 feet per second. Trough gates, ports and valves shall be designed at a maximum flow velocity of four feet per second on the transfer of water between units.

(C) Sedimentation basins may be square, rectangular, round, or other shapes approved by the department. The length of rectangular settling basins shall preferably be at least twice their width with a side water depth of 10 feet to 12 feet in nonsoftening water treatment. Square and round sedimentation may also be used for clarification and softening plants; however, the detention times must be observed in accordance with the requirements of this paragraph.

(D) Surface loading for clarification units shall not exceed 800 gallons per square foot per day and softening units shall not exceed 900 gallons per square foot per day.

(E) Settled water weir overflow rates shall be 15,000 to 20,000 gallons per foot per day.

(F) Sedimentation basins shall be provided with facilities for draining the basin in a period not in excess of six hours. In the event that the plant site topography is such that gravity draining cannot be realized, a permanently installed electric powered pump station shall be provided to dewater the basin.

(12) Filters shall be gravity or pressure type.

(A) The design of gravity rapid sand filters shall be based on a maximum design filtration rate of two gallons per square foot per minute. At the beginning of filter runs for declining rate filters, a maximum filtration rate of three gallons per square foot per minute is allowed. The filter

discharge piping shall be designed with an orifice or other permanently installed limiting device to ensure that the maximum filter rate cannot be exceeded.

(B) When a single, dual, or multiple medium filters are used, a maximum design filtration rate of five gallons per square foot per minute must be used. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 6.5 gallons per square foot per minute is allowed. The filter discharge piping shall be designed with an orifice or other permanently installed limiting device to ensure that the maximum filter rate cannot be exceeded.

(C) Pressure sand filters shall be subject to the loading provisions in subparagraph (A) of this paragraph for gravity sand filters. When used, the units are filters shall be installed such that design capacity is available to furnish the design capacity with one filter out of service. In any case, a minimum of two filter units shall be furnished. The design capacity of filters shall be limited to installation of less than 0.50 million gallons per day capacity.

(D) The depth of filter sand, anthracite, or other filtering materials shall be between 24 inches and 36 inches. This filtering material shall be free of clay, silt, organic matter, and other impurities. Its effective size shall range from 0.35 to 0.45 mm for fine sand, 0.55 to 0.55 mm for medium sand, and 0.55 to 0.6 mm for coarse sand. Its uniformity coefficient shall not exceed 1.7. The grain size distribution shall also be as prescribed by AWWA standards. Material for dual or mixed media filters shall conform to AWWA standards.

(E) Underlayment material, at least 12 inches in grain size, shall be placed varying in size from 1/4 inch to 2 1/2 inches. The gravel is usually arranged in three to five layers such that each layer contains material about twice the size of the material above it. Other support material may be approved on a case by case basis.

(F) The rate-of-flow of wash water shall not be less than 20 inches vertical rise per minute and usually not more than 30 inches vertical rise per minute. This shall expand the filtering bed 30 to 50 percent. The free board in inches shall exceed the wash rate in inches of vertical rise per minute.

(i) The water for backwashing filters shall be of the same quality as that produced by the plant. This water may be supplied by elevated wash water tanks or by pumps provided for backwashing of filters only taking suction from clear wells. For installations having a treatment capacity no greater than 150,000 gallons per day, water for backwashing may be secured directly from the distribution system if proper controls and rate of flow limiters are provided.

(ii) Rate of backwashing of filters shall be regulated by rate-of-flow controllers.

(G) All surface filter backwash systems are provided atmospheric backwash breakers shall be installed in the main supply lines above the overflow of the filters such that all water passes through them.

(H) Each filter unit shall be equipped with a manually adjustable rate-of-flow controller with rate-of-flow reduction indicators with control valves. Devices are in addition to the flow limiting devices required above in subparagraphs (A) and (B) of this paragraph.

(I) Each filter unit shall be equipped with a device to indicate loss-of-head through the filter box.

(J) Filter-to-waste connections, if included, shall be provided with a direct connection to waste.

(K) Filters shall be so located that common walls will not exist between them and aerators, mixing, and sedimentation basins or clear wells. They shall be readily accessible for inspection and repair.

(13) Pipe galleries shall be incorporated into the plant design with ample working room, good lighting and good drainage provided by slopes, gutters and sumps. Adequate ventilation to prevent condensation and to provide humidity control is also required.

(14) The identification of influent, effluent, waste, and fire wash lines can be accomplished by use of various colors of paint. In order to maintain uniformity, the color code below is suggested for pipe galleries. All piping for the following services shall be color coded where scheduled. Bands shall be six inches wide and spaced along the pipe at five foot intervals. The color code is as follows:

LETTERS	COLOR OF PIPE	COLOR OF LETTERS
Potable Water	Light Blue	Black
Compressed Air	Light Green	Black
Instrument Air	Light Green with Dark Green Bands	Black
Chlorine (gas, liquid, or vent)	Yellow	Black
Chlorine (solution)	Yellow with Red Bands	Black
Liquid Alum	Yellow with Orange Bands	Black
Alum (solution)	Yellow with Green Bands	Black
Ammonia	Yellow with Brown Bands	Black
Settled Water	Green	Black
Filter Effluent	Light Blue	Black
Backwash	Light Blue	Black

Drain	Dark Gray	White
Raw Water	Tan	Black

(15) An adequately equipped laboratory must be available locally where daily bacteriological and chemical tests can be made on water supplied by all plants serving 25,000 population or more.

(16) For making bacteriological tests may be committed and the required bacteriological samples submitted to Texas Department of Health, Bureau of Sanitation, 49th Street, Austin, Texas 78761.

(17) Treatment plants shall be provided with equipment for making at least the following determinations: turbidity, jar tests and other tests deemed necessary to monitor specific water quality parameters to evaluate specific water treatment processes.

(c) Disinfection

(1) Surface water obtained from surface sources must be disinfected prior to distribution. The dosage sufficient to produce an adequate residual in the water leaving the plant.

(2) All groundwater must be disinfected prior to distribution. Disinfection facilities must be ahead of the water storage reservoir(s) if storage is a part of the distribution. Permission to use alternate disinfectant applies to ground water obtained in writing from the department.

(3) All water stored in elevated water reservoirs for pumping directly to the distribution system must contain a disinfectant residual. Disinfection facilities must be provided for all such locations where an adequate disinfectant residual is not maintained from prior treatment.

(4) Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be secured under all conditions as covered in treatment requirements for groundwater and surface water.

(A) Disinfection equipment shall have a capacity at least 50% greater than the highest expected dosage to be applied at any time. It shall be capable of satisfactory operation under every prevailing hydraulic condition.

(B) Automatic proportioning of the disinfectant dosage to the rate of flow of the water treated shall be provided at the larger plants and at all plants where the rate of flow varies more than 50% above or below the average flow. Manual control shall be permissible only where the rate of flow is relatively constant or an attendant is always on hand to promptly adjust needed dosage.

(C) All disinfecting equipment on surface water treatment plants shall include at least one standby unit of each capacity for ensuring uninterrupted operation.

(D) Facilities shall be provided for determining the amount of disinfectant

used daily as well as the amount of disinfectant remaining for use.

(E) When used, solutions of calcium hypochlorite shall be prepared in a separate mixing tank and allowed to settle so that only clear, colorless liquid is provided in the solution for use for the hypochlorinator.

(F) Provisions shall be made for continuous treatment disinfection and post-disinfection at all surface water plants and at such additional points in the treatment process as indicated in order to provide for alternate treatment procedures.

(G) The use of disinfectants other than chlorine shall be considered on a case-by-case basis under the exception guidance of §337.202(h)(2) of this title (relating to General Provisions).

(5) A suitable positive airflow gas analyzer, a suitable breathing apparatus and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage shall be provided and accessible outside the chlorination area. Chlorine gas to be used.

(6) Housing for gas chlorination equipment and cylinders of chlorine shall be in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facility. Housing shall be located above ground level as a measure of safety. Equipment and cylinders may be installed on the outside of the buildings when protected from adverse weather conditions and vandals.

(7) Adequate ventilation which includes both high level and floor level screened vents shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one 150 pound cylinder of chlorine shall also provide forced air ventilation which includes screened and louvered floor level and high level vents, a fan which is located at the top vent and draws air in through the top vent and discharges through the floor vent, and a fan switch located outside the enclosure.

(8) Hypochlorination solution containers and pumps must be housed and locked to protect them from adverse weather conditions and vandalism. The solution container top must be completely covered and sealed to prevent the entrance of dust, insects, and other contaminants.

(9) Safety measures for the use of alternate disinfectants shall be as prescribed by the department.

(d) Special treatment processes. The adjustment of fluoride ion content, special treatment for iron and manganese reduction, special methods for taste and odor control, demineralization, and other proposals covering other than usual treatment will be considered as special projects. All treatment shall be accomplished prior to the storage reservoirs. Permission to utilize alternate treatment points must be obtained

in writing from the department.

(e) Sanitation facilities for water works installations. Toilet and hand washing facilities provided in accordance with established standards of public health engineering practices shall be available at all installations receiving frequent visits by the general public.

(f) Permits for waste discharges. Permits for discharging effluent from water treatment processes shall be obtained from the Texas Water Commission, Austin, Texas.

§337.206. Water Distribution

(a) Design and standard. All potable water distribution systems including pump stations, mains, groins, and elevated storage, shall be designed, installed, and constructed in accordance with current AWWA standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, departmental review may be based upon ASTM, commercial and other recognized standards utilized by design engineers. All plastic pipe proposed for use in public water systems must bear the National Sanitation Foundation Seal of Approval and have an ASTM design pressure rating of at least 150 psi or a standard dimension ratio of 26. No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted and relocated for use in any public drinking water supply.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 8.0% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances.

(A) for installation and repair of any public water supply and

(B) for any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(c) Pressure. All water distribution systems shall be designed and constructed so as to provide a minimum residual pressure of 20 pounds per square inch under peak demand conditions. Under normal operating conditions, minimum pressures should be not less than 35 pounds per square inch.

(1) Where the topography of the area to be served is such that air locks in the lines may occur, air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contamination.

(2) Where distribution system conditions are such that it is necessary to provide more than one pressure plane or where distribution system conditions and demands are such that low pressures develop, the

method of providing increased pressure shall preferably be by means of booster pumps taking suction from storage reservoirs. The designing engineer must furnish for the department's review all planning material for booster pumps taking suction from other than a storage reservoir. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls and other pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 pounds per square inch must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures (less than 20 psi) for prolonged periods, adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Each community public water system shall provide accurate metering devices at each service connection for the accumulation of water usage data. Systems where no direct charge is made for the water shall be excused from this requirement.

(4) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for the purpose of flushing the system when required. The engineering report shall establish criteria for this design.

(5) The system shall be designed by the engineer so as to afford effective circulation of water with a minimum of dead ends. All dead-end mains shall be provided with acceptable flush valves and discharge piping. All dead-end lines two inches or less in diameter will not require flush valves if they terminate as a customer service. Where dead ends are necessary as a stage in the growth of the system, they shall be located and arranged with a view to ultimately connecting them so as to provide circulation.

(d) Location of mains.

(1) When water mains and sanitary sewers are installed, they shall be installed no closer to each other than nine feet in all directions and parallel lines must be installed in separate trenches.

(2) In addition, where the nine foot separation distance cannot be achieved, refer to the table in §337.213 of this title (relating to Appendix D—Separation of

Water & Sewer Lines).

(A) Where a sanitary sewer parallels a waterline, the sewer shall be constructed of cast iron, ductile iron or PVC meeting ASTM specifications with a pressure rating for both the pipe and joints of 150 psi. The vertical separation shall be a minimum of two feet between outside diameters and the horizontal separation shall be a minimum of four feet between outside diameters. The sewer shall be located below the waterline.

(B) Where a sanitary sewer crosses a waterline and the sewer is constructed of cast iron, ductile iron, or PVC with a minimum pressure rating of 150 psi, an absolute minimum distance of six inches between outside diameters shall be maintained. In addition, the sewer shall be located below the waterline where possible and one length of the sewer pipe must be centered on the waterline.

(C) Where a sewer crosses under a waterline and the sewer is constructed of ABS truss pipe, similar semi-rigid plastic composite pipe, clay pipe or concrete pipe with gasketed joints, a minimum two foot separation distance shall be maintained. The initial backfill shall be cement stabilized sand (two or more bags of cement per cubic yard of sand) for all sections of sewer within nine feet of the waterline. This initial backfill shall be from one quarter diameter below the centerline of the pipe to one pipe diameter (but not less than 12 inches) above the top of the pipe.

(D) Where a sewer crosses over a waterline all portions of the sewer within nine feet of the waterline shall be constructed of cast iron, ductile iron or PVC pipe with a pressure rating of at least 150 psi using appropriate adapters. In lieu of this procedure, the new conveyance may be encased in a joint of 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five feet intervals with spacers or be filled to the spring line with washed sand. The encasement pipe should be centered on the crossing and both ends sealed with cement grout or manufactured seal.

(E) The sewer need not be disturbed where a new waterline is to be installed in parallel to an existing sewer that shows no evidence of leakage and the waterline is installed above the sewer a minimum of two feet vertically and four feet horizontally. Should excavation for the waterline produce evidence that the sewer is leaking, the sewer must be repaired or replaced as described in subparagraphs (A) or (D) of this paragraph.

(F) The sewer need not be disturbed where a new waterline is to cross over (by two feet or more) existing sewer showing no evidence of leakage. Should excavation for the waterline produce evidence that the sewer is leaking, then the sewer must be repaired or replaced as described

in subparagraphs (C) or (D) of this paragraph.

(3) Unless sanitary sewer manholes and the connecting sewer can be made watertight and tested for no leakage, they must be installed so as to provide a minimum of nine feet of horizontal clearance from an existing or proposed water line. Where the nine foot separation distance cannot be achieved, an encasement pipe as described in paragraph (1)(D) of this subsection may be used for the waterline.

(4) Fire hydrants shall not be installed within nine feet vertically or horizontally of any sanitary sewer regardless of construction.

(5) No physical connection shall be made between a drinking water supply (public or private) and a sewer. Any appurtenance shall be designed and constructed so as to prevent any possibility of sewage entering the drinking water system.

(6) No sewer carrying domestic or industrial wastes shall cross suction mains or pumping equipment. Water mains shall not be installed closer than 10 feet to septic tank drainfields. No raw waterlines shall be installed within five feet of any tile or concrete sanitary sewer.

(e) Sanitary precautions and disinfection. Sanitary precautions, flushing, disinfection procedures and bacteriological sampling as prescribed in AWWA standards for disinfecting water mains shall be followed in laying waterlines.

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

(2) Special precautions must be taken when water mains are laid under any flowing stream or semipermanent body of water such as marsh, bay, or estuary. In these cases, the water main shall be installed in a separate watertight pipe encasement or valves shall be provided in the line on each side of the crossing with facilities to allow the underwater portion of the system to be isolated and tested to determine that there are no leaks in the line under water.

(3) New mains shall be thoroughly disinfected in accordance with AWWA standards and then flushed and sampled before being placed in service. Samples shall be collected for bacteriological analysis to check the efficiency of the disinfection procedure which shall be repeated if contamination persists. A minimum of one sample for each 1,000 feet of completed main will be required.

(f) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany planning material submitted.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(g) Backflow, siphonage

(1) No water connection from any public drinking water supply system shall be made to an establishment where an actual or potential contamination or system hazard exist without an air gap separation between the drinking water supply and the source of potential contamination. The contamination air gap is sometimes impractical and, instead, reliance must be placed on individual internal air gaps or mechanical backflow prevention devices. Under these conditions, additional protection shall be required at the meter in the form of a backflow prevention device (in accordance with AWWA Standard C 506, latest revision, and AWWA Manual M14) on those establishments handling substances deleterious or hazardous to the public health. The water purveyor need not require backflow protection at the water service entrance if an adequate cross connection program is in effect that includes an annual inspection and testing by a certified backflow prevention device tester.

(2) All backflow prevention devices shall be tested upon installation by a backflow prevention device tester as designated by the water purveyor. It is recommended that the designated tester be certified by the manufacturer or as specified in the water purveyor's regulations. It is strongly recommended that all backflow prevention devices be tested annually with their test and maintenance report forms retained for a minimum of three years.

(3) The use of a backflow prevention device at the service connection shall be considered as additional backflow protection and not negate the use of backflow protection on internal hazard as outlined and enforced by local plumbing codes.

(h) Water hauling. When drinking water is distributed by tank truck or trailer, in lieu of distribution piping, it must be accompanied in the following manner:

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by this department and must be constructed as follows:

(A) the tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water;

(B) the tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected.

Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by either the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, the U. S. Public Health Service, or the National Sanitation Foundation (NSF);

(C) the tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked;

(D) the tank shall have a vent which is located and faced downward so as to minimize the drawing of contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion resistant material;

(E) connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains;

(F) a drain shall be provided which will completely empty the tank for cleaning or repairs;

(G) when a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain;

(H) hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start up during an intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together;

(I) the tank shall be disinfected monthly and at any time that contamination is suspected.

(J) at least one sample per month from each tank shall be collected and submitted for bacteriological analysis to a Texas Department of Health laboratory for each month of operation;

(K) a minimum free chlorine residual of 0.5mg/l or chloramine residual of 1.0mg/l shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) operational records detailing the amount of water hauled, purchases, and source of water shall be maintained.

§337.207. Water Storage

(a) Capacity. The minimum clear well and pressure maintenance capacity shall be governed by the requirements in §337.208 of this title (relating to Minimum Water System Capacity Requirements).

(b) Location. Insofar as possible, clear wells or treated water tanks shall not be located under any part of any buildings

and, when possible, shall be constructed partially or wholly above ground. No sanitary sewers shall be located within 50 feet or septic tank soil absorption system located within 150 feet of the reservoir or clear well if the reservoir or clear well is below ground level. However, if the sanitary sewers are constructed of 150 psi pressure rated pipe with watertight joints as used in water main construction, they may be located at distances less than 50 feet from an underground treated water reservoir.

(c) Design and construction of clear wells, standpipes, reservoirs, and elevated tanks. All facilities for potable water storage shall be covered and designed, fabricated, erected, tested and disinfected in strict accordance with current AWWA standards and shall be provided with the minimum number, size, and type of roof vents, manways, drains, sample connections, access ladders, overflows, liquid level indicators, and other appurtenances as specified in these sections. Bolted tanks shall be designed, fabricated, erected, and tested in strict accordance with current AWWA Standard D103. The roof of all tanks shall be designed and erected so that no water ponds at any point on the roof and, in addition, no area of the roof shall have a slope of less than 1/4 inch in 12 inches.

(1) Roof vents shall be gooseneck or roof ventilator and be designed by the engineer based on the maximum outflow from the tank. Vents shall be installed in strict accordance with current AWWA standards and shall be equipped with approved screens to prevent entry of animals, birds, insects and heavy air contaminants. Screens shall be fabricated of corrosion resistant material and shall have not less than 16 openings per linear inch. Screens shall be securely clamped in place with stainless or galvanized bands or wires designed to withstand winds of not less than tank design criteria (unless specified otherwise by the engineer).

(2) All roof openings for access shall be designed in strict accordance with current AWWA standards and shall have either hinged or bolted covers. Roof hatch openings shall have a raised curbing of at least four inches in height and the cover shall overlap and terminate in a downward direction for at least two inches (with arrangements for keeping it locked in place). Minimum size opening shall be not less than 24 inches in diameter. The primarily used access opening shall not be less than 30 inches in diameter. Other roof openings required only for ventilating purposes during cleaning, repairing or painting operations shall be not less than 24 inches in diameter or as specified by the design engineer. Hinged covers shall open at 90 degrees to the ladder that the access opening serves.

(3) Overflows shall be designed in strict accordance with current AWWA standards and shall terminate with a gravity

hinged and weighted cover. The cover shall fit tightly with no gap over 1/16 inch. If the overflow terminates at any point other than the ground level, it shall be located near enough and at a position accessible from a ladder or the balcony for inspection purposes. The overflow (or overflows) shall be sized to handle the maximum possible fill rate without exceeding the capacity of the overflow. The overflow shall not be equipped with a screen under any circumstances.

(4) All clear wells and water storage tanks shall be equipped with a liquid level indicator located at the tank site. The indicator can be either a float with a moving target or a pressure gauge calibrated in feet of water for ground reservoirs and standpipes. If an elevated tank has a float with moving target indicator, it must also have a pressure indicator located at ground level. Pressure gauges must not be less than three inches in diameter and calibrated at not less than two foot intervals. Remote reading gauges at the owner's treatment plant or pumping station will not eliminate the requirement for a gauge at the tank site (unless the tank is located at the plant or station).

(5) Inlet and outlet connections shall be located so as to prevent short circuiting or stagnation of water.

(6) Clear wells and potable water storage tanks shall be thoroughly tight against leakage. They shall be situated above the groundwater table and shall have no walls in common with any other plant units containing water in the process of treatment.

(7) If clear well or potable water storage tank drains are provided, they shall not be connected to any waste or sewage disposal system. The drains shall be constructed so that they are not a potential agent in the contamination of the stored water.

(8) All clear wells, ground reservoirs, standpipes, and elevated tanks shall be painted, disinfected, and maintained in strict accordance with current AWWA standards. However, no temporary coatings, wax grease coatings, coating materials containing lead or any other coating will be allowed which are not approved for use (as a contact surface with potable water) by the United States Public Health Service (USPHS), the United States Environmental Protection Agency (EPA), or the United States Food and Drug Administration (FDA).

(9) No tanks or materials shall be used to store potable water that have previously been used for any nonpotable purpose. Where a used tank is proposed for use, a letter from the previous owner or owners must be submitted to the department which states the use of the tank.

(10) The design engineer will provide a means of preventing the accumulation of silt and deposits at all low points in the bottom of all water tanks.

(11) Access manways in the riser

pipe, shell area, access tube, bowl area or any other location opening directly into the water compartment shall be located in strict accordance with current AWWA standards. These openings shall not be less than 24 inches in diameter. However, in the case of a riser pipe or access tube of 36 inches diameter or smaller, the access manway may be 18 inches x 24 inches with the vertical dimension not less than 24 inches.

(d) Design and construction of hydropneumatic tanks. All hydropneumatic tanks must be located wholly above grade and must be of steel construction with welded seams.

(1) Metal thickness for hydropneumatic tanks shall be sufficient to provide at least a minimum of 1/8 inch corrosion allowance and to withstand the highest expected working pressures with a four to one factor of safety. Tanks of 1,000 gallon capacity or larger must meet ASME Section VIII, Division 1 Codes and Construction Regulations. An ASME name plate must be permanently attached for those tanks.

(2) All hydropneumatic tanks shall be provided with a pressure release device and an easily readable pressure gauge.

(3) Facilities shall be provided for maintaining the air-water-volume at the design water level and working pressure. A sight glass must be provided for all tanks greater than 1,000 gallon capacity. Galvanized tanks which are not provided with the necessary fittings and which were in operation on the effective date of these regulations shall be exempt from this requirement.

(4) Protective paint or coating shall be applied to the inside portion of any pressure tank. The coating shall be as specified in subsection (c)(8) of this section.

(5) No tank that has been used to store any material other than potable water may be considered for use in a public water system. A letter from previous owner or owners must be provided as specified in subsection (c)(9) of this section.

(6) Hydropneumatic tank installations should be equipped with slow closing valves and time delay pump controls to eliminate water hammer and reduce the chance of tank failure.

(c) Facility fence. All potable water storage reservoirs and pressure maintenance facilities must be enclosed by an intruder resistant fence with lockable gates.

(f) Location. No public water supply elevated storage, ground storage or hydropneumatic tank shall be located within 500 feet from any municipal or industrial sewage treatment plant or any land spray irrigated with treated sewage effluent.

§337.208. Minimum Water System Capacity Requirements.

(a) Community public water systems. All quantities listed below are only minimum requirements. In view of the wide variation in per capita water usage through-

out the State of Texas, the determining factor for water system facilities is the ability of the system to maintain a minimum residual pressure of 20 psi at all points in the distribution system under peak demand conditions. Those systems which are unable to maintain the specified minimum pressure will be required to provide additional supply, storage, pumping or pressure maintenance facilities as determined by this department on a case-by-case basis. Although the minimum pressure will be determined under actual flow conditions, the system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. Note: In all sections governing quantity requirements, total storage capacity does not include pressure tank capacity, if any.

(1) Groundwater supply requirements are as follows.

(A) If less than 50 connections without ground storage, the system must have the following:

(i) a pressure tank capacity of 50 gallons per connection; and

(ii) a well capacity of 1.5 gallons per minute per connection.

(B) If less than 50 connections with ground storage, the system must have the following:

(i) a total storage capacity of 200 gallons per connection;

(ii) a pressure tank capacity of 20 gallons per connection;

(iii) a well capacity of 0.6 gallon per minute per connection, and

(iv) a service pump capacity of 2.0 gallons per minute per connection.

(C) For 50 to 250 connections, the system must have the following:

(i) a total storage capacity of 200 gallons per connection.

(ii) pressure maintenance facilities which have either elevated storage based on 100 gallons per connection or pressure tank capacity of 20 gallons per connection;

(iii) a well capacity of 0.6 gallon per minute per connection, and

(iv) a service pump capacity such that each pump station or pressure plane shall have two or more pumps having a total capacity of 2.0 gallons per minute per connection.

(D) For more than 250 connections, the system must meet the following requirements:

(i) Total storage must have a capacity of 200 gallons per connection.

(ii) Pressure maintenance facilities must either have elevated storage based on 100 gallons per connection or pressure tank capacity of 20 gallons per connection with a maximum of 30,000 gallons for systems with less than 2,500 connections. Elevated storage in the amount of 100 gallons per connection is required for

systems with over 2,500 connections. Systems with over 50,000 connections which utilize multiple production plants may substitute additional ground storage capacity, service pumping capacity and auxiliary power for elevated storage in excess of five million gallons, at the discretion of the Department. Pressure tank installations are not recommended for systems between 1,000 and 2,500 connections and serious consideration should be given to the provision of elevated storage.

(iii) Well capacity must be such that two or more wells having a total capacity of 0.6 gallons per minute per connection. Where an interconnection is provided with another acceptable water system capable of supplying at least 0.35 gallons per minute for each connection in the combined system under emergency conditions, an additional well will not be required as long as the 0.6 gallons per minute per connection requirement is met for each system on an individual basis. Each water system will still be required to meet the storage and pressure maintenance requirements on an individual basis unless the interconnection is permanently open. In this case, the systems will be considered as a single system.

(iv) Service pump capacity must be such that each pump station or pressure plane shall have two or more pumps having a total capacity of 2.0 gallons per minute per connection or total capacity of 1,000 gallons per minute and be able to meet peak demands (whichever is less).

(v) Auxiliary power must be such that it is sufficient to deliver a minimum of 0.35 gallon per minute per connection to the distribution system in the event of the loss of normal power supply. Auxiliary power is required for all systems which do not meet the elevated storage requirements. Systems which have an emergency interconnection with a system that has auxiliary power and can provide 0.35 gallon per minute for each connection in the combined system are exempt.

(F) High density mobile home parks and apartment complexes supplying less than 100 connections without ground storage must have the following:

(i) a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required; and

(ii) a well capacity of 1.0 gallon per minute per connection.

(F) High density mobile home parks and apartment complexes supplying 100 or more connections or less than 100 connections and utilizing ground storage must meet the following requirements.

(i) Total storage must equal a capacity of 200 gallons per connection.

(ii) Pressure tank capacity must equal 20 gallons per connection.

(iii) Well capacity must have a total capacity of 0.6 gallon per minute per connection. Systems with 250 or more con-

nections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gallons per minute for each connection in the combined system.

(iv) Service pump capacity must be 2.0 gallons per minute per connection. Systems with 250 or more connections must have duplicate service pumps with a combined capacity of at least 2.0 gallons per minute per connection.

(2) Surface water supply requirements are as follows.

(A) For less than 50 connections, the system must have the following:

(i) a total storage capacity of 200 gallons per connection (with a minimum capacity of 1,000 gallons) provided as clear well capacity at the plant;

(ii) a pressure tank capacity of 20 gallons per connection with a minimum capacity of 250 gallons;

(iii) a raw water pump capacity with two or more pumps having a total capacity of 0.6 gallon per minute per connection when the largest pump is out of service;

(iv) a transfer pump capacity (where applicable) with two or more pumps having a total capacity of 0.6 gallon per minute per connection when the largest pump is out of service;

(v) a treatment plant capacity of 0.6 gallons per minute per connection under normal rated design capacity; and

(vi) a service pump capacity such that each pump station or pressure plane shall have two or more pumps having a total capacity of 2.0 gallons per minute per connection.

(B) For 50 to 250 connections, the system must have the following:

(i) a total storage capacity of 200 gallons per connection;

(ii) a clearwell capacity such that covered clearwell storage or ground storage at the plant is at least 50 gallons per connection to provide for adequate chlorine contact time;

(iii) a pressure maintenance facilities which have either elevated storage capacity based on 100 gallons per connection or pressure tank capacity of 20 gallons per connection;

(iv) a raw water pump capacity such that two or more pumps have a total capacity of 0.6 gallon per minute per connection when the largest pump is out of service;

(v) a transfer pump capacity (where applicable) such that two or more pumps have a total capacity of 0.6 gallon per minute per connection when the largest pump is out of service;

(vi) a treatment plant capacity of 0.6 gallons per minute per connection under normal rated design capacity; and

(vii) a service pump capacity such that each pump station or pressure plane shall have two or more pumps with

a total capacity of 2.0 gallons per minute per connection.

(C) For 250 or more connections, the system must have the following:

(i) a total storage capacity of 200 gallons per connection;

(ii) a clear well capacity such that covered clearwell storage or ground storage at the plant is at least 3% of rated plant capacity (in million gallons per day) to provide for adequate chlorine contact time;

(iii) pressure maintenance facilities which either have elevated storage based on 100 gallons per connection or pressure tank capacity of 20 gallons per connection with a maximum of 30,000 gallons for systems with less than 2,500 connections elevated storage in the amount of 100 gallons per connection is required for systems with over 2,500 connections. Systems with over 50,000 connections which utilize multiple production plants may substitute additional ground storage capacity, service pumping capacity and auxiliary power for elevated storage in excess of 5.0 million gallons, at the discretion of the department. Pressure tank installations are not recommended for systems of between 1,000 and 2,500 connections and serious consideration should be given to the provision of elevated storage;

(iv) a raw water pump capacity such that two or more pumps have a total capacity of 0.6 gallon per minute per connection when the largest pump is out of service;

(v) a transfer pump capacity (where applicable) such that two or more pumps have a total capacity of 0.6 gallon per minute per connection when the largest pump is out of service;

(vi) a treatment plant capacity of 0.6 gallons per minute per connection under normal rated design capacity;

(vii) a service pump capacity such that each pump station or pressure plane shall have two or more pumps having a total capacity of 2.0 gallons per minute per connection or total capacity of 1,000 gallons per minute and able to meet peak demand (whichever is less); and

(viii) an auxiliary power which is sufficient to deliver a minimum of 0.35 gallons per minute per connection to the distribution system in the event of the loss of normal power supply (auxiliary power is required for all systems which do not meet the elevated storage requirement). Systems which have an emergency interconnection with a system that has auxiliary power and can provide 0.35 gallons per minute for each connection in the combined system are exempt.

(b) Noncommunity water systems serving transient accommodation units. The following water quantity requirements are applicable to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces,



campsites, and similar accommodation. These requirements will be used as a basis in plan review for the establishment of new noncommunity water systems serving transient populations and in determining the appropriate quantity requirements for similar existing water systems following field surveys.

(1) Groundwater supply requirements are as follows.

(A) If less than 100 accommodation units, the system must have:

(i) a pressure tank capacity of 10 gallons per unit with a minimum of 250 gallons; and

(ii) a well capacity of 1.0 gallon per minute per unit.

(B) For systems serving 100 or more accommodation units, the system must have the following:

(i) a ground storage capacity of 35 gallons per unit;

(ii) a pressure tank capacity of 10 gallons per unit;

(iii) a well capacity of 0.6 gallon per minute per unit; and

(iv) a service pump capacity such that two or more pumps have a total capacity of 1.0 gallon per minute per unit.

(2) All surface water supplies regardless of size shall meet the following requirements. Each system must have the following:

(A) a ground storage capacity of 35 gallons per unit with a minimum of 1,000 gallons as clearwell capacity for adequate chlorine detention time;

(B) a pressure tank capacity of 10 gallons per unit with a minimum requirement of 250 gallons;

(C) a raw water pump capacity such that two or more pumps have a total capacity of 0.6 gallon per minute per unit when the largest pump is out of service;

(D) a transfer pump capacity (where applicable) such that two or more pumps have a total capacity of 0.6 gallon per minute per unit when the largest pump is out of service;

(E) a treatment plant capacity of 0.6 gallon per minute per unit; and

(F) a service pump capacity such that two or more pumps have a total capacity of 1.0 gallon per minute per unit.

(c) Noncommunity water systems serving other than transient accommodation units.

(1) The following table shall be used to estimate the daily water requirements for the various types of facilities listed:

Type of Establishment	Gallons/Person/Day
Restaurants-----	18
Schools without cafeterias, gymnasiums or showers-----	18
Schools with cafeterias but no gymnasiums or showers--	24
Schools with cafeterias, gymnasiums and showers-----	30
Office Buildings-----	18
Hospitals-----	240
Institutions other than hospitals-----	120
Factories (gallons per person per shift, exclusive of industrial wastes)-----	24
Perks without bathhouse-----	6
Swimming pools and bathhouses-----	12
Country Clubs (per resident member)-----	120
Drive-In Theaters (per car space)-----	6
Movie Theaters (per auditorium seat)-----	6
Airports (per passenger)-----	6
Self-service laundries (gallons per wash, i.e., per customer)-----	60
Stores (total per day per washroom)-----	400
Service stations (per vehicle served)-----	12

It should be noted that usage of this table is for the purpose of estimating minimum capacities only and that the overriding criteria will be the ability of the system to maintain a minimum residual pressure of 20 psi under peak demand conditions.

(2) Groundwater supply requirements are as follows:

(A) if less than 300 persons per day are served, the system must have the following:

(i) a pressure tank capacity at a minimum tank capacity of 250 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the department's personnel; and

(ii) a well capacity which is sized to provide the maximum daily demand as determined in paragraph (i) of this subsection and an estimate of the time of the usage;

(B) if 300 or more persons per day are served, the system must have the following:

(i) a ground storage which is equal to 50% of the maximum daily demand determined in the subsection;

(ii) a pressure tank capacity at a minimum tank capacity of 250 gallons

with additional capacity, if necessary, based on a sanitary survey conducted by the department's personnel.

(iii) a well capacity which is capable of supplying maximum daily demand determined in this subsection; and

(iv) a service pump capacity which has one or more pumps with a combined capacity of three times the maximum daily flow rate in gallons per minute.

(3) Each surface water supply system, regardless of size, shall meet the following requirements.

(A) ground storage capacity which provides clearwell storage at the plant in sufficient quantity as to produce a 30 minute chlorine detention time at a flow rate of three times the maximum daily flow rate in gallons per minute as determined by this subsection;

(B) pressure tank capacity of a minimum tank capacity of 250 gallons with additional capacity, if necessary, based on

a sanitary survey conducted by the department's personnel;

(C) treatment plant capacity sized to provide maximum daily usage as determined by this subsection;

(D) raw water pump capacity such that two or more pumps are sufficient to provide maximum daily usage plus a 20% allowance for filter backwash water and flushing when the largest pump is out of service;

(E) transfer pump capacity, (where applicable) such that two or more pumps are capable of providing maximum daily demand as determined by this subsection when the largest pump is out of service; and

(F) service pump capacity such that two or more pumps have a total capacity of three times the maximum daily flow rate in gallons per minute as described in this subsection.

(d) Water wholesalers. The following

additional requirements apply to systems which supply wholesale treated water to other public water supplies.

(1) All wholesalers must provide efficient production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in their various contractual obligations.

(2) For systems supplying both retail and wholesale connections, the department's requirements for the system's wholesale connections are in addition to the department's requirements for the system's retail connections.

§337.209. *Minimum acceptable Operating Practices For Public Drinking Water Systems.*

(a) **General.** When a public drinking water supply system is to be established, plans are to be submitted to the department for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with these sections and maintained and operated in accordance with the acceptable operating standards in this section.

(b) **Bacteriological.** Submission of samples for bacteriological analysis shall be as required by the drinking water standards. A minimum number of samples shall be submitted from each pressure plane or section of distribution served by a separate ground storage reservoir and or service pipe. This shall be in accordance with the population served by each. These samples shall be submitted each month to the department or a laboratory approved by the department. (Different laboratories may accept samples on different days of the week. Refer to a department publication titled "The Why and How of Water Sampling" for information on how to collect samples and where to find them.)

(c) **Chemical.** Sample for chemical analysis shall be submitted as directed by personnel from the department's public health regions during sanitary surveys of the facilities.

(d) **Monthly operation reports.** A monthly report of water works operation must be compiled and a copy must be submitted to the department. Use department Form H-3 for well supplies and department Form H-13 for surface supplies. The report shall show raw and treated water analyses, amounts of various chemicals, distribution system pumpages, dates of dead-end main flushes, cleanings of reservoirs, daily turbidity analyses for surface water sources, results of bacteriological and chemical tests performed, and other pertinent data. A copy must be kept on file for review and made available during inspections.

(1) Results of daily turbidity analyses for surface water supplies must be included in the monthly report and a copy of the report must be submitted monthly to the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3192.

(2) Systems with less than 100 connections utilizing groundwater sources only are not required to compile monthly reports.

(e) **Operation by certified personnel.** No district, municipality, firm, corporation, or individual shall furnish to the public any drinking water for which any charge is made, unless the production, processing, treatment, and distribution is at all times under the direct supervision of a competent water works operator holding a valid certificate of competency issued under the direction of the department. A Grade D certificate is valid for systems with 250 or fewer connections. Systems serving in excess of 250 connections must employ an operator with Grade C or higher certificates. Systems serving in excess of 1000 connections must employ at least two certified operators. Each surface water treatment plant must have a certified surface water operator on duty when the plant is in operation.

(f) **Disinfection.** Disinfection facilities capable of maintaining a residual shall be provided for all public water supplies with the point of application prior to pumping to the distribution system. At all times, the disinfection equipment shall be operated to maintain the following minimum residuals in the far reaches of the distribution system:

(1) free chlorine residual—0.2mg/l, or

(2) chloramine residual—0.5mg/l.

(g) **Disinfection of new or repaired facilities.** Disinfection by or under the direction of water department personnel must be performed when repairs are made to existing mains or when new main extensions are provided. These personnel must use amounts of chlorine compounds as to fill the repaired or new mains and appurtenances with water containing 50 mg/l chlorine. After the water containing this amount of chlorine has been in contact with the pipe and appurtenances at least 24 hours, the water shall be replaced with the water to be normally transported and samples of water from the main submitted to laboratories for bacteriological examination. This will act as assurance that the disinfection procedure was effective. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/l and the contact time reduced to one-half hour.

(h) **Calcium hypochlorite.** A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) **Plumbing ordinance.** Cities or corporations must adopt an adequate plumbing ordinance (or regulations) with provisions for proper enforcement to insure that neither cross-connections nor other undesirable plumbing practices are permitted. The use of pipes and pipe fittings that contain more than 8.0% lead or solders and

flux that contain more than 0.2% lead is prohibited for installation and repair of any Public water supply and for any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) **Cross-connection control.** Water department personnel, plumbing inspectors, and others shall inspect individual water facilities prior to providing service and periodically thereafter to prevent possible cross-connections between the potable (safe) water system and any nonpotable (unsafe) water. Continuous efforts shall be made by water department personnel, plumbing inspectors, and others to locate possible cross-connections between privately owned water systems and the public water system. As these undesirable cross-connections are located, they shall be eliminated so as to prevent possible contamination of the water supplied by the community water facilities.

(k) **Interconnection.** No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless such other water is of safe sanitary quality and the interconnection is approved by the department.

(l) **Flushing of mains.** All dead-end mains must be flushed at monthly intervals or more frequently if water quality complaints are received from water customers.

(m) **Housekeeping and maintenance.** A program should be initiated to facilitate cleanliness and to improve the general appearance of all plant facilities.

(n) **Distribution system map.** The map of the distribution system must be kept up to date in order that valves and mains may be easily located during emergencies.

(o) **Well log.** Copy of well material setting data, geological log, sealing information (pressure, cementing, and surface protection), disinfection information, bacteriological sample results and a chemical analysis report of a representative sample of water from the well shall be kept on file.

(p) **Ground and elevated storage tank maintenance.** Both ground and elevated storage tanks must be inspected at least annually to determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves provide adequate protection against insects, rodents, and other vermin, and that the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces.

(q) **Filter backwashing for surface water treatment plants.** Filters must be backwashed when a loss of head differential of six to 10 feet is experienced between the influent and effluent loss of head gauges or as often as necessary to maintain acceptable filtered water turbidity levels.

(r) **Changes in system ownership.** When water system ownership changes, a written notice of such a transaction must be provided to the department by the previous owner within 10 days of the date of the transaction. The notice must include the name of the old and the new owner, the date of transaction, the address of the new owner or responsible official, and any other information necessary to properly identify the transaction.

(s) **Boil water notice.** In the event of numerous or prolonged periods of low distribution pressures, water outages, repeated unacceptable bacteriological samples, or failure to maintain adequate chlorine residuals, a boil water notice or other protective measures may be required at the discretion of the department.

§337.210. Appendix A-- State Approval Recognition.

(a) **Requirements.** Public water supply systems which achieve and maintain state approval must exceed the minimum acceptable standards of the department in these sections. To attain this recognition, the following additional requirements must be met.

(1) Physical facilities shall comply with the requirements in these sections.

(2) There shall be a minimum of two certified operators with additional operators-required for larger systems

(3) The system's bacteriological record for the previous 24 months period shall indicate no violations (frequency, number or MCL) of the drinking water standards.

(4) The chemical quality of the water shall comply with all primary and secondary constituent levels listed in the drinking water standards.

(5) The system's operation shall comply with applicable state statutes and this department's minimum acceptable operating practices as stated in §337.209 of this title (relating to Minimum Acceptable Operating Practices For Public Drinking Water Systems).

(6) The system's capacities shall exceed this department's minimum water system capacity requirements as stated in §337.208 of this title (relating to Minimum Water System Capacity Requirements).

(7) The system shall have at least two wells two raw water pumps or a combination of these of sufficient capacity to provide average daily consumption with the largest well or pump out of service. This requirement also to apply to treatment plant pumps necessary for operation in accordance with §337.204 of this title (relating to Water Sources).

(8) The water system shall be generally well maintained and the facilities shall present a pleasing appearance to the public.

(b) **Signs.** Systems which have met the requirement for state approval have the privilege of erecting signs denoting this honor.

(c) **Inspections** Prior to approval or reapproval, systems must be inspected and evaluated by department personnel as to physical facilities, appearance and operation. Systems which fail to meet or exceed the above requirements in this section may have their state approval revoked.

§337.211. Appendix B--Minimum Required Water Main Sizes.

(a) **Minimum main sizes.** These are minimum requirements for domestic flow only and do not consider fire flows. The requirements should be exceeded when the design engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe.

(b) **Minimum pressure requirement.** The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gpm per connection.

Maximum Number of Connections	Minimum Main Size (in inches)
2	1
5	1.5
10	2
25	2.5
50	3
100	4
150	5
250	6
>250	8 and larger

§337.212. Appendix C--Sample Sanitary Control Easement Document For a Public Water Well.

THE STATE OF TEXAS
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS:

That _____ being the owners of Lot _____ and Lot _____ of the _____ survey, in _____ County, Texas, as shown on the map or plat recorded in Vol. _____, page _____ of the Deed Records of _____ County, Texas, do hereby declare such property bound by the hereinafter set out restrictions and covenants and agree that said purchasers and subsequent owners of said lots or parts thereof shall comply with same. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of two years from date these covenants are recorded, after which time said covenants shall be automatically extended until the use of this water well as a source of water for a public water system ceases.

Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

Invalidation of any one of these covenants by judgment or court order shall not in any wise affect any of the other provisions which shall remain in full force and effect.

Such restrictions are as follows, to wit:

- Sanitation control upon all of that area of land of said Lot _____ and Lot _____ as is included within a 150 foot radius of a proposed deep water well located _____ feet at a radial of _____ degrees from the _____ corner of said Lot(s) _____ and specifically prohibiting the construction and/or operation of stock pens, feed lots, dump grounds, privies, cesspools, septic tank drainfields, drilling of improperly constructed water wells of any depth and all other construction or operation that could create an insanitary condition within, upon or across the above described tract of land;
- Tile or concrete sanitary sewers, septic tanks and storm sewers are specifically prohibited within a 50 foot radius of the deep water well described and located above.
- This sanitation control permits the construction of homes or buildings upon same, provided, however, that all stock pens, feed lots, privies, tile or concrete sanitation sewers, cesspools, septic tanks, storm sewers, septic tank drainfields, drilling of improperly constructed wells of any depth and other construction and/or operations that could create an insanitary condition within, upon or across same are specifically prohibited within the designated distances.

4. Normal farming and ranching operations are permitted except that livestock shall not be allowed within 50 feet of the proposed well.

IN WITNESS WHEREOF the said owners have executed this instrument this ____ day of _____ 19 ____.

THE STATE OF TEXAS
COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ know to me to be the person(s) whose name(s) are subscribed to the foregoing instrument and acknowledged to me that they (he/she) executed the same for the purpose and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____ 19 ____.

Notary Public in and for

County, Texas

Recorded at _____ Courthouse, _____, Texas on _____ 19 ____.

§337.213. Appendix D—Separation of Water and Sewer Lines.

CONDITION	LOCATION	MATERIAL		SEPARATION (MIN)		COMMENTS
		WATER	SEWER	VERT	HORIZ	
NEW WATER & NEW SYSTEM						
Sewer Force Main and Gravity Sanitary Sewer Parallel to Water Main	Water Above Sewer	Std	CI DI PVC 150 PSI	2'	4'	Separate trenches
Gravity Sanitary Sewer Crossing Water Main	Water Above Sewer or Sewer Above Water	Std	CI DI PVC 150 PSI	6"	NA	Center one joint of sewer pipe on water main.
Gravity Sewer Crossing Water Main	Water Above Sewer	Std	ABS, Clay Conc Composite	2'	NA	Cement stabilize sand backfill initial backfill zone of sewer for 9 ft. each side of crossing. Center one joint of sewer pipe on water main.
NEW WATER & EXISTING SANITARY SEWER						
New Water Parallel Existing Sewer	Water Above Sewer	Std	Clay, Conc, ABS CI DI PVC	2'	4'	If sewer shows no sign of leakage, then leave sewer alone. If sewer shows signs of leakage, then repair or replace.
New Water Crossing Existing Sewer	Water Above Sewer	Std	ABS, Clay Conc, Composite	2'	NA	If sewer shows no sign of leakage, then leave sewer alone. If sewer shows signs of leakage, then repair or replace.
New Water Crossing Existing Sewer	Sewer Above Water	Std	ABS, Clay Conc, Composite	2'	NA	Replace existing sewer with One joint CI, DI, PVC-150 PSI, centering over water line.
New Water Parallel to Existing Sewer	Sewer Above Water	Std	ABS, Clay Conc, Composite	2'	4'	Replace existing sewer with CI, DI, PVC-150 PSI or cement stabilized sand backfill in initial backfill zone of sewer where parallel closer than 9 ft., or encase the water in
150 PSI Pipe two nominal sizes larger.						
EXISTING WATER & NEW SANITARY SEWER						
New Sewer parallel Existing Water	Water Above Sewer or Sewer Above Water	Std	CI DI PVC 150 PSI	2'	4'	Separate trenches

New Sewer crossing Existing Water	Water Above Sewer or Sewer Above Water	CI DI PVC	Std	150 PSI	6"	NA	Center one joint of Sewer pipe in water line.
New Sewer crossing Existing Water	Water Above Sewer	Std	ABS, Clay Conc composite		2'	NA	Cement stabilize sand backfill in zone of sewer for 9 ft. each side of crossing. Center one joint of sewer pipe on water main.

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 December 17, 1987

TRD-8711807 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption.

April 16, 1988

For further information, please call
(512) 458-7533.



**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION**
Part III. Texas Air Control
Board

Chapter 116. Permits

★ 31 TAC §116.12

The Texas Air Control Board (TACB) proposes an amendment to §116.12, concerning review and continuance of operating permits. The amendment replaces the current single fee with a new tiered fee schedule which more closely reflects agency costs for conducting the reviews. The current \$300 fee required under §116.12(q) was adopted in 1986 as an interim fee for the few applicants expected to apply for permit continuance review during fiscal year 1987 (FY-87). However, the number of applicants is expected to increase significantly in succeeding years. Additional TACB staff resources will be needed in the future to process the several hundred permit continuance applications per year.

The proposed fee schedule is based on the total annual allowable emission rates to be authorized by the operating permit following continuance. The applicant would estimate the fee based on emission rates at the time of application for permit renewal. This proposed system responds more effectively than the current system in recovering the costs for the review of 15-year-old permits. The tiers outlined in the schedule also more accurately reflect agency costs of performing a detailed technical review of these permits than the current system.

Les Montgomery, PE, director, Technical Support and Regulation Development Program, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the proposed section will be in effect is an estimated increase in revenue of \$54,000 in fiscal year 1988, \$305,000 in fiscal year 1989, \$354,000 in fiscal year 1990, \$469,000 in fiscal year 1991, and \$541,000 in fiscal year 1992. There is no anticipated effect on local government. The fiscal impact on any small business would be the applicable fee amount calculated in the fee schedule of §116.12(g), based on the air contaminant emissions levels from affected permitted facilities.

Mr. Montgomery 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 the recovery of a percentage of agency costs for the review of operating permits and a corresponding reduction in funds appropriated to the TACB from the general revenue fund to support the review activity.

A public hearing on this proposal is scheduled for 2 p.m. on January 26, 1988, in the Auditorium of the TACB, located at 6330 U.S. Highway 290 East, Austin, Texas.

Copies of the proposed section are available from Betty Rogers at the TACB central office and at all TACB regional offices. Public comment, both oral and written, on the proposal is invited at the hearing. The TACB would appreciate receiving five copies of any written testimony prior to or at the hearing. Written testimony received by 4 p.m. on January 27, 1988, at the TACB central office will be included in the hearing record and should be sent to the Control Strategy Division, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723.

The amendment is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§116.12. Review and Continuance of Operating Permits.

- (a)-(f) (No change)
- (g) Fee for review of operating permit. The holder of an operating permit to be reviewed for continuance by the TACB shall remit a fee with each continuance application, pursuant to the TCAA §3.29(a), based on the total annual allowable emissions from the permitted facility for which the continuance is being sought, as applied to the following table [9,8300] with each continuance application. The fee shall be due and payable at the time application for review and continuance is filed with the TACB in response to written notice from the TACB consistent with subsection (a) of this section. No fee will be accepted before the permit-holder has been notified by the TACB that the permit is scheduled for review. The basis of the fee is that fee schedule which is in effect at the time the application is filed. All permit review fees shall be remitted in the form of a check or money order made payable to the Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723. Required fees must be received before the agency will consider an application to be complete.

CONTINUANCE FEE TABLE*

<u>TOTAL ALLOWABLE (TONS/YEAR)</u>	<u>BASE FEE</u>	<u>INCREMENTAL FEE</u>
0-5	\$ 300	-
6-24	\$ 300	\$35/ton
25-99	\$ 965	\$25/ton
100-999	\$ 2,840	\$ 8/ton
1000+	\$10,000	-

Minimum fee: \$300.

Maximum fee: \$10,000.

*To calculate the fee, multiply the number of tons in excess of the initial tonnage in that category by the incremental fee, then add this figure to the base fee. For example, if total emissions of all air contaminants are 50 tons per year, the total fee would be \$1,590 (base fee of \$965, plus incremental fee of \$25 x 25 tons or \$625).

(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 December 30, 1987

TRD 8711799 Allen Eli Bell
Executive Director
Texas Air Control Board

Earliest possible date of adoption:
January 30, 1988

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education
Chapter 211. Administrative Division
Substantive Rules

★37 TAC §211.74

(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 Commission on Law Enforcement Officer Standards and Education, 1106 Clayton Lane, Suite 2201 - Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Commission on Law Enforcement Officer Standards and Education proposes the repeal §211.74 concerning state licensing examinations. This old section is to be repealed because it has been completely rewritten as a new section with few substantive changes

David M Boatright, general counsel, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal

Mr. Boatright 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 more efficient implementation by rule of the commission law concerning state licensing examinations. There is no anticipated economic cost to individuals who

are required to comply with the proposed repeal.

Comments on the proposal may be submitted to David M Boatright, General Counsel, 1606 Headway Circle, Suite 100, Austin, Texas 78754

The repeal is proposed under the Government Code §415.056, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to prescribe the content of written licensing examinations and set passing standards

§211.74. Licensing Examination

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 December 29, 1987.

TRD-8711800 David M Boatright
General Counsel
Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption:
May 1, 1988
For further information, please call
(512) 834-9222



The Texas Commission on Law Enforcement Officer Standards and Education proposes new §211.74, concerning state examinations. The old section has been completely rewritten as the new section with few substantive changes. Those changes are necessary to adopt current commission policy and procedure. They include a definition of terms to indicate synonymous language, a restatement of the law concerning the commission's power to prescribe the content and type of examination, a clarification of eligibility to sit for an exam and the endorsement eligibility and a clarification of test proctors, fraud provisions, distribution of grades and analysis of performance and a 70% passing standard.

David M. Boatright, general counsel, has determined that for the first five year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Boatright 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 more efficient implementation by rule of the commission's law concerning state licensing examinations. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to David M. Boatright, General Counsel, 1606 Headway Circle, Suite 100, Austin, Texas 78754.

The new section is proposed under the Government Code, §415.056, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to prescribe the content of written licensing examinations and set passing standards.

§211.74 State Examinations

- (a) The terms "examination", "exam", and "test" are synonymous in this section.
- (b) The commission shall prescribe the content of any license examination and shall include in any such exam a written examination that tests the knowledge of the applicant about the appropriate occupation.
- (c) Eligibility to sit for a state examination is based, generally, upon the examinee meeting the training standards appropriate to that exam. However, an exam may not be taken by one who already holds any license or certificate to be awarded upon its passage. Once qualified by training, an examinee will then be allowed only three opportunities to pass. After three failures, the examinee must requalify by repeating the training. If a score is invalidated for any reason, that particular score may count as one of the three opportunities.
- (d) To sit for an examination, an examinee:

- (1) must possess and display at the test site a valid, timely endorsement of eligibility for the specific type of exam sought;
- (2) must bring to the test site and display upon request some identification card which contains a photograph;
- (3) must report on time;
- (4) must not disrupt the exam;
- (5) must comply with all the written and verbal instructions of the proctor; and
- (6) shall not violate any of the fraud provisions of this section.

(e) An endorsement of eligibility shall:

- (1) be on a form provided by the commission;
- (2) be signed by the endorser and completed, with a specific notation of the training completed and testing sought;
- (3) state that the examinee has met the minimum training standards appropriate to the type of exam sought; and
- (4) include a date of issue and date of expiration;

(f) For an endorsement of eligibility to be or remain valid:

- (1) it must not be issued in error or based on false or incorrect information, and, specifically, the applicant must meet the appropriate minimum training standards; and
- (2) it must be presented before its date of expiration or, in any event, before two years from its date of issue.

(g) An endorsement of eligibility may be obtained from

- (1) a member of the commission staff;
- (2) an academy coordinator;
- (3) a course coordinator; or
- (4) some other person designated by the commission.

(h) Each exam may be given by a test administrator who may proctor the exam alone or with the assistance of one or more additional proctors. However, the exam may also be given by one or more proctors under the direction of the test administrator. Each administrator or proctor shall be either

- (1) a member of the commission staff; or
- (2) another person designated by the executive director.

(i) A member of the commission staff, a test administrator, or a proctor shall:

- (1) set the date, time, and location of any exam;
- (2) ensure that the exam remains secure and is conducted under conditions warranting honest results;
- (3) monitor the exam while in progress;
- (4) control entrance to and exit from the test site;
- (5) permit no one in the room while the exam is in progress except proctors, examinees, and commission staff;
- (6) assign or re-assign seating;
- (7) bar admission to or dismiss any

examinee who fails to comply with any of the provisions of subsection (d) of this section;

- (8) collect all exam materials from anyone who is dismissed;
- (9) comply with any testing agreements; and
- (10) record the fact of examination on the endorsement of eligibility and shall collect any fraudulent or questionable endorsement.

(j) No license holder or prospective license holder shall violate or attempt to violate any of the following fraud provisions. The commission may invalidate a score for any such violation or attempt. An examinee shall not:

- (1) bring into the testing room any books, notes, or other written material related to the content of the test;
- (2) refer to, use, or possess any such written material in the testing room;
- (3) give or receive answers or communicate in any manner with another examinee during the exam;
- (4) communicate any of the contents of an exam to another at any time;
- (5) steal, copy, or in any way reproduce any part of the exam;
- (6) engage in any deceptive or fraudulent act either during an exam or to gain admission to it; or
- (7) solicit, encourage, direct, assist, or aid another person to violate any provision of this section.

(k) All official grading and notification shall come from the Austin office of the commission. A self-addressed notice containing the results will be mailed by the commission to the examinee within 30 days of testing, if possible. If more than 30 days will elapse, the commission shall, before that date, notify the examinee in writing of the reasons for the delay. Telephone calls or personal inquiries about a particular score are discouraged before and encouraged after 30 days from the test date.

(l) Upon failure, the report of test results shall also include an analysis of the examinee's performance. The commission may issue a duplicate analysis upon timely request, no later than one year from the date of failure.

(m) For a score to be or remain valid, the examinee must complete the score sheet, or otherwise record the answers, as instructed and the endorsement of eligibility must remain valid.

(n) Unless provided otherwise by rule, agreement, instructor guide, learning object, or other similar document the minimum passing score on each exam shall be 70%. For a machine-graded exam, this means that 70% of the total possible valid questions must be answered correctly. The commission may, in its discretion, invalidate any question.

(o) The effective date of this section shall be May 1, 1988.

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 December 29, 1987.

TRD-8711801

David M. Boatright
General Counsel
Texas Commission on
Law Enforcement
Officer Standards and
Education

Proposed date of adoption

May 1, 1988

For further information, please call
(512) 834-9222

◆ ◆ ◆
**TITLE 40. SOCIAL
SERVICES AND
ASSISTANCE**

**Part IX. Texas Department
on Aging**

**Chapter 255. State Delivery
Systems**

Area Agency Designation

★ 40 FAC §255.36

The Texas Department on Aging proposes an amendment to §255.36, concerning the requirement that advisory council meet-

ings adhere to the Open Meeting Act of the State of Texas. The amendment corrects a requirement which has no basis in the Texas Administrative Code.

Charles Hubbard, fiscal officer, Texas Department on Aging, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Alex Guerra, director of programs, Texas Department on Aging, 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 correction of a requirement which had no basis in the Texas Administrative Code. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Edwin R. Floyd, Program Liaison, Texas Department on Aging, PO Box 12786, Austin, Texas 78711

The amendment is proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

§255.36. Operating an Area Agency on Aging.

(a) (No change.)

(b) Area Agency Activities. AAAs will administer the provisions of the Older Americans Act as it relates to Title II program region in accordance with the approved area plan, and state and federal fiscal and programmatic rules, regulations, and statutes.

(1)-(10) (No change.)

(11) Advisory councils may meet monthly, but shall meet at least bimonthly. Business meetings shall be publicized [and adhere to the Open Meetings Act] Records of actions taken at all meetings shall be available to the public for review

(c) (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 December 31, 1987

TRD-8711883

O. P. (Bob) Robbitt
Executive Director
Texas Department on
Aging

Earliest possible date of adoption.

January 31, 1988

For further information, please call
(512) 444-2727

Withdrawn

Rules An agency may withdraw proposed action or the remaining effectiveness of emergency action on and by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office and a notice of the withdrawal will appear in the *Register*.

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility

Commission of Texas

Chapter 23. Substantive Rules

★ 16 TAC §23.3

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §23.3, submitted by the Public Utility Commission of Texas has been automatically withdrawn, effective January 5, 1988. The amendment as proposed appeared in the July 3, 1987, issue of the *Texas Register* (12 TexReg 2133).

TRD 8800029
Filed January 5, 1988



Customer Service and Protection

★ 16 TAC §23.49

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendment to §23.49, submitted by the Public Utility Commission of Texas has been automatically withdrawn, effective January 5, 1988. The amendment as proposed appeared in the July 3, 1987, issue of the *Texas Register* (12 TexReg 2137).

TRD 8800028
Filed January 5, 1988



Adopted Rules

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

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Catastrophe Property Insurance Association Plan of Operation

★28 TAC §5.4001

The State Board of Insurance adopts an amendment to §5.4001, with changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4097).

Section 5.4001 concerns the Plan of Operation of the Texas Catastrophe Property Insurance Association (the association). An amendment to paragraph 5.4001(a)(2)(l) is necessary to implement recent amendment of the Insurance Code, Article 21.49, §5(c), by providing a basis for calculation of extended coverage for property insurance policies issued by non-admitted insurance companies affiliated with licensed companies. This amendment is also necessary to provide a basis for calculation of extended coverage for property insurance policies issued using composite rates, and for property insurance policies issued not subject to rates promulgated or approved by the State Board of Insurance, under the Insurance Code, Articles 5.25, 5.26(a), 5.26(b), 5.31, and 5.81. This adoption changes the proposed text by eliminating a proposed amendment to 5.4001(a)(2)(O), 5.4001(a)(2)(P), and 5.4001(c)(2)(B). Elimination of that proposed amendment is necessary to defer consideration of the proposed revision of formulas for calculation of assessments of participating companies until after an opportunity for evaluation of the impact of other factors on formulas for participation.

The amendment to paragraph 5.4001(a)(2)(l) corrects terminology in the definition of net direct premiums and provides that the extended coverage and other allied lines portion of premiums for certain policies shall be calculated as 40% of total policy premium or the combined actual extended coverage and other allied lines premium.

Submitting comments for the proposed amendments were the Texas Catastrophe Property Insurance Association, the Texas Insurance Advisory Association, and the U.S. Insurance Group. Objecting against the proposed amendment to 5.4001(a)(2)(O), 5.4001(a)(2)(P), and 5.4001(c)(2)(B), were the Alliance of American Insurers, the Farmer's Insurance Group, Safeco Insurance Company of America, and Travelers Insurance Company.

The board received comments urging that removal of a maximum limitation on participation would discourage participation and decrease the availability of property insurance in Texas. The commenter further urged that consideration of such removal is premature until after evaluation of the impact of other factors. The board also received comments arguing that such removal would have a positive effect of encouraging more companies to write voluntary coverage in a catastrophe area and thus reducing the overall liability exposure of the association.

The board agrees with comments urging that consideration of proposed amendment to 5.4001(a)(2)(O), 5.4001(a)(2)(P), and 5.4001(c)(2)(B) would be premature at this time.

The amendment is adopted under the Insurance Code, Article 21.49, §5, which provides for approval by the State Board of Insurance of the Plan of Operation of the Texas Catastrophe Property Insurance Association for providing catastrophe coverage by property insurance.

§5.4001. Plan of Operation.

(a) Definitions.

(1) (No change.)

(2) Definitions in the section.

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

(A)-(H) (No change.)

(I) Net direct premiums—

(i) For association policies with inception dates on and after January 1, 1988, net direct premiums shall mean all statewide direct written premiums (excluding direct written premiums in the catastrophe area as designated by the State Board of Insurance) restored to manual level and further adjusted to the manual rate level applicable to the catastrophe area as designated by the State Board of Insurance and shall be the sum of

the following:

(I)-(III) (No change.)

(IV) the extended coverage and other allied lines portion of the following policies, which shall be calculated as follows:

(-a-) 40% of the total policy premium for any commercial policy written with a composite rate (premium) including, but not limited to, policies issued under the highly protected risk rating plan;

(-b-) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is the greater, for any commercial policy written with a rate (premium) that has not been promulgated or approved by the board under the Insurance Code, Article 5.25, 5.26(a), 5.26(b), or 5.81, including, but not limited to, policies issued under an approved deviation plan pursuant to the Insurance Code, Article 5.26(c), and policies issued pursuant to the authority granted under the Insurance Code, Article 5.31; or

(-c-) 40% of the total policy premium or the combined actual extended coverage and other allied lines premium charged, whichever is greater, for any property insurance policy written by an insurance company that is not authorized to transact property insurance in Texas, and which is affiliated under common management or control of an insurance company licensed to transact property insurance in Texas.

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

(J)-(N) (No change.)

(b) (No change.)

(c) Operation of the association.

(1) (No change.)

(2) Assessment of members.

(A) (No change.)

(B) Amount of assessment. The

board of directors shall determine which members of the association shall participate in any assessment for operating expenses and/or catastrophe losses. This determination shall be computed on a syndicate year basis rather than on a calendar year basis. The designated members of the association shall participate in any assessment levied in the proportion that the net direct premiums of such member written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association as

furnished to the association by the board after review of annual statements, other reports, and required statistics; provided, however, that, if at the time of such assessment the board has not furnished to the association information necessary to compute a member's participation during the preceding calendar year, then each member's participation shall be based upon information furnished to the association from the last calendar year in which such information is available and, upon obtaining the necessary information from the board, the association shall reassess or refund to each member such amounts as are necessary to properly reflect such member's participation; provided, further, that a member shall be entitled to receive the following credit for insurance, similar to catastrophe insurance, written in such catastrophe area, except that in no event shall the final percentage of participation after application of credit for voluntary writings in the catastrophe area be less than 20% nor more than 190% of the company's percentage of statewide windstorm and hail premiums modified by applicable offset factors, nor more than 170% of the company's percentage of statewide windstorm and hail premiums modified by applicable offset factors for policies with inception dates on and after January 1, 1984.

(i) Participation in Texas Catastrophe Property Insurance Association for policies after January 1, 1988. Procedure for determining the percent of participation respecting association policies with inception dates on and after January 1, 1988, for members of the Texas Catastrophe Property Insurance Association reflecting credit for voluntary premiums written in the designated area (all premiums are for the most recent preceding calendar year ending December 31, as furnished by the State Board of Insurance):

Column 1(a) Statewide net direct premiums for extended coverage and other allied lines.

Column 1(b) Statewide net direct premiums for extended coverage and other allied lines portion of the multiple peril line.

Column 1(c) Statewide net direct premiums for homeowners and farm and ranch owners.

Column 2 The sum of the statewide net direct premiums at 90% of the extended coverage and other allied lines, and 50% of the homeowners and farm and ranch owner's, or such percentage as may be

Column 3 Each company's percentage of the net direct premiums as described in column 2, which is the basis for indicating normal required participation in the Texas Catastrophe Property Insurance Association prior to credits for voluntary writings in the designated area.

Column 4 Total windstorm and hail premiums in the designated area (TCPIA premiums plus voluntary premiums)

Column 5 Normal company quota of total windstorm and hail premiums: column 3 x column 4.

Column 6 Each company's voluntary writings in the designated area multiplied by the same percentages as shown in column 2. Note: Maximum credit shall be limited to company's normal quota.

Column 7 Each company's maximum possible allocation after applying credits for voluntary writings (column 5 minus column 6). Negative allocation to be shown as zero.

Column 8 Percentage participation of each member company in Texas Catastrophe Property Insurance Association, prior to application of offset. Note: The offset figure measures the excess premiums developed by maximum credits in column 6.

Column 9 Percentage participation of each member company in Texas Catastrophe Property Insurance Association prior to application of minimum-maximum factors.

determined in accordance with subsection (a)(2)(I)(i)(III) of this section (90% of column 1(a) plus 90% of column 1(b) plus 50% of column 1(c)).

Column 10 Assignment after application of 20% minimum or 170% maximum of column 3.

Column 11 Net assignment in association. (After application of offset following minimum-maximum limitations.)

(ii)-(iv) (No change.)
 (C)-(D) (No change.)
 (3)-(4) (No change.)
 (d)-(f) (No change.)

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

Issued in Austin, Texas, on December 31, 1987.

TRD-8711879 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective date: January 21, 1988
 Proposal publication date: November 6, 1987
 For further information, please call
 (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part X. Texas Water Development Board
Chapter 355. Research and Planning Fund
Flood Protection Planning

★31 TAC §§355.31-355.40

The Texas Water Development Board adopts new §§355.31-355.40, without changes to the proposed text published in the October 16, 1987, issue of the *Texas Register* (12 TexReg 3822).

These sections contain the new application requirements and evaluation criteria for flood protection planning projects for the limited amounts of funds in the board's research and planning fund under the Texas Water Code, §15.402 and §15.405. Section 355.31 provides definitions for the terms used in the section, and §355.32 states the purpose of the sections. Section 355.33 addresses rule applicability and limits board funding to no more than 50% of the planning costs, with the applicant supplying the remainder in cash or limited in-kind services. The method for board solicitation of proposals in areas of the state where there is a need for flood protection is outlined in §355.34. The board will publish all solicitations, including the areas and type and scope of the project, in the *Texas Register*. Deadlines for submission will

also be established in the published notice. Section 355.34(b) states that announcements of the board's acceptance of unsolicited proposals will be published in the *Texas Register*. Section 355.35 presents the criteria for eligibility, which are designed to ensure that appropriate applicants apply.

Section 355.36 identifies the information that must be contained in an application. The form published in the Uniform Grants and Contract Management Act (UGCMA), Texas Civil Statutes, Article 4413(32g), does not have to be used because the Texas Water Code, §15.404, establishes certain statutory requirements for the content of an application. Further, the UGCMA form does not include the information needed by the board so the UGCMA form does not need to be used. To assure the board that all local political subdivisions in the planning area are aware of the project, notice under §355.37 must be given.

Section 355.38 outlines the evaluation criteria the board will use to choose which applications will receive grants from the limited amount of funds available. Important considerations such as the immediacy and urgency of need, the probability that the planning proposal will be implemented, and the ability of the applicant to provide the matching share are described in the section. Section 355.36(b)(5) specifies that the applicant is responsible for supplying information which addresses each of the criteria.

The method of contracting with the board is described in §355.39. The board will contract with the local political subdivision. Any subcontracts that the political subdivision enters into for professional services must be approved by the executive administrator. Also, no subcontracts can be entered into until the board approves the application and negotiates a contract that establishes fair and reasonable professional fees. The definitions of direct costs, fringe costs, overhead, travel, and subsistence are included in §355.39 and are designed to provide the applicant and the subcontractors guidance in putting together the proposed budget required in the application.

The results of a flood protection planning study are public information and will be made available to the public. Section 355.40 also states that the board will contract with the applicants regarding copyrights and patents.

These new sections ensure fairness in selecting flood protection planning proposals for funding and ensure that contracts entered into by the board achieve the most benefit for flood protection planning in the state.

Comments were received from the United States Department of the Interior Fish and Wildlife Service (FWS) and Brandt Mannchen. The FWS was supportive of the board's interest in developing flood pro-

tection planning criteria; however, it was concerned with the lack of consideration of wetlands, riparian habitat, and fish and wildlife resources. Mr. Mannchen did not express whether he was for or against the sections; however, he expressed concerns over particular sections. The basic comment made was that environmental impact statements and mitigation measures should be included in flood protection planning projects so that all environmental losses to wetlands, riparian habitats, and estuaries will be taken into account. The commentors suggested that environmental assessments, impact statements, and mitigation plans be included in the definition of flood protection planning in §355.31. In the solicitation procedures, §355.34, they felt that the board should acknowledge environmentally sensitive areas in a project planning area, including wetlands, riparian habitats, endangered species, and anticipated adverse impact to fish and wildlife resources. Under the criteria for eligibility for funding in §355.35, the commentors felt that awareness of environmental impacts and federal and state laws, i.e. the National Environmental Policy Act, the Fish and Wildlife Coordination Act, Executive Orders 11990 and 11988, the Clean Water Act, the Endangered Species Act, and state laws toward threatened and endangered species, should be demonstrated along with a mitigation plan. Additionally, the commentors felt that the applicant should mention the effects on the environment in their application and that the applications should be judged on the cumulative environmental impacts to the watershed, wildlife, and estuaries. The FWS offered to assist the board in developing environmentally sensitive criteria for the flood protection planning program.

The board made no changes to the proposed sections based on these comments. Under the definition of flood protection planning in §355.31 (A)(vi), planning includes studies and analyses to determine that any proposed solutions are consistent with appropriate regional or statewide plans and relevant laws and regulations. This broad definition covers all existing laws, including the federal laws listed by the commentors. Each applicant for flood protection planning funds must be aware of any applicable regulations and adjust its proposal accordingly. However, the board does not believe every flood protection planning project will necessarily have to have an environmental impact statement or assessment or a mitigation plan. To the extent existing federal and state laws affect the flood protection planning, the applicant is responsible for taking those into account. The board believes that the substantive requirements for environmental assessments and mitigation should not be placed in these sections, but instead existing laws and regulations which define these parameters should be relied on. Because the board is not a regulating

agency, it believes the environmental criteria should be left to the appropriate regulating state and federal agencies.

The new sections are adopted under the Texas Water Code, §6.101, which provides the board with authority to make rules necessary to carry out its power and duties.

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

Issued in Austin, Texas, on December 31, 1987.

TRD-8711881

Nancy Matchus
Assistant General
Counsel
Texas Water
Development Board

Effective date: January 21, 1988
Proposal publication date: October 16, 1987
For further information, please call
(512) 463-7850.

◆ ◆ ◆

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Q. Franchise Tax

★ 34 TAC §3.408

The Comptroller of Public Accounts adopts the repeal of §3.408, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4114).

This section is repealed because the subject matter of this section is in new §3.391, concerning accounting methods, which will be adopted on an emergency basis.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Texas 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 franchise tax.

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

Issued in Austin, Texas, on December 30, 1987.

TRD-8711841

Bob Bullock
Comptroller of Public
Accounts

Effective date: January 20, 1988
Proposal publication date: November 6, 1987
For further information, please call
(512) 463-4004.

**TITLE 40. HEALTH
SERVICES**

**Part I. Texas Department of
Human Services**

Chapter 79. Legal Services

Subchapter Q. Contract Appeals

**★40 TAC §§79.1605, 79.1607,
79.1610**

The Texas Department of Human Services (DHS) adopts amendments to §§79.1605, 79.1607, and 79.1610, without changes to the proposed text published in the November 6, 1987, issue of the *Texas Register* (12 TexReg 4118).

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

Issued in Austin, Texas, on January 4, 1988.

TRD-8711920

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: February 16, 1988

Proposal publication date: November 6, 1987

For further information, please call
(512) 450-3765.



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Corn Producers Board

Tuesday, January 12, 1988, 9 a.m. The Texas Department of Agriculture, Texas Corn Producers Board will meet in the Corn Board Office, 218 East Bedford, Dimmitt. According to the agenda, the board will consider minutes, financial statement, hear the grit plant update, and discuss annual meeting.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: January 4, 1987, 3:44 p.m.
TRD-8711936



Texas Commission for the Deaf

Friday, January 8, 1988, 7 p.m. The Board for Evaluation of Interpreters (BEI) for the Texas Commission for the Deaf will meet in emergency session in the Basement Conference Room, 510 South Congress Avenue, Austin. According to the agenda, the board will approve previous meeting minutes; discuss changes in BEI evaluation and meeting dates; review certificate recommendations, evaluations, and revocation, in closed session; and hear the chairpersons report. The emergency is necessary because the meeting is necessary to reduce travel expenses by combining BEI meeting with scheduled evaluations held January 4-9, 1988.

Contact: Larry D. Evans, P.O. Box 12904, Austin, Texas 78764, (512) 469-9891.

Filed: January 4, 1987, 2:47 p.m.
TRD-8711931



Texas Education Agency

Tuesday, January 12, 1988, 10 a.m. The Proprietary School Advisory Commission of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. Ac-

ording to the agenda, the commission will consider possible removal of a commission member, in accordance with provisions from TAC, §69.2(c); discuss and consider new rules for State Board of Education, and Texas proprietary schools; discuss additional classroom facilities; discuss use of GED (general educational development) scores for admission to degree programs; consider the status of degree granting authority; and consider information on corporate surety bonds.

Contact: Joe L. Price, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9475.

Filed: January 4, 1987, 4:15 p.m.
TRD-8711948



Employees Retirement System of Texas

Thursday, January 14, 1988, 9 a.m. The Group Insurance Advisory Committee of the Employees Retirement System of Texas will meet in Room 332, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin. According to the agenda, the committee will recognize visitors and guests; approve previous minutes; hear a report on the Flexible Benefits Plan; consider and act on invitro fertilization, replacement prosthesis, and nicotine addiction; discuss other related insurance matters and the ERS staff update; and consider work session on the Dental Plan.

Contact: James W. Sarver, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-3207, ext. 217.

Filed: January 4, 1987, 3:21 p.m.
TRD-8711934



Texas Department of Health

Friday, January 15, 1988, 9 a.m. The Municipal Solid Waste Management and Resource Recovery Advisory Council of the

Texas Department of Health will meet in Plaza Suite 516, Four Seasons Hotel, 99 San Jacinto Boulevard, Austin. According to the agenda summary, the council will approve minutes of the November 20, 1987, meeting; hear reports by the division director on Environmental Protection Agency's landfill criteria, EPA's policy on incinerator ash, fees collected for 1986 reporting year, fees and annual reports for 1987 reporting year; task force on waste management policy (interim session legislative committee), and a proposal to receive nominations for a representative of the financial community to serve on the advisory council; infectious waste management in Texas; conference planning committee; status of waste-to-energy facilities in Texas; consider agenda development for 1988; and other matters.

Contact: Hector Mendieta, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271.

Filed: December 31, 1987, 1:58 p.m.
TRD-8711910



Texas Historical Commission

Thursday, January 14, 1988, 9:30 a.m. The State Preservation Board, Permanent Advisory Committee of the Texas Historical Commission will meet in Room 103, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the committee will approve minutes of the December 9, 1987, meeting, and discuss outline for the Master Plan, hiring procedures, and projects.

Contact: Curtis Tunnell, P.O. Box 12276, Capitol Station, Austin, Texas 78711.

Filed: January 4, 1987, 4:11 p.m.
TRD-8711947



Texas State Board of Medical Examiners

Thursday, January 7, 1988, 8 a.m. The Disciplinary Process Review Committee for the Texas State Board of Medical Examiners met in emergency session at 1101 Camino LaCosta, Austin. According to the agenda, the committee reviewed investigation files, and met in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and attorney general opinion H-484, 1974. The emergency status was necessary because information is now available to committee which warrants prompt attention, and committee report will be had at next full board meeting.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: January 4, 1987, 4:17 p.m.
TRD-8711949



Texas Board of Licensure for Nursing Home Administrators

Wednesday, January 20, 1988, 10 a.m. The Texas Board for Licensure of Nursing Home Administrators will meet in Suite 310, Commission for the Blind Administrative Building, 4800 North Lamar Boulevard, Austin. According to the agenda, the board will introduce new board members, consider invocation, roll call, agenda approval, and approval of minutes for the October 14, 1987, meeting; hear reports from the Suitability, Education, Texas Department of Health, Texas Department of Human Services committees, executive director, and chair; personal appearances; and consider election of officers for 1988.

Contact: Janet M. Moore, 4800 North Lamar Boulevard, Suite 355, Austin, Texas 78756, (512) 458-1955.

Filed: January 4, 1987, 10:32 a.m.
TRD-8711927



Board of Pardons and Paroles

Monday-Friday, January 11-15, 1988, 1:30 p.m. daily, except 11 a.m. Friday. A three member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: December 31, 1987, 10:54 a.m.
TRD-8711885



Tuesday, January 12, 1988, 9:30 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will act on minutes of the December 2 and December 8, 1987, meetings; consider RIO project update, special reviews, the ratification of memo-delegated authority withdrawal/revocation actions, and proposal for restoration of delegated authority for the Hearing Section; ratification of memos-designation of HH facilities as PPT facilities; ratification of memo regarding holiday passes for HH residents; consider administrative/parole panel compositions for 1988, promotional procedures pilot project, the policy regarding attorney general opinion of removal of documents from personnel files, and procedures for distribution of gate money; evaluation of Exempt Personnel Committee report; discuss executive director's report; and consider public input and comments.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: January 4, 1987, 4:25 p.m.
TRD-8711950

Tuesday, January 12, 1988, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions, other than out of country conditional pardons, including full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: December 31, 1987, 10:54 a.m.
TRD-8711886



Texas State Board of Pharmacy

Thursday, January 14, 1988, 9 a.m. The Texas State Board of Pharmacy will meet with a revised agenda in the Embassy Suites Hotel, 5901 IH-35 North, Austin. According to the agenda summary, the board will delete a reference to a proposed amendment to §281.4; and add approval of rule amendment to §281.58, regarding executive session procedures.

Contact: Fred S. Brinkley, Jr., R.Ph., 8505 Cross Park Drive, Suite 110, Austin, Texas 78701, (512) 832-0661.

Filed: December 31, 1987, 11:27 a.m.
TRD-8711903



Polygraph Examiners Board

Thursday-Friday, January 14-15, 1988, 1 p.m. and 9 a.m., respectively. The Polygraph Examiners Board will meet in the Fourth Floor Conference Room, Lamar Crest Tower 7701 North Lamar Boulevard, Austin. According to the agenda, the board will hold licensing examination, phase I, on January 13, 1988, at the Department of Public Safety Personnel and Training Building, Commissioners Conference Room, 5805 North Lamar Boulevard, Austin; phase II and III will begin on January 14, 1988, at the same location. The board will elect officers for 1988 calendar year; approve of October meeting minutes; adopt amendments to regulations 395.2, 395.4, 395.13, and 395.22; consider applications for licensure; conduct a hearing on Complaint C2-01 for fiscal year 1988; consider any other polygraph related business that may come before the board.

Contact: Debbie Speicher, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: January 5, 1987, 9:19 a.m.
TRD-8711952



Public Utility Commission of Texas

Tuesday, January 12, 1988, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division will consider Docket 7736—Southwestern Bell Telephone Company proposed tariff to block intrastate interlata calls to dial 976 numbers pursuant to Docket 7423.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 31, 1987, 2:31 p.m.
TRD-8711909



Railroad Commission of Texas

Monday, January 11, 1988, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters, including, but not limited to discussion, consideration and/or action on the following: management study, oil and gas general counsel, oil field investigator personnel and their operations, the creation and designation of an executive director with related positions and matters, and personnel matters relating to the office of general counsel and special counsel.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: December 31, 1987, 10:53 a.m.
TRD-8711887

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: December 31, 1987, 10:54 a.m.
TRD-8711888

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

Filed: December 31, 1987, 10:54 a.m.
TRD-8711889

Various matters falling within the Gas Utilities Division's regulatory jurisdiction. In addition, the Railroad Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Railroad Commission may take various actions, including, but not limited to, scheduling an item in its entirety or for particular action at a future time or date.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: December 31, 1987, 10:57 a.m.
TRD-8711890

The Office of the General Counsel will consider and act on the general counsel's report on division administration, budget, procedures, and personnel matters, including, but not limited to, discussion and/or action on the following: Hufo Oils, et al v. Railroad Commission C-5937 in the Supreme Court of Texas, Walker Operating, et al v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698, et al, in relation of Oil and Gas Docket 10-87,017.

Contact: Gail Watkins, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: December 31, 1987, 10:57 a.m.
TRD-8711891

The Office of Information Services division director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: December 31, 1987, 10:57 a.m.
TRD-8711892

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: December 31, 1987, 10:57 a.m.
TRD-8711893

Various matters falling within the Oil and Gas Division's regulatory jurisdiction. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to scheduling an item in its entirety or for particular action at a future time of date.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: December 31, 1987, 10:57 a.m.
TRD-8711894

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108

Contact: Margie I. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: December 31, 1987, 10:58 a.m.
TRD-8711896

Consideration of Oil and Gas Dockets 7C-88,758, 8-88, 776, 1-89,487, 2-88,250, 3-91, 574, and 7C&8-91,506.

Contact: Barbara Epstein, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6922.

Filed: December 31, 1987, 3:50 p.m.
TRD-8711917

Investigation of cementing practices of Western Company of North America.

Contact: Tim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: December 31, 1987, 10:58 a.m.
TRD-8711895

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: December 31, 1987, 10:58 a.m.
TRD-8711897

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: December 31, 1987, 11:01 a.m.
TRD-8711898

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters; pro-

posed and pending litigation, including, but not limited to, discussion and/or decision in Cause 417,521, Joe Broussard II and Ben C. Hebert v. Railroad Commission of Texas and Prudential Oil and Gas, Inc., 250th District Court, and Cause 426,752, United Texas Transmission v. Railroad Commission of Texas, et al.

Contact: Walter E. Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: December 31, 1987, 10:58 a.m.
TRD-8711899

The Surface Mining and Reclamation Division will consider various matters falling within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in its entirety or for particular action at a future time of date.

Contact: J. Randel (Jerry) Hill, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6900.

Filed: December 31, 1987, 10:58 a.m.
TRD-8711900

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: C. Tom Clowe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: December 31, 1987, 10:58 a.m.
TRD-8711901

The commission will consider and possibly elect a chairman for the Railroad Commission of Texas.

Contact: Walter E. Lilie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: December 31, 1987, 10:59 a.m.
TRD-8711902



Texas Savings and Loan Department

Thursday, January 14, 1988, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda, the department will accumulate a record of evidence in regard to the application of Caprock Savings and Loan Association, Lubbock, Lubbock County, for a loan office to be located at One Galleria Tower, Suite 1745, Dallas, Dallas County, from which records the commissioner will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: January 4, 1988, 9:51 a.m.
TRD-8711921



Select Committee on Tax Equity

Thursday, January 21, 1988, 9 a.m. The Select Committee on Tax Equity will meet in the Joe C. Thompson Conference Center Auditorium, UT Campus, Austin. According to the agenda, the committee will discuss tax structure, the economy, and the tax policy for economic development.

Contact: Billy Hamilton, Room 304h-5, Reagan Building, Austin, Texas 78711, (512) 463-1238.

Filed: January 4, 1988, 11:29 a.m.
TRD-8711922



Texas Water Commission

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, and agendas follow.

Wednesday, January 20, 1988, 2 p.m. The commission will consider application by Amarillo By-Products, Inc., for an amendment to Permit 02030 to authorize an increase in the volume of industrial wastewater discharged at the Amarillo By-Products rendering plant, Potter County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: January 4, 1988, 11:44 a.m.
TRD-8711924

Tuesday, January 12, 1988, 10 a.m. The commission will consider water district bond issues, use of surplus funds, release from escrow, appointment of directors, water certificates of convenience and necessity, proposed water quality permits, amendments, and renewals, dismissal of applications for hazardous waste permit, water right applications, repeal of TAC §335.35 concerning a memorandum of understanding between the Texas Water Commission and the Texas Department of Health; and consider a contract with E.P.A. to provide state funding for a superfund site.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: December 31, 1987, 2:33 p.m.
TRD-8711908

Wednesday, January 27, 1988, 2 p.m. The commission will consider application by Lebanon Properties, Inc., for Proposed Permit 13331-01, to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day from the Cypress Lakes Number 1

wastewater treatment plant, Liberty County, Trinity River Basin.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: January 4, 1988, 11:43 a.m.
TRD-8711923

Thursday, February 18, 1988, 9 a.m. The Office of Hearings Examiner will meet in the Commissioner's Courtroom, Johnson County Courthouse, Cleburne. According to the agenda, the examiner will consider K.W. Pound, doing business as Oak Ridge Square Mobile Home Park, P.O. Box 194, Colleyville, Texas 76034, applying for Proposed Permit 13376-01, to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 9,500 gallons per day. Existing wastewater treatment facilities are to be improved and modified to include an enclosed structure over the plant with filtration facilities for noise and odor abatement.

Contact: Alex Schmandt, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 31, 1987, 11:28 a.m.
TRD-8711904



Regional Agencies

Meetings Filed December 31

The Bosque County Appraisal District, Board of Directors, met at 104 West Morgan, Meridian, on January 6, 1988, at 7 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665, (817) 435-2019.

The Brazos Higher Education Authority, Inc., Board of Directors, met in the MBank Building, City Club of Waco, 801 Washington Avenue, Waco, on January 7, 1988, at noon and 1 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

The Brazos River Authority, Administrative Policy Committee, will meet at 4400 Cobbs Drive, Waco, on January 17, 1988, at 3 p.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Brazos Student Finance Corporation, Board of Directors, met in the MBank Building, City Club of Waco, 801 Washington Avenue, Waco, on January 7, 1988, at 12:30 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

The Dallas Area Rapid Transit, Rail Vehicle Specifications Committee, Minority Affairs Committee, and Budget and Finance

Committee, met at 601 Pacific Avenue, Dallas, on January 5, 1988, at noon, 2 p.m., and 4 p.m., respectively; and the Operations Committee met in the same location on January 6, 1988, at 1:30 p.m. Information may be obtained from Nancy McKethan, Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Edwards County Appraisal District, Board of Directors, will meet in the New County Annex Building, Rocksprings, on January 8, 1988, at 10 a.m. Information may be obtained from Natalie McNealy, P.O. Box 378, Rocksprings, Texas 78880, (512) 683-4189.

The Garza County Appraisal District, Board of Directors, will meet in the Courthouse, Post, on January 14, 1988, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Lamar County Appraisal District, Board of Directors, met in the Appraisal District Office, 1523 Lamar Avenue, Paris, on January 4, 1988, at 5 p.m. Information may be obtained from Rodney Anderson, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785-7822.

The Martin County Appraisal District, Board of Directors and Appraisal Review Board, met at 708 West St. Anna, Stanton, on January 7, 1988, at 7 p.m. and 7:30 p.m. respectively. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823.
TRD-8711907



Meetings Filed January 4

The Canadian River Municipal Water Authority, Board of Directors, will meet in the Plainview County Club, 2902 West Fourth, Plainview, on January 13, 1988, at 10:30 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325.

The East Texas Council of Governments, Executive Committee met in the Ramada Hotel, Tyler, on January 7, 1988, at 1:30 p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas, (214) 984-8641.

The Edwards Underground Water District, Board of Directors, will meet at 1615 North St. Mary's Street, San Antonio, on January 12, 1988, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's Street, San Antonio, Texas 78215, (512) 222-2204.

The Erath County Appraisal District, Board of Directors, will meet in the Boardroom, 1390 Harbin Drive, Stephenville, on January

13, 1988, at 10 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-7301.

The Hood County Appraisal District, Board of Directors, will meet in the District Office, 1902 West Pearl, on January 12, 1988, at 7:30 p.m. Information may be obtained from Harold Chesnut, 1902 West Pearl, Granbury, Texas 76048, (817) 573-2471.

The Liberty County Central Appraisal District, Board of Directors, met in emergency session at 1820 Sam Houston, Liberty, on January 5, 1988, at 7 p.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

The Palo Pinto Appraisal District, Board of Directors, will meet in the Courthouse, Palo Pinto, on January 13, 1988, at 3 p.m. Information may be obtained from Jack Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-3651, ext. 234.

The San Antonio River Authority, Board of Directors' Policy and Procedures Committee, and regular Board of Directors, will meet in the SARA General Offices, 100

Guenther Street, San Antonio, on January 13, 1988, at 1 p.m. and 2 p.m., respectively. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, Guilbeau Station, San Antonio, Texas 78204, (512) 227-1373.

The Scurry County Appraisal District, Board of Directors, will meet at 2612 College Avenue, Snyder, on January 12, 1988, at 7 p.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

The Wise County Appraisal District, Board of Directors, will meet in the Boardroom, 206 South State, Decatur, on January 14, 1988, at 9 a.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3081, ext. 74.

TRD-8711919

Meetings Filed January 5

The Tax Appraisal District of Bell County, Board of Directors, will meet at 411 East Central, Belton, on January 20, 1988, at 7

p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841.

The Brazos Valley Development Council, Executive Committee, will meet in Suite 2, The Council Offices, 3006 East 29th, Bryan, on January 14, 1988, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77802, (409) 776-2277.

The Central Texas Economic Development District, Executive Committee, will meet at CTEDD Headquarters, Building 10-3, Airline Drive, TSTI Campus, Waco, on January 21, 1988, at 2 p.m. Information may be obtained from Bruce Gaines, P.O. Box 4408, Waco, Texas 76705, (817) 799-0258.

The Lavaca County Central Appraisal District, Board of Directors, will meet at the Appraisal District, 113 North Main, Hallettsville, on January 11, 1988, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

TRD-8711951

In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Aeronautics Commission Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Aeronautics Commission is seeking letters of interest and proposals from qualified consultants desiring to provide technical services to produce an accurate, repeatable, photographic record with support documentation of the approach surfaces for approximately 700 runway ends at 250 Texas airports.

The approach surface record will be used by the Federal Aviation Administration (FAA) and the Texas Aeronautics Commission (TAC) to more effectively communicate with city and county officials concerning clearing of runway approaches. The record will also be used by FAA and TAC to identify needed obstruction removal projects and assist in Part 139 and airport master record inspections. Airport sponsors may use the documents as an official record of approach surface condition. The project will cover most Texas airports in the national plan of integrated airport systems and will be phased over two to three years.

Photographic records will be made of the entire approach surface for precision, nonprecision, and visual approaches. The photograph(s) must clearly identify objects near or penetrating the approach surface. The coordinates (relative to the runway end), height, and dimension above or below the approach surface for all objects penetrating the surface and for controlling objects must be identified in the record. The record results must be repeatable. The proposal should specify accuracy, repeatability, and quality control procedures. Federal and state funds available for the project are limited. Proposals should identify cost-accuracy tradeoffs and a range of approximate unit costs (per runway end, per airport, etc.) consistent with proposed accuracy(ies). Competitive unit costs will be a factor in TAC's selection of a consultant.

In addition to approach surface records, the consultant will produce periodic progress reports and a final summary report. At least three copies of the record documenting the approach surfaces for each airport will be provided. The consultant will train TAC personnel to maintain the records and specify the equipment, for purchase by TAC, necessary to verify and maintain the records. Monuments will be placed at each runway end so that TAC or other contract personnel can set up equipment necessary to verify an approach surface record or maintain currency of that record over a period of years.

After coordination with the Southwest Regional Office (SWRO) of FAA and with TAC, the consultant will develop a detailed work scope and application(s) for system planning funds under the Airport Improvement Program administered by FAA. The project will be administered by TAC in close coordination with the SWRO. Acceptable methodology, schedule, and cost will be negotiated with the consultant after selection.

Proposals. Consultant proposals should be limited to a maximum of 10 original pages plus already available attachments, appendixes, etc., necessary to support the original information. Proposals should be submitted to TAC by 5 p.m., February 15, 1988. Submit proposals to Merrill Goodwyn, Chief, Plans and Research, Texas Aeronautics Commission, P.O. Box 12607, Austin, Texas 78711 (street address: 410 East 5th Street).

For further information, contact Mr. Goodwyn or Alan Schmidt at (512) 476-9262.

Selection Process and Schedule. It is TAC's desire to select a consultant after review of written proposals. If this is possible, selection will occur around March 2, 1988. If interviews are necessary, no more than three firms will be asked to make presentations the week of March 7, and selection will then be announced around March 14.

Evaluation/Selection Criteria. Proposals should cover relevant experience; expertise in airport approach standards; methodology; availability of consultant personnel; accuracy and repeatability of methodology; proposed record format; approximate unit costs (per airport, per runway end, etc.); and other information deemed relevant. Proposals will be rated and a consultant selected using the following criteria: demonstrated experience with like or similar projects; demonstrated understanding of airport operation and airport design and dimensional standards; relevance of the proposal to the stated uses of the approach surface records; and ability of the proposed process to achieve acceptable standards of accuracy and repeatability within acceptable unit costs.

Issued in Austin, Texas, on January 4, 1988.

TRD-8711882 Lydia Scarborough
Chief
Support Services
Texas Aeronautics Commission

Filed: December 31, 1987

For further information, please call (512) 476-9262.



Texas Air Control Board Public Hearing

Notice is hereby given that pursuant to the Texas Clean Air Act, Texas Civil Statutes, Article 4477-5, §3.09; the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and the Texas Air Control Board (TACB) procedural rules, §103.11(4), the TACB will conduct a public hearing to receive testimony concerning proposed revisions to its Regulation VI.

The TACB is proposing to amend §116.12, concerning review and continuance of operating permits, to revise the fee an applicant is assessed for the review. Under the current system, an applicant pays a flat fee of \$300 when ap-

plying for the review of a 15-year old permit. This fee was adopted in August 1986, on an interim basis to allow the agency additional time to evaluate alternative systems which would recover a greater proportion of the administrative costs of conducting continuance reviews. The rapidly increasing number of reviews scheduled during the next few years makes replacement of the minimal flat fee necessary. The proposed system includes a tiered scheduled based on total annual allowable emissions from the permitted facility for which the continuance is being sought. While the minimum fee of \$300 is retained, the maximum is increased to \$10,000. The proposed system is relatively simple and equitable, and will enable the TACB to recover more of the costs of administering the program.

The hearing will be held at 2 p.m. on January 26, 1988, in the Auditorium of the TACB. The TACB is located at 6330 U.S. Highway 290 East, Austin, Texas 78723. The hearing is structured for the receipt of oral or written comments. Interrogation or cross-examination is not permitted, although a TACB staff member will be available at the hearing to answer questions.

Written comments not submitted at the hearing may be submitted to the TACB central office in Austin up to and including January 27, 1988. Comments received by 4 p.m. on that date will be considered by the board prior to any final decision on the proposed revisions. Copies of the proposed language are available for inspection at the TACB central office and all regional offices. For further information, contact Betty Rogers at (512) 451-5711, extension 264.

Issued in Austin, Texas, on December 30, 1987.

TRD-8711798 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: December 30, 1987
For further information, please call (512) 451-5711, Ext. 354.

Texas Department of Commerce Private Activity Bond Allocation Report

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1987 is \$1,227,750,000.

State legislation, 70th Legislature, Senate Bill 1382, was passed, effective June 20, 1987, to establish the allocation process. The Act specifies that prior to October 1, 1/3 of the state ceiling is available exclusively for issuers of qualified mortgage bonds. One-fourth of the state ceiling is available exclusively for state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation. On and after October 1, that portion of the state ceiling available for reservations shall become available to any issuer for any bonds requiring an allocation.

Generally, the state ceiling will be allocated on a first-come, first-served basis, with the Texas Department of Commerce administering the allocation system.

The information that follows is a summary report of the allocation activity for the period December 21, 1987-December 25, 1987.

Weekly Report on the 1987 Allocation of the State Ceiling on Certain Private Activity Bonds as Pursuant to

Senate Bill 1382

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of December 25, 1987:
\$6,595,101

Comprehensive listing of bond issues which have received a reservation date per Senate Bill 1382 from December 21, 1987, through December 25, 1987: None.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from December 21, 1987 through December 25, 1987:

City of El Paso Industrial Development Authority, Inc., Westwood Lighting Group, Inc., Manufacturer of Portable Lighting, Lampshades, and Related Products, \$2,700,000.

Bonds for the City of El Paso Industrial Development Authority, Inc. were issued and delivered at a lower amount than the reservation request.

Issued in Austin, Texas, on December 29, 1987

TRD-8711852 J. W. Lauderback
Executive Director
Texas Department of Commerce

Filed: December 30, 1987
For further information, please call (512) 472-5059.



The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1988 is \$834,100,000.

Senate Bill 1382, Acts of the 70th Legislature, 1987, (the Act) establishes the allocation process for the State of Texas. The Act specifies that prior to October 1: 1/3 of the state ceiling (\$278,333,300) is available exclusively for reservations by issuers of qualified mortgage bonds; 1/4 of the state ceiling (\$208,525,000) is available exclusively for reservations by issuers of state-voted issues; and the balance of the state ceiling (\$347,241,700) is available for reservations by all other issuers of bonds requiring an allocation.

Issued in Austin, Texas, on December 30, 1987

TRD-8711851 J. W. Lauderback
Executive Director
Texas Department of Commerce

Filed: December 30, 1987
For further information, please call (512) 472-5059.



Texas Department of Corrections Consultant Proposal Request

Invitation. The Texas Department of Corrections invites offers to serve as consultant for construction management. This invitation is made under Texas Civil Statutes, Article 6252-11c.

Description. The consultant shall assist the Texas Department of Corrections in the management of bidding and construction of specific new construction projects. Projects tentatively considered to be eligible for assignment to the construction manager include the following: one-thousand bed medium security prison unit at Snyder,

Texas; one-thousand bed medium security prison unit at Dayton, Texas; one-thousand bed medium security prison unit at Woodville, Texas; and one-thousand medium security prison unit at Marlin, Texas.

TDC intends to evaluate each proposal and may then award a contract based upon the consultant's demonstrated competence, knowledge, and qualifications for the expected services.

Contact. A copy of the request for proposal may be obtained by contacting Bill Barry, Director of Management Services, Texas Department of Corrections, P.O. Box 99, Huntsville, Texas 77342-0099, (409) 294-2450.

Deadline. All proposals shall be submitted no later than 5 p.m. on February 2, 1988, sealed and labeled Construction Management.

Issued in Huntsville, Texas, on December 30, 1987

TRD-8711884 Michael R Davis
Assistant General Counsel
Texas Department of Corrections

Filed: December 31, 1987
For further information, please call (409) 294-2700.



Texas Education Agency Public Hearing

The Texas Education Agency and the Texas Higher Education Coordinating Board will conduct four regional public hearings on the proposed state plan for federal vocational education funding, fiscal years 1989-1990. The hearings will be conducted at the following times and locations: Monday, February 1, 1988, 9-10:30 a.m., Region IV Education Service Center, 7200 West Tidwell, Houston, Texas 77001, (713) 462-7708; Monday, February 1, 1988, 2:30-4 p.m., Region II Education Service Center, 209 North Water Street, Corpus Christi, Texas 78401, (512) 883-9288; Tuesday, February 2, 1988, 9-10:30 a.m., Region X Education Service Center, 400 East Spring Valley Road, Richardson, Texas 75080, (214) 231-6301; Tuesday, February 2, 1988, 3-4:30 p.m., Region XVIII Education Service Center, La Force Boulevard, Midland, Texas 79701, (915) 563-2380.

Individuals who wish to speak at these hearings are requested to bring two copies of their written testimony. Draft copies of the administrative provisions of the proposed plan will be available for interested individuals after January 18, 1988. Copies of the draft may be obtained by contacting Mark Butler, Program Planning Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9512.

Issued in Austin, Texas, on December 30, 1987.

TRD-8711810 W. N. Kirby
Commissioner of Education

Filed: December 30, 1987
For further information, please call (512) 463-9212.



Texas Department of Health Notice of Public Hearings

In the December 15, 1987, issue of the *Texas Register* (12 TexReg 4676) the Texas Department of Health proposed an amendment to 25 TAC §31.2, concerning the WIC state

plan of operations. The amendment modifies Section III of the state plan concerning the food delivery system. Because the WIC Program is serving such a small percentage of the state's potentially eligible citizens and because the United States Department of Agriculture has changed the method by which it allocates funds to Texas, thereby decreasing the overall percentage of the national appropriation the state of Texas will receive, the Texas WIC Program is seeking to implement cost reduction measures in its food delivery system. To serve more people with existing WIC food dollars, the WIC Program is proposing that the state request rebate bids from infant formula manufacturers whereby the company submitting the best rebate offer per can be designated as the primary brand/manufacturer of milk and soy based formulas authorized for issuance. The proposal would not include the special formulas authorized by the WIC Program for infants with specific problems. A public hearing concerning the amendment was held at the Texas Department of Health in Austin, Texas on December 30, 1987.

The department intends to hold additional public hearings at the following locations:

Harlingen; South Texas Hospital, Auditorium, 1400 South Rangerville Road, Harlingen, Texas; Tuesday, January 12, 1988, 1 p.m.

Arlington; Arlington Community Center, 2800 South Center Street, Arlington, Texas; Tuesday, January 12, 1988, 1 p.m.

The procedure at these hearings will be as follows: All interested persons will have the opportunity to present testimony and comments which are relevant and material to the proposed amendments. The hearing officer may limit the time for presenting testimony for each person because of the large attendance expected. Due to a possible time limit for testimony, all persons desiring to testify or comment are strongly urged to reduce as much of their testimony and comments to writing as possible and present such material to the hearing officer at the hearing. Associations or other groups of people should select one spokesperson to present the view points of the association or group. All testimony, written or verbal, will become part of the formal hearing record. It is not necessary for any person to attend or testify at more than one of these hearings because comments received at any of the three hearings, will be given consideration prior to any final action by the Texas Board of Health.

Issued in Austin, Texas, on December 30, 1987.

TRD-8711955 Robert A MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Filed: December 30, 1987
For further information, please call (512) 465-2640.



Texas Department of Human Services Consultant Proposal Request

The Texas Department of Human Services (TDHS), Protective Services for Families and Children Branch, is requesting a proposal for consultant services. The request is filed under the provisions of the Texas Civil Statutes, Article 6252-11c.

Description. This is a proposal request for a detailed management study of the Child Protective Services (CPS) program. The study must be completed by August 31,

1988, and must include a review and analysis of the program's intake and investigation services, in-home services, and substitute care services. Issues to be examined include: adequacy of the intake process; promptness and thoroughness of CPS investigations; availability of in-home services; rate of removal into substitute care; returning children to parents who were previously abusive or neglectful; child deaths resulting from abuse/neglect; recruitment, qualification, and retention of CPS staff; and cooperation and coordination among components of the CPS system.

Offeror's Conference. An offeror's conference will be held on February 3, 1988, at the Texas Department of Human Services, John H. Winters Human Services Center, 701 West 51st Street, Austin, Texas at 10 a.m. in the Public Hearing Room. At this conference the RFP will be reviewed. Oral and written questions regarding the RFP will be answered at this meeting. However, oral answers are not binding and should be used for information only. The answers provided in this meeting will subsequently be reduced to writing and mailed to all offerors who requested an application. The answers will then be binding for all offerors.

Written Inquiries. All questions concerning the contents of the RFP, other than those presented at the offerors conference, must be in writing and received by 5 p.m. on February 1, 1988, and sent to: Susan Watkins, Program Specialist, Texas Department of Human Services, P.O. Box 2960, M.C. 538-W, Austin, Texas 78769.

Limitations. The contract period will be April 1, 1988-October 31, 1988, and funding will not exceed \$250,000.

Contact Person. To obtain a complete copy of the request for proposal please contact: Susan Johnson, Contract Management Specialist, Texas Department of Human Services, P.O. Box 2960, M.C. 537-W, Austin, Texas 78769, 512/450-3289.

Request for proposal packets will be available on or after January 11, 1988.

Evaluation and Selection. Criteria for selecting the consultant will include the selection of an organization which has national experience in providing consultation, research and evaluation to child protective services agencies and organizations. The experience of the project manager and team members must demonstrate a high level of competence and expertise in conducting CPS evaluations. A panel of DHS program/administrative staff will rank and score each proposal.

Procedures to be used to evaluate offers will include evaluation of the following criteria: demonstrated effectiveness of the bidder and experience of key personnel; quality of proposed approach; and cost.

Closing Date The last day to receive offers is 4 p.m. on March 18, 1988.

Issued in Austin, Texas, on December 30, 1987.

TRD-8711905
Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Filed: December 31, 1987
For further information, please call (512) 450-3765.



Request for Proposals

The Texas Department of Human Services (TDHS) is requesting proposals for Titles IV-B and IV-E, Preparation for Independent Living Project contract services. Region

06 issues this request for proposals for the following services and areas.

Description. Services to be purchased will be: training to prepare youth for adult living (the unit of services is per hour per session); individual counseling/therapy one-to-one sessions to aid the individual in meeting treatment goals (the unit of service is per hour); group counseling/therapy provided simultaneously to at least two unrelated individuals to meet individual treatment goals (the unit of service is per hour per client); and allowances made available to eligible youth (service is paid on a cost reimbursement basis).

Geographic Areas. Area A: Bastrop, Blanco, Burnet, Caldwell, Fayette, Frels, Lee, Llano, Travis, and Williamson. It is estimated there will be 25 clients in this catchment area. Area B: Bell, Coryell, Hamilton, Lampasas, Milam, Mills, and San Saba. It is estimated there will be 10 clients in this catchment area. Area C: Bosque, Falls, Freestone, Hill, Limestone, and McLennan. It is estimated there will be 15 clients in this catchment area. Area D: Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington. It is estimated there will be six clients in this catchment area.

Contract Period. The contract period will be April 1, 1988-August 31, 1988.

Limitations. The total projected allocation for purchase of these services is approximately \$146,000. The final allocation is contingent on the availability of funds. More than one contract may be awarded as a result of this request for proposals. Request for proposals packets will be available January 8, 1988.

Contact Person. To obtain complete copies of request for proposals, please contact: Jim Caruthers, Contract Manager, Texas Department of Human Services, P.O. Box 15995, Mail Code 016-1, Austin, Texas 78761, (512) 835-2350.

Evaluation and Selection. Scoring and ranking of proposals will be based upon the following criteria and considerations: availability of services; experience; staff qualifications; curriculum; and cost. Final selection will be based upon the department's evaluation of the criteria.

Closing Date. The last day to receive offers is February 5, 1988.

Issued in Austin, Texas, on December 31, 1987

TRD-8711906
Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Filed: December 31, 1987
For further information, please call (512) 450-3765.



Texas Water Commission Invitation for Bids

The following is a notice to bidders of the intention of the Texas Water Commission (TWC) to let contract for construction of Geneva Industries Remedial Action.

Sealed proposals addressed to David Sorrells, P.E., Chief, Superfund Section, Hazardous and Solid Waste Division, will be received until 2 p.m. local prevailing time on February 8, 1988, for furnishing all labor, equipment, materials, supplies, and supervision necessary for construction of the Geneva Industries Remedial Construction.

Specified work shall consist of removal and off-site disposal of approximately 31,600 cubic yards of soil contaminated with polychlorinated biphenyls (PCB), backfill

with clean soil and installation of slurry wall and RCRA cap and including all labor, materials, supplies, and supervision as shown and specified in accordance with the project plans and specifications for the Geneva Industries superfund site. The site is located at 9334 Caniff Road in the City of Houston, Harris County.

Plans and specifications may be examined without charge at the Texas Water Commission, Room 513, Employees Retirement System Building, 18th and Brazos Streets, Austin, or one copy may be obtained for the nonrefundable purchase price of \$300 at the following location on or after January 8, 1988: IT Corporation, 2925 Briar Park, Suite 405, Houston, Texas 77042, (713) 784-2800.

A certified or cashier's check, or an acceptable bid bond in an amount not less than 5.0% of the total bid, shall accompany each bid as a guaranty that, if awarded the contract, the bidder will promptly enter into contract with the TWC and furnish bonds on the forms provided.

The successful bidder or bidders will be required to furnish a performance bond and a payment bond, each in the amount of the contract, written by a responsible surety company authorized to do business in the State of Texas, and satisfactory to the TWC as required by Texas Civil Statutes, Article 5160.

Bidders are expected to inspect the site of the work as provided in the instructions to bidders and to inform themselves of all local conditions. Time of completion shall be 330 calendar days including Saturdays, Sundays, and legal holidays.

Attention to bidders is directed to the provisions of House Bill 54, Chapter 45, 43rd Legislature, requiring that not less than the general prevailing rates of per diem wages for work of similar character in the locality where the work is performed shall be paid all laborers, workmen, and mechanics employed in the construction of public works. Also, the successful bidder will be required to comply with the Labor Standard Provisions for Federally Assisted Construction Contracts (Form 5720-4).

No bid may be withdrawn after the scheduled closing time for receipt of bids for at least 90 calendar days.

In case of ambiguity stating the price in the bids, the TWC reserves the right to consider the most advantages construction thereof, or to reject the bid.

Any contract or contracts awarded under this invitation for bids are expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this invitation for bids or any resulting contract. This procurement will be subject to regulations contained in 40 Code of Federal Regulations Part 33.

Equal opportunity in employment. All qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin. Bidders on this work will be required to comply with the President's Executive Order 11246, as amended. The requirements for bidders and contractors under this order are explained in the specifications.

Issued in Austin, Texas, on December 31, 1987

TRD-8711911 J. D. Head
Director
Legal Division
Texas Water Commission

Filed: December 31, 1987
For further information, please call (512) 463-7801.

Request for Proposals

Pursuant to 40 Code of Federal Regulations Part 33, the Texas Water Commission (TWC) is soliciting proposals from registered professional engineers for services concerning nonpoint source (NPS) pollution in Texas' surface waters, as addressed in the Federal Water Quality Act of 1987, §319. Funding for this project is through a grant from the United States Environmental Protection Agency under the provisions of the Act, §205(j)5.

The two basic requirements addressed in the Act, §319, are the development of an assessment report which will identify waterbodies affected by NPS pollution, and describe the nature, extent, cause, and effect of NPS water pollution in Texas; and the development of a management program which identifies programs and specific best management practices which will be used to reduce pollution from the major categories or subcategories of NPS pollution.

Requested Services. It is estimated the engineer should expend approximately 25% of his efforts on the assessment report and the remaining 75% on the management program. The TWC is currently conducting a preliminary review of the state's existing water quality data to select potential waterbodies for inclusion in the assessment report. These selected waterbodies will be submitted to the engineer for further analyses to substantiate their inclusion in the assessment report.

The engineer will also assist the TWC with the development of the management program by researching the effectiveness of site-specific best management practices and measures for possible implementation at selected waterbodies.

Budget and Schedule. The maximum budget allowed for this project is \$95,000. Due to the short time frame mandated by the Water Quality Act of 1987, the engineer must be able to start on the project immediately after the award of the contract. Anticipated award date is late February or early March 1988. The assessment report is to be completed by April 1988, while the management program should be in final draft form by June 1988.

Review Criteria and Procedures. Evaluation of the submitted proposals will be based on the following criteria, which are not necessarily listed in relative order of importance: demonstrated knowledge of the work to be performed; qualifications and experience of project staff; commitment of physical facilities to successfully complete the work; project management; and reasonableness of proposed budget and time schedule.

The TWC will award the contract to the engineer considered to be best qualified to perform the work and also reserves the right to reject, in total or in part, any or all proposals. Upon submittal, the proposals shall become the property of the State of Texas.

Contact Person and Deadline. A copy of the request for proposal (RFP) may be obtained by contacting Danna Stecher. The RFP packet will be available for distribution on January 15, 1988. Ms. Stecher is also the designated person to whom proposals may be made. Three copies of each proposal must be received by the TWC no later than 5 p.m., February 16, 1988. Proposals may be mailed to Ms. Stecher, Texas Water Commission, Water Quality Division, P.O. Box 13087, Austin, Texas 78711-3087; or hand delivered to Room 1140-A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. If additional information is needed, Ms. Stecher may be contacted by calling (512) 463-8443.

Issued in Austin, Texas, on December 31, 1987.

TRD-8711912

J. D. Head
Director
Legal Division
Texas Water Commission

Filed: December 31, 1987

For further information, please call (512) 463-8452.

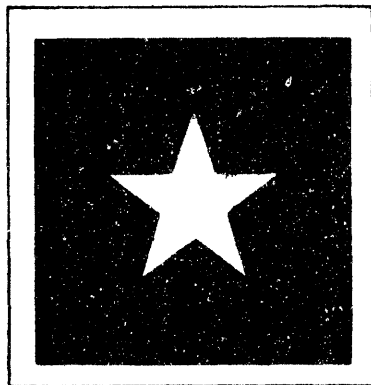


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