

Texas Register

Volume 17, Number 53, July 14, 1992

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

- Governor** - Appointments, executive orders, and proclamations
- Attorney General** - summaries of requests for opinions, opinions, and open records decisions
- Secretary of State** - opinions based on the election laws
- Texas Ethics Commission** - summaries of requests for opinions and opinions
- Emergency Sections** - sections adopted by state agencies on an emergency basis
- Proposed Sections** - sections proposed for adoption
- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Sections** - sections 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 explanation 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.

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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 17 (1992) is cited as follows: 17 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: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 TexReg 3"

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code*, section numbers, 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 section is designated by a TAC number. For example in the citation 1 TAC §27.15:

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

Texas Register Art Project

This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages and does not increase the cost of the *Texas Register*.

Texas Register Publications



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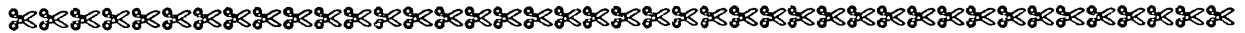
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*The Texas Register Readers Choice Award
continues with this issue!*

You will be able to continue to VOTE throughout the summer on what you think is the best of the 1991-1992 school art project submissions. In this issue, we finish publishing the first category of artwork, featuring submissions from children in kindergarten through third grade. Also in this issue, we begin publishing artwork from students in grades four through six. The pictures are labeled first by the category, and then by a number reflecting the individual piece. For example "4-1" will indicate that the picture is the first submission in the fourth through sixth grade group. You will be able to vote as often as you would like. Simply fill out the attached form, and mail it to the Texas Register, Roberta Knight, P.O. Box 13824, Austin, Texas 78711-3824.

The Secretary of State, Texas Register staff will then tabulate the votes and announce the winners in the fall of 1992.

The artwork does not add additional pages and does not increase the cost of the Texas Register.



1991 - 1992 Texas Register Readers Choice Award.

Please enter my vote for the "best of the best" :

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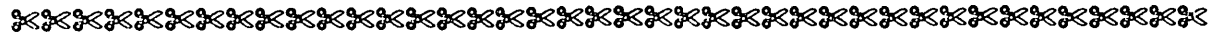
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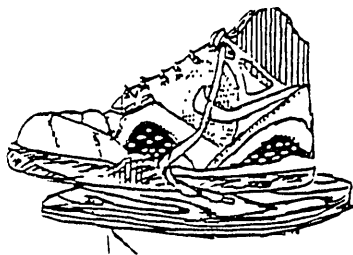
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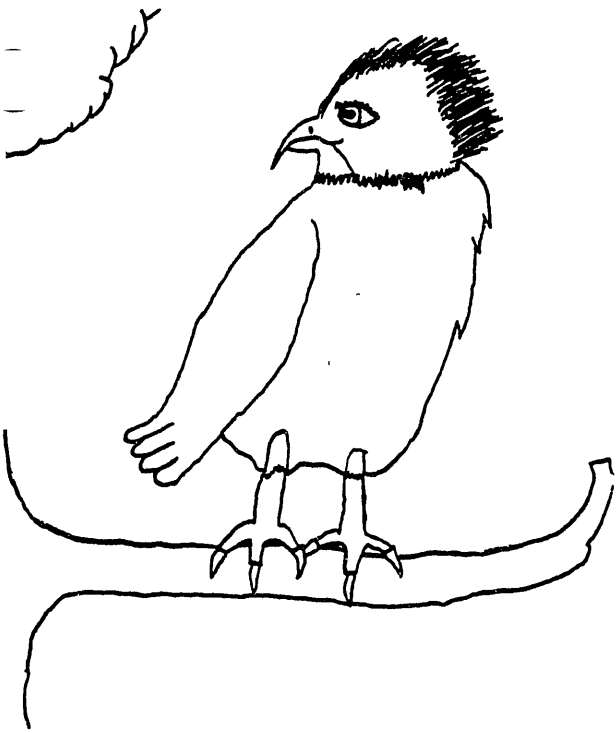
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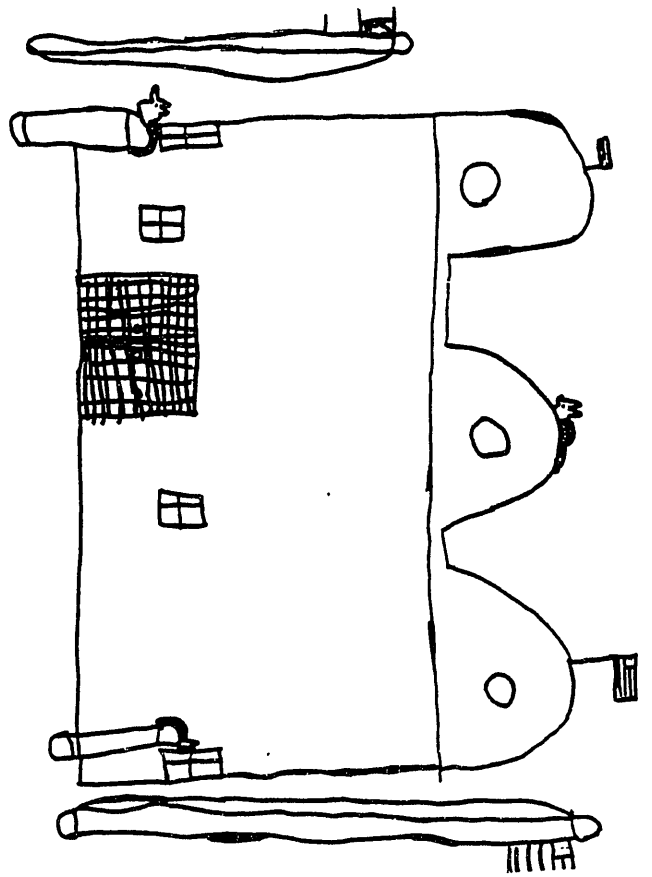


Lets get started on the right foot!





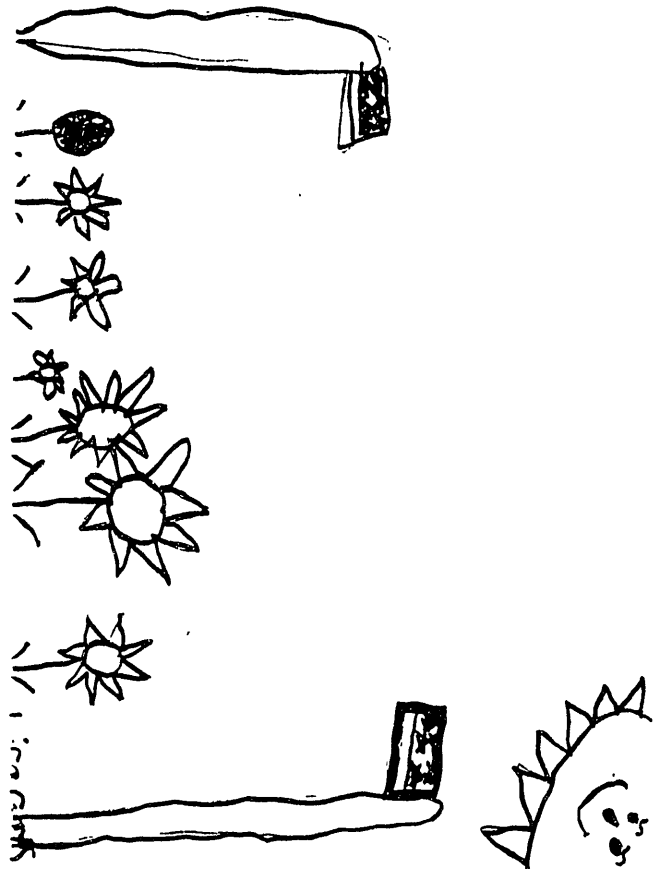
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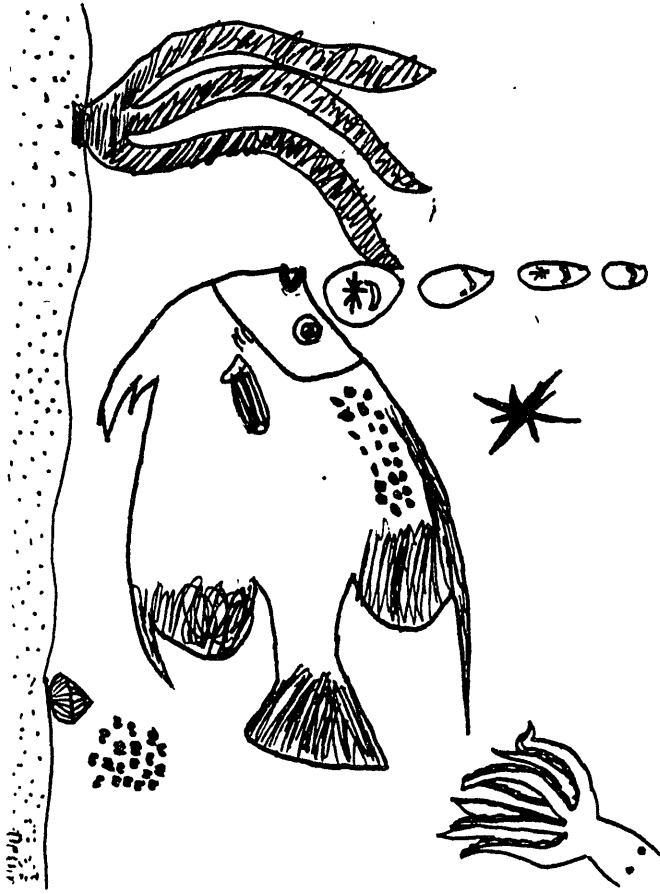
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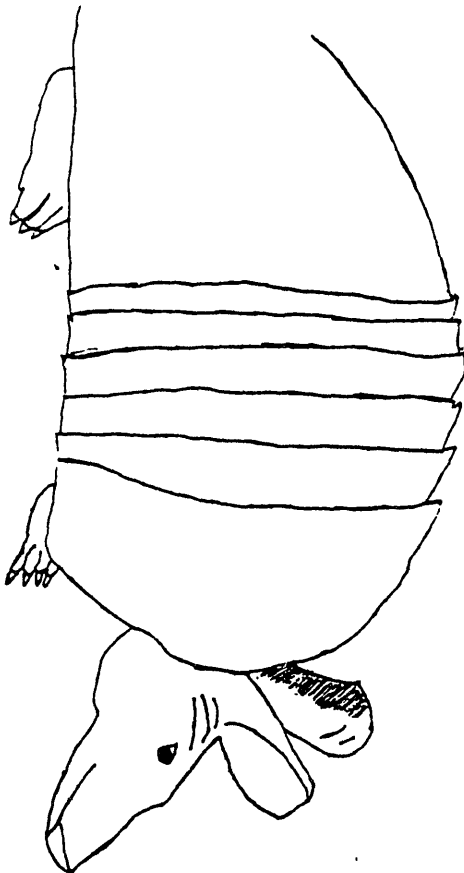


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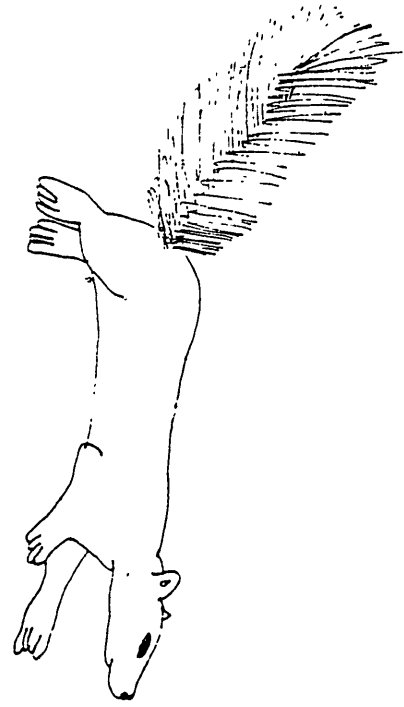


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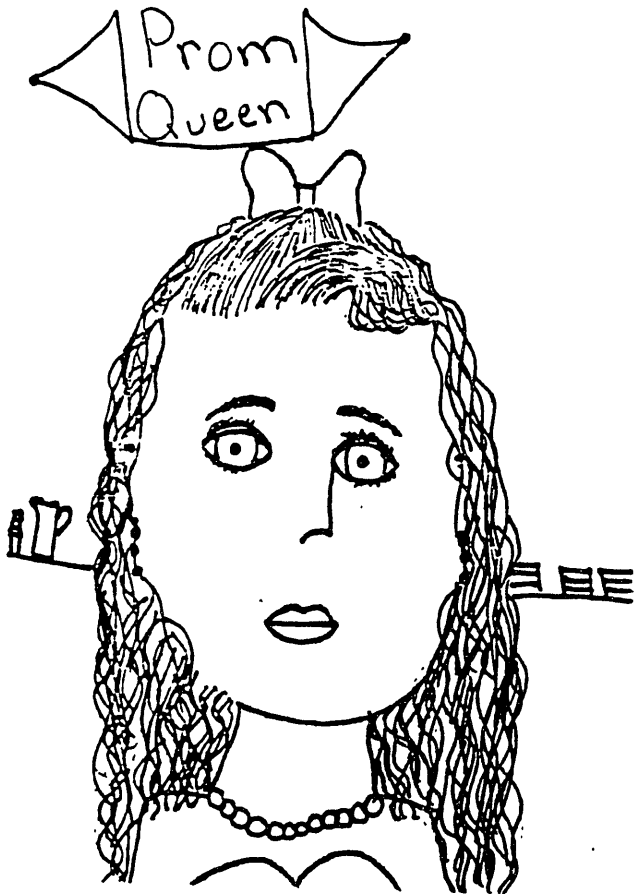




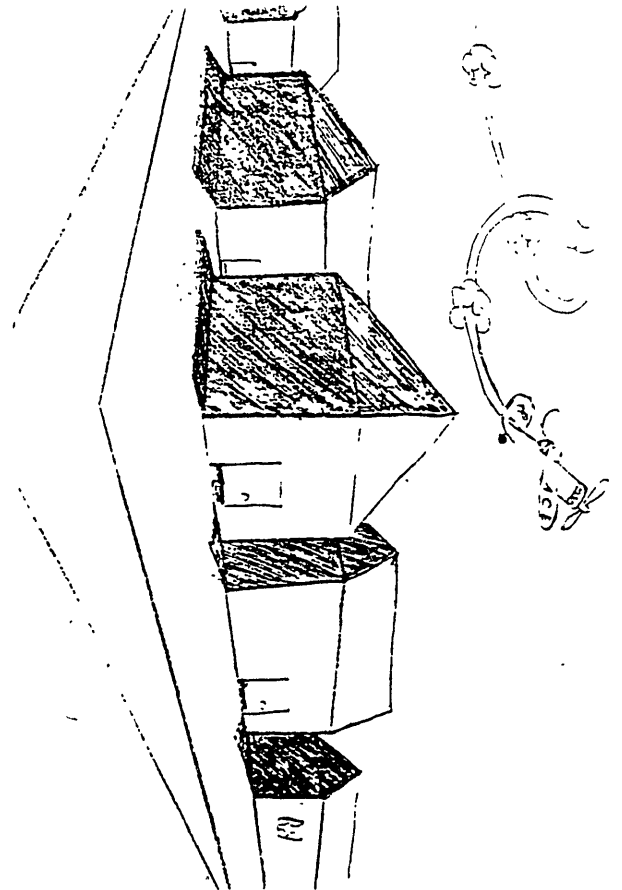
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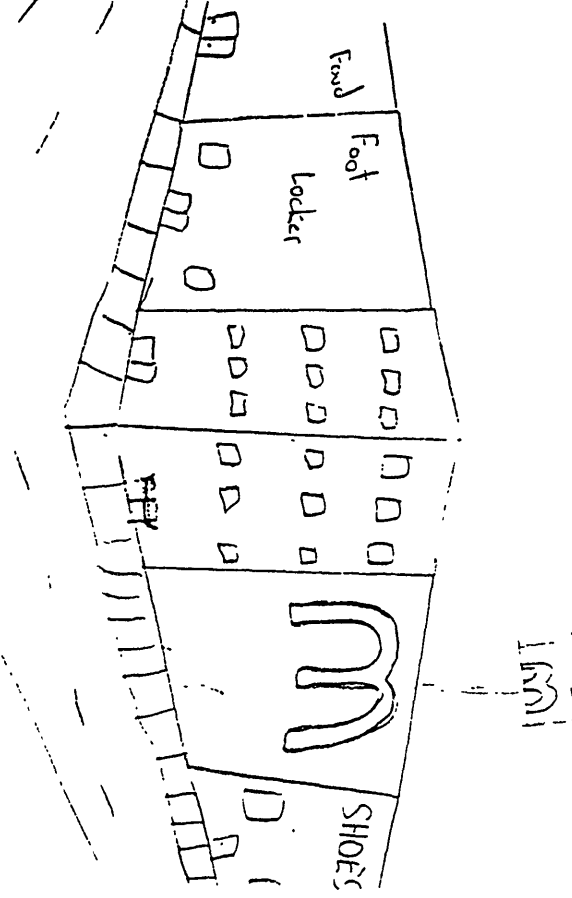
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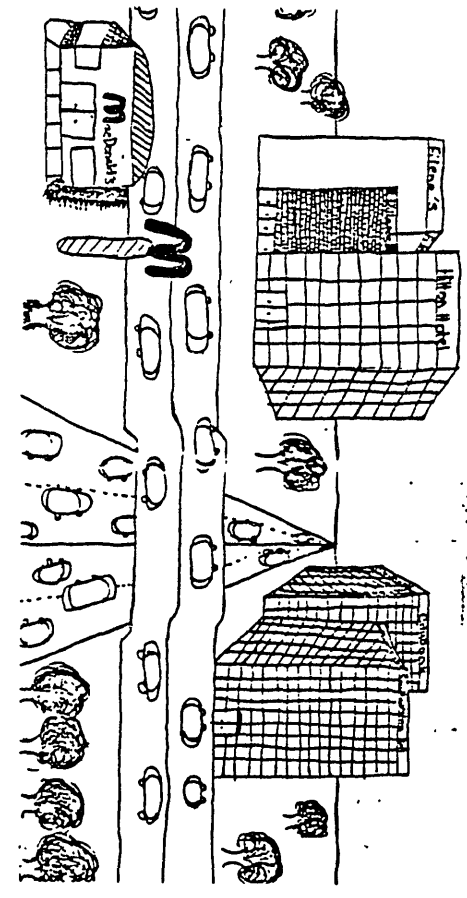
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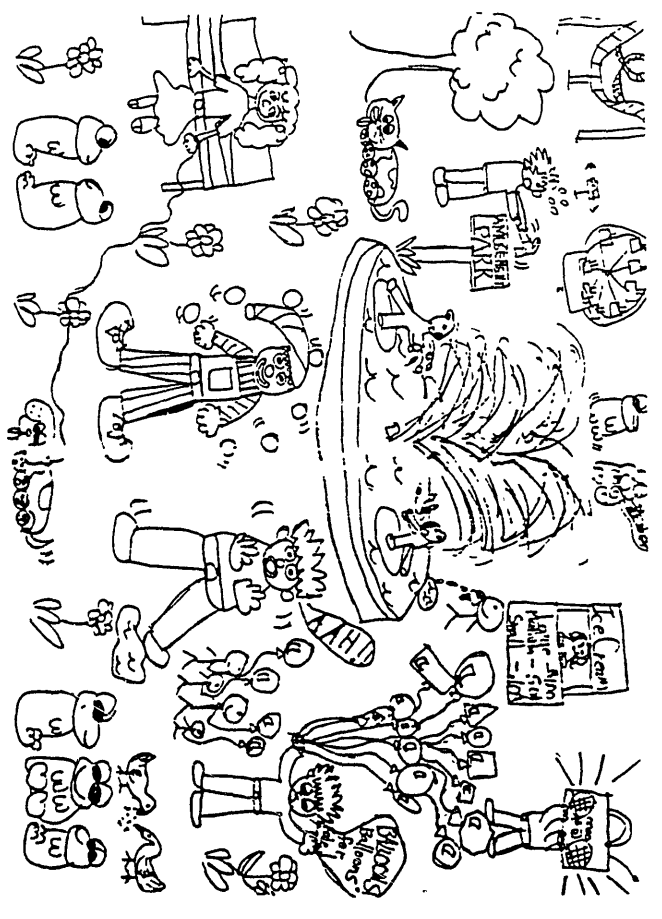
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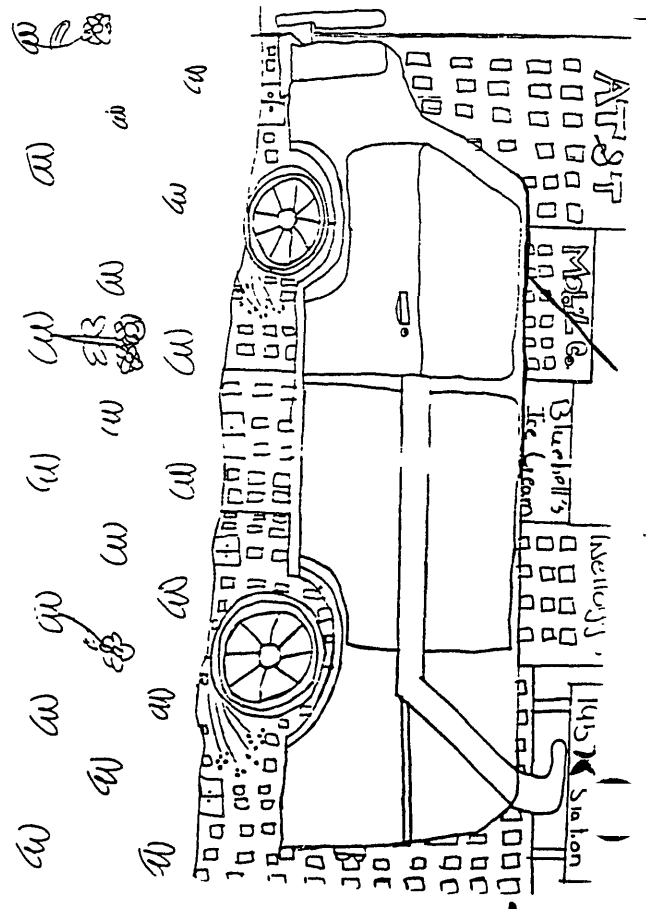
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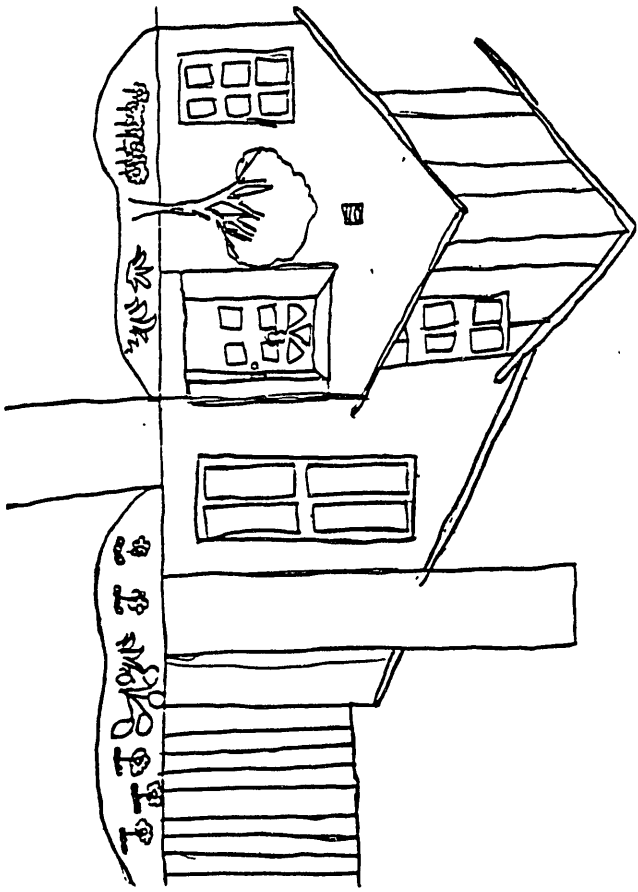
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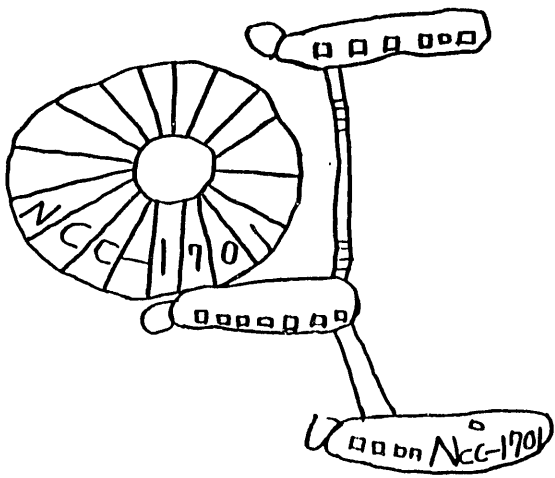
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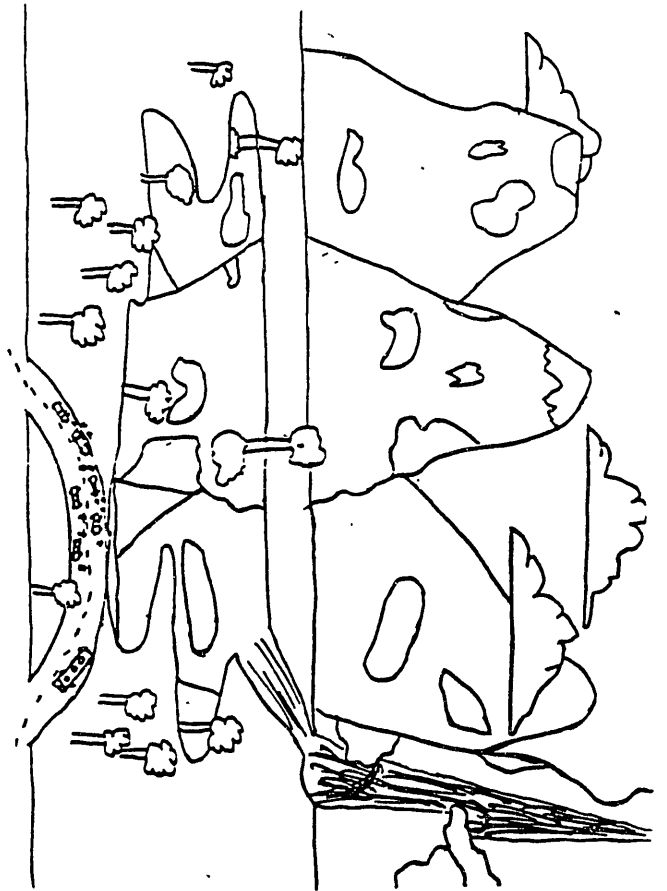


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The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made July 3, 1992

To be a member of the **Judge of the 339th Judicial District Court, Harris County**, effective at 5:01 p.m., July 3, 1992, until the next general election and until his successor shall be duly elected and qualified: John E. Ackerman, 5111 Briarbend, Houston, Texas 77035. Mr. Ackerman will be replacing Judge Norman Lanford of Houston who resigned.

Appointments Made July 6, 1992

To be a member of the **Angelina and Neches River Authority Board of Directors** for a term to expire September 5, 1997: Herman Wright, P.O. Box 297, Jasper, Texas 75951. Mr. Wright will be replacing Paul Richard Riehle of Lufkin whose term expired.

To be a member of the **Angelina and Neches River Authority Board of Directors** for a term to expire September 5, 1997: Jack Gorden, 2211, Old Union Road, Lufkin, Texas 75901. Mr. Gorden will be replacing Walter L. Volz of Jacksonville whose term expired.

To be a member of the **Texas Incentive and Productivity Commission** for a term to expire February 1, 1994: Bill B. Cobb, 45 Palmer Lane, Wimberley, Texas 78676. Mr. Cobb is being reappointed.

To be a member of the **Texas Commission for the Blind** for a term to expire February 1, 1997: Dr. Hilda Medrano, 600 Water Lilly, McAllen, Texas 78504. Dr. Medrano will be replacing Dr. Robert Peters of Tyler whose term expired.

To be a member of the **Texas Board of Licensure for Nursing Home Administrators** for a term to expire January 31, 1997: Olga Cortez, 2437 Kendlewood, McAllen, Texas 78501. Ms. Cortez will be filling the unexpired term of Jarmese Morris of Houston who resigned.

To be a member of the **State Board of Vocational Nurse Examiners** for a term to expire September 6, 1997: Rojelio Cuevas, 615 Daffodil, McAllen, Texas 78501. Mr. Cuevas will be replacing Wayne Ogburn of DeSoto whose expired.

To be a member of the **Project Child Save Steering Committee** for a term to expire September 1, 1993. Treina Wilson, 4003 Redwin Circle, Houston, Texas 77047. Ms. Wilson will be filling the unexpired term of Lila Lee Pond of Port Arthur who resigned.

To be a member of the **Advisory Commission on State Emergency Communications** for a term to expire September 1, 1993: Judge Ron Harris, 3117 Lynbrook, Plano, Texas 75075. Judge Harris will be filling the unexpired term of Lee Walker of Denton who resigned. Judge Harris' present term has expired and he is being moved to another position on the commission.

To be a member of the **Advisory Commission on State Emergency Communications** for a term to expire September 1, 1997: Alene Rash Aldridge, 1402 Corpus Christi Street, Laredo, Texas 78040. Ms. Aldridge will be replacing Ron Harris of Plano whose term expired. He has been appointed to another position on the commission.

Issued in Austin, Texas, on July 7, 1992.

TRD-9209334

Ann W. Richards
Governor of Texas



Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section 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 sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter W. Registration of Commercial Carriers

• 16 TAC §5.507

The Railroad Commission of Texas is renewing the effectiveness of the emergency adoption of the amended §5.507, for a 60-day period effective July 10, 1992. The text of the amended §5.507 was originally published in the March 17, 1992, issue of the *Texas Register* (17 TexReg 1969).

Issued in Austin, Texas, on July 6, 1992.

TRD-9209304 Nolan Ward
 Hearings Examiner/Legal
 Division-General Law
 Railroad Commission of
 Texas

Effective date: July 10, 1992

Expiration date: September 8, 1992

For further information, please call: (512)
463-7095



Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before 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 section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

• 10 TAC §§9.1-9.6, 9.9

The Texas Department of Housing and Community Affairs (TDHCA) proposes amendments to §§9.1-9.6 and 9.9, concerning the allocation of community development block grant (CDBG) non-entitlement area funds under the Texas Community Development Program. The proposed amendments establish the standards and procedures by which TDHCA will allocate fiscal year 1992 community development, Texas Capital, planning/capacity building, disaster relief, urgent need, and Colonia funds to eligible units of general local government. The amendments make changes in the public participation requirements; delete the governor's special assistance fund for small and minority businesses and the governor's small business special assistance fund and establish the Small and Minority Business Loan Program under the Texas capital fund; change the name of the urgent need fund to the disaster relief fund and add additional eligibility requirements; and make various changes in the application procedures and selection criteria for the other program funds.

Ruth Cedillo, director, Texas Community Development Program, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Cedillo 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 equitable allocation of CDBG nonentitlement area funds to eligible units of general local government in Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Anne O. Paddock, Acting General Counsel, 811 Barton Springs, Suite 500, Austin,

Texas 78711-3941.

The amendments are proposed under Texas Civil Statutes, Article 4413(501), which provide TDHCA with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

§9.1. General Provisions.

(a) (No change.)

(b) Overview. Community development block grant nonentitlement area funds are distributed by the Texas Community Development Program to eligible units of general local government in the following program areas:

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

(4) **disaster relief** [emergency] fund;

(5) (No change.)

(6) **colonia fund**. [governor's special assistance fund for small and minority businesses;]

[(7) colonia fund.]

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per Texas Community Development Program fund, as outlined in subsection (b) of this section, on its own behalf per funding cycle (except as specified for the Texas capital fund [, the governor's special assistance fund for small and minority businesses, and the governor's small business special assistance fund]). A city may include beneficiaries who reside in the extraterritorial jurisdiction of the city provided that at least 30% of the beneficiaries of the project reside within the corporate limits of the jurisdiction and, if funded, the city will be required to annex the area in its extraterritorial jurisdiction prior to receiving any contract construction funds. If the city is unwilling to annex the area, the city and county in which the area is located must submit the project as a joint application.

(2) Joint applications. Subject to approval by the United States Department of Housing and Urban Development and subject to each participating community satisfying the application requirements of the

Texas Community Development Program fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A joint application solely for administrative convenience will not be accepted. Any community participating in a joint application may not submit a single jurisdiction application under the project fund for which the joint application was submitted. One of the participating communities must be primarily accountable to the department for financial compliance and program performance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates Texas Community Development Program requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a joint application (except as specified for the Texas Capital Fund [, the governor's special assistance fund for small and minority businesses, and the governor's small business special assistance fund]).

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

(f) Citizen participation.

(1) Public hearing requirements.

For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in [the non-legal section of] a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the department in lieu of publication of notices.

Notices should [must] also be prominently posted in public buildings and distributed to interested community groups.

(B) Each public hearing shall be held [after 5 p.m. on a weekday or on a Saturday] at a time and [at a] location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities [the handicapped]. At least one of the public hearings must be held after 5 p.m. on a weekday or on a Saturday.

(C) (No change.)

(2) Application requirements. Prior to submitting a formal [an] application, an applicant for Texas Community Development Program funding shall satisfy the following requirements.

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

(C) At least one of the public hearings must be held in the proposed project area, except for incorporated cities with a population less than 5,000 persons and applications which include multiple project areas.

(D)-(F) (No change.)

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

(g) Appeals. An applicant for funding under the Texas Community Development Program may appeal the disposition of its application in accordance with this subsection.

(1) (No change.)

(2) The appeal must be submitted in writing to the Texas Community Development Program of the department no later than 30 days after the date the announcement of contract awards is published in the *Texas Register*. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the State Review Committee will be heard at the subsequent meeting of the State Review Committee. The department staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the State Review Committee at its next regularly scheduled meeting. The State Review Committee will make a final recommendation to the executive director of the department. The decision of the executive director of the department is final. If the appeal concerns a Texas capital fund application, [a governor's special assistance fund for small and minority businesses application, or a governor's small business special assistance fund application.] the ap-

peal must be submitted in writing to the department no later than 30 days following the date of the notification letter of the denial. The staff evaluates the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the executive director. The executive director then considers the appeal within 30 days and makes the final decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal is rejected, the department notifies the applicant of its decision, including the basis for rejection after the meeting of the State Review Committee at which the appeal was considered. If the appeal concerns a Texas capital fund application, [a governor's special assistance fund for small and minority businesses application, or a governor's small business special assistance fund application.] the applicant will be notified of the decision made by the executive director within 10 days after the final determination by the executive director.

(4) (No change.)

(h)-(i) (No change.)

(j) False information. If an applicant provides false information in its application which has the effect of increasing the applicant's competitive advantage, the department refers the matter to the State Review Committee for disciplinary action. If the applicant provides false information in a Texas capital fund application, [a governor's special assistance fund for small and minority businesses application, or a governor's small business special assistance fund application.] the department staff in conjunction with the staff of the Texas Department of Commerce shall make a recommendation for action to the executive director of the department. The State Review Committee makes a recommendation for action to the executive director of the department at its next regularly scheduled meeting. Recommendations that the State Review Committee may make include, but are not limited to:

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

(k) (No change.)

(l) Unobligated and recaptured funds. Any additional funds resulting from the recapture of dollars from a prior year's allocation, recapture of program income, unobligated funds from a program area specified in subsection (b) of this section, or reallocated funds which the United States Department of Housing and Urban Development has recaptured from small cities grantees are redistributed to eligible communities on a priority basis with eligi-

ble disaster relief [emergency] and urgent need projects and projects benefitting public housing as the highest priorities. Any additional remaining funds may be redistributed to eligible communities at the discretion of the executive director of the department within such program areas. [A governor's small business special assistance fund was established for economic development projects proposed by communities impacted by base closings/cutbacks or defense related layoffs (i.e., Fort Hood area). This program was funded through \$500,000 of 1988 and 1989 program years' allocations by an amendment to the 1990 final statement. This fund does not involve 1991 funds.]

(m) (No change.)

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program year 1992 [1991] funds. A contract is considered executed for the purposes of this subsection on the date stated in Section 2 of such contract:

(1) obligate at least 50% of the total funds awarded under a contract (except for Texas capital fund contracts) executed at least 12 months prior to the program year 1992 [1991] application deadline. **This paragraph does not apply to disaster relief fund applicants;**

(2) expend all but the audit funds awarded under a contract (except for Texas capital fund contracts) executed at least 24 months prior to the program year 1992 [1991] application deadline and submit to the department the close-out documents required by the most recent edition of the Texas Community Development Program Project Implementation Manual. **This paragraph does not apply to disaster relief fund applicants.**

§9.2. Community Development Fund.

(a) General provisions. This fund covers housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities.

(1) An applicant may not submit an application under this fund and also under the colonia fund or urgent need fund at [during] the same time [program year] if the proposed activity under each application is the same or substantially similar.

(2) (No change.)

(b)-(d) (No change.)

(e) Selection criteria. The following is an outline of the selection criteria used by the department and the regional review committees for scoring applications under the community development fund. Seven hundred points are available.

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

(4) Project impact (total--170 points). Ten points of the 170 points available are awarded to applicants who did not receive a 1991 community development fund contract award. Of the remaining 160 points available, each [Each] application is scored on how the proposed project resolves the identified need and the severity of the need within the applying jurisdiction. Information submitted in the application or presented to the regional review committees is used by a committee composed of staff of the department to generate scores on this factor.

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

§9.3. Texas Capital Fund.

(a) General provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment; or may, in the case of the small business incubator program, include the fulfillment of the national objective in eliminating slum or blight. All jobs being created or retained must primarily benefit low- and moderate-income persons. A minimum of 51% of all of the jobs ultimately created or retained must have been for people who at the time of their employment had total family income below the low- and moderate-income limit for the county where the development occurred. If the project is designed to aid in the prevention or elimination of slums or blight, then it must meet the area slum or blight or spot slum or blight criteria and threshold requirements outlined in the pre-application. Eligible activities include the loan program, the infrastructure program, the real estate development program, [and] the small business incubator program, and the small and minority businesses loan program. The loan program provides financing for activities such as machinery and equipment, working capital, the purchase of land and depreciable property, new construction, and rehabilitation of commercial or industrial facilities. The public infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line services, electric-power services, and railroad spurs. The real estate development program provides a contract to an eligible applicant for the acquisition, construction, or rehabilitation of real estate in support of a specific business (either a for-profit entity or a non-profit entity). The small business

incubator program provides funds for an eligible applicant to acquire, construct, or rehabilitate real estate and to provide public improvements in support of a nonprofit incubator sponsor. The small and minority businesses loan program provides a loan to a for-profit small or minority business for the purchase of machinery and equipment and for working capital. The terms and criteria for the loan program, the public infrastructure program, the real estate development program, [and] the small business incubator program, and the small and minority businesses loan program are further defined in the pre-application guidelines for the programs. A firm financial commitment from all funding sources other than United States Department of Commerce Economic Development Administration is required upon submission of a pre-application. A letter from the United States Department of Commerce Economic Development Administration inviting a formal application under its public works program must be included in the pre-application if applicable. The leverage ratio between all funding sources and Texas Capital Funds must not be less than 1:1 (with the exception of the small and minority businesses loan program which requires a minimum leverage ratio of 1:3). In order for an applicant to be eligible for Texas capital funding under the low- and moderate-income persons benefit objective, the cost per job calculation must not exceed \$25, 000.

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

(7) A Texas capital fund [or governor's special assistance fund for small and minority businesses] contractor must satisfactorily close out a contract in support of a specific business/incubator sponsor in order to be eligible to receive additional funds under the Texas capital fund for the same business/incubator sponsor.

(8) The department will not consider or accept an application for funding under the Texas capital fund [or the governor's special assistance fund for small and minority businesses] in support of the same project.

(b) (No change.)

(c) Selection procedures. The department has entered into an interagency cooperation contract with the Texas Department of Commerce by which the Texas Department of Commerce performs marketing and underwriting services for this fund. Applications under this section are reviewed by the Texas Capital Fund Advisory Committee after they have been evaluated by staff of the Texas Department of Commerce. The Advisory Committee is appointed by the executive director of the Texas Department of Commerce and the community development block grant division director of the department. The Texas

Department of Commerce and the department have equal representation on the Advisory Committee. The Texas Capital Fund Advisory Committee and staff make recommendations to the department's executive director for final award. The application and selection procedures consist of the following steps.

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

(5) The staff of the Texas Department of Commerce generates scores on selection criteria related to leverage ratio, cost per job, minority hiring, and project feasibility. Scores on factors in these categories are derived from information provided by the applicant. An infrastructure, loan, or real estate development program applicant must receive at least 60 points out of a possible 100 points to be considered for funding. An applicant that receives at least 60 points on such criteria may be invited to send a representative to make a presentation to the Texas Capital Fund Advisory Committee. An application submitted under the Small Business Incubator Program or the small and minority businesses loan program is not scored, however, an applicant must meet the minimum threshold requirements specified in the pre-application.

(6)-(10) (No change.)

(d)-(h) (No change.)

(i) Threshold requirements for the small and minority businesses loan program. The following requirements are used for the selection of projects under the Texas Capital Fund Small and Minority Businesses Loan Program. The terms and criteria used in this subsection are further defined in the pre-application guidelines for this program. In order for its pre-application to be considered, an applicant must document the following:

(1) at least 51% or more of all the persons to benefit from the economic development activities qualify as low- and moderate-income persons; and

(2) a minimum 10% (of the total project costs) equity injection in the form of cash, land, buildings, equipment, furniture, or fixtures of the business.

(j) Enterprise zone designation. A small and minority businesses loan program project that is located in a designated enterprise zone receives special consideration.

§9.4. Planning/Capacity Building Fund.

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

(c) Selection procedures. Scoring and the recommended ranking of projects is done by staff and a committee composed of department staff with input from the regional review committees. The application

and selection procedures consist of the following steps.

(1) (No change.)

(2) Upon receipt of an application, the department staff performs an initial review to determine whether the application is complete and whether the activities proposed are eligible for funding. [In those instances where the department staff determines that the application is either incomplete or that the activities are ineligible for funding, the applicant may correct any deficiencies in the application as long as it is resubmitted prior to the application deadline.] Results of this initial staff review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3)-(9) (No change.)

(d) Selection criteria. The following is an outline of the selection criteria used by the department for selection of the projects under the planning/capacity building fund. Four hundred twenty-five points are available.

(1) Community distress (total--50 points). All community distress factor scores are based on the total population of the applicant:

(A) percentage of persons living in poverty--20 [15];

(B) (No change.)

[(C) percentage of housing units without some or all plumbing-10];

(C)[(D)] Unemployment rate--15 [10].

(2) (No change.)

(3) Project design (total--100 points).

(A) (No change.)

(B) Areawide proposals (50 points). An applicant must propose to conduct all activities described in its application throughout the entire jurisdiction of the applicant to receive the maximum 50 points. An applicant proposing target area planning receives zero points. County applicants with identifiable, unincorporated communities qualify for these points provided that incorporation or other organization of the unincorporated communities is being considered as an option.

(4) (No change.)

§9.5. Disaster Relief [Emergency] Fund.

(a) General provisions. Assistance under this fund is available to units of general local government for eligible activities under the Housing and Community Development Act of 1974, Title 1, as amended, for the alleviation of a disaster [an emergency] situation. To receive [emergency] assistance under this program category, the situation to be addressed with Texas Community Development Program funds must be both unanticipated and beyond the control of the local government. For example, the collapse of a municipal water distribution system due to lack of regular maintenance does not qualify. If the same situation was caused by a tornado or flood, the community could apply for disaster relief [emergency] funds. An applicant may not apply for funding to construct public facilities that did not exist prior to the occurrence of the disaster [emergency]. Additionally, in disaster relief [emergency] situations, the Texas Community Development Program dollars are to be viewed as gap financing or funds of last resort. In other words, the community may only apply to the department for funding of those activities for which assistance from other sources is not available. Assistance under the disaster relief [emergency] fund is provided only if one of the following has occurred:

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

(b) Funding cycle. Funds for disaster relief [emergency] projects will be awarded throughout the program year in response to disaster [emergency] situations.

(c) Selection procedures. As soon as an area qualifies for disaster relief [emergency] assistance, the department works with the governor's office and the Emergency Management Division of the Texas Department of Public Safety to determine where Texas Community Development Program funds can best be utilized. The department then contacts the unit of local government selected for funding to negotiate a contract.

§9.6. Urgent Need Fund.

(a) General provision. Assistance under this fund is provided only to eliminate existing water and sewer conditions which pose a serious and immediate threat to the health or welfare of the residents of the applicant where other financial resources are not available to meet such conditions. A unit of general local government that wishes to receive assistance under this fund must submit an application, as provided by the department, to the department. There is no application deadline. An applicant may not submit an application under this fund and also under the community development fund or the colonia fund at

[during] the same time [program year] if the proposed activity under each application is the same or substantially similar. An applicant may submit only one application under this fund in any one program year. The department may negotiate the level of funding to be provided to an applicant and the scope of work to be performed by the applicant.

(b) Threshold requirements. In addition to the requirements set forth in §9.1(h) and (n) of this title (relating to General Provisions), each of the following requirements must be satisfied in order to be eligible for funding under this fund:

(1) (No change.)

(2) the condition addressed in the application must have directly resulted in a human fatality within the jurisdiction of the applicant, or must have directly resulted in illness or injury within the jurisdiction of the applicant as documented by the Texas Department of Health, or poses an imminent threat to human life or health as documented by the Texas Department of Health or Texas Water Commission; [and]

(3) the applicant must provide the department with evidence that the applicant is unable to finance the proposed activity with local funds and that no other sources of funding are available; [.]

(4) the conditions addressed in the application must be unanticipated and beyond the control of the local government and the conditions, if not addressed, must represent a permanent threat to public health and safety; and

(5) the applicant must provide matching funds equal to 20% of the Texas Community Development Program urgent need fund application request.

§9.9. Colonia Fund.

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low- and moderate-income persons for eligible [is limited to] water and sewer improvements projects and eligible planning activities projects to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is designated as such by the department; is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence and generally recognized as a colonia prior to November 28, 1990. For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region,

except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund. [In addition to the threshold requirements of §9.1(h) and the requirements of §9.1(n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low- to moderate-income.]

(1) An applicant may not submit an application under this fund and also under the community development fund, planning/capacity building fund, or urgent need fund at the same time if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §9.1(h) and the requirements of §9.1(n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low- to moderate-income.

(b) Eligible activities. The only eligible activities under the colonia fund are:

(1) the payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low- and moderate-income to recover the capital cost for a public water and/or sewer improvement;

(2) payment of the cost of planning community development (including water and sewage facilities) and housing activities; costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate non-profit organizations and public agencies acting on behalf of the residents; and costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

[(b) Funding cycle. This fund is allocated on an annual basis to eligible county applicants on a competitive basis. Applications for funding must be received by the department by 5 p.m. on April 27, 1992.]

(c) Types of applications. Eligible applicants may submit one application for the payment of assessments activities and one application for eligible planning activities. The two eligible activ-

ities (payment of assessments activities and planning activities) cannot be included in one application, but must be applied for under separate applications.

[(c) Marginal applicants. If the distribution of funds to the highest ranked applications does not completely allocate all of the colonia funds and the remainder is insufficient to fund the next-ranked application, the department works with the marginal applicant to determine whether partial funding is feasible. In the marginal amount available is equal to or above the grant minimum of \$50,000, the marginal applicant may scale down the scope of the original project design and accept the marginal amount, if the reduced project is still feasible. In the event that the marginal amount remaining in the colonia fund competition is less than \$50,000, the remaining funds become deobligated money and are distributed according to the 1991 Final Statement.]

[(d) Funding cycle. This fund will be allocated on an annual basis to eligible county applicants on a competitive basis. Applications for funding must be received by the department by 5 p.m. on the date specified in the most recent application guide for this fund.

(e)[(d)] Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for payment of assessments activities and one application for planning activities for funding under the colonia fund. Copies of the application must be provided to the applicant's regional review committee and the department.

(2)-(4) (No change.)

(5) Following a final technical review, the department staff makes funding recommendations to the State Review Committee.

(6) [(5)] The funding recommendations of the State Review Committee are then provided to the executive director of the department.

(7)[(6)] The executive director of the department reviews the final Texas recommendations for project awards and announces the contract awards.

(8)[(7)] Upon announcement of contract awards, the department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(f)[(e)] Selection criteria for payment of assessments activities. The following is an outline of the selection criteria used by the department for scoring applications for payment of assessments activities under the colonia fund. Three [Four] hundred fifty [ten] points are available.

(1) Community distress (total--60 points). All community distress scores are based on the population of the applicant and the census geographic areas where project activities are located. An applicant that has 125% or more of the average of all applicants of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants on a factor will receive a proportionate share of the maximum number of points available for that factor. An applicant that has 75% or less of the average of all applicants on the per capita income factor will receive the maximum number of points available for that factor:

(A) percentage of persons living in poverty--15 [20];

(B) per capita income--15 [20];

(C) percentage of housing units without public sewer service [plumbing]--15 [20];

(D) percentage of housing units without public water service--15.

(2) Benefit to low- and moderate-income persons (total--50 points). [To determine the percentage of Texas Community Development Program funds benefitting low- to moderate-income persons the total amount of Texas Community Development Program funds requested is divided by the number equal to the percentage of low- to moderate-income persons benefitting from the proposed project multiplied by the amount of Texas Community Development Program funds requested for construction. Points are awarded based on the percentage of Texas Community Development Program funds benefitting low- to moderate-income persons in accordance with the following scale:]

[(i) 100% to 90% of funds benefitting low-to moderate income persons-50;

[(ii) 89.99% to 80% of funds benefitting low-to moderate-income persons;

[(iii) 79.99% to 70% of funds benefitting low-to moderate-income persons-25;

[(iv) 69.99% to 60% of funds benefitting low-to moderate-income persons-10;

[(iv) below 60% of funds benefitting low-to moderate-income persons-0].

(A) Number of low- and moderate-income persons to be served (20 points). Points will be awarded using the median number of low- and moderate-income persons to benefit from all colonia fund applications received as the base figure using the following scale:

(i) 120% or above the median number of low- and moderate-income beneficiaries-20;

(ii) 100% to 119.99% of the median number of low- and moderate-income beneficiaries-15;

(iii) 80% to 99.99% of the median number of low- and moderate-income beneficiaries-10;

(iv) below 80% of the median number of low- and moderate-income beneficiaries-0.

(B) Low- and moderate-income percentage of the entire colonia area(s) receiving project benefit (30 points). Points will be awarded based on the percentage of low- and moderate-income persons residing within the entire boundaries of the colonia area(s) where project activities are located according to the following scale:

(i) 100% to 95% low- to moderate-income percentage for persons residing in the colonia area(s)-30;

(ii) 94.99% to 90% low- to moderate-income percentage for persons residing in the colonia area(s)-25;

(iii) 89.99% to 80% low- to moderate-income percentage for persons residing in the colonia area(s)-20;

(iv) 79.99% to 70% low- to moderate-income percentage for persons residing in the colonia area(s)-10;

(v) below 70% low- to moderate-income percentage for persons residing in the colonia area(s)-0.

(3) (No change.)

[(4) Match-60 Points (maximum). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. The terms used in this paragraph are further defined in the current application package for this fund.

[(A) For colonia projects with beneficiaries equal to or less than 750:

[(i) match equal to or greater than 5.0% of grant request-60;

[(ii) match at least 4.0% but less than 5.0% of grant request-40;

[(iii) match at least 3.0% but less than 4.0% of grant request-20;

[(iv) match at least 2.0% but less than 3.0% of grant request-10;

[(v) match less than 20% of grant request-0.

[(B) For colonia projects with beneficiaries equal to or less than 1,500 but over 750:

[(i) match equal to or greater than 10% of grant request-60;

[(ii) match at least 7.5% but less than 10% of grant request-40;

[(iii) match at least 5.0% but less than 7.5% of grant request-20;

[(iv) match at least 2.5% but less than 5.0% of grant request-10;

[(v) match less than 2.5% of grant request-0.

[(C) For colonia projects with beneficiaries equal to or less than 5,000 but over 1,500:

[(i) match equal to or greater than 15% of grant request-60;

[(ii) match at least 11.5% but less than 15% of grant request-40;

[(iii) match at least 7.5% but less than 11.5% of grant request-20;

[(iv) match at least 3.5% but less than 7.5% of grant request-10;

[(v) match less than 3.5% of grant request-0.

[(D) For colonia projects with beneficiaries over 5,000:

[(i) match equal to or greater than 20% of grant request-60;

[(ii) match at least 15% but less than 20% of grant request-40;

[(iii) match at least 10% but less than 15% of grant request-20;

[(iv) match at least 5.0% but less than 10% of grant request-10;

[(v) match less than 5.0% of grant request-0.]

[(4) [(5) Project impact (total--215 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need

within the applying jurisdiction. A project that addresses the provision of first time water or sewer service is scored higher than a project addressing other water and sewer activities. Each application is scored by a committee composed of Texas Community Development Program staff using the following information submitted in the application:

(A)-(G) (No change.)

(H) the applicant's past performance on prior Texas Community Development Program contracts; [.]

(I) whether the applicant's proposed use of Texas Community Development Program funds is to provide water or sewer connections/yardlines to existing water/sewer systems or to water/sewer systems financed through other resources;

(J) the applicant's proof of firm commitments for initial project financing and the type of financing utilized by the applicant;

(K) whether the applicant provides any local matching funds for project activities; and

(L) the average cost of the combined capital recovery fees, access fees, and assessments charged to properties owned and occupied by low- and moderate-income persons.

(g) Selection criteria (planning activities). The following is an outline of the selection criteria used by the department for scoring applications for eligible planning activities under this fund. Three hundred fifty points are available.

(1) Community distress (total- 60 points). All community distress factor scores are based on the total population of the applicant:

(A) percentage of persons living in poverty-15;

(B) per capita income-15;

(C) percentage of housing units without public sewer service-15;

(D) percentage of housing units without public water service-15;

(2) Benefit to low- and moderate-income persons (total 30 points). Points are awarded based on the

low- and moderate-income percentage for the entire colonia areas where project activities are located according to the following scale:

(A) 100% to 90% of funds benefitting low- to moderate-income persons-30;

(B) 89.99% to 80% of funds benefitting low- to moderate-income persons-25;

(C) 79.99% to 70% of funds benefitting low- to moderate-income persons-20;

(D) 69.99% to 60% of funds benefitting low-to moderate-income persons-10;

(E) Below 60% of funds benefitting low-to moderate-income persons-0.

(3) Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (total-25 points). In the event less than 5.0% of the applicant's population base is composed of minority residents or the applicant has less than five full-time permanent employees, the applicant will be assigned the average score on this factor for all applicants, or the score calculated on its actual figures, whichever is higher. The terms used in this paragraph are defined in the current application guide.

(4) Project design (total-235 points). Each application is scored based on how the proposed planning effort resolves the identified need and the severity of need within the applying jurisdiction. Each application is scored by a committee composed of Texas Community Development Program staff using the following information submitted in the application:

(A) the severely of need within the colonia area(s);

(B) how clearly the proposed planning effort removes barriers to the provision of public facilities to the colonia area(s) and results in a strategy to resolve the identified needs;

(C) the planning activities proposed in the application;

(D) whether each proposed planning activity is conducted on a

colonia-wide basis;

(E) the extent to which any previous planning efforts for colonia areas have been implemented;

(F) the Texas Community Development Program cost per low-to moderate-income beneficiary;

(G) whether the applicant has adopted and enforced subdivision regulations or orders;

(H) the availability of grant funds to the applicant for project financing from other sources;

(I) whether the applicant provides any local matching funds for project activities; and

(J) the applicant's past performance on prior Texas Community Development Program contracts.

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 July 8, 1992.

TRD-9209373

Anne O. Paddock
Acting General Counsel
Texas Department of
Housing and
Community Affairs

Earliest possible date of adoption: August 14, 1992

For further information, please call: (512) 475-3916

◆ ◆ ◆
Subchapter A. Allocation of
Program Funds

• 10 TAC §9.7

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

The Texas Department of Housing and Community Affairs (TDHCA) proposes the repeal of §9.7, concerning the governor's special assistance fund for small and minority businesses. The activities formerly available for funding under this section are now part of the small and minority businesses loan program of the Texas capital fund (10 TAC §9.3).

Ruth Cedillo, director of the Texas Community Development Program, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of en-

forcing or administering the repeal.

Ms. Cedillo 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 available resources for small and minority businesses due to the removal of the specific funding cap for small and minority businesses. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Anne O. Paddock, Acting General Counsel, within 30 days of the date of this publication.

The repeal is proposed under Texas Civil Statutes, Article 4413 (501), §2. 07, which provide TDHCA with the authority to allocate community development block grant nonentitlement area funds to eligible counties and municipalities according to department rules.

§9.7. Governor' Special Assistance Fund for Small and Minority Businesses.

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 July 7, 1992.

TRD-9209372

Anne O. Paddock
Acting General Counsel
Texas Department of
Housing and
Community Affairs

Earliest possible date of adoption: August 14, 1992

For further information, please call: (512) 475-3882

◆ ◆ ◆
TITLE 31. NATURAL RE-
SOURCES AND CON-
SERVATION

Part IX. Texas Water
Commission

Chapter 320. Regional
Assessments of Water
Quality

Program for Water Quality
Assessment by Watershed
and River Basin

• 31 TAC §320.21, §320.22

The Texas Water Commission proposes new §320.21 and §320.22, concerning fees for the regional water quality assessment program authorized by Senate Bill 818. The assessment program has been codified in the Texas Water Code, §26.0135. In order to fund the watershed assessment program, the bill authorizes the commission to recover the reasonable costs of administering the program from all users of water and wastewater permit

holders in each watershed generally in proportion to their right to use water from and discharge wastewater into the watershed. Under these rules, holders of wastewater permits issued under the Texas Water Code, Chapter 26 will be assessed an annual fee based on the operating parameters specified in their permits for flow and traditional pollutant limits. It is the intent of these rules that the majority of industrial and municipal water users be assessed fees through the wastewater permit mechanism. Users of water who do not hold permits for the treatment or discharge of wastewater will be assessed a fee based on the amount of water that may be used under a water right for both consumptive and non-consumptive purposes. It is recognized that retail public utilities as well as other service providers for which the use of water or the treatment of water is necessary and essential, including, but not limited to, electric power generators, will likely seek to recover these fees from their customers. Ultimately, the costs of supporting the regional water quality assessment program would be borne by the water and wastewater service customers in each watershed and the recipients of other services which generate wastewater discharges or consume the state's water resources.

Within the confines of Senate Bill 818, the commission has attempted to create a funding mechanism that is fair and equitable. To provide continued adequate funding for the water quality assessment program, it may be necessary for the commission to adjust the fees established in this section. Any adjustments to the fee format will be as fair and equitable as reasonably possible.

Proposed §320.21(a) provides a list of definitions and terms which apply to the section. Subsection (b) states the basis and the purpose for the fee. Subsection (c) provides the basis for assessing municipal and industrial uses of water. Subsections (d), (e), and (f) provide the bases for assessing a fee against water right holders. Subsections (g), (h), and (i) describe how retail public utilities may collect from customers a charge to recover the amount of the fee assessed. Subsection (j) sets out the dates upon which the fees shall be paid. Subsection (k) provides that the fees may be adjusted to ensure the adequate support of the programs and the equitable assessment of fees.

Proposed §320.22 relates to allocation of fee revenue. Subsection (a) of that section provides that river authorities or designated local governments shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of Chapter 320. Subsection (b) provides that the schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan.

Stephen Minick, budget, planning and evaluation division, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The effects on

state government will be an increase in costs of \$308,000 in each of the fiscal years 1992-1996. Costs to local governments (river authorities or designated local governments) will increase by approximately \$3.3 million in each of the fiscal years 1992-1996. Senate Bill 818 authorizes the assessment of fees to be collected from water rights holders and wastewater permittees in each watershed of the state to pay the costs of this program. Costs to affected permittees, including local governments, is anticipated to average approximately \$3.6 million in each of the fiscal years 1992-1996. Costs to individual water right permit holders will depend on the amount of surface water rights held and actual water use in acre feet. Costs to wastewater permittees will depend on the permitted flow and authorized pollutant load of wastewater discharges. Costs to small businesses will be determined on the same basis as larger concerns. Revenue collected by the commission will be used to reimburse river authorities and other designated local governments for the costs of development of regional water quality assessments.

Mr. Minick 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 improvement in the ability of state, regional, and local government's ability to assess water quality conditions in each of the watersheds of the state and develop more effective proposals for maintaining and improving the quality of public water resources. Except for those costs identified for water rights and wastewater permit holders, there are no known costs to persons required to comply with the provisions of these sections as proposed.

Comments on the proposal may be submitted to Linda Brookins, Standards and Assessments, P.O. Box 13087, Austin, Texas 78711. The deadline for submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*.

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the Code and all other laws of the State of Texas and to establish and approve all general policies of the commission.

§320.21. Water Quality Assessment Fees.

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

(1) BOD-Five-day biochemical oxygen demand.

(2) COD-Chemical oxygen demand.

(3) Consumptive use-The use of water for domestic and municipal, industrial, irrigation, or mining purposes, consistent with the meaning of these uses for which water may be appropriated under the Texas Water Code, §11.023 and §11.024.

(4) Final flow limit-The maximum amount of wastewater discharge authorized by a permit issued in accordance with the Texas Water Code, Chapter 26, expressed as a daily average flow, a daily maximum flow, an annual average or an annual maximum. For the purpose of this section, a final flow limit is expressed in millions of gallons per day of discharge (MGD).

(5) Flow-The total by volume of all wastewater discharges authorized under a permit issued in accordance with the Texas Water Code, Chapter 26, expressed as an average flow per day, a maximum flow per day, an annual average, or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow is based on the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(6) Flow type-

(A) Contaminated-these wastewaters include sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters.

(B) Uncontaminated-these wastewaters include non-contact cooling water or mixed flows which contain at least 90% non-contact cooling water and not more than one million gallons per day of process wastewater.

(7) Hydropower use-The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

(8) Industrial use-The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production, and the development of power by means other than hydroelectric.

(9) Irrigation use-The use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

(10) MGD-Million gallons per day.

(11) Mining use-The use of water for mining processes including hydraulic

use, drilling, washing sand and gravel, and oil field repressuring.

(12) Municipal use-The use of treated water within or without a municipality and its environs whether supplied by a person, privately-owned utility, political subdivision, or other entity as well as the use of municipal sewage effluent for certain purposes specified as follows. It includes the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes including public and private swimming pools, the use of treated water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens. Municipal use also includes the application of municipal sewage effluent upon land sites, pursuant to a Texas Water Code, Chapter 26, permit, where:

(A) the primary purpose of the application is the treatment and/or necessary disposal of such effluent; or

(B) the application site is a park, parkway, golf course, or other landscaped area owned by the owner of the permitted sewerage system; or

(C) the effluent applied to such site is generated within an area for which the commission has adopted a no-discharge to surface water rule.

(13) Navigation use-A recognized use that is not currently included in any water rights.

(14) Non-consumptive use-The use of water for those purposes not otherwise designated as consumptive uses under this section, including hydroelectric power, navigation, non-consumptive recreation, and other beneficial uses, consistent with the meaning of these uses and for which water may be appropriated under the Water Code, §11.023 and §11.024.

(15) Other use-Any beneficial use not otherwise defined herein.

(16) Recreational use-The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aesthetic land enhancement of a subdivision, golf course, or similar development.

(17) Recharge use-The use of surface water to either increase the amount of natural recharge to an underground aquifer or the injection of water into an aquifer.

(18) TOC-Total organic carbon.

(19) Traditional pollutants-The wastewater parameters typically found in wastewater discharge permits, specifically oxygen demand (BOD/COD/TOC), total suspended solids (TSS), and ammonia. For the purpose of this section, COD and TOC are expressed in terms of BOD at the rate of three pounds of TOC equal to one pound of BOD (3:1) or eight pounds of COD equal to one pound of BOD (8:1).

(20) TSS-Total suspended solids.

(b) For the purpose of recovery of the costs of development of regional water quality assessments and administration of the provisions of this chapter, a fee is assessed against water right holders and wastewater discharge permit holders in each watershed of the state in proportion to their right to use water from and discharge wastewater into the watershed.

(c) The municipal and industrial use of water shall be assessed a fee based on the authority of a permittee to dispose of or discharge wastewater under a permit issued pursuant to the Texas Water Code, Chapter 26. The fee shall be assessed on the basis of permitted flow and traditional pollutant limits and determined as the sum of factors paragraphs (1)-(3) of this subsection. When calculating the charge based on flow, this amount shall be calculated based on the daily average flow limit in the permit. For permits that do not have a daily average flow limit, the charge shall be based on 50% of the daily maximum flow limit:

(1) for contaminated discharges, \$300 per MGD up to a maximum of 100 MGD; and \$10 for each additional MGD or fraction thereof;

(2) for uncontaminated discharges, \$1.00 per MGD;

(3) for each traditional pollutant, \$2.00 per pound per day. The annual fee assessed for each wastewater discharge permit shall be a minimum of \$200 and shall not exceed \$35,000. The fee for a permit which does not authorize the discharge of wastewater, including evaporation and land disposal permits, shall be \$150. The fee for an inactive permit shall be \$100.

(d) Water right holders not subject to subsection (c) of this section shall pay a fee based on the right to appropriate water under a permit issued pursuant to the Texas Water Code, Chapter 11. The fee for all water rights entitled to divert more than 250 acre-feet per year for consumptive use, other than water rights appropriated for irrigation, shall be \$.20 per acre foot up to 10,000 acre feet, and \$.02 per acre-foot thereafter. The fee shall be \$.02 per acre foot for water rights appropriated for non-consumptive use above 2,500 acre-feet per year up to 100,000 acre feet, and \$.002 per

acre-foot thereafter. Holders of water rights appropriated for irrigation shall pay a minimum fee of \$50 per permit with no exceptions. If a water right includes irrigation use which has specific amounts stated for each of the multiple holders, each of these holders shall pay a separate \$50 fee for that permit. Water right holders entitled to divert for irrigation 100 acre-feet or less per year will be assessed only the \$50 minimum fee. For water right holders entitled to divert for irrigation more than 100 acre-feet per year, the fee shall be \$.07 per acre foot in addition to the minimum fee.

(e) Water right holders entitled to divert for irrigation more than 100 acre-feet of water annually will be assessed \$.07 per acre-foot. If the amount of water actually diverted is less than the water entitlement, the water right holder for irrigation would be entitled to a credit at \$.07 per acre-foot for the difference between the total appropriated amount and the amount of water actually diverted. The 1990 water use reports will be the governing year for any claimed credits. Diverters claiming any credits would have to meet the following condition of verification: actual diversions would have to be verified by the commission's watermaster program or a federal entity (i.e., Bureau of Reclamation, United States Geological Survey or its designated contract employees, Corps of Engineers, or the International Boundary and Water Commission), political subdivision, or municipality. For those water right holders not required to file an annual use report with the Texas Water Commission, verification of any credits would have to be provided by any one of the previously listed entities. Water right holders unable to provide this verification shall not be allowed any credits and shall be required to pay the full assessment.

(f) Water which is authorized in a permit for consumptive use, but which is designated by a permit provision as unavailable for use may be exempted from the assessment of a fee under subsection (c) of this section.

(g) A retail public utility as defined by the Texas Water Code, §13.002, which is subject to a water quality assessment fee under this chapter may collect from each customer a charge to recover the amount of the fee assessed. The total amount recovered by a retail public utility shall not exceed the amount assessed under this chapter plus any reasonable costs of collection. Any pass-through mechanism for the fees shall be fair and equitable for all customers and may be subject to review by the commission.

(h) The portion of a water quality assessment fee recovered from a customer of a retail public utility may be listed on the customer's bill as a separate item and may

be collected in addition to other regulatory assessments or charges for utility services.

(i) The portion of a water quality assessment fee recovered from a customer by a retail public utility is not part of the rates of that utility. This provision shall apply to a retail public utility providing water and/or wastewater service.

(j) Water quality assessment fees for every year after the initial year of this program are due and payable to the commission by January 1 of each year. The commission shall establish procedures for billing and collection of the fee and notification of amounts due for each year. For the first year this program is in effect, water quality assessment fees are due and payable 30 days after issuance of the bill.

(k) The commission shall monitor both the collection of fees under this section and the allocation of fee revenues under §320.22 of this title (relating to Allocation of Water Quality Assessment Fee Revenue) for the river basins of the state. The commission shall adjust the fee rates established under this section to the extent necessary to ensure the adequate support of the programs undertaken to implement this chapter and the equitable assessment of fees within each watershed and region of the state.

§320.22. Allocation of Water Quality Assessment Fee Revenue.

(a) A river authority or designated local government shall be eligible for reimbursement of the costs of development of water quality assessments and implementation of the provisions of this chapter.

(b) The schedule and amount of any reimbursement shall be determined by mutual agreement of the commission and the appropriate river authority or local government based on an approved water quality assessment report or work plan as required under §320.5 of this title (relating to Assessment Reports and Work Plans) or §320.7 of this title (relating to Responsibilities of River Authorities and Designated Local Governments), respectively.

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 July 8, 1992.

TRD-9209376 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: August 14, 1992

For further information, please call: (512) 463-8069

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 54. Family Violence Program

The Texas Department of Human Services (DHS) proposes the repeal of §§54.102, 54.103, 54.201, 54.205, 54.302, 54.304, and 54.307; proposes new §§54.102, 54.103, 54.201, 54.205, 54.302, 54.304, 54.307, and 54.405; and proposes amendments to §§54.104, 54.203, 54.204, 54.301, 54.305, 54.306, 54.310, 54.311, and 54.403, in its Family Violence Program rule chapter. The purpose of the proposals is to better define services purchased by DHS and to clarify expectations of contractors in record keeping and internal policies.

Burton F. Raiford, commissioner, has determined that for the first five-year period the sections are to be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford 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 consistent services for battered women and their children across the state. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Questions about the content of the proposal may be directed to Pam Rodgers at (512) 450-3144 in DHS's Protective Services for Families and Children Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-156, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Administration

• 40 TAC §54.102, §54.103

(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 Human Resources or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 51, which provides the department with the authority to contract for family violence shelter-center services and to adopt rules to implement them.

§54.102. Eligibility.

§54.103. Confidentiality.

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 July 8, 1992.

TRD-9209362 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: September 15, 1992

For further information, please call: (512) 450-3765

• 40 TAC §§54.102-54.104

The new sections and amendment are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 51, which provides the department with the authority to contract for family violence shelter-center services and to adopt rules to implement them.

§54.102. Client Eligibility.

(a) Eligible persons are victims of family violence as defined in the Human Resources Code, Title II, 51.002(2), and adults subjected to sexual and/or emotional abuse by their batterer.

(b) Shelter centers must:

(1) determine eligibility and document in the case file that the client is or has been a victim of family violence;

(2) have written policy specifying conditions under which persons are precluded from receiving services;

(3) provide services to clients without regard to income;

(4) comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), the Rehabilitation Act of 1973, §504 (Public Law 93-112), The Americans with Disabilities Act of 1990 (Public Law 101-336), and all amendments to each, and all requirements imposed by the regulations issued pursuant to these Acts. In addition, shelter centers must agree to comply with 40 TAC Chapter 73. These provide in part that no person in the United States shall, on the grounds of race, color, national origin, age, sex, disability, political beliefs, or religion be excluded from participation or denied any aid, care, service, or other benefits, provided by federal and/or state funding, or otherwise be subject to discrimination; and

(5) comply with the Health and Safety Code, §85.113 (concerning Workplace and Confidentiality Guidelines regarding AIDS and HIV).

(c) Shelter centers may provide in-

formation and referral services without determining eligibility.

(d) Since shelter centers are not licensed to provide residential child care, they must not provide 24-hour-a-day shelter to a person less than 18 years old unless that person is:

(1) accompanied by a parent or legal guardian;

(2) legally emancipated, as defined in the Texas Family Code, Chapter 31; or

(3) an unmarried minor mother.

(e) Under the Texas Family Code, Chapter 35.03(g), shelter centers may provide counseling to minors without parental consent.

(f) Shelter centers that provide services, other than community education as defined in §54.206 of this title (relating to Community Education), for minors without serving their parent as an adult victim of family violence must document what funds are used to provide the services and must not:

(1) use Texas Department of Human Services (DHS) funding to provide this service; or

(2) include this service in statistics they report to DHS.

(g) Shelter centers must have written policies stating whether they serve unmarried minor mothers who are the sole financial support of their child or children.

(h) Shelter centers that serve unmarried minor mothers must document what funds are used to provide the services. Shelter centers must not:

(1) use DHS funding to provide this service; or

(2) include this service in statistics they report to DHS.

§54.103. Confidentiality Requirements of Shelter Centers.

(a) Shelter centers must develop policies to ensure confidentiality of persons requesting or receiving services. These policies must:

(1) be followed by all staff members and volunteers who have contact with clients or information regarding clients;

(2) be posted in the shelter center and other sites where resident and non-resident clients are served; and

(3) apply to all information provided by a client to a shelter staff member or volunteer.

(b) Shelter centers must obtain

written consent from the client before releasing information orally or in writing. The consent must include the:

(1) name of the person or agency to which the information is being released;

(2) reason for releasing the information; and

(3) time period during which the release of information will occur.

(c) The consent must be signed and dated by the client and an appropriate staff member. Clients may verbally or in writing terminate their consent to release information at any time.

(d) Staff do not obtain written consent to report the following; and they must report:

(1) suspected abuse and neglect to Child Protective Services; and

(2) to appropriate mental health authorities circumstances in which the client may be harmful to himself or others.

(e) Shelter center board members must not use their position on the board of directors to obtain confidential client information unless the information is needed to carry out their board duties and responsibilities.

(f) Shelter residents or nonresidents must be allowed to review all information in their client file except the information exempted from disclosure under the Open Records Act.

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

Violent family member/batterer—The person who most recently subjected the victim to physical force or the threat of physical force and/or sexual or emotional abuse and who: [An adult who victimizes another adult by physical force or the threat of physical force and who lives with the victim, is the victim's former spouse, or is related to the victim by blood, adoption, or an existing marriage.

(A) is related to the victim by blood, adoption, or an existing marriage;

(B) is the victim's former spouse or partner;

(C) lives with the victim;

(D) is the victim's boyfriend or girlfriend.

Nonresident-A victim of family violence who receives services without receiving shelter.

Resident-A victim of family violence who receives shelter and other services from a family violence shelter center.

Hotline call-A call concerning family violence and:

(A) requesting shelter center services; and/or

(B) information.

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 July 8, 1992.

TRD-9209363

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: September 15, 1992

For further information, please call: (512) 450-3765

Shelter Center Operational Requirements

• 40 TAC §54.201, §54.205

(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 Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 51, which provides the department with the authority to contract for family violence shelter-center services and to adopt rules to implement them.

§54.201. Shelter Center Policies.

§54.205. Volunteer Training.

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

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Nancy Murphy
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For further information, please call: (512) 450-3765

• 40 TAC §§54.201, 54.203, 54.204, 54.205

The new sections and amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 51, which provides the department with the authority to contract for family violence shelter-center services and to adopt rules to implement them.

§54.201. Shelter Center Policies and Procedures. Shelter centers must have written policies or procedures about the subjects listed in paragraphs (1)-(8) of this section. Shelter centers must operate in compliance with the requirements of their written policies. Each noncompliance with written policies is a contract violation.

(1) Fiscal management policy must include:

(A) the shelter center's board oversight responsibilities concerning financial management and resource development; and

(B) staff responsibilities concerning financial management and resource development. Specific policy should address:

(i) the process for tracking different sources of income, such as cash inkind, and food stamps;

(ii) content and frequency of financial reporting; and

(iii) conflict of interest.

(2) Volunteer policy must be provided to all volunteers and must include:

(A) selection and screening procedures;

(B) job descriptions;

(C) training requirements;

(D) confidentiality rights of volunteers;

(E) confidentiality expectations;

(F) grievance procedures;

(G) termination process;

(H) conflict of interest; and

(I) rules of conduct.

(3) Personnel policies must be provided to all staff and must include:

(A) job descriptions;

(B) job posting procedures;

(C) hiring and termination procedures;

(D) staff benefits;

(E) leave;

(F) equal employment and affirmative action;

(G) training requirements;

(H) drug-free workplace guidelines required by the Drug-free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D) and the Texas Workers' Compensation Act;

(I) HIV/AIDS and related conditions in the workplace guidelines required by Senate Bill 959 enacted by the 71st Legislature;

(J) confidentiality rights of staff;

(K) conflict of interest;

(L) rules of conduct;

(M) confidentiality requirements;

(N) grievance procedures; and

(O) record retention.

(4) Confidentiality policy requirements are outlined in (§54.103 of this title (relating to Confidentiality Requirements of Shelter Centers).

(5) Safety and security policy for:

(A) responding to bomb threats, fire, intruder on the property, threatening telephone calls, assaults to persons and/or damage to property, medical emergencies, natural disasters, weapons on the property, drugs on the property, and theft;

(B) annual, local monitoring of the resident and nonresident facilities for compliance with local fire, electrical, and health codes;

(C) maintaining the safety of children in the contractor's facilities;

(D) maintaining the safety of children when staff or volunteers take them on outings; and

(E) maintaining the safety of children in the contractor's facilities through nonviolent disciplinary practices.

(6) Client rights policy must include:

(A) posting and notification of client rights and grievance procedures; and

(B) nondiscrimination statement.

(7) Daily operation procedures for the shelter must include:

(A) house rules;

(B) data collection procedures;

(C) case management/coordination procedures;

(D) case record content and management;

(E) transportation procedures;

(F) storage and disbursement of medication;

(G) back-up procedures for staff and hotline coverage;

(H) assignment of household chores;

(I) child care agreements between shelter residents; and

(J) provision of clothing to clients.

(8) Health and hygiene procedures must include:

(A) practices for the control

and prevention of contagious diseases;

(B) hygienic practices for the kitchen and bath areas; and

(C) nondiscriminatory practices for providing services to victims of family violence with health care needs.

§54.203. Board Orientation [for Board Members].

(a) Shelter centers must provide an oral orientation annually for their new board members and their other board members as appropriate. The purpose of board orientation is to provide board members with an explanation of [Topics to be covered include, but are not limited to]:

(1) their role;

(2) the needs and issues of battered women and their children; and

(3) how shelter services and nonresident services address the needs of battered women.

(b) Topics to be covered include, but are not limited to:

(1) history of the battered woman's movement;

(2) [(1)] legal responsibilities of board members;

(3) [(2)] fiscal responsibilities and management;

(4) [(3)] fundraising;

(5) [(4)] relationship between the board and staff;

(6) [(5)] philosophy of the shelter center;

(7) [(6)] committees of the board;

(8) [(7)] contracting process;

(9) [(8)] dynamics of family violence;

(10) [(9)] local community involvement;

(11) [(10)] program services; and

(12) [(11)] existing policies and policy development.

§54.204. Employee Orientation and Training [for Employees].

(a) Shelter centers must provide an orientation to employees within the first two weeks of employment. The orientation must cover [that covers] the policies listed in §54.201 of this title (relating to Shelter Center Policies).

(b) Shelter centers must provide training to employees within the first six months of employment. The training must cover all of the topics listed in §54.205 of this title (relating to Volunteer Training). Staff having direct contact with clients must also be trained on how to complete Texas Department of Human Services (DHS) and shelter center forms and how to write case notes.

(c) The employees' orientation and training must be documented in their personnel file. Documentation must include the number of training hours the employee received, and the topics and dates of training.

§54.205. Volunteer Training. Shelter centers must train their direct delivery volunteers (volunteers who work with resident or nonresident clients) on:

(1) the history of the battered women's movement;

(2) the dynamics of family violence;

(3) hotline skills;

(4) basic crisis intervention techniques;

(5) how to work with people who have multiple problems;

(6) the impact of family violence on children;

(7) how to work with children residing in the shelter;

(8) cultural differences;

(9) drug and alcohol abuse;

(10) recognition of mental health issues;

(11) sexual abuse;

(12) legal aspects of family violence; and

(13) other areas pertinent to their assigned responsibilities.

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

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TRD-9209365

Nancy Murphy
Agency Liaison, Policy and
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Texas Department of
Human Services

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• 40 TAC §§54.301, 54.302,
54.304-54.307, 54.310, 54.311

The new sections and amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 51, which provides the department with the authority to contract for family violence shelter-center services and to adopt rules to implement them.

§54.301. Provision of Services.

(a) Shelter [Family violence shelter] centers must provide services to victims of family violence either directly or through formal arrangements with other resources.

(b) Each [family violence] shelter center must enter into a written agreement [for in-kind services] or a written subcontract for Texas Department of Human Services funded basic [paid] services with each community service provider that serves victims of family violence on the shelter center's behalf. The Texas Department of Human Services must approve each subcontract in advance.

(c) Shelter centers may accept monetary contributions or in-kind donations from clients, but they must not deny basic services as defined in the Family Violence Handbook to eligible victims of family violence who do not contribute, donate, or pay for these services. Clients must be informed of this policy in writing.

§54.302. Twenty-Four-Hour-A-Day Shelter.

(a) Shelter centers must provide access, admittance, and temporary shelter residence for victims of family violence 24 hours a day, every day of the year.

(b) Twenty-four-hour-a-day shelter may be provided through the following types of housing:

(1) a facility primarily serving victims of family violence;

(2) a safe home (a private individual or family offering their home); or

(3) other accommodations arranged by shelter center staff, such as motels and existing community or emergency shelter facility, if the accommodations are used:

(A) as a secondary source of shelter for temporarily housing victims of family violence under special circumstances; or

(B) as the primary source of shelter for up to the first 18 months of the contract period. After 18 months, the shelter

center must provide a permanent facility that serves as the primary source of shelter. The permanent facility must be:

(i) set up for continuous, extended lengths of stay and for on-site delivery of shelter services; and

(ii) owned or rented by the shelter center.

(c) If 24-hour-a-day shelter is provided through another community or emergency shelter facility that serves other kinds of clients, shelter center staff must document:

(1) assurance concerning acceptance of clients and capacity; and

(2) referral procedures.

(d) If 24-hour-a-day shelter is provided by safe homes, shelter center staff must document:

(1) an in-depth screening of the home that addresses suitability of the house and the host family or individual; and

(2) proof of liability insurance for the family or the individual.

(e) If other accommodations are used, shelter centers must document that:

(1) a telephone and bathroom are safely accessible; and

(2) all exterior doors have locks.

(f) Shelter centers must:

(1) help victims of family violence obtain other temporary shelter if the primary method of providing shelter is full. Providing information and referral meets the minimum requirement;

(2) maintain safety and security of residents;

(3) ensure that crisis intervention and basic services are available;

(4) provide food, clothing, and personal hygiene items for victims of family violence, as needed;

(5) ensure and document that a staff person has a face-to-face contact with a new resident within 16 hours of the resident's admission in order to determine needed emergency services;

(6) ensure and document that a staff person signs a written agreement with each resident about:

(A) services to be provided by the center;

(B) house rules;

(C) length of stay;

(D) resident's privacy; and

(E) confidentiality of the case file.

(g) Any break in 24-hour-a-day shelter service must immediately be reported to DHS. A break in 24-hour-a-day shelter service is when this service is not available at the shelter site or when an alternative 24-hour-a-day shelter service is not available. Contractors must have a written plan for an alternative 24-hour-a-day shelter service in case of interruptions in normal services.

§54.304. *Emergency Medical Care and Other Medical Care.*

(a) Each shelter center must:

(1) develop and follow a written procedure to help residents and nonresidents of family violence obtain emergency medical services. Emergency medical care refers to immediate professional medical care needed as a result of an incident of family violence. Other medical care refers to all other professional medical care provided to or arranged for the client;

(2) maintain a current list of emergency and nonemergency medical care resources that can provide medical services for victims of family violence. Residents and nonresidents may receive other medical care when appropriate and as resources permit. Contractors are not required to pay for emergency or other medical care.

(b) Whenever necessary, each shelter center must:

(1) provide or arrange emergency transportation to and from emergency medical facilities for persons accepted as residents of a shelter center and persons accepted for nonresident services; and

(2) provide or arrange for transportation from a safe place to the shelter center for persons who are accepted as residents of a shelter center and who are located in the shelter center's service area.

§54.305. *Counseling Services.*

(a) Shelter centers must provide counseling services to adult resident and nonresident victims of family violence to strengthen problem-solving and decision-making skills, reduce stress, encourage planning for the future, and assist victims [and their family members] to identify options so they can make appropriate choices.

(b) Counseling must address the:

(1)-(5) (No change.)

(6) [skills in] building of self esteem, and [in] problem solving.

(c) When appropriate, counseling must address:

(1) drug and alcohol abuse;

(2) parenting;

(3) AIDS;

(4) opportunities for educational programs; and

(5) opportunity for employment or training.

(d)[(c)] Face-to-face counseling services to violent family members and counseling for couples are not included in the basic level of services purchased by DHS. Although DHS encourages shelter centers to offer services beyond the basic level, shelter centers must not use DHS funds for these services. Basic level services to violent family members are provided by telephone, as specified in §54.308 of this title (relating to Violent Family Member Services.)

§54.306. *Services for Resident Children.*

[(a)] Shelter centers must provide the following services to resident children:

(1) designate a staff person to act as children's advocate;

(2) develop and follow written nonviolent disciplinary policies;

(3)[(1)] conduct an orientation that is [in a manner] appropriate to the child's level of understanding;

(4)[(2)] assess the child's basic needs;

(5) [(3)] refer the child to available community resources as necessary;

(6)[(4)] offer recreational and social activities;

(7) provide safe indoor play space equipped with toys and arts and craft supplies and safe outdoor play space equipped with toys;

(8)[(5)] help [assist] the parent or legal guardian to make arrangements for the child's continued education; [and]

(9) accompany the parent or legal guardian to school meetings regarding the child's special needs, at the parent or legal guardian's request;

(10) provide or arrange for school supplies and clothing as needed; and

(11)[(6)] provide transportation for education, if necessary.

[(b)] Shelter center services for children are not subject to day care licensing standards.]

§54.307. *Nonresident Services.*

(a) Shelter centers must offer information and referral services to nonresident children if nonresident services are offered to the children's parent.

(b) Shelter centers must offer nonresident services that include:

- (1) a 24-hour-a-day hotline;
- (2) emergency and other medical care;
- (3) counseling;
- (4) services for children;
- (5) legal assistance;
- (6) information and referral; and
- (7) employment services.

(c) All services are provided as appropriate.

§54.310. *Legal Assistance.* Shelter [Family violence shelter] centers must:

(1) designate a staff person to act as a legal advocate;

(2)[(1)] maintain a current list of legal services and resources available to resident and nonresident victims of family violence;

(3)[(2)] offer resident and nonresident victims of family violence appropriate [current] information about the legal services and resources available to them, and basic legal information as it relates to family violence; and

(4)[(3)] help resident and nonresident victims of family violence [gain] access [to] legal services in both the civil and criminal justice systems.

§54.311. *Employment Services.*

[(a)] Shelter centers must:

(1) provide information about employment training and employment opportunities either directly or through formal arrangements with other agencies;[.]

(2)[(b)] Shelter centers must maintain a list of the training and employment services and resources available in the area; and [.]

(3) provide or arrange for resident and nonresident victims of family violence:

(A) clothing for employment or training interviews and positions, except for positions requiring specific uniforms;

(B) assistance preparing

employment applications, training applications, and resumes; and

(C) information on job-seeking and job-keeping skills.

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 July 8, 1992.

TRD-9209367 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: September 15, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆
Shelter Center Services

• 40 TAC §§54.302, 54.304, 54.307

(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 Human Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 51, which provides the department with the authority to contract for family violence shelter-center services and to adopt rules to implement them.

§54.302. *Twenty-Four Hour-A-Day Shelter.*

§54.304. *Emergency Medical Care and Emergency Transportation.*

§54.307. *Nonresident and Former Resident Services.*

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 July 8, 1992.

TRD-9209366 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: September 15, 1992

For further information, please call: (512) 450-3765

Contracting Requirements

• 40 TAC §54.403, §54. 405

The new section and amendment are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 51, which provides the department with the authority to contract for family violence shelter-center services and to adopt rules to implement them.

§54.403. *Contractor's Payment.*

(a) (No change.)

(b) If the first contract with a shelter center is not for a full 12-month period, DHS's level of participation must not exceed 75% for the combined partial year and following 12-month contract period.

(c) [(b)] In the seventh or any subsequent year of a shelter center's contract, [if there are changes in the shelter center's budget that meet the criteria specified in subsection (c) of this section.] DHS may waive the 50% ceiling on the department's share of the shelter center's projected budget anytime during the contract year, if there are changes in the shelter center's projected budget that meet the criteria specified [annual operating costs. To receive a waiver for a given contract year, the shelter center must submit a written request and appropriate documentation. The documentation must demonstrate that the shelter center's budgets and fund-raising capabilities satisfy the conditions specified in subsection (c) of this section. The appropriate DHS regional director must approve the request for a waiver. No shelter center may receive more than two such waivers in a five-year period].

(d)[(c)] DHS waives the ceiling [may waive the 50% ceiling on the department's share of a shelter center's annual operating costs] only when all [each] of the following [three] conditions are met [is satisfied]:

(1) the shelter center's anticipated [actual] income for the contract year is expected to increase or decrease [has increased or decreased] by more than 10% relative to the actual income received during the previous contract year [previous contract year's actual income];

(2) the change in the shelter center's budget has resulted from:

(A) [either from] an increase in the state appropriation for [family violence] shelter center services; or

(B) [from] a decrease in funding from other sources that cannot be

attributed to a failure or deficiency on the shelter center's part; and

(3) (No change.)

(e) To receive a waiver for a given contract year, the shelter center must submit a written request and appropriate documentation to DHS contract management staff. The documentation must demonstrate that the shelter center's budget and fundraising capabilities satisfy the conditions specified. No shelter center may receive more than two waivers in consecutive contract periods, or two waivers in a five-year period.

(f)>[(d)] DHS permits family violence shelter centers to include in-kind contributions of goods and services when they calculate their yearly operating costs as specified in subsection (a) of this section. This provision is an exception to the requirements of §69.237 of this title (relating to Certified Local Resources). Each shelter center must establish and follow internal policies for the consistent and reasonable treatment of in-kind contributions. These policies must include:

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

(g)[(e)] To receive payment, shelter centers must bill DHS monthly according to the payment schedule specified in the contract. The family violence program's monthly activity report form must be submitted with the bill.

§54.405. Client Case Files.

(a) Shelter centers must keep written documentation of services for each adult and child resident and nonresident served. Adult client files must contain the documents listed in paragraphs (1)-(3) of this subsection:

(1) the Texas Department of Human Services' (DHS's) Registration for Services form;

(2) shelter center forms applicable for residents or nonresidents, including those listed in subparagraphs (A)-(D) of this paragraph. These forms must be signed by the client and must be given to the client or maintained in the center's file on that client. If the forms are given to the client, the file must indicate this:

- (A) waivers of liability;
 - (B) house rules and orientation packets;
 - (C) client grievance policy;
- and

(D) nondiscrimination statement;

(3) case notes written in chronological order stating who, what, where, when, why, and how. These notes must include:

(A) intake information (may be shelter designed intake form);

(B) documentation of services provided;

(C) a service plan, completed with the client, that outlines the client's goals and needs, and identifies the staff or volunteer assigned to assist with meeting needs; and

(D) exit information.

(b) Individual case files for children must be developed. The children's records may be filed separately or may be included in the parent file. Case files for children must include at least case notes written in chronological order and stating who, what, where, when, why, and how. These notes must include:

- (1) intake information;
- (2) documentation of shelter orientation;
- (3) documentation of services, and

(4) a service plan outlining the child's needs, parent's role and responsibilities, and the staff or volunteer assigned to assist with meeting each need. The service plan must be completed with the parent and when age-appropriate, with input from the child.

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 July 8, 1992.

TRD-9209368 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: September 15, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆
TITLE 43. TRANSPORTATION
Part I. Texas Department of Transportation

Chapter 2. Environmental Affairs

Subchapter B. Memoranda of Understanding with Natural Resource Agencies

• 43 TAC §2.23

The Texas Department of Transportation (TxDOT) proposes new §2.23, concerning memorandum of understanding with the Texas Water Commission. Section 2.23 adopts as Exhibit A a memorandum of understanding between the department and the Texas Water Commission (TWC) which provides for the review of department projects that have the potential to affect natural resources within the jurisdiction of TWC and concerns the development of a system by which information developed by TxDOT and TWC may be exchanged to their mutual benefit.

Texas Civil Statutes, Article 6673g, enacted by Senate Bill 352, 72nd Legislature, 1991, required the department to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archaeological resources. Article 6673g also requires the department and each of the resource agencies to adopt the memoranda and all revisions by rule. In order to meet this legislative intent and to ensure that natural resources are given full consideration in accomplishing the department's activities, this new section is being proposed for permanent adoption.

Roland Gamble, P.E., director, division of environmental affairs, has determined that there will be fiscal implications as a result of enforcing or administering the section. The department is unable to assign an exact cost to the state that will be associated with the increased coordination effort between TxDOT and TWC. It is not possible to estimate the cost of additional environmental mitigation and/or enhancement resulting from the proposed section since the type and extent of mitigation and/or enhancement is related to the scope and extent of specific departmental activities or projects and the anticipated associated environmental impacts. However, it is the department's position that the benefits to the natural environment and the benefits to the public will more than offset the increased coordination and environmental mitigation/enhancement costs associated with administering the proposed new section.

Mr. Gamble also has determined that there will be no effect on local government or small businesses as a result of enforcing the proposed section.

Mr. Gamble has certified that there will be no significant impact on local economies or overall employment as a result of administering the proposed new section.

Mr. Gamble has determined that for each year of the first five years the sections, as proposed, are in effect, the public benefit anticipated as a result of enforcing the section will be the increased coordination and communication between the department and the

Texas Water Commission resulting from implementation of the memorandum of understanding which will benefit the public by ensuring that the natural environment is preserved to the fullest extent possible and enhanced when practicable.

Comments on the proposal may be submitted to Roland Gamble, P.E., Director, Division of Environmental Affairs, 125 East 11th Street, Austin, Texas 78701. The department and TWC will hold a joint public hearing at a future date with notice of the hearing to be published in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Articles 6666 and 6673g, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically for the adoption by rule of memoranda of understanding with natural resource agencies.

§2.23. Memorandum of Understanding with the Texas Water Commission.

(a) The Texas Department of Transportation (TxDOT) adopts as Exhibit A-23 a memorandum of understanding between TxDOT and the Texas Water Commission (TWC) concerning:

(1) the review of department projects which have the potential to affect natural resources within the jurisdiction of TWC, in order to assist TxDOT in making environmentally sound decisions; and

(2) the development of a system by which information developed by TxDOT and TWC may be exchanged to their mutual benefit.

(b) The memorandum of understanding follows as Exhibit A-23.

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 July 7, 1992.

TRD-9209323 Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Earliest possible date of adoption: August 14, 1992

For further information, please call: (512) 463-8630

• 43 TAC §2.24

The Texas Department of Transportation (TxDOT) proposed new §2.24, concerning memorandum of understanding with the Texas Historical Commission and the Texas Antiquities Committee. Section 2.24 adopts as Exhibit A a memorandum of understanding among the department, the Texas Historical Commission (THC), and the Texas Antiquities Committee (Committee) which provides

for the review of department projects that have the potential to affect historic properties and cultural resources within the jurisdiction of THC and the Committee, and concerns the development of a system by which information developed by TxDOT, THC, and the committee may be exchanged to their mutual benefit.

Texas Civil Statutes, Article 6673g, enacted by Senate Bill 352, 72nd Legislature, 1991, required the department to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archaeological resources. Article 6673g also requires the department and each of the resource agencies to adopt the memoranda and all revisions by rule. In order to meet this legislative intent and to ensure that natural resources are given full consideration in accomplishing the department's activities, this new section is being proposed for permanent adoption.

Roland Gamble, P.E., director, division of environmental affairs, has determined that there will be fiscal implications as a result of enforcing or administering the section. The department is unable to assign an exact cost to the state that will be associated with the increased coordination effort between TxDOT, THC, and the Committee. It is not possible to estimate the cost of additional environmental mitigation and/or enhancement resulting from the proposed section since the type and extent of mitigation and/or enhancement is related to the scope and extent of specific departmental activities or projects and the anticipated associated environmental impacts. However, it is the department's position that the benefits to the natural environment and the benefits to the public will more than offset the increased coordination and environmental mitigation/enhancement costs associated with administering the proposed new section.

Mr. Gamble also has determined that there will be no effect on local government or businesses as a result of enforcing the proposed sections, except when cultural resources are encountered during the course of construction. Provisions of this section require that construction be suspended if cultural resources are encountered. Should this occur the resulting delay would affect both the completion date of the project and the total construction cost. Businesses and employees of businesses involved in the construction would be affected. In addition, businesses located in the project area, employees of these businesses, and residents of the project area would also be affected by the suspension of construction as would the traveling public.

Mr. Gamble has certified that there will be no significant impact on local economies or overall employment as a result of administering the proposed new section.

Mr. Gamble 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 increased coordination and communication among the department, THC, and the Committee resulting from implementation of the memorandum

of understanding which will benefit the public by ensuring that the natural environment is preserved to the fullest extent possible and enhanced when practicable.

Comments on the proposal may be submitted to Roland Gamble, P.E., Director, Division of Environmental Affairs, 125 East 11th Street, Austin, Texas 78701. The department, THC, and the Committee will hold a joint public hearing at a future date with notice of the hearing to be published in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Articles 6666 and 6673g, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically for the adoption by rule of memoranda of understanding with natural resource agencies.

§2.24. Memorandum of Understanding with the Texas Historical Commission and the Texas Antiquities Committee.

(a) The Texas Department of Transportation (TxDOT) adopts as Exhibit A-24 a memorandum of understanding among TxDOT, the Texas Historical Commission (THC), and the Texas Antiquities Committee (Committee) concerning:

(1) the review of department projects which have the potential to affect historic properties and cultural resources within the jurisdiction of THC and the Committee, in order to assist TxDOT in making environmentally sound decisions; and

(2) the development of a system by which information held by TxDOT, THC, and the Committee may be exchanged to their mutual benefit.

(b) The memorandum of understanding follows as Exhibit A-24.

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 July 7, 1992.

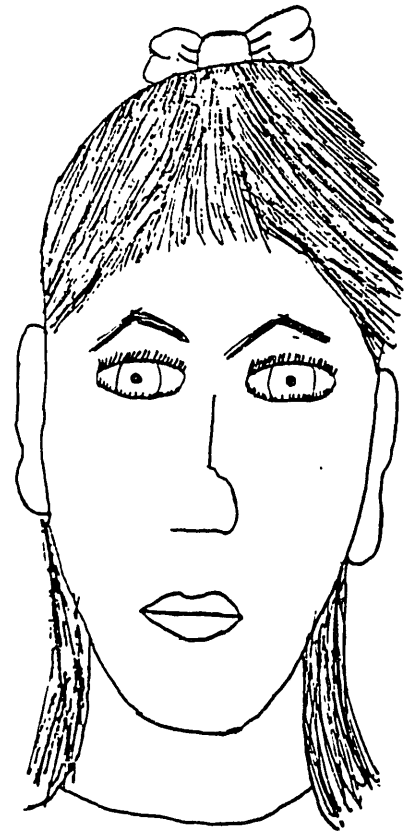
TRD-9209324 Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Earliest possible date of adoption: August 14, 1992

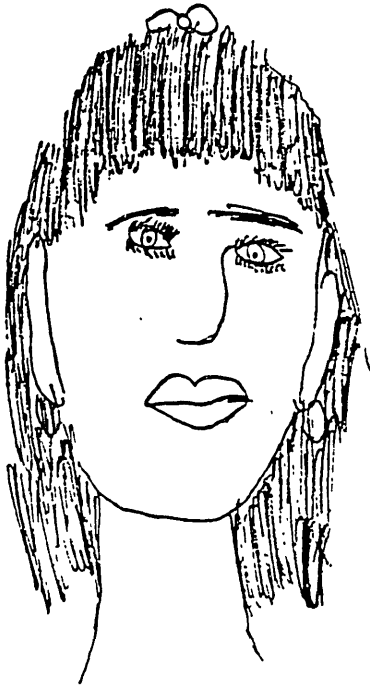
For further information, please call: (512) 463-8630



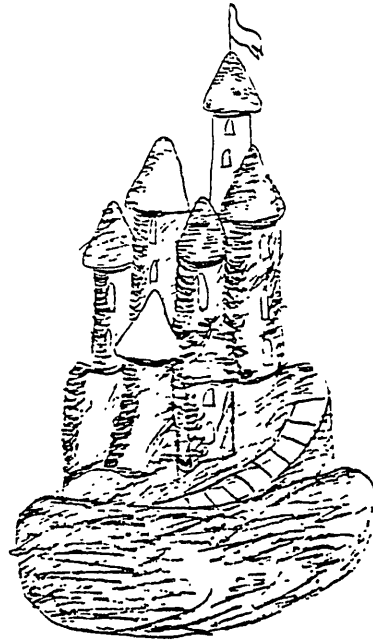
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Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section 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 section 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 section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 22. EXAMINING BOARDS

Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

General Professional Ethics

• 22 TAC §573.4

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.4, without changes to the proposed text as published in the March 10, 1992, issue of the *Texas Register* (17 TexReg 1799).

The amendment eliminates antiquated wording and allows the board to take disciplinary action when there is proof of a violation rather than action being deferred until a final conviction is obtained.

Disciplinary action will be taken when adequate evidence is available that a violation has occurred and there will not be a need to wait final convictions, which oftentimes requires lengthy delays.

One individual made a number of comments concerning previous disciplinary actions taken by the board.

It is not clear what relevancy past disciplinary actions taken by the board have to the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to "... make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

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 July 3, 1992.

TRD-9209289 Buddy Mathhjetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: July 27, 1992

Proposal publication date: March 10, 1992

For further information, please call: (512) 447-1183

Supervision of Personnel

• 22 TAC §573.10

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.10, without changes to the proposed text as published in the May 15, 1992, issue of the *Texas Register* (17 TexReg 3541).

The amendment expands current regulations to include care of patients in an emergency and/or hospitalized situation.

Will allow for trained non-DVMs to provide treatment where it is essential for the prevention of death and alleviation of extreme suffering in emergency situations, when the DVM is not on the premises. Will also allow for routine treatment of hospitalized animals.

A comment was received that the title of the rule was "sexist."

One of the amendments to this rule is the removal of the word "laymen" in the title and substitution of "lay personnel."

Two commenters expressed concern that subsection (d) addressing hospitalized animals would allow nonlicensed individuals to treat "hospitalized" animals.

Subsection (e) of the rule states that a veterinarian must have examined the animal(s) and established a veterinarian/client/patient relationship prior to allowing an unlicensed person to provide routine treatment. The Veterinary Licensing Act defines this relationship as personal examination to diagnosis the medical condition. Subsection (e) further states that the veterinarian is solely responsible for determining the employee's qualifications, and "Consequently the licensee will be held accountable before the Board for the actions and misdeeds of employees acting at his/her direction."

There was opposition to subsection (a) which requires that DVMs personally sign rabies certificates.

The Texas Department of Health requires the personal signature on certificates; however, consideration is being given to removing this requirement and if this is done, the requirement will be removed from this rule.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to "... make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

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 July 3, 1992.

TRD-9209291 Buddy Mathhjetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: July 27, 1992

Proposal publication date: May 15, 1992

For further information, please call: (512) 447-1183

Chapter 575. Practice and Procedure

• 22 TAC §575.9

The Texas Board of Veterinary Medical Examiners adopts an amendment to §575.9, without changes to the proposed text as published in the March 24, 1992, issue of the *Texas Register* (17 TexReg 2176).

This amendment clarifies the misconception that all complaints received in the board offices are docketed for disciplinary action. A previous amendment to the rule required the secretary of the board, a licensed veterinarian rather than the executive director, a non-DVM, to determine whether a licensee has violated the Practice Act and/or rules of professional conduct in the practice of veterinary medicine.

The amendment clarifies the need for receipt of sufficient evidence prior to a complaint being docketed for disciplinary action and this determination is to be made by the secretary of the board who is a licensed veterinarian.

One commenter expressed a concern that the first sentence does not state who the complaint is received from—the board investigator, or the general public.

The agency investigates all complaints received, regardless of their source, and therefore it is not necessary to address the source of a complaint in the rule.

Concern was expressed that the board secretary determines which complaints contain sufficient evidence to proceed to a docketed case, and the entire board should be making that determination.

An average of 145 complaints are received in the board offices each year. Every complaint is assigned to an investigator to determine whether violations have occurred and before

and further action is taken, the case is presented to the secretary for review. Due to budgetary constraints, the board meets three times each year. Experience has shown that the review of every complaint by the entire board, regardless of its legitimacy, requires an inordinate amount of time, thus prohibiting the board's consideration of other important business.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to "... make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

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 July 3, 1992.

TRD-9209288 Buddy Matthijet
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: July 27, 1992

Proposal publication date: March 24, 1992

For further information, please call: (512) 447-1183

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

The Texas Water Commission (TWC) adopts amendments to §§305.50, 305.51, and new §§305.571-305.573, concerning consolidated permits. The amendments to §§305.69(h), 305.572 and 305.573 are adopted with changes to the proposed text as published in the April 10, 1992 and April 17, 1992, issues of the *Texas Register* (17 TexReg 2583 and 2698). The amendments to §305.50 and §305.51 are adopted without changes and will not be republished.

The amendments and new sections are adopted in order to clarify existing rules and to conform to the federal hazardous waste regulations as published and adopted in the March 7, 1989, issue of the *Federal Register* (54 FedReg 9608), the February 21, 1991, issue of the *Federal Register* (56 FedReg 7239), the July 17, 1991, issue of the *Federal Register* (56 FedReg 32688), the August 27, 1991, issue of the *Federal Register* (56 FedReg 42504), and the September 5, 1991, issue of the *Federal Register* (56 FedReg 43874).

The commission received comments on the proposed rules from Alternative Fuel Systems, Inc., Cement Manufacturers Association of Texas, Citizens Aware & United for a

Safe Environment (CAUSE), City of New Braunfels, Dow Chemical Company, Hoechst Celanese Chemical Group, LaFarge Corporation, North Texas Cement Company, Olin Chemicals, Public Interest Counsel of the Texas Water Commission, Securing a Future Environment (SAFE), a state senator, Sterling Chemical, Inc., Texas Chemical Council, Texas Industries, Inc. (TXI), and United States EPA Region VI. In addition, comments were received from citizens in public hearings conducted by the TWC in the Texas cities of: Austin, Midlothian, New Braunfels, and Texas City.

One commenter requested clarification of the term "reasonable period of time" under §305.50(4)(E) concerning submittal of Part B information. The commission responds that a "reasonable period of time" has typically been interpreted as six months, but points out that the only portion of §305.50(4) (E) proposed for amendment involved the inclusion of Title 40 of the Code of Federal Regulations (CFR), §270.22. Consequently, the comment concerning the term "reasonable period of time" addressed a portion of the rule which was not proposed for amendment, and will not be addressed in this rulemaking. With regard to §305.51(a)(5), a commenter requested that the term "newly regulated" be precisely defined by rule. The commission believes that the term "newly regulated" is sufficiently clear. Nonetheless, the commission notes that a "newly regulated unit" is a unit which is in existence and which has become subject to regulation by the adoption of a new rule, where the unit was not subject to regulation prior to the adoption of the new rule. Other commenters asserted that interim status for boilers and industrial furnaces should be eliminated, and one commenter stated that "newly regulated units" should not be allowed to qualify for "interim status." The commission responds that the Solid Waste Disposal Act, under Texas Health and Safety Code, §361.082(f), Annotated (Vernon Pamphlet 1992), clearly sets forth the concept of "interim" or "continuing" status for solid waste management facilities that are in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit.

A comment was received on §305.51(c) which requested clarification of the terms "50% of the capital cost," and "entirely new hazardous waste management facility." The commission responds that the rule is sufficiently clear as written. The meaning of the term "reconstruction" is clearly spelled out to occur "when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility." In response to the commenter's question as to who determines the 50% figure, the responsibility would fall primarily to the owner or operator of the affected hazardous waste management facility, with any subsequent review by regulatory officials taking place as a matter of course. Finally, comment was received on §305.51(c)(7), stating that construction of newly regulated units should not "apply as a reconstruction," since it did not appear to the commenter that new construc-

tion meets the meaning of "reconstruction." In fact, the rule in question states that the costs for the addition of certain newly regulated units at interim status facilities does not, in effect, "count" toward the reconstruction costs when considering the 50% capital cost limitation.

One commenter remarked that, since the term hazardous waste management "unit" was proposed to be used under §305.69(g), then §305.2 (relating to Definitions) should contain such a definition. The commission agrees but will propose the addition of this definition in a subsequent rulemaking since the publication of these rules did not propose any change to §305.2. Based on comments received and a thorough review of United States EPA promulgations subsequent to the February 21, 1991, regulation and the July 17, 1991, technical amendment, adoption by reference of regulations contained in the August 27, 1991 and September 5, 1991, issues of the *Federal Register* have been added to §305.572. Also, in response to comments received from United States EPA Region VI regarding concerns over substantial equivalency of the state program to the federal program, the commission has deleted the introductory phrase in §305.572 which excepted from adoption by reference federal regulations that were clearly inconsistent with the Texas Solid Waste Disposal Act, the Texas Clean Air Act, the rules of the Texas Air Control Board, or the rules of TWC.

One commenter objected to the allowance for the submission of "other information as specified in 40 CFR, §270.22(a)(6)," in lieu of a trial burn. In response, we consider that the controls provided under 40 CFR, §270.22(a) (6) are reasonable and stringent enough to assure that any waiver from a trial burn under this section will provide for adequate protection of human health and the environment. Therefore, this portion of §305.573 has been renumbered and adopted as §305.573(a).

Several commenters brought up the issue of the timing of any on-going or previously conducted United States EPA-approved trial burns in relation to the pending effective date of the TWC rules. The primary concerns of those commenters were that compliance with the TWC rules could disrupt on-going schedules for trial burns, the plans for which had already been submitted to and/or approved by the United States EPA, and that there was a possibility that certain facilities would be required to conduct a trial burn for the EPA, and then conduct a separate trial burn in accordance with a trial burn plan which was approved by the TWC executive director after the TWC boiler-industrial furnace rules become effective. Some commenters requested that, for applicants who have submitted trial burn plans to the EPA as of the effective date of these TWC rules, approval by the EPA of such plans shall constitute approval by the executive director. A commenter requested that TWC clarify that it will not take any position contrary to EPA guidance relating to compliance with particular provisions of the EPA boiler-industrial furnace regulation. In response to these concerns, new §305.573(b) has been adopted, which allows for executive director approval of a trial burn, the plan for which has been approved pursuant to 40

CFR, §270.66, whether or not the trial burn has been conducted. Thus, the flexibility provided by this option for the executive director to approve a trial burn plan which has been previously approved by the EPA will diminish the probability of significant disruption of ongoing trial burn activities. It should be noted that the adopted rule does not preclude the possibility of a separate trial burn, the plan for which is approved by the executive director, being required. TWC cannot guarantee that the executive director will automatically approve all EPA-approved trial burn plans, nor can TWC guarantee that the executive director will take positions aligned with EPA guidance in every respect. Nonetheless, the commission anticipates that the adopted TWC rule provides for the opportunity for minimization of duplication of effort. Any duplication of work that is required will be based on significant issues, rather than minor concerns.

Subchapter C. Application for Permit

• 31 TAC §305.50, §305.51

The amendments are adopted under the Texas Water Code, §§5.103, 5.105, and 26.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendments are also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

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 July 8, 1992.

TRD-9209384 Mary Ruth Holder
Director, Legal Services
Texas Water Commission

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For further information, please call: (512) 463-8069

Subchapter Q. Permits for Boilers and Industrial Furnaces Burning Hazardous Waste

• 31 TAC §§305.571-305.573

The new sections are adopted under the Texas Water Code, §§5.103, 5.105, and 26.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also adopted under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal

wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§305.571. Applicability. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 Code of Federal Regulations (CFR), §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners)) are subject to §305.572 of this title (relating to Permit and Trial Burn Requirements). Owners and operators of existing boilers and industrial furnaces operating under the interim status standards of 40 CFR, §266.103 and §335.224 of this title are subject to §305.573 of this title (relating to Interim Status and Trial Burn Requirements).

§305.572. Permit and Trial Burn Requirements. The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through June 1, 1990 (see 55 FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, and September 5, 1991, issues of the *Federal Register* (see 56 FedReg 7239, 32688, 42504, and 43874):

(1) §270.66(b)-Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amendment or modification shall proceed according to the applicable requirements of Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) §270.66(c) -Requirements for Trial Burn Plans;

(3) §270.66(d)-Trial Burn Procedures, except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) §270.66(e)-Special Procedures for DRE Trial Burns; and

(5) §270.66(f) -Determinations Based on Trial Burn.

§305.573. Interim Status and Trial Burn Requirements.

(a) For the purpose of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations (CFR), §§266.104-266.107 and of determining adequate operating conditions under 40 CFR, §266.103 and §335.224 of this title (relating to Additional Interim Status Standards for Burners), applicants owning or operating existing boilers or industrial furnaces operated under the

interim status standards of 40 CFR, §266.103 and §335.224 of this title must either prepare and submit a trial burn plan for approval by the executive director and perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR, §270.66 and §305.572 of this title (relating to Permit and Trial Burn Requirements) or submit other information as specified in 40 CFR, §270.22(a)(6). Applicants who submit a trial burn plan and receive approval before submission of the Part B permit application must complete the trial burn and submit the results specified in 40 CFR, §270.66(f) with the Part B permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant must contact the executive director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn for approval by the executive director with Part B of the permit application, the approved trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the executive director.

(b) Owners and operators who have obtained approval of trial burn plans pursuant to 40 CFR, §270.66 prior to the effective date of this section may request executive director approval of the trial burn plan and the executive director may approve the trial burn plan, whether or not the trial burn has been conducted. If the executive director does not approve the trial burn plan, then the owner or operator must prepare and submit a trial burn plan and receive approval from the executive director, and then perform a trial burn in accordance with the approved trial burn plan and in accordance with 40 CFR, §270.66 and §305.572 of this title or submit other information as specified in 40 CFR, §270.22(a)(6).

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.

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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Water Commission (TWC) adopts amendments to §§335.1, 335.6, 335.45,

335.112, 335.151, 335.152, 335.205, and 335.221, the repeal of §§335.222-335.226, and new §§335.222-335.229.

The amendments to §§335.1, 335.6, 335.151, 335.222, 335.225, 335.227, 335.228, and 335.229 are adopted without changes to the proposed text as published in the April 10, 1992 issue of the *Texas Register* (17 TexReg 2583), and will not be republished. The amendments to §§335.45, 335.112, 335.152, 335.205, and 335.221, and new §§335.223, 335.224, and 335.226 are adopted with changes to the proposed text as published in the April 10, 1992 issue of the *Texas Register* (17 TexReg 2583).

The amendments, repeals and new sections are being adopted in order to adopt certain federal hazardous waste regulations, as published and adopted in the February 21, 1991 issue of the *Federal Register* (56 FedReg 7239), the July 17, 1991 issue of the *Federal Register* (56 FedReg 32688), the August 27, 1991 issue of the *Federal Register* (56 FedReg 42504), and the September 5, 1992 issue of the *Federal Register* (56 FedReg 43874), to adopt additional requirements applicable to facilities which burn hazardous waste in boilers or industrial furnaces and to commercial hazardous waste combustion facilities, and to clarify existing rules.

The amendments and new sections are adopted in order to clarify existing rules and to conform to the federal hazardous waste regulations as published and adopted in the March 7, 1989 issue of the *Federal Register* (54 FedReg 9608), the February 21, 1991 issue of the *Federal Register* (56 FedReg 7239), the July 17, 1991 issue of the *Federal Register* (56 FedReg 32688), the August 27, 1991 issue of the *Federal Register* (56 FedReg 42504), and the September 5, 1991 issue of the *Federal Register* (56 FedReg 43874). The commission received comments on the proposed rules from Alternative Fuel Systems, Inc., Cement Manufacturers Association of Texas, Citizens Aware and United for a Safe Environment (CAUSE), City of New Braunfels, Dow Chemical Company, Hoechst Celanese Chemical Group, LaFarge Corporation, North Texas Cement Company, Olin Chemicals, Public Interest Counsel of the Texas Water Commission, Securing a Future Environment (SAFE), a State Senator, Sterling Chemical, Inc., Texas Chemical Council, Texas Industries, Inc. (TXI), and United States Environmental Protection Agency (EPA) Region VI. In addition, comments were received from citizens in public hearings conducted by the TWC in the Texas cities of: Austin, Midlothian, New Braunfels, and Texas City.

Comments were received on the proposed definition of "industrial furnace," stating that the proposed definition is not as clear as the United States EPA's corresponding definition concerning the types of devices that could be considered industrial furnaces. In response, it should be noted that the adopted definition lists the same devices as the federal definition. The lack of the phrase "that are integral components of manufacturing processes and" merely makes the TWC definition of "industrial furnace" broader in scope than the corresponding United States EPA definition.

Another commenter requested clarification concerning the definition of "carbon regeneration unit," which was proposed as "any enclosed thermal treatment device used to regenerate spent activated carbon." This commenter requested that the TWC clarify that a carbon regeneration unit is not a hazardous waste thermal treatment unit unless it is used for treating a hazardous waste. We agree with this straightforward interpretation. However, as to this commenters request for clarification that in situ regeneration of carbon associated with a wastewater treatment system, where steam is condensed and routed back to the treatment tank, is not thermal processing for the purposes of §335.152(14), we would respond by stating that such regeneration appears to be thermal processing, but if the thermal processing unit (i.e., carbon bed, in this case) is not used for treating a hazardous waste, then the unit would not be a hazardous waste thermal processing unit, and thus would not be subject to §335.152(14).

Several commenters raised concerns about §335.45(b) concerning the filing of Part A hazardous waste permit applications by existing facilities. Basically, the proposed rule would require submittal of applications for certain hazardous waste boiler and industrial furnace facilities by the effective date of the United States EPA boiler-industrial furnace regulations (i.e., August 21, 1991), which predates the TWC boiler-industrial furnace proposal by a number of months. In order to provide for a more reasonable approach to setting permit application deadlines under §335.45(b), language has been added to the §335.45(b) which states that, in cases where federal requirements become effective prior to the effective date of corresponding state requirements, submittal to the TWC executive director of a copy of the properly filed United States EPA permit application within 30 days of the effective date of the state requirements will constitute compliance with §335.45(b) with regard to application filing requirements.

Under proposed §335.112 and §335.152, based on comments received and a thorough review of U.S. EPA promulgations subsequent to the February 21, 1991 federal regulation and the July 17, 1991 technical amendment, an adoption by reference of the federal regulations of August 27, 1991 and September 5, 1991 has been added to §§335.112, 335.152, and 335.221. In response to comments received from United States EPA Region VI regarding concerns over substantial equivalency of the state program to the federal program, the commission has deleted the introductory phrase in §335.112 and §335.152 which excepted from adoption by reference federal regulations that were clearly inconsistent with the Texas Solid Waste Disposal Act or the rules of the TWC.

Under proposed §335.205, several commenters noted the proposed definition of "new commercial hazardous waste management facility" appears to include hazardous waste management facilities, in general, as well as certain commercial facilities. Also, concern was expressed that this new definition would affect types of facilities other than boilers and industrial furnace facilities. While we do not consider it inappropriate to promul-

gate rules which impact facilities other than the facilities primarily impacted by the rules, upon review of the comments and the concerns presented therein, the commission has deleted from the rule the proposed definition for "new commercial hazardous waste management facility" and will consider whether to present it in a subsequent rule change. Consequently, the adopted amendments to §335.205(c) show a deletion from the proposed rule of the reference to §335.205(j), since the adopted amendments to §335.205(j) do not contain a definition for "new commercial hazardous waste management facility." Also, under §335.205(c), the phrase "including such facilities that burn or propose to burn waste-derived fuel, as defined in this section," has been added for clarification.

One commenter asserted that the one-half mile siting prohibition under §335.205(c) is inconsistent with the federal risk-based siting criteria for boilers and industrial furnaces proposed to be incorporated in §335.221. The commission points out that the one-half mile prohibition is a statutory requirement. The existing rules merely track the statutory language. Statutory provisions cannot be altered by rule. Also under proposed §335.205, commenters remarked that the proposed definition of "waste-derived fuel" would apply to other types of facilities in addition to boilers and industrial furnaces, and thus should not be adopted because the proposed rules predominantly address requirements which apply only to boilers and industrial furnaces. The commission does not consider it inappropriate to promulgate rules which impact facilities in addition to those facilities which are the primary subject of the rules.

Other commenters argued that by narrowing the definition of "waste-derived fuel" to material resulting from the blending or inclusion of hazardous waste that is to be burned for energy recovery, the TWC misinterpreted the legislative intent of §1.25(a) of Senate Bill 1099. The commission disagrees with the assertion and points out that a commenter who was a co-sponsor of Senate Bill 1099 supported the commission's position that the term waste-derived fuel was not meant to include material derived from tires. The commission continues to believe that the proposed definition of "waste-derived fuel" is a reasonable interpretation of Senate Bill 1099.

Some commenters pointed out that under §335.221, the commission should include references to the August 27, 1991 and the September 5, 1991 issues of the *Federal Register* which contain some technical amendments to the federal rules on boilers and industrial furnace facilities. The commission agrees that these technical amendments should have been adopted by reference in §335.221(a) and has adopted by reference the federal regulations as published and adopted in the August 27, 1991 issue of the *Federal Register* (56 FedReg 42504) and the September 5, 1991 issue of the *Federal Register* (56 FedReg 43874).

A change to §335.221(a)(7) has been adopted in order to adopt by reference the federal meaning of the terms "existing" or "in existence" under 40 Code of Federal Regula-

tions 266.103(a)(1)(ii). This adoption by reference has been accomplished by deleting "(ii) -" from the exception statement under §335.221(a)(7), which has the effect of including 40 Code of Federal Regulations 266.103(a)(1)(ii) in the adoption by reference of §266.103(a)(1)-(3). This change was necessitated by the amendments to §335.224 concerning the terms "existing" and "in existence," which are discussed later in this preamble.

Comments were received on proposed new §335.223(b) regarding equivalency to the United States EPA boiler-industrial furnace regulations (40 Code of Federal Regulations §§266.104(i), 266.106(i), and 266.107(h)), in that the proposed TWC rule should be revised to include language concerning "good cause" for amendment of the permit. The TWC agrees with this comment and has revised new §335.223(b) to provide that evidence of noncompliance with 40 Code of Federal Regulations §§266.104-266.107, even though the owner or operator is complying with the operating requirements of the permit, is "good cause" for amendment of the permit under §305.62(d)(2).

Numerous comments were received on proposed new §335.224. The main areas of comment centered around the meaning of the terms "existing" and "in existence," the public notice requirements for the precertification of compliance, and the rejection procedure for certifications and recertifications of compliance.

Several commenters questioned TWC's statutory authority to promulgate the meanings of the terms "existing" and "in existence" as they apply to commercial boiler and industrial furnace facilities, found under §335.224(2), because the proposed rule would treat commercial and non-commercial facilities differently. The proposed rule would have placed more stringent requirements on commercial facilities attempting to gain interim status than non-commercial facilities. Another commenter requested, in effect, that the requirements (to gain interim status) for non-commercial boiler and industrial furnace facilities be more closely aligned with those requirements for commercial facilities. Other commenters argued that interim status should be extended to only those facilities which are in actual operation at the time the rules are promulgated, while another commenter argued for the elimination of interim status altogether.

In response, the TWC notes that "interim status," or authorization for certain facilities to continue to operate, is provided by statute under §361.082(f) of the Texas Solid Waste Disposal Act, Texas Health and Safety Code, (Vernon Pamphlet 1992). Nonetheless, the TWC finds that the issue of determining the point at which a hazardous waste facility or unit qualifies for interim status, in terms of being "in existence" merits a more thorough consideration and evaluation than was allowed in this rulemaking in light of the federal deadlines. Therefore, the terms "existing" and "in existence" under proposed §335.224 have been deleted. The TWC will consider proposing these terms at a future date. As discussed above, a change has been made to

§335.221(a)(7) which has the effect of adopting the United States EPA meaning of the terms "existing" and "in existence." Nonetheless, the TWC reserves the right to interpret the meaning of federal regulations which it adopts by reference absent clear federal mandate otherwise.

Several commenters expressed concerns over proposed new §335.224(6) and (7) which set forth procedures regarding the certifications of precompliance. The concerns centered around the potential waste of resources involved in duplicating work which had been performed last year to comply with the federal deadline of August 21, 1991. In response, a change has been made to §335.224(6) which requires the submittal to the executive director, on or before August 21, 1992, of the "certification of precompliance." This section allows an owner or operator to submit the certification of precompliance which was prepared according to the applicable 40 Code of Federal Regulations Part 266 standards, regardless of the time of preparation of the certification. Thus, assuming a valid certification of compliance was previously prepared, the owner or operator will be in compliance with adopted §335.224(4) if the valid certification or copy thereof is submitted to the executive director on or before August 21, 1992. Proposed new §335.224(6) therefore has been adopted without changes, except for the redesignated subsection number, as §335.224(4).

Several commenters expressed concerns over proposed new §335.224(6) and (7) which set forth procedures regarding certifications of precompliance. The concerns centered around the potential waste of resources involved in duplicating work which had previously been performed to comply with the federal deadline of August 21, 1991. In response, proposed new §335.224(6) would require the submittal to the executive director, on or before August 21, 1992, of the "certification of precompliance." A straight forward reading of this section certainly allows an owner or operator to submit the certification of precompliance which was prepared according to the applicable 40 Code of Federal Regulations Part 266 standards, regardless of the time of preparation of the certification. Thus, assuming a valid certification of compliance was previously prepared, the owner or operator will be in compliance with adopted §335.224(4) if the valid certification or copy thereof is submitted to the executive director on or before August 21, 1992. Proposed new §335.224(6) therefore has been adopted without changes, except for the redesignated subsection number, as §335.224(4).

Under proposed new §335.224(8)-(13), several comments were received on the procedures regarding compliance testing and certifications of compliance. Some commenters stated that the conditions allowing for executive director rejection of certifications or recertifications of compliance were unnecessary in light of United States EPA guidance and regulation which set forth this are of control to be self-implementing in nature. That is, the commenters stated, in effect, that the TWC B-IF rules should not depart from the United States EPA regulations regarding the self-implementing nature

of the certification of compliance procedures. The TWC disagrees, and believes that it is important for the executive director to have some level of direct control on this area.

Several commenters pointed out that the TWC should specify objective findings that the executive director would have to make prior to rejecting a certification or recertification. The TWC agrees and has changed the rule to provide a list of possible rejection criteria has been included under new §335.224(12). Also, in response to comments requesting an appeals procedure for any rejected certifications or recertifications of compliance, adopted new §335.224(13) contains an allowance for appeal to the commission.

In response to commenters who stated that any rejection of certifications or recertifications of compliance by the executive director should occur within a limited time frame after submittal of the certification or recertification, the commission does not believe that such a limitation is necessary or appropriate. Such a time limitation would substantially diminish the level of control given to the executive director in this area. Concerning the time frame for conducting compliance testing and submittal of a recertification of compliance following executive director rejection of a certification or recertification, several commenters stated that the proposed new §335.224(11) time limit of 90 days was too short, in light of the complexity of testing and the potential for scarcity of available testing resources. Deadlines of 120 days to 180 days were suggested. The commission concurs that additional time beyond 90 days should be afforded, and has changed §335.224(9) to provide a 150-day allowance. Due to oversight, the phrase "...unless the executive director approves in writing a longer period of time" was inadvertently omitted from adopted new §335.224(9). The commission will propose the addition of this phrase into the rule in a future rulemaking.

Several commenters remarked that owners and operators should be allowed to voluntarily submit a recertification of compliance without the risk of losing the ability or authorization to burn hazardous waste if the executive director rejects the voluntary recertification. Rather than losing such authorization, in cases of rejections of voluntary recertifications of compliance the owner or operator should be allowed to continue to operate under a previous valid certification or recertification of compliance, according to several commenters. The commission agrees and has changed new §§335.224(a) and (10) to address these concerns. The commission intends that, as stated above, the owner or operator would be allowed to rely on a previous valid certification or recertification of compliance, and not to operate under the rejected (voluntary) recertification.

Comments regarding the rejection procedure also included a statement that the proposed rule could be interpreted such that the rejections of any three certification and/or recertifications, for a boiler or industrial furnace during interim status, would result in the unit having to cease burning hazardous waste. We agree with this interpretation, and add that under adopted new §335.224(10), not

only would the owner or operator be required to stop burning hazardous waste in the unit for which three rejections had been issued by the executive director (and if appealed, upheld by the commission), but also the owner or operator would be required to begin closure activities for that unit.

The commenter discussing the aforementioned interpretation regarding three rejections went on to suggest that the rule should include the phrase "... third rejection... of the certification of compliance and/or recertifications of compliance that were submitted consecutively...", thus making closure necessary only if the three rejections were consecutive. The commission does not see any justification, in terms of protection of human health and the environment, to adopt this suggestion.

One final point should be clarified concerning the rejection procedure as it relates to adopted new §335.224(14) regarding termination of hazardous waste burning and closure of the unit for failure to comply with the interim status compliance schedule provided by paragraphs (4),(5),(6),(9), or (11) under adopted new §335.224. These paragraphs refer to the August 21, 1992 deadline for the submittal of the (previously accomplished) certification of precompliance, the public notice requirements for the certification of precompliance, the deadline for submittal of a complete and accurate certification of compliance, and the deadlines for the recertifications of compliance that are required upon rejection by the executive director and that are required within three years from submitting the previous certification or certain recertifications. It should be noted that if any of the aforementioned deadlines or requirements of the interim status compliance schedule are not met, hazardous waste burning must terminate on the date of the deadline, closure activities must begin, and hazardous waste burning may not resume except under an operating permit issued under 31 TAC Chapter 305. The point of this discussion is that rejection procedure cannot be used as a way to avoid the applicability of adopted new §335.224(14).

Simply put, if the interim status compliance schedule is not met, §335.224(14) applies. Thus, for example, if an owner or operator submits a certification of compliance which is not "complete and accurate," then §335.224(14) applies. The commission views the rejection procedure to apply to significant technical issues, such as those listed under adopted new §335.224(12), but not to be applied in lieu of §335.224(14). Nonetheless, we anticipate that §335.224(14) should not be unreasonably invoked for reasons which are based merely on technicalities. Each case will have to be considered on its own merits. As a result of these changes, §335.224 has been renumbered. Typographical errors were corrected in §335.224(4) and §335.224(5)(C).

Numerous comments were received on proposed 31 TAC §§335.226-335.229, which incorporate certain Texas Air Control Board (TACB) rules addressing commercial combustion facilities. Some comments went to the question of whether these additional controls are necessary, while others brought up is-

suues of consistency with the other portions of the proposal under 31 TAC §§335.221-335.225. In response, the commission considers that additional requirements for commercial boiler and industrial furnace facilities are warranted by legitimate and compelling concerns for protection of human health and the environment, due to the relative higher variability of incoming wastes and generally greater complexity of treatment operations at these commercial facilities. In order to address the possibility of internal inconsistency in the proposed rule, the commission has added language under adopted new §335.226 to require compliance with whichever applicable requirement results in lower emission rates of particulate matter, hydrogen chloride, chlorine gas, metals, carbon monoxide, hydrocarbons, or principal hazardous organic constituents.

The TWC understands that there are certain differences or additional requirements in §§335.226-335.229 compared to §§335.221-335.225. For example, commercial combustion facilities are faced with additional requirements concerning automatic waste feed cutoffs, opacity measurements, and trial burns. Comment was received which basically questioned the earlier deadline (July 31, 1992) imposed under proposed §335.226(9), compared to the August 21, 1992 deadline under §335.224(8). Several commenters supported full equivalency between the portion of the TWC rule that is based on the TACB rule and the proposed TWC B-IF rule that is based on the federal regulation. Most of these commenters recommended elimination of any requirement not completely consistent with the federal B-IF regulation.

In response, for the reasons outlined above, the commission believes that additional requirements for commercial combustion facilities are warranted. Of course, since the state hazardous waste program can always be more stringent than the federal hazardous waste program, additional requirements and earlier deadlines do not raise serious concerns for maintaining such authorization. Future rulemaking may be necessary if problems arise in the implementation of these new §§335.221-335.229.

A commenter suggested that the commission implement a summary disposition procedure whereby permit applications not meeting certain threshold criteria can be rejected or dismissed without being able to continue further in the permit application process. Another commenter suggested that the commission seek input from underground water districts when it considers permit applications for hazardous waste facilities. Without commenting on the merits of these suggestions, the commission responds that it would be inappropriate within the context of this rulemaking to implement such procedures in that no notice of such was given in the proposed version of these rules.

Typographical errors have been corrected in §335.221(a)(18), 335.223(b), and 335.226(2).

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

• 31 TAC §335.1, §335.6

The amendments are adopted under the Texas Water Code, §§5.103, 5.105, and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

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.

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Texas Water Commission

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Subchapter B. Hazardous Waste Management General Provisions

• 31 TAC §335.45

The amendment is adopted under the Texas Water Code, §§5.103, 5.105, and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also proposed under the Solid Waste Disposal Act, §3 and §4, which give the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.45. *Effect on Existing Facilities.*

- (a) (No change.)
- (b) Effect on off-site facilities without a permit to re-use, recycle, or reclaim hazardous waste, or to burn hazardous waste in boilers or industrial furnaces. Any person who has commenced the off-site storage, processing, or disposal of hazardous wastes, or activities that are listed, identified or described by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261, on or before the effective date of statutory or regulatory amendments under

the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §§6901 et seq, relating to the re-use, recycling, or reclamation of hazardous waste, or relating to the burning of hazardous waste in boilers or industrial furnaces, that render such wastes or activities subject to the requirements to have a hazardous waste permit, shall file an application with the commission on or before the effective date of such amendments, which includes the applicable information required by §335.44 of this title (relating to Application for Existing On-site Facilities). Any person who has commenced off-site storage, processing, or disposal of hazardous waste on or before the effective date of such amendments, who has filed a hazardous waste permit application with the commission on or before the effective date of such amendments in accordance with the rules and regulations of the commission, and who complies with requirements in this chapter applicable to such activities, may continue the off-site storage, processing, or disposal of the newly listed or identified wastes or waste activities until such time as the Texas Water Commission approves or denies the application. In cases where the aforementioned federal statutory or regulatory amendments become effective prior to the effective date of state statutory or regulatory amendments under the Texas Solid Waste Disposal Act, Chapter 361, Texas Health & Safety Code Annotated (Vernon Pamphlet 1992), submittal to the executive director of a copy of the properly filed United States Environmental Protection Agency permit application within 30 days of the effective date of the applicable state statutory or regulatory requirements shall constitute compliance with this subsection with regard to application filing requirements. Facilities that have received a permit for the reuse, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) are not required to comply with this subsection and may operate pursuant to their existing permit. Such permits, however, are subject to amendment under §305.62 of this title (relating to Amendment) to reflect new regulatory requirements.

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.

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Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

• 31 TAC §335.112

The amendment is adopted under the Texas Water Code, §§5.103, 5.105, and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendment is also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations Part 265 (including all appendices to Part 265) (except as otherwise specified herein), are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see 55 FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, and September 5, 1991 issues of the *Federal Register* (see 56 FedReg 7239, and 56 FedReg 32688, 56 FedReg 42504, and 56 FedReg 43874).

(1) -(16) (No change.)

(b) (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 July 8, 1992.

TRD-9209385 Mary Ruth Holder
Director, Legal Services
Texas Water Commission

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For further information, please call: (512) 463-8069

◆ ◆ ◆
Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

• 31 TAC §335.151, §335.152

These amendments are adopted under the Texas Water Code, §§5.103, §§5.105, and

26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendments are also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations Part 264 (including all appendices to Part 264), are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, and September 5, 1991 issues of the *Federal Register* (see 56 FedReg 7239, and 56 FedReg 32688, 56 FedReg 42504, and 56 FedReg 43874):

(1) -(14)(No change.)

(b)-(c) (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.

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◆ ◆ ◆
Subchapter G. Location Standards for Hazardous Waste Storage, Processing, or Disposal

• 31 TAC §335.205

The amendment is adopted under the Texas Water Code, §§5.103, 5.105 and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendment is also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.205. Prohibition of Permit Issuance.

(a) The commission shall not issue a permit for a new hazardous waste management facility or an areal expansion of an

existing facility if the facility or expansion does not meet the requirements of §335.204 of this title (relating to Unsuitable Site Characteristics).

(b) (No change.)

(c) No permit shall be issued for a new commercial hazardous waste management facility as defined in §335.202 of this title (relating to Definitions) including such facilities that burn or propose to burn waste-derived fuel, as defined in this section, or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within 1/2 mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(d)-(i) (No change.)

(j) The term "Waste-derived fuel" when used in this section, shall mean any material resulting from the blending or inclusion of hazardous waste that is to be burned for energy recovery. Such fuel does not include material derived from nonhazardous waste such as nonhazardous waste garbage, rubbish, refuse, tires, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, or other nonhazardous waste solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, or agricultural operations or from community or institutional activities.

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.

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Mary Ruth Holder
Director, Legal Services
Texas Water Commission

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For further information, please call: (512) 463-8069

Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

• 31 TAC §§335.221-335.226

The repeals are adopted under the Texas Water Code, §§5.103, 5.105 and 26.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The repeals are also adopted under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal solid wastes

and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

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.

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Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

• 31 TAC §§335.221-335.229

The amendments are adopted under the Texas Water Code, §§5.103, 5.105 and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendments are also proposed under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§335.221. *Applicability and Standards.*

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, and September 5, 1991, issues of the *Federal Register* (see 56 FedReg 7239, 32688, 42504, and 43874):

(1) §266.100-Applicability, except §266.100(b);

(2) §266.102(a)-Permit Standards for Burners- Applicability, excepting those portions of §266.102(a) containing references to §§264.56(d), 264. 71-264.72, 264.75-264.77, 264.90, 264.101, and 264.142(a)(2);

(3) §266.102(b)-Permit Standards for Burners- Hazardous Waste Analysis;

(4) §266.102(c)-Permit Standards for Burners- Emission Standards;

(5) §266.102(d)-Permit Standards for Burners- Permits;

(6) §266.102(e)-Permit Standards for Burners- Operating Requirements;

(7) §266.103 (a)(1)-(3)-Interim Status Standards for Burners-Purpose, Scope, and Applicability- General; Exemptions; and Prohibition on Burning Dioxin-Listed Wastes, respectively, except §266.103(a) (1)(iii) and (2);

(8) §266.103(a)(4)-Interim Status Standards for Burners-Purpose, Scope, and Applicability- Applicability of Part 265 Standards, excepting those portions of §266.103(a)(4) containing references to §§265.56(d), 265.71-265.72, 265.75- 265.77, 265.142(a)(2); facilities qualifying for a corporate guarantee for liability are subject to §265.147(g) (2) and §264.151(h)(2), as amended;

(9) §266.103(a)(5)-(6) -Interim Status Standards for Burners-Purpose, Scope, and Applicability: Special Requirements for Furnaces; and Restrictions on Burning Hazardous Waste That is Not a Fuel;

(10) §266.103(b)-Interim Status Standards for Burners-Certification of Precompliance, except §266.103(b)(1) and (6);

(11) §266.103(c)-Interim Status Standards for Burners-Certification of Compliance, except §266.103(c)(3)(i);

(12) §266.103(f)-Interim Status Standards for Burners-Start-Up and Shut-Down;

(13) §266.103(g)(1)-(2)-Interim Status Standards for Burners-Automatic Waste Feed Cutoff;

(14) §266.103(h)-(l)-Interim Status Standards for Burners: Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure, respectively;

(15) §266. 104-Standards to Control Organic Emissions, except §266.104(i);

(16) §266.105-Standards to Control Particulate Matter, except §266.105(c) and except as provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities);

(17) §266.106-Standards to Control Metals Emissions, except §266.106(i);

(18) §266.107-Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl₂) Emissions, except §266.107(h);

(19) §266.108-Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) may not be burned in an off-site device under the exemption provided by §266.108;

(20) §266.109-Low-Risk Waste Exemption;

(21) §266.110-Waiver of DRE Trial Burn for Boilers;

(22) §266.111-Standards for Direct Transfer; and

(23) §266.112-Regulation of Residues.

(b) The following hazardous wastes and facilities are not regulated under this section and §§335.222-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces):

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C. Such used oil is subject to regulation by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 266, Subpart E. This exception does not apply if the used oil has been mixed with hazardous waste, or if the used oil is considered to be a hazardous waste by EPA under 40 Code of Federal Regulations, §266.40(c). Used oil exhibiting a characteristic of hazardous waste remains subject to the requirements of §335.24(g) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials);

(2) hazardous wastes that are exempt from regulation under the provisions of 40 Code of Federal Regulations, §261.4 and §335.24(c)(5)-(9) of this title, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title;

(3) gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery; and

(4) coke ovens, if the only hazardous waste burned is EPA Hazardous Waste Number K087, decanter tank tar sludge from coking operations.

§§335.223. *Additional Permit Standards for Burners.*

(a) In addition to the permit standards for burners under §335.221(a)(2)-(6) of this title (relating to Applicability and Standards), owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), as follows:

(1) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(2) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(4) §335.154 of this title (relating to Reporting Requirements for Owners and Operators);

(5) §335.155 of this title (relating to Additional Reports);

(6) §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(7) §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(8) §335.178 of this title (relating to Cost Estimate for Closure).

(b) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit, pursuant to 40 Code of Federal Regulations (CFR), §266.102, and §335.221(a)(1)-(6) of this title (relating to Applicability and Standards), and subsection (a)-(1)-(8) of this section, will be regarded as compliance with 40 CFR, §§266.104-266.107. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of 40 CFR, §§266.104-266.107 may be "good cause" for justifying suspension or revocation of a permit under §305.66 of this title (relating to Permit Denial, Suspension, and Revocation) or may be "good cause" for amendment of the permit under §305.62(d)(2) of this title (relating to Amendment).

§335.224. *Additional Interim Status Standards for Burners.* In addition to the interim status standards for burners under §335.221(a)(7)-(14) of this title (relating to Applicability and Standards), owners and

operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows.

(1) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the owner or operator must comply with the applicable rules and regulations dealing with permit amendments or modifications under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations (CFR), §270.42, or revisions of applications for hazardous waste permits and changes during interim status under Chapter 305 of this title and 40 Code of Federal Regulations, §270.72;

(2) The requirements of this section and §335.221(a)(7)-(14) of this title do not apply to hazardous wastes and facilities exempt under §335.221(b) of this title, or exempt under 40 CFR, §266.108, as adopted under §335.221(a)(19) of this title.

(3) Owners and operators of existing boilers and industrial furnaces that burn hazardous waste are subject to the following provisions:

(A) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(B) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(C) §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(D) §335.114 of this title (relating to Reporting Requirements);

(E) §335.115 of this title (relating to Additional Reports);

(F) §335.127 of this title (relating to Cost Estimate for Closure).

(4) The owner or operator must provide complete and accurate information specified in 40 CFR, §266.103(b)(2) to the executive director on or before August 21, 1992, and must establish limits for the operating parameters specified in 40 CFR, §266.

103(b)(3). Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in 40 CFR, §266.103 (b)(3), the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, HCl and Cl₂ are not likely to exceed the limits provided under 40 CFR, §§266.105, 266.106, and 266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under 40 CFR, §266.103(b) (3) until the owner or operator submits a revised certification of precompliance under 40 CFR, §266.103(b)(8) or a certification of compliance under 40 CFR, §266.103(c), or until a permit is issued.

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §305.103(b)(2)-(12) of this title (relating to Notice by Mail). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 Code of Federal Regulations, §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 CFR, §266.103(b) this paragraph and paragraph (4) of this section." An owner or operator who satisfied the public notice requirements under 40 CFR, 266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

(A) name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;

(B) date that the certification of precompliance was submitted to the executive director;

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7)-(14) of this title, and 40 CFR, §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl₂;

(D) types and quantities of hazardous waste burned including, but not limited to, source(s), whether solids or liquids, as well as an appropriate description(s) of the waste(s);

(E) type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

(F) types and quantities per year of other fuels and industrial furnace feedstocks fed to each unit;

(G) brief description of the basis for this certification of precompliance as specified in 40 CFR, §266.103(b)(2);

(H) locations where the operating record for the facility can be viewed and copied by interested parties. These locations shall at a minimum include:

(i) the local Texas Water Commission district office; and

(ii) the facility site where the device is located;

(I) notification of the establishment by the facility owner or operator of a facility mailing list whereby interested parties shall notify the facility owner or operator that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(J) location (mailing address) of the local Texas Water Commission (TWC) district office, where further information can be obtained on TWC regulation of hazardous waste burning.

(6) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 CFR, §§266.103(a)(5)(i)(D), 266.104(b)-(e), 266.105, 266.106, and 266.107, under the procedures prescribed by this paragraph and paragraphs (7) and (8) of this section and 40 CFR, §266.103(c), except under extensions of time provided by 40 CFR, §266.103(c)(7). Based on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR, §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR, §266.103(c)(1). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the certification of compliance or require additional information to be submitted within

specified time frames.

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 CFR, §266.103(b) and paragraphs (4)-(5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR, §266.103(c)(2);

(8) If the owner or operator chooses to submit a revised certification of compliance (recertification of compliance) under 40 CFR, §266.103(c)(8), or if the owner or operator is required to submit a recertification of compliance under paragraph (9) or (11) of this section, then the owner or operator shall submit the recertification of compliance to the executive director under the procedures in 40 CFR, §266.103(c)(8)(i)-(iv). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(9) The owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR, §266.103(c), within 150 days of rejection by the executive director under this paragraph and paragraphs (6), and (8), of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames. Except for the activities necessary for the owner or operator to conduct the compliance testing in accordance with 40 CFR, §266.103(c)(8)(i)-(iv), and except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon rejection by the executive director and until a subsequent recertification of compliance is approved under paragraph (8) of this section, the owner or operator shall not burn hazardous waste in the unit for which a certification of compliance or recertification of compliance was rejected.

(10) Except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon receipt of the third rejection by the executive director of a certification of compliance and/or recertification of compliance for the burning of hazardous waste in a boiler or industrial furnace, the owner or operator shall stop burning hazardous waste in the unit for which the certification and/or recertification were rejected, begin closure activities under 40 CFR, §266.103(l), and shall not resume

the burning of hazardous waste except under an operating permit issued under Chapter 305 of this title.

(11) Notwithstanding any requirement for a recertification under paragraph (9) of this section, the owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR, §266.103(c) within three years from submitting the previous certification or recertification (excluding recertification(s) submitted under paragraph (9) of this section). If the owner or operator seeks to recertify compliance under new operating conditions, then the owner or operator must comply with the requirements of paragraph (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(12) The executive director may reject certifications or recertifications of compliance based on the failure of the owner or operator to meet the substantive requirements under 40 CFR, §266.103 or §335.224 of this title, including, but not limited to, the following:

(A) incorrect or inappropriate calculations or other mathematical techniques which lead to significant effects on operating condition limitations;

(B) incorrect or inappropriate sampling, physical measurements, or analysis techniques which lead to significant effects on operating condition limitations;

(C) equipment failure or malfunction during the compliance test which leads to inadequate results or incorrect results which significantly affects the limits on operating conditions;

(D) inappropriate feed rates of waste, raw production materials, and/or fuels which leads to significant effects on operating condition limitations;

(E) failure to operate the compliance test under steady-state conditions; or

(F) other significant deficiencies which, in the opinion of the executive director will lead to endangerment to public health and welfare or insufficient protection of public property or the environment.

(13) The owner or operator may appeal to the commission any rejection of a certification or recertification by the executive director. Owners and operators who appeal to the commission any rejection of a certification or recertification by the executive director may continue operations under the rejected certification or recertification until the rejection is upheld by the commission.

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (4), (5), (6), (9), or (11) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 CFR, §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title.

(15) During the compliance test required by paragraph (7) of this section and 40 CFR, §266.103(c)(3), and upon certification of compliance under 40 CFR, §266.103(c), a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in 40 CFR, §266.103(c) (1)(i) and (v)-(xiii) deviate from those established in the certification of compliance, and the boiler or industrial furnace must be operated in accordance with 40 CFR, §266.103(g)(1)-(2).

§335.226. Standards for Burning Hazardous Waste in Commercial Combustion Facilities. In addition to the applicable requirements under §§335.221-335.225 of this title (relating to Applicability and Standards; Management Prior to Burning; Addi-

tional Permit Standards for Burners; Additional Interim Status Standards for Burners; and Additional Standards for Direct Transfer, respectively), no person shall cause, suffer, allow, or permit the burning of hazardous waste in a combustion unit at any facility that accepts such hazardous waste from off-site sources which involves a commercial transaction or a change in ownership of the waste and for which the combustion unit is not regulated by the United States Environmental Protection Agency at 40 Code of Federal Regulations (CFR), Part 264 or 265, Subpart O, or by the Texas Water Commission at §335.112(a)(14) or §335.152(a)(13) of this title (relating to standards), unless the following requirements are met. Where compliance with any of the applicable requirements under §§335.221-335.229 of this title would result in lower emission rates of particulate matter, hydrogen chloride, chlorine gas, metals, carbon monoxide, hydrocarbons, or principal hazardous organic constituents than the emission rates that would result from compliance with another requirement under §§335.221-335.229 of this title, then the owner or operator shall comply with the applicable requirements which would result in lower emission rates.

(1) Particulate emissions shall not exceed 0.18 gram per dry standard cubic meter or 0.08 grain per dry standard cubic foot, to include particulate matter caught by impinger train, when corrected for 7.0% oxygen in the stack gas according to the formula specified in §111.121(1) of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators).

(2) Hydrogen chloride (HCl) emissions greater than 1.8 kilograms (4 pounds) per hour shall be controlled with a minimum removal efficiency of 95%.

(3) Except as provided by 40 CFR, §266.104(a)(3)-(5), destruction and removal efficiency (DRE) shall be at least 99.99% for each principal organic hazardous constituent (POHC) in each waste feed. The POHCs shall be selected according to the method at 40 CFR Part 264.342 and shall be approved in advance by the executive director. DRE shall be determined using the following formula:

$$DRE = \left[1 - \frac{W_{out}}{W_{in}} \right] \times 100\%$$

in which

W_{in} = the mass feed rate of an approved POHC in the waste stream feeding the combustion facility;

and

W_{out} = the mass emission rate of the same POHC, expressed in the same units as the mass feed rate used in W_{in} , present in exhaust emissions of the combustion device prior to release to the atmosphere;

(4) The facility shall perform a trial burn according to the requirements listed at 40 CFR Part 270.62 to determine compliance with paragraphs (1)-(3) of this section. The operating conditions and waste feed composition during a trial burn demonstrating compliance with the requirements of paragraphs (1)-(3) of this section shall be maintained as limits for subsequent operation of the facility. Substitution of new hazardous waste constituents and increases in the concentration of any hazardous waste constituent compared to the conditions existing during the trial burn will require retesting unless such change or substitution has received written approval from the executive director. The operating limits shall be monitored continuously and shall include the following:

(A) maximum carbon monoxide level in the exhaust gas of the combustion device;

(B) minimum oxygen level in the exhaust gas of the combustion device;

(C) maximum waste feed rate to the combustion device;

(D) minimum combustion temperature;

(E) an appropriate indicator of combustion gas velocity;

(F) maximum total hydrocarbons in the exhaust gas of the combustion device; and

(G) any other operating limit determined necessary by the executive director to ensure that the requirements of paragraphs (1)-(3) of this section are met.

(5) The facility shall not burn any chlorinated hazardous waste or hazardous waste containing any of the following metals unless an enforceable emission limit has been established which is designed to protect public health for each metal and for toxic products of incomplete combustion.

Metals:

Arsenic-Chromium.

Antimony-Lead.

Barium-Mercury.

Beryllium-Silver.

Cadmium-Thallium.

(6) The facility shall maintain an automatic waste feed cutoff system which shall activate if the facility is not operating within the limits determined in accordance with paragraph (4) of this section and shall remain activated until the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(7) During start-up or shutdown of the facility, hazardous waste fuels must not be fed into the combustion zone unless the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(8) Fugitive emissions from the combustion zone shall be controlled by maintaining the combustion zone pressure lower than atmospheric pressure or by keeping the combustion zone totally sealed to prevent fugitive emissions.

(9) Compliance with the requirements of paragraphs (1)-(4) and (6)-(8) of this section shall be accomplished prior to the burning of any hazardous waste, except for such burning which is necessary to conduct the required trial burn. Compliance with paragraph (5) of this section shall be as soon as practicable but no later than July 31, 1992. This paragraph applies to facilities burning hazardous waste under state or

federal interim status prior to the effective date of this section. Facilities not burning hazardous waste under interim status which are permitted after that date will be subject to compliance dates specified by permit.

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.

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TRD-9209377 Mary Ruth Holder
Director, Legal Services
Texas Water Commission

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For further information, please call: (512)
463-8069



State Board of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L.

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance in Docket Number 1871, June 30, 1992, Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments to the Texas Automobile Insurance Plan of Operation, (The Plan). The Plan submitted proposals to change the rules governing the Plan at the May 21, 1992 hearing under Docket Number 1871. The hearing was recessed until June 30, 1992 to seek an Attorney General opinion regarding the Board's jurisdiction over the Plan and the applicability of the Texas Insurance Code, Article 1.35C, to board appointment of members to the Plan's governing committee and to allow time for publication of the filed proposal by the Plan and to consider the composition of the governing committee. The board also authorized for publication configurations of the governing committee proposed by the Plan, the Office of Public Insurance Counsel and one received in public comment.

Additionally, on April 23, 1992, the board considered a proposal by Office of Public Insurance Counsel which included the proposed repeal of Section 8.5 of the Plan of operation,

which requires rule changes to come only from the Plan. The proposal was published in the *Texas Register* dated March 20, 1992, issued (17 TexReg 2119). The issue was recessed to May 21, 1992 and again recess to June 30, 1992.

Docket Number 1871, was reconvened on June 30, 1992. Reference Number (A-0392-12).

A majority of the board approved the following amendments to the Plan for adoption:

4.14. Upon receipt of the application properly completed and eligible for assignment, together with the premium determined in accordance with Section 3.2, the manager shall designate an insurer to which the insured shall be assigned and shall so advise the insured and the servicing agent. The notice of designation shall state that coverage shall become effective at 12: 01 A.M., on the day following the date of assignment to the insurer. In the event there is in force a policy terminating at a date later than the date which would be fixed pursuant to this section, the insured shall indicate such date in the application and coverage shall become effective as of 12:01 A.M. on the stated termination date of such policy.

The manager shall forward to the insurer the original copy of the application form, the notice of effective date of coverage, and the premium payment. In the event the insurer finds the premium submitted with the application to be incorrect, the insurer shall make such premium adjustment directly with the servicing agent and shall so notify the manager.

6.2. The commission under the Plan is to be paid to the servicing agent as follows:

A. for motor vehicles of the truck type operating beyond a radius of 200 miles from

the limits of the city or town of principal garaging and public passenger carrying vehicles, 5.0% of the policy premium;

B. for other insureds, 10% of the policy premium.

6.3. In the event of cancellation or changes in such policies involving return or additional premium, the insurer shall adjust commission amounts directly with servicing agent.

8.1. Composition of the governing committee to consist of 14 members: seven public members; five elected by subscribers; and two agent members elected by the Independent Insurance Agents of Texas and Professional Insurance Agents.

8.2. Eight members of the committee constitutes a quorum.

8.5. Repealed.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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 July 6, 1992.

TRD-9209312 Linda K. von-Quintus Dom
Chief Clerk
Texas Department of
Insurance

Effective date: July 29, 1992

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



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 *Texas 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 agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Thursday-Friday, July 16-17, 1992, 1 p.m. and 8 a.m. The Texas Peanut Producers Board of the Texas Department of Agriculture will meet at Howard Johnson's Plaza Hotel, Pecos Room, 7800 North IH-35, Austin. According to the agenda summary, the board will introduce guests; discuss and act on minutes; oath of office to newly re-elected directors; discuss and act on annual audit report; flavor research project; strategic planning session; recess regular session; call executive session to discuss personnel matters; reconvene in open session; act on executive session; discuss and act on strategic planning session; and discuss other business. Executive session being held pursuant to Texas Civil Statutes Annotated, Article 6252-17, §2(a).

Contact: Dolores Alvarado Hibbs, 1700 North Congress Avenue, Ninth Floor, Austin, Texas 78701, (512) 463-7583.

Filed: July 7, 1992, 2:31 p.m.

TRD-9209344

Tuesday, August 4, 1992, 10 a.m. The Office of Hearings Examiner of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code §75.006(a) and 4 TAC §11.8 by Ernest Brenek.

Contact: Ivry J. Pollard, P.O. Box 12847, Austin, Texas 78711, (512) 463-1668.

Filed: July 7, 1992, 2:01 p.m.

TRD-9209337

Tuesday, September 1, 1992, 9 a.m. The Office of Hearings Examiner of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code §13.032 and §13.036 by Burt Livengood & Livengood Feeds.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: July 9, 1992, 9:30 a.m.

TRD-9209430

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Thursday, September 3, 1992, 10 a.m. (Rescheduled from Tuesday, June 23, 1992, 10 a.m.) The Office of Hearings Examiner of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 928B, Austin. According to the complete agenda, the department will hold an administrative hearing to review alleged violations of Texas Agriculture Code and TAC by Morlan C. Shuman, Jr., holder of commercial applicator license.

Contact: Ivry J. Pollard, P.O. Box 12847, Austin, Texas 78711, (512) 463-1668.

Filed: July 7, 1992, 2:01 p.m.

TRD-9209338

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Texas School for the Blind and Visually Impaired (TSBVI)

Thursday, July 16, 1992, 1 p.m. The Board of Trustees Finance/Audit Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Building 500, Room 116, Austin. According to the complete agenda, the committee will call the meeting to order; discuss new business: approval of minutes of May committee meeting; discuss internal auditor's job description and performance appraisal; approval of fiscal year 1993 operating budget allocations; adoption of FY 1993 legacy budget; report from internal auditor; approval of permanent and temporary easement to City of Austin for traffic improvements, 45th Street and Burnet Road; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 133.

Filed: July 8, 1992, 4:19 p.m.

TRD-9209418

Thursday, July 16, 1992, 1 p.m. The Board of Trustees Personnel/Policy Committee of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Building 500, Room 110, Austin. According to the complete agenda, the committee will call the meeting to order; discuss internal auditor's job description and performance appraisal; implementation of work force diversity plan; discuss roles and responsibilities of personnel/policy committee related to policy development, revision, and review, in accordance with mandates of applicable laws and regulations; review of policies on July 16-17 board agenda: DAA-R-employment objec-

tives: equal opportunity employment; DNB-status of employment; employee performance and discipline; EEJA-individualized learning; advanced placement examinations; EHDA-extended instructional programs; summer school; EMJ-miscellaneous instructional policies; behavior management; FFAB-health requirements and services; immunizations; GE-Parent-booster organizations; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 133.

Filed: July 8, 1992, 4:19 p.m.

TRD-9209419

Thursday-Friday, July 16-17, 1992, 2 p.m. and 9 a.m. respectively The Board of Trustees of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Building 500, Room 116, Austin. According to the agenda summary, the board will call the meeting to order; recognize TSBVI staff; certificate of appreciation to Patricia Becker; presentation: end-of-year curriculum development; hear public comments/open forum; discuss new business: report by board committees; approval of fiscal year 1993 operating budget allocations; adoption of FY 1993 legacy budget; discuss internal auditor's job description and performance appraisal; report from internal auditor; approval of minutes of May 28, 1992 board meeting; discuss personnel/policy committee's roles and responsibilities regarding school policy development, revision, and review, in accordance with mandates of applicable laws and regulations; adoption, amendment of school policies; implementation of work force diversity plan; implementation of Senate Bill 3; consultation with school attorney regarding litigation; discussion of superintendent's growth plan; discussion of TSBVI eligibility criteria; discussion regarding use of superintendent's on-campus residence; approve dates for 1992-1993 board meetings; summary of consultants' contracts; discuss establishment of flower, gift fund by board members; approval of permanent and temporary easement to City of Austin for traffic improvements; status and supervision of VH department; use of facilities by outside groups; comments from board members; and adjourn.

Contact: Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756-3494, (512) 454-8631, ext. 133.

Filed: July 8, 1992, 4:17 p.m.

TRD-9209416

Texas Education Agency

Thursday, July 9, 1992, 12:30 p.m. The State Board of Education Committee of the

Whole of the Texas Education Agency met at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete emergency revised agenda, the committee held a public hearing on proposed amendments to 19 TAC Chapter 75, Curriculum, Subchapter E, regarding State Board of Education rules for curriculum to phase-out below-level courses for state graduation requirements. The emergency status was necessary as the agency found it of urgent public necessity for this public hearing to be scheduled on an emergency basis to provide an opportunity for public input concerning the proposed amendments to the rules for curriculum to phase-out below-level courses for state graduation requirements prior to the beginning of the school year. This was to accommodate a request for a public hearing after the meeting was posted.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: July 7, 1992, 4:25 p.m.

TRD-9209354

Friday, July 10, 1992, 9 a.m. The State Board of Education Committee on Long-Range Planning of the Texas Education Agency met at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete emergency revised agenda, the committee requested approval of a waiver request under the innovative programs approval process. The emergency status was necessary as the agency found it of urgent public necessity for this item to be added to the agenda for action by the board so the program could be implemented for the 1992-93 school year. The necessary recommendation prior to board approval was received after the meeting was posted. This was the last meeting of the board before the school year began.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: July 7, 1992, 4:25 p.m.

TRD-9209353

Friday, July 10, 1992, 1 p.m. The State Board of Education of the Texas Education Agency met at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete emergency revised agenda, the board requested approval of a waiver request under the innovative programs approval process. The emergency status was necessary as the agency found it of urgent public necessity for this item to be added to the agenda for action by the board so the program could be implemented for the 1992-93 school year. The necessary recommendation prior to board approval was received after the meet-

ing was posted. This was the last meeting of the board before the school year began.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: July 7, 1992, 4:25 p.m.

TRD-9209352

Thursday-Friday, July 16-17, 1992, 9 a.m. The Committee on Student Learning (CSL) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the committee will make introductions and comments; discuss the accelerated approach to learning; accelerated schools-schools for the 21st Century; a fact of life (presentation on problem solving); and on Friday, updates on existing initiatives (strategic plan for TEA; professional preparation and development; high school education; pilot programs; student outcome goals); work session to include: review of tentative September agenda; comments and reports from CSL members, and determination of next steps.

Contact: Marvin Veselka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9533.

Filed: July 8, 1992, 4:27 p.m.

TRD-9209423

Thursday, July 30, 1992, 1 p.m. The Advisory Board on National and Community Service of the Texas Education Agency will meet at the Lake Austin Financial Plaza, 1717 West Sixth Street, Third Floor, Suite 335, Austin. According to the complete agenda, the board will hold preservice and service training activities; program models; and discuss national and community service act projects and implementation activities.

Contact: Sharon Cooper, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9633.

Filed: July 7, 1992, 4:25 p.m.

TRD-9209351

Educational Economic Policy Center

Wednesday, July 22, 1992, 9:30 a.m. The Subcommittee on Public School Accountability of the Educational Economic Policy Center will meet at the Thompson Conference Center, 2315 Red River, Room 3.120, Austin. According to the complete agenda, the subcommittee will review accountability study workplan; presentation of preliminary drafts of faculty teams; discuss indicators of school effectiveness; work session with educational organizations; and adjourn.

Contact: Mary Ward, UT-Austin, SRH 3.310, 52700, Austin, Texas 78705, (512) 571-7561.

Filed: July 8, 1992, 11:17 a.m.

TRD-9209389

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**Advisory Commission on
State Emergency Commu-
nications**

Tuesday, July 14, 1992, 10 a.m. (Emergency revised agenda). The Planning and Implementation Committee of the Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway South, B-100, Austin. According to the emergency revised agenda summary, the committee will call the meeting to order; recognize guest; hear public comment; discuss and consider approval of proposed 1993 budget and process for COGs; overview of Council of Governments funding; discuss and consider proposed changes to Rule 251.2; commission authorization to Southwestern Bell to cease billing the 9-1-1 fees in Kermit and Wink Exchanges (Winkler County, Permian Basin Regional Planning Commission); consider and approve proposed plan amendments (eleven); discuss 9-1-1 districts' requests for funding assistance; and adjourn. (Committee may recess for the day and reconvene on Wednesday, July 15, 1992, at 9 a.m.) The emergency status is necessary to obtain commission direction on a financial matter in a timely manner.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: July 8, 1992, 5:31 p.m.

TRD-9209425

Wednesday, July 15, 1992, 1:15 p.m. (Emergency revised agenda). The Advisory Commission on State Emergency Communications will meet at the John H. Reagan Building, Room 103, Austin. According to the emergency revised agenda summary, the commission will call the meeting to order; recognize guests; hear public comment; administration committee report; planning and implementation committee report; addressing committee report; consideration and approval of May meeting minutes; and adjourn. The emergency status was necessary to receive direction on a financial matter in a timely manner.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: July 8, 1992, 5:31 p.m.

TRD-9209424

**Texas Department of Housing
and Community Affairs**

Thursday, July 16, 1992, 8:30 a.m. The Programs Committee of the Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Conference Room, Austin. According to the agenda summary, the committee will consider and possibly act on Program Committee work schedule for July and August, 1992; discuss income limit adjustments for multi-family projects based on location of project, economic fluctuations and HUD medium income; and presentation of lease purchase program. Individuals who require auxiliary aids and services for this meeting should contact Ed Blankenship at 475-3983 or Relay Texas at 1-800-735-2989 (TDD).

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3932.

Filed: July 8, 1992, 1:20 p.m.

TRD-9209393

Thursday, July 16, 1992, 10 a.m. The Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Conference Room, Austin. According to the complete agenda, the board will hold an educational workshop and will discuss multi-family issues including public purpose criteria. Individuals who require auxiliary aids and services for this meeting should contact Ed Blankenship at 475-3983 or Relay Texas at 1-800-735-2989 (TDD) at least two days before the meeting so that appropriate arrangements can be made.

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3932.

Filed: July 8, 1992, 4:26 p.m.

TRD-9209420

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**Texas Department of Human
Services**

Friday, July 17, 1992, 10:15 a.m. The CPS Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, Second Floor, West Tower, Classroom Two, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of minutes; report from nominating sub-committee; director's remarks; review of CPS advisory committee bylaws; CWLA-children's campaign; new CANRIS disposition-"sustained"; family code changes (House Bill 2029); worker liability legislation; foster care reimbursement; and adjourn.

Contact: Virginia Guzman, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3025.

Filed: July 7, 1992, 3:23 p.m.

TRD-9209347

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Texas Department of Insurance

Wednesday, July 15, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will discuss personnel; litigation; solvency; commissioner orders; planning calendar; excess of loss policy orders; Docket Number R-1906 concerning Rule 48; filings by United States Fidelity and Guaranty Company, Boston Old Colony Insurance Company; Western Surety Company, International Insurance Company, Cumis Insurance Society; Montgomery Ward Insurance Company; Forum Insurance Company; American Security Insurance Company; Central States Indemnity Company; Workers' Compensation negotiated deductible endorsements by Gulf Insurance Group and Electric Mutual Liability Insurance Company; filing by TDI staff for amendments to automobile rules and rating manual and Texas Forestry Association proposing revisions to Workers' Compensation classification codes; consider proposed new 28 TAC §7.401 and new proposed 28 TAC §7.410 concerning risk-based capital and surplus requirements for life, A&H and P/C insurers; and consider final action on amendment to 28 TAC §19.802 concerning licensing fees for utilization review agents.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 7, 1992, 3:23 p.m.

TRD-9209348

Tuesday, August 4, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1913 to consider an appeal by Joseph P. Zito from Commissioner of Insurance Order Number 92-0315 revoking Joseph P. Zito's non-resident Group I, Legal Reserve Life Insurance Agent's license and Commissioner's Order Number 92-0516 denying Mr. Zito's motion for rehearing.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 8, 1992, 3:51 p.m.

TRD-9209411

Tuesday, August 25, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1914 to consider an appeal by Douglas H. Cordell from Commissioner of Insurance Number 92-0331 under Docket Number 11329 revoking Douglas Cordell's Group I, Legal Reserve Life Insurance Agent's license.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: July 8, 1992, 3:51 p.m.

TRD-9209412

Commission on Jail Standards

Wednesday, July 29, 1992, 9 a.m. The Commission on Jail Standards will meet at the John H. Reagan Building, 15th and Congress, Room 105, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call of members; reading and discuss approval of minutes of May 27, 1992; discuss old business: Bowie County, Brazoria County, Ector County; Hidalgo County; Hopkins County, Kleberg County, Potter County, Titus County; use of stun guns in county jails; status of transfer of felony backlog; status of payment to counties; status of temporary housing; completed jail projects; jail population report; and active remedial orders. discuss new business: Angelina County, Harris County, Wharton County; requirement for law libraries; education committee report; internal audit committee report; and TB in county jails. Applications for variances from the following counties: Collin, Kleberg, San Patricio, Washington, and Wharton; hear directors report; discuss other business; meet in executive session; and adjourn.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78704, (512) 463-5505.

Filed: July 9, 1992, 9:28 a.m.

TRD-9209427

Texas State Board of Examiners of Psychologists

Friday, July 24, 1992, 9:15 a.m. The Texas State Board of Examiners of Psychologists will meet at the Veterans Administration Medical Center, Psychology Department, 2002 Holcombe Boulevard, Houston. According to the complete agenda, the board will consider proposed changes to the Psychologists' Certification and Licensing Act, Article 4512c of Vernon's Texas Civil Statutes.

Contact: Patricia S. Tweedy, M.P.A., 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: July 7, 1992, 2:45 p.m.

TRD-9209346

Railroad Commission of Texas

Wednesday, July 15, 1992, 9:30 a.m. The Railroad Commission of Texas will meet at 1701 North Congress Avenue, 12th Floor Conference Room #12-126, Austin. Agendas follow.

The commission will consider and act on the administrative services division director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: July 7, 1992, 11:01 a.m.

TRD-9209325

The commission will consider and act on the Division Director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: July 7, 1992, 11:02 a.m.

TRD-9209326

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

Filed: July 7, 1992, 11:02 a.m.

TRD-9209327

The commission will consider and act on the Office of Information Services Director's report on Division Administration, Budget, Procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

Filed: July 7, 1992, 11:02 a.m.

TRD-9209328

The commission will consider and act on the Investigation Division Director's report on Division administration, investigations, budget, and personnel matters.

Contact: Marcelo Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: July 7, 1992, 11:02 a.m.

TRD-9209329

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: July 7, 1992, 11:02 a.m.

TRD-9209330

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss the implementation of individual operating budgets for each individual commissioner's office. The commission will discuss a proposed training agreement for the Gas Utility Section of the Legal Division. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation. Consideration of a contract for public information services.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: July 7, 1992, 11:03 a.m.

TRD-9209331

The commission will consider category determination under Sections 102(c)(1) (B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Box 12967, Austin, Texas 78711, (512) 463-6755.

Filed: July 7, 1992, 11:03 a.m.

TRD-9209332

The commission will consider and/or decide various applications and other matters within the jurisdiction of the agency. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: July 7, 1992, 11:03 a.m.

TRD-9209333

Texas Water Commission

Wednesday, July 22, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider Rebecca Creek Golf Club's Application Number TA-6811 to seek a permit to divert and use a total of 75 acre-feet of water for a one-year period from Rebecca Creek, tributary of the Gaudalupe River, Guadalupe River Basin, for irrigation purposes (golf course) in Comal County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 371-6389

Filed: July 8, 1992, 1:57 p.m.

TRD-9209397

Texas Water Development Board

Wednesday, July 15, 1992, 3 p.m. The Audit Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the complete agenda, the committee will consider approval of the minutes of the May 20, 1992 committee meeting; discuss the annual plan, including risk analysis and types of projects from audit and management prospective, for the fiscal year ending August 31, 1993; and be briefed on continuing internal audit projects. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Donna Darling at 463-8422 two (2) work days prior to the meeting so that appropriate arrangements can be made. Additional non-committee board members may be present to deliberate but will not vote in the committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 7, 1992, 3:49 p.m.

TRD-9209349

Wednesday, July 15, 1992, 4 p.m. The Finance Committee of the Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 513-F, Austin. According to the complete agenda, the committee will consider approval of the minutes of the June 17, 1992, committee meeting; presentation and discussion on negotiated versus competitive sale of board general obligation bonds; may consider items relating to any pending or prospective applications for funding; and may discuss items on the agenda of the July 16, 1992 board meeting.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Donna Darling at 463-8422 two (2) work days prior to the meeting so that appropriate arrangements can be made. Additional non-committee board members may be present to deliberate but will not vote in the committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 7, 1992, 3:49 p.m.

TRD-9209350

Thursday, July 16, 1992, 9 a.m. The Texas Water Development Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the board will discuss approval of minutes; hear development fund manager's report; extension of commitments to Hill Country WSC and Cities of Holiday Lakes, Bridgeport, Glen Rose, Woodbranch Village and Hondo; discuss financial assistance to Cities of Anahuac, Allen, Austin, Idalou, Mineral Wells, Midlothian and Alamo, Hull Fresh WSC and City of Galveston Park Board of Trustees; amendments to 31 TAC §§355.73, 363.502, 363.505, 375.72 and 363.44; negotiation of contracts with Sabine River Authority and Lavaca Navidad River Authority for Trans-Texas Water program studies; sending rfp's for an underwriter for possible interim financing program for non-SRF loans; grant to Upper Colorado River Authority for Texas Clean River Act; and items from the Finance and Audit Committee meetings.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 8, 1992, 3:23 p.m.

TRD-9209405

Texas Water Resources Finance Authority

Thursday, July 16, 1992, 9 a.m. The Texas Water Resources Finance Authority will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the authority will consider approval of the minutes of the meeting of June 18, 1992; consider approval of the payment of expenses to be incurred from August 16, 1992 through February 15, 1993; and be briefed on and discuss publication of rules. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons

who are deaf or hearing impaired, readers, large print or braille, are requested to contact Donna Darling at 463-8422 two (2) work days prior to the meeting so that appropriate arrangements can be made.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 8, 1992, 3:23 p.m.

TRD-9209406

Regional Meetings

Meetings Filed July 7, 1992

The Dallas Central Appraisal District met at 2949 North Stemmons Freeway, Dallas, July 10, 1992, at 11:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9209341.

The Concho Valley Council of Governments Private Industry Council met at 4950 Knickerbocker Road, San Angelo, July 8, 1992, at 3 p.m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76901, (915) 944-9666. TRD-9209314.

The Dallas Central Appraisal District Board of Directors will meet at 2949 North Stemmons Freeway, Dallas, July 15, 1992, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9209342.

The Tyler County Appraisal District Appraisal Review Board met at 806 West Bluff, Woodville, July 13, 1992, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9209335.

Meetings Filed July 8, 1992

The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees held an emergency meeting at 1430 Collier Street, Board Room, Austin, July 10, 1992, at 7 a.m. The emergency status was necessary due to items requiring immediate board action, and this was the only time a quorum could meet. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78784-3548, (512) 447-4141. TRD-9209413.

The Bi-County Water Supply Corporation will meet at the Bi-County Office, FM Road 2254, Pittsburg, July 14, 1992, at 7 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9209404.

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, August 3-6, 10-14, 17-20, 24-28, 31, 1992, at 8:30 a.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9209356.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District, 502 North Main Street, Linden, July 13, 1992, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9209361.

The Cass County Appraisal District Appraisal Review Board will meet at the Cass County Appraisal District, 502 North Main Street, Linden, July 14, 1992, at 7 p.m. Information may be obtained from Janelle Clements, P. O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9209374.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway, Abilene, July 13-17, 20-21, 1992, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9209392.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway, Abilene, July 22, 1992, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9209391.

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, July 14, 1992, at 5:30 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597. TRD-9209358.

The Comal Appraisal District Appraisal Review Board will meet at 430 West Mill Street, New Braunfels, July 20, 1992, at 9 a.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597. TRD-9209357.

The Dewitt County Appraisal District Appraisal Review Board will meet at the Appraisal District Office, 103 Bailey Street, Cuero, July 16, 1992, at 9 a.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9209360.

The Gonzales County Appraisal District Appraisal Review Board will meet at 928 St. Paul Street, Gonzales, July 14, 1992, at

9 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879. TRD-9209390.

The Hays County Appraisal District Board of Directors met at 632 A East Hopkins, Municipal Building, San Marcos, July 13, 1992, at 4 p.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9209395.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, July 13 and July 15, 1992, at 9 a.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9209359.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at the Lavaca County Central Appraisal District, 113 North Main, Hallettsville, July 23, 1992, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9209375.

The Nolan County Central Appraisal District Board of Directors will meet at the Nolan County Courthouse, Third Floor, Sweetwater, July 14, 1992, at 7 a.m. Information may be obtained from Lane Compton, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9209403.

The Region III Education Service Center Board of Directors and Regional Advisory Committee will meet at the Region III E.S.C., 1905 Leary Lane, Victoria, August 5, 1992, at 1:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9209387.

The South Franklin Water Supply Corporation Board of Directors will meet at the South Franklin Water Supply Corporation Office, Highway 115 South, Mt. Vernon, July 14, 1992, at 7 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mt. Vernon, Texas 75457, (903) 860-3400. TRD-9209394.

◆ ◆ ◆ Meetings Filed July 9, 1992

The Blanco County Central Appraisal District Board of Directors will meet at the Courthouse Annex, Avenue G and Seventh Street, Johnson City, July 14, 1992, at 5 p.m. Information may be obtained from Hollis Boatright, P. O. Box 338, Johnson City, Texas 78636, (512) 868-4013. TRD-9209433.

The Brown County Appraisal District Board of Directors met at 402 Fisk Avenue, Brownwood, July 13, 1992, at 7 p.m. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9209426.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, July 15, 1992, at 9:30 a. m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291. TRD-9209438.

The Limestone County Appraisal District Board of Directors will meet at the Limestone County Courthouse, Board Room, Second Floor, Groesbeck, July 15, 1992, at 1 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9209431.

The Multimodal Transportation Planning Gulf Coast State Planning Region Transportation Planning Committee will meet at 3555 Timmons, Fourth Floor Conference Room, Houston, July 17, 1992, at 9:30 a.m. Information may be obtained from LaDawn Bush, P.O. Box 1386, Houston, Texas 77251, (713) 869-4571. TRD-9209434.

The Scurry County Appraisal District Appraisal Review Board will meet at 2612 College Avenue, Snyder, July 14-15, 1992, at 8:30 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9209432.

The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, July 14, 1992, at 9 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9209428.

The South Plains Association of Governments Board of Directors will meet at 1323 58th Street, Lubbock, July 14, 1992, at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9209429.

The Texas Municipal League (TML) Group Benefits Risk Pool Board of Trustees, Group Benefits Risk Pool will meet at the Sheraton South Padre Island Beach Resort, South Padre, July 16-18, 1992, at 8 a.m. Information may be obtained from Penny McIntosh, 211 East Seventh Street, Austin, Texas 78701, (512) 320-7861. TRD-9209435.

In Addition

The *Texas 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 Department of Commerce

A Proposal for the Expenditure of Stripper Well Settlement Funds for the State of Texas

Purpose. The state is seeking proposals from air conditioner manufacturers to make high efficiency air conditioning systems available to small public building owners in Texas at a significantly reduced cost. The state will in effect buy down the cost of energy efficient direct expansion (DX) units for small municipalities, counties, and school districts by funding a rebate to cover part of the cost differential between standard and high efficiency units. Targeted participants for the program are counties with less than 20,000 population, cities with less than 5,000 population, and school districts with less than 1,000 students. These entities will have access to the state's revolving loan program (LoanSTAR) to finance the remaining costs.

Background. Texas has a preponderance of small, basically rural, subdivisions: 60% of its counties have less than 20,000 residents, and 57% of its school districts have less than 1,000 students.

Because they are frequently remote and relatively hard to serve (in terms of delivering state services), local governments and school districts in the latter categories are, unfortunately, the last to realize a local restitutionary impact from the state's petroleum violation escrow dollars.

Thousands of small direct expansion (DX) air conditioners can be found in the offices, classrooms, and shops of these small municipalities, counties, and school districts. Many of the units were installed over 20 years ago, have had minimal to no maintenance, and are performing poorly at best. Replacement of these air conditioners with high efficiency units will provide not only energy dollar savings, but enhanced comfort.

Requirements. The state plans to enter into a volume purchasing agreement with a manufacturer capable of producing DX systems with SEER greater than 12 that will agree to the following terms: enter into a multi-year purchase agreement to provide eligible participants a rebate which will, at a minimum, cover part of the costs differential between standard and high efficiency units; provide a ten year warranty for the equipment; develop a simple purchasing procedure for eligible participants so that rebates will be handled through the manufacturer, not through distributors; assure that 6,000 units will be available for purchase over a six-year period; provide a state-wide network to service the units; and maintain purchase records and provide appropriate reports to the state.

Requests Information. If you wish to be considered, please provide the following information: SEER ratings

and size of air conditioner units proposed to be manufactured; retail cost of the units; proposed rebate levels; copy of proposed warranty; location of manufacturing site; new technologies involved in producing proposed equipment; implementation plan for delivering the service and product, including marketing of rebates, purchase procedure for eligible customers, and project record keeping.

Selection Criteria. The selection of the air conditioner manufacturer will be based primarily on the following factors: net economic benefit to eligible participants which will consider the initial cost, rebate level, SEER of the units, warranty, number of units and availability of units; preference given to manufacturers located in Texas; demonstrated willingness to foster development of new technologies; implementation plan described above.

The state reserves the right to accept or reject any or all proposals submitted. The state may use the responses hereto as a basis for further negotiation of specific details with offerors.

Costs Incurred in Responding. All costs directly or indirectly related to preparation of a response to this request or any oral presentation required to supplement and/or clarify a proposal which may be required by the state shall be the sole responsibility of the manufacturer. In addition, costs associated with negotiating a contract with the state will be borne by the manufacturer.

Release of Information. Information submitted relative to this request for proposal shall not be released by the state during the proposal evaluation process or prior to contract award. All information submitted to and retained by the state becomes public record and subject to disclosure under the Texas Open Records Act, unless an exception under such Act is applicable.

Proprietary Information. If the manufacturer does not desire proprietary information in the proposal to be disclosed under the Texas Open Records Act or otherwise, you are required to clearly identify (and segregate, if possible) all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If you fail to clearly identify proprietary information, you agree, by the submission of a proposal, that those sections shall be deemed non-proprietary and made available upon public request after the contract is awarded.

Other. Responses should be sent to the following entity: Texas Department of Commerce, P.O. Box 12728, Capital Station, Austin, Texas 78711, Phone: (512) 320-9689, Fax: (512) 320-9454.

Three bound copies of your proposal should be submitted by 12 noon on July 24, 1992. Please limit your responses to ten (10) pages or less. Questions about this request for proposal should be directed to Steve Jaeger, P.E., at (512) 463-1769.

Issued in Austin, Texas, on July 8, 1992.

TRD-9209388 Cathy Bonner
Executive Director
Texas Department of Commerce

Filed: July 8, 1992

For further information, please call: (512) 320-9666

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Comptroller of Public Accounts
Consultant Contract Award

In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, the Comptroller of Public Accounts furnishes this notice of consultant contract award.

The consultant proposal request was published in the May 22, 1992, issue of the *Texas Register* (17 TexReg 3799).

The consultant will develop and conduct a management audit program of the Windham School System (WSS) within the Texas Department of Criminal Justice (TDCJ). The program is intended to provide the Comptroller's Office and the school district with measurable audit results that will offer tangible recommendations and audit procedures to WSS to improve efficiency and effectiveness.

The contract is awarded to MGT Consultants, 2425 Torreya Drive, Tallahassee, Florida 32303. The total dollar value of the contract is \$319,960. The contract was executed June 25, 1992, and extends through August 31, 1992.

Issued in Austin, Texas, on July 6, 1992.

TRD-9209279 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Filed: July 6, 1992

For further information, please call: (512) 463-4091

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Invitation for Bids

Notice of Invitations for Bids: Pursuant to the State Lottery Act, Texas Civil Statutes, Article 179g, the Lottery Division of the Comptroller of Public Accounts announces its invitation for bids (IFB) for uniformed security officers for security control station at Texas Lottery Headquarters. The purpose of the IFB is to obtain binding offers for around the clock staffing of the security control station at the lottery headquarters by uniformed security officers.

Contact Person: Parties interested in submitting a bid should contact Joanne Severn, Purchasing, Comptroller of Public Accounts, LBJ Building, 111 East 17th Street, Room 207, Austin, Texas 78774, (512) 463-4125 for a complete copy of the IFB. The IFB will be available for pickup at the preceding address on Tuesday, July 14, 1992, between 1 p.m. and 5 p.m. (CDT), and during normal business hours thereafter.

Closing Date: Bids must be received in Room 207 of the LBJ Building not later than 4 p.m. (CDT), on July 27, 1992. Bids received after this date and time will not be considered.

Award Procedure: The lottery will award a contract to the lowest qualified bidder who submits a bid that meets specifications and is in the best interests of the state.

The Lottery Division reserves the right to accept or reject any or all bids submitted. The Lottery Division is under no legal or other requirements to execute a resulting contract on the basis of this notice or the distribution of the RFP. Neither this notice nor the RFP commit the Lottery Division to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: IFB available--July 14, 1992; Bids due--July 28, 1992, by 4 p.m. (CDT); Contract awarded--July 30, 1992.

Issued in Austin, Texas, on July 8, 1992.

TRD-9209371 Martin E. Cherry
Chief, General Law
Comptroller of Public Accounts

Filed: July 8, 1992

For further information, please call: (512) 463-4125

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Governor's Energy Office
Request for Proposals-Extended
Submission Deadline

The Governor's Energy Office (GEO) is extending the proposal submission deadline of the request for proposals published on May 29, 1992 (17 TexReg 3926). The new submission deadline is July 17, 1992.

Notice of Invitation. The GEO invites proposals from qualified nonprofit organizations and social service agencies to implement programs to provide training and technical assistance in the efficient use of energy weatherization for nonprofit organizations and/or their low- to moderate-income clients. For the purposes of this program, "nonprofit organizations" means charitable organizations with §501(c)(3) status from the United States Internal Revenue Service. The organization submitting the proposal must demonstrate proof of §501(c)(3) status.

This program is funded with oil overcharge funds appropriated to the Public-Private Partnership Program (PPP) by the 71st Texas Legislature. A dollar-for-dollar match is required for projects funded through this program. (Match can be other funding sources or in-kind, except in cases of documented extreme hardship. Determination of cases of extreme hardship will be at the discretion of the Governor's Office.)

Projects and programs funded through the PPP must at a minimum achieve the following: promote the efficient use of energy by nonprofit organizations or their low- to moderate-income clients through technical assistance, training, and building or equipment modifications; and form a public-private partnership by matching funds in addition to oil overcharge funds from sources such as private and corporate foundations; direct grants, or in-kind professional services from local governments, utilities, private businesses, or individuals; the applicant's own resources; or a combination of sources.

Service to be Performed. One or more contractors will be selected to perform the following services:

- market the program to eligible non-profit organizations;
- recruit and train unemployed/low- income persons as energy auditors and energy counselors;
- assign teams to visit the non-profit organizations and supervise these teams in providing, at a minimum, the

following services: conducting a walk-through energy audit of the non-profit organization; weather-stripping doors, caulking around windows, installing water flow restrictors, wrapping hot water heaters, and other low-cost weatherization measures as needed; counseling about energy behavior modifications, such as lowering thermostats, which can reduce utility bills; providing written literature (provided by the Energy Extension Service) with additional information about energy saving opportunities; and making referrals to other agencies and organizations that may offer assistance with more expensive energy efficiency measures;

conduct follow-up visits or telephone interviews with a sample of program participants, and prepare a final report evaluating: the impact of the program on the participants' energy awareness; changes in the energy use patterns of program participants; and measurable energy savings attributable to the program.

collect and report additional data as requested by GEO for evaluation purposes.

Restrictions on the Use of Funds. Oil overcharge funds are monetary settlements returned to the states as a result of litigation by the U. S. Department of Energy (DOE) against certain oil companies for violations of price controls in effect between 1973 and 1981. The courts returned these funds to the states for use in certain energy programs deemed to provide restitution to citizens aggrieved by the overcharges.

Funds are subject to program guidelines of the DOE State Energy Conservation Plan (SECP) and the *U.S. v. Exxon* court decision, and may not be used to pay indirect or administrative costs. The funds may be used to supplement existing programs, but may not supplant funds already allocated to the programs.

Projects selected will be funded on a cost reimbursement basis. All expenses must be properly documented and permissible under the contract and under federal guidelines, and all are subject to approval by the Governor's Office. No advance payments are allowable.

Contact Person. To obtain a copy of the proposal format, or for more information, contact Jan Gore, Governor's Energy Office, P.O. Box 12428, Austin, Texas 78711, (512) 463-1993. Proposal formats will be sent via regular mail, not by express mail or by fax machine.

Closing Date. Six copies of the proposal should be sent to: Renee' Veasey, Governor's Energy Office, P.O. Box 12428, Austin, Texas 78711.

The Energy Office is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701. In order to be considered, proposals must contain the original signature of a person authorized to sign for the organization and must be received or postmarked by July 17, 1992. No extensions will be granted. Proposals may not be submitted by fax machine.

Selection Criteria. Proposals must adhere to the format provided by the Governor's Energy Office. Proposals will be evaluated using the following criteria: Energy savings (10%). The proposal must have the potential to improve energy efficiency or to reduce energy costs for non-profit organizations or their low- to moderate-income clients; Training (20%). Proposers' plan for training unemployed/low- income persons as energy auditors/counselors; Reasonableness of Budget (15%). The proposal must document how additional resources, which may be monetary

or in-kind goods and services, will be leveraged from private sector services. (Except in cases of documented extreme hardship, a dollar-for-dollar match is required.) Leveraging more than the minimum amount is strongly encouraged; Restitution to consumers (15%). The proposal must indicate how the program will benefit the non-profit organization's clients. It must show how the energy dollars saved will be used to increase or improve services to clients. Additional weight under this criterion will be given to non-profit organizations whose clients are low- to moderate-income persons; Community support (10%). The proposal should be supported by leaders of the businesses community, religious organizations, utilities, local governments, and/or civil organizations; Innovation (5.0%). This proposal should attempt new solutions for old problems or use proven energy saving methods that have not been adopted in the community; Qualifications of the proposer (15%). The proposing organizations should have the proven ability to administer program dollars efficiently and to deliver services expediently and efficiently; and Ongoing benefits (10%). The program should have the potential to be completed within a short time frame (one to two years) with lasting benefits to the organizations and/or their clients.

Final selection of contractors will be based on the recommendations of a proposal review panel. The GEO reserves the right to reject any or all proposals and is under no legal requirement to execute a contract on the basis of this request for proposals. The review panel may request finalists to provide additional information or to meet with GEO staff in Austin prior to final selection. No respondent, however, will be reimbursed for any costs incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas, on June 25, 1992.

TRD-9209343 Harris E. Worcester
Director
Governor's Energy Office

Filed: July 7, 1992

For further information, please call: (512) 463-1931

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**Texas Department of Human Services
Consultant Proposal Request**

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (TDHS) is inviting proposals for consultant services.

Description of Services: The consultant will analyze the mainframe capacity of the TDHS mainframe computers, to determine the length of time that current capacity will suffice. In addition, a method to charge the using entity within TDHS for use of automation services will be developed.

Contact Person: To obtain a complete copy of the request for proposal packet, contact Bobbie Ann Fisher, Acquisition Analyst, M.C. W-631, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030, or by phone at (512) 450-4102.

Closing Date for Receipt of Offers: The last date offers will be received is July 31, 1992.

Evaluation and Selection: Evaluation criteria will include proven knowledge of automation capacity management, and analytical skills; quality of proposed approach; and cost. TDHS has knowledge that the Federal Systems

Integration and Management Center (FEDSIM), a unit of the United States General Services Administration, can perform the necessary services on a nonprofit basis, and is inclined to award the contract to FEDSIM unless a substantially better proposal is received.

Issued in Austin, Texas, on July 8, 1992.

TRD-9209370 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: July 8, 1992

For further information, please call: (512) 450-3765

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Texas Department of Insurance
Company Licensing

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for incorporation in Texas for AcurCare Group, L.L.P., a domestic third party administrator. The home office is in Irving.
2. Application for admission to do business in Texas for American Insurance Administration Group, Inc., a foreign third party administrator. The home office is in Clearwater, Florida.
3. Application for admission to do business in Texas for F.A. Richard & Associates, Inc., a foreign third party administrator. The home office is in Mandeville, Louisiana.
4. Application for admission to do business in Texas for Group Management Services, Inc., a foreign third party administrator. The home office is in Lynnwood, Washington.
5. Application for incorporation in Texas for Benesys (assumed name for Group Plan Clinic, Inc.), a domestic third party administrator. The home office is in Houston.
6. Application for incorporation in Texas for Santa Fe Preferred Healthcare, Inc., a domestic third party administrator. The home office is in Temple.
7. Application for admission in Texas for Underwriters and Administrators, Inc., a foreign third party administrator. The home office is in Harrisburg, Pennsylvania.
8. Application for incorporation in Texas for WorldNet Services Corp., a domestic third party administrator. The home office is in Richardson.

Issued in Austin, Texas, on July 6, 1992.

TRD-9209355 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: July 7, 1992

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

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Texas Council on Offenders with
Mental Impairments
Request for Proposals

Notice of Invitation. The Texas Council on Offenders with Mental Impairments invites interested applicants to

submit proposals for the provision of case management services to eligible special needs offenders in selected areas of the state. This case management service will be implemented as directed in House Bill 93 (HB 93), passed by the Texas Legislature in the Second Called Session of the 72nd Legislature. Material contained in the packet includes requirements and overall compatibility with the intent of HB 93.

Background. Jail and prison overcrowding has resulted in a significant demand upon criminal justice resources. Within the incarcerated offender population, a group has been identified as placing particular demand upon available space and resources. Those special needs offenders were identified as elderly, terminally or significantly ill, and physically handicapped.

In evaluating the benefit of incarceration for these offenders, there are some offenders within this population who by virtue of their medical and/or physical condition are not considered to pose a threat to public safety, or likely to re-offend. HB 93 seeks to identify this particular inmate population within the prison system and grant special needs parole for those inmates who would benefit from community-based services. The case management services are needed to ensure adequate planning and delivery of services needed by the special needs offenders prior to and after release from incarceration.

Proposed Scope. Proposals are to address the following parameters: a defined service area and a detailed plan for the provision of cost-effective case management services. The detailed plan includes, but is not limited to: demonstrated ability, based on staff, experience, and organizational structure to perform case management, a description of the client assessment process, service plan development, and monitoring of client needs; the number and frequency of case management contacts, an evaluation plan to assess measures of the program's performance.

To Request a Packet. Parties interested in submitting a proposal should contact Pat Hamilton, Texas Council on Offenders with Mental Impairments, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5406 for a complete copy of the RFP.

Proposers Conference. A proposers conference will be held on August 7, 1992, in Huntsville. All questions regarding this RFP must reference this RFP and be submitted in writing, and received by the Council by 5 p.m. on July 31, 1992. Verbal responses to questions presented at the proposers conference are not binding on this RFP process and do not preclude the printed information or requirements in the RFP packet.

Closing Date. The closing date for receipt of proposals by the Texas Council on Offenders with Mental Impairments is August 13, 1992, at 5 p. m. Proposals received after this date and time will be rejected.

Award Procedure. Selection of proposals will be based on demonstrated competence, experience, knowledge, and qualifications in the area of services desired and reasonableness of the proposed fee. All proposals will be subject to evaluation by a committee of qualified personnel charged with selecting the proposals which most clearly meet the Council's need. Proposers may be asked to provide clarification of their proposal, which may include making an oral presentation of their proposal prior to final selection and/or site visits.

The Texas Council on Offenders with Mental Impairments reserves the right to accept or reject any or all responses

submitted. The Texas Council on Offenders with Mental Impairments is under no legal or other requirements to execute a resulting contract on the basis of this notice nor the distribution of the RFP. Neither this notice nor the RFP commit the Council to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on July 6, 1992.

TRD-9209316 Dee Kifowit
Director
Texas Council on Offenders with Mental
Impairments

Filed: July 7, 1992

For further information, please call: (512) 406-5406



Notice of Invitation. Texas Council on Offenders with Mental Impairments invites interested applicants to submit proposals for pilot projects that would provide community-based residential treatment services for special needs offenders. These projects will be implemented as directed in House Bill 93 (HB 93), passed by the Texas Legislature in the Second Called Session of the 72nd Legislature. Material contained in the packet includes requirements for responding to this invitation. Responses to the packet will be evaluated on these requirements and overall compatibility with the intent of HB 93.

Background. Jail and prison overcrowding has resulted in a significant demand upon criminal justice resources. Within the incarcerated offender population, a group has been identified as placing particular demand upon available space and resources. HB 93 identified those offenders as special needs and is comprised of elderly, terminally or significantly ill, and physically handicapped.

In evaluating the benefit of incarceration for special needs offenders, there are some who by virtue of their medical and/or physical condition are not considered to pose a threat to public safety, or likely to re-offend. HB 93 seeks to identify those offenders and allow for a special needs parole status that would divert or transfer those offenders to community-based residential treatment programs. These residential services should provide cost-effective alternatives to incarceration for a limited number of eligible offenders. Eligibility guidelines include, but are not limited to, offenders whose instant offense is not one as described in the Code of Criminal Procedure, Article 42.12, §3G, are determined Medicaid/Medicare eligible prior to release from incarceration and are United States citizens or legal residents.

Proposed Scope. Proposed pilot projects for residential services are to address the following parameters which are defined in the packet: collaboration, community support, residential treatment services, programmatic support services, transportation, location, and facility operations.

To Request a Packet. Parties interested in submitting a proposal should contact Pat Hamilton, Texas Council on Offenders with Mental Impairments, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5406 for a complete copy of the RFP.

Proposers Conference. A proposers conference will be held on August 7, 1992, in Huntsville. All questions regarding this RFP must reference this RFP and be submitted in writing, and received by the Council by 5 p.m. on July 31, 1992. Verbal responses to questions presented at the proposers conference are not binding on this RFP

process and do not preclude the printed information or requirements in the RFP packet.

Closing Date. The closing date for receipt of proposals by the Texas Council on Offenders with Mental Impairments is August 13, 1992, at 5 p. m. Proposals received after this date and time will be rejected.

Award Procedure. Selection of proposals will be based on demonstrated competence, experience, knowledge, and qualifications in the area of services desired and reasonableness of the proposed fee. All proposals will be subject to evaluation by a committee of qualified personnel charged with selecting the proposals which most clearly meet the Council's need. Proposers may be asked to provide clarification of their proposal, which may include making an oral presentation of their proposal prior to final selection and/or site visits.

The Texas Council on Offenders with Mental Impairments reserves the right to accept or reject any or all responses submitted. The Texas Council on Offenders with Mental Impairments is under no legal or other requirements to execute a resulting contract on the basis of this notice nor the distribution of the RFP. Neither this notice nor the RFP commit the Council to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on July 6, 1992.

TRD-9209317 Dee Kifowit
Director
Texas Council on Offenders with Mental
Impairments

Filed: July 7, 1992

For further information, please call: (512) 406-5406



Texas Public Finance Authority Public Notice

The board of directors, of the Texas Public Finance Authority, will visit various facilities of the Texas Department of Criminal Justice Institutional Division, on Monday, July 27, 1992. Facilities to be visited are located in Gatesville and Marlin. The purpose of the visit will be to become better informed as to the construction of these facilities, their cost, and their operation. Representatives of the TDCJ-ID staff will brief members of the TPEA board concerning the master plan for prison system expansion and related matters during the course of the visit. While official business matters will be discussed among TPFA board members, no formal action on such matters will be taken. TPFA board members will travel to Gatesville via state aircraft, departing Austin approximately 9 a.m. and returning to Austin approximately 5 p.m. on Monday, July 27, 1992.

Issued in Austin, Texas, on July 6, 1992.

TRD-9209294 Glenn Hartman
Executive Director
Texas Public Finance Authority

Filed: July 6, 1992

For further information, please call: (512) 463-5544



Public Utility Commission of Texas
Notice of Intent to File Pursuant to PUC
Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Midland County, Midland.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for Midland County pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11295.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Midland County. The geographic service market for this specific service is the Midland area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 6, 1992.

TRD-9209345 John M. Rentrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 7, 1992

For further information, please call: (512) 458-0100

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Texas Department of Transportation
Consultant Contract Awards

Under the provisions of Texas Civil Statutes, Article 664-4, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services.

The request for professional engineering services was published in the January 21, 1992, issue of the *Texas Register* (17 TexReg 489).

The consultant will provide engineering services for the preparation of a site selection study, airport master plan, and environmental assessment for the following TxDOT project: 9309-031, City of Mount Pleasant.

The engineering firm for these services is Bucher, Willis & Ratliff, 3620 Old Bullard Road, Suite 206, Tyler, Texas 75701.

The total value of the contract is \$61,000 and the contract period starts on July 6, 1992, until the completion of the project.

If there are any questions, please contact Karon Wiedemann, Manager, Grant Administration, Division of Aviation, (512) 476-9262.

Issued in Austin, Texas, on July 7, 1992.

TRD-9209339 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: July 7, 1992

For further information, please call: (512) 463-8630

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Under the provisions of Texas Civil Statutes, Article 664-4, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services.

The request for professional engineering services was published in the January 21, 1992, issue of the *Texas Register* (17 TexReg 489).

The consultant will provide engineering services for the feasibility study for the following TxDOT project: 9301-011, Kendall County and the City of Boerne.

The engineering firm for these services is Proctor/Davis/Ray Engineers, Inc., 800 Corporate Drive, Lexington, Kentucky 40503.

The total value of the contract is \$60,000 and the contract period starts on July 6, 1992, until the completion of the project.

If there are any questions, please contact Karon Wiedemann, Manager, Grant Administration, Division of Aviation, (512) 476-9262.

Issued in Austin, Texas, on July 7, 1992.

TRD-9209340 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: July 7, 1992

For further information, please call: (512) 463-8630

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Texas Board of Veterinary Medical
Examiners

Correction of Error

The Texas Board of Veterinary Medical Examiners adopted an amendment to 22 TAC §573.43, concerning misuse of DEA narcotics registration. The rule was published in the July 3, 1992, *Texas Register* (17 TexReg 4753).

Due to an error in the agency's submission, comments received concerning the rule were not included in the adoption preamble. The agency's revised adoption preamble reflecting the comments should read as follows.

"The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.43 with no changes to the proposed text published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2090).

"The amendment will clarify when Drug Enforcement Administration (DEA) and /or Department of Public Safety (DPS) controlled substances certificates are required.

"The amendments to this section will bring the rule into compliance with federal regulations.

"Comments received concerning the amendment were as follows.

"Concern was expressed that oral orders over the telephone, for controlled substances and narcotics should be prohibited, since it circumvents the 'paper-trail' that should follow all transactions.

"The agency's response is that the invoices represent a 'paper trail' and the Board has no authority over the regulations governing the use of DPS and/or DEA controlled substances certificates.

"Another commenter suggested that specific wording be included that a licensee cannot give (sell) the "use" of his DEA/DPS registration, to a wholesale or retail drug salesman - for any purpose.

"The agency responds that restrictions as to their use, i.e. "give (sell)" the registration to a wholesale or retail drug salesman must be addressed by the appropriate authority.

"Another commenter suggested that veterinarians should be prohibited from using multiple addresses and multiple business names should be prohibited.

"The agency responds that it is not within the Board's authority to place this restriction on the registration of controlled substances certificates.

"Another commenter suggested that DVMS should be prohibited from ordering drugs from out-of-state and overseas suppliers.

"The agency responds that it is not within the Board's authority to impose such a restriction."



Texas Water Commission

Meeting Notice

A meeting of the Management Committee of the Galveston Bay National Estuary Program (GBNEP) is scheduled for: Wednesday, July 15, 1992, 9 a.m., University of Houston-Clear Lake, Forest Room, Bayou Building, 2700 Bay Area Boulevard, Houston.

Following opening remarks and approval of minutes of the last meeting, a summary of GBNEP activities will be

presented by the program staff. The Management Committee will then consider review/revision of the GBNEP Report Review Policy to include a 45-day limit on final project report reviews. The Management Committee will then consider final report approvals for projects entitled: Toxic Contaminant Characterization of Aquatic Organisms in Galveston Bay: A Pilot Study, Ambient Water and Sediment Quality of Galveston Bay, and Characterization of Public Health Issues in Galveston Bay. The Management Committee will then consider sole source awards for projects entitled: Galveston Bay Decent Program, Galveston Bay Marine Mammal Research Expedition Project, Untreated/Partially Treated Effluent Loadings, Galveston Bay Literature Survey, and Galveston Bay Information Center. The Management Committee will then consider award of an action plan demonstration project for fiscal year 1993. The Management Committee will then consider seeking funding to continue the project entitled: Galveston Bay Pollution Reporting Hotline. The Management Committee will then consider appointment of an fiscal year 1993 Bay Day Steering Committee representative. The Management Committee will then hear a brief from Dr. Susan Hadden on the project entitled: Galveston Bay Management Evaluation. The Management Committee will then hear a briefing from Dr. Larry McKinney on the project entitled: Coastal Preserves Management Plans. After consideration of other business and announcement of the next meeting the meeting will be adjourned.

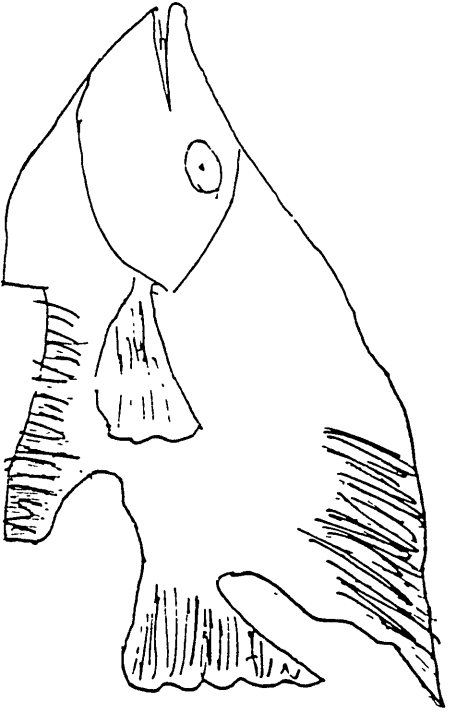
Issued in Houston, Texas, on July 3, 1992.

TRD-9209336 Frank S. Shipley
Program Director
Texas Water Commission

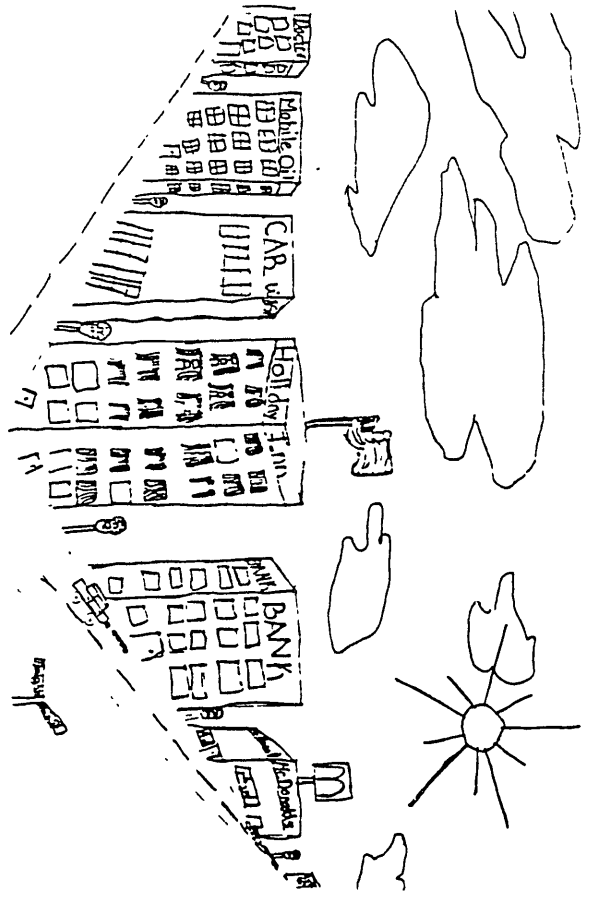
Filed: July 7, 1992

For further information, please call: (713) 332-9937

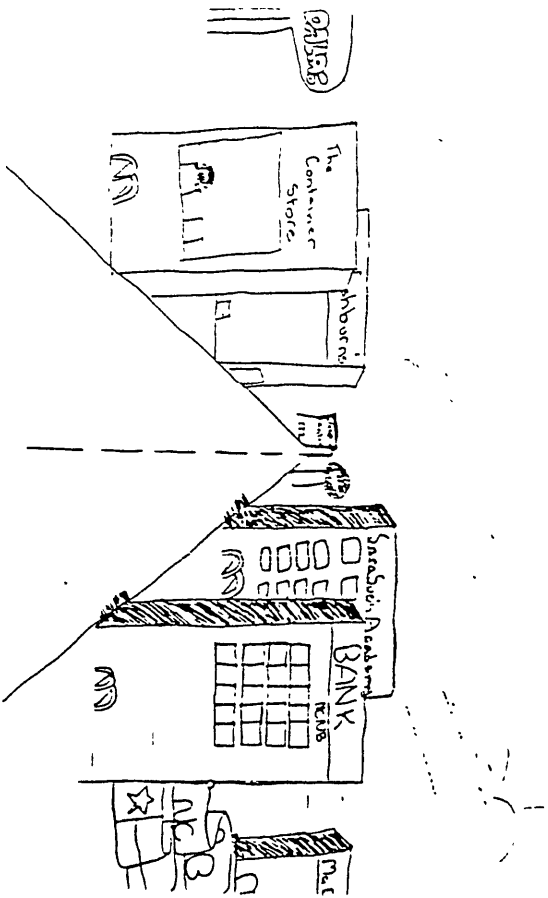




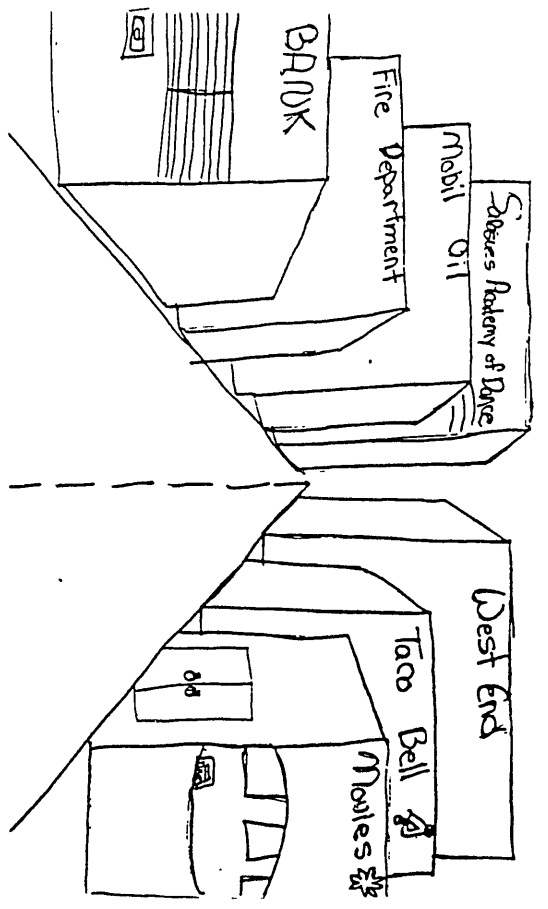
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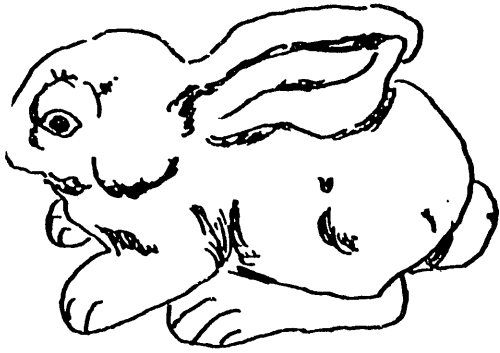
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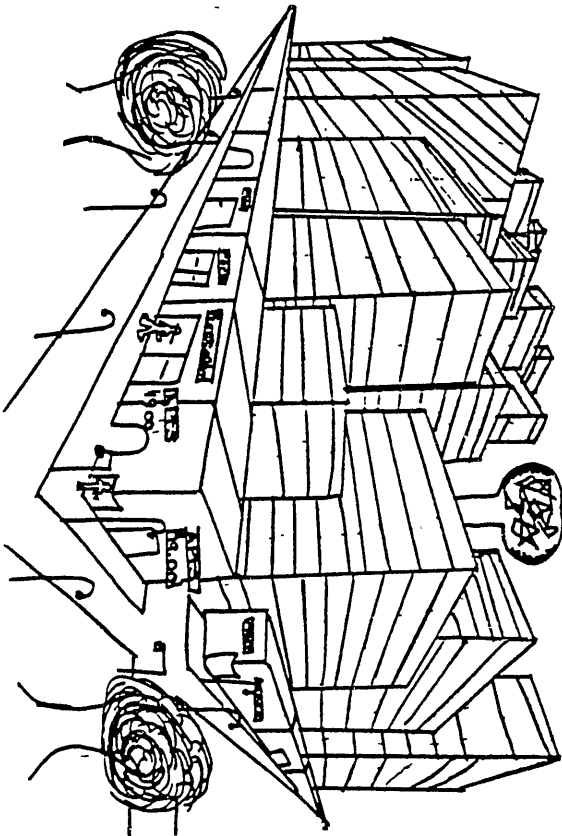
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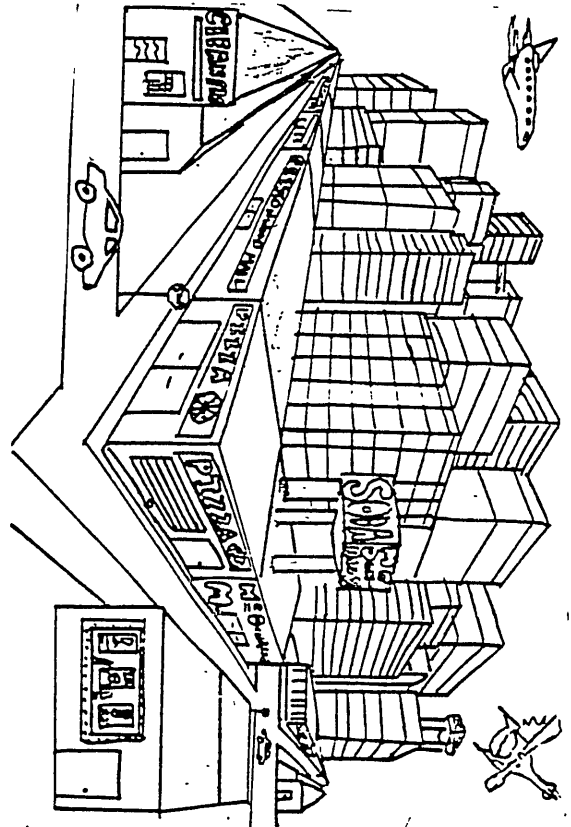
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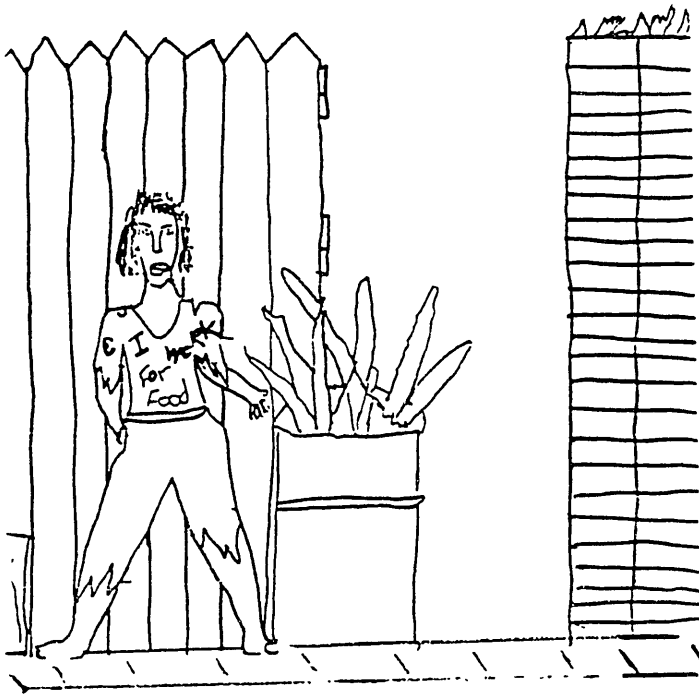
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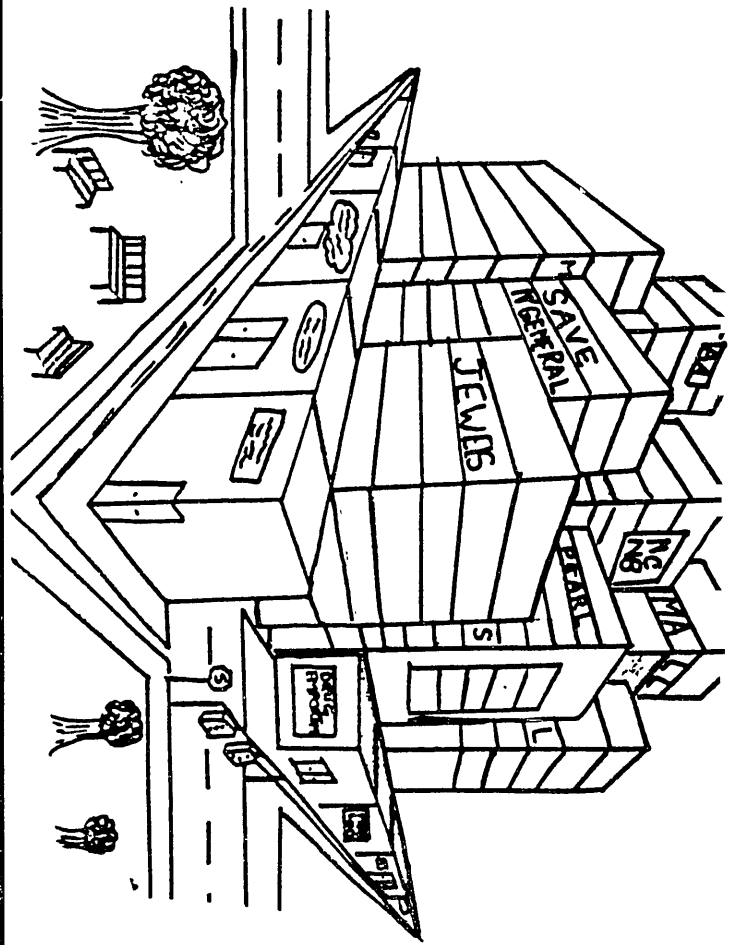
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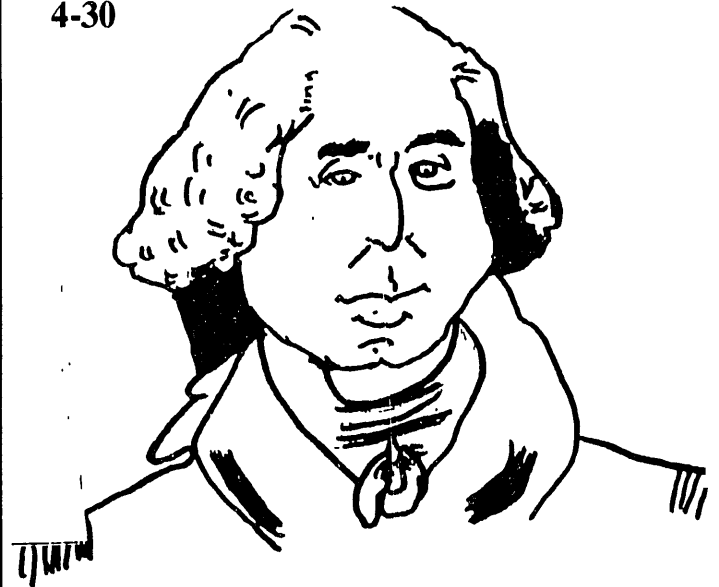
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Franklin Pierce

1853-1857



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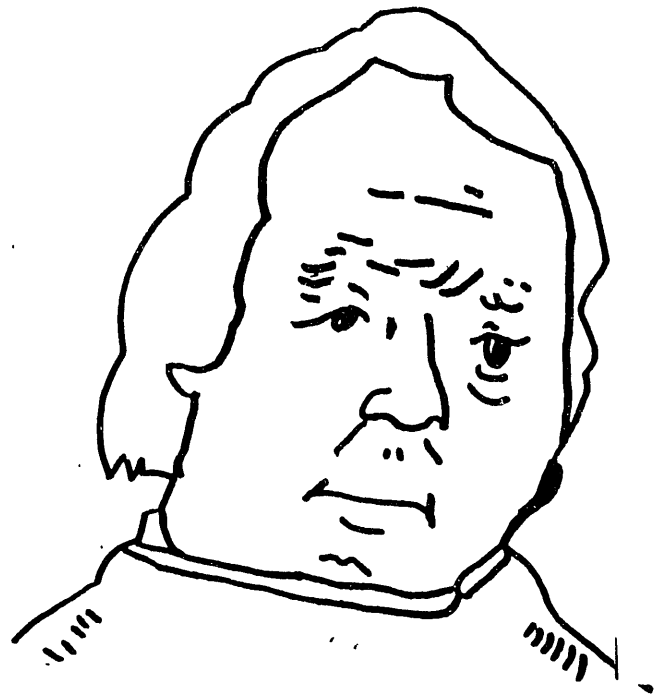
James Madison

1809-1817



George Bush
1989-

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Andrew Johnson
1865-1869

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Rutherford B. Hayes
1877-1881

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Ulysses S. Grant
1869-1877

1992 Publication Schedule for the Texas Register

Listed below are the deadline dates for the September-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	Wednesday, July 8	Thursday, July 9
53 Friday, July 17	SECOND QUARTERLY INDEX	
54 Tuesday, July 21	Wednesday, July 15	Thursday, July 16
55 Friday, July 24	Monday, July 20	Tuesday, July 21
56 Tuesday, July 28	Wednesday, July 22	Thursday, July 23
57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8
70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22

82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, Novmber 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesay, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 Friday, January 1	Monday, December 28	Tuesday, December 29

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