

Texas Register

Volume 15, Number 44, June 12, 1990

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Information Available: The eight 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

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Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

In Order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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 Administrative Code*, sections number, or TRD number.

Texas Administrative Code

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

How to Cite: Under the TAC scheme, each agency 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 Publications

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Name: Michael Greenslate 4
Grade: 9
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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.

Appointment Made May 31,
1990

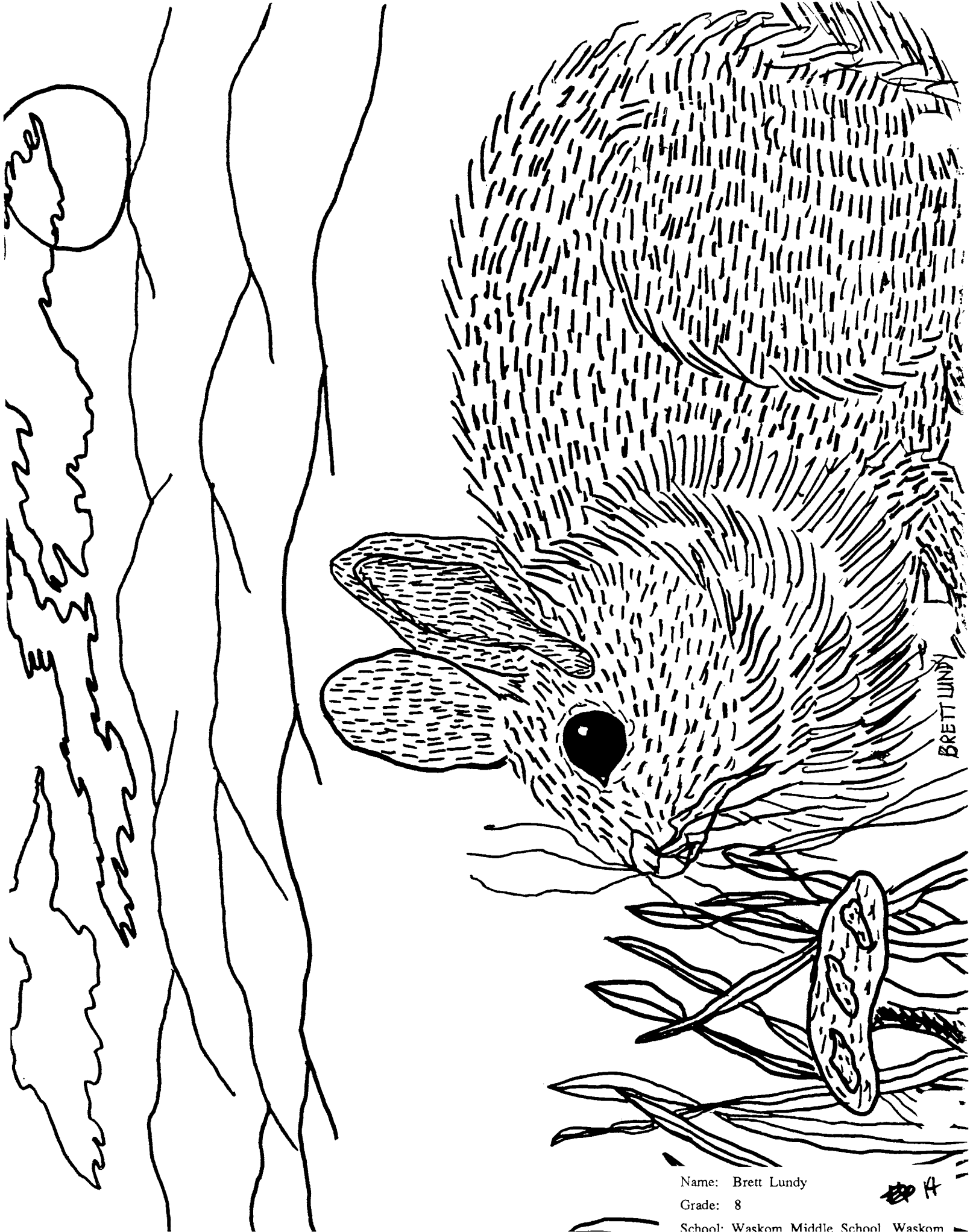
To be a member of the **149th Judicial District Court** for a term to expire December 31, 1990: Robert E. May, 111 Arrowhead, Lake Jackson, Texas 77566. Mr. May is replacing Judge John Rainey of Angleton, who resigned.

Issued in Austin, Texas on May 31, 1990.

TRD-9005883

William P. Clements, Jr.
Governor of Texas





Name: Brett Lundy

Grade: 8

School: Waskom Middle School Waskom

~~12~~ 14

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 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.74

The State Board of Insurance is renewing the effectiveness of the emergency adoption of new §7.74, for a 60-day period effective June 8, 1990. The text of new §7.74 was originally published in the February 16, 1990, issue of the *Texas Register* (15 TexReg 801).

Issued in Austin, Texas, on June 4, 1990.

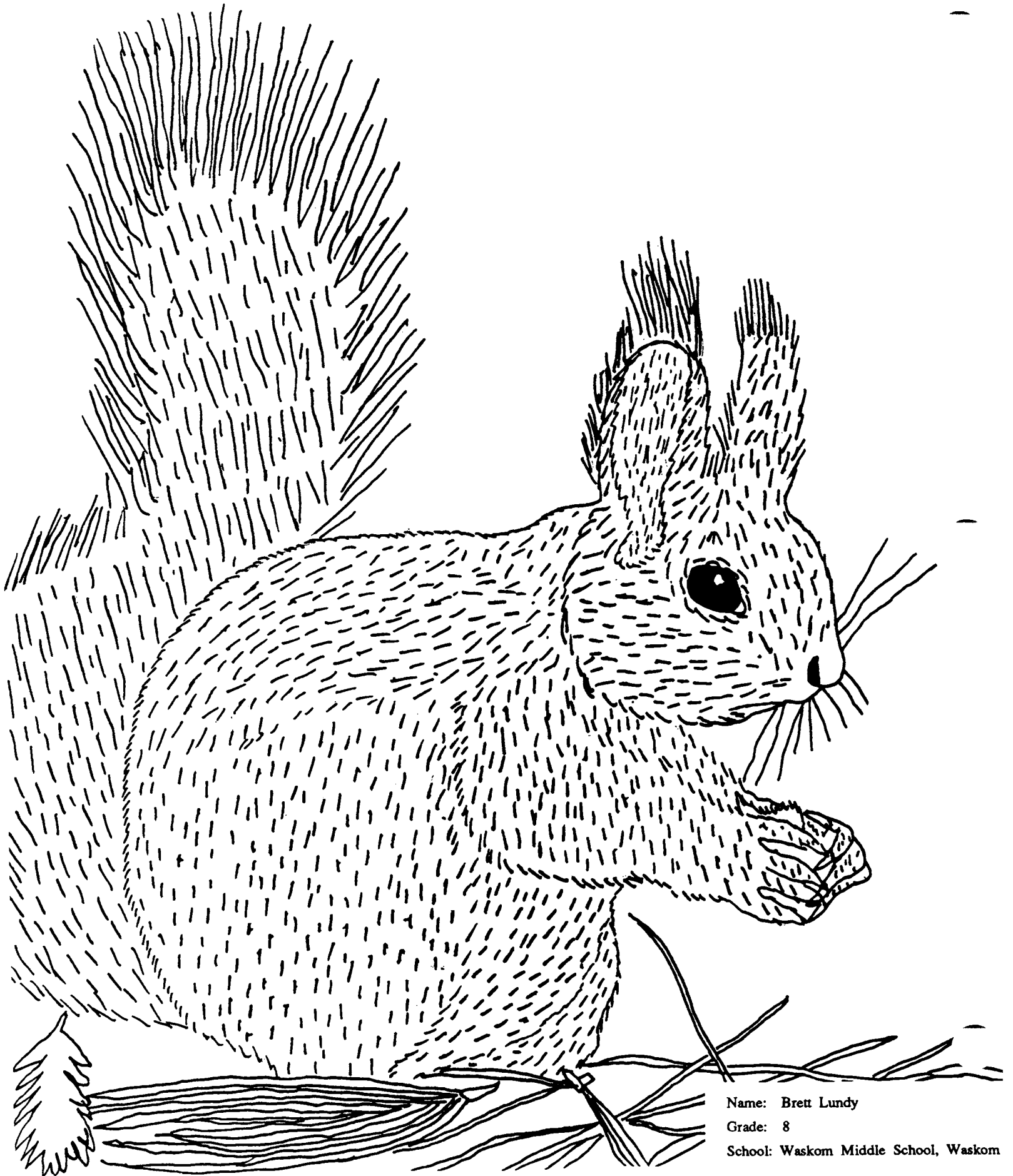
TRD-9005845 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective date: June 8, 1990

Expiration date: August 7, 1990

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





Name: Brett Lundy

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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 4. AGRICULTURE Part II. Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.2

The Texas Animal Health Commission proposes an amendment to §35.2, concerning general requirements.

The amendment will provide for a retest of animals with a test discrepancy between field, or market and the laboratory; vaccinated animals that are card-positive but are classified negative on the PCFIA or CITE tests can move intrastate; field-tested cattle will be required to be identified to aid in tracebacks; market card-positive, CITE or PCFIA negative vaccinated animals can move intrastate; "S" branding will be required on all cattle in quarantined feedlots except steers and spayed heifers; the provision for extenuating circumstances will be deleted from this title and moved to Chapter 59.

Mr. Bill Hayden, director of administration, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Robert L. Daniel, director of program records, has determined that for each year of the first five years the section in effect the public benefit anticipated as a result of enforcing the section will be to provide a means to require exposed and infected animals released from a market because of a test discrepancy to be located and tested; for the free intrastate movement of card-positive, vaccinated cattle when they have been tested with the CITE or PCFIA tests and are classified as negative; for the identification of cattle when classified as negative; for the identification of cattle when tested during a herd test; and for "S" branding of all cattle except steers and spayed heifers upon entering a quarantined feedlot. There will be no effect on small businesses as a result of enforcing the section. There will be no anticipated economic cost to persons who are required to comply with this section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P. O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes,

Chapters 161 and 163, which provides the commission with authority to adopt rules and set forth the duties of this commission to control disease.

§35.2. General Requirements.

(a) Testing of blood and semen.

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

(3) When a discrepancy occurs between test results of the state-federal laboratory and those of the person who originally tested the animal(s), the entire consignment, shipment, or herd will be traced and held pending results of a retest on the animal(s) with the discrepancy.

(4) Samples for all retest purposes will be collected by commission or APHIS personnel and submitted to the state-federal laboratory for confirmation testing. An epidemiologist may designate those cattle that do not require a test. The herd of origin, as well as the herd in which the animal(s) is presently located, will be affected by the test results of the state-federal laboratory. The state-federal laboratory initial test results will prevail if the traced animal cannot be positively identified or if it has been slaughtered and cannot be retested.

(5) When the state-federal laboratory is unable to confirm results of a test because of insufficient serum, hemolyzed blood, or broken tubes, the commission may require a trace and retest of the animals not confirmed.

(6)[(3)] When the commission has reason to believe the tests are controversial, contested, or disputed, it may require that its personnel be present at the time of blood collection and testing as a basis for compliance with these regulations. In such case, the commission shall notify the herd owner prior to the test.

(b) Classification of cattle. Cattle shall be classified by approved personnel by an evaluation of titer responses for all cattle to serological tests, or by identification of *Brucella abortus* in specimens taken from these cattle. The following serological tests may be used for classification cattle.

(1)-(7) (No change.)

(8) Particle concentration fluorescence immunoassay (PCFIA) test. May

be used to determine the brucellosis disease status of test-eligible cattle and bison when conducted by methods approved by USDA, APHIS, VS. When used as a supplemental test on card-positive vaccinated cattle, a negative PCFIA result will allow them to be classified as negative for intrastate movement only.

(9) Concentration immunoassay test (CITE). Used as a supplemental test in market channels where vaccinated cattle have been disclosed as positive by use of the card test [and/or BAPA tests]. Card positive CITE-negative vaccinated animals may be classified as negative for intrastate movement only. [suspects and the] The remainder of the consignment may move unrestricted. CITE-positive animals will be considered as reactors and the remainder of the consignment will be considered as exposed.

(10) (No change.)

(c) (No change.)

(d) Requirements for a herd test. A herd test shall include all nonexempt cattle in the herd six months of age or older. All cattle tested shall be identified with either an official eartag, an individual registration tattoo, or individual registration brand. Identification shall be recorded on the test record at time of blood sample collection.

(e) Requirements of a market test.

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

(7) Cattle which show a positive reaction to the card test shall have another blood sample collected from them by an inspector. On vaccinated animals the inspector will conduct another card test and the CITE test or deliver the sample to a laboratory for a PCFIA test. If negative to the CITE or PCFIA tests the cattle shall be classified negative for intrastate movement only and marked on the hip with yellow paint. The remainder of the consignment may move unrestricted. [The sample] Samples tested with the CITE test shall then be submitted to a state-federal laboratory in a vacutainer for supplemental testing and accompanied by another completed VS Form 4-54 which lists only the card positive cattle.

(f)-(n) (No change.)

(o) Requirements for a quarantined feedlot. All parturient and postparturient cattle must be officially tested for brucellosis within 30 days prior to entry into a quarantined feedlot. All cattle except steers and spayed heifers in a quarantined feedlot shall be classified as exposed to brucellosis. The quarantined feedlot shall be maintained for finish feeding of cattle in drylot with no provisions for pasturing or grazing. All [untested, test-eligible cattle, or negative exposed] cattle except steers and spayed heifers must be permanently identified with a hot iron "S" brand either on the left jaw or high on the tailhead upon entering such feedlots. All cattle except steers and spayed heifers leaving such feedlot must go directly to slaughter; or may be moved directly to another quarantined feedlot with an "S" permit; or may be "S" branded at the feedlot and move to a market to be sold for movement with an "S" permit issued at the market directly to another quarantined feedlot or directly to slaughter.

(p)-(u) (No change.)

(v) Extenuating circumstances. In case of unusual circumstances or individual hardship, the executive director may vary or waive any provisions of these rules provided such waiver is not in conflict with sound epidemiologic principles. Individual hardship will commonly mean unforeseen circumstances affecting the owner or his operation beyond his control.]

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 May 25, 1990.

TRD-9005850 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

Subchapter B. Eradication of Brucellosis in Swine

• 4 TAC §35.41

The Texas Animal Health Commission proposes an amendment to §35.41, concerning definitions.

The amendment will delete the definition of "dealer" as that term is defined in other swine regulations.

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

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public

benefit anticipated as a result of enforcing the section will be to provide the general public with easier reading of the regulation by removing duplicate wording. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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

[Dealer-

(a) Any person engaged in the business of buying or selling swine in commerce on his own account, as an employee or agent of the vendor, the purchaser, or both, or on a commission basis.

(b) The term shall not include a person who buys or sells swine as part of his own bona fide breeding, feeding, or stocker operations but does not include livestock markets and commission merchants.]

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 May 25, 1990.

TRD-9005851 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

• 4 TAC §35.43

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

The Texas Animal Health Commission proposes the repeal of §35.43, concerning identification and testing requirements.

The section is no longer required because identification and testing requirements will be set forth in §55.7.

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

Robert L. Daniel, director of program records, 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 none. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.43. Identification and Testing Requirement.

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 May 25, 1990.

TRD-9005863 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

The Texas Animal Health Commission proposes new §35.43, concerning persons authorized to conduct official tests. This section, previously known as §35.44, also contains new language.

The new section provides authorization and guidelines for persons collecting swine blood for brucellosis testing and for reporting test results.

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

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on who is authorized to conduct official brucellosis testing on swine. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules

and set forth the duties of this commission to control disease.

§35.43. Persons Authorized to Conduct Official Test.

(a) Collection of samples. Only the veterinarians who are approved, recognized, and accredited by the commission and the United States Department of Agriculture, or their employees, or regularly employed representatives of the Texas Animal Health Commission or the United States Department of Agriculture are authorized to collect blood samples for the purpose of conducting tests for brucellosis. The accredited veterinarian is responsible for all acts of his employees engaged in brucellosis testing.

(b) Conducting official test. The following persons or facilities are authorized to conduct the B.B.A. card test:

(1) veterinarians approved by the commission and the United States Department of Agriculture;

(2) regularly employed and authorized representatives of the Texas Animal Health Commission or the United States Department of Agriculture;

(3) other individuals approved by the commission and the United States Department of Agriculture.

(c) Reporting test results. Results of all swine brucellosis tests must be reported to the Texas Animal Health Commission within 48 hours.

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 May 25, 1990.

TRD-9005852 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

◆ ◆ ◆
• **4 TAC §35.44**

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

The Texas Animal Health Commission proposes the repeal of §35.44, concerning persons authorized to conduct official test. In order to change the numbering sequence, this repeal will be repropoed as §35.43.

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

Robert L. Daniel, director of program records, 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 none. There will be no effect on small businesses as a result of enforcing the section. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules set forth the duties of this commission to control disease.

§35.44. Persons Authorized to Conduct Official Test.

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 May 25, 1990.

TRD-9005864 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

◆ ◆ ◆
The Texas Animal Health Commission proposes new §35.44, concerning identification and movement of brucellosis infected and exposed swine. The section was previously known as §35.45.

Swine which have been classified as reactors are required to be identified with a red serially numbered reactor tag in the left ear and must be sold to slaughter within 15 days of the date they are identified. Quarantined and exposed swine must be accompanied by a VS 1-27 permit when they are moved. When these swine are moved, they must be segregated from all other classes of livestock. Exposed swine must be individually identified by eartag.

Bill Hayden, director of administration, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on how swine are identified and moved from infected and exposed herds. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health

Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.44. Identification and Movement of Brucellosis Infected and Exposed Swine.

(a) Reactors. Reactor swine shall be identified with a red serially numbered reactor tag in the left ear and be sold to slaughter under State or Federal permit (VS 1-27) within 15 days of the date they are identified as reactors. (Reactor herds under Plan 2, Chapter 35.47, may handle reactors according to recommended procedures of the plan.) Reactors must remain on the premises where they were found until the owner obtains a State or Federal permit for movement to slaughter. Swine moved for immediate slaughter must go to a recognized slaughter establishment or to a state or federally approved market for sale to a recognized slaughter establishment. Reactor swine must be slaughtered as soon as practical. The time may be extended for reasons mutually acceptable to the cooperating state and federal officials in charge.

(b) Quarantined and exposed swine. Quarantined and exposed swine, when moved, must be accompanied by a permit (VS 1-27). They can be moved for immediate slaughter. When moved, the swine must be segregated from all other classes of livestock. When moved to premises other than the herd of origin, exposed animals must be individually identified by eartag and the number must be recorded on the permit.

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 May 25, 1990.

TRD-9005853 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

◆ ◆ ◆
• **4 TAC §35.45**

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

The Texas Animal Health Commission proposes the repeal of §35.45, concerning identification and movement of brucellosis infected and exposed swine. In order to change

the numbering sequence, this section will be repropoed as §35.44.

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

Robert L. Daniel, director of program records, 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 none. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.45. Identification and Movement of Brucellosis Infected and Exposed Swine.

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 May 25, 1990.

TRD-9005865 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697



The Texas Animal Health Commission proposes new §35.45, concerning procedures for handling brucellosis infected herds of swine. This section was previously known as §35.46.

Swine in infected herds must be quarantined and confined to the premise until the herd is free of brucellosis or sold for slaughter under permit. Two negative herd blood tests are required before the herd can be released from quarantine.

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

Robert L. Daniel, director of program records, has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on restricted movement and procedures for releasing quarantines on infected herds of swine. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are

required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.45. Procedures for Handling Brucellosis Infected Herds of Swine. All swine in infected herds must be confined to the premises under quarantine until the herd has been freed of brucellosis or sold for slaughter under permit. Two negative herd blood tests are required for release of quarantine, with the first test occurring 30 days or more after all reactors have been removed and slaughtered. The second test must occur 90 days or more after the first negative test. Herds of origin of MST reactors that fail to reveal additional reactors on a test of the entire herd would not be required to be held under quarantine for additional testing unless there is evidence of Brucella infection or exposure to brucellosis.

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

Issued in Austin, Texas, on March 2, 1990.

TRD-9005860 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697



• 4 TAC §35.46

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

The Texas Animal Health Commission proposes the repeal of §35.46, concerning procedures for handling brucellosis infected herd of swine. In order to change the numbering sequence, this section will be repropoed as §35.45.

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

Mr. Robert L. Daniel, director of program records, 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 none. There will be no effect on small businesses as a result of enforcing the section. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.46. Procedures for Handling Brucellosis Infected Herds of Swine.

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 May 25, 1990.

TRD-9005854 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697



The Texas Animal Health Commission proposes new §35.46, concerning plans for eradication of brucellosis from infected swine herds. The section was previously known as §35.47.

The owner of an infected swine herd must select one of three plans to eradicate the disease and qualify the herd for validated free herd status, if desired, or one similar. Plan One is recommended for commercial swine herds; Plan Two is for use in purebred swine herds; and Plan Three is useful in herds when only a few reactor swine are found and no clinical symptoms of brucellosis have been noted.

Bill Hayden, director of administration, has determined that for the first five year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on procedures for eliminating brucellosis infection from infected herds of swine. There will be no effect on small businesses as a result of enforcing the section. There will be no anticipated economic cost to persons who are required to comply with this section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P. O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with authority to adopt rules and set forth the duties of this commission to

control disease.

§35.46. Plans for Eradicating Brucellosis from Infected Swine Herds. If infection is disclosed in swine herds, one of the following plans or one similar shall be selected for eradicating the disease and for qualifying the herd for subsequent validated brucellosis-free status, if desired. Infected herds under test for area validation status should also choose one of these plans to eradicate brucellosis from the herd. If the herd owner fails to agree to a plan to eradicate brucellosis from the herd, a plan shall be developed by the veterinarian representing the commission.

(1) Plan 1. This plan is recommended for commercial herds. The following procedures should be carried out:

(A) market the entire herd for slaughter as soon as practicable;

(B) clean and disinfect houses and equipment;

(C) restock premises with animals from validated brucellosis-free herds placing them on ground that has been free of swine for at least 60 days;

(D) after two consecutive negative tests not less than 60 nor more than 90 days apart, the herd is eligible for validated brucellosis-free herd status.

(2) Plan 2. This plan is recommended for use in infected pure-bred herds only where it is desired to retain valuable blood lines. The following procedures should be carried out:

(A) separate pigs from sows at 42 days of age or younger and isolate;

(B) market infected herd for slaughter as soon as practicable. Infected sows should not be rebred and should be slaughtered as soon as possible. Complete isolation of infected animals is essential. The separated weanling pigs form the nucleus for establishment of the infection-free herd;

(C) test the gilts to be used for the following breeding season about 30 days before breeding. Save only the gilts that are negative. Breed only the negative boars;

(D) retest the gilts after farrowing and before removing them from individual farrowing pens. If reactors are found, they should be segregated from the remainder of the herd and slaughtered as soon as possible. Select only pigs from negative sows for breeding gilts;

(E) after two consecutive negative herd blood tests the herd is eligible for release from quarantine. The first test must be at least 30 days after all reactors have been removed and slaughtered and the second test must be at least 90 days after the first test.

(3) Plan 3. This plan is not recommended in general, but it has been found useful in herds where only a few reactors are found and where no clinical symptoms of brucellosis have been noted. Carry out the following procedures:

(A) market reactor(s) for slaughter;

(B) retest herd at 30 day intervals removing reactors for slaughter until the entire herd is negative;

(C) if the herd is not readily freed of infection, abandon this plan in favor of Plan 1 or Plan 2;

(D) after two consecutive negative tests the herd is eligible for release from quarantine. The first test must be at least 30 days after all reactors have been removed and slaughtered and the second test must be at least 90 days after the first test.

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 May 25, 1990.

TRD-9005861 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

◆ ◆ ◆
• 4 TAC §35.47

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

The Texas Animal Health Commission proposes the repeal of §35.47, concerning plans for eradicating brucellosis from infected swine herds. In order to change the numbering sequence, this repeal will be repropoed as §35.46.

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

Robert L. Daniel, director of program records, 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 repeal will be none. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§35.47. Plans for Eradicating Brucellosis from Infected Swine Herds.

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 May 25, 1990.

TRD-9005855 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

◆ ◆ ◆
• 4 TAC §35.49

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

The Texas Animal Health Commission proposes the repeal of §35.49, concerning requirements for dealer recordkeeping.

The repeal is no longer required because dealer recordkeeping requirements will be set forth in §55.8.

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

Robert L. Daniel, director of program records, 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 none. There will be no effect on small businesses as a result of enforcing the repeal. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The repeal is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the

authority to adopt rules and set forth the duties of this commission to control disease.

§35.49. Requirements for Dealer Recordkeeping.

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 May 25, 1990.

TRD-9005858 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

◆ ◆ ◆
**Subchapter C. Eradication of
Brucellosis in Dairy Goats**

• **4 TAC §35.60**

The Texas Animal Health Commission proposes new §35.60, concerning definitions.

The new section defines words, terms, and phrases used for certified brucellosis free herds of dairy goats.

Bill Hayden, director of administration, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on the definitions of the terms used in this section. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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

BRT—A test of milk from either a single animal or several animals to determine presence of the brucella organism.

Certified free herd—Herd that is operating under a signed agreement with the commission and has met the requirement of §35.61(d) of this title (relating to Requirements for Certified Brucellosis Free

Herd of Dairy Goats).

Dairy goats—Domestic caprine (genus *Capra*) kept for the purpose of producing milk for human consumption.

Herd—A group of dairy goats maintained on common ground, or two or more groups of dairy goats under common ownership or supervision geographically separated but which have an interchange or movement without regard to health status. (A group is construed to mean one or more animals.)

Individual herd plan—A herd disease management and testing plan to prevent, control and eliminate brucellosis in a herd of dairy goats.

Negative herd blood test—A test where all the male and female dairy goats over six months of age located on the premise were tested and found negative to the blood test.

Negative milk ring tests—These are tests where the results have failed to indicate the presence of brucella in the milk.

Provisions for release of quarantine—Same as the provisions for the release of quarantine for bovine brucellosis. (See §35.2(1)(7) of this title relating to General Requirements).

Quarantine and retest provisions—Provides for the issuance of a quarantine when infection is disclosed and for timeframes for herd tests to rid the herd of infection. These provisions are the same as the ones found in the Bovine Brucellosis Regulation.

Reactor—Dairy goats classified as being infected with brucellosis as a result of serological testing or microbiological culturing of blood, tissue, secretions, or excretions from the animal.

Suspect—Dairy goats classified as suspicious of being infected with brucellosis as a result of serological testing of blood, secretions, or excretions from the animal.

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 May 25, 1990.

TRD-9005859 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

◆ ◆ ◆
• **4 TAC §35.61**

The Texas Animal Health Commission proposes new §35.61, concerning general requirements.

The new section establishes requirements for obtaining a certified brucellosis free herd of dairy goats. Those requirements are completing and signing a herd plan; testing test-age

offspring; and meeting. The new section also establishes requirements following classification of a dairy goat as a reactor or suspect.

Bill Hayden, director of administration, has determined that for the first five year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with the means to get a herd of dairy goats certified brucellosis free, thus providing less restrictions for movement to other states. There will be no effect on small businesses as a result of enforcing the section. There will be no anticipated economic cost to persons who are required to comply with this section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711. This rule is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§35.61. Requirements for Certified Brucellosis Free Herd of Dairy Goats.

(a) A herd plan agreement must be completed and signed with the Texas Animal Health Commission.

(b) Brucellosis testing will be on a herd basis including all offspring that are of an age to be tested. Certified free herd status is for a 12 month period.

(c) All male and female dairy goats that are part of the herd and are six months of age or older are required to be tested.

(d) Qualifying methods:

(1) initial certification:

(A) milk ring test (BRT). A minimum of four consecutive, negative milk ring tests conducted at not less than 90 day intervals, followed by a negative herd blood test conducted within 90 days after the last negative milk ring test;

(B) complete herd blood test. Two consecutive, negative blood tests of all goats required to be tested not less than 10 months, nor more than 14 months apart;

(2) recertification. A negative herd blood test of all dairy goats required to be tested, conducted within 60 days of the anniversary date, is required for continuous certification. If the certification test is conducted within 60 days of the anniversary date, the certification period will be 12 months from the anniversary and not 12 months from the date of the recertifying test. If a herd blood test for recertification is not conducted within 60 days following the

anniversary date, then certification requirements are the same as for initial certification;

(3) purchase of a certified free herd:

(A) negative herd blood test is not required when the dairy goats remain on the premises. A new certificate will be issued in the owner's name. The anniversary date and the herd number will remain the same;

(B) all or part of a certified free herd purchased and moved directly to premises without other goats may qualify without a test. A new certification number will be issued. The anniversary date of the new herd is established by the test date of the herd of origin or by a new herd test of the purchased goats.

(e) Qualifying standards:

(1) herd infection rates. The individual herd must disclose no evidence of infection at the time of initial certification or recertification;

(2) animal infection rates. The individual animals must disclose no evidence of infection at the time of initial herd certification or recertification;

(3) suspects. When suspects are disclosed, an individual herd plan shall be developed for the future testing of the suspect(s) and the handling of the herd;

(4) herd status, if reactors are classified. When one or more reactors are disclosed in a certified herd or in a herd under test for initial certification, it shall be considered affected and the quarantine and retest provisions shall apply. If a retest of a certified herd, or of animals from such a herd reveals only one reactor, the certification status will be suspended until all provisions for release of quarantine have been met. If more than one reactor is disclosed, the herd certification is terminated until all provisions for release of quarantine have been met, and when additional provisions for initial certified brucellosis-free herd status required under subsection (d)(1) of this section, concerning initial certification, have been met. Herd retests for quarantine release, and to fulfill the provisions required under subsection (d)(1) of this section, concerning initial certification, may be conducted concurrently;

(5) movement of goats into a certified brucellosis free herd from certified brucellosis free herds. No test requirements on dairy goats originating from Certified brucellosis-free herds. Goats added to a Certified brucellosis free herd under this provision shall not receive new herd status for sale purposes until they have passed a 60-120 day postentry retest.

(f) Proof of qualifying as a

certified brucellosis-free herd:

(1) initially a certificate will be issued;

(2) recertification will be done by renewal certificate showing only the certified free herd number, number of animals and owner.

(g) Requirements following classification of a dairy goat as a reactor or suspect. Goat herds with animals classified as reactors or suspects will be quarantined and tested on the same schedule as cattle (see §35.2(1) of this title (relating to General Requirements).)

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

Issued in Austin, Texas, on May 25, 1990.

TRD-9005857 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

Chapter 36. Exotic Livestock and Fowl

• 4 TAC §36.1

The Texas Animal Health Commission proposes new §36.1, concerning definitions.

The new section sets out definitions of words, terms, and phrases used for exotic livestock and exotic fowl.

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

Robert L. Daniel, director of program records, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on the definitions of the terms used in this rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§36.1. Definitions. The following words and terms when used in this section shall

have the following meanings, unless the context clearly indicates otherwise.

Commission—Texas Animal Health Commission.

Exotic livestock—Grass-eating or plant-eating, single hooved, or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

Exotic fowl—Any avian species that is not indigenous to this state. The term includes ostriches.

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 May 25, 1990.

TRD-9005868 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

◆ ◆ ◆ • 4 TAC §36.2

The Texas Animal Health Commission proposes new §36.2, concerning general requirements.

The new section establishes requirements for importation of exotic animals into Texas.

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

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on the entry requirements for exotic livestock and exotic fowl and will help assure that when they do enter, they will not exhibit symptoms of disease or parasites. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§36.2. General.

(a) All exotic livestock and exotic fowl entering Texas from any state, territory, or foreign country shall have an entry

permit issued by the commission.

(b) All exotic livestock and exotic fowl entering the State of Texas shall be accompanied by a certificate of veterinary inspection stating that they have been inspected by an accredited veterinarian and are free of external parasites and evidence of contagious and communicable disease.

(c) The following named species shall meet the specific requirements stated and this information recorded on the certificate.

(1) Elk—Negative to a brucellosis and tuberculosis test within 30 days prior to entry.

(2) Water buffalo—Negative to a brucellosis and tuberculosis test within 30 days prior to entry.

(3) Vietnamese pot bellied pig—Negative to a brucellosis and pseudorabies test within 30 days prior to entry.

(4) Sika (red) deer—Negative to a brucellosis and tuberculosis test within 30 days prior to entry.

(d) The executive director of the commission may require an inspection or test on any exotic livestock or exotic fowl for the detection of any disease or parasite prior to importation when the executive director has determined there is a risk of disease or parasite transmission. Entry may be denied based on the results of these tests or inspections.

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

Issued in Austin, Texas, on May 25, 1990.

TRD-9005869 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

Chapter 43. Tuberculosis

Subchapter B. Dairy Goats

• 4 TAC §43.10

The Texas Animal Health Commission proposes new §43.10, concerning definitions.

The new section sets out definitions of words, terms, and phrases used for a tuberculosis accredited herd plan for dairy goats.

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

Robert L. Daniel, director of program records, has determined that for each year of the first

five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on the definitions of the terms used in this rule. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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

Accredited free state—A state which maintains full compliance with all of the provisions of the USDA's Uniform Methods and Rules (UM&R) and where no evidence of bovine tuberculosis has been disclosed for five or more years.

Dairy goats—Domestic caprine (genus *Capra*) kept for the purpose of producing milk for human consumption.

Herd—A group of dairy goats maintained on common ground, or two or more groups of dairy goats under common ownership or supervision geographically separated but which have an interchange or movement without regard to health status. (A group is construed to mean one or more animals.)

Individually identified—Identification by metal eartag which provides unique identification for each individual animal conforming to the nine-character, alphanumeric National Uniform Eartagging System; or by an individual registration tattoo.

Modified accredited state—A state which is actively participating in the eradication of bovine tuberculosis and which maintains its status in accordance with the provisions of these UM&R.

Negative animals—Dairy goats which show no response to a tuberculin test or have been classified negative by the testing veterinarian following the application of the comparative cervical test.

Reactor—Any dairy goat that shows a response to a tuberculin test and is classified a reactor by the testing veterinarian.

Suspect—Any dairy goat which shows a response to the caudal fold tuberculin test and is not classified a reactor or dairy goats which have been classified suspects by a c-c test.

Tuberculin test—A test for tuberculosis applied and reported by approved personnel. The official tuberculin tests are: the caudal fold test, the comparative cervi-

cal test, and the single cervical test.

Who may administer tuberculin test—Tuberculin tests shall be conducted by a veterinarian employed by the Texas Animal Health Commission or the United States Department of Agriculture or by an accredited veterinarian.

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 May 25, 1990.

TRD-9005870 John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

• 4 TAC §43.11

The Texas Animal Health Commission proposes new §43.11, concerning accredited herd plan for dairy goats.

The new section establishes requirements for obtaining a tuberculosis-free dairy goat herd.

Bill Hayden, director of administration, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the public with general information on the requirements to obtain a tuberculosis free dairy goat herd. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161. This statute provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§43.11. *Accredited Herd Plan for Dairy Goats.*

(a) Animals to be tested. Testing of herds for accreditation or reaccreditation shall include all goats over 12 months of age. All natural additions shall be individually identified and recorded on the test charts as members of the herd at the time of the annual test.

(b) Additions. Herd additions must originate directly from one of the following:

- (1) accredited herd;

cones, ice cream sandwiches, dishes, bars, sticks, specialties, or the like; however, ice cream sundries when sold in prepackaged units containing six or more such items are not included;

(vi) all individual-sized portions of bakery products sold in quantities of five or less; and

(vii) all food sold in individual-sized packages or portions requiring no further processing before consumption, when more than 75% of the retailer's gross sales on an outlet-by-outlet basis consist of sales of nonfood items and/or food sold in a heated state, with utensils provided, or in the form of sandwiches or individual ice cream sundries.

(C) When food is sold by a retailer who does not provide eating facilities (tables, trays, chairs, benches, or booths), food ready for immediate consumption also includes:

(i) all food sold in a heated state, when the food is heated by the retailer rather than the customer;

(ii) all food sold with eating utensils provided, including plates, knives, forks, spoons, glasses, cups, or straws;

(iii) all sandwiches ready for immediate consumption (examples of sandwiches ready for immediate consumption include most triangle-type sandwiches, whether or not refrigerated, such as ham, cheese, tuna, or chicken salad. An example of a sandwich not ready for immediate consumption would be a frozen sandwich or a sandwich with a frozen or partially frozen filling); and

(iv) all individual ice cream sundries. For example: ice cream cones, ice cream sandwiches, dishes, bars, sticks, specialties, or the like; however, ice cream sundries sold in pre-packaged units containing six or more such items are not included.

(9)[(8)] Retirement facility—A facility which provides permanent housing and residence to individuals, a majority of whom are 60 years of age or older.

(10)[(9)] Wedding consultant—A person who provides services other than or in addition to the preparation and serving of food at weddings. Such services may include sending invitations, providing floral arrangements, decorating, supervision, and clean-up.

(b) Taxable food sales. Tax is due on the sale of food, meals and drinks:

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

(6) sold ready for immediate consumption by a mobile vendor;

(7) -(8) (No change.)

(c)-(f) (No change.)

(g) Food sales through vending machine.

(1) With the exceptions of soft drinks and candy, vending machine operators must report sales tax on 50% of the total gross receipts from sales of all food. No deduction will be allowed for spoilage, waste, or other loss of foods.

(2) Vending machine operators must pay sales tax on the total gross receipts from sales of soft drinks and candy except as provided in paragraph (3) of this subsection. Vending machine operators who include the tax in the sales price of food, soft drinks, and candy should refer to §3.328 of this title (relating to Optional Reporting Methods for Grocers and Other Vendors).

(3) No tax is due on the sale of food, gum, or candy for \$.25 or less from a bulk vending machine.

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

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

Issued in Austin, Texas, on June 8, 1990.

TRD-9005999 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: July 16

For further information, please call: (512) 463-4004

◆ ◆ ◆
• 34 TAC §3.336

The Comptroller of Public Accounts proposes an amendment to §3.336, concerning gold, silver, coins, and currency. Legislative changes added to the Tax Code, §151.336, exempting from sales tax the sale of gold, silver, or numismatic coins or of platinum, gold, or silver bullion when purchased in a single transaction totaling \$1,000 or more.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be from bringing the rule regarding sales tax on purchases of gold, silver, coins, and currency into conformity with the law. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Lucy Glover, Director, Taxability, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe,

adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.336. Gold, Silver, Coins, and Currency.

(a) Sales tax is due on the sale in Texas of gold, silver, or numismatic coins or gold, silver, or platinum bullion unless sold to a purchaser in a single transaction in which the total sales price of all the items sold is \$1,000 or more. Sales tax is not due on the sale of official State of Texas coins produced under the State Purchasing and General Services Act, §11.05, when sold by a person under contract with the State Purchasing and General Services Commission. Sellers of gold, silver, platinum, or numismatic coins are required to hold a Texas sales or use tax permit and to collect sales tax on all taxable sales within the state. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

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

(d) Unless exempted as provided by subsection (a) of this section, sales [Sales] or use tax is due on the sale of coins and currency when sold above face value or without a face value. The face value of United States coins and currency must be subtracted from the sales price before the tax is computed. Tax must be collected on the total sales price of foreign coins and currency. The face value of foreign coins and currency may not be subtracted from the sales price. The exchange of foreign currency at face value is not a taxable transaction.

(e) The sales tax exemption on the sale of gold, silver, or numismatic coins or gold, silver, or platinum bullion in a single transaction of \$1,000 or more does not include jewelry or other items of adornment. [At the time an item which was purchased in a single transaction for \$10,000 or more and previously exempted under the Tax Code, §151.336(a), is transferred to a different owner, use tax is due from the original purchaser on the original purchase price. Section 151.336 was repealed in 1987 by the second called session of the Texas Legislature.]

(f)-(g) (No change.)

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

Issued in Austin, Texas, on June 8, 1990.

TRD-9005998 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: July 16, 1990

For further information, please call: (512) 463-4004



Part VII. State Property Tax Board

Chapter 155. Tax Record Requirements

• 34 TAC §155.60

The State Property Tax Board proposes new §155.60, concerning an application for the exemption of freeport property from ad valorem taxes. The new section requires county appraisal districts to prepare forms and make them available. The section also sets out required contents for the forms and adopts a model form by reference. The board adopted the proposal on an emergency basis at its January 10, 1990, meeting. The new section is required under the Tax Code, §11.251, which took effect January 1, 1990.

Sands L. Steifer, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Stieffer also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that property owners and appraisal districts will have uniform procedures for gathering information about qualifications for the exemption. There will be no effect on small businesses as a result of enforcing the section. 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 Jim Robinson, Executive Director, State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

The new section is proposed under the Tax Code, §5.07, which provides the State Property Tax Board with the authority to prescribe all forms necessary for use in the property tax system.

§155.60. Application for Exemption of Goods Exported from Texas.

(a) Appraisal districts shall prepare and make available application forms for the exemption provided by the Tax Code, §11.251.

(b) A form shall require a property owner to provide the following information:

(1) the property owner's name, street address, mailing address if different, and telephone number;

(2) a description of the inventory affected by the exemption;

(3) the total cost of goods sold from inventory held by the property owner in the preceding year;

(4) the total cost of goods sold from inventory that in the preceding year met the criteria set forth in the Tax Code, §11.251(a)(1) and (2), excluding the cost of equipment, machinery, or materials that en-

tered into and became part of the inventory described in paragraph (3) of this subsection but did not themselves meet the criteria set forth in the Tax Code, §11.251(a)(1) and (2);

(5) a statement that the property owner holds items in inventory that in the current year meet or will meet the requirements of the Tax Code, §11.251(a)(1) and (2); and

(6) a statement indicating how long the property owner has engaged in the business of transporting goods out of this state.

(c) The chief appraiser shall include the following information on the form:

(1) instructions stating that the property owner must apply for the exemption annually;

(2) a statement that under the Penal Code, §37.10, the penalties for making a false statement on the application could include a fine of up to \$5,000 and a jail or prison term of up to 10 years; and

(3) a statement that the chief appraiser may require the property owner to submit records verifying the information in the application and that if so required, the property owner must submit the records within 30 days of the request.

(d) The chief appraiser may duplicate Model Form 11.251 or employ a different form that sets out the information listed in subsections (b) and (c) of this section in the same language and sequence as the model form.

(e) In special circumstances the chief appraiser may use a form that provides additional information, deletes information required by this section, or sets out the required information in different language or sequence than that required by this section if the form has been previously approved by the State Property Tax Board.

(f) Model Form 11.251 is adopted by reference. Copies of the form may be obtained from the State Property Tax Board, 4301 Westbank Drive, Building B., Suite 100, Austin, Texas 78746-6565.

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

Issued in Austin, Texas, on June 8, 1990.

TRD-9005985 Jim Robinson
Executive Director
State Property Tax Board

Earliest possible date of adoption: July 16, 1990

For further information, please call: (512) 329-7802



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 145. Parole

Terms and Conditions of Parole

• 37 TAC §145.22

(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 Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Criminal Justice proposes the repeal of §145.22, concerning terms and conditions of parole. The section is being repealed in order to comply with the law.

Carl Reynolds, general counsel, Texas Board of Criminal Justice, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Reynolds, 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 not be applicable, as the public is relatively unaffected by this particular proposed repeal. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

There will be no local employment impact.

Comments on the proposal may be submitted to Carl Reynolds, P.O. Box 13084, Austin, Texas 78711-3084.

The repeal is proposed under the Texas Code of Criminal Procedure, Article 42.18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem proper and necessary.

§145.22. Terms and Conditions of Parole.

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

Issued in Austin, Texas, on June 6, 1990.

TRD-9006012 Carl Reynolds
General Counsel
Texas Board of Criminal Justice

Earliest possible date of adoption: July 16, 1990

For further information, please call: (512) 459-2708



proposes new §55.8, concerning dealer recordkeeping.

The new section defines a dealer as being any person engaged in the business of buying or selling swine in commerce on his own account or for others; it also requires a dealer to keep records of swine transactions by giving the name and address of the buyer and seller, the county of origin, number, breed and sex of animals, and some form of individual identification number; auctions and commission firms are required to show the delivery vehicle license numbers.

Bill Hayden, director of administration, has determined that for the first five year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with information on how dealer records are kept on swine transactions handled for a seller or buyer of swine. There will be no effect on small businesses as a result of enforcing the section. There will be no anticipated economic cost to persons who are required to comply with this section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P. O. Box 12966, Austin, Texas 78711.

The new section is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163. These statutes provide the commission with authority to adopt rules and set forth the duties of this commission to control disease.

§55.8. Dealer Recordkeeping.

(a) Definitions. Dealer:

(1) any person engaged in the business of buying or selling swine in commerce on his own account, as an employee or agent of the vendor, the purchaser, or both, or on a commission basis;

(2) shall not include a person who buys or sells swine as part of his own bona fide breeding, feeding, or stocker operations but does include livestock markets and commission merchants.

(b) Requirements of dealer recordkeeping. Any dealer, auctioneer, or commission firm must maintain records of swine handled. Such records shall show the seller's and buyer's name and address, county of origin, number of animals, breed and sex with some form of individual identification numbers. Records at auctions and commission firms shall show the delivery vehicle license number.

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 May 25, 1990.

TRD-9005874

John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

Chapter 59. General Practice and Procedures

• 4 TAC §59.2

The Texas Animal Health Commission proposes an amendment to §59.2 concerning general requirements.

The amendment will provide that the executive director of the agency may vary or waive any provisions of the rules regulated by this agency.

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

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with information on how and under what circumstances a waiver may be obtained if unusual circumstances or individual hardship arise. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§59.2. General Responsibilities.

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

(c) **Extenuating circumstances. In case of unusual circumstances or individual hardship, the executive director may vary or waive any provisions of these rules provided such waiver is not in conflict with sound epidemiologic principles. Individual hardship will commonly mean unforeseen circumstances affecting the owner or his operation beyond his control.**

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 May 25, 1990.

TRD-9005875

John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 479-6697

TITLE 16. ECONOMIC REGULATION Part I. Railroad Commission of Texas Chapter 5. Transportation Division

Subchapter I. Equipment: Identification and Reports

• 16 TAC §5.152

The Railroad Commission of Texas proposes an amendment to §5.152, concerning cab cards. The amendment will allow motor bus companies that also hold common carrier authority to register their vehicles once a year instead of twice a year. This amendment will reduce the administrative burden of re-registering the same vehicles each year.

Jackye Greenlee, assistant director, central operations, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Jan Barton-Gerro, hearings examiner, 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 that motor bus companies that also hold common carrier authority will have an easier time in registering their vehicles. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to individual who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jan Barton-Gerro, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Motor Carrier Act and the Texas Motor Bus Act, Texas Civil Statutes, Article 911a and 911b, which authorizes the commission to register motor vehicles operated by motor carriers and motor bus companies.

§5.152. Cab Cards.

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

(d) Multiple cab cards.

(1) Except as otherwise provided by this subsection or subsection (g) of this section, no motor vehicle may be issued more than one cab card at any one time.

(2) (No change.)

(e) Cab cards shall be renewed annually. Each motor carrier, except for motor carriers that are also motor bus companies, shall be assigned an annual date for renewal according to the last digit of the motor carrier's certificate number or permit number, as follows:

If the last digit is: Renew before the first day of:

- 1 January
- 2 February
- 3 March
- 4 April
- 5 May
- 6 June
- 7 July
- 8 August
- 9 September
- 0 October

(f) (No change.)

(g) Each motor bus company, and each motor carrier that is also a motor bus company, shall renew cab cards on or before the last day of October of each year, except for a motor bus company operating pursuant to §5. 244 of this title (relating to Government Subsidized or Mileage-Reimbursed Motor Bus Operations). The annual fee for renewal of each cab card is the sum of a \$10 statutory fee plus a fee of

\$1.00 per seat of rated passenger seat capacity of each motor vehicle plus a \$1.00 charge for the cab card. A motor bus company that is also a motor carrier shall be required to pay all statutory fees for issuance and renewal of motor carrier cab cards as well as motor bus cab cards. If a motor vehicle is placed in service by a motor bus company after the annual renewal date, the annual fee shall be prorated as follows:

Seat	Registration Fee	Amount Per Passenger
December	\$10.17	\$.92
January	9.33	.83
February	8.50	.75
March	7.67	.67
April	6.83	.58
May	6.00	.50

June	5.17	.42
July	4.34	.33
August	3.50	.25
September	3.50	.25
October	3.50	.25

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

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

Issued in Austin, Texas, on June 4, 1990.

TRD-9005911 Cril Payne
Assistant Director, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: July 13, 1990

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

◆ ◆ ◆
TITLE 19. EDUCATION
Part II. Texas Education
Agency

Chapter 77. Comprehensive
Instruction

Subchapter V. Adoptions by
Reference

• **19 TAC §77.453**

The Texas Education Agency proposes an amendment to §77.453, concerning the adoption by reference of the State Plan for Federal Vocational Education Funding, Fiscal Years 1991-1992. This document is the general application required to be submitted by the state for funds to be received under the Carl D. Perkins, Vocational Education Act, Public Law 98-524.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the section is

in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination have 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 is that federal funds will be available to support vocational education programs for students enrolled in the public schools. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Education Code, §11.02(c), which provides the Central Education Agency with the authority to enter into agreements with an agency of the federal government; §11.24(a), which designates the State Board of Education as the State Board for Vocational Education; and Public Law 98-524, which requires states receiving funds for vocational education to develop a three-year state plan and annual program plans for vocational education.

§77.453. *State Plan for Federal Vocational Education Funding.* The administrative provisions for **vocational** [occupational]

education programs, services, and activities [and technology] are described in the State Plan for Federal Vocational Education Funding, Fiscal Years **1991-1992** [1989-1990], adopted **March 1990** [April 1988, which was developed as a requirement under Public Law 98-524]. **The plan, developed as a requirement under Public Law 98-524, is adopted by** [this] reference as the Central Education Agency's official rule. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except on holidays, Saturdays, and Sundays, at the Central Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

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 May 17, 1990.

TRD-9005844 W. N. Kirby
Commissioner of Education

Earliest possible date of adoption: July 13, 1990

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

◆ ◆ ◆
Chapter 81. Instructional
Resources

Subchapter D. State Textbook
Program

Textbook Proclamation

• **19 TAC §§81.90-81.95**

The Texas Education Agency proposes an amendment to §81.90 and new §81.

91-81.95 concerning the state textbook program. The proposed amendments concern the development and issuance of textbook proclamations. The majority of the proposed amendments track legislation requiring the appointment of state textbook proclamation advisory committees for each subject in the textbook proclamation and the issuance of each proclamation 32 months before the date scheduled for adoption. House Bill 884 of the 71st Legislature requires the State Board of Education to issue textbook Proclamations 32 months before the date scheduled for adoption of the textbooks and to appoint textbook proclamation advisory committees to be used for the development of all proclamations issued by the board on or after January 1, 1991.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. It is estimated that an additional \$87,500 will be required to support the various textbook advisory committees. This includes \$22,480 of professional staff support; \$43,826 for travel and per diem expenses for committee members; \$6,694 for office supplies; and \$12,500 for substitute teachers. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination, also have 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 that State Board of Education rules will be consistent with recent statutory changes. The proposals could have some fiscal impact on small businesses who release personnel to be members of the advisory committees. These costs cannot be accurately calculated. 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 Criss Cloudt McCuller, Office of Planning Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The new section and amendments are proposed under the Texas Education Code, §12.01, which provides that textbook adoptions shall be carried out in accordance with the Texas Education Code, Chapter 12, §12.11, which provides for the establishment of the state textbook subject area committees; and §12.24, which authorizes the State Board of Education to make rules for the adoption of textbooks for use in public schools.

§81.90. Proclamation, Public Notice, and Schedule for Adoption for Textbooks.

(a) In accordance with the Texas Education Code, §12.04(a) and 12.17, the State Board of Education shall issue a pro-

clamation for new textbooks in those subjects in which contracts are not renewed. The proclamation shall serve as public notice to all Texas registered textbook publishers and to the public that bids to furnish textbooks to the state are being invited. The proclamation shall be issued 32 months [one year] in advance of the date specified in the adoption schedule for adoption of the textbooks by the State Board of Education [filing of samples by publishers].

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

§81.91. State Textbook Proclamation Advisory Committees: Appointments and Qualifications.

(a) The commissioner of education, annually at a meeting of the State Board of Education, shall recommend one person from each State Board of Education district in this state for appointment to a textbook proclamation advisory committee for each subject area for which textbooks are to be adopted. In making these recommendations, the commissioner shall be exempt from the requirements of §161.3 of this title (relating to Appointment of Members) concerning consultation with members of the State Board of Education. The commissioner shall notify each board member of the names and shall furnish biographical information for each person being recommended from that member's state board district 30 days prior to the meeting at which the recommendations are presented to the board for review and approval.

(b) The commissioner of education shall ensure that all persons recommended by the commissioner for appointment to the proclamation advisory committees meet the statutory and State Board of Education rule requirements concerning qualifications for membership. All appointments to the textbook proclamation advisory committees shall be made in accordance with the Texas Education Code, §12.04. Each person appointed shall reside and/or teach in the State Board of Education district to be represented.

(c) At least a majority of the members of each textbook proclamation advisory committee shall be classroom teachers, and all members shall be appointed because of unusual background or training or recognized ability as teachers in the subject fields for which adoptions are to be made during the year of appointment. At least one member of each textbook proclamation advisory committee shall be knowledgeable in the field of special education. At least two members of each textbook proclamation advisory committee shall be persons who are not employed in the public schools, but who are recognized for their expertise in a subject area assigned to that committee.

(d) The State Board of Education

shall approve or reject the nominations; and if any name is rejected, the commissioner of education shall nominate others until one person has been selected from each State Board of Education district in this state.

(e) The commissioner of education and the State Board of Education shall solicit and accept recommendations for possible appointees to the textbook proclamation advisory committees from any school district or educational organization in the state and shall also accept recommendations from any person in the state, but shall not accept nominations from any textbook publishers, authors, or depositories; agents for textbook publishers, authors, or depositories; or any other persons who have any official positions with any of such textbook publishers, authors, depositories, or agents.

(f) All textbook publishers, authors, or depositories; agents, for textbook publishers, authors, or depositories; or any other persons who have any official positions with any such textbook publishers, authors, depositories, or agents shall refrain from and shall avoid, either directly or indirectly, aiding, abetting, suggesting, recommending, or encouraging either that any other person seek to be nominated or appointed, or that any person nominate or appoint another person to a textbook proclamation advisory committee.

(g) Prior to employing an educator to review textbooks, sell textbooks, or otherwise represent a publishing company, the publisher shall notify the person that employment or receipt of any remuneration would negate the person's eligibility to serve on a textbook proclamation advisory committee for a two-year period following such employment or receipt of remuneration.

(h) Each person appointed to a textbook proclamation advisory committee shall file with the State Board of Education an affidavit verifying that the person does not have an interest that conflicts with the Texas Education Code, §12.04(e) and (f).

§81.92. Duties of the State Textbook Proclamation Advisory Committees. The duties of each textbook proclamation advisory committee shall be to make recommendations to the State Board of Education regarding:

(1) content specifications in the proclamation for textbooks in each subject area assigned to that committee which are consistent with the Texas Education Code, §21.101 and Title 19, Texas Administrative Code, Chapter 75;

(2) criteria to be used to evaluate textbooks submitted for consideration in each subject area assigned to that committee.

§81.93. State Textbook Proclamation Advisory Committees: Meetings and Ex-

penses.

(a) Meetings.

(1) A schedule for meetings of the textbook proclamation advisory committees shall be established by the commissioner of education.

(2) Each State Textbook Proclamation Advisory Committee member shall make every effort to attend all scheduled meetings of the committee. A member who cannot attend a meeting shall not be permitted to send a substitute.

(b) Expenses.

(1) Members of each textbook proclamation advisory committee shall be reimbursed for expenses incurred in attending official meetings.

(2) Reimbursement for lodging, meals, and travel shall be in accordance with rules adopted by the State Board of Education for advisory committees.

(3) Expenses shall be paid for designated subject area proclamation advisory committee members to attend proclamation hearings before the State Board of Education and State Board of Education meetings at which proclamations are considered if attendance is requested by the board.

(c) Reimbursement for substitute teachers. If a textbook proclamation advisory committee member is required to attend a meeting of the State Textbook Proclamation Advisory Committee or a hearing or meeting of the State Board of Education at which proclamations are considered on a day when school is in session and a substitute teacher must be used by the local school district to assume the textbook proclamation advisory committee member's teaching responsibilities, the district shall be reimbursed for the cost of the substitute at the standard state rate. The cost of the substitute shall not be paid by the textbook proclamation advisory committee member. State Textbook Proclamation Advisory Committee members shall report the use of a substitute teacher at the time their expense claims are filed. Reimbursement for the substitute will be paid from state funds to the school district through the appropriate textbook proclamation advisory committee member.

§81.94. No-Contact Periods.

(a) Members of each State Textbook Proclamation Advisory Committee shall observe a no-contact period which shall begin with the initial communication regarding possible appointment to a textbook proclamation advisory committee and end 30 days after the close of the last official meeting of the committee, unless the committee is otherwise notified. During this no-contact period, members shall have no contact either directly or indirectly with any textbook publishers, authors, or deposi-

ories; agents for textbook publishers, authors, or depositories; any other persons who have any official positions with any such textbook publishers, authors, depositories, or agents, or petitioners.

(b) State Textbook Proclamation Advisory Committee members shall report immediately to the commissioner of education any communication or attempted communication by any textbook publishers, authors, or depositories, agents for textbook publishers, authors, or depositories, any other persons who have any official positions with any such textbook publishers, authors, depositories, or agents, or petitioners.

§81.95. Committee Member Conduct. State Textbook Proclamation Advisory Committee members shall not accept meals, entertainment, gifts, or gratuities in any form from any textbook publishers, authors, or depositories, agents for textbook publishers, authors, or depositories, or any persons who have any official positions with any such textbook publishers, authors, depositories, or agents.

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 May 17, 1990.

TRD-9005847 W. N. Kirby
Commissioner of Education

Earliest possible date of adoption: July 13, 1990

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

◆ ◆ ◆
**Chapter 109. Budgeting,
Accounting, and Auditing**
**Subchapter D. Adoptions by
Reference**

• **19 TAC §109.61**

The Texas Education Agency proposes an amendment to §109.61, concerning the adoption by reference of Bulletin 679, the financial accounting manual. The proposed amendment includes additions of fund codes to account for programs funded by Chapter 34, additions of asset and liability accounts to program codes for bilingual and special education programs, examples of auditor's opinion letters in the annual audit report, updates to include recent changes in federal regulations, and corrections of minor errors.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination, have 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 is that schools will have a current reference that is in compliance with state and federal laws and current accounting requirements. There will be no effect on small businesses as result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Education Code, §11.72(a)(1) and (3), which provides the State Board of Education with the authority to adopt budgets for operation of the Foundation School Program and other programs, and to establish procedures for budgetary control, expending, auditing, and reporting on expenditures within budgets adopted.

§109.61. Financial Accounting Manual.

(a) The rules for financial accounting are described in the official Central Education Agency bulletin, *Financial Accounting Manual, Bulletin 679*, as amended May 1990, [February 1989] which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Central Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) (No change.)

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

Issued in Austin, Texas, on May 17, 1990.

TRD-9005888 W. N. Kirby
Commissioner of Education

Earliest possible date of adoption: July 13, 1990

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

◆ ◆ ◆
**Chapter 137. Teacher
Education**

**Subchapter M. 1987 Program
Requirements for Preparation
of School Personnel for
Initial Certificates and
Endorsements**

• **19 TAC §137.551, §137.559**

The Texas Education Agency proposes amendments to §137.551 and §137.559, concerning the 1987 program requirements

for preparation of school personnel for initial certificates and endorsements. The proposed amendment to §137.551 recommends changes in the board's rule concerning general requirements in reading. The proposed amendment to §137.559 adds several special education endorsements as additional options for this specialized certification but not as a replacement for the generic special education delivery system.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination, also have 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 that reading requirements would be strengthened for all teachers, and there will be more options in special education endorsements that are more competitive than existing certifications. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendments are proposed under the Texas Education Code, §13.032, which authorizes the State Board of Education to make rules for approval or disapproval of teacher education institutions and programs.

§137.551. Preparation Required in All Programs.

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

(d) The teacher education program shall include academic specializations and teaching fields in subjects approved to be taught in the public schools of Texas or delivery systems as authorized by the State Board of Education for use in the public schools of Texas.

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

(4) For the teacher certificate, each academic specialization, teaching field, and delivery system shall comply with one or more of the options in this paragraph. In accordance with the Texas Education Code, §13.036(b) additional semester hours in education are permissible for certification in bilingual education, English as a second language, early childhood education, and special education. For the teacher certificate—elementary, six semester hours of upper-division courses in reading

must be included in each option unless reading is selected as an academic specialization. For all other certificates based on college-approved teacher education programs, reading must be included in the approved program. Reading instruction will be developmental and corrective and shall include study relating to the phonetic structure of the English language; knowledge of reading instruction such as language-based, phonics-based, and meaning-based; demonstration and application of reading theories; and identification, teaching strategies, and resources for dyslexia and other reading disorders [, and will incorporate identification, teaching strategies, and resources for dyslexia and other reading resources]. Reading courses which fulfill these requirements may be offered beyond the 18 semester hours of professional development courses.

§137.559. Endorsements.

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

(c) Program requirements for endorsement in delivery system areas.

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

(3) **Early childhood-handicapped.**

(A) **Certificate requirements.** The early childhood-handicapped endorsement may be added to a valid Texas elementary certificate, teacher of young children certificate, special education certificate, all-level certificate, vocational home economics certificate which requires a bachelor's degree, early childhood education, or kindergarten endorsement.

(B) **Professional development.** The professional development sequence for the early childhood-handicapped endorsement shall consist of:

(i) nine semester hours including, but not limited to, studies of;

(I) infant/child development including both normal and exceptional development;

(II) communication skills emphasizing oral language development and literacy;

(III) cultural diversity of learners and families;

(IV) organization of the classroom and management of the learning environment;

(V) behavior management;

(VI) organization of the curriculum and implementation of the essential elements at the appropriate level;

(VII) diagnosis and evaluation of learning needs, affective, cognitive, and motor; and

(VIII) parental involvement;

(ii) nine semester hours directly related to teaching students (ages 0-8) with handicaps, including, but not limited to:

(I) general orientation to social education;

(II) medical aspects of serving young children with handicaps;

(III) methods and technology;

(IV) transition from infant to early childhood programs; and

(V) inter-agency coordination;

(iii) three semester hours of student teaching with handicapped children ages 0-8; or one year of successful teaching experience on a permit in an early childhood for the handicapped classroom in a school accredited or recognized by the central education agency.

(C) **ExCET requirement:** Early Childhood (14).

(4) **Generic special education.**

(A) **Certificate requirements.** The generic special education endorsement may be added to any valid Texas elementary, secondary, all-level, special education, or vocational education certificate based on a bachelor's degree.

(B) **Professional development.** The professional development sequence for the generic special education endorsement shall consist of:

(i) 18 semester hours directly related to teaching students with handicaps, including, but not limited to:

(I) infant/child and adolescent development;

(II) task analysis;

(III) motor physical development/adaptive education;

(IV) parent training;

(V) oral language development;

(VI) adaptation; modification of instructional methods and materials;

(VII) behavior management;

(VIII) classroom management;

(IX) survey of special education;

(X) assessment, diagnosis, and remediation;

(XI) vocational, transition, and related secondary issues, such as inter-agency coordination;

(XII) concepts of integration and least restrictive environment;

(XIII) consultation techniques; and

(XIV) classroom observation.

(ii) three semester hours of student teaching with special education students; or one year of successful experience on a permit working with special education students.

(C) ExCET requirement: Generic Special Education (37).

(5)[(3)] Seriously [Severely] emotionally disturbed and autistic.

(A) Certificate requirements. The seriously [severely] emotionally disturbed and autistic endorsement may be added [only] to any valid Texas elementary, secondary, all-level, special education, or vocational education certificate based on a bachelor's degree [special education certificates or to teacher certificates with an elementary or secondary option in generic

special education].

(B) Professional development. The professional development sequence for the severely emotionally disturbed and autistic endorsement shall consist of:

(i) nine semester hours, including, but not limited to, studies of:

(I) infant/child and adolescent development;

(II) diagnosis and classroom assessment;

(III) behavior management;

(IV) parent training;

(V) consultation procedures;

(VI) communication/language development;

(VII) classroom management;

(VIII) survey of special education;

(IX) task analysis;

(X) motor development and adaptive physical education;

(XI) vocational, transition, and related secondary issues; and

(XII) crisis intervention and management of violent behavior. Note: personnel having a generic special education endorsement or delivery system are exempt from the nine semester hours described in this clause. [15 semester hours directly related to teaching the severely emotionally disturbed and autistic; and]

(ii) nine semester hours directly related to teaching the seriously emotionally disturbed and autistic, including, but not limited to:

(I) medical aspects;

(II) interdisciplinary coordination;

(III) curriculum development;

(IV) systematic instruction; and

(V) classroom observation;

[three semester hours of a practicum working with the severely emotionally disturbed or autistic; or one year of successful experience on a permit teaching the severely emotionally disturbed or autistic, and three additional semester hours directly related to teaching the severely emotionally disturbed or autistic.]

(iii) three semester hours of student teaching with the seriously emotionally disturbed or autistic; or one year of successful experience on a permit teaching the seriously emotionally disturbed or autistic.

(C) ExCET requirement: Severely Emotionally Disturbed and Autistic (30).

(6)[(4)] Severely and profoundly handicapped.

(A) Certificate requirements. The severely and profoundly handicapped endorsement may be added [only] to any valid Texas elementary, secondary, all-level, special education, or vocational education certificate based on a bachelor's degree [special education certificates or to teacher certificates with an elementary or secondary option in generic special education].

(B) Professional development. The professional development sequence for the severely and profoundly handicapped endorsement shall consist of:

(i) nine semester hours, including, but not limited to studies of:

(I) infant/child and adolescent development;

(II) task analysis;

(III) parent training;

(IV) motor physical development/adaptive education;

(V) oral language development;

(VI) behavior management;

(VII) classroom management;

(VIII) assessment/diagnosis;

(IX) secondary issues including vocation preparation and transition, including collaboration with other agencies;

(X) crisis intervention and management of violent behavior;

(XI) consultation techniques;

(XII) concepts of integration and least restrictive environment; and

(XIII) use of adaptive/assistance devices. Note: personnel having a generic special education endorsement or delivery system are exempt from the nine semester hours described in this clause.

[12 semester hours directly related to teaching the severely and profoundly handicapped which shall include six semester hours of field experience in a Central Education Agency accredited or approved school agency, or institution; or]

(ii) nine semester hours directly related to teaching the severely and profoundly handicapped, including, but not limited to:

- (I) medical aspects;
- (II) interdisciplinary coordination;
- (III) curriculum development;
- (IV) systematic instruction; and
- (V) classroom observation.

[two years of successful experience on a permit teaching the severely and profoundly handicapped, including, but not limited to, deaf/blind children, in a Central Education Agency accredited or approved school, agency, or institution and six semester hours directly related to teaching the severely/profoundly handicapped.]

(iii) three semester hours of student teaching in an accredited or approved school, agency, or institution; or one year of successful experience on a permit teaching the se-

verely and profoundly handicapped, including, but not limited to, deaf/blind children, in a central education agency accredited or approved school, agency, or institution.

(C) ExCET requirement: Severely and Profoundly Handicapped (37).

(7)[(5)] Visually handicapped.

(A) Certificate requirement. The visually handicapped endorsement may be added only to special education certificates or to elementary or secondary teacher certificates.

(B) Professional development. The professional development sequence for the visually handicapped endorsement shall consist of:

(i) 21 semester hours directly related to teaching the visually handicapped which must include, but need not be limited to:

(I) physiological, psychological, and social factors of blindness;

(II) literary braille (grade II);

(III) special braille notations (including nemeth code, braille music, scientific notation formal and foreign language);

(IV) media, materials, and adaptations;

(V) methods of instruction (including low vision, orientation and mobility, vocational and career exploration, and multihandicapped);

(VI) assessment and programming;

(VII) intervention and parent training; and

(VIII) survey of exceptional children; and

(ii) three semester hours of a practicum working with the visually handicapped; or one year of successful experience on a permit teaching the visually handicapped, and three additional semester hours directly related to teaching the visually handicapped.

(8)[(6)] Gifted and talented.

(A) Certificate requirement.

The all-level gifted and talented endorsement may be added to a valid initial teacher certificate which requires a college degree effective September 1, 1991.

(B) Professional development. The professional development sequence for the gifted and talented endorsement shall consist of:

(i) 12 semester hours to include, but not limited to, the following areas:

(I) nature and needs of the gifted and talented;

(II) identification and assessment of gifted and talented students;

(III) methods, materials, and curriculum for gifted and talented students;

(IV) counseling and guidance of gifted and talented students; and

(V) creativity: theories, models, and applications.

(ii) Three semester hours of practicum experience or two years of successful classroom teaching experience in a program for gifted and talented students.

(d) (No change.)

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

Issued in Austin, Texas, on May 17, 1990.

TRD-9005887 W. N. Kirby
Commissioner of Education

Earliest possible date of adoption: July 13, 1990

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

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE
Part IV. Employees Retirement System of Texas

Chapter 81. Insurance

• 34 TAC §§81.3, 81.5, 81.7

The Employees Retirement System of Texas proposes amendments to §§81.3, 81.5, and 81.7, concerning extended continuation of health coverages for COBRA participants who are disabled. These amendments will allow participants in the Texas Employees Uniform Group Insurance Program who continue insurance coverage after termination of employment to obtain an additional eleven

months of coverage if they were disabled on the date of termination of employment. The amendments are mandated by federal law.

William S. Nail, general counsel, 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.

Mr. Nail 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 are 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 the extension of insurance coverage entitled to employees whose employment is terminated and who are also disabled. There will be no effect on small businesses as a result of enforcing the sections. 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 William S. Nail, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under the Texas Insurance Code, §4, Article 3. 50-2, which provides the board of trustees of the Employees Retirement System of Texas with the authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of the Texas Employees Uniform Group Insurance Benefits Act.

§81.3. Administration.

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

(d) Funding.

(1) (No change.)

(2) Payment of premiums. Deductions from monthly compensation or annuities and direct payment of premiums are two methods of payments used for the employee's share of premiums.

(A) (No change.)

(B) Direct payment of premiums. Persons who are eligible participants in the program and who are not on a payroll or who are not receiving an annuity from a state retirement system from which the appropriate premiums may be deducted or whose salary or annuity are insufficient to allow for a full required deduction must pay premiums directly as indicated in the following.

(i)-(ii) (No change.)

(iii) A person who continues group health benefits as provided in §81.5(j)(3) of this title (relating to Eligibility) must pay premiums in advance on a monthly basis. Health coverage premiums for such a person for each month of coverage after

the 18th month of coverage, will be 150% of the rates charged for other participants in the same coverage category and with the same health coverage. All premiums are due on the first day of the coverage month and must be postmarked or received by the Employees Retirement System of Texas within 30 days of the due date to avoid cancellation of coverage.

(iv)[(iii)] A person, other than those described in clause (i) or (ii) of this subparagraph, must pay premiums in advance and may elect to pay either monthly, every three months, every six months, or annually. The full premium for the payment period option chosen must be paid directly to the Employees Retirement System and is due on the first day of the first month covered by the payment period. The premium payment must be postmarked or received by the Employees Retirement System within 30 days of the due date to avoid cancellation of coverage. A person who fails to complete a payment period option election prior to the first premium due date will be required to pay premiums in advance every month until an election is filed with the Employees Retirement System.

§81.5. Eligibility.

(a)-(i) (No change.)

(j) Continuation of health coverage only for certain spouses and dependent children of employees/retirees, and for certain terminating employees, their spouses, and dependent children (as provided by the Public Health Service Act, Title XXII).

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

(3) An employee, spouse, or dependent child determined by the Social Security Administration to have been disabled on the date the employee's employment terminated may have his or her continuation health coverage extended for an additional 11 months, for a total of 29 months. Notification of the Social Security Administration's determination must be received by the Employees Retirement System of Texas within 60 days of the date of that determination, and before the end of the original 18 months of continuation coverage. Continuation coverage will be canceled the month that begins more than 30 days after the date the Social Security Administration determines that the participant is no longer disabled.

(4)[(3)] A spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children who are not otherwise eligible to continue health coverage under the provisions of the Act or subsection (d) of this section, who are not entitled to benefits under the Social Security Act, Title XVIII, and who are not covered under any other group health plan

unless that plan subjects them to a preexisting conditions limitation or exclusion, may continue for up to 36 months the health coverage only that was in effect immediately prior to the date the divorce decree is signed. The employee/retiree or the divorced spouse or the divorced spouse's dependent child/children must notify the Employees Retirement System through the employing agency or retiree insurance coordinator of the divorce within 60 days from the date the divorce decree is signed. A formal election must be made to continue the health coverage by the divorced spouse and/or the dependent child/children. The formal election must be postmarked or received by the Employees Retirement System within 60 days of the date of notice contained in the notice of right to continue health coverage form.

(5) [(4)] A dependent child under 25 years of age who marries, who is not entitled to benefits under the Social Security Act, Title XVIII, and who is not covered under any other group health plan unless that plan subjects the child to a preexisting conditions limitation or exclusion, may continue for up to 36 months the health coverage only that was in effect immediately prior to the date of the marriage. The married child or the employee/retiree must notify the Employees Retirement System through the employing agency or retiree insurance coordinator of the marriage within 60 days from the date of the marriage. A formal election must be made by the married child to continue health coverage. The formal election must be postmarked or received by the Employees Retirement System within 60 days of the date of notice contained in the notice of right to continue health coverage form.

(6)[(5)] A dependent child who has attained 25 years of age, who is not otherwise eligible to continue health coverage indefinitely under the provisions of the Act or subsection (d) of this section, who is not entitled to benefits under the Social Security Act, Title XVIII, and who is not covered under any other group health plan unless that plan subjects the child to a preexisting conditions limitation or exclusion, may continue for up to 36 months the health coverage only that was in effect immediately prior to the date of the child's 25th birthday. The child or employee/retiree must notify the Employees Retirement System through the employing agency or retiree insurance coordinator within 60 days of the child's 25th birthday. A formal election must be made by the 25-year-old child to continue health coverage. The formal election must be postmarked or received by the Employees Retirement System within 60 days of the date of notice contained in the notice of right to continue health coverage form.

(7)[(6)] Extension of continuation of health coverage for certain spouses

and/or dependent child/children of former employees who are continuing health coverage under the provisions of paragraph (2) of this subsection is governed by the following provisions.

(A) (No change.)

(B) A spouse who is divorced from a former employee during the period of continuation coverage and/or the divorced spouse's dependent child/children who satisfy the provisions of paragraph (4)(3) of this subsection are entitled to a total of 36 months of continuation health coverage.

(C) A dependent child under 25 years of age who marries during the period of continuation coverage and who satisfies the provisions of paragraph (5)(4) of this subsection is entitled to a total of 36 months of continuation health coverage.

(D) A dependent child who attains the age of 25 years during the period of continuation coverage and who satisfies the provisions of paragraph (6)(5) of this subsection is entitled to a total of 36 months of continuation health coverage.

(E) An employee, spouse, or dependent child determined by the Social Security Administration to be disabled at the time of termination of the employee's employment and who satisfies the provisions of paragraph (3) of this subsection is entitled to a total of 29 months of continuation health coverage.

(F)(E) No person shall be allowed to continue health coverage under the provisions of this subsection for more than 36 months.

(8)(7) A person who continues group health benefits under the provisions of paragraphs (1)-(7)(1)-(6) of this subsection may change health coverage levels or plans during the continuation period on the same basis as an employee/retiree participant, provided, however, that health coverage which is canceled during the continuation period may not be reestablished.

(9)(8) In all situations deemed applicable by the Employees Retirement System where state or federal laws or regulations mandate specific terms or provisions which are omitted or conflict with specific terms or provisions of the group health contracts or trustees' rules, the appropriate contracts and rules shall be interpreted and administered to comply with such laws or regulations.

§81.7. Enrollment and Participation.

(a)-(h) (No change.)

(i) Continuing coverage in special circumstances.

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

(7) Continuation of health coverage benefits for a spouse who is divorced from an employee/retiree and/or the spouse's dependent child/children. The divorced spouse and/or the spouse's dependent child/children (not provided for by §81.5(a) of this title (relating to Eligibility)) of an employee/retiree who, in accordance with §81.5(j)(4)[§81.5(j)(3)] of this title (relating to Eligibility), elects to continue health coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation of coverage enrollment form. Continuing health coverage will begin on the first day of the month following the month in which the divorce decree is signed, provided all group insurance premiums due for the month in which the divorce decree is signed and for the election/enrollment period have been paid in full.

(8) Continuation of health coverage benefits for a dependent child under 25 years of age who marries. A dependent child under 25 years of age who marries and who, in accordance with §81.5(j)(5)[§81.5(j)(4)] of this title (relating to Eligibility), elects to continue health coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation of coverage enrollment form. Continuing health coverage will begin on the first day of the month following the month in which the dependent child's marriage occurred, provided all group insurance premiums due for the month in which the dependent child's marriage occurred and for the election/enrollment period have been paid in full.

(9) Continuation of health coverage benefits for a dependent child who has attained 25 years of age. A 25-year-old dependent child (not provided for by §81.5(d) of this title (relating to Eligibility)) of an employee/retiree who, in accordance with §81.5(j)(6)[§81.5(j)(5)] of this title (relating to Eligibility), elects to continue health coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on

the continuation of coverage enrollment form. Continuing health coverage will begin on the first day of the month following the month in which the dependent child of the employee/retiree attains 25 years of age, provided all group insurance premiums due for the month in which the dependent child attained age 25 and for the election/enrollment period have been paid in full.

(10) Extension of continuation of health coverage for certain spouses and/or dependent child/children of former employees who are continuing health coverage under the provisions of paragraph (6) of this subsection.

(A) The surviving spouse and/or dependent child/children of a deceased former employee, who, in accordance with §81.5(j)(7)(A)[§81.5(j)(6)(A)] of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the former employee died.

(B) A spouse who is divorced from a former employee and/or the divorced spouse's dependent child/children, who, in accordance with §81.5(j)(7)(B)[§81.5(j)(6)(B)] of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the divorce decree was signed.

(C) A dependent child under 25 years of age who marries, who, in accordance with §81.5(j)(7)(C)[§81.5(j)(6)(C)] of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first

day of the month following the month in which the dependent child marries.

(D) A dependent child who has attained 25 years of age, who, in accordance with §81.5(j)(7)(D)[§81.5(j)(6)(D)] of this title (relating to Eligibility), elects to extend continuation coverage may do so by submitting the required election notification and enrollment forms to the Employees Retirement System. The enrollment form, including all premiums due for the election/enrollment period, must be postmarked or received by the Employees Retirement System on or before the date indicated on the continuation enrollment form. The election/enrollment period begins on the first day of the month following the month in which the dependent child attained age 25.

(11) Continuation coverage defined. Continuation coverage as provided for in paragraphs (5)-(10) of this subsection means the continuation of only health coverage benefits which meet the following requirements.

(A) (No change.)

(B) Period of coverage. The coverage shall extend for at least the period beginning on the first day of the month following the date of the cessation of coverage event and ending not earlier than the earliest of the following:

(i) (No change.)

(ii) in the case of termination of an employee's employment, if the employee, spouse, or dependent child has been certified by the Social Security Administration as being disabled as provided in §81.5(j)(3) of this title (relating to Eligibility), the last day of the 29th calendar month of the continuation period;

(iii)[(ii)] in any case other than termination of an employee's employment, the last day of the 36th calendar month of the continuation period;

(iv)[(iii)] the date on which the employer ceases to provide any group health plan to any employee/retiree;

(v)[(iv)] the date on which coverage ceases under the plan due to failure to make timely payment of any premium required as provided in §81.3(d)(2)(B)(ii) and (iii) of this title (relating to Administration);

(vi)[(v)] the date on which the participant, after the date of election, becomes covered under any other group health plan under which the participant is not subject to a preexisting conditions limitation or exclusion;

(vii)[(vi)] the date on which the participant, after the date of elec-

tion, becomes entitled to benefits under the Social Security Act, Title XVIII.

(C) Premium requirements. The premium for a participant during the initial 18 months of the continuation of health coverage period will be 102% of the employee's/retiree's health coverage only rate and is payable as provided in §81.3(d)(2)(B)(ii) of this title (relating to Administration).

(i) The premium for a participant eligible for 36 months of coverage will be 102% of the employee's/retiree's health coverage only rate for the 19th-36th months of coverage and is payable as provided in §81.3(d)(2)(B)(ii) of this title (relating to Administration).

(ii) The premium for a participant eligible for 29 months of coverage will be 150% of the employee's/retiree's health coverage only rate for the 19th-29th months of coverage and is payable as provided in §81.3(d)(2)(B)(iii) of this title (relating to Administration).

(D) No requirement of insurability. No evidence of insurability is required for a participant who elects to continue health coverage under the provisions of §81.5(j)(1)-(6)[§81.5(j)(1)-(5)] of this title (relating to Eligibility).

(E) Conversion option. An option to enroll under the conversion plan available to employees/retirees is also available to a participant who continues health coverage for the maximum period as provided in paragraph (11)(B)(i) and (ii) of this subsection[paragraph (B)(i) and (ii) of this paragraph]. The conversion notice will be provided to a participant during the 180-day period immediately preceding the end of the continuation period.

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

Issued in Austin, Texas, on June 6, 1990.

TRD-9005905 James A. Adkins
Acting Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption: July 13, 1990

For further information, please call: (512) 476-6431, ext. 213

◆ ◆ ◆
TITLE 40. SOCIAL
SERVICES AND
ASSISTANCE

Part I. Texas Department
of Human Services

Chapter 54. Family Violence Program

Contracting Requirements

• 40 TAC §54.403

The Texas Department of Human Services proposes an amendment to §54.403, concerning payments to contractors, in its Family Violence Program chapter. The purpose of the amendment is to give family violence shelter centers time to adjust to substantial changes in income. The amendment permits the department to temporarily waive the 50% ceiling on its share of a shelter center's annual operating budget when the shelter center's income increases or decreases by more than 10% in a single year.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to maintain or increase shelter center services to victims of family violence when a shelter center faces a substantial loss of income from other sources than the department or when it has an opportunity to accept a substantial increase in state funding. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Questions about the content of this proposal may be directed to Pam Rodgers at (512) 450-3144 in the Family Violence Program. Comments on the proposal may be submitted to Cathy Rossberg, Policy Communication Services-347, Texas Department of Human Services 454-W, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

§54.403. Contractor's Payment.

(a) The Texas Department of Human Services' (DHS's) funding for a shelter center must not exceed the following prescribed [yearly] percentages of the shelter center's annual [total] operating costs: [DHS funding will not exceed the following percentages:]

(1)-(7) (No change.)

(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 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 fundraising 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.

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

(1) the shelter center's actual income for the contract year has increased or decreased by more than 10% relative to the previous contract year's actual income;

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

(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) the shelter center is capable of raising enough funds from other sources to comply with the 50% ceiling requirement before the end of the next contract year.

(d) [(b) The Texas Department of Human Services] (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.)

(e)[(c)] 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.

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

Issued in Austin, Texas, on June 6, 1990.

TRD-9005898

Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Proposed date of adoption: August 31, 1990

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

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Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 34. PUBLIC FINANCE

Part IX. Bond Review Board

Chapter 181. Bond Review Board

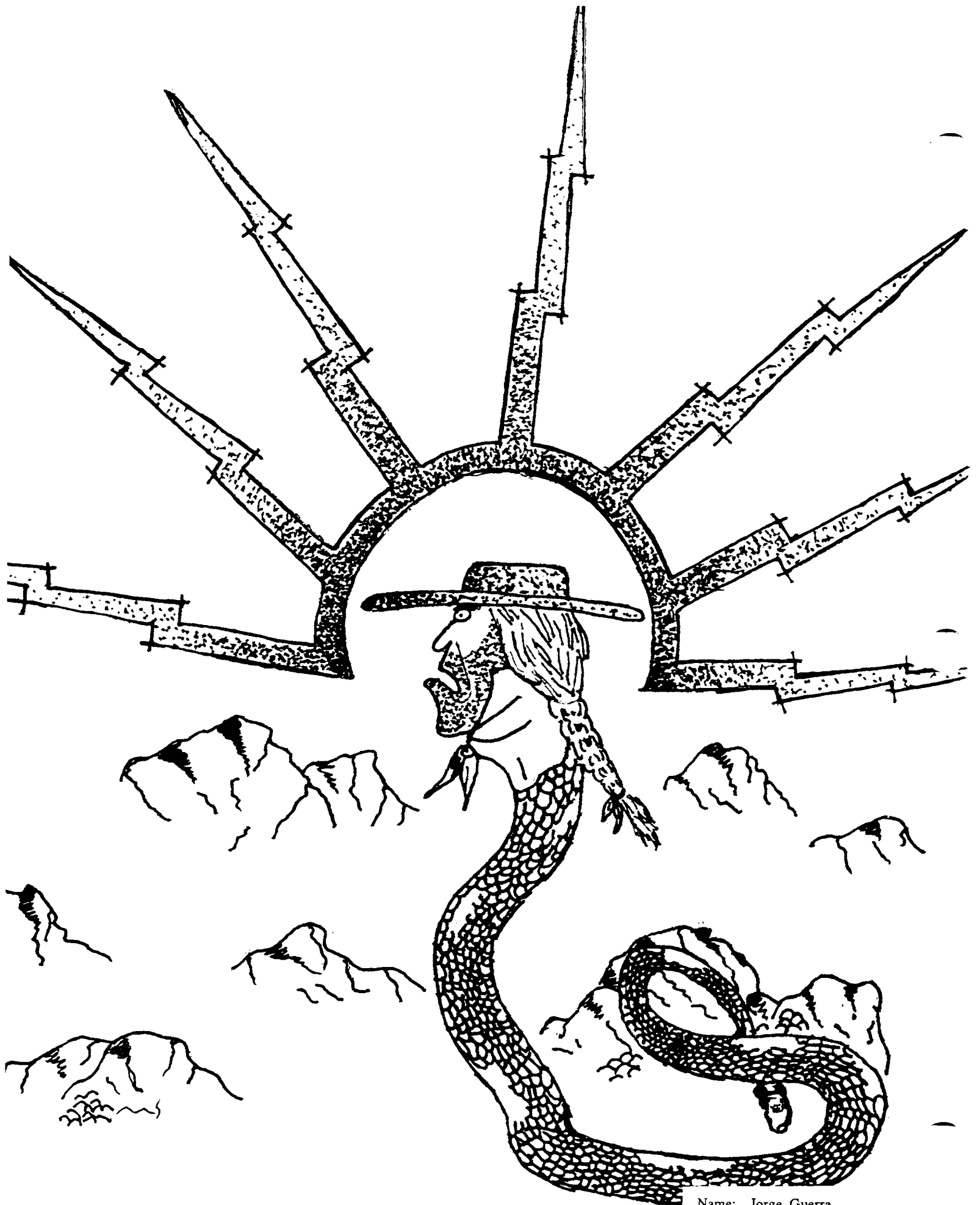
Subchapter B. Public School Facilities Funding Program Rules

- 34 TAC §§181.21, 181.23, 181.25,
181.27, 181.29, 181.31, 181.33,
181.35

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91.24(b), the proposed new sections to §§181.21, 181.23, 181.25, 181.27, 181.29, 181.31, 181.33, 181.35, submitted by the Bond Review Board has been automatically withdrawn, effective June 6, 1990. The new sections as proposed appeared in the December 5, 1989 issue of the *Texas Register* (14 TexReg 6340).

TRD-9005904





Name: Jorge Guerra

Grade: 9

School: Waskom High School, Waskom

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 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 297. Water Rights, Substantive

Subchapter A. Requirements of Water Use Permit Application

• 31 TAC §297.1

The Texas Water Commission (TWC) adopts amendments to §297.1 and §297.45, without changes to the proposed text as published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6734) except for the correction of certain typographical errors discussed below. These sections will not be republished.

The amendments to §297.1, concerning definitions, modifies the definition of "municipal use" and adds a definition for "reclaimed water." The amendments to §297.45(a) clarifies the water rights associated with return and surplus water. Additionally, this subsection is simplified to indicate that all uses of water must be authorized in the water right. These amendments are promulgated in coordination with the adoption of new Chapter 310, concerning the use of reclaimed water. The commission is promulgating this new chapter to encourage the substitution of reclaimed water promotes conservation of existing natural resources and may provide a less expensive way for water suppliers to meet water demands.

Comments to the proposed amendments were submitted by the Texas Parks and Wildlife Department, the City of Austin, the Brazos River Authority, the Lone Star Chapter of the Sierra Club, and the Dallas County Park Cities Municipal Utility District. Comments received were generally favorable to the use of treated effluent, the source of which is state water diverted pursuant to a water rights, for re-use purposes in accordance with those authorization provided in the water right. However, concerns were raised by all commenters as to the effect this may have on existing water rights, since the return flows have used in calculating water availability for purposes of the issuance of water rights permits and the maintenance of instream uses.

The amendments have not changed the impact of the existing rules on downstream water rights or instream uses. Under current law, a water right holder has the right to beneficially use the full extend of his water

right, which may result in no return or surplus water. Therefore, the amendments do not affect current water rights any differently than under previous rules.

In determining water availability with regard to an application for water appropriation, historical streamflow data is considered. The amount of streamflow is, of course, affected by the amount of return flows. If significant decreases occur in the amount of return water flows than have been historically recorded, then this will be considered as part of the water availability analysis that is performed in response to an application for a water appropriation. Such increases in the re-use of water is required to be reported to the executive director pursuant to §310.4 to, in part, assist in water availability analyses.

Additionally, some commenters expressed confusion over the intent of the definition of "reclaimed water" and what impact this may have on water availability. The use of treated sewage effluent (reclaimed water) on a municipality's own land continues to be authorized under the rules. The prior definition of municipal use included the disposal of sewage effluent by irrigation if such disposal is part of the required treatment process and/or the disposal of such effluent was applied to areas owned by the permitted sewerage system. The amended definition of municipal use simply allows a municipality to supply reclaimed water (sewage effluent) to a customer such as a privately-owned golf-course or landscaped area within the environs of the municipality when it is substituted for potable water. Although the substitution of reclaimed water for potable water could, in some instances, potentially impact downstream flows, it would have to be an unusual case, such as inordinate amount of land area that historically had been irrigated with potable water.

Finally, one commenter proposed the inclusion of "untreated" in the definition of "municipal water use." The commission disagrees with this suggestion. The terms "treated" and "untreated" are used to distinguish between water prepared for human consumption and water normally used in its natural state for other purposes such as irrigation and/or industrial processes. Generally, municipalities do not supply untreated water to their users. Additionally, the suggested, expanded definition causes priority problems in that it would protect non-municipal uses such as irrigation and industrial use by bringing those uses under the umbrella of the municipal use classification, which is exempted from pre-emptive appropriation pursuant to the Texas Water Code, §11.024. Under §11.023 and §11.024 and definitions contained in commission rules under §271.1, domestic and municipal use, the highest priority use, is water used for sustaining human life and the

life of domestic animals. It is the policy of the state, as provided under these code sections, that municipal and domestic use be superior to the use of water for all other purposes.

Finally, the following corrections of typographical errors are made on page 6733, of the December 22, 1989, issue of the *Texas Register*, in the definition of "municipal use" contained under §297.1, the word "or" is inserted after the semi-colon and before "(B)"; on page 6733, in the definition of "reclaimed water" contained under §297.1, the word "and" is inserted after "owner/operator"; on page 6734, in §297.45(a), replace the word "extend" with "extent"; on page 6734, in §297.45(a)(2), "golf" is incorrectly spelled; and on page 6734, in §297.45(a), the bracket before "(1)" should be removed.

The amendment is adopted under the authority of the Texas Water Code, §§5.103, 5.105, and 5.120, which provide the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the State and to establish and approve all general policies of the commission.

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

Issued in Austin, Texas, on June 4, 1990.

TRD-9005778 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: June 25, 1990

Proposal publication date: December 22, 1989

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

Subchapter E. Issuance and Conditions of Water Permit or Certificate of Adjudication

• 31 TAC §297.45

The amendment is adopted under the authority of the Texas Water Code, §§5.103, 5.105, and 5.120, which provide the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

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

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Chapter 305. Consolidated Permits

Subchapter F. Permit Characteristics and Conditions

• 31 TAC §305.126

The Texas Water Commission adopts an amendment §305.126, with changes to the proposed text as published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6734).

The amendment provides applicants for new amended or renewed permits a year to submit a reclaimed water study. This section is necessary to encourage the conservation of potable water and/or freshwater.

The Texas Water Commission received two comments on the proposed section. The City of Austin stated that it is not clear whether the results of the reclaimed water use study will be incorporated as permit requirements. The purpose of the study is to initiate community awareness of the uses of reclaimed water. The Texas Water Commission at this time is not intending to automatically require a wastewater treatment facility to develop reclaimed water uses. We will, however, encourage the use of reclaimed water where studies indicate substitution for potable/freshwater water is practical.

The Texas Parks and Wildlife Department (TPWD) stated that environmental impacts should be addressed in the required reclaimed water use study. "Such a study should include assessment of conditions in the receiving water stream above and below the current outfalls, including water quality, historical streamflow data, general channel morphology, and the occurrence of sensitive species (in particular, threatened or endangered species) or sensitive biological communities (such as wetlands or rare plant communities) and of recreational areas downstream." The agency agrees that this issue is important; however, it should be addressed within the scope of water availability and adjudicated water rights. The required study is to investigate the possibility of using reclaimed water for conservation purposes and thus we have elected not to include this type of environmental analysis at this stage.

The Texas Water Commission will include the provision requiring the reclaimed water use study in a wastewater permit at the time of renewal. The permittee will usually be allowed one year to complete the investigation. Additional time may be granted if in the judgment of the executive director good cause exists. The agency will review these studies and discuss with the permittee the possibility

of initiating a reuse program in order to conserve the state's natural resources.

The amendments are adopted under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state, and to establish and approve all general policies of the commission.

§305.126. Additional Standard Permit Conditions for Waste Discharge Permits.

(a) Whenever flow measurements for any sewage treatment plant facility in the state reach 75% of the permitted average daily flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily flow reaches 90% of the permitted average daily flow for three consecutive months, the permittees shall obtain necessary authorization from the Texas Water Commission (TWC) to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75% of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the Water Quality Division of the TWC, and such waiver of these requirements will be reviewed upon expiration of the existing permit. However, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

(b) Within one year of issuance of any new, amended, or renewal permit, permittees of domestic wastewater treatment facilities with a permitted daily average effluent flow equal to or greater than 500,000 gallons per day shall submit to the executive director a study that investigates the possibility of substituting reclaimed water for potable water and/or freshwater where such substitution would be both appropriate and cost effective. Reclaimed water is domestic wastewater that is under the direct control of the treatment plant owner/operator which has been treated to a quality suitable for a beneficial use. At a minimum, the study shall include:

(1) a water supply and demand assessment for the area served;

(2) an inventory of potential areas where reclaimed water may be appropriately substituted for potable water and/or

freshwater;

(3) an inventory of potential uses of reclaimed water;

(4) an analysis of the market for reclaimed water and the conditions necessary to serve that market (eg., quantity, quality, selling price, distribution system); and

(5) a preliminary cost-benefit analysis for the treatment and use of reclaimed water compared with the continued use of potable water and/or freshwater, water supply augmentation, water conservation, and/or cost of treatment and disposal of treated wastewater.

(c) Any permittee required to perform a study pursuant to subsection (b) of this section may be granted an extension of the one year deadline if in the judgment of the executive director good cause exists.

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

Issued in Austin, Texas, on June 4, 1990.

TRD-9005781

Jim Haley
Legal Division
Texas Water Commission

Effective date: June 25, 1990

Proposal publication date: December 22, 1990

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

Chapter 310. Use of Reclaimed Water

Subchapter A. Use of Reclaimed Water

• 31 TAC §§310.1-310.18

The Texas Water Commission (TWC) adopts new §§310.1-310.18. Sections 310.2, 310.5, 310.7, 310.8, 310.9, 310.12, and 310.15 are adopted with changes to the proposed text as published in the December 22, 1989, issue of the *Texas Register* (14 TexReg 6735). Sections 310.1, 310.3, 310.4, 310.6, 310.10, 310.11, 310.13, 310.14, and 310.16-310.18 are adopted without changes and will not be republished.

The new sections are necessary to encourage the conservation of water resources by reusing water where possible and appropriate. Reclaimed water providers and users may, after executive director approval, utilize treated domestic wastewater in accordance with the sections and without making modification to the providers wastewater permit.

Revisions have been made to §§310.2, 310.5(c)-(e), 310.7(a) and (b), 310.8(1)(B) and (D), (3)(A) Table 1 footnotes d and e, (3)(D), (F), and (J), 310.9(b), 310.12(8), and 310.15. Grammatical and spelling corrections have also been made.

The TWC received written comments on the proposed sections from Lloyd, Gosselink, Fowler, Blevins & Mathews, P.C. (Lloyd et al.), City of Austin, Texas Parks and Wildlife Department (TPWD), Fort Worth Water Department (FWWD), Lower Colorado River Authority (LCRA), the Sierra Club, Brazos River Authority (BRA) and Bickerstaff, Heath & Smiley (Bickerstaff et al.). The following is a discussion of comments and the TWC response.

The TPWD objects to "the general regulatory strategy of exempting all uses from permits except those explicitly described" because it leaves a large body of potential uses and users unregulated. TWC does not believe that the section as proposed exempts all uses from permitting. Section 310.2(c) clearly states that reclaimed water use projects approved under this chapter do not require a permit, but projects not included in this chapter do need commission authorization through the permit process. TPWD also felt that each project whether or not described in this chapter requires a permit in accord with the Texas Water Code, Chapter 26, rather than the notification required in §310.4. We do not agree because we have proposed this chapter in a "permit by rule" concept as provided under the Texas Water Code, 26.040. The purpose of the notification is to provide the agency with information as to who is discharging reclaimed water under this section and to allow the agency to determine that the project is designed to be compliant with the requirements in the section. Those reclaimed water use projects that do not have standards and are not described in this section will continue to be regulated under an individual TWC permit.

The City of Austin suggested the word "job" in §310.2(b) was unnecessary. TWC agrees and has deleted the word. The city also suggested the terminology "treated greywater" is confusing in §310.5(c). TWC agrees and has deleted the word "treated."

Lloyd et al. raised the concern that some users may want to provide extra treatment for an intended use and that §310.5 would require that user to first obtain a permit from the commission. The TWC has no objections to treating reclaimed water to a better quality for an intended use as long as the provider delivered reclaimed water that meets the required minimum quality for the specified use. Accordingly, the following sentence has been added to the existing section: "If the user elects to treat reclaimed water to a quality better than the minimum standard supplied by the provider for the same use, such treatment does not require a permit." Lloyd et al. also questioned whether providing additional disinfection would require a permit under this section. TWC believes that disinfection should not normally be a cause to require a permit and has added the following phrase to this section to so indicate: "Additional disinfection is not considered treatment for purposes of this section."

Lloyd et al. questioned whether persons transferring wastewater from an owner/operator of a treatment facility to an end user should require a permit. The agency believes that in order to assure that reclaimed water standards are maintained and the end user and the public are protected, the provider should be appropriately regulated by

a permit. We do agree that entities delivering reclaimed water without interim storage can reliably provide reclaimed water meeting appropriate standards without additional treatment. Accordingly, we have modified §310.5(e) to read as follows: "No person may receive reclaimed water, store, and transfer such water to another person without first obtaining a permit for storage/treatment from the commission. Pipeline or one-day truck delivery is not considered storage."

Accordingly, the City of Austin suggested that if a provider intended to deliver reclaimed water to a user that only the provider and user notify under §310.4. We agree with the city as long as the hauler does not store the reclaimed water.

The City of Austin commented that "it does not seem that public health and environmental needs necessitate the lining of all ponds." The agency agrees with this statement to the extent that existing soils may adequately contain the reclaimed water. Such a demonstration may be made under §310.7(a) and the executive director may exempt the pond from the specified liner characteristics found in paragraphs (1) and (2) of this subsection. LCRA noted that §310.7(b) prohibits discharge from storage/holding ponds although later sections of this chapter allow discharges if there is a volume of reclaimed water to stormwater in the pond that is less than or equal to 1:10. This was an oversight and the section has been amended to be consistent with §310.9(b).

The City of Austin noted that §310.8(1)(B) reclaimed water standards are the same but two treatment systems are specified. We have simplified this section so as not to be confusing and specify only the following: "BOD5 ... 30 mg/l." One commenter noticed that there is a limit on fecal coliform for use of reclaimed water on food crops but no limit on unrestricted landscape use and questioned the appropriateness of adding a fecal limit. TWC agrees that a fecal coliform limit is appropriate and is adding a limit not to exceed 75 CFU/100 ml in §310.8(1)(D)(i). The City of Austin commented that turbidity or fecal coliform limit would be appropriate but saw no public benefit in both. The agency believes that a fecal coliform limit is important to protect the public and that testing is necessary. The turbidity limit is established so that reclaimed water will have a low suspended solids content and thus assist in achieving low fecal coliform counts. Turbidity can easily be checked and can be set up in a continuous monitoring mode to assist in good quality control. Additionally, the test is very quick whereas the fecal coliform test requires 24 hours to perform. Because both test are useful and inexpensive, we believe it is appropriate to retain both types of limits for unrestricted landscaped areas and irrigation of food crops for effluent from systems other than pond systems. Also, the label under paragraph (1)(D)(ii) of this section should read for restricted landscaped areas. We have corrected two errors in §310.8(3)(A), Table 1 footnotes d and e: "L = (Ce/(Cl-Ce))(E-Ri)" and corrected the spelling of Millimhos, respectively.

In response to comments from Lloyd et al. and FWWD that §310.8(3)(F) and (J) were duplicative and that we should define the disinfection in terms of minimum acceptable

criteria, we have modified subparagraph (F) to read as follows: "If irrigation water is stored prior to application, provision must be made to provide additional disinfection to meet the specified criteria for the designated use. Such disinfection must receive executive director approval. Pipeline and one-day truck delivery does not constitute storage." Proposed paragraph (J) was deleted and proposed paragraph (K) was renumbered to (J) for final adoption.

Lloyd et al. felt that §310.9(b) should be reworded to "insure that on-channel facilities can be used for the impoundment of reclaimed waters, and could lawfully spill, as long as the 1:10 ration specified in this section is maintained." We have reworded this section as follows: "There shall be no discharge from a restricted recreational impoundment, or ornamental fountain into surface water in the state unless such impoundments or fountains naturally provide or are designed, constructed, and operated so that any overflows of reclaimed water occur only when the volume of reclaimed water to stormwater in the impoundment or fountain is less than or equal to 1:10."

The TPWD raised a general concern about §§310.8-310.10 and the fact that "the standards for quality of reclaimed water uses do not address many significant contaminants." The TWC is interested in comments related to other contaminants and opinions on appropriate limits for future rulemaking.

The City of Austin commented that the TWC should specify dyes to utilize for toilet flush water in §310.11(b). The agency is declining to be specific because the requirement is included in the section just so that the water color will be "unnatural." This requirement can be achieved through a broad range of color tones and can be evaluated when the reclaimed water use notification is submitted. FWWD and LCRA also suggested that a sampling and analysis requirement of once per day for reclaimed water used for flush water would be too expensive and discourage its use for this purpose. The agency agrees and has adopted a once per week frequency.

LCRA commented that there are situations where the transfer of reclaimed water from a provider to a user should be allowed on a basis other than demand only and used as an example the Highland Lakes area where the goal of wastewater treatment plants is to achieve zero discharge. The intent behind the requirement of a demand only reclaimed water agreement found in §310.14 is to promote the use of reclaimed water as a substitute for potable water or freshwater as part of a conservation objective. To make a user take water that is not needed appears to be a disposal problem that a wastewater treatment plant should be responsible for providing. The agency is retaining the demand only requirement in this rulemaking.

In order to make §310.15, entitled "general provisions," agree with earlier changes regarding on-channel ponds, we have modified this section to read as follows: "Except for on-channel ponds, storage facilities for retaining reclaimed water prior to use shall not be located within the five-year floodplain and shall be protected from the 100-year flood."

TWC received comments from Bickerstaff et

al., BRA, and the Sierra Club concerning water rights as they relate to this chapter. TWC has not addressed the issue of water rights directly in proposed Chapter 310 although we have stated in the proposal preamble that we will review water rights with respect to the proposed reclaimed water use plans submitted to the agency. In a companion section also adopted at this time, TWC has specifically addressed water rights with respect to the size of a reclaimed water use project (see amendments to Chapter 297).

The new sections are adopted under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state, and to establish and approve all general policies of the commission.

§310.2. Purpose and Scope.

(a) The purpose of this chapter is to establish quality criteria, design, and operational requirements for use of reclaimed water which may be substituted for potable water and/or freshwater. Specific use categories are defined with corresponding reclaimed water quality requirements. These criteria are intended to allow the safe utilization of reclaimed water for conservation of surface and ground water; to ensure the protection of public health; to protect ground and surface waters; and to help ensure an adequate supply of water resources for present and future needs.

(b) The commission has defined other types of reclaimed water in separate chapters. This section does not modify those definitions; however, the term "reclaimed water" is limited in scope for the purpose of this section as defined in §310.1 of this title (relating to Definitions). Approval by the executive director of a reclaimed water use project does not effect any changes of existing water rights. If water rights are an issue to a reclaimed water use project, a separate water rights authorization from the commission must be obtained by the reclaimed water provider and/or user, as appropriate.

(c) Reclaimed water projects approved under this chapter do not require a permit from the commission except as provided in §310.5 of this title (relating to Permits Required). Persons who desire to develop projects not included in this section may apply for a permit under Chapter 305 of this title (relating to Consolidated Permits).

§310.5. Permits Required.

(a) Prior to discharging any reclaimed water to the waters in the state, the provider or user shall obtain a permit from the commission in accordance with the requirements of Chapter 305 of this title (relating to Consolidated Permits) except as provided in §§310.7(b) and 310.9(b) of this title (relating to Storage Requirements for Reclaimed Water and Landscape Impoundment, Restricted Recreational Impoundments, or Ornamental Fountains).

(b) The executive director may, if conditions warrant, require a reclaimed water user to apply for and obtain a permit to utilize reclaimed water.

(c) The treatment and use of greywater does not require a permit from the commission if the greywater (reclaimed water) is used by the owner/operator of the treatment facility and the user satisfies the requirements of this chapter.

(d) A reclaimed water user who accepts effluent and provides additional treatment for a more restrictive use must apply for and obtain a permit from the commission prior to engaging in such activity. If the user elects to treat reclaimed water to a quality, better than the minimum standards supplied by the provider for the same use, such treatment does not require a permit. Additional disinfection is not considered treatment for purposes of this section.

(e) No person may receive reclaimed water, store, and transfer such water to another person without first obtaining a permit for storage/treatment from the commission. Pipeline delivery of reclaimed water is not considered storage.

§310.7. Storage Requirements for Reclaimed Water.

(a) Unless the reclaimed water provider or user, as appropriate, submits soil and geologic data to demonstrate containment of the reclaimed water, which is reviewed by the executive director, and a specific exemption is obtained from the executive director, reclaimed water holding ponds shall conform to the following requirements.

(1) All ponds whether constructed of earthen or other impervious materials shall be designed and constructed so as to prevent groundwater contamination. Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be of compacted material, at least 24 inches thick, compacted in lifts no greater than six inches, and compacted to 95% of standard

proctor density. Soil liners must meet the following particle size gradation and Atterberg limits: 30% or more passing a Number 200 mesh sieve; a liquid limit of 30% or greater; and a plasticity index of 15 or greater. Alternate linings may be utilized for a pond lining as long as they are constructed with a 12-inch thick soil base free of foreign materials such as paper, brush, trees, and large rocks and the alternate lining material has a permeability less than or equal to 1×10^{-7} cm/sec. Synthetic membrane linings shall have a minimum thickness of 20 mils with a leak detection system. Certification shall be furnished by a Texas registered professional engineer that the pond lining meets the appropriate criteria prior to utilization of the facilities.

(2) If soils are used in construction of a ponds embankment wall, it shall be free of foreign material such as paper, brush, trees, and large rocks. Soil embankment walls shall have a top width of at least five feet. The interior and exterior slopes of soil embankment walls shall be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are utilized. Soil embankment walls must be constructed of material compacted in lifts no greater than six inches to 95% of standard proctor density. All soil embankment walls shall be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion stops and water seals shall be installed on all piping penetrating the embankments.

(3) An alternative method of pond lining may be utilized with the approval of the executive director.

(b) Stormwater may be directed to storage/holding ponds; however, the pond shall not be allowed to overflow unless the volume of reclaimed water to stormwater in the pond is less than or equal to 1:10.

(c) Reclaimed water may be stored in leak proof tanks.

§310.8. Irrigation Using Reclaimed Water. The following conditions apply to the use of reclaimed water for agricultural purposes.

(1) At a minimum, the reclaimed water provider shall only transfer reclaimed water of the following quality as described for each type of specific use.

(A) Irrigation of food crops: reclaimed water on a 30-day average shall have a quality of:

(i) BOD₅ (system other than pond system)

10 mg/l

Turbidity

3 NTU

Fecal Coliform (not to exceed) 75CFU/100 ml

(ii) BOD₅ (pond system)

30 mg/l

Fecal Coliform (not to exceed) 75CFU/100 ml

(B) Irrigation of fodder, fiber and seed crops: Reclaimed water on a 30-day average shall have a quality of:

BOD₅

30 mg/l

(C) Irrigation of pastures for animals milked for human consumption: reclaimed water on a 30-day average shall have a quality of:

BOD₅ (other than pond system) 20 mg/l

(pond system) 30 mg/l

Fecal Coliform (not to exceed) 800CFU/100 ml

(D) Irrigation of landscaped areas:

(i) for unrestricted landscaped areas, reclaimed water on a 30-day average shall have a quality of:

BOD₅ 5 mg/l

Turbidity 3 NTU

Fecal Coliform (not to exceed) 75CFU/100 ml

(ii) for restricted landscaped areas, reclaimed water on a 30-day average shall have a quality of:

BOD ₅ (other than pond system)	20 mg/l
(pond system)	30 mg/l
Fecal Coliform (not to exceed)	800CFU/100 ml

(2) If a user stores reclaimed water prior to use on food crops or landscaped areas for a period of time, 24 hours or longer (based upon current daily average low rates), the reclaimed water shall be disinfected as needed to meet the fecal coliform limits for the corresponding specific use.

(3) The reclaimed water user must determine the application rate based upon a detailed water balance. The water balance should generally follow the example development shown in Table 1 of this paragraph.

(A) Precipitation inputs to the water balance shall utilize the average monthly precipitation based on past rainfall records. The consumptive use requirements (evapotranspiration losses) of the crop system shall be developed on a monthly basis. The method of determining the consumptive use requirement shall be documented as a part of the water balance study. A leaching requirement, calculated as shown in Table 1 of this paragraph, shall be included in the water balance study when the total dissolved solids concentration of the reclaimed water presents the potential for developing excessive soil salinity buildup due to the long-term operation of the irrigation system.

TABLE 1
WATER BALANCE EXAMPLE
(All Units are Inches of Water per Acre of Irrigated Area)

a	b	c	d	e	f	g		
Average Precipitation Month (1)	Average Runoff (3)	Average Infiltrated Rainfall (4)	Evapo- transpiration Required Leaching (6)	Total Water Needs (5)+(6) (7)	Effluent Needed in Root Zone (7)-(4) (8)	Evapo- ration from Reservoir Surface (9)	Effluent to be Applied to Land (8)/K (10)	Consumption from Reservoir (9)+(10) (11)
Jan.	2.11	0.40	1.71	0.80	0.00	0.02	0.00	0.02
Feb.	2.43	0.57	1.86	1.20	0.00	0.01	0.00	0.01
Mar.	2.02	0.36	1.66	2.80	0.20	0.09	1.58	1.67
Apr.	3.19	1.03	2.16	3.40	0.22	0.05	1.72	1.77
May	4.19	1.74	2.45	6.10	0.64	0.10	5.05	5.15
June	3.30	1.10	2.20	6.50	0.76	0.20	5.95	6.15
July	2.20	0.45	1.75	6.70	0.87	0.34	6.85	7.19
Aug.	2.12	0.41	1.71	4.60	0.51	0.34	4.00	4.34
Sept.	3.58	1.30	2.28	5.10	0.50	0.19	3.91	4.10
Oct.	3.09	0.96	2.13	4.10	0.35	0.14	2.73	2.87
Nov.	2.23	0.46	1.77	2.10	0.06	0.07	0.46	0.53
Dec.	2.34	0.52	1.82	1.00	0.00	0.03	0.00	0.03
	32.80	9.30	23.50	44.40	4.11	1.58	32.25	33.83

Table 1 Footnotes

- a. Up-to date rainfall and evaporation data sets are available from the Texas Natural Resources Information System.
- b. Runoff should be determined by an acceptable method such as the Soil Conservation Service method found in SCS Technical Releases No. 55. For calculation purposes only, a CN value of 74 was assumed for good pasture with Class "C" soils.
- c. Suggested source of values is the "Bulletin 6019, Consumptive Use of Water by Major Crops in Texas", Texas Board of Water Engineers.
- d. In low rainfall areas, this is the required leaching to avoid salinity build-up in the soil where:

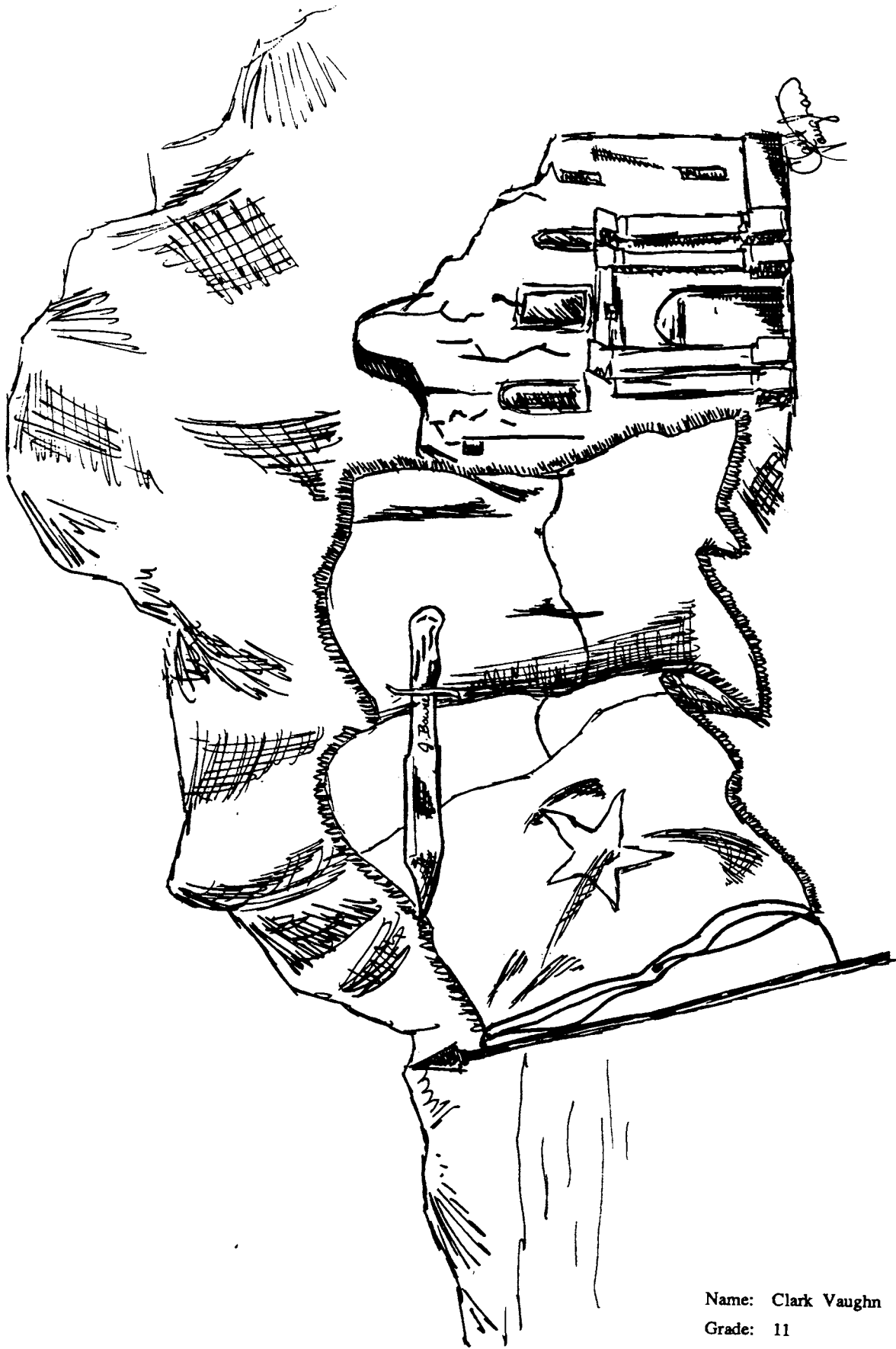
$$L = \frac{C_e}{C_1 - C_e} (E - R_i) \quad R_i = \text{Infiltrated rainfall}$$

C_e = Electrical conductivity of effluent C₁ = Maximum Allowable Conductivity of Soil Solution (Table 3)

E = Evapotranspiration

For calculation purposes only, C_e is measured to be 1.5 millimhos/cm @ 25° and C₁ is 10.0 (Bermuda Grass)

- e. Net evaporation from reservoir surface. For the purpose of calculation, an assumption must be made as to the ratio of irrigated land area to reservoir surface area. For this example problem, the necessary reservoir area was assumed to be 17% of the irrigated area. If, after all calculations are made, the reservoir dimensions do not seem reasonable, then a new assumption must be made and the calculations repeated. Values in column (9) are adjusted to be inches per irrigated acre.
- f. K is the irrigation efficiency which for this example is taken to be 0.85.
- g. The total of this column together with the expected annual volume of effluent will determine the acreage of irrigated land required.



INSEPARABLE

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(B) The irrigation site must be maintained with a vegetative cover or be under cultivation during times when reclaimed water is being applied.

(C) The irrigation practices shall be designed so as to prevent incidental ponding or standing water except where local farming conditions and the accepted irrigation delivery systems and cropping patterns are such that, as an unavoidable consequence of such conditions, systems, and patterns, there will be standing water.

(D) Irrigation shall be achieved when the area is not in use by humans or by animals milked for human consumption.

(E) Irrigation application rates and application times shall be developed so as to minimize "wet grass" conditions in unrestricted landscaped areas during the periods the area could be in use.

(F) If irrigation water is stored prior to application, provision must be made to provide additional disinfection to meet the specified criteria for the designated use. Such disinfection must receive executive director approval. Pipeline and one-day truck delivery does not constitute storage.

(G) Irrigation spray shall not reach any privately-owned premises outside the designated irrigation area or public drinking fountains.

(H) There shall be no application of effluent when the ground is saturated or frozen.

(I) Tailwater water controls shall be constructed to preclude discharge of reclaimed water from irrigation sites used for production of food crops, grazing animals milked for human consumption, production of fodder, fiber, and seed crops, and restricted landscape area.

(J) Distribution systems must be designed to prevent operation by unauthorized personnel.

§310.9. Landscape Impoundment, Restricted Recreational Impoundments, or Ornamental Fountains.

(a) Reclaimed water may be used for a source of water supply in a landscape impoundment, restricted recreational impoundment, or ornamental fountain if the quality of the water transferred from the provider is at a minimum:

BOD₅

10 mg/l

Turbidity

3 NTU

Fecal Coliform (not to exceed)

75CFU/100 ml

(b) There shall be no discharge from a landscape impoundment, restricted recreational impoundment, or ornamental fountain into surface water in the state unless such impoundments or fountains naturally provide or are designed, constructed, and operated so that any overflows of reclaimed water occur only when the volume of reclaimed water to stormwater in the impoundment or fountain is less than or equal to 1:10.

(c) Signs in both English and Spanish shall be posted stating that swimming and drinking the water is prohibited.

(d) Ornamental fountains shall be designed to minimize drift of water spray outside of the fountain.

§310.12. Sampling and Analysis. The reclaimed water provider shall sample the reclaimed water prior to distribution to user to assure that the water quality is in accord with the intended contracted use. Analytical methods shall be in accord with those specified in Chapter 319 of this title (relating to Monitoring and Reporting). The minimum sampling and analysis frequency for reclaimed water is as follows:

(1) distribution for irrigation of food crops: once per week;

(2) distribution for irrigation of fodder, fiber, and seed crops: once per month;

(3) distribution for irrigation of pastures for milking animals: once per two weeks;

(4) distribution for irrigation of unrestricted landscaped areas: once per week;

(5) distribution for irrigation of restricted landscaped areas: once per month;

(6) distribution for landscape impoundment water, restricted recreational impoundment water, or ornamental fountain water: once per week;

(7) distribution for industrial or commercial uses: once per month;

(8) distribution for use as toilet flush water: once per week.

§310.15. General Prohibitions. Except for on-channel ponds, storage facilities for retaining reclaimed water prior to use shall not be located within the five-year floodplain and shall be protected from the

100-year flood.

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

Issued in Austin, Texas, on June 4, 1990.

TRD-9005780 Jim Haley
Director, Legal Division
Texas Water Commission

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Proposal publication date: December 22, 1989

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

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Chapter 334. Underground and Aboveground Storage Tanks
Subchapter A. General Provisions

The Texas Water Commission (TWC) adopts the repeal of §§334.13 and adopts new §§334.21-334.23, 334.121-334.132, and amendments to §§334.1-334.3, 334.5-334.7, 334.42, 334.44, 334.47, 334.50, and 334.51. Section 334.47 and §334.50 are adopted with changes to the proposed text as

published in the April 6, 1990, issue of the *Texas Register* (15 TexReg 1935). Sections 334.1-334.3, 334.5-334.7, 334.13, 334.21-334.23, 334.42, 334.44, 334.51, and 334.121-334.132 are adopted without changes and will not be published. The TWC also adopts a corrected title for new Subchapter B (§§334.21-34.23) without any changes in the text of the subchapter.

Subchapter B as published in the April 6, 1990, issue of the *Texas Register* (15 TexReg 1941) was incorrectly entitled "Aboveground Storage Tank fees." The title should have read "Underground Storage Tank Fees." The TWC corrects that error at this time.

The TWC received several written comments on the proposed regulations, including comments from Brown Maroney & Oaks Hartline, Electric Reliability Council of Texas, Southwestern Bell Telephone, and Waste Management of North America, Inc. All commenters generally expressed support for the proposed rules. However, two commenters requested that the proposed new §334.50(d)(3)(C)(i)(II) be revised to allow a reduction from 36 hours to 24 hours in the prescribed monthly tank gauging period when automatic tank gauging equipment is used to monitor emergency generator tanks. The TWC agrees with the commenters that automatic tank gauging should be recognized as

an acceptable method of release detection for emergency generator tanks. However, the commenters' proposed reduction in the tank gauging period is not considered a practicable alternative. Instead, the TWC amends §334.50(d)(4) to incorporate automatic tank gauging (without inventory control) as an acceptable method of release detection for emergency generator tanks.

Also, as reflected in the proposal, the addition and insertion of new §334.50(d)(3) has necessitated revisions to several references which appear throughout Subchapter C. The following list shows locations in Subchapter C where previous references to §334.50(d) have been revised, and also shows the previous reference notation and the revised notations as adopted:

§334.50(d)	Paragraphs (1)-(8)	Paragraphs (1)-(9)
§334.50(d)	Paragraphs (4)-(8)	Paragraphs (5)-(9)
§334.50(d)(8)	Paragraphs (1)-(7)	Paragraphs (1)-(8)

e.

<u>Location of Reference</u>	<u>Previous Notation</u>	<u>Revised Notation</u>
§334.47(b)(1)(A)(I)	§334.50(d)(3)-(d)(8)	§334.50(d)(4)-(d)(9)
§334.47(b)(4)(B)	§334.50(d)(4)&(d)(5)	§334.50(d)(5)&(d)(6)
§334.50(a)(1)(c)(ii)(II)	(d)(3)	(d)(4)
§334.50(b)(1)(A)	(d)(3)-(d)(8)	(d)(4)-(d)(9)
§334.50(b)(2)(A)(ii)(II)	(d)(4)-(d)(8)	(d)(5)-(d)(9)
	(d)(4)-(d)(8)	(d)(5)-(d)(9)
	Subsections (d)(6),	Subsections (d)(7),
	(d)(7) or (d)(8)	(d)(8) or (d)(9)

In addition to the above revised references, the addition and insertion of new §334.50(d)(3) will also necessitate the revision to a similar reference in §334.55(a)(6)(B)(i). Specifically, the current reference to "§334.50(d)(4) -(d)(8)" to now be accurate. However, since the original proposal (15 TexReg 1935 et seq.) did not include any proposed revisions to §334.55, the commission will defer this revision at this time and will propose an appropriate amendment at a later date.

• 31 TAC §§334.1-334.3,
334.5-334.7

The amendments are adopted under the Texas Water Code, §§26.341-26.359, as enacted in Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, which authorize the TWC to regulate underground and aboveground storage tanks and assess and collect fees for deposit to the storage tank fund; and §5.103 and §5.105, which provide the TWC with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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

Issued in Austin, Texas, on June 4, 1990.

TRD-9005785 Jim Haley
Director, Legal Division
Texas Water Commission

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

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• 31 TAC §334.13

The repeal is adopted under the Texas Water Code, §§26.341-26.359, as enacted in Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, which authorize the TWC to regulate underground and aboveground storage tanks and assess and collect fees for deposit to the storage tank fund; and §5.103 and §5.105, which provide the TWC with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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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Director, Legal Division
Texas Water Commission

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463-8069

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Subchapter B. Underground
Storage Tank Fees

• 31 TAC §§334.21-334.23

These new sections are adopted under the Texas Water Code, §§26.341-26.359, as enacted in Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, which authorize the

TWC to regulate underground and above-ground storage tanks and assess and collect fees for deposit to the storage tank fund; and §5.103 and §5.105, which provide the TWC with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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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Director, Legal Division
Texas Water Commission

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

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Subchapter C. Technical
Standards

• 31 TAC §§334.42, 334.44, 334.47,
334.50, 334.51

The amendments are adopted under the Texas Water Code, §§26.341-26.359, as enacted in Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, which authorizes the TWC to regulate underground and above-ground storage tanks and assess and collect fees for deposit to the storage tank fund; and §5.103 and §5.105, which provides the TWC with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§334.47. *Technical Standards for Existing UST Systems.*

(a) (No change.)

(b) Minimum upgrading requirements for all existing underground storage tank (UST) systems.

(1) Tank integrity assessment and UST system cathodic protection. No later than December 22, 1998, all tanks in an existing UST system shall be assessed for structural integrity, and all underground metallic components of an existing UST system shall be equipped with a cathodic protection system, as provided in the following subparagraphs.

(A) Tank integrity assessment. The tank shall be assessed for structural integrity and for the presence of corrosion holes by one or more of the following methods.

(i) The tank may be equipped with one or more of the release detection systems meeting the applicable requirements of §334.50(d)(4)-(9) of this title (relating to Release Detection). Such release detection system(s) shall have been in operation for at least 60 days prior to the date of the cathodic protection system installation, and at least one of the systems shall remain in operation for the remaining operational life of the tank.

(ii) The tank may be tested by conducting at least two tank tightness tests meeting the requirements of §334.50(d)(1)(A) of this title (relating to Release Detection). The first tightness test shall be conducted prior to installing the cathodic protection system, and the second test shall be conducted between three and six months after the cathodic protection system is placed into operation.

(iii) When the tank upgrading is to include the installation of an interior lining meeting the applicable provisions in §334.52(b) of this title (relating to UST System Repairs and Relining), a site assessment or release determination may be conducted prior to the installation of the interior lining and the cathodic protection system. Such site assessment or release determination shall be conducted in accordance with the provisions of §334.55(e) of this title (relating to Permanent Removal from Service).

(iv) Prior to the installation of the cathodic protection system, the tank may be internally inspected and assessed to assure that the tank is structurally sound and free of corrosion holes, provided that such internal inspection shall be:

(I) conducted in accordance with a code or standard of practice developed by a nationally

recognized association or independent testing laboratory; and

(II) performed by qualified personnel possessing the requisite training, experience, and competence to assure that any corrosion holes or structurally unsound areas are located.

(v) Prior to the installation of the cathodic protection system, the tank may be assessed for structural integrity and the presence of corrosion holes by an alternate method which has been reviewed and determined by the executive director to prevent releases in a manner that is no less protective of human health and the environment than the methods described in clauses (i)-(iv) of this subparagraph, in accordance with the provisions of §334.43 of this title (relating to Variances and Alternative Procedures).

(B) Repairs or corrective action. If the results of the tank integrity assessment (required by subparagraph (A) of this paragraph) indicate that the existing tank is not structurally sound and/or that a release of regulated substances has occurred, then the owner and operator shall:

(i) comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action); and

(ii) conduct one of the following activities, as applicable:

(I) perform appropriate repairs or relining of the tank, in accordance with the applicable requirements of §334.52 of this title (relating to UST System Repairs and Relining), as necessary to restore the structural integrity of the tank; or

(II) permanently remove the tank from service in accordance with the applicable provisions in §334.55 of this title (relating to Permanent Removal from Service).

(C) Field-installed cathodic protection system. After confirmation or restoration of the structural integrity of the tank, all underground metal components of the underground storage tank system, which are not isolated from the surrounding soil, backfill, and groundwater, and which either do or could convey, contain, or store regulated substances, shall be equipped with a field-installed cathodic protection system meeting the requirements of §334.49(c)(2) of this title (relating to Corrosion Protection).

(2) Adding spill and overflow prevention equipment. No later than December 22, 1994, all existing

underground storage tanks shall be equipped with appropriate spill and overflow prevention equipment, in accordance with the provisions in §334.51(b) of this title (relating to Spill and Overflow Prevention and Control).

(3) Adding release detection for UST system piping.

(A) Release detection for pressurized piping. No later than December 22, 1990, all piping in an existing UST system that routinely conveys regulated substances under pressure (i.e., which operates at greater than atmospheric pressure) shall be brought into compliance with the pressurized piping release detection requirements in §334.50(b)(2)(A) of this title (relating to Release Detection).

(B) Release detection for suction piping and gravityflow piping. All piping in an existing UST system that routinely conveys regulated substances either under suction (i.e., which operates at less than atmospheric pressure) or by gravityflow shall be brought into compliance with the applicable release detection requirements in §334.50(b)(2)(B) of this title (relating to Release Detection) no later than the date on which release detection is required for the tank to which such piping is connected, as prescribed in paragraph (4) of this subsection.

(4) Adding release detection for tanks.

(A) Except as provided in subparagraph (B) of this paragraph, all tanks at an existing UST system shall be brought into compliance with the tank release detection requirements in §334.50(b)(1) of this title (relating to Release Detection) no later than the date specified in the following clauses for the time of installation applicable to such tanks:

(i)-(vii) (No change.)

(B) For emergency generator tanks only, the compliance dates prescribed in subparagraph (A)(i)-(v) of this paragraph shall be extended by one year; however, no compliance date shall be extended past December 22 1993.

(C) When two or more existing tanks are located in a common tank hole, and when the selected method of release detection is either vapor monitoring or groundwater monitoring in accordance with §334.50(d)(5) and (6) of this title (relating to Release Detection), then all such tanks shall be brought into compliance with the applicable release detection requirements of this paragraph no later than the date specified for the oldest tank in such common tank hole.

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

§334.50. Release Detection.

(a) General requirements.

(1) Owners and operators of new and existing underground storage tanks (UST) systems shall provide a method, or combination of methods, of release detection which shall be:

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

(C) Capable of meeting the particular performance requirements of such method (or methods) as specifically prescribed in this section, based on the performance claims by the equipment manufacturer or installer, provided that the following additional requirements shall also be met.

(i) (No change.)

(ii) When any of the following release detection methods are used on or after December 22, 1990 (except for methods permanently installed and in operation prior to that date), such method shall be capable of detecting the particular release rate or quantity specified for that method such that the probability of detection shall be at least 95% and the probability of false alarm shall be no greater than 5.0%:

(I) (No change.)

(II) automatic tank gauging, as prescribed in subsection (d)(4) of this section;

(III)-(IV) (No

change.)

(2)-(6) (No change.)

(b) Release detection requirements for all UST systems. Owners and operators of all UST systems shall ensure that release detection equipment or procedures are provided in accordance with the following requirements.

(1) Release detection requirements for tanks.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, all tanks shall be monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods described in subsections (d)(4)-(d)(9) of this section.

(B) (No change.)

(C) The manual tank gauging method of release detection, as prescribed

in subsection (d)(2) of this section, may be used as the sole release detection system only for a petroleum substance tank with a nominal capacity of 550 gallons or less. The monthly tank gauging method of release detection, as prescribed in subsection (d)(3) of this section, may be used as the sole release detection system only for emergency generator tanks.

(D) (No change.)

(2) Release detection for piping. Piping in an underground storage tank system shall be monitored in a manner designed to detect a release from any portion of the piping system, and in accordance with the following requirements.

(A) Requirements for pressurized piping. Underground storage tank system piping that conveys regulated substances under pressure shall be in compliance with the following requirements.

(i) (No change.)

(ii) In addition to the required line leak detector prescribed in clause (i) of this subparagraph, each pressurized line shall also be tested or monitored for releases in accordance with at least one of the following methods.

(I) (No change.)

(II) The piping may be monitored for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods prescribed in subsections (d)(5)-(d)(9) of this section.

(B) Requirements for suction piping and gravity flow piping.

(i) Except as provided in clause (ii) of this subparagraph, each separate line in UST piping system that conveys regulated substances either under suction or by gravity flow shall meet at least one of the following requirements.

(I) (No change.)

(II) Each line may be monitored for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods prescribed in subsections (d)(5)-(d)(9) of this section.

(ii) (No change.)

(I)-(V) (No change.)

(C) (No change.)

(c) Additional release detection requirements for hazardous substance UST systems. In addition to the release detection requirements for all UST systems prescribed in subsections (a) and (b) of this section, owners and operators of all hazardous substance UST systems shall also assure compliance with the following additional requirements.

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

(3) Secondary containment and monitoring.

(A) (No change.)

(B) All hazardous substance UST systems (including tanks and piping) shall include one or more of the release detection methods or equipment prescribed in subsections (d)(7)-(d)(9) of this section, which shall be capable of monitoring the space between the primary tank and piping walls and the secondary containment wall or barrier.

(d) Allowable methods of release detection. Tanks in UST system may be monitored for releases using one or more of the methods included in paragraphs (1)-(9) of this subsection. Piping in UST system may be monitored for releases using one or more of the methods included in paragraphs (5)-(9) of this subsection. Any method of release detection for tanks and/or piping in this section shall be allowable only when installed (or applied), operated, calibrated, and maintained in accordance with the particular requirements specified for such method in this subsection.

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

(3) Monthly tank gauging. Monthly tank gauging may be used as a tank release detection method, subject to the following limitations and requirements.

(A) Monthly tank gauging in accordance with this paragraph may be used as the sole method of tank release detection only for emergency generator tanks.

(B) The use of monthly tank gauging shall not be considered an acceptable method for meeting the release detection requirements of this section for any tanks other than emergency generator tanks.

(C) When used for compliance with the release detection requirements of this section, the procedures and requirements in the following clauses shall be applicable.

(i) For purposes of this paragraph only, the following definitions are applicable:

(I) level measure-

ment—the average of two consecutive liquid level readings from a tank gauge, measuring stick, or other manual or automatic measuring equipment;

(II) gauging period—a period of at least 36 hours during which no substance is added to or removed from the tank;

(III) monthly deviation—the variation between the level measurements taken at the beginning and the end of one gauging period, converted to and expressed as gallons.

(ii) Any measuring equipment (whether operated manually or automatically) shall be capable of measuring the level of a stored substance over the full range of the tank's height to the nearest one-eighth of an inch.

(iii) Separate liquid level measurements in the tank shall be taken at least once monthly at the beginning and the ending of the gauging period, and the monthly deviation shall be determined from such level measurements.

(iv) For the purposes of the monthly tank gauging method of release detection, a release shall be indicated when the monthly deviation exceeds the maximum allowable standards indicated in the following subclauses:

(I) for a tank with a capacity of 550 gallons or less: monthly standard = five gallons;

(II) for a tank with a capacity of 551 gallons to 1,000 gallons: monthly standard = seven gallons;

(III) for a tank with a capacity of 1,001 gallons to 2,000 gallons: monthly standard = 13 gallons;

(IV) for a tank with a capacity greater than 2,000 gallons: monthly standard = 1.0% of the total tank capacity.

(v) When the monthly standard is exceeded and a suspected release is thereby indicated, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(4) Automatic tank gauging and inventory control.

(A) A combination of automatic tank gauging and inventory control may be used as a tank release detection method, subject to the following requirements.

(i) Inventory control procedures shall be in compliance with paragraph (1)(B) of this subsection.

(ii) The automatic tank gauging equipment shall be capable of:

(I) automatically monitoring the in-tank liquid levels, conducting automatic tests for substance loss, and collecting data for inventory control purposes; and

(II) performing an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the tank which contains regulated substances.

(B) For emergency generator tanks only, automatic tank gauging may be used as a tank release detection method, provided that the automatic tank gauging equipment shall be capable of:

(i) automatically monitoring the in-tank liquid levels;

(ii) conducting continuous automatic tests for substance loss during the periods when the emergency generator engine is not in operation; and

(iii) performing an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the tank which contains regulated substances.

(5) Vapor monitoring. Equipment and procedures designed to test or monitor for the presence of vapors from the regulated substance (or from a related tracer substance) in the soil gas of the backfilled excavation zone may be used, subject to the following limitations and requirements.

(A) The bedding and backfill materials in the excavation zone shall be sufficiently porous to allow vapors from any released regulated substance (or related tracer substance) to rapidly diffuse through the excavation zone (e.g., gravel, sand, crushed rock).

(B) The stored regulated substance, or any tracer substance placed in the tank system, shall be sufficiently volatile so that, in the event of a substance release from the UST system, vapors will develop to a level that can be readily detected by the monitoring devices located in the excavation zone.

(C) The capability of the monitoring device to detect vapors from the stored regulated substance shall not be adversely affected by the presence of any groundwater, rainfall, and/or soil moisture

in a manner that would allow a release to remain undetected for more than one month (not to exceed 35 days).

(D) Any preexisting background contamination in the excavation zone shall not interfere with the capability of the vapor monitoring equipment to detect releases from the UST system

(E) The vapor monitoring equipment shall be designed to detect vapors from either the stored regulated substance, a component or components of the stored substance, or a tracer substance placed in the UST system, and shall be capable of detecting any significant increase in vapor concentration above preexisting background levels.

(F) Prior to installation of any vapor monitoring equipment, the site of the UST system (within the excavation zone) shall be assessed by qualified personnel to:

(i) ensure that the requirements in subparagraphs (A)-(D) of this paragraph have been met; and

(ii) determine the appropriate number and positioning of any monitor wells and/or observation wells, so that releases into the excavation zone from any part of the UST system can be detected within one month of the release (not to exceed 35 days).

(G) All monitoring wells and observation wells shall be designed and installed in accordance with the requirements of §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(6) Groundwater monitoring. Equipment or procedures designed to test or monitor for the presence of regulated substances floating on or dissolved in the groundwater in the excavation zone may be used, subject to the following limitations and requirements.

(A) The stored regulated substance shall be immiscible in water and shall have a specific gravity of less than one.

(B) The natural groundwater level shall never be more than 20 feet (vertically) from the ground surface, and the hydraulic conductivity of the soils or backfill between all parts of the UST system and the monitoring points shall not be less than 0.01 centimeters per second (i.e., the soils or backfill shall consist of gravels, coarse to medium sands, or other similarly permeable material).

(C) Any automatic monitoring devices that are employed shall

be capable of detecting the presence of at least 1/8-inch of free product on top of the groundwater in the monitoring well or observation well. Any manual monitoring method shall be capable of detecting a visible sheen or other accumulation of regulated substances in or on the groundwater in the monitoring well or observation well.

(D) Prior to installation of any groundwater monitoring equipment, the site of the UST system (within and immediately below the excavation zone) shall be assessed by qualified personnel to:

(i) ensure compliance with the requirements of subparagraphs (A) and (B) of this paragraph; and

(ii) determine the appropriate number and positioning of any monitoring wells and/or observation wells, so that releases from any part of the UST system can be detected within one month (not to exceed 35 days) of the release.

(E) All monitoring wells and observation wells shall be designed, installed, and maintained in accordance with the requirements in §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(7) Interstitial monitoring for double-wall UST systems. Equipment designed to test or monitor for the presence of regulated substance vapors or liquids in the interstitial space between the inner (primary) and outer (secondary) walls of a double-wall underground storage tank system may be used, subject to the following conditions and requirements.

(A) Any double-wall UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substances from any portion of the primary tank or piping within one month (not to exceed 35 days) of the release.

(C) The sampling, testing, or monitoring method shall be capable of detecting a breach or failure in the primary wall and the entrance of groundwater into the interstitial space due to a breach in the secondary wall of the double-wall tank or piping system within one month (not to exceed 35 days) of such breach or failure (whether or not a stored regulated substance has been released into the environment).

(8) Monitoring of UST systems with secondary containment barriers. Equipment designed to test or monitor for the presence of regulated substances (liquids or vapors) in the excavation zone between the UST system and an impermeable secondary containment barrier immediately around the UST system may be used, subject to the following conditions and requirements.

(A) Any secondary containment barrier or liner system at a UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substance from any portion of the UST system into the excavation zone between the UST system and the secondary containment barrier within one month (not to exceed 35 days) of the release.

(C) The sampling, testing, or monitoring method shall be designed and installed in a manner that will ensure that groundwater, soil moisture, and rainfall will not render the method inoperative where a release could remain undetected for more than one month (not to exceed 35 days).

(D) Prior to installation of any secondary containment release monitoring equipment, the site of the UST system shall be assessed by qualified personnel to:

(i) ensure that the secondary containment barrier will be positioned above the groundwater level and outside the designated 25-year flood plain, unless the barrier and the monitoring equipment are designed for use under such conditions; and

(ii) determine the appropriate number and positioning of any observation wells.

(E) All observation wells shall be designed and installed in accordance with the requirements in §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(9) Alternative release detection method. Any other release detection method, or combination of methods, may be used if such method has been reviewed and determined by the executive director to be capable of detecting a release from any portion of the UST system in a manner that is no less protective of human health and

safety and the environment than the methods described in paragraphs (1)-(8) of this subsection, in accordance with the provisions of §334.43 of this title (relating to Variances and Alternative Procedures).

(e) (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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Director, Legal Division
Texas Water Commission

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Subchapter F. Aboveground Storage Tanks

• 31 TAC §§334.121-334.132

The new sections are adopted under the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, which authorizes the Texas Water Commission to establish a program to regulate underground storage tanks and aboveground storage tanks and to assess and collect fees for deposit to the storage tank fund, and under §5.103 and §5.105, Texas Water Code, which authorize the Texas Water Commission to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve any general policy of the commission.

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

Issued in Austin, Texas, on June 4, 1990.

TRD-9005784

Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: June 25, 1990

Proposal publication date: April 6, 1990

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

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 77. Judicial Retirement

• 34 TAC §§77.9, §77.11

The Employees Retirement System of Texas adopts new section §77.9, and §77.11, without changes to the proposed text as

published in the April 10, 1990, issue of the *Texas Register* (15 TexReg 28).

The addition of §77.9 will make JRS-II consistent with JRS-I and the Employees Retirement System of Texas in that there will be an option that will pay three-fourths to the designated beneficiary at the death of the retiree. The addition of §77.11 will provide for interest rates and mortality, service, and other tables necessary for the retirement system after considering the actuarial investigation.

Members of JRS-II will be furnished information setting forth the contents of the adopted rules and will be able to use this information in making retirement decisions.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Title 8, Texas Government Code, §839.103 and §840-005, which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to provide optional service retirement annuities and adopt interest rates and mortality, service, and other tables the board considers necessary for the retirement system.

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

Issued in Austin, Texas, on June 6, 1990.

TRD-9005906

James A. Adkins
Acting Executive Director
Employees Retirement
System of Texas

Effective date: June 27, 1990

Proposal publication date: April 10, 1990

For further information, please call: (512) 476-6431, ext. 213

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Inspection Items, Procedures, and Requirements

• 37 TAC §23.41

The Texas Department of Public Safety adopts an amendment to §23.41, without changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2268).

The amendment eliminates headlight aim as an inspection item; thus, there are less initial equipment costs to be a licensed inspection station.

The amendment revises the inspection chart to add the requirement to inspect window tinting/glass coatings and deletes subsection (c) which designates that the *Rules and Regulations Manual* are on file with the county clerk. This inspection references the *Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified In-*

spectors. This manual contains the vehicle inspection requirements which are being amended to eliminate headlight aim as an inspection item. Consequently, station owners will no longer need to purchase head lamp testing equipment nor will the owners be required to use their current head lamp testing equipment as a part of the vehicle inspection. This manual is available for review at the Department of Public Safety, 5805 North Lamar Boulevard, Austin.

The Texas Department of Public Safety received comments from the owner of Fast Sticker 10-Minute State Inspection. The commenter is opposed to the implementation of §23.41 which deletes the requirement for use of headlight aiming devices to be used by vehicle inspection stations. The comments revolved around two points of contention: loss of revenue by inspection stations, and decreased safety of the motoring public.

The Texas Department of Public Safety considered both points and previously conducted a field study of headlight adjustment on vehicles. This prompted the department to research the benefits of headlight aiming services in the vehicle inspection program. The District of Columbia, Missouri, Oklahoma, and Delaware were contacted as entities that had dropped the headlight aim requirement from their vehicle inspection program. Each responded that since removing the requirement from their program there had been no increase in accident frequency for their respective jurisdictions. General Motors conducted a study as to the importance of headlight aim and could not establish that lack of precision headlight aim affected safety any more than terrain. They determined that the road grades and curves in the highway had the same adverse affect as headlights without precision aim. This section does not eliminate the requirement that headlights must adhere to the statute which requires illumination of the highway. Vehicles that have been damaged to the extent that the headlight does not meet the requirements of the statutes must be repaired before passing the vehicle inspection.

The amendment is adopted under Texas Civil Statutes, Article 6701d, Article XV, which provide the Texas Department of Public Safety with the authority to adopt rules necessary for the administration 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 May 25, 1990.

TRD-9005842

Joe E. Milner
Director
Texas Department of
Public Safety

Effective date: June 26, 1990

Proposal publication date: April 20, 1990

For further information, please call: (512) 465-2000

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-support Services

Child Care Management Services Field Test

• 40 TAC §§10.3501-10.3506

The Texas Department of Human Services (DHS) adopts new §§10.3501-10.3506. Section 10.3504 is adopted with changes to the proposed text as published in the April 6, 1990, issue of the *Texas Register* (15 TexReg 1952). Sections 10.3501-10.3503, 10.3505, and 10.3506 are adopted without changes and will not be republished.

The justification for the new sections is to expand number of providers and provide more continuity in child care arrangements.

The new sections will function by allowing DHS to field test the child care management services (CCMS) concept for the purchase of child care services.

During the public comment period, DHS received two written comments concerning the proposal. The Houston Welfare Rights Organization suggested the addition of the term "economic" to define representation on the child care advisory group in §10.3504. The department agrees and has changed the section accordingly.

The commenter also suggested an additional sentence in §10.3504 to specifically include recipients of AFDC, Participants in WIN Refocus, JOBS, and JTPA Programs. The department prefers the term "parents" because it encompasses the broader range of people served by CCMS.

The United Way of the Texas Gulf Coast made no specific recommendation to the proposal. The department appreciates their input and noted their concerns about certain aspects of CCMS implementation and the current conditions in the child care industry.

No testimony was presented at DHS's public hearing on April 26, 1990.

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

§10.3504. Child Care Management Services (CCMS) Contractor Responsibilities. The CCMS contractor performs the following tasks in accordance with Texas Department of Human Services (DHS) directives:

(1) organizes and maintains a child care advisory group with geographic, economic, and ethnically balanced representation. Resource and referral agencies, early childhood education programs, employment and training programs, providers, parents, child care associations, appropriate city

agencies, and other agencies, such as United Way, in the SDA, should be represented;

(2) coordinates community resources to improve services to the families served;

(3) manages budgets with multiple funding sources, and collects data for statistical reporting;

(4) maintains a data base that supports assessment of needs and resources;

(5) recruits vendors to meet identified child care needs;

(6) contracts with eligible vendors for the delivery of child care services;

(7) contracts only with vendors that comply with state and local laws, including license, registration, and/or certification requirements;

(8) sets reimbursement rates for vendors based on the vendor's published rates in accordance with DHS rate maximums (ceilings) and other DHS rate setting guidelines;

(9) trains vendors in program participation requirements specified in their vendor agreements;

(10) provides or arranges for training that will assist vendors in maintaining or improving their service delivery;

(11) performs intake and eligibility verification and documentation for clients requesting child care services;

(12) informs parents about all child care options available to them;

(13) provides for parent choice in the selection of care;

(14) assists in locating child care that meets the needs of parents and children and assists them in making a child care arrangement;

(15) assesses parent co-payment fees and oversees their collection;

(16) authorizes child care in accordance with the child's eligibility and the availability of appropriate funds;

(17) authorizes and/or pays child care rates in accordance with DHS specifications;

(18) pays for or arranges for the payment of child care by DHS;

(19) manages waiting lists;

(20) authorizes and issues payments to parents who choose self-arranged care outside the child care management services (CCMS) system of vendors;

(21) tests applications of automation including client access, eligibility, funds management, resource and referral, waiting list management, billing, and reporting;

(22) ensures that a child development or early childhood education specialist is on staff or under contract to monitor the service delivery and to offer training and technical assistance to vendors. This specialist must meet the same qualifications as a person employed at DHS as a Child Development Specialist II or III. A person who meets the qualifications of a Child Development Specialist II may qualify only if he is supervised by a person who meets qualifications of a child development specialist III, IV, or V, and if there are no more than four specialists per supervisor.

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

Issued in Austin, Texas, on June 6, 1990.

TRD-9005899 Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: July 1, 1990

Proposal publication date: April 6, 1990

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

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• 40 TAC §10.3507

The Texas Department of Human Services (DHS) adopts new §10.3507, with changes to the proposed text as published in the April 24, 1990, issue of the *Texas Register* (15 Tex Reg 2333).

The justification for the new section is to require child care centers and homes that apply to become vendors under the child care management services (CCMS) system to have liability insurance coverage.

The new section will function by providing an additional safeguard for families using CCMS vendor child care.

No comments were received regarding adoption of the new section. The department, however, has initiated minor editorial changes to clarify and improve the accuracy of the section.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

§10.3507. Liability Insurance Requirement. Child care centers and homes that apply to become vendors under the child care management services contract must be covered by a minimum of \$300,000 liability insurance.

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

Issued in Austin, Texas, on June 6, 1990.

TRD-9005900 Cathy Rossberg
Agency liaison, Policy

Communication
Services
Texas Department of
Human Services

Effective date: July 1, 1990

Proposal publication date: April 24, 1990

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

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Chapter 29. Purchased Health
Services

Subchapter W. Chemical De-
pendency Treatment Facility
Services

• 40 TAC §§29.2201-29.2203

The Texas Department of Human Services (DHS) adopts new §§29.2201-29.2203, without changes to the proposed text as published in the March 30, 1990, issue of the *Texas Register* (15 TexReg 1782).

The justification for the new sections is to add chemical dependency treatment facility services as a covered Title XIX service.

The sections will function by expanding services to clients eligible for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program to cover residential treatment and outpatient individual and group counseling for chemical dependency.

Although no comments were received regarding adoption of the new sections, implementation of coverage of chemical dependency treatment facility services is contingent upon approval of the Title XIX state plan amendment by the Health Care Financing Administration (HCFA).

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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

Issued in Austin, Texas, on June 5, 1990.

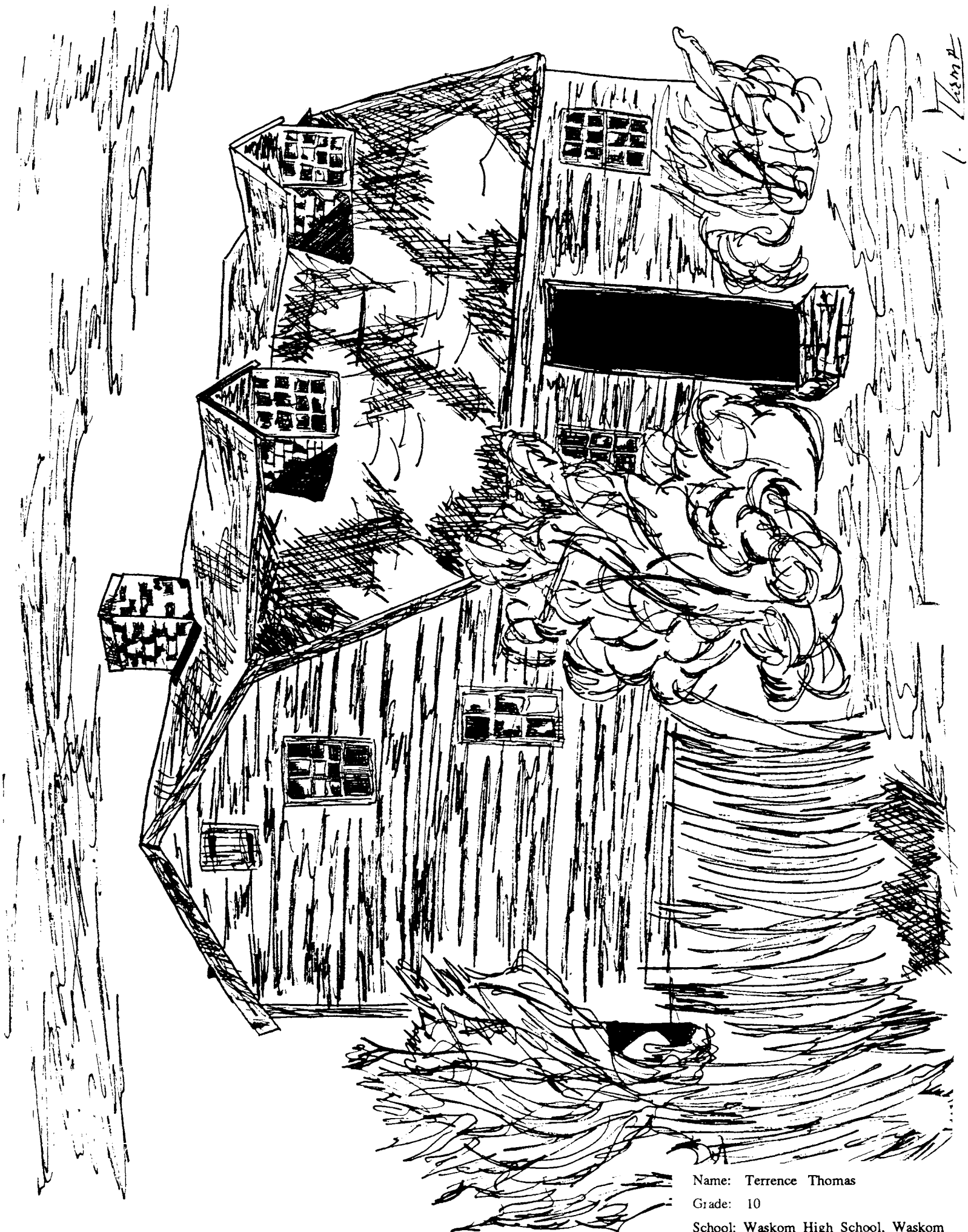
TRD-9005846 Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: July 1, 1990

Proposal publication date: March 30, 1990

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

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1. 7/23/22

Name: Terrence Thomas

Grade: 10

School: Waskom High School, Waskom

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*.

Battleship Texas Advisory Board

Thursday, June 14, 1990, 3 p.m. The Battleship Texas Advisory Board will meet at the offices of Liddell, Sapp, Zivley, Hill, and LaBoon, 600 Travis, 3200 Texas Commerce Tower, 32nd Floor, Houston. According to the agenda summary, the board will discuss the various items with respect to the Battleship Texas restoration project and plan the return ceremonies.

Contact: Robert D. Miller, 3200 Texas Commerce Tower, Houston, Texas 77002, (713) 226-1186.

Filed: June 7, 1990, 9:39 a.m.

TRD-9005948

Texas Department of Commerce

Monday, June 11, 1990, 9:30 a.m. The Texas Literacy Council of the Texas Department of Commerce met at the John H. Reagan Building, 105 West 15th Street, (15th and Congress), Room 103, Austin. According to the agenda summary, the Council called an emergency meeting to order; approved minutes; discussed public comments; manager's report; briefed (Texas Conference and White House Conference for Libraries and Information Services); update on LVA contract; update on A & M contract; update on Texas Adult Literacy Laubach; report on Program Development Committee Meeting; update on Governor's Conference on Science and Technology; committee meetings, (in accordance with Section 2(g) of the Texas Open Meeting Act, the Council will be meeting in closed session to discuss possible members to serve on the Trust Fund). All agenda items were not developed at the time for regular filing date.

Contact: Martha Alworth, P.O. Box 12728, Austin, Texas 78711, (512) 320-9498.

Filed: June 5, 1990, 3:16 p.m.

TRD-9005876

Friday, June 15, 1990, 1 p.m. The Board

of Directors of the Texas Department of Commerce will meet at the Harvey Hotel, 3100 West I-40, Amarillo. According to the complete agenda, the board will call the meeting to order; welcome from the community; presentation of new commerce video; adoption of April 10, 1990, minutes; consideration of enterprise project application from City of Terrell-Tejas Resources, Inc.; consideration of enterprise project application from town of Pecos City-Anchor West, Inc.; consideration of request for proposal for senior managing underwriter concerning product development bond financing; consideration of appointments to the Small Business Advisory Committee; discussion of legislative activities including the legislative appropriations request; discussion of revised schedule for internal audit; overview of the Aim High program; update on America's Heartland program.

Contact: Mary Lane, 816 Congress, Suite 1100, Austin, Texas 78701, (512) 320-9660.

Filed: June 7, 1990, 9:43 a.m.

TRD-9005947

Texas School For The Deaf

Friday, June 15, 1990, 8:30 a.m. The Budget Committee of the Governing Board of the Texas School For The Deaf will meet at 1102 South Congress, Administration Building Conference Room, Austin. According to the complete agenda, the committee will review and discuss the proposed 1992-93 biennium budget request.

Contact: Marilyn R. Stephan, 1102 South Congress Avenue, Austin, Texas 78704, (512) 440-5335.

Filed: June 6, 1990, 4:22 p.m.

TRD-9005929

Friday, June 15, 1990, 1 p.m. The Governing Board of the Texas School For The Deaf will meet at 1102 South Congress Avenue, Governing Board Room, Administration Building, Austin. According to the agenda summary, the board will

approve minutes of March 24, 1990 meeting; business for information purposes; business requiring board action; comments by members.

Contact: Marily R. Stephan, 1102 South Congress Avenue, Austin, Texas 78704, (512) 440-5335.

Filed: June 6, 1990, 4:21 p.m.

TRD-9005930

Texas State Board of Dental Examiners

Thursday, June 14, 1990, 6 p.m. The Texas State Board of Dental Examiners will meet at Baylor College of Dentistry, 3302 Gaston Avenue, Dallas. According to the agenda summary, the board will discuss approval of settlement conference orders; election of officers; informal settlement conferences; request of Dr. Ada Yrizarry-Heyne for board approval to act as a dental advisor; acceptance of affidavit of Dr. William K. Homan for cancellation of dental license number 7273; discussion of proposed amendment to rule 115.2-root planing; discussion of proposed budget for 1992-93 biennium; request of Dr. Elsa Echovorri for a limited state license; request of Dr. George Angelos for a limited state license.

Contact: Crockett Camp, 8317 Cross Park Drive, Suite 400, Austin, Texas 78755, (512) 834-6021.

Filed: June 6, 1990, 4:11 p.m.

TRD-9005928

Texas Education Agency

Saturday, June 9, 1990, 8:30 a.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 emergency revised agenda, the agenda item entitled "Replacement Nominee for the 1990 State Textbook Subject Area Committee" has been revised to "Replacement

Nominees for the 1990 State Textbook Subject Area Committees." Since this item was originally posted, an additional nominee for elementary science was disqualified because of prior publisher contact. Therefore, rather than one replacement nominee, there are several; This revision will also allow additional nominations if others cannot serve. There are no changes to the agenda and it remains as originally posted. The agency found it to be of urgent public necessity for this item to be considered and acted on at this time to ensure full membership of the textbook subject area committees which begin deliberations in June 1990. The agency could not have anticipated that the person would be disqualified.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: June 5, 1990, 3:45 p.m.

TRD-9005886

Saturday June 9, 1990, 8:30 a.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 emergency revised agenda, the agenda item entitled "Replacement Nominee for the 1990 State Textbook Subject Area Committee" has been revised to "Replacement Nominees for the 1990 State Textbook Subject Area Committees." Since this item was originally posted, an additional nominee for elementary science was disqualified because of prior publisher contact. Rather than one replacement nominee, there are several. This revision will also allow additional nominations if others cannot serve as well. There are no other changes to the agenda and remains as originally posted. The agency finds the emergency status to be of urgent public necessity for this item to have been considered and acted on at this time to ensure full membership of the textbook subject area committees which begin deliberations in June 1990. The agency could not have anticipated that this person would be disqualified.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: June 5, 1990, 3:46 p.m.

TRD-9005885

Texas Employment Commission

Wednesday, June 13, 1990, 8:30 a.m. The Texas Employment Commission will meet at the TEC building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will discuss prior meeting notes; executive session to discuss contemplated litigation involving Comprehensive Language Services Program;

actions, if any, resulting from executive session; internal procedures of commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 24; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512)463-2291.

Filed: June 5, 1990, 4:02 p.m.

TRD-9005889

Office of the Governor

Monday, June 18, 1990, 9:30 a.m. The Governor's Educational Excellence Committee of the Office of the Governor will meet at the John H. Reagan Building, 105 West 15th Street, Room 104, Austin. According to the complete agenda, the committee will meet to adopt and approve criteria and standards as approved by State Board of Education; adopt and approve application forms for scholastic gains and student intervention awards; reports from fund-raising and recognition subcommittees.

Contact: Sheila W. Beckett, 201 East 14th Street, Austin, Texas 78701, (512) 463-1817.

Filed: June 6, 1990, 9:38 a.m.

TRD-9005910

Texas Health and Human Services Coordinating Council

Thursday, June 14, 1990, 9:30 a.m. The Commission on Children, Youth, and Family Services will meet at the Texas Youth Commission, Brown Healy Building, 4900 North Lamar, Room 1410, Austin. According to the complete agenda, the commission will meet to discuss approval of minutes; subcommittee reports: technical; monitoring, cost of care appointments update; review historical listing of LOC actions; old business; new business.

Contact: Marguerite Rivera-Houze, 311-A. East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: June 6, 1990, 2:29 p.m.

TRD-9005922

Thursday, June 28, 1990, 10:30 a.m. The Advisory Committee on Immigration will meet at the Reagan Building, 15th Street and Congress Avenue, Room 103, Austin. According to the complete agenda, the committee will discuss approval of minutes; federal activities update; report on Council meeting, April 27, 1990; report on development of spending plan; report on outreach activities; report on anti-discrimination proposal; old business; new

business.

Contact: Marguerite Rivera-Houze, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

TRD-9005924

Friday, June 29, 1990, 3:30 p.m. The State Information and Referral Task Force will meet at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the committee will meet to discuss approval of April 11, 1990 minutes; project status update: assessment of public needs, local I and R services; federal and state mandates; compilation of Texas I and R services; national information; recurring themes, needs and issues; review of project planning calendar; definitions of information and referral; mission statement; guiding principles; public comment; structuring of subcommittees; subcommittee organizational meetings.

Contact: Carol Price, P.O. Box 13065, Austin, Texas 78711, (512) 463-2195.

Filed: June 6, 1990, 2:30 p.m.

TRD-9005923

Texas Department of Human Services

Thursday, June 14, 1990, 10 a.m. The Family Planning Interagency Advisory Council of the Texas Department of Human Services will meet at 701 West 51st, 1st Floor, East Tower, Public Hearing Room, Austin. According to the complete agenda, the council will meet to discuss approval of minutes; TDH family planning program update; DHS family planning update; by-laws of FP IAC; HIV prevention policy; revised staff response to TFPA report on sexuality education; Title XIX/XX family planning services; addition/modification of services and reimbursements; no charge and funds gone claims policy; TMA adolescent health task force; APPAC status report; family planning coordinated allocation plan status report; bulk purchasing on family planning drugs/supplies; school-age pregnancy and prevention clearinghouse status report; advisory committee report.

Contact: Beth Weber, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4164.

Filed: June 6, 1990, 12:15 p.m.

TRD-9005916

Friday, June 15, 1990, 9:30 a.m. The Adolescent Pregnancy and Parenthood Advisory Council of the Texas Department of Human Services will meet at 701 West 51st Street, West Tower, Conference Room 1W, Austin. According to the complete agenda, the council will meet to discuss approval of minutes; APPAC report to the legislature on content and format; program updates.

Contact: Liz Silbernagel, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4164.

Filed: June 6, 1990, 12:15 p.m.

TRD-9005917

◆ ◆ ◆
State Board of Insurance

Wednesday, June 20, 1990, 10 a.m. The State Board of Insurance will meet at 1110 San Jacinto, Room 460, Austin. According to the complete agenda, the board will conduct a public hearing to consider a petition by Financial Casualty & Surety, Inc., for exemption from the Texas Workers' Compensation Assigned Risk Pool.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (513) 463-6328.

Filed: June 7, 1990, 9:35 a.m.

TRD-9005941

Wednesday, June 20, 1990, 1 p.m. The State Board of Insurance will meet at 1110 San Jacinto, Room 460, Austin. According to the complete agenda, the board will conduct a public hearing to consider a petition by Texas Citrus and Vegetable Insurance Exchange for exemption from the Texas Workers' Compensation Assigned Risk Pool.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (513) 463-6328.

Filed: June 7, 1990, 9:35 a.m.

TRD-9005945

Wednesday, June 20, 1990, 3 p.m. The State Board of Insurance will meet at 1110 San Jacinto, Room 460, Austin. According to the complete agenda, the board will conduct a public hearing to consider a petition by Emshare Insurance Exchange for exemption from the Texas Workers' Compensation Assigned Risk Pool.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (513) 463-6328.

Filed: June 7, 1990, 9:35 a.m.

TRD-9005944

Thursday, June 21, 1990, 10 a.m. The State Board of Insurance will meet at 1110 San Jacinto, Room 460, Austin. According to the complete agenda, the board will conduct a public hearing to consider a petition by Texas Hospital Insurance Exchange for exemption from the Texas Workers' Compensation Assigned Risk Pool.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (513) 463-6328.

Filed: June 7, 1990, (512) 463-6328.

TRD-9005943

Thursday, June 21, 1990, 1 p.m. The State Board of Insurance will meet at 1110 San Jacinto, Room 460, Austin. The board will conduct a public hearing to consider a peti-

tion by Bell Indemnity Company for exemption from the Texas Workers' Compensation Assigned Risk Pool.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (513) 463-6328.

Filed: June 7, 1990, 9:35 a.m.

TRD-9005942

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Texas Department of Licensing and Regulation

Wednesday, June 13, 1990, 8:30 a.m. The Manufactured Housing Division will hold an emergency meeting at E. O. Thompson Building, 920 Colorado, 10th Floor Conference Room, Austin. According to the complete agenda, the Department's agenda will include proceedings that consider denial, suspension, or revocation of respondent's license for violation of Texas Civil Statute Article 5221f and Article 9100 for James William Howard. Hearing needed for emergency hearing.

Contact: Imelda Martinez Escobar, 920 Colorado, Austin, Texas 78711, (512) 463-7332.

Filed: June 6, 1990, 9:23 a.m.

TRD-9005908

Thursday, June 14, 1990, 9 a.m. The Business and Occupational Programs, Boxing Agencies will meet at E. O. Thompson Building, 920 Colorado, 10th Floor Conference Room, Austin. According to the agenda, the Department will include proceedings that consider the assessment of an administrative penalty for violation of Texas Civil Statutes, Articles 8501-1, 6252-13a and 9100. Pursuant to Article 8501-1 possible disciplinary actions as a result of this hearing include denial, suspension, or revocation of the respondent's license. Hearing for KO Productions, Inc.

Contact: Imelda Martinez Escobar, 920 Colorado, Austin, Texas 78711, (512) 463-7332.

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Texas Council on Offenders with Mental Impairments

Wednesday, June 13, 1990, 1:30 p.m. The Committee on Offenders with Mental Retardation/Developmental Disabilities of the Texas Council on Offenders with Mental Impairments will meet at the Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin. According to the agenda summary, the committee will approve the minutes; discuss the expectations of the committee, hear subcommittee reports and a report on the pilot project, discuss the agenda for the July meeting and hear announcements.

Contact: Kim Pederson, P.O. Box 12546,

Capitol Station, Austin, Texas 78711, (512) 463-9988.

Filed: June 6, 1990, 10:03 a.m.

TRD-9005915

Friday, June 15, 1990, 9 a.m. The Executive Committee of the Texas Council on Offenders with Mental Impairments will meet at the Mental Health Association of Texas, 8401 Shoal Creek Boulevard, Austin. According to the agenda summary, the committee will approve the minutes; discuss Council fiscal matters; hear committee reports and an Executive Director's report; discuss old and new business.

Contact: Kim Pederson, P.O. Box 12546, Capitol Station, Austin, Texas 78711, (512) 463-9988.

Filed: June 6, 1990, 10:03 a.m.

TRD-9005913

◆ ◆ ◆
Texas Optometry Board

Thursday, June 14, 1990, 2 p.m. The Texas Optometry Board will meet at the Houston Medical Center Hilton, 6633 Travis, Houston. According to the agenda summary, a regular board meeting will begin, following committee meetings; consider reports of Secretary-Treasurer, legal counsel, executive director, committee chairpersons; unfinished and new business to consider duplicate license requests; meeting dates for meetings and examinations for 1991; executive session to be held in compliance with Section 2(e), Article 6252-17; VACS to discuss contemplated/pending litigation, contractual matters, referred or to be referred to the Attorney General; committee meetings begin at 9:30 a.m. on that same day, according to following schedule: 9:30 a.m. - investigation-enforcement; 1 p.m. - continuing education; 1:30 p.m. - all committees; on June 15-17, 1990, board examinations will be administered at the University of Houston College of Optometry.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: June 5, 1990, 3:54 p.m.

TRD-9005884

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Texas State Board of Podiatry Examiners

Thursday-Saturday, June 14-16, 1990, 2 p.m., 9 a.m., 8 a.m. respectively. The board will meet at the Ramada Inn, 59th and Seawall Boulevard, Galveston. According to the agenda summary, on Thursday, the board will discuss routine board business which will include the following; discuss and review current complaint files; legislation regulating Podi-

not less than one gallon size attached to the crab trap;

(v) fish a crab trap without a valid gear tag attached to the orange buoy or plastic bottle marking the crab trap. Gear tags on crab traps are valid only for 30 days after the date the crab trap is set out;

(vi) possess, use or place more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County; or

(vii) fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in the water area of Aransas Bay within 1/2 mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(C) Umbrella net. It is unlawful for any person to use an umbrella net with the area within the frame exceeding 16 square feet.

(D) Devices legally used for taking fresh or salt water fish or shrimp and operated in places and at times authorized by a proclamation of the Parks and Wildlife Commission or the Parks and Wildlife Code.

§65.82. Other Aquatic Life.

(a) It is unlawful for a person to knowingly take, kill, or disturb sea turtles or sea turtle eggs in or from the waters of the State of Texas.

(b) There is no open season on porpoises, dolphins (mammals), and whales.

(c) Any other aquatic life (except threatened and endangered species) not addressed in the sections in this subchapter may be taken only with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by proclamations of the Texas Parks and Wildlife Commission and the Texas Parks and Wildlife Code.

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

Issued in Austin, Texas, on June 6, 1990.

TRD-9005921

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: September 1, 1990

Proposal publication date: April 20, 1990

For further information, please call: (512) 389-4974

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 271. Classification and Separation of Inmates

• 37 TAC §271.2

The Texas Commission on Jail Standards adopts an amendment to §271.2, with changes to the proposed text as published in the May 4, 1990, issue of the *Texas Register* (15 TexReg 2590).

The amendment specifies that the commission may grant a variance allowing for the congregation of pre-trial first offenders and convicted inmates when properly supervised by jail staff.

The amendment will allow more efficient operation of jails with respect to staffing costs and space needs.

All comments received were favorable.

Commenting in favor of the amendment were Palo Pinto County Sheriff, Dallas County Sheriff, Archer County Sheriff, Freestone County Sheriff, Jail Committee, and the Sheriffs Association.

The amendment is adopted under the Government Code, Title 4, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to promulgate rules affecting county jails.

§271.2. *Classification Plan.* Each sheriff shall develop and implement a written classification plan approved by the commission, which shall contain provisions for the following:

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

(10) the separation of first offenders waiting trial from those who have been convicted of crimes. The Texas Commission on Jail Standards may grant a variance to this requirement when individuals are congregated under constant and direct supervision; and

(11) (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 May 23, 1990.

TRD-9005969

Jack E. Crump
Executive Director
Texas Commission on Jail
Standards

Effective date: June 28, 1990

Proposal publication date: May 4, 1990

For further information, please call: (512) 463-5505

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 4. Medicaid Programs—Children and Pregnant Women

Eligibility Requirements

• 40 TAC §§4.1004, 4.1006, 4.1010, 4.1012

The Texas Department of Human Services adopts amendments to §§4.1004, 4.1006, 4.1010, and 4.1012, concerning eligible groups, application requirements, determining income eligibility, and Medicaid eligibility.

The purpose of these amendments is to comply with the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989). OBRA 1989 mandates Medicaid coverage for pregnant women and children under six at 133% of the Federal Poverty Income Limits (FPIL) effective April 1, 1990.

The sections will function by expanding Medicaid coverage to assist more needy individuals.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs. The amendments are adopted to be effective April 1, 1990, to comply with federal law.

§4.1004. *Eligible Groups.* The programs serve the following groups of people:

(1) pregnant women whose income is less than 133% of the federal poverty level and whose total resources are less than the food stamp resource limit for households with no members age 60 or over;

(2) children under six whose family income is less than 133% of the federal poverty level and whose total resources are less than the food stamp resource limit for households with no members age 60 or over.

(3) newborn children born on or after October 1, 1984, if their mothers are receiving Medicaid coverage at the time of birth. This coverage can continue through the month of the child's first birthday as long as he remains in the mother's household and the mother remains eligible for Medicaid;

(4) children six or over in two-parent families who meet all AFDC eligibility requirements except that they are not

deprived of parental support, or because they have been denied participation in the AFDC Program for failure to comply with employment services or child support requirements outlined in the AFDC program rules;

(5) children who meet all AFDC eligibility requirements except income. These deprived children live with their legal parent and stepparent of their legal minor parent and their minor parent's parents. They are ineligible for AFDC because of the applied income of their stepparent or grandparents.

§4.1006. Requirements for Application. To be eligible to apply for the CPW program, clients must meet the following requirements.

(1) (No change.)

(2) Resources. Resource limits and types of countable and exempt resources for CPW are the same as those outlined in the AFDC rules, with the following exceptions.

(A) (No change.)

(B) The food stamp resource policy for households with no members 60 or over is applied when determining eligibility for pregnant women and children under six.

(C) When determining eligibility for pregnant women and children under six, the family's primary vehicle is exempt. All other vehicles are considered in accordance with food stamp resource requirements.

(3)-(7) (No change.)

§4.1010. Determining Income Eligibility. Income eligibility is determined using the AFDC eligibility requirements outlined in the AFDC rules with the following exceptions.

(1) The income limits for pregnant women and children under six are 133% of the federal poverty level adjusted annually, according to federal requirements, or by DHS action in the absence of federal requirements.

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

(5) Ongoing eligibility for pregnant women is not denied because of increased income.

§4.1012. Medicaid Eligibility.

(a) CPW applicants must meet the requirement stipulated in the AFDC rules for three months prior coverage.

(b) Regular Medicaid eligibility for all applicants except pregnant women be-

gins the earliest day in the application month on which the client meets all eligibility criteria.

(c) Medicaid eligibility for pregnant women begins as early as the first day of the third month before the month of application, but no earlier than the month their pregnancies began.

(d) Medicaid eligibility for children certified under the newborn children provision must begin on the child's date of birth.

(e) CPW clients are not eligible for four months post Medicaid coverage.

(f) Medicaid eligibility for pregnant women ends the second month following the month the pregnancy terminates.

(g) Medicaid eligibility for children certified under the newborn children provision ends the earliest of the following:

(1) the month the mother's Medicaid ends;

(2) the month the child is no longer a member of his mother's household; or

(3) the month the child becomes one year old.

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

Issued in Austin, Texas on June 7, 1990.

TRD-9005970 Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: April 1, 1990

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

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**Chapter 48. Community Care
for Aged and Disabled**

**Contracting for CCAD
Services**

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• 40 TAC §48.5902

The Texas Department of Human Services (DHS) adopts an amendment to §48.5902, without changes to the proposed text as published in the May 4, 1990, issue of the *Texas Register* (15 Tex Reg 2590).

The justification for the amendment is to clarify the policy for negotiating unit rates for services.

The amendment will function by providing provider agencies with a clear understanding of the negotiation of unit rates for services that have an established unit rate ceiling.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and

32, which provides the department with the authority to administer public and medical assistance programs.

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

Issued in Austin, Texas, on June 11, 1990.

TRD-9006018 Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: July 15, 1990

Proposal publication date: May 4, 1990

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

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**TITLE 43.
TRANSPORTATION
Part IV. Texas High-speed
Rail Authority
Chapter 81. Administrative
Procedures**

Subchapter A. Board Practices

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**• 43 TAC §§81.1, 81.11, 81.21,
81.31, 81.41, 81.51, 81.61**

The Texas High-speed Rail Authority adopts new §§81.1, 81.11, 81.21, 81.31, 81.41, 81.51, and 81.61. Section 81.61 is adopted with changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2273). Sections 81.1, 81.11, 81.21, 81.31, 81.41, and 81.51 are adopted without changes and will not be republished.

Section 81.61 is being changed to represent the current citation for Roberts Rules of Order.

The new sections are being adopted to establish clearly defined administrative procedures for the Texas High-speed Rail Authority board of directors.

Only one commenter, an individual, directed comment at these sections. This commenter noted the proposed sections incorrectly cited Roberts Rules of Order. This has been changed in the revised §81.61. No other comments were received regarding Chapter 81, Subchapter A.

The new sections are adopted under Texas Civil Statutes, Article 6674v.2, §17(a)(2), which provide for the promulgation of rules to govern the operation of the authority.

§81.61. Conduct of Board Meetings. The chairman of The Texas High-speed Rail Authority (the authority) shall preside at all meetings of the authority.

(1) During the absence or disability of the chairman, the vice-chairman shall perform the duties and exercise the powers of the chairman.

(2) The rules contained in the

Bastrop County Water Control and Improvement District Number 2 for proposed permit numbers 13511-01 and 13511-02 authorizing disposal of treated domestic wastewater effluent by irrigation. During periods of wet weather, the effluent will be discharged into the Colorado River in Segment number 1428 of the Colorado River Basin.

Contact: Leslie Limes, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512)463-7875.

Filed: June 6, 1990, 3:28 p.m.

TRD-9005940

Regional Meetings

Meetings Filed June 5, 1990

The Blanco County Appraisal District Board of Directors will meet at the Blanco County Courthouse Annex, Johnson City, June 12, 1990, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Brazos Valley Development Council Board of Directors will meet at Council offices, 3006 East 29th Street, Suite #2, Bryan, June 14, 1990, at 7 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805.

The Garza County Appraisal District Board of Directors will meet at the Appraisal Office, 124 East Main, Post, June 14, 1990, at 9 a.m. Information may be obtained from Jean Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Garza County Appraisal District Review Board will meet at the Appraisal Office, 124 East Main Street, Post, June 15, 1990, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The High Plains Underground Water conservation District No. 1 Board of Directors will meet in the Conference Room, 2930 Avenue Q, Lubbock, June 12, 1990, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806)762-0181.

The Nolan County Central Appraisal District Board of Directors will meet at the Nolan County Courthouse, Sweetwater, June 12, 1990, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The Nueces-Jim Wells-Kleberg-Kenedy Soil and Water Conservation District Board of Directors will meet at 710 East Main Street, Robstown, June 19, 1990, at 2 p.m. Information may be obtained from Joan D. Rumfield, 710 East Main Street,

Robstown, Texas 78380, (512) 668-8363.

The Region VII Education Service Center Board of Directors will meet at Region VII Education Service Center, 818 East Main, Kilgore, June 12, 1990, at 10 a.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas 75662, (214) 984-3071.

TRD-9005840

Meetings Filed June 6, 1990

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, June 18, 1990, at 7:30 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Coryell County Appraisal District Appraisal Review Board will meet at the Coryell County Appraisal District Office, 113 North 7th Street, Gatesville, June 13, 1990, at 9:30 a.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Dallas Central Appraisal District Appraisal Review Board will meet at 1420 West Mockingbird Lane, Suite 500, Dallas, June 15, 1990, at 2 p.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

The Erath County Appraisal District Board of Directors will meet at 1390 Harbin Drive, Stephenville, June 13, 1990, at 9:30 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-7301.

The Gillespie Central Appraisal District Board of Review will meet at the Gillespie County Courthouse, Room 101-B, Fredericksburg, June 14, 1990, at 9:30 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (512) 997-9807.

The Gonzales County Appraisal District Appraisal Review Board met at 928 St. Paul Street, Gonzales, June 11, 1990, at 6 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Hood County Appraisal District Appraisal Review Board will meet at 1902 West Pearl Street, District Office Building, Granbury, June 18, 1990, at 9 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471.

The Kendall County Appraisal District Board of Directors will meet at 207 East San Antonio Street, Kendall Appraisal Office, Boerne, June 14, 1990, at 6:45 p.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas

78006, (512) 249-8012.

The Lampasas County Appraisal District Appraisal Review Board will meet at 109 East Fifth, Lampasas, June 12, 1990, at 8:30 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76650, (512) 556-8058.

The Palo Pinto Appraisal District Appraisal Review Board will meet at the Palo Pinto County Courthouse, Palo Pinto, June 15, 1990, at 10 a.m. Information may be obtained from Jack F. Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

The Region IV Education Service Center Board of Directors will meet at 7145 West Tidwell Road, Board Room, Region IV Education Service Center, Houston, June 12, 1990, at 6 p.m. Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77001, (713) 462-7708.

The Upshur County Appraisal District Appraisal Review Board met at the Upshur County Appraisal District Office, Warren and Trinity Street, Gilmer, June 7, 1990, at 8 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

TRD-9005893

Meetings Filed June 7, 1990

The Austin Transportation Study Policy Advisory Committee will meet at the Joe C. Thompson Conference Center, Room 2.102, 26th and Red River, Austin, June 12, 1990, at 6 p.m. Information may be obtained from Joseph P. Gieselman, 811 Barton Springs Road, #700 Austin, Texas 77004, (512) 472-7483.

The Dawson County Central Appraisal District Board of Directors will meet at 920 North Dallas Avenue, Lamesa, June 13, 1990, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Erath County Appraisal District Appraisal Review Board will meet at 1390 Harbin Drive, Board Room, Stephenville, June 12-13, 1990, at 1 p.m. Information may be obtained from Trencia Perales, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, June 13, 1990, at noon. Information may be obtained from Deborah Reneau, 205 North Travis, Sherman, Texas 75090, (214) 893-9673.

TRD-9005932

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 Community Affairs Amended Notice of Block Grant Hearings

As part of the public information, consultation, and public hearings requirements for federal block grant funds, the Texas Department of Community Affairs (TDCA) is conducting public hearings throughout the state in June and July. The purpose of these hearings is to solicit comments on the proposed use and distribution of federal fiscal year (FFY) 1991, 1992, and 1993 funds provided under the Community Services Block Grant (CSBG) and the Low-Income Home Energy Assistance Program (LIHEAP) Block Grant. TDCA uses its allocation of LIHEAP funds to support the Weatherization Assistance and Energy Crisis Programs. Comments will also be solicited on the state's intended use of Dependent Care Planning and Development Grant Program Funds.

At these hearings intended use reports on the use of these funds will be provided and public comments will be received for use in the preparation of final state block grant plans and the department's fiscal year 1992 and 1993 legislative appropriation request. Four public hearings have been scheduled as follows: June 27, 1990, at 7 p.m. in the Barbara Jordan Community Center, 2803 East Commerce Street, San Antonio; June 28, 1990, at 7 p.m. at the Gulf coast CSA, 6300 Bowling Green, Houston; July 12, 1990, at 2 p.m. in the Committee Room-2nd Floor, North Central Texas, Council of Governments, 616 Six Flags Drive, Arlington; July 13, 1990, at 10 a.m. in the Council Chambers, Two Civil Center Plaza, El Paso.

A representative from TDCA will be present to explain the planning process and consult with and receive comments from interested citizens and affected groups regarding the proposed plans. Intended use reports may be obtained on or about June 20 by contacting the Community Services Section, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711.

Comments on the intended use of funds may be in the form of written comments or oral testimony at the hearings or by mail no later than July 19, 1990.

Issued in Austin, Texas, on June 4, 1990.

TRD-9005843 Roger A. Coffield
General Counsel
Texas Department of Community Affairs

Filed: June 5, 1990

For further information, please call: (512) 834-6010

Governor's Budget and Planning Office

Request for Proposals

Pursuant to Texas Civil Statutes, Article 6252-11C, the

Governor's Office of Budget and Planning invites professionals with documented expertise in the field of indirect cost recovery and cost allocation plans for governmental units to submit proposals to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas, consolidated statewide cost allocation plan for the fiscal year ending August 31, 1991.

Proposers will be expected to develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs. The contractor selected will be responsible for all aspects of the plan, including obtaining raw cost and statistical data, identifying allocable costs, preparing and submitting the plan, and negotiating the final plan with the federal government for state agency use during the state fiscal year beginning September 1, 1990. Proposals must include a description of the system to be used to extract allowable costs from central government agencies and for allocating such costs. The total contract award will not exceed \$25,000.

The Governor's Office of Budget and Planning will evaluate each proposal and reserved the right to reject any and all proposals.

If selected, the contractor will be chosen on the basis of proposal content, the proposer's demonstrated experience, competence, knowledge and qualifications, and ability to meet stringent deadlines.

A copy of the request for proposal and a copy of the FY 1990 plan may be obtained by contacting Tom Adams, Governor's Budget and Planning Office, 700 Sam Houston State Office Building, Austin, Texas 78711 (512) 463-1778.

All proposals must be submitted at the above address no later than 5 p.m., July 16, 1990.

Issued in Austin, Texas, on June 5, 1990.

TRD-9005786 Sheila W. Beckett
Director
Governor's Office of Budget and Planning

Filed: June 4, 1990

For further information, please call: (512) 463-1778

Governor's Energy Division Consultant Proposal Request

This request for professional services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Governor's Energy Management Center invites proposals from qualified firms, public agencies, institutions of higher education, and individuals to provide energy conscious design assistance upon request for up to eighty-five county jail facilities. The primary objectives of this program are: to raise county jail operators' awareness of the major impact

that energy conscious design can have on the lifetime cost of a new facility and of the critical need to design for energy efficiency; to estimate energy usage in proposed facilities by performing computer simulations of architectural, mechanical and electrical designs; to analyze energy use data and identify cost-effective measures to improve building energy performance; to provide energy savings data to encourage local decision makers to implement recommended measures.

Services to be Performed. The contractor or contractors selected will be expected to provide services in three areas: program marketing, design assistance, and program evaluation. Respondents are expected to submit proposals to provide these services statewide.

Program Marketing. Respondents should submit a description of their proposed approach for marketing the program and a proposed schedule for completing marketing activities.

Design Assistance. The contractor or contractors selected will provide design assistance to county jail operators and their selected design teams by: performing energy use analyses of the design drawings for proposed new county jail facilities; analyzing architectural designs, electrical layouts, and mechanical systems to identify strategies that would improve building energy performance; identifying cost-effective measures that should be incorporated into the construction documents; quantifying the annual energy and cost savings anticipated from the implementation of each recommendation; attending meetings with county officials and members of the design team to discuss recommended design changes; providing technical assistance and training as necessary to ensure energy efficiency recommendations are included in the construction documents; and other duties as assigned by EMC.

Program Evaluation. The contractor or contractors selected will evaluate the effectiveness of the service in three areas: success in enlisting participation in the program; success in convincing decision makers and design teams to incorporate recommendations in final construction documents; and improvement in projected building energy performance resulting from participation in the program.

Selection Criteria. The contractor or contractors selected must demonstrate The contractor or contract comprehensive knowledge of energy using systems, energy efficient design strategies and technologies, energy savings calculation methodologies and current energy efficient design standards in county jail facilities. Specific criteria for proposal evaluation are as follows: qualifications and experience of the organization and specific staff assigned to this project; approach and schedule proposed for notifying county officials and design teams of the availability of the design assistance service and encouraging participation in the program; methodology(s) proposed for evaluating building energy performance; ability to provide adequate staffing to complete multiple analyses and recommendations in a short time frame; reasonableness of proposed budget in relation to the services provided.

Award will not necessarily be made to the bidder offering the lowest price; selection will be based on the proposer's ability to satisfy the criteria listed above. The Governor's office reserves the right to negotiate both budget and scope of work with the finalist(s). The Governor's office 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. Final selection of a contractor or contractors will be based on the recommendations of a review team. If two or more proposals are ranked so closely that a decision cannot be

made, the review team may request finalists to provide additional information or to meet with Energy Management Center staff in Austin prior to final selection. No respondent will be reimbursed for any costs incurred in the preparation, submission or clarification of a proposal.

Proposal Format and Due Date. The proposal should address each of the selection criteria in the order listed previously. Five copies of the proposal should be mailed to: Ms. Kim Munyon, Energy Management Center, Governor's Office, P.O. Box 12428, Austin, Texas 78711.

The Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701; (512) 463-1931. Proposals should be sent by registered mail or by courier and must be received no later than 3 p.m. on July 16, 1990. Proposals received after that time and proposals submitted by fax will not be considered.

Contact Person. For further information concerning this program, contact Ernie Moore, Governor's Energy Management Center, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931.

Issued in Austin, Texas, on June 4, 1990.

TRD-9005790 Sheila W. Beckett
Director
Governor's Office of Budget and Planning

Filed: June 4, 1990

For further information, please call: (512) 463-1931

Notice of Deadline Extension for Consultant Proposals

The deadline for submission of proposals to develop and provide training sessions for design professionals in identifying and implementing energy efficient design strategies for school facility construction (15 TexReg 2828) has been extended to July 13, 1990, at 4 p.m. Contractor selection date has also been changed to August 15, 1990. The Consultant Proposal Request appeared in the May 18, 1990 issue of the *Texas Register*.

For further information and to obtain a copy of the required proposal format and information package, contact Dave Boerner, Architect, Governor's Energy Management Center, P.O. Box 12428, Austin, Texas 78711. Proposal packets will be sent first-class mail. The EMC will not fax proposal packets.

Issued in Austin, Texas, on June 4, 1990.

TRD-9005789 Sheila W. Beckett
Director
Governor's Office of Budget and Planning

Filed: June 4, 1990

For further information, please call: (512) 463-1931

Request for Proposals

This request for consulting services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Energy Management Center in the Governor's Office (EMC) invites proposals to support regulatory intervention activities to promote consumer-oriented energy conservation or alternative energy programs at energy utilities in the State of Texas. The purpose of intervening in regulatory proceedings such as rate cases and avoided cost and certification proceedings is to assist in the reduction of energy costs for low-income, residential, and small commercial consumers through the

proposed facilities; evaluate specific design options by quantifying the annual energy and cost savings anticipated from their implementation; attend meetings with school officials and members of the design team to discuss recommended design strategies; provide technical assistance as requested to incorporate energy strategies into the design drawings; and estimate energy usage in proposed facilities energy during the construction document phase by performing computer simulations of architectural, mechanical and electrical designs.

Respondents may submit proposals to provide these services statewide or for a specific region of the state.

Contact Person. To obtain a copy of the required proposal format and information packet, contact Judith Carroll, Governor's Energy Management Center, P.O. Box 12428, Austin, Texas 78711, (512) 463-1871. Proposal packets will be sent first-class mail. No copies of the proposal format will be sent via facsimile machine.

Closing Date. Six copies of the proposal should be sent to: Ms. Kim Munyon, Energy Management Center, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

The EMC is located on the Sixth Floor of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78711. Proposals should be sent by registered mail or courier and must arrive no later than 3 p.m. on July 20, 1990.

Proposals sent by facsimile machine will not be accepted. Contractor selection will be made on or before August 15, 1990. The contract period for this project will extend from the date of signing through August 31, 1991.

Selection Criteria. The contractor or contractors selected must demonstrate comprehensive knowledge of energy using systems; current energy efficient design technology, techniques and equipment; energy savings calculation methodologies; computerized energy modeling of buildings; and experience in designing energy efficient school facilities. In evaluating the proposals, the proposal review committee will use the following criteria: qualifications and experience of the organization and specific staff assigned to provide each service; specific experience in energy efficient architectural and engineering design and energy evaluation; proven ability to provide practical design solutions within constraints outlined by school district policies and to communicate effectively with design professionals, school administrators and Governor's Office staff; approach and schedule proposed for notifying school officials and design teams of the availability of the design assistance service and encouraging participation in the program; methodology(s) proposed for evaluating energy-related design options and estimating building energy performance; ability to provide adequate staffing to deliver technical assistance and evaluation services promptly as called upon and in an extremely short time frame; and reasonableness of proposed budget in relation to the services provided.

Contractor selection will be based on the proposers' ability to satisfy the listed criteria. The Governor's Office reserves the right to negotiate both budget and scope of work with the finalist(s).

Final selection of contractors will be based on the recommendations of a proposal review panel. In order to assemble the strongest design assistance team, EMC may wish to contract with several individuals or firms to provide the services. The EMC reserves the right to reject any and all proposals and is under no legal requirement to execute a contract on the basis of this consultant proposal request. If two or more proposals are ranked so closely that a decision cannot be made, the review panel may

request finalists to provide additional information or to meet with Energy Management Center 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 1, 1990.

TRD -9005791 Sheila W. Beckett
Director
Governor's Office of Budget and Planning

Filed: June 4, 1990

For further information, please call: (512) 463-1931

◆ ◆ ◆

Heart of Texas Council of Governments

Request for Proposal

The Heart of Texas Council of Governments (HOTCOG) will continue to receive proposals to operate services for senior citizens under the Older Americans Act of 1965, Title III, as amended, Ombudsman Hunger Funds, and the Urban Mass Transportation Act for Hill County. No bids for services were received by the specified due date therefore HOTCOG will continue to receive bids as set forth below.

Description. Services to be contracted include: congregate meals, home-delivered meals, transportation services, and senior center operations.

Local Match Requirements. Applicants must provide a local 10% match for the contract period. After a grant has been awarded, a program is eligible for funding one year. Applications for continued funding are required annually.

Limitations. Contracts awarded for all projects included in this request for proposal will commence on October 1, 1990, and terminate on September 30, 1991. Proposals must be submitted in the required format of the HOTCOG's Area Agency on Aging.

Selection Criteria. A committee of HOTCOG staff and Advisory members of the HOTCOG will rank and score each proposal.

Procedures to be used to evaluate offers will include evaluation of the following criteria: previous relevant experience, plan for provision of procured services, demonstration of community support, units of service, and cost.

Contact Person. to obtain a complete copy of the request for proposal packet, please contact: Hazel Limback, Deputy Executive Director, Heart of Texas Council of Governments, 300 Franklin, Waco, Texas 76701, (817) 756-7822. Request for Proposal packets are available. A bidders conference will be held on June 14, 1990, at 9 a.m. at HOTCOG, 300 Franklin, Waco.

Closing Date. The last day to receive offers is June 22, 1990 at 5 p. m. in Council office, 300 Franklin, Waco, Texas 76701. Proposals received after the date or time specified will not be considered. Proposals may not be submitted through use of fax machines. HOTCOG reserves the right to reject any or all proposals received in response to this RFP.

Issued in Waco, Texas, on April 9, 1990.

TRD-9005914 H. W. Davis
Executive Director
Heart of Texas Council of Governments

funds are authorized for traffic management improvement expenditures, those funds may not be released and then replaced by TM funds. Additional information concerning the TM program is included in the Grant Application Manual which is available from local district offices.

Agency Contact. Additional information concerning the request for proposals may be obtained by writing your local SDHPT district office, or by contacting the Maintenance and Operations Division, 11th and Brazos, Austin, Texas (512) 465-6356.

Response Date. The completed Grant Application must be received by local SDHPT district offices on or before September 28, 1990. Applicants will be notified of selection or non-selection on December 21, 1990.

Selection Criteria. Applications will be evaluated using the following criteria: operational characteristics of the roadway—operational characteristics such as existing level-of-service, average daily traffic, etc., will be considered to determine the amount of benefit a project can produce; potential for a high benefit/cost ratio—the ability of a proposed project to provide the greatest benefits (i.e., maximize fuel savings, provide a high percentage of capacity increase, lower existing peak hour volume/capacity ratio) at the lowest possible cost will allow for the most efficient use of funds; use of high/innovative technology in the proposed project—the installation of components included in systems for signal coordination, surveillance, communication and control, etc., could enhance the capacity of existing roadways; other criteria such as date of most recent improvements, potential for project completion in a timely manner and certification that oil over-charge traffic management funds will supplement and not supplant existing funds—these criteria will aid in determining where funds can be best used and where maximum benefit can be achieved.

Issued in Austin, Texas, on June 5, 1990.

TRD-9005907 Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public
Transportation

Filed: June 6, 1990

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



County Number	County Name	Number of Months Over	Nov	Dec	Jan	Feb	Mar	Apr
			130	Kendall	5	88.7	90.6	90.6

Issued in Austin, Texas, on June 6, 1990.

TRD-9005902 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: June 6, 1990

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



Pursuant to 40 TAC §16.1513, as amended in the September 29, 1989, issue of the *Texas Register* (14

Public Notice Open Solicitation

Pursuant to 40 TAC §16.1513, as amended in the September 29, 1989, issue of the *Texas Register* (14 TexReg 5099), and the Human Resources Code, Title 2, Chapters 22 and 32, the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for the county identified below, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of five months in the continuous November-April, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the county identified in this public notice must submit a written reply (as described in 40 TAC §16.1513) to TDHS, Gary L. Allen, Provider Services Section, Long-term Care Department, Mail Code 646-E, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m. July 13, 1990, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order in which the Texas Department of Health originally licensed the beds that are being proposed for Medicaid participation. The primary selection process will be completed on July 23, 1990. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 80%, TDHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for those individuals wishing to construct a facility.

TexReg. 5099), and the Human Resources Code, Title 2, Chapters 22 and 32, the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in the county identified in the April 24, 1990, issue of the *Texas Register* (15 TexReg 2373). That county is also listed in this public notice. Potential contractors desiring to construct a 90-bed nursing facility in the county identified in this public notice must submit a written reply (as described in 40 TAC §16.1513) to TDHS, Gary L. Allen, Provider Services Section, Long-term Care Department, Mail Code 646-E, P.O. Box 149030, Austin, Texas 78714-9030. The

written reply must be received by TDHS by 5 p.m. July 13, 1990, the last day of the open solicitation period. Potential contractors will be allowed 90 days to qualify and qualified potential contractors will be placed on a secondary-selection waiting list in the order that their applications are received. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and to complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if the 180-day and/or 18-month deadline(s) described in 40 TAC §16.1513(q) are not met. The signed agreement must also

require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 180-day deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 18-month deadline is not met, liquidated damages are 10% of the estimated total cost of the proposed or completed facility. Fourth, there must be acceptable written documentation that the preliminary architectural plans for the proposed or completed facility have been submitted to the Texas Department of Health (TDH). Each application must be complete at the time of its receipt. TDHS accepts the first qualified potential contractor on the secondary-selection waiting list. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

Occupancy rates for identified threshold county is listed below:

County Number	County Name	Number of Months Over	Occupancy Rates					
			Sept	Oct	Nov	Dec	Jan	Feb
049	Cooke	5	89.4	90.5	90.6	97.1	91.4	91.4

Issued in Austin, Texas, on June 6, 1990.

TRD-9005903 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: June 6, 1990

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

◆ ◆ ◆ Notice of Public Hearing

The Texas Department of Human Services (DHS) will conduct a public hearing to receive comments on the department's proposed rule concerning Remedies for Violations of Title XIX nursing facility provider agreements which was published in the May 1, 1990, issue of the *Texas Register*. The public hearing will be held on June 20, 1990, at 9 a.m. in the public hearing room, 701 West 51st Street, Austin. Additional information about this proposal is available from Barbara Stegall, P.O. Box 149030, 643-W, Austin, Texas 78714-9030, (512) 450-3111.

Issued in Austin, Texas, on June 6, 1990.

TRD-9005901 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: June 6, 1990

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

◆ ◆ ◆ Interagency Council on Early Childhood Intervention

Award of Contract

The Interagency Council on Early Childhood Intervention awards contract to conduct a follow-up study of ECI

Graduates. This contract award is filed under the provisions of Texas Civil Statutes, Articles 6252-11c.

The request for proposals appeared in the January 6, 1989, issue of the *Texas Register* (14 TexReg 142).

The award was to Macy Research Associates, Route 5, Box 122, Wills Point, Texas 75619, in the amount of \$89,891 for the period of February 15, 1990 through April 30, 1991.

Issued in Austin, Texas, on June 5, 1990.

TRD-9005839 Patti Patterson, M.D.
Chairperson
Interagency Council on Early Childhood
Intervention.

Filed: June 5, 1990

For further information, please call: (512) 465-2671

◆ ◆ ◆ Texas Parks and Wildlife Department Notice of Public Hearing to Remove Sand and Gravel

Notice is hereby given that Transco Offshore Gathering Company, whose address is P.O. Box 1396, Houston, Harris County, on March 5, 1990, filed an application with the Texas Parks and Wildlife Commission for a sand, gravel, and marl permit: "to install a 12 inch natural gas pipeline across state blocks, 794-L, 774-L, and 775-L in the Mustang Island Area, Offshore Texas, Gulf of Mexico."

This permit is being requested under the authority granted to the Commission in Chapter 86 of the Texas Parks and Wildlife Code.

Pursuant to commission rule, the executive director has appointed an examiner to conduct a hearing on this application at 2 p.m., Monday, June 18, 1990, Room C-200, Texas Parks and Wildlife Department Headquarters,

4200 Smith School Road, Austin, Travis County, at which time all interested parties may appear and be heard. Evidence or testimony may be presented orally or in writing by affidavit or deposition. All evidence offered must be subject to cross-examination or otherwise qualify as admissible evidence under the Texas Rules of Civil Evidence in order to be considered by the Commission. Written evidence should be filed with the examiner prior to the hearing date.

This hearing will be held under the authority of Article 6252-13a, §18(a) and the rules of the Texas Parks and Wildlife Commission, 31 TAC §57.61 et. seq. and 31 TAC §51.21 et. seq.

The record of this proceeding will include evidence and testimony taken at the public hearing. The hearing may be continued from time to time and place to place, if necessary, to develop all relevant evidence bearing on the subject of the hearing. The examiner retains the authority to schedule or reschedule hearings as deemed necessary. Further information concerning any aspect of the application, if available, may be obtained by contacting Paul Shinkawa, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4585. Information concerning any procedures of the hearing or scheduling may be obtained by contacting Jennifer Mellett, Hearing Examiner, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4867.

Issued in Austin, Texas, on June 5, 1990.

TRD-9005848 Jennifer Mellett
Hearing Examiner
Texas Parks and Wildlife Department

Filed: June 5, 1990

For further information, please call: (512) 389-4805

◆ ◆ ◆
Texas Department of Public Safety
Correction of Error

The Texas Department of Public Safety submitted a proposed new section which contained an error as published in the March 30, 1990, issue of the *Texas Register* (15 TexReg 1776).

In §16.42(g) a period was omitted. The subsection should read as follows. "(g) A person may not submit a new application for CDL or commercial driver learner's permit during the 60-day cancellation period or while an appeal is pending. After the cancellation period has expired, the person must reapply as an original applicant."

◆ ◆ ◆
Public Utility Commission of Texas
Notice of Application to Amend
Certificate of Convenience and
Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 29, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a) 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application for Wood County Electric Cooperative, Incorporated for a certificate of con-

venience and necessity for a proposed transmission line and substation within Wood County, Docket Number 9575 before the Public Utility Commission of Texas.

The Application: In Docket Number 9575, Wood County Electric Cooperative requests approval of its application to construct approximately 14.2 miles of 69 kV transmission line between Quitman in Wood County and Myrtle Springs in Van Zandt County.

Persons who wish to intervene in the proceeding or comment upon 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 Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on June 4, 1990.

TRD-9005878 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 5, 1990

For further information, please call: (512) 458-0100

◆ ◆ ◆
Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 25, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a) 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of the City of Castroville to amend certificated service area boundary, Docket Number 9574 before the Public Utility Commission of Texas.

The Application: In Docket Number 9574, City of Castroville requests approval of its application to amend service area boundaries to provide service to a business customer in Medina County.

Persons who wish to intervene in the proceeding or comment upon 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 Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on June 4, 1990.

TRD-9005879 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 5, 1990

For further information, please call: (512) 458-0100

◆ ◆ ◆
Public Notice

To all former and current intrastate wide area telecommunications service WATS/800 subscribers: Southwestern Bell Telephone Company has instituted a Class Action Lawsuit seeking judicial approval of a settlement reached in Docket Number 7297, an inquiry of General Counsel of the Public Utility Commission of Texas into possible overcharges which occurred between September, 1976, and February 1987, due to rounding practices, on bills of intrastate WATS/800 customers sent by Southwestern Bell and other telephone companies which concur in Southwestern Bell's tariff. The suit is styled "Southwestern Bell Telephone Company, Plaintiff, vs. MCI Telecommunications Corporation, A Member of the Class of

Texas Intrastate WATS and 800 Service Customers Who Paid Overtime Charges From September 1976 Through February 1987, Defendant," and identified as Cause Number 471,460 in the 126th Judicial District Court of Travis County.

Pursuant to the settlement, while not admitting liability, Southwestern Bell, the other local exchange telephone companies in Texas, and AT&T Communications of the Southwest, Incorporated have agreed to pay refunds to those WATS/800 customers who paid overtime charges attributable to the rounding practices for intrastate WATS/800 services at any time between September, 1976, and February, 1987. The refunds will be based upon either the actual or estimated amount of overtime charges attributable to such rounding practices. An exact refund will be determined for customers able to produce copies of their WATS/800 service bills. For customers who do not have copies of their WATS/800 service bills to establish actual overtime charges paid, an average refund of \$4.53 to \$5.95 per WATS/800 service line per month will be applied. All claims will be subject to verification. The refunds will also include interest at the rate of 7.80% per annum.

Claim Forms and Additional Information. Those customers who think they may be entitled to a refund or who desire more information must call 1-800-782-3026, 8:30 a.m.-4:40 p.m., Monday-Friday, or write to WATS Refund Pool Administrator, One Bell Plaza, Room 670, P.O. Box 650376, Dallas, Texas 75265-0376, to request a WATS Refund Information Package. The WATS Refund Information Package will contain further information regarding the lawsuit and eligibility for a refund, a description of documentation required to support a customer's claim for refund, and a refund claim form to be filled out and submitted requesting a refund. Requesting a wats refund information package does not obligate you in any way.

All Claims for a refund must be received by the Refund Pool Administrator by Friday, October 5, 1990, and all rejections of the settlement (that is, requests for exclusion from the class action lawsuit) must be received by the Court by Wednesday, September 5, 1990. Only those who respond by filing a claim or by filing a rejection of the settlement, as explained in the WATS Refund Information Package, will receive notice of future developments in this proceeding.

Persons who wish to obtain further information may also contact the Public Utility Commission, Public Information Division, at (512) 458-0257 or (512) 458-1221, teletypewriter for the deaf.

Issued in Austin, Texas, on June 4, 1990.

TRD-9005795 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 4, 1990

For further information, please call: (512) 458-0100

◆ ◆ ◆
**State Purchasing and General Services
Commission**
**Summary of Other State Bidding
Preference Laws**

The State Purchasing and General Services Commission publishes this list of other state bidding preference laws in accordance with Texas Civil Statutes, Article 601g(b)(1), which requires the publication of a list of states which have laws or regulations regarding the award of contracts

for general construction, improvements, services, or public works projects or purchases of supplies, materials, or equipment to nonresident bidders, together with a citation to and summary of the most recent law or regulation of each state relating to the evaluation of bids from and award of contracts to nonresident bidders.

Following the complete list of bidding preference statutes, which includes product, reciprocal, and tie-bid preferences, are summaries of only the specific commodity and construction preferences that are to be applied pursuant to Texas Civil Statutes, Article 601g.

Summary—All Preferences

ALABAMA

Alabama Code—Section 41-4-139 (1989)—Class 2(a), 2(b) and 4 printing, generally official state documents specifically defined in Section 41-4-131 (1989), must be done in the City of Montgomery.

Section 41-16-57 (1989)—Products produced in state or sold by residents preferred in tie bids.

ALASKA

Alaska Statute—Section 36.15.050 (1987)—Preference of 7% to agricultural and fisheries products produced or harvested in the state, including timber and lumber, and products manufactured from timber and lumber harvested in the state. Preference is applicable to all purchases using state money, which includes state reimbursement to municipalities and school districts.

Section 36.30.332 (1987)—Preference of 3% to Class I products (more than 25% but less than 50% value added in state); 5% to Class II products (more than 50% but less than 75% value added in state); and 7% to Class III products (75% or more value added in the state). Preferences apply to state procurements.

ARIZONA

Arizona Revised Statutes Annotated, Section 34-241 (1988)—Preference of 5% to contractors who have paid state or county taxes for at least two years, of at least \$200 per year.

Section 34-242 (1988)—Preference of 5% to construction materials produced or manufactured in the state.

Section 34-243 (1988)—Preference of 5% to construction materials bid by a resident dealer. Preferences apply to state and political subdivision contracts to be paid for from public funds.

ARKANSAS

Arkansas Code of 1987 Annotated, Section 19-11-259 (Pamphlet, 1990) —Preference of 5% to firm resident in Arkansas on competitively bid purchases of all commodities by the state and all political subdivisions.

Section 22-9-206 (Cumulative Supplement 1989)—Preference of 3% to contractors with "staffed office" in state and history of state tax payments.

CALIFORNIA

None.

COLORADO

Colorado Revised Statutes, Section 8-19-103—Reciprocal preferences.

CONNECTICUT

None.

DELAWARE

None.

FLORIDA

Florida Statutes Section 287.084 (1990)—Reciprocal preferences applicable to political subdivisions only.

GEORGIA

Georgia Code Annotated. Sections 50-5-60, 50-5-61, 50-5-62 (1986)—Resident and product preferences in tie bids.

Section 50-5-63 (1986)—Any contract for construction, addition to, or repair of a facility, to be paid for by the state or a political subdivision must stipulate Georgia forest products will be used, if such products are required and are available. Preferences apply to state and political subdivisions.

HAWAII

Hawaii Revised Statutes Sections 103-41, 103-42 (1985)—Preference of 3% to Class I products (i.e., 25-50% value added in state); 5% to Class II products (i.e., 50-75% value added in state) and 10% to Class III products (i.e., 75% or more value added in state). Preferences apply to any expenditure of public funds by a governmental agency, defined as the state and its political subdivisions and a public officer or employee thereof.

IDAHO

Idaho Code Sections. 60-101, 60-103 (Cumulative Supplement 1989)—Preference of 10% to printing, binding, engraving and stationery work performed by resident in the state, for the state unless exception in Section 60-103 applies.

Section 60-102 (Cumulative Supplement 1989)—All county printing, binding, and stationery work for counties must be performed within the county; if proper facilities do not exist to do the work in the county, it must be done within the state unless Section 60-103 is applicable.

Section 67-5718 (1987)—Product preference in tie bids.

ILLINOIS

Illinois Annotated Statutes Chapter 29, Section 36 (Smith-Hurd 1989)—Preference of 10% to coal mined in the state purchased for fuel by any state agency or political subdivision.

Title 127, Section 132.6 (Smith-Hurd 1989)—Reciprocal preferences.

INDIANA

Indiana Code Section 5-17-3-1 (1989)—Public institutions that purchase coal for fuel must purchase coal mined in Indiana unless low-sulphur coal is required by federal regulations.

IOWA

Iowa Code Section 18.6 (1989)—Product and resident preference in tie bids.

Section 73.1 (Cumulative Supplement 1990)—Products preferred in tie bids.

Section 73.6 (Cumulative Supplement 1990)—Coal mined or produced in Iowa is given preference of up to 5%.

Section 23.21 (1989)—Reciprocal preferences. Section 18.6 applies to state; remaining provisions apply to state and political subdivisions.

KANSAS

Kansas Statutes Annotated Section 75-3740(a) (1990)—Reciprocal preferences.

KENTUCKY

None.

LOUISIANA

Louisiana Revised Statutes Annotated Section 1595 (West 1988)—Preference of 7% to meat and meat products, seafood or seafood products grown, canned, frozen, or produced in state. Preference of 4% to domesticated catfish grown outside state but processed in state and meat and meat products further processed in state under the state's grading and certification process.

Section 1595.2 (West 1988)—Public works contractors reciprocal provision.

Section 1595.3 (West 1988)—Preference of 5% to vendors of services to organize or administer rodeo and livestock shows in state-owned facilities.

Section 1595.5 (West 1988)—Preference of 5% to Louisiana retail dealers for any public agency retail purchase.

Section 1595.6 (West 1988)—Preference of 10% to steel rolled in Louisiana.

MAINE

Maine Revised Statutes Annotated Title 26, Section 1301 (1974)—Residents preferred on tie bids for public works contracts.

MARYLAND

Maryland State Fin. and Procedures Code Annotated Section 14-401 (1989)—Reciprocal preferences.

MASSACHUSETTS

Massachusetts Annotated Laws Chapter 7, Section 22(17) (1989)—Products preferred in tie bids.

MICHIGAN

Michigan Comp. Laws Annotated Section 18.1261 (West 1987)—Products and residents preferred on tie bids.

Section 24.61 (West 1981)—Printing for state chargeable to state must be performed within the state and bear a local union label.

MINNESOTA

Minnesota Statute Section 16B.102 (1988)—Reciprocal preferences.

MISSISSIPPI

Mississippi Code Annotated Section 31-7-15 (1972)—Products preferred in tie bids.

Section 31-7-47 (1987)—Reciprocal preferences.

MISSOURI

Missouri Annotated Statutes Section 34.070 (Vernon 1969)—Residents and products preferred in tie bids.

Section 34.076 (Vernon 1990)—Reciprocal preferences. Preferences apply to state and political subdivisions.

MONTANA

Montana Code Annotated Sections 18-1-101, 18-1-102, 18-1-103 (1989)—Preference of greater of 3% or the reciprocal preference to resident bidder for construction, repair, or public works contracts of state agencies and political subdivisions. Preference of 5% to resident bidders

offering Montana made goods; or 3% to any bidder offering Montana made goods over resident bidder offering non-Montana made goods.

Section 18-7-107 (1989)—Preference of 3% to printing, binding, and stationery work performed by resident in state.

NEBRASKA

Nebraska Revised Statutes Section 73-101.01 (1986)—Reciprocal preferences.

NEVADA

None.

NEW HAMPSHIRE

None.

NEW JERSEY

New Jersey Statutes Annotated Section 52:32-1.4 (1986)—Reciprocal preferences.

Section 52:36-3 (1986)—Printing for state must be performed in the state.

NEW MEXICO

New Mexico Statutes Annotated Sections 13-4-1, 13-4-2 (1989)—All governmental entities have duty to award public works construction contracts to resident contractors whenever practicable. Preference of 5% to resident contractors.

Section 13-1-21 (1989)—Preference of 5% to resident manufacturers and resident businesses.

Section 13-1-22 (1989)—Businesses and manufacturers must be precertified as resident firms before being given a preference.

NEW YORK

New York State Fin. Section 174A (McKinney 1988)—Preference of 3% for New York agriculture products.

NORTH CAROLINA

North Carolina General Statutes Section 143.59 (1987)—Residents preferred on tie bids.

NORTH DAKOTA

North Dakota Century Code Section 44-08-01 (1989)—Reciprocal preferences.

OHIO

Ohio Revised Code Annotated Section 125.11 (1988)—Contracts are awarded for products produced or mined in Ohio if there is sufficient competition to insure against excessive price or inferior quality. Sufficient competition is deemed to exist with two or more qualified bids offering Ohio produced or manufactured products. Preferences are mandatory on state but optional for political subdivisions.

Section 153.012 (1983)—Reciprocal preferences on construction contracts.

Ohio Administrative Code Section 123:5-1-26 Preference of 5% to residents for all goods and services.

OKLAHOMA

Oklahoma Statute Title 74 Section 85.32 (1990)—Preference of 5% to products grown, produced or manufactured in state, unless a reciprocal preference applies. Preference is applicable to contracts of the state and its political subdivisions.

OREGON

Oregon Revised Statute Section 282.210 (1989)—Printing, binding and stationery work for the state or political subdivisions must be performed within the state unless it cannot be done, the price is higher than that customarily charged private persons, or all bids are excessive.

Section 279.021 (1989)—Products preferred in tie bids.

Section 279.029 (1989)—Reciprocal preferences.

PENNSYLVANIA

73 P.S. Section 1645.5—Reciprocal prohibition.

RHODE ISLAND

None.

SOUTH CAROLINA

South Carolina Code Annotated Section 11-35-1520 (1989)—Residents and products preferred in tie bids. Preference of 2% to residents on procurements under \$2.5 million, and 1%, over \$2.5 million. Preferences are applicable to state and political subdivision contracts, but do not apply to construction contractors, subcontractors or to procurements, regardless of total amount, if any individual item is more than \$10,000.

SOUTH DAKOTA

South Dakota Codified Laws Annotated Section 5-19-3 (1989)—Reciprocal preferences. Bureau of Administration must maintain list of other state preference laws.

Section 5-23-13 (1985)—Residents and products preferred in tie bids.

TENNESSEE

None.

TEXAS

Texas Revised Civil Statutes Annotated, Article 601b, Section 3.28 (Vernon 1990)—Residents and products grown in state preferred in tie bids.

Article 601g (Vernon 1990)—Reciprocal preference. State Purchasing and General Services Commission must publish list of other state preference laws at least annually. Article 601b applies to state agencies only; Article 601g applies to state agencies and political subdivisions.

UTAH

Utah Code Annotated Section 63-56-20.6 (1989)—Reciprocal preferences.

VERMONT

Vermont Statutes Annotated Title 6, Chapter 207, Section 4601 (1988)—Resident products preferred in tie bids.

VIRGINIA

Virginia Code Annotated Section 11-47 (1989)—Residents preferred in tie bids; reciprocal preferences.

Section 11-47.1 (1989)—Preference of 4% to coal mined in state purchased for use in state facilities with state funds.

WASHINGTON

None.

WEST VIRGINIA

West Virginia Code Section 5A-3-44 (1990)—Preference of 2% to resident bidders for state commodities and printing contracts. Same preference may be granted by political subdivisions at their option.

Section 5A-3-45 (1987)—Reciprocal preferences.

WISCONSIN

Wisconsin Statutes Annotated Sections. 16.75 and 16.855 (1986)—Residents and products preferred on tie bids. Reciprocal preferences.

WYOMING

Wyoming Statutes Section 16-6-101 et seq. (1989)—Preference of 5% to (1) resident contractors; (2) supplies, materials, equipment or provisions produced, manufactured or grown in the state offered by residents.

Section 16-6-301 (1987)—Preference of 10% to resident bidders for public printing. Preferences apply to state agencies and political subdivisions.

Summary—Resident Reciprocity Percentages for Goods and Services.

Arkansas—5%—All goods and services.

Idaho—10%—Printing.

Montana—3%—All goods and services.

New Mexico—5%—All goods and services.

Ohio—5%—All goods and services.

South Carolina—2%—All goods and services under \$2.5 million. 1%—All goods and services over \$2.5 million.

West Virginia—2%—All goods and services.

Wyoming—10%—Printing. 5%—All other goods and services.

Summary—Resident Reciprocity Percentages for Construction Contracts.

Arizona—5%

Arkansas—3%

Montana—3%

New Mexico—5%

Wyoming—5%

Issued in Austin, Texas, on June 5, 1990.

TRD-9005882 John R. Neel
 General Counsel
 State Purchasing and General Services
 Commission

Filed: June 5, 1990

For further information, please call: (512) 463-3446

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Texas Rehabilitation Commission Consultant Application Request

The Texas Rehabilitation Commission (TRC) announces the availability of federal funds in an amount up to \$90,000 from the Texas Commission on Alcohol and Drug Abuse (TCADA) to provide for research into factors which may lead to unsuccessful case closures (employment) of vocational rehabilitation clients. These funds will be contracted to an individual, institution of higher education, non-profit or for-profit organization, who will arrange for and monitor the implementation of this research project.

The goal of the TRC Vocational Rehabilitation (VR) program is to provide timely and needed services to individuals with disabilities who meet eligibility requirements and who need assistance in order to return to or enter into employment.

The TRCD is seeking applications for a study to determine any factors related to substance abuse which leads to certain TRC clients being unsuccessful in achieving the goal of employment. The research project must define substance abuse factors which contribute to the failure of these individuals receiving vocational rehabilitation services. Also, the research project must develop possible strategies and procedures for identifying these factors. The project must administer these strategies and procedures to a sample of applicants (who have a wide variety of disabilities) for TRC VR services. The project must follow upon these applicants at case closure to determine whether the outcome of case closure was affected by the identified factors. A final report which includes an analysis of the findings and recommendations for future action will be required.

General Information. Application packets will be available June 12, 1990. Completed proposals must be received by or postmarked and mailed first class to; Sarah D. Bolz, Program Specialist, the Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751 no later than 5 p.m. on July 10, 1990.

Funding Period. The funding period will begin on August 1, 1990, and all funds must be expended by August 31, 1991.

Contract Award and Requirements. Determination of funding for the research project will be based on the accepted application and may be subject to reduction if budgeting limitations exist. The applicant whose application is accepted for funding, hereinafter referred to as provider, will be notified no later than July 31, 1990. The contract with the selected provider will include but is not limited to the following: provider workplan; evaluation/monitoring processes to be performed by both parties; provider reporting requirements; payment/reimbursement schedule; compliance with applicable laws and regulations; procedures for maintenance of financial records and program files; auditing procedures; insurance liability/bonding requirements, if applicable; and termination process.

Qualifications of Applicant. Potential providers must ensure that they have the research capability, facilities, and all special resources readily available to meet and to satisfactorily perform the services identified in their proposal. The TRC and TCADA will have proprietary rights to all files generated. The potential provider must have submitted: documentation of ability to perform the work specified; documentation of ability to provide acceptable accounting and financial reporting systems; evaluation mechanisms to measure quality of services provided; and assurances that confidentiality of client information is protected.

Application Procedure. More detailed information on the application, the review process and the appeals process may be obtained from Sarah D. Bolz, Program Specialist, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4117.

Review of Applications. The commission reserves the right to accept or reject any or all applications submitted. The commission is under no legal obligation to execute a resulting contract on the basis of this advertisement. This request does not commit the commission to pay any costs incurred prior to the execution of a contract. Each application will be evaluated according to selection criteria which will be included in the application packet.

Results of Application Review. The application selection results will be published in the *Texas Register* on August 7, 1990 and may be obtained by sending a written request

and a stamped self-addressed envelope to: Texas Rehabilitation Commission, Programs, 4900 North Lamar Boulevard, Austin, Texas 78751.

Issued in Austin, Texas, on June 5, 1990.

TRD-9005824 Charles W. Schiesser
Assistant Deputy Commissioner
Texas Rehabilitation Commission

Filed: June 5, 1990

For further information, please call: (512) 483-4117

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The Texas A&M University System
Consultant Proposal Request

Under the provisions of Texas Civil Statutes, Article 6252-11c, the Texas A&M University System has engaged a consultant to provide managerial and technological expertise in the definition of a Strategic Information Reporting System for the TAMUS Board of Regents and senior administrators within TAMUS. This consultant was engaged as a result of a proposal submitted in response to the Texas A&M University System's Consultant Proposal Request which was published in the *Texas Register* on April 6, 1990 (15 TexReg 1981). This consultant will provide assistance to the Texas A&M University System in knowledge and experience with regards to a board and executive strategic information reporting system, especially with regards to financial and accounting information. The consultant to be engaged is: Anderson Consulting, 711 Louisiana, Suite 1300, Houston, Texas 77002.

The contract will commence on June 1, 1990, and end approximately November 1, 1990. The total value of the contract will not exceed \$99,500.

Issued in College Station, Texas, on June 4, 1990.

TRD-9005881 Bill C. Presnel
Executive Secretary of the Board of
Regents
The Texas A&M University System

Filed: June 5, 1990

For further information, please call: (409) 845-9600

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Texas Water Commission
Notice of Application For Waste
Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of May 28-June 1, 1990.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Luther Edwards, Yoakum; a swine operation; approximately five miles east of the City of Yoakum, approximately seven miles northwest of the intersection of U. S. Highway 77 and State Highway 111 in Lavaca County; 03304; new.

E.I. DuPont De Nemours & Company; Orange; Sabine River Works hazardous waste disposal well; 1,490 feet north and 1,980 feet west of the southeast corner of the W. H. Stark Survey, A-505, Orange County; WDW-282; new; 45-day notice.

E.I. DuPont De Nemours & Company; Beaumont; hazardous waste storage, processing, and disposal facility; on 750 acres of land along the Neches River, approximately six miles southeast of Beaumont in Jefferson County; HW-50166; amendment; 45-day notice.

Fermenta ASC Corporation, Greens Bayou Plant; Houston; a hazardous waste storage facility; on a 129-acre tract of land in an industrial area off Haden Road in Eastern Harris County; HW-50205; amendment; 45-day notice.

Nagron U.S.A., Incorporated; Houston; King's Manor Wastewater Treatment Facility; 0.6 mile northeast of the intersection of State Highway Loop 494 and Kingwood Drive in Harris County; 13526-01; new.

L.W. Parker; Pflugerville; Brewster Road Wastewater Treatment Facility; approximately 1,800 feet north of the intersection of Moore's Mill Road and Brewster Road and approximately 2.3 miles generally south of the Community of Pendleton in Bell County; 12933-01; renewal.

Safety-Kleen Corporation; Wichita Falls; Class I hazardous waste storage and processing facility; 1606 Missile Road within the city limits of Wichita Falls, Wichita County; HW-50232; new; 45-day notice.

Texas Industries, Incorporated, Jeffers-Wright-Simms Open Pit Mine; sand and gravel mine; 3.1 miles northeast of the Town of Bristol, Ellis County; 02734; renewal.

Dale Van ES; Covington; a dairy; approximately three miles north of the City of Covington, approximately three miles north of the intersection of State Highway 67 and State Loop 520 in Hill County; 03194; new.

Guy Viss; Comanche; a dairy; west-side of State Highway 16 at its intersection with FM Road 2681, approximately 4.9 miles northeast of Comanche in Comanche County; 03159; new.

Issued in Austin, Texas, on June 4, 1990

TRD-9005822 Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: June 4, 1990

For further information, please call: (512) 463-7906

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Texas Youth Commission
Family Based Residential Care

The Texas Youth Commission (TYC) is requesting written proposals for Family Based Residential Care to serve

youth at the Health and Human Services Level II, III, and IV levels of care.

Description. The program will provide family based residential services to fifty (50) male/female youth in the TYC East Region with 15 youth having HHSCC Level II needs, 15 youth having HHSCC Level III needs and 20 youth having HHSCC Level IV needs. These youth are those who traditionally have been served in institutions and group home settings but who require a smaller, family oriented setting with individualized care and treatment. The program must deliver a variety of services, directly or by contract, based on the level of needs of youth in care.

Eligible applicants include corporations, private non-profit agencies, private for profit agencies or individuals. Bids must be received no later than 5 p.m. on July 16, 1990.

Contract Limitations. The contract period will be from September 1, 1990-August 31, 1992. Start-up funds will be available for this program. The program is to be operational on or before October 12, 1990 at 8 a.m. with on-going development through August 31, 1991.

Evaluation and Selection. Proposals will be evaluated and a selection made based on the program description of services; staff qualifications and experience; site specifications; daily operations; operational specifications; and financial information.

Contact Person. Bid packets and additional information may be obtained from Michael C. Harrison, Administrator of Contract Services, Texas Youth Commission, Post Office Box 4260, Austin, Texas 78765, (512) 483-5091.

Closing Date. The closing date for receipt of proposals is July 16, 1990 at 5 p.m.

Issued in Austin, Texas, on May 30, 1990.

TRD-9005776 Ron Jackson
Executive Director
Texas Youth Commission

Filed: June 4, 1990

For further information, please call: (512) 483-5244



Statewide Contracted Group Care

The Texas Youth Commission (TYC) is requesting written proposals for Statewide Contracted Group Care to serve youth at the Health and Human Services Level III service needs.

Description. The Group Care programs will provide residential services to 132 male/female youth with Health and Human Services Level III needs. Youth are apportioned to each of the five Texas Youth Commission Regions as follows: Central-20; east-54; North-34; West-12; and South-12. The programs will serve TYC youth exclusively and must make available a variety of services to youth that result in behavior and attitudinal changes resulting in successful community reentry.

Eligible applicants include corporations, private non-profit agencies, private for profit agencies or individuals. Bids must be received no later than 5 p.m. on July 2, 1990.

Contract Limitations. The contract period will be from August 3, 1990-August 31, 1992. Limited start up funds will be available for this program. TYC prefers that program be operational at 8 a.m. on September 1, 1990, but no later than October 31, 1990.

Evaluation and Selection. Proposals will be evaluated and a selection made based on the program description of services; staff qualifications and experience; site specifications; daily operations; operational specifications; and financial information.

Contact Person. Bid packets and additional information may be obtained from Michael C. Harrison, Administrator of Contract Services, Texas Youth Commission, Post Office Box 4260, Austin, Texas 78765, (512) 483-5091.

Closing Date. The closing date for receipt of proposals is July 2, 1990 at 5 p.m.

Issued in Austin, Texas, on May 30, 1990.

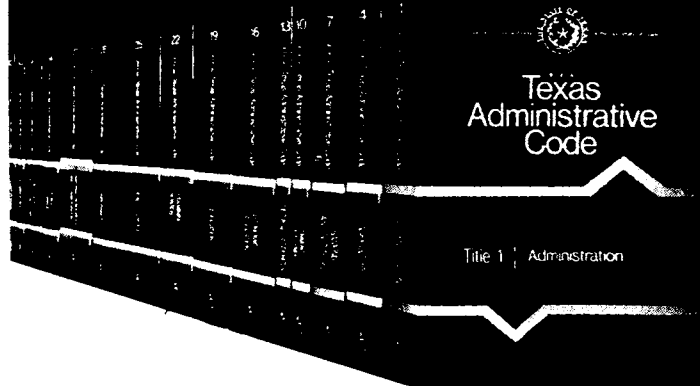
TRD-9005777 Ron Jackson
Executive Director
Texas Youth Commission

Filed: June 4, 1990

For further information, please call: (512) 483-5244



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