

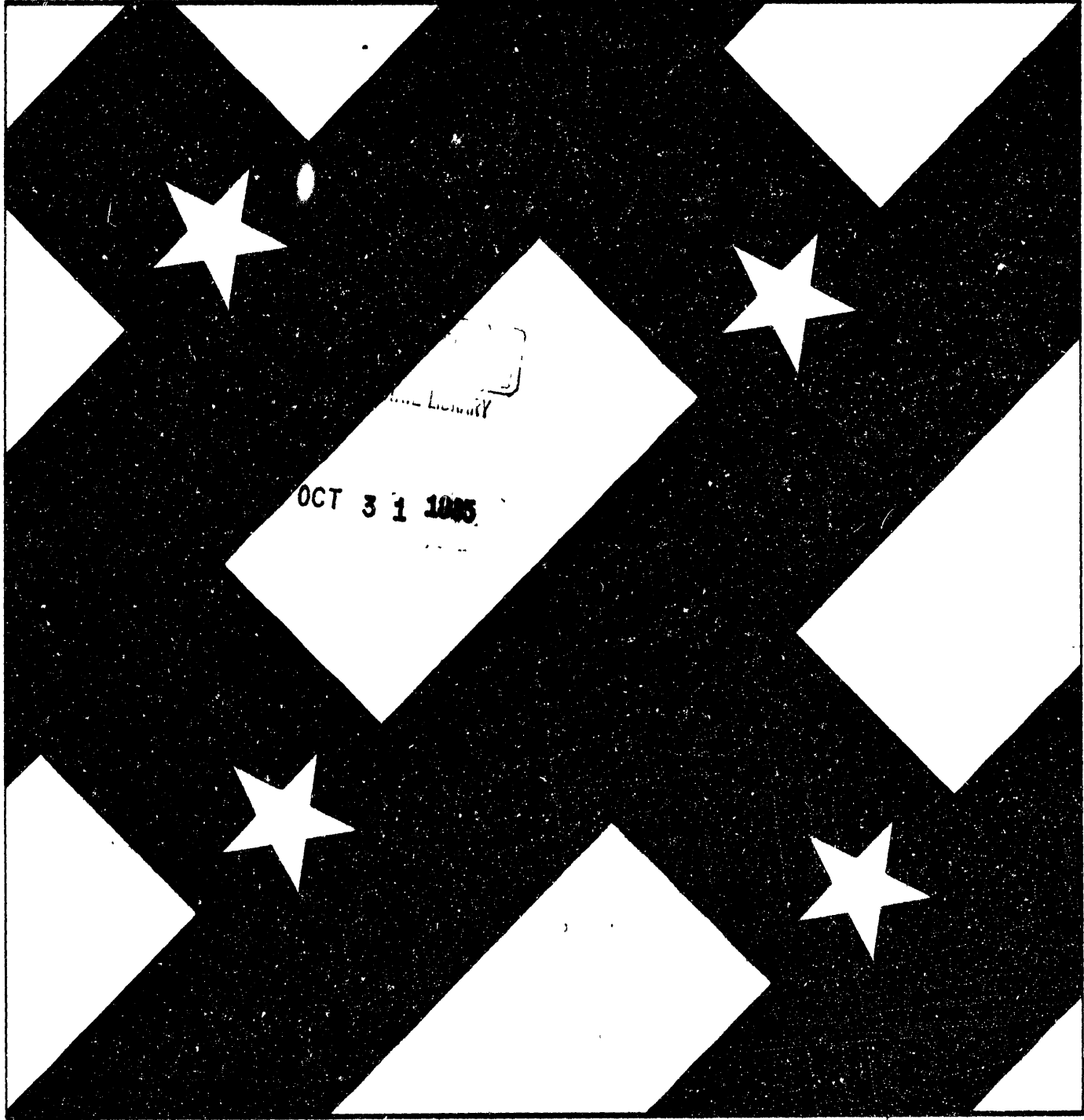
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Texas Register

Volume 10, Number 81, October 29, 1985

Pages 4199 - 4248



Highlights

The Criminal Justice Division, Governor's Office adopts an emergency new section concerning the Crime Stoppers Assistance Program. Effective date - October 22. **page 4208**

The Texas Department of Community Affairs proposes

new sections concerning allocation of program funds. Earliest possible date of adoption - November 29..... **page 4212**

The State Board of Medical Examiners proposes new sections concerning the schedule of fees. Earliest possible date of adoption - November 29..... **page 4212**

**Office of
the Secretary
of State**

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1985 with the exception of June 25, July 9, August 30, December 3, and December 31, by the Office of the Secretary of State.

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- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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

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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: "10 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 10 TexReg 3."

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

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1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code*;

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



Texas Register Publications

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The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *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 October 10

Joint Interim Committee on the Texas Shrimp and Oyster Industry

For a term to continue at the pleasure of this governor:

Kenneth Muecke
6314 Sioux
Pasadena, Texas 77503

Mr. Muecke is being appointed pursuant to House Concurrent Resolution 203, 69th Legislature, 1985.

Issued in Austin, Texas, on October 10, 1985

TRD-859817 Mark White
Governor of Texas

★ ★ ★

Appointments Made October 16

Texas Commission on Alcohol and Drug Abuse

For terms to expire June 8, 1991:

Cervando Martinez, Jr., M.D.
Box 189-C, Route 26
San Antonio, Texas 78246

Dr. Martinez is replacing Dr. David Wade of Austin, whose term expired.

Calvin Clifton Reed
P.O. Box 496
Kress, Texas 79052

Mr. Reed is replacing Jerry P. Cunningham of Dallas, whose term expired.

Issued in Austin, Texas, on October 16, 1985.

TRD-859817 Mark White
Governor of Texas

★ ★ ★

Rafael Roberto Garcia, M.D.
5715 36th Street
Lubbock, Texas 79407

Peggy Brzeszkiewicz Smith
3851 Chevy Chase
Houston, Texas 77019

Joyce Dorrycott
6454 Village Park Drive
San Antonio, Texas 78250

Emily Barbee Shelton
1006 Southwood Drive
Lufkin, Texas 75901

Bobbie Mae Matthews
1600 Peyton Gin Road
Austin, Texas 78758

Phil D. Stickland
3809 Martha Lane
Dallas, Texas 75229

These members are being appointed pursuant to Senate Bill 371, 69th Legislature, 1985.

Appointments Made October 11

Interim Committee on Coastline Rehabilitation

For a term to expire January 1, 1987:

Ruth Gill
245 Circle Drive
Corpus Christi, Texas 78411

Ms. Gill is being appointed pursuant to Senate Resolution 4, 69th Legislature, 1985.

Water District and River Authority Study Committee

To serve as chairman for a term to expire January 1, 1987:

Gerry E. Pate
121 North Post Oak, #803
Houston, Texas 77024

Mr. Pate is being appointed pursuant to Senate Bill 249, 69th Legislature, 1985.

Issued in Austin, Texas, on October 11, 1985.

TRD-859817 Mark White
Governor of Texas

★ ★ ★

Appointments Made October 18

Texas Statewide Health Coordinating Council

For a term to expire September 1, 1987:

James L. Caldwell, Ph.D.
6804 Rockledge Cove
Austin, Texas 78731

Dr. Caldwell is replacing Mrs. Jarmese Morris of Houston, who resigned.

Council on Child Abuse and Neglect Prevention

For terms to expire September 1, 1987:

Michael Atlee Reilly
505 Ryan Plaza Drive
Arlington, Texas 76011

Jane Elizabeth Caudle Crouch
P.O. Box 622
Hamilton, Texas 76531

Gretchen Becker Denny
3500 Dorothy Lane North
Fort Worth, Texas 76107

Texas State Board of Examiners of Professional Counselors

For terms to expire February 1, 1989:

Carol E. Champion
134 Highland Drive
Brownsville, Texas 78520

Ms. Champion is replacing Edward Bonk of Denton, whose terms expired.

Katherine Crumley
P.O. Box 41
Shepherd, Texas 77371

Ms. Crumley is replacing Raul Castillo of Houston, whose term expired.

Texas Housing Agency

For a term to expire January 31, 1987:

Perry Bradley
309 Hillcrest Drive
Sulphur Springs, Texas 75482

Mr. Bradley is replacing Ray P. Moudy of Midland, who resigned.

Issued in Austin, Texas, on October 18, 1985.

TRD-859817 Mark White
Governor of Texas

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Emergency

Rules

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

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

TITLE 1.

ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

Subchapter A. Criminal Justice Administration of the Crime Stoppers Assistance Program

★ 1 TAC §§3.501-3.540

The Criminal Justice Division of the Office of the Governor adopts on an emergency basis new §§3.501-3.540, concerning the administration of the Crime Stoppers Assistance Program.

Under provisions of Acts of the 69th Legislature, 1985, Chapter 589, §2, funds have been allocated for the 1986-1987 biennium for use by local crime stoppers programs. The Criminal Justice Division (CJD) of the Office of the Governor has been designated as the agency responsible for the administration of these funds.

The new sections are adopted on an emergency basis to enable the CJD to begin the process of accepting and reviewing applications for funding. It is also imperative that the applicants have complete and accurate information essential to the development of their grant applications, and that applicants are fully aware, prior to the development of the grant applications, of statutory and administrative requirements that may affect their proposed projects.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(32a), §6(a)(11), which provide the CJD with the authority to adopt such rules, regulations, and procedures as may be necessary.

§3.501. Legal Authorization. These sections are promulgated under the authority of Texas Civil Statutes, Article 4413(32a), §6(a)(11), which provide the Criminal Justice Division of the Office of the Governor, with the authority to adopt rules, regulations, and procedures necessary to carry out provisions of the Act.

§3.502. Applicability. These sections shall apply only to applications and grants

awarded to local crime stoppers programs and to funds appropriated for the 1986-1987 biennium under the provisions of Acts of the 69th Legislature, 1985, Chapter 589, §2.

§3.503. Compliance; Adoption by Reference. Grantee/applicants shall comply with all applicable state and federal statutes, rules, regulations, and guidelines. The Criminal Justice Division (CJD) adopts by reference the following documents and forms. Information regarding these adoptions by reference may be obtained from the Criminal Justice Division, Attention: Texas Crime Stoppers Advisory Council, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919.

(1) *Crime Stoppers Assistance Program: Plan for Application and Implementation of Local Grant Programs;*

(2) *Crime Stoppers Assistance Program: Application Kit;*

(3) audit guidelines:

(A) U.S. General Accounting Office, *Standards for Audit for Governmental Organizations, Programs, Activities, and Functions;*

(B) U.S. General Accounting Office, *Guidelines for Financial and Compliance Audits of Federally Assisted Programs;*

(C) Office of Management and Budget, *Circular A-128, Audits of State and Local Government;*

(4) *Uniform Grant and Contract Management Standards* developed under directive of the Uniform Grant and Contract Management Act of 1981, Texas Civil Statutes, Article 4413(32g);

(5) Criminal Justice Division forms for local crime stoppers programs:

(A) statement of grant award;

(B) grantee acceptance notice;

(C) grantee's request for funds;

(D) grant adjustment notice;

(E) grantee's monthly performance report;

(F) report of expenditure and status of funds;

(G) property inventory.

§3.504. Eligible Applicants. Only existing local crime stoppers programs located within the State of Texas may apply to the Criminal Justice Division (CJD) for grants funded from the Crime Stoppers Assistance Program. Under Texas Civil Statutes, Ar-

ticle 4413(50), §1, "local Crime Stoppers Program" is defined as a private nonprofit organization that is operated on less than a statewide level, that accepts and expends donations for rewards to persons who report to the organization information concerning criminal activity, and that forwards the information to the appropriate law enforcement agency.

§3.505. Organization Structure.

(a) Board of directors. The board of directors (board) of a local crime stoppers program shall be comprised of at least three civilian members who reside in the local jurisdictions that participate in the program. Law enforcement and criminal justice officials may not serve on the board, but may serve in an advisory capacity.

(1) The chairman of the board shall be designated as the authorized official for any grant awarded by the Criminal Justice Division (CJD) to a local crime stoppers program.

(2) The treasurer or designee of the board shall act as financial officer for any crime stoppers grant awarded by the CJD.

(b) Crime stoppers coordinator. The participating law enforcement agency or agencies shall designate a police officer or other qualified individual as coordinator for any crime stoppers grant awarded by the CJD.

§3.506. Grant Applications.

(a) Grant applications for local crime stoppers programs must be prepared in accordance with all applicable documents and forms adopted by reference under §3.503 of this title (relating to Compliance; Adoption by Reference).

(b) Grant applications submitted to the Criminal Justice Division must include:

(1) articles of incorporation as a private nonprofit organization filed with the Texas secretary of state;

(2) bylaws adopted by the applicant;

(3) a state vendor identification number or a copy of an application for a state vendor I.D. number;

(4) a letter of endorsement from each law enforcement agency participating in the local crime stoppers program; and

(5) the names, titles, addresses, and telephone numbers of the individuals designated as the authorized official, financial officer, and project director for the grant.

§3.507. Review of Grant Applications.

(a) The Criminal Justice Division (CJD) will review only those grant applications that are submitted in compliance with the applicable documents and forms adopted by reference under §3.503 of this title (relating to Compliance; Adoption by Reference).

(b) The CJD will submit recommendations to the governor concerning each grant application reviewed.

(c) The CJD may recommend award of a grant, award of a grant with modification, or rejection of a grant application.

(d) Recommendations shall be based on applicable statutory requirements, rules, guidelines, fiscal constraints, and administrative policies.

§3.508. Revision of Grant Application. The Criminal Justice Division may require revision of a grant application to comply with all state and federal laws, guidelines, rules, regulations, and applicable administrative and financial requirements for local crime stoppers programs.

§3.509. Nonsupplanting Requirement. Each grantee shall certify that Criminal Justice Division (CJD) funds have not been used to replace state or local funds that would have been available in the absence of CJD funds. The certification shall be incorporated in each grantee's report of expenditure and status of funds referred to under §3.503 of this title (relating to Compliance; Adoption by Reference).

§3.510. Nonlobbying Certification.

(a) Each grantee shall certify that none of the grant funds, regardless of their source or character, including local cash contribution, shall be used in any manner to influence the outcome of any election or the passage or defeat of any legislative measure.

(b) A finding that a grantee has violated this certification shall result in the immediate termination of funding of the project and the grantee shall not be eligible for future funding from the Criminal Justice Division.

§3.511. Bonding and Insurance. Each private nonprofit corporation directly receiving grant funds from the Criminal Justice Division (CJD) must secure and maintain a commercial bond against the loss or theft of CJD grant funds.

§3.512. Award and Acceptance of Grant Award.

(a) The Criminal Justice Division (CJD) shall notify a grant applicant of final action on a grant application.

(b) Each grantee shall accept or reject a grant award in the form and manner prescribed by the CJD within 30 days of the grant award date. In any event, failure by the grantee to execute the grantee acceptance notice within 30 days of the award date shall be construed as a rejection of the grant award.

§3.513. Implementation of Grant. Each grantee shall implement the grant within 45 days of the designated start date indicated on the grant award statement. Failure by the grantee to implement a grant within 45 days will be construed by the Criminal Justice Division (CJD) as the grantee's relinquishment of the grant award. Any exception to this rule will require the review and written approval of the CJD executive director.

§3.514. Operation of Grant. All grants shall be conducted in accordance with the following:

(1) applicable federal or state laws, rules, regulations, policies, or guidelines; and

(2) terms, conditions, standards, or stipulations of grant agreements.

§3.515. Bonding Requirement. The Criminal Justice Division (CJD) will not release funds to the grantee until the grantee provides CJD with proof of bonding as required under §3.511 of this title (relating to Bonding and Insurance).

§3.516. Grant Adjustments. The grantee must secure prior written approval from the Criminal Justice Division for any of the following:

(1) changes in the project director, financial officer, or authorized official;

(2) changes in the need, objectives, approach, or geographical location of the grant;

(3) transfers of funds among direct cost categories exceeding 5.0% of the total grant budget;

(4) changes in the number or job descriptions of personnel specified in the grant agreement;

(5) changes in equipment amounts, types, or methods of acquisition;

(6) changes in the grant or liquidation periods; or

(7) other changes for which the grant agreement or *Uniform Grant and Contract Management Standards* require prior approval.

§3.517. Grant Extensions. The Criminal Justice Division will not extend grants beyond the project period specified in the statement of grant award.

§3.518. Requests for Funds. All grantee requests for funds shall be submitted to the comptroller of the Criminal Justice Division (CJD), in accordance with the instructions provided to the grantee and shall be in the form required by the CJD.

§3.519. Obligation of Grant Funds. Grant funds may not, without advance written approval by the Criminal Justice Division be obligated prior to the effective date or subsequent to the termination date of the grant period. Obligations must be related to goods or services provided and used for approved purposes.

§3.520. Compensation to Victims of Crime Fund. Municipal and county courts in those jurisdictions that are participating in local crime stoppers programs must comply with fee collection and reporting requirements for the compensation to victims of crime fund, Texas Civil Statutes, Article 8309-1, §14. A determination that a court is not assessing costs due under the statute, or is not making a reasonable effort to collect the costs, may result in denial of funds for local crime stoppers programs within that jurisdiction.

§3.521. Third Party Participation.

(a) The grantee will retain ultimate control of and responsibility for the grant project and any contractor shall be bound by grant agreements, grant conditions, and any other requirements applicable to the grantee.

(b) Contracts over \$5,000, including any amendments, must be reviewed and approved as to form by the Criminal Justice Division prior to the release of any funds under the contract.

§3.522. Financial, Monthly Performance, and Inventory Reports. Each grantee shall submit financial, monthly performance, and inventory reports in accordance with the instructions provided by the Criminal Justice Division (CJD). All reports shall be submitted in accordance with the prescribed CJD forms for such reports. Financial and inventory reports must be signed by the financial officer. Monthly performance reports must be signed by the project director. Inventory reports are to accompany the final financial report.

§3.523. Deobligation of Funds. Any unobligated funds remaining with the grantee shall be returned immediately to the Criminal Justice Division with the final financial report.

§3.524. Cancellation of Project. The grantee shall notify the Criminal Justice Division, in writing, of the cancellation of any approved project immediately upon the determination to cancel the project.

§3.525. Misappropriation of Funds. The grantee must, immediately upon discovery, report to the Criminal Justice Division any evidence of misappropriation of funds.

§3.526. Security and Privacy. The grantee must, immediately upon discovery, report to the Criminal Justice Division any violation of Texas Civil Statutes, Article 4413(50), §10 and §11, relating to misuse of report information and privileged information. This action shall not be considered in lieu of, nor shall it relieve the grantee of, any responsibility for reporting any violation to the appropriate law enforcement authorities.

§3.527. Withholding Funds from Grantees. The Criminal Justice Division may withhold funds from a grantee when determination is made that the grantee has failed

to comply with established rules, guidelines, standard grant conditions, special grant conditions, or contractual agreements on which the award of such grant is predicated or when the funds for local crime stoppers programs are depleted.

§3.528. Conditions for Withholding Funds from Grantees.

(a) Withholding funds from specific projects. The Criminal Justice Division (CJD) may withhold funds from a specific project for reasons which include, but are not limited to, the following:

(1) failure to comply with any applicable federal or state laws, rules, regulations, policies, or guidelines, or with the terms, conditions, standards, or stipulations of any grant agreements;

(2) failure to submit reports of expenditure and status of funds, grantee's monthly performance reports, or special required reports at the times and in the form established for such reporting;

(3) significant deficiencies or irregularities in records maintained by the grantee or its agent for operation and/or administration of the grant project;

(4) failure to conduct the grant project according to the terms of the application for grant, the statement of grant award, the grantee acceptance notice, or a grant adjustment notice; or

(5) failure to comply with any standard or special condition which has been made a part of the statement of grant award by reference or inclusion therein, or through the issuance of a grant adjustment notice; or

(6) failure to commence project operations within 45 days of the project start date.

(b) Withholding funds from all projects. The Criminal Justice Division (CJD) may withhold funds from all projects operated by a grantee for reasons which include, but are not limited to, the following:

(1) failure to respond to any deficiency listed in this section;

(2) failure to return to the CJD within the required time any unused grant funds remaining on the expired grant; or

(3) refusal or an unwillingness to return to the CJD any grant funds which have been shown by an audit report and the CJD Audit Review Board to have been improperly accounted for or expended for ineligible purposes under a grant that has expired.

(c) Notification of withholding of funds. The CJD shall notify grantees of all deficient conditions constituting grounds for withholding funds and may give advance notification that funds will be withheld unless the deficient conditions are corrected by a specified date.

(d) Appeals to the CJD. Grantees may, within 10 days of receiving notification, request in writing a reconsideration of the determination to withhold funds. The request shall be directed to the executive director of the CJD together with any doc-

umentation in support of the reconsideration. The executive director will review the determination to withhold funds based on the documentation submitted, and the final determination will be transmitted in writing to the grantee.

(e) Release of funds. Funds shall be released when the CJD has been provided with satisfactory evidence that the deficient conditions have been corrected.

§3.529. Termination for Cause.

(a) The Criminal Justice Division (CJD) may terminate any grant for failure to comply with any of the following:

(1) applicable federal or state laws, rules, regulations, policies, or guidelines;

(2) terms, conditions, standards, or stipulations of grant agreements; or

(3) terms, conditions, standards, or stipulations of any other grant awarded to the grantee.

(b) Termination of grants for cause shall be based on findings that:

(1) deficient conditions make it unlikely that the objectives of the grant will be accomplished;

(2) deficient conditions cannot be corrected within a period of time adjudged acceptable by the CJD; or

(3) a grantee has acted in bad faith.

(c) The CJD shall notify grantees of the conditions and findings constituting grounds for termination.

(d) Unexpended or unobligated funds awarded to a grantee shall, upon termination of a grant, revert to the CJD.

(e) A grantee may be adjudged ineligible for future grant awards if a grant awarded to the grantee is terminated for cause.

§3.530. Appeal of Termination of Grant.

(a) A grantee may appeal the termination of a grant by writing to the executive director of the Criminal Justice Division (CJD) within 10 days from the date of the suspension or termination notification.

(b) The grantee may submit written documentation in support of the appeal.

(c) The executive director of the CJD shall consider any documentation submitted by a grantee in support of an appeal.

(d) The decision of the executive director of the CJD concerning an appeal of a termination shall be final unless overturned by a court of competent jurisdiction.

§3.531. Travel.

(a) Training. The Criminal Justice Division (CJD) will fund transportation, room and board, and registration fees for training programs that are approved by the Texas Crime Stoppers Advisory Council and at rates as specified by the CJD.

(b) Other travel. The CJD may fund travel within Texas for purposes other than training at rates as specified and approved by the CJD.

(c) Out-of-state travel. The CJD will not fund out-of-state travel for local crime stoppers programs.

§3.532. Payment of Outstanding Liabilities.

(a) Upon completion of the grant period, a grantee must pay all outstanding liabilities within 90 days.

(b) All payments made after the completion of the grant period must relate to obligations encumbered before the end of the grant period.

§3.533. Audit Standards. Examinations are to be conducted in accordance with the financial and compliance audit provisions of the U.S. General Accounting Office, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, adopted by reference under §3.503 of this title (relating to Compliance; Adoption by Reference).

§3.534. Audit Objectives. The audit objective is to review the recipient's administration of grant funds and required matching contributions for the purpose of determining whether the recipient has:

(1) established an accounting system and procedures integrated with adequate internal fiscal and management controls to provide full accountability for the receipt, expenditure, and use of the program funds;

(2) expended and used program funds in accordance with the requirements set forth in state laws, regulations, and procedures, and the terms and conditions of the award;

(3) submitted timely financial reports that contain accurate, reliable, and useful financial data, and that present fairly the financial position and the results of the financial operations; and

(4) managed its financial operations in accordance with sound management procedures.

§3.535. Known or Suspected Violations of Laws. Knowledge or suspicion of any legal violations that are encountered during audits—including fraud, theft, embezzlement, forgery, or serious irregularities—must be communicated in writing to the appropriate law enforcement authorities and to the Criminal Justice Division immediately upon discovery.

§3.536. Grantee's Response to Audit Exceptions. A grantee may, within a reasonable time not to exceed 10 working days, give notice of intent to submit documentation to respond to exceptions contained in an audit report by the Criminal Justice Division (CJD) or that has been forwarded to the CJD by an independent auditor.

§3.537. Documentation by Grantee. Any documentation concerning an audit may be submitted to the Criminal Justice Division (CJD) comptroller, either in person or by mail. Documentation may be delivered to the CJD at the Sam Houston State Office Building, third floor, 201 East 14th Street, Austin, Texas, or may be mailed to the Criminal Justice Division, Of-

office of the Governor, P.O. Box 12428, Austin, Texas 78711, Attention: Comptroller.

§3.538. *Audit Review Board.* The Audit Review Board (ARB) will consist of three members of the Criminal Justice Division (CJD) staff appointed by the CJD executive director. The ARB will review documentation submitted by grantees for legal, financial, and program acceptability under state rules, regulations, and guidelines.

§3.539. *Report of the Audit Review Board.* The Audit Review Board will make recommendations to the executive director for approval, disapproval, or approval as modified of audit exceptions. The determination by the executive director will be transmitted in writing to the grantee within 30 days.

§3.540. *Refunds to the Criminal Justice Division on Audit Review Board Determinations.* Grantees shall, within 30 days, refund all funds due after a final determination by the Audit Review Board and approval by the executive director of the Criminal Justice Division. Failure to comply with this provision shall subject participants to the provisions of §3.528 of this title (relating to Conditions for Withholding Funds from Grantees).

Issued in Austin, Texas, on October 22, 1985

TRD-859857 Gilbert Pena
 Executive Director
 Criminal Justice
 Division
 Office of the Governor

Effective date: October 22, 1985
Expiration date: February 19, 1986
For further information, please call
(512) 463-1919.

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TITLE 10. COMMUNITY DEVELOPMENT

Part II. Texas Economic Development Commission

Chapter 102. Allocation of Private Activity Bonds

★ 10 TAC §§102.1-102.9

The Texas Economic Development Commission (TEDC) adopts on an emergency basis new §§102.1-102.9, concerning the allocation of the authority in the state to issue certain private activity bonds. These sections are also proposed for permanent adoption in this issue of the *Texas Register*. The commission is adopting these sections on an emergency basis to implement the requirements of House Bill 690, 69th Legislature, 1985, Texas Civil Statutes, Article 5190.9. The effective date of this legislation requires

the immediate adoption of rules which will provide procedures and guidelines for public compliance. Procedures for the allocation were outlined in Executive Order MW-27B which remained in full force only until the effective date of any state legislation with respect to allocation of the state's limit

The new sections are adopted on an emergency basis under House Bill 690, 69th Legislature, 1985, which provides the commission with the authority to adopt rules necessary to carry out the purposes of the bill, and under House Bill 20, 69th Legislature, 1985, which authorizes the commission to charge application fees for a private activity bond allocation.

§102.1. *Scope.* The sections in this chapter apply only to the allocation of the state's limit on certain private activity bonds, pursuant to the Act.

§102.2. *Definitions.* Each word, term, or phrase not otherwise defined in this §102.2 shall have the same meaning as it has in the Act. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act—House Bill 690, 69th Legislature, 1985, Texas Civil Statutes, Article 5190.9.

Application for carryforward—Application for carryforward form prescribed by the commission and signed by a member of the governing body or an officer of the entity developing the project, and any required documentation.

Application for reservation—Application for reservation form prescribed by the commission and signed by a member of the governing body or an officer of the issuer, and any required documentation.

Commission—The Texas Economic Development Commission.

Executive director—The executive director of the Texas Economic Development Commission.

Governing body—The board, council, commission, commissioners court, or legislative body of the issuer.

Issuer—Any department, board, authority, agency, subdivision, municipal corporation, district, public corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever, and any nonprofit corporation acting for or on behalf of any of the foregoing.

Reservation date—The earliest date on which a completed application for reservation is filed with the commission pursuant to the Act and a portion of the state's limit is or becomes available to the issue.

Rules—Any commission's statement of general applicability that implements, interprets, or prescribes law or policy, or describes the commission procedures or practices.

Significant expenditures—Expenditures which equal or exceed the lesser of \$1 million or 15% of the estimated cost of the project.

§102.3. *Allocation and Reservation System.*

(a) The state's limit shall be determined for each calendar year by the executive director of the commission based upon the most recent census estimate of the resident population of the state of Texas published by the Bureau of Census before the beginning of such calendar year.

(b) The state's limit for each year is allocated to governmental units that issue private activity bonds or on whose behalf private activity bonds are issued. Except as provided for in the Act, §3, reservations are granted in the order of the reservation application date.

(c) An application for a reservation shall be completed prior to closing and must contain the following information:

(1) the maximum amount of the bonds in the issue;

(2) the purpose of the bonds;

(3) whether the bonds are student loan bonds or industrial development bonds; and

(4) if the bonds are industrial development bonds, the paragraph of the federal Tax Code, §103(b), that applies to the bonds; and

(5) if the federal Tax Code, §103(b), applies to the bonds, the specific subparagraph that applies; and

(6) other information as requested on the form prescribed by the commission.

(d) An application for reservation must comply with applicable provisions of the Act.

(e) An application for reservation may not be submitted after December 14.

§102.4. *Carryforward.*

(a) The amount of the state's limit that has not been reserved prior to December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation may be designated as carryforward for projects for which industrial development bonds may be issued under the federal Tax Code, §103(b)(4) and (5), and student loan bonds through submission of the prescribed application for carryforward and required documentation to the commission.

(b) An application for carryforward must:

(1) state the amount of the carryforward sought;

(2) describe the project; and

(3) contain other information as requested on the form prescribed by the commission.

(c) An issuer may submit an application for carryforward at any time during the year up to the last working day in December. Requests for carryforward shall be approved by applicable priority classification,

in the order of each request's receipt, to the extent that the state's limit for the given calendar year is not exceeded, provided that the following requirements are met with respect to any such request:

(1) the election to carryforward has been made by the appropriate governing body and assigned to the issuer for said project according to Internal Revenue Service (IRS) regulations, with the statement of carryforward election under the federal Tax Code, §103(n), containing such information as required by the IRS, including, where applicable under IRS regulations:

(A) a description of the project, including its address and the general type of facility;

(B) the name, address, and taxpayer identification number (TIN) of the initial owner, operator, or manager; and

(C) the amount to be carried forward for the project; or in the case of a carryforward election for the purpose of issuing student loan bonds, the amount to be carried forward for said purpose;

(2) the commission has been notified as to whether the said issue has received a reservation date from the commission; and

(3) the application for carryforward includes designation of the priority classification in which the project is to be placed.

(d) Priority classifications for the carryforward are as follows.

(1) Priority classification 1. Projects which are:

(A) student loan bonds; or

(B) projects for which:

(i) there was an inducement resolution prior to December 31; and

(ii) construction began prior to December 31; or

(iii) the substantial user was under a binding contract by such time to incur significant expenditures with respect to such project, provided the appropriate individual certifies that bonds for such project are issued and delivered during the following calendar year.

(2) Priority classification 2. Projects for which:

(A) there was an inducement resolution prior to December 31 and construction began prior to December 31; or

(B) the substantial user was under a binding contract by such time to incur significant expenditures with respect to such project.

(3) Priority classification 3. Projects for which:

(A) there was an inducement resolution prior to December 31 of the calendar year; and

(B) there is ownership by a governmental unit (per the federal Tax Code, §103(n), as amended by Public Law 98-369, §621).

(4) Priority classification 4. Projects for which there was an inducement resolution prior to December 31 of the calendar year.

(e) In the case of a project which has received a reservation date, an application for carryforward will be considered to have been filed with the commission on the date and at the time the commission receives written notification that the issuer will not issue the bonds for which the reservation date was received within that calendar year.

§102.5. Filings, Submissions.

(a) All letters, documents, or other papers relating to private activity bond reservations will be received only between the hours of 8 a.m.-5 p.m., and papers will not be received on Saturdays, Sundays, or holidays established by law for state employees.

(b) Duplicate originals of each document presented to the commission for filing shall be mailed to the following address: Texas Economic Development Commission, Finance Department, P.O. Box 12728, Austin, Texas 78711, or delivered by hand to the office of the Texas Economic Development Commission, Finance Department, Anson-Jones Building, third floor, 410 East 5th Street, Austin.

(c) When a document is received for filing, it will be dated and time stamped in the office of the Texas Economic Development Commission.

(d) The executive director of the commission, or his designee, shall:

(1) endorse on each original the words received for filing and the year, month, day, and time of the receipt thereof; and

(2) certify under penalty of perjury that the allocation was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

§102.6. Withdrawals, Amendments, Cancellations.

(a) An application for carryforward may be withdrawn or amended prior to the issuance of bonds by submitting to the com-

mission: a notice of the withdrawal or amendment. If an application for carryforward is amended, the application's place in the order of eligibility for a carryforward designation within a classification is determined by the date of amendment rather than the date that the application was originally submitted.

(b) The amount designated in the application for carryforward may not be amended and that amount designated shall be the amount which is issued or the carryforward will be cancelled.

(c) If an issuer does not timely submit documents required by the sections and the Act, the issuer's request for reservation will be cancelled.

§102.7. Publications in the Texas Register.

The executive director of the commission, or his designee, shall compile and publish weekly in the *Texas Register*:

(1) a statement of the amount of the state's limit remaining unreserved;

(2) a list of bond issues which have received a reservation since the last publication in the *Texas Register*, including the amount of each reservation; and

(3) a list of all bond issues that had previously received a reservation that have been issued and delivered since the last publication in the *Texas Register*.

§102.8. Fees, Payment of Money.

An application for a reservation or carryforward designation must be accompanied by a fee equal to one-tenth of 1.0% of the face amount of each bond allocation, but not less than \$500.

§102.9. Other Provisions.

The sections in this chapter may be amended at any time in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and upon approval of the governing body.

Issued in Austin, Texas, on October 23, 1985

TRD-859874

David V Brandon
Executive Director
Texas Economic
Development
Commission

Effective date: October 23, 1985
Expiration date: January 21, 1986
For further information, please call
(512) 472-5059.

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Proposed

Rules

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

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

TITLE 1.

ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

Subchapter A. Criminal Justice Administration of the Crime Stoppers Assistance Program

★ 1 TAC §§3.501-3.540

(Editor's note: The Office of the Governor proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is published in the Emergency Rules section of this issue.)

The Criminal Justice Division of the Office of the Governor proposes new §§3.501-3.540, concerning the administration of the Crime Stoppers Assistance Program.

Under provisions of Acts of the 69th Legislature, 1985, Chapter 589, §2, funds have been allocated for the 1986-1987 biennium for use by local crime stoppers programs. The Criminal Justice Division (CJD) of the Office of the Governor has been designated as the agency responsible for the administration of these funds. Sections 3.501-3.540 reflect Criminal Justice Division administrative policies, requirements, and operating procedures that apply to grants which may be funded under the Crime Stoppers Assistance Program.

Larry Janecek, assistant director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Janecek 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 is the assurance that applicants will be fully informed concerning the administrative policies and procedures and the special requirements for funding under the Crime Stoppers Assistance Program. There is no anticipated economic cost to individuals who are re-

quired to comply with the proposed sections.

Comments on the proposal may be submitted to Gilbert Pena, Executive Director of the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, for a period of 30 days following publication in this issue of the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 4413(32a), §8(a)(11), which provide the Criminal Justice Division of the Office of the Governor with the authority to adopt rules, regulations, and procedures as may be necessary.

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 October 22, 1985

TRD-859858

Gilbert Pena
Executive Director
Criminal Justice
Division
Office of the Governor

Earliest possible date of adoption:
November 29, 1985
For further information, please call
(512) 463-1919.

★ ★ ★

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

★ 10 TAC §9.1

The Texas Department of Community Affairs proposes an amendment to §9.1, concerning the allocation of community development block grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP). The amendment clarifies the performance threshold requirements for community development project fund

and statewide area revitalization fund contracts. The requirements take effect March 1, 1986.

Douglas C. Brown, general counsel, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Bill Pluta, Community Development and Housing Division Director, 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 is more expeditious completion of existing community development project fund and statewide area revitalization fund contracts. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Douglas C. Brown, General Counsel, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 4413(201), which provide the Texas Department of Community Affairs with the authority to allocate CDBG non-entitlement area funds to eligible counties and municipalities in accordance with rules and regulations adopted by the TDCA.

§9.1. General Provisions.

(a)-(k) (No change.)

(l) Performance threshold requirements.

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

(3) Community development project funds and statewide area revitalization fund contracts. In order to be eligible to apply for Texas Community Development Program (TCDP) funding, an applicant must have completed all activities under such contracts (with the exception of audit and closeout) which were funded utilizing monies from at least two program years prior to the program year in which additional TCDP funds are being requested. If the effective date of such a contract is one year or less before the date of the current application deadline, the applicant must have begun all construction activities under the contract in order to be eligible to apply

for TCDP funding. This subsection takes effect March 1, 1986.

(4) (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 October 21, 1985.

TRD-859818

Douglas C. Brown
General Counsel
Texas Department of
Community Affairs

Earliest possible date of adoption:
November 29, 1985

For further information, please call
(512) 834-6060.

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Part II. Texas Economic Development Commission Chapter 102. Allocation of Private Activity Bonds

★ 10 TAC §§102.1-102.9

(Editor's note: The Texas Economic Development Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is published in the Emergency Rules section of this issue.)

The Texas Economic Development Commission (TEDC) proposes new §§102.1-102.9, concerning to the allocation of the authority to the state to issue certain private activity bonds. These sections provide the rules and regulations for the implementation of the state allocation program. The procedures are outlined pursuant to House Bill 690, 69th Legislature, 1985, Texas Civil Statutes, Article 5190.9.

Wardaleen F. Belvin, director of finance, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The anticipated effect on state government is an estimated increase in revenue of \$2.3 million in 1986, and \$1.5 million in 1987, \$750,000 each year in 1988-1989, and zero for 1990. There is no anticipated economic effect on local government. Small businesses submitting an application for a reservation or carryforward designation for a private activity bond would be required to pay a fee of one-tenth of 10% of the face amount of each bond issue. The cost of compliance will be the same for small and large businesses.

Ms. Belvin 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 is the establishment of a fair and equitable system of allocation that

makes full use of the state's ceiling on certain private activity bonds as imposed by the federal Tax Reform Act, 1984 (Public Law 98-369).

The economic cost to individuals who are required to comply with the sections as proposed equals to one-tenth of the face amount of each bond issue, but not less than \$500 for a five-year period from 1986-1990. The reservation fee is provided for in the House Bill 20, 69th Legislature, 1985.

Comments on the proposal may be submitted to Johanna McCully-Bonner, General Counsel, Texas Economic Development Commission, P.O. Box 12728, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5190.9, which provide the Texas Economic Development Commission with the authority to adopt rules pertaining to the allocation of the authority of the state to issue private activity bonds and under House Bill 20, 69th Legislature, 1985, which authorizes the commission to charge application fees for a private activity bond allocation.

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 October 23, 1985.

TRD-859875

David V. Brandon
Executive Director
Texas Economic
Development
Commission

Earliest possible date of adoption:
November 29, 1985

For further information, please call
(512) 472-5059.

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TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners Chapter 175. Schedule of Fees

★ 22 TAC §175.2

The Texas State Board of Medical Examiners proposes an amendment to §175.2, concerning the schedule of fees. Specifically, the amendment sets out guidelines for single amount payments when received for multiple permit requests.

Florence Allen, business manager, and Jean Davis, program administrator, have determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications

for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Davis also has determined that for each year of the first five years the section is in effect there is no public benefit anticipated as a result of enforcing the section. The section pertains to payments by or for licensees or perspective licensees of the board. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held on the proposed section. Although no date has been set, it is expected to occur in early December.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§175.2. Payment of Fees. All licensure fees must be submitted in the form of a money order or cashier's check payable on or through a United States bank. Fees cannot be refunded. If a single payment is made for more than one individual permit, it must be made for the same class of permit and a detailed listing, on a form prescribed by the board, must be included with each payment.

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 October 15, 1985.

TRD-859873

G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption:
November 29, 1985

For further information, please call
(512) 452-1078.

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TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services
Hemophilia Assistance Program
★ 25 TAC §§37.111-37.120

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Department of Health proposes the repeal of existing §§37.111-37.120 and the adoption of new §§37.111-37.125, concerning the Hemophilia Assistance Program. The new sections will update and clarify the existing rules and implement the recent legislation in House Bill 2091, Article 9, 69th Legislative, 1985. Specifically, the new sections will cover purpose, definitions, and eligibility for patient services, services provided to patients, application process, authorization of blood product purchases, rights and responsibilities of the providers and of the responsible parties of the patient, contracts, payment of services, suspension or cancellation of payment, appeals, confidentiality, gifts, nondiscrimination, and income guidelines.

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

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to update and clarify the existing rules and to implement recent legislation (House Bill 2091, 69th Legislature, 1985) concerning the Hemophilia Assistance Program. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Janet S. Barkely-Booher, Chief, Bureau of Crippled Children's Services, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 465-2666. Comments will be received for 30 days after publication of this proposed repeal and adoption of new sections in the *Texas Register*. A public hearing will be held at 1 p.m. on Tuesday, November 9, 1985, in the second floor conference room, Room 2.500, 1101 East Anderson Lane, Austin.

The repeal is proposed under Texas Civil Statutes, Article 4477-30, §2, which provide the department with the authority to establish standards of eligibility under the Hemophilia Assistance Program.

- §37.111. *Introduction and Brief Description of Program Operation.*
- §37.112. *Advisory Committee.*
- §37.113. *Annual Report.*
- §37.114. *Patient Eligibility.*
- §37.115. *Approved Providers.*
- §37.116. *Assistance Provided.*
- §37.117. *Utilization of Private Insurance or Other Third Party Payment Sources.*
- §37.118. *Termination or Modification of Patient Eligibility.*
- §37.119. *Confidentiality of Information.*
- §37.120. *Nondiscrimination Statement.*

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 October 22, 1985.

TRD-859880

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

Proposed date of adoption.

December 14, 1985

For further information, please call
(512) 465-2666.

★ ★ ★



★ 25 TAC §§37.111-37.125

The new sections are proposed under Texas Civil Statutes, Article 4477-30, §2, which provide the department with the authority to establish standards of eligibility under the Hemophilia Assistance Program.

§37.111. *Purpose.* The purpose of these sections is to implement the Hemophilia Assistance Program authorized by Texas Civil Statutes, Article 4477-30. The program of the Texas Department of Health was created by the legislature to provide financial assistance to persons who are eligible for services. By law, the program shall provide financial assistance for medically eligible persons through approved providers in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

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

Act—The Hemophilia Act, Texas Civil Statutes, Article 4477-30.

Active case—All aspects of eligibility have been met. Eligibility continues for a period not to exceed one year's duration, as long as each of the eligibility criteria are met (have hemophilia and can meet the financial need and residency requirements).

Anniversary date—The day in the year on which initial eligibility was established and from which program restrictions based on 12-month limitation periods will be measured.

Applicant—A person making application for the program, but not currently determined eligible.

Approved providers—Any pharmacy, hospital, blood bank, or pharmaceutical manufacturer or distributor legally doing business in the State of Texas, to the extent that the program has not made binding agreements or contractual arrangements with a limited number of providers for purposes of cost containment or quality assurance.

Commissioner—The commissioner of health.

Department—The Texas Department of Health.

Eligible person—A person who meets all program requirements for eligibility.

Eligibility date—The effective date of initial eligibility for the program, which is:

(A) the date all eligibility requirements were met; or

(B) the date of blood product delivery if all written information to establish eligibility was received in the program within 30 days of that date.

Hemophilia—A human physical condition, characterized by bleeding, resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

Legally responsible person(s)—A person(s) who has legal obligation to support the patient, also referred to as parent/guardian/conservator.

Other benefits—Any other resource available to the eligible patient or the legally responsible adult(s), if the patient is legally dependent on someone else, other than a benefit under this Act, to which a person is entitled for payment of the cost of blood, blood derivatives and concentrates, and other substances provided under this Act, including the following:

(A) third party insurance;

(B) personal financial resources;

(C) a legal course of action, settlement, or judgment in behalf of the patient;

(D) coverage by the Texas Department of Health, Crippled Children's Services Program, Title XVIII or Title XIX of the Social Security Act, the Veteran's Administration, Worker's Compensation, or any compulsory employer's insurance program;

(E) a public program created by federal law or state law;

(F) the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(G) benefits available from a cause of action for medical expenses to a person applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for service provided under this Act.

Patient—An eligible recipient of the Hemophilia Assistance Program, also referred to as eligible person.

Program—The Hemophilia Assistance Program.

State—The State of Texas.

§37.113. Eligibility for Patient Services. In order for a person to be eligible for the Hemophilia Assistance Program, the person has to meet the medical, financial, and related criteria in this section.

(1) **Medical criteria.** To be medically eligible for the program, the patient must have been diagnosed as having hemophilia by a physician licensed to practice in Texas.

(2) **Financial criteria.**

(A) **Financial need.** Financial need is established on the basis of income and assets which are legally available to the applicant.

(i) **Income.** The income used to determine eligibility is the gross income of the applicant and those persons who have a legal obligation to provide for the applicant. Income includes earned wages, pensions, or allotments, child support payments, alimony, or any monies received on a regular basis for family support purposes. Verification of income will be required as set out in §37.115 of this title (relating to Application Process).

(ii) **Priority level based on federal poverty guidelines.** Income guidelines are based on percentages of the current federal poverty guidelines and may be adjusted by the program with the consent of the commissioner to meet budgetary limitations. Coverage is based by program priority on percentages of federal poverty guidelines. Income guidelines are maintained on a current basis and are adopted by reference in §37.125 of this title (relating to Income Guidelines). The program will adjust priority levels depending on available funds. Priority levels are as follows:

Program Priorities Based on Federal

Poverty Income Guidelines

- Priority 1 - 100% or below
- Priority 2 - 101% to 115%
- Priority 3 - 116% to 130%
- Priority 4 - 131% to 145%
- Priority 5 - 146% to 160%
- Priority 6 - 161% to 185%
- Priority 7 - 186% to 200%
- Priority 8 - 201% to 215%
- Priority 9 - 216% to 230%
- Priority 10 - 231% to 245%

(iii) **Assets.** Assets legally owned by or available to the applicant must be considered as a source of support to provide services for the applicant. Assets include such items as savings, real property other than a homestead, stocks, bonds, mutual or trust funds, IRAs, etc. Exemptions include a homestead (or a farm homestead of not over 200 acres); one automobile for an individual/two for a two adult family. Total assets are limited to a percentage of the amounts established for supplemental security income (SSI) eligibility.

(I) The program will adjust the percentages by priority levels depending on available funds, as follows:

Priority Levels for Total Assets

- Priority 1 - 100% or below of SSI limits
- Priority 2 - 101% to 150% of SSI limits
- Priority 3 - 151% to 200% of SSI limits
- Priority 4 - 201% to 250% of SSI limits

(II) The SSI asset limitations are as follows:

Supplemental Security Income (SSI) Asset Limitations

Effective Date	One Parent Family (or Single Adult)	Two Adult Family
1-1-85	\$1600	\$2400
1-1-86	1700	2550
1-1-87	1800	2700
1-1-88	1900	2850
1-1-89	2000	3000

(B) **Program coverage.**

(i) If the factors considered for financial eligibility are within program guidelines, the eligible person will be allowed coverage as defined by the program. Items covered may include blood, blood derivatives, or manufactured pharmaceutical products.

(ii) For all blood products covered by the program, program payment is considered to be payment in full.

(3) **Other benefits available.** Any other resource available to the eligible person, or the parent/guardian/conservator must be utilized prior to the use of program funds. This includes benefits from a legal cause of action, settlement, or judgment in behalf of the patient, as well as personal financial resources and third-party insurance, or Crippled Children's Services Program coverage.

(4) **Health insurance.** All health insurance policies held by the applicant and/or family must be listed on the application. If insurance eligibility was effective prior to program eligibility, premium payments on individual or group health insurance must continue. If insurance cannot be maintained:

(A) verification of uninsurability from the carrier or the employer must be provided to the program; or

(B) verification of loss of employment and/or inability to make premium payments must be provided.

(5) **Residency.**

(A) The person must be a bona fide resident of Texas. A bona fide resident means a person who:

(i) is physically present within the geographic boundaries of the state;

(ii) has an intent to remain within the state, whether permanently or for an indefinite period;

(iii) actually maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(iv) does not claim residency in any other state or country;

(v) is a minor child residing in Texas and his/her parent(s) or a conservator or the guardian of the child's person is a bona fide resident; or

(vi) is a person residing in Texas who is the legal dependent spouse of a bona fide resident; or

(vii) is an adult residing in Texas and his/her legal guardian is a bona fide resident.

(B) Verification of residency will be requested in the form of a valid driver's license, voter registration, rent or utility receipts for two months prior to the date of application, school records, or other proof of residency if determined valid by the program.

(6) **Determination of eligibility.**

(A) The final determination of eligibility is made by the program using the information provided by the application. The program may request verification of any information given to establish eligibility, but at a minimum will require that documentation of income and residency be submitted with the application.

(B) **Eligibility criteria are:**

(i) diagnosis of hemophilia;

(ii) financial need; and

(iii) residency.

(C) The person's case is considered to be active when all aspects of eligibility have been met and continues for a period not to exceed one year's duration, as long as each of the eligibility criteria in subparagraph (B) of this paragraph are met. The program will respond in writing within 15 working days after the application is received regarding eligibility status.

(D) To be medically eligible, a person must have the medical condition of hemophilia as certified by a physician li-

censed to practice in Texas.

(E) At the time initial eligibility is established, an eligibility date will be determined and entered into the program record. The eligibility date assigned will be:

(i) the date all requirements for eligibility were met; or

(ii) the date of blood product delivery if the program was notified of the need for an application to be made, and if all written information to establish eligibility was received within 30 days of that date.

(7) Determination of continuing eligibility. Eligibility is established for a maximum of one year. Financial eligibility must be reestablished on at least an annual basis.

(A) To maintain eligibility for program benefits the person must:

(i) continue to reside in the state;

(ii) be in financial need as defined by the program;

(iii) continue health insurance premiums, if applicable;

(iv) apprise the program within 30 days of changes in the following:

(I) permanent home address;

(II) insurance coverage;

(III) employment;

(IV) income;

(V) assets.

(B) The program may request current information when there is indication of a change of family circumstances, but no less often than once a year.

(C) Verification of income and residency will be required.

(D) If insurance eligibility was established prior to program eligibility, premium payments on individual or group health insurance must continue. Noncompliance with this requirement will result in the termination of program benefits. If the person is considered uninsurable, verification of denial of coverage will be required from the carrier or the employer. If the family is unable to continue premium payments, verification of unemployment or financial inability to continue premium payments will be required by the program.

§37.114. Services Provided to Patients. The program provides no direct services, but utilizes a reimbursement process through authorization of purchase of blood products delivered by program approved providers.

(1) Types of assistance. Payment may be made to approved providers for blood, blood derivatives and concentrates, and other substances for the treatment of hemophilia, prescribed by any physician licensed to practice in Texas. The provider must submit proof of receipt by the patient and a copy of the physician's prescription with the voucher.

(2) Program coverage. To be eligible for program coverage, a person must meet all eligibility requirements of the program and be at or below the percentage of the federal poverty guidelines in effect for

the program according to income priority levels. Coverage may be limited or restricted if necessary to remain within available funding. The program will notify patients and providers of the extent of coverage when eligibility is determined and when authorization is requested.

(3) Limitations. The program may limit or restrict services to remain within available funding and to provide effective and efficient administration. If funding shortages occur, priority will be given to those persons already eligible and receiving services over those making initial application. The eligibility date will be used to make this determination. If cutbacks in services are required, parties directly affected will be given a minimum of 30 days notice. Services may also be limited by the following means (not listed by priority):

(A) changes in income priority levels;

(B) limits on expenditures—by case, by annual cost.

§37.115. Application Process.

(a) Availability of application. Applications are available to anyone seeking assistance from the program. Application forms may be obtained from any local or regional health department or the program office in Austin. The completed application form is sent to the program for eligibility determination. To be considered by the program, the application must be made on the department form entitled Hemophilia Assistance Program application, shown to be effective after September 1, 1985. Forms utilized prior to September 1985 may be accepted by the program through January 1, 1986 provided documentation of income and residency is attached to the application. The person is considered to be an applicant from the time the program is notified (in writing or by telephone) that the person wishes to make application until the determination of eligibility is made by the program. The program will respond in writing within 15 working days after the application is received by the program regarding eligibility status. Applications will be considered:

(1) denied if eligibility requirements are not met;

(2) incomplete if sufficient family information is not provided;

(3) pending if medical information is not yet available;

(4) approved if all criteria are met.

(b) Family circumstances.

(1) The applicant or parent/guardian/conservator must submit a properly completed, signed application form to the program. Any documentation requested on the application must be attached to the form or it will be returned as incomplete.

(2) Information required includes, but is not limited to:

(A) data about the applicant—name, present location, date of birth, and place of birth, social security number, if ap-

plicable, and whether the applicant is currently eligible for Medicaid and/or Medicare;

(B) data about the applicant's legally responsible person(s) (if applicable)—name, relationship, present address and permanent address, telephone, whether a resident of the state (requires verification);

(C) health insurance policies providing coverage for the applicant—insurer, policy number, group number, certificate number, and amount of monthly premium;

(D) income of the applicant or legally responsible person(s) (requires verification);

(E) assets of the applicant or legally responsible person(s)—description, value, monthly income available;

(F) other members of the household—name, relationship, age;

(G) other benefits available to the family or applicant.

(3) The application is considered incomplete for any of the following reasons:

(A) failure to provide information as requested on the form;

(B) lack of supporting documents, as requested on the form (i.e., income, residency, etc.);

(C) omission of signature on the application of parent/guardian/conservator or the adult applicant.

(c) Medical information. In order to determine medical eligibility, a statement by a physician licensed to practice in Texas must be sent to the program. The physician must provide at least the following:

(1) applicant's name, current address, and date of birth;

(2) diagnosis;

(3) blood product needed, and quantity required (units).

(d) Emergency situations. Emergency situations are treated as any other request and notification must be received within five working days of emergency delivery of blood product. Eligibility must be established before any payment for services can be made; the program must receive a completed application no later than 30 days after the date of blood product delivery. Failure to comply with this 30-day deadline will forfeit the provider's and patient's/applicant's right to any claim for payment.

(e) Verification. The program may request verification of any information given to establish eligibility. This may include more documentation than required on the application if there is incomplete, inadequate, or conflicting information provided. Verification of income, assets, and residency is required as a minimum. Any application that is not accompanied by appropriate documentation will be returned to the sender as an incomplete application. The following information is required:

(1) Residency. Verification of Texas residency must be attached to the application and may be in the form of a copy of one of the following:

- (A) a valid driver's license;
- (B) voter registration;
- (C) rent or utility receipts for two months prior to the month of application;
- (D) school records; or
- (E) other documents of proof of residency if considered valid by the program.

(2) Income/assets:

(A) All income of the applicant and/or legally responsible person(s) must be verified in at least one of the following ways:

- (i) copy of the most recent pay check;
- (ii) copy of the most recent pay check stub/monthly employee earnings statement;
- (iii) employer's written verification of gross monthly income;
- (iv) pension/allotment award letters;
- (v) Internal Revenue Service Form 1040 and supporting schedules for the most recently completed year. The program may require submission of this item to verify income and assets;
- (vi) other documents of proof of income if considered valid by the program.

(B) If the responsible person(s) is unemployed, a statement of termination from the employer or evidence of Texas unemployment insurance enrollment is required.

(C) If the applicant can be confirmed as eligible for Medicaid or food stamps, no verification of income is required.

(D) The program will request current information on family circumstances (see subsection (b) of this section) on an annual basis or at any time there appears to have been a change that would affect eligibility status.

(f) Notification of acceptance. Notification of eligibility status will be mailed within 15 working days after the application has been received by the program and any limitations or restrictions of services will be explained. Any questions regarding coverage should be addressed to the program and not the provider. Incomplete applications will be returned to the applicant.

(g) Denial. The denial of any application to the program will be in writing and will include the reasons for such denial. The applicant has the right of administrative review and a due process hearing as set out in §37.124 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(h) Reapplication. Any person has the right to reapply for program coverage at any time or when there is a change of situation. An updated application must be received by the program on each patient at least once every 12 months so that eligibility can be redetermined.

§37.116. Authorization of Blood Product Purchases.

(a) Types of authorization.

(1) Standard authorization. Authorization is the program's method of approving the payment for blood products for an active case. If a purchase is authorized, payment is guaranteed to the provider if the purchase is not covered by a third-party resource. A request for authorization may be received by telephone or in writing prior to the date of purchase, but must be received within five working days of the purchase date. The program will not pay for any blood product provided more than five working days prior to receipt of notification. All conditions of eligibility must be met. These conditions include a completed application, current and sufficient financial information, current and sufficient medical information, and determination by the program that the applicant is eligible.

(2) Conditional authorization.

(A) A conditional authorization is the program's method of approving payment on a conditional basis when there is insufficient information available for the program to determine eligibility or the need for blood products. The program will not pay for any blood products provided more than five working days prior to receipt of notification. Conditional authorization will be used under the following circumstances:

- (i) when a blood product needs to be provided and eligibility status has not been determined;
- (ii) when financial information on an approved patient needs updating; and/or
- (iii) when the necessity for a blood product needs written documentation.

(B) Notification of conditional authorization will be provided in writing to providers with the understanding that the authorization will be honored by the program only if all information needed to establish or confirm eligibility or information to justify the need for a blood product is received by the program within 30 days of the date the blood product was provided, and if all conditions of eligibility are met. The notification letter will include those items needed by the program to remove the conditional status. If the information is received within the time allowed, a voucher will be issued to the provider. Conditional authorizations will be cancelled after the 30-day deadline if the information is not received.

(b) Third-party reimbursement. Under the provisions of the law, any private or public medical insurance or other benefits available to the patient, including the Texas Department of Health's Crippled Children's Services Program, must be utilized prior to the use of program funds.

(1) Any health insurance policies that provide coverage to the applicant/patient must be utilized before the program

can be of assistance. Providers must request authorization of purchase of blood product but must bill private insurance to determine the amount of coverage available prior to submitting any claim to the program for payment. Third-party explanation of benefits (EOBs) must accompany any claim sent to the program for payment. If a claim is rejected by a third party, the provider may bill the program if the purchase was authorized, and if the rejection letter or EOB is received by the program within 30 days of the date of the rejection, but no later than 180 days from the date of product delivery. Claims rejected by Medicaid or any private insurance on the basis of late filing will not be considered for payment by the program.

(2) The program will not supplement any Medicaid or Medicare payments; however, purchases beyond Medicaid or Medicare coverage can be provided.

(3) The program will not pay any claim rejected by Medicaid or Medicare on the basis of lack of medical justification.

(c) Limitations. The program may limit or restrict purchases to remain within available funding and to provide effective and efficient administration. The program may establish priorities for budgetary reasons. Purchases may be limited in the following ways (not listed by priority):

- (1) changes in income guidelines;
- (2) limit of expenditure by case or annual cost.

§37.117. Denial/Modification/Suspension/Termination of Program Benefits.

(a) Reasons. Any person requesting or receiving benefits from the program may be notified that such benefits may be denied, modified, suspended, or terminated if:

- (1) application information is erroneous or falsified;
- (2) the person is no longer a resident of Texas;
- (3) pertinent information is not provided when requested;
- (4) obligated reimbursement to the program is not provided. (Any person or persons who have a legal obligation to support the patient and have received third-party or liability payments must reimburse the department by lump sum payment or, at the department's discretion, in monthly installments);
- (5) program funds are reduced or curtailed.

(b) Procedure. The program will notify the parent/guardian/conservator or the patient of the action taken and the reasons for such action in writing. The right of appeal is available as stated in §37.124 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

§37.118. Rights and Responsibilities of Parents/Guardian/Conservator or the Adult Patient.

(a) Rights. The parent/guardian/conservator or the adult patient shall have the right:

(1) to apply for eligibility determination;

(2) of notification of modification, suspension, or termination of service;

(3) to refuse entry into the home to any employee, agent, or representative of the department;

(4) to appeal program decisions within 10 working days of the date of written notification of program decisions.

(b) Responsibilities. The parent/guardian/conservator or patient shall have the responsibility:

(1) to provide accurate information regarding any change of circumstance which might affect eligibility, within 30 days of such change;

(2) to reimburse the program if third-party payments are made directly to the patient or guardian/conservator to blood products purchased by the program;

(3) to consult with the provider regarding authorization of blood product purchases from the program prior to product delivery;

(4) to utilize insurance and other assets and to inform providers of such benefits/assets;

(5) to notify the program of any other benefits available to the patient at the time of application or thereafter;

§37.119. Providers.

(a) Providers must request authorization in specific terms in order for the program to determine cost and encumber adequate funds for payment of blood products so that provider payment can be assured.

(b) The law specifies that payment of program benefits are secondary to other public and private health insurance programs. Providers must agree to utilize all third party resources available to the patient, including Medicaid or Medicare, prior to requesting payment.

(c) Overpayments made in behalf of patients to providers must be reimbursed to the department by lump sum payment or, at the discretion of the department, in monthly installments or out of current claims due to be paid the provider.

(d) Approved providers must agree to abide by program rules and regulations, to accept program fees as payment in full, and not to discriminate against patients on the basis of insurance, Medicaid, or Medicare status.

(e) Any provider may withdraw from program participation at any time by notifying the program in writing of its desire to do so.

(f) The program may terminate doing business with any provider for due cause. Any provider submitting false or fraudulent claims or failing to provide and maintain quality services or medically acceptable standards is subject to review, fraud referral, and/or administrative sanctions.

(g) A due process hearing is available to any provider for the resolution of conflict between the program and the provider.

§37.120. *Contracts and Written Agreements.* In order to conserve funds, assure quality, and effectively administer the program, the program may establish agreements with a selected list of providers or contract on a lowest and best bid basis for the provision of blood products.

§37.121. *Payment of Services.* No payment will be made for blood product purchases not authorized by the program except as indicated in paragraph (6) of this section. Payment for any purchase authorized by the program may be made only after the delivery of the blood product. If a purchase has been authorized by the program, the family must not be billed for the purchase or be required to make a prepayment or deposit. Providers must agree to accept established fees as payment in full although such fees may be below usual and customary charges.

(1) Claims payment, denial, rejection. All payments made in behalf of a recipient will be for claims received by the program within 90 days of the date of product delivery, or the latter date shown on the program voucher (90-day filing deadline), and/or within the submission deadlines listed in subparagraphs (B) and (C) of this paragraph. Claims will either be paid, denied, or rejected, generally within 60 days of receipt by the program.

(A) Claims will be paid if submitted on the program approved voucher, if authorized, and if required documentation is received with the voucher.

(B) Denied claims are claims which are incomplete, submitted on the wrong form, or contain inaccurate information when originally submitted.

(i) Payment may be made if the provider corrections are accomplished and the claim is returned to the program within 30 days from the program's notice of denial or within the initial 90-day filing deadline, whichever is later.

(ii) If the claim is incomplete because it lacks other third-party explanation of benefits (EOB), payment may be made if the original claim and completed EOB's are received by the program within 30 days from the date of the third-party EOB, but no later than 180 days from the date of product delivery.

(iii) Claims that have been denied in error by the program may be reconsidered for payment if the claims, with the error identified, are returned to the program within 30 days of the date of the denial notice, or within the initial 90-day filing deadline, whichever is later.

(iv) Claims that have been denied and are resubmitted for payment must be corrected and be accompanied by a copy of the program notice of denial. Corrections must be made to the original voucher (claim) if at all possible. If a new voucher is submitted, the original claim form must accompany the new voucher. Additional purchases will not be considered

for payment on a resubmitted claim.

(C) Rejected claims are claims which fail to meet the filing deadline or are for ineligible recipients.

(i) Claims which have been rejected in error by the program may be reconsidered for payment if the claims, with the error identified, are returned to the program within 30 days of the date of the rejection notice, or within the initial 90-day filing deadline, whichever is later.

(ii) Claims which have been rejected but filed within the 90-day period, if resubmitted for payment, must be corrected. A copy of the program rejection notice must accompany the original claim. Corrections must be made on the original voucher (claim) if at all possible. If a new voucher is prepared, the original voucher must accompany the new claim form. Additional purchases will not be considered for payment on a resubmitted claim.

(D) Denied or rejected claims which do not meet the criteria in subparagraphs (B) or (C) of this paragraph may still be appealed through the program administrative review process or through the due process hearing procedure of the department.

(2) Claims with insurance coverage. Any health insurance policies that provide coverage to the applicant/patient must be utilized before the program can be of assistance. Providers must bill private or public insurance to determine the amount of coverage available prior to submitting any claim to the program for payment. The provider may bill the program if the purchase was authorized, and if the explanation of benefits (EOB) or the rejection letter is attached to the voucher and is received by the program within 30 days of the date of the rejection, but no later than 180 days after the date of delivery of blood product.

(3) Required documentation. The program requires documentation of the delivery of goods from the provider.

(4) Ninety-day claims submission deadline. No claim may be considered for program payment if it reaches the program later than 90 calendar days after the date of delivery of blood product, except for claims involving third-party reimbursement, as provided in §37.121 of this title (relating to Payment of Services).

(5) Overpayments. Overpayments made in behalf of patients to providers must be reimbursed to the department by lump sum payment or, at the department's discretion, out of the current claims due to be paid the provider in behalf of patients. This will also apply to any person or persons who have a legal obligation to support the patient and have received third-party or liability payments. The opportunity for an administrative hearing is available to providers and to the patient or person(s) responsible for the patient, as provided in §37.124 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(6) Linkage with medically needy program. Patients eligible for both the program and the Medically Needy Program (MNP) through the Texas Department of Human Services (DHS) may submit unpaid claims used in meeting the MNP spend-down provision for payment consideration by the program if the claims were for program covered blood products provided no more than 30 days prior to the date the program received the patient's application. Claims must be submitted to the program after submission to the DHS' Medically Needy Program. The program may consider these claims for payment if funds are available and if the program receives within 30 days the claim returned by DHS. These are the only claims that the program may consider for payment without authorization.

§37.122. Payment Suspension or Cancellation. The program may suspend or cancel payment for blood product purchases if false or fraudulent claims are submitted by a provider or supplier. Any provider failing to provide and maintain quality services or medically acceptable standards is subject to review, fraud referral, and/or administrative sanctions. Providers may request a due process hearing from the department.

§37.123. Cooperation with Other Agencies. The department will cooperate with public agencies, federal, state, and local, and with private agencies and individuals interested in the welfare of persons with hemophilia. The program as needed, will make every effort to establish cooperative agreements with other state agencies to define the responsibilities of each agency in relation to specific programs to avoid duplication of services.

§37.124. Appeals, Confidentiality, Gifts, and Nondiscrimination.

(a) Right of appeal. Any person aggrieved by a program decision to deny, modify, suspend, or terminate benefits or participation rights may appeal the decision in the following manner.

(1) Administrative review.

(A) Within 10 working days after receiving notice of denial, modification, suspension, or termination of benefits, a person aggrieved and wanting an administrative review shall respond to, or question, the program's decision and notify the program by certified mail of his/her request for an administrative review of the program's decision. Additional information bearing on the decision may be submitted at this time. Failure to request an administrative review within the 10-day period is deemed to be a waiver of the administrative review.

(B) Upon receipt of this response, a program administrative review team will affirm or reverse the proposed action, and respond in writing to the person, giving the reason(s) for the decision.

(C) Within 10 days after receiving written notice of the decision of the administrative review team, a person aggrieved by the program's administrative review may request a due process hearing from the department in accordance with the provisions of paragraph (2) of this subsection. A request for a hearing shall be sent to the program by certified mail. Failure to request the hearing within the 10-day period is deemed to be a waiver of the due process hearing.

(2) Due process hearing.

(A) The department will set a date and time at the Texas Department of Health in Austin, Texas, for the hearing.

(B) The hearing will not be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act, but will include the following:

(i) timely written notice to the person aggrieved of the basis for the decision and disclosure of the evidence on which the decision is taken;

(ii) an opportunity for the person aggrieved to appear before an impartial decision maker to relate the basis for the decision;

(iii) an opportunity for the person aggrieved to be represented by counsel or another representative;

(iv) an opportunity for the person aggrieved or representatives to be heard in person, to call witnesses, and to present documentary evidence;

(v) an opportunity for the person aggrieved to cross-examine witnesses; and

(vi) a written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(b) Confidentiality of information. All medical records and other information maintained by the department which is confidential by law shall not be disclosed to the public.

(c) Gifts and donations. The department may receive gifts and donations in behalf of the program, which are deposited in the state treasury and reappropriated to the program.

(d) Nondiscrimination statement. The Texas Department of Health operates in compliance with the Civil Rights Act of 1964 (Public Law 88-352, Title VI) and 45 Code of Federal Regulations Part 80, so that no person will be excluded from participation in, or otherwise subjected to discrimination on the grounds of race, color, or national origin.

§37.125. Income Guidelines. The department adopts by reference the Annual Revision of the Poverty Income Guidelines published in the *Federal Register*, Volume 50, Number 46, dated Friday, March 8, 1985. A copy of the guidelines is indexed and filed in the Bureau of Crippled Children's Services, Texas Department of Health, 1101 East Anderson Lane, Austin, Texas,

and is available for public inspection during regular working 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 October 22, 1985.

TRD-859882

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

Proposed date of adoption:
December 14, 1985

For further information, please call
(512) 465-2686

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Chapter 325. Solid Waste Management

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Department of Health proposes the repeal of §§325.271-325.276, 325.291-325.299, 325.311-325.316, 325.321-325.324, 325.331-325.350, 325.371, and 325.910, concerning hazardous waste management and Appendix J—small quantity generator notification form. The sections contain the department's previous rules for municipal hazardous waste generators and transporters, facility siting criteria, facility owners and operators, special rule facilities, and the notification form for small quantity generators. These sections are proposed for repeal in accordance with Senate Bill 249's (69th Legislature, 1985) transfer of authority over municipal hazardous waste from the department to the Texas Water Commission. As of September 1, 1985, jurisdiction over municipal hazardous waste was transferred to the Texas Water Commission. The department no longer has the authority to enforce the sections listed. Cross-references to the hazardous waste rules will be amended in the near future.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeals. The legislature transferred money which had been appropriated to the department to regulate municipal hazardous waste.

Mr. Seale also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeals will be a clarification of which agency has jurisdiction over municipal hazardous waste, since only the appropriate agency will carry rules for its management. There is no anticipated economic cost to individuals as a result of proposed repeals.

Comments on the proposal may be submitted to L. D. Thurman, Acting Chief, TDH Bureau of Solid Waste Management, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7271. All comments received within 30 days of the publication of this proposal will be considered.

General

★ 25 TAC §§325.271-325.276

The repeals are proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §3, which provides the Texas Department of Health with the authority to regulate only nonhazardous municipal solid waste. Jurisdiction over hazardous municipal solid waste was transferred to the Texas Water Commission by Senate Bill 249, 69th Legislature, 1985, which amended the Solid Waste Disposal Act.

- §325.271. *Purpose, Applicability, and Release of Information.*
- §325.272. *Definitions of Terms and Abbreviations.*
- §325.273. *Hazardous Waste Determination.*
- §325.274. *Hazardous Waste Regulated, Exclusions, and Exceptions.*
- §325.275. *Notification of Hazardous Waste Activity.*
- §325.276. *EPA Identification 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.

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TRD-859883 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

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(512) 458-7271.

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Generators

★ 25 TAC §§325.291-325.299

The repeals are proposed under the Solid Waste Disposal Act, Texas Civil Statutes,

Article 4477-7, §3, which provides the Texas Department of Health with the authority to regulate only nonhazardous municipal solid waste. Jurisdiction over hazardous municipal solid waste was transferred to the Texas Water Commission by Senate Bill 249, 69th Legislature, 1985, which amended the Solid Waste Disposal Act.

- §325.291. *Generators.*
- §325.292. *Scope and Applicability.*
- §325.293. *Hazardous Waste Accumulation.*
- §325.294. *Pretransport Requirements.*
- §325.295. *Manifest Requirements.*
- §325.296. *Reporting Requirements.*
- §325.297. *Record-Keeping Requirements.*
- §325.298. *Special Requirements for Small Quantity Generators.*
- §325.299. *Hazardous Waste Which Is Used, Reused, Recycled, or Reclaimed.*

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

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Professional Services
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(512) 458-7271.

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Transporters

★ 25 TAC §§325.311-325.316

The repeals are proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §3, which provides the Texas Department of Health with the authority to regulate only nonhazardous municipal solid waste. Jurisdiction over hazardous municipal solid waste was transferred to the Texas Water Commission by Senate Bill 249, 69th Legislature, 1985, which amended the Solid Waste Disposal Act.

- §325.311. *Scope.*
- §325.312. *Compliance with Manifest Requirements.*
- §325.313. *Delivery Requirements.*
- §325.314. *Record-Keeping Requirements.*
- §325.315. *Hazardous Waste Discharges.*
- §325.316. *Cleanup of Hazardous Waste Discharge.*

This agency hereby certifies that the proposal has been reviewed by legal counsel

and found to be within the agency's authority to adopt.

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Deputy Commissioner
Professional Services
Texas Department of
Health

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(512) 458-7271.

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Facility Siting Criteria

★ 25 TAC §§325.321-325.324

The repeals are proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §3, which provides the Texas Department of Health with the authority to regulate only nonhazardous municipal solid waste. Jurisdiction over hazardous municipal solid waste was transferred to the Texas Water Commission by Senate Bill 249, 69th Legislature, 1985, which amended the Solid Waste Disposal Act.

- §325.321. *Applicability.*
- §325.322. *Definitions of Terms and Abbreviations.*
- §325.323. *Site Selection to Protect Groundwater and Surface Water.*
- §325.324. *Unsuitable Site Characteristics.*

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

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Professional Services
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(512) 458-7271.

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Facility Owners and Operators

★ 25 TAC §§325.331-325.350

The repeals are proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §3, which provides the Texas Department of Health with the authority to regulate only nonhazardous municipal solid waste. Jurisdiction over hazardous municipal solid waste was transferred to the Texas Water Commission by Senate Bill 249, 69th Legislature, 1985, which amended the Solid Waste Disposal Act.

- §325.331. *Purpose and Scope.*
- §325.332. *Applicability.*
- §325.333. *General.*
- §325.334. *Preparedness and Prevention.*
- §325.335. *Contingency Plan and Emergency Procedures.*
- §325.336. *Manifest System, Record-Keeping, and Reporting.*
- §325.337. *Groundwater Monitoring Requirements for Interim Status Facilities.*
- §325.338. *Closure and Postclosure Requirements.*
- §325.339. *Financial Requirements.*
- §325.340. *Use and Management of Containers.*
- §325.341. *Tanks.*
- §325.342. *Interim Status Surface Impoundment Facilities.*
- §325.343. *Interim Status Waste Piles.*
- §325.344. *Interim Status Land Treatment Facilities.*
- §325.345. *Interim Status Landfill Facilities.*
- §325.346. *Incinerators.*
- §325.347. *Interim Status Thermal Processing Facilities.*
- §325.348. *Interim Status Chemical, Physical, and Biological Processing Facilities.*
- §325.349. *General Standards for Land Disposal Facilities.*
- §325.350. *Permits.*

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

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 Texas Department of
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 (512) 458-7271.

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Special Rule Facilities

★ 25 TAC §325.371

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Health, 1100 West 49th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §3, which provides the Texas Department of Health with the authority to regulate only nonhazardous municipal solid waste. Jurisdiction over

hazardous municipal solid waste was transferred to the Texas Water Commission by Senate Bill 249, 69th Legislature, 1985, which amended the Solid Waste Disposal Act.

§325.371. *Storage by Special Rule.*

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 October 22, 1985.
 TRD-859888 Robert A. MacLean
 Deputy Commissioner
 Professional Services
 Texas Department of
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 (512) 458-7271.

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Subchapter X. Forms and Documents

★ 25 TAC §325.910

The repeals are proposed under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §3, which provides the Texas Department of Health with the authority to regulate only nonhazardous municipal solid waste. Jurisdiction over hazardous municipal solid waste was transferred to the Texas Water Commission by Senate Bill 249, 69th Legislature, 1985, which amended the Solid Waste Disposal Act.

§325.910. *Small Quantity Generator Notification Form.*

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

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 TRD-859890 Robert A. MacLean
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 Professional Services
 Texas Department of
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 For further information, please call
 (512) 458-7271.

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Subchapter O. Guidelines for Regional and Local Solid Waste Management Plans

★ 25 TAC §325.568

The Texas Department of Health (TDH) proposes new §325.568, concerning ap-

proved regional and local solid waste management plans. The department proposes this section to carry out its duties under the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Texas Civil Statutes, Article 4477-7c, §7(a)-(e) and §11, by approving or disapproving regional and local solid waste management plans submitted under the Act.

The Act requires the department to adopt approved plans by rule. Once approved, public and private solid waste management activities and state regulatory activities must conform to the adopted plan during its period of effectiveness. The department is proposing to adopt by reference the provisions of the Houston-Galveston Area Council's regional solid waste management plan titled "Action Guide for Solid Waste Management in the H-GAC Region, 1985-2000."

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

Mr. Seale 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 improved management of solid waste in the 13-county Houston-Galveston Area Council planning region by reducing the potential for environmental pollution; conserving land, water, and material resources; reducing health risks; and encouraging interagency coordination among local governments. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to L. D. Thurman, P.E., Acting Chief, TDH Bureau of Solid Waste Management, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7271. Comments will be accepted for 30 days from the date of publication of this proposal.

In addition, a public hearing is scheduled at 9:30 a.m. on Thursday, November 14, 1985, at the Harris County Bear Creek Library, 16408 Clay Road, Houston. The plan may be reviewed at the TDH Bureau of Solid Waste Management, 1100 West 49th Street, Austin; the TDH Region 11 office, 1110 Avenue G, Rosenberg; or the offices of the Houston-Galveston Area Council, 3555 Timmons Lane (Keplinger Building), Houston. Copies and information may be obtained from Doris Davis of the Houston-Galveston Area Council at (713) 627-3200.

The new section is proposed under the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Texas Civil Statutes, Article 4477-7c, §7(a)-(e) and §11, which provides the Texas Department of Health

with the authority to adopt rules necessary to implement the Act.

§325.568. Approved State, Regional, and Local Solid Waste Management Plans.

(a) Purpose. This section adopts state, regional, and local solid waste management plans which have been approved by the board of health. As specified in §325.566(d) of this title (relating to Procedures for Regional and Local Plan Submission and Approval), public and private solid waste management activities and state regulatory activities within the geographical boundaries where the plan is applicable shall conform to an adopted plan during its effective period.

(b) State plan. The department adopts by reference the "Solid Waste Management Plan for Texas, 1980-1986, Volume 1, Municipal Solid Waste," as the state plan for solid waste over which the department has jurisdiction. The plan was approved by the board of health on January 31, 1981, and the effective period is from that date until December 31, 1986. Because jurisdiction over municipal hazardous waste has been changed since plan approval, provisions in the plan which are related to hazardous waste are no longer applicable. Department, regional, and local activities shall conform to those provisions which remain applicable in the adopted state plan. Copies of the state plan are available for public inspection during regular working hours at the TDH Bureau of Solid Waste Management, 1100 West 49th Street, Austin.

(c) Regional plans.

(1) Plans approved. The department has approved and hereby adopts by reference the "Action Guide for Solid Waste Management in the H-GAC Region, 1985-2000," which was developed by the Houston-Galveston Area Council and adopted by the council's board of directors on June 18, 1985. The effective period is from December 15, 1985, to December 31, 2000. Copies of this document are available for public inspection during regular working hours at the TDH Bureau of Solid Waste Management, 1100 West 49th Street, Austin; TDH Region 11 Office, 1110 Avenue G, Rosenberg; and offices of the Houston-Galveston Area Council, 3555 Timmons Lane (Keplinger Building), Houston.

(2) Conflicting provisions. By adopting a regional plan, the department has determined that the plan has been developed according to departmental rules and does not conflict with the state plan. If it should later be determined that provisions of a regional plan do conflict with provisions of the adopted state plan, then provisions of the state plan shall prevail.

(3) Agency responsibilities. It shall be the responsibility of the regional planning agency to coordinate the implementation of regional policies and recommended actions in an approved regional plan and

coordinate local planning efforts. It shall be the responsibility of affected local governments to implement the policies and recommended actions of an adopted regional plan and to maintain policies and activities that do not conflict with provisions in state and regional plans. The department shall consider provisions of an approved regional plan when reviewing an application for a permit for a facility to be located in the area affected by an approved plan.

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

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TRD-859889

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

Proposed date of adoption:
December 14, 1985
For further information, please call
(512) 458-7271.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part IX. Texas Department on Aging
Chapter 279. Implementation of Rehabilitation Act of 1973, §504, Policies and Procedures

Statutes and Regulations

★ 40 TAC §§279.1-279.4

The Texas Department on Aging proposes new §§279.1-279.4, concerning implementation of the Rehabilitation Act of 1973, §504, policies and procedures. The new sections establish policies and procedures for area agencies, grantees, service providers, or applicants to comply with and implement the Rehabilitation Act of 1973, §504, and details procedures for filing grievances by complainants in instances where the Act is not complied with.

Russell Gregorczyk, director for fiscal management, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result

of enforcing or administering the sections.

Tim Shank, deputy executive director, 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 is standardization of rules governing implementation of the Rehabilitation Act of 1973, §504, which will permit implementation of comparable services for the elderly funded by Title III of the Older Americans Act, as amended, throughout the state. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Edwin R. Floyd, Chief of Administrative Services, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new sections are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to adopt rules governing the function of the department.

§279.1. Background. The Texas Department on Aging and its grantees and sub-grantees are required to comply with the Rehabilitation Act of 1973, §504, as a condition for receiving federal assistance. Specifically, the section of the Act provides that no otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The implementing regulations, 45 Code of Federal Regulations Part 84, were adopted by reference by the Texas Department on Aging on June 13, 1984 (9 TexReg 3612).

§279.2. Policy.

(a) All area agencies on aging, grantees, service providers, or applicants to provide services to be funded under the provisions of the Older Americans Act of 1965, as amended, must execute a statement of compliance with the Rehabilitation Act of 1973, §504, and 45 Code of Federal Regulations Part 84 prior to receiving grants funds from the Texas Department on Aging. Failure to execute a statement of compliance may result in delays in funding or denial of funding.

(b) Area agencies on aging and service providers will take necessary actions to insure that all beneficiaries, participants, potential beneficiaries, and other interested persons are made aware that services, aid, and other benefits under the Older Americans Act, as amended, are provided on a nondiscriminatory basis and of their right to file a complaint with the Texas Department on Aging, the U.S. Department of Health and Human Services, or both, if they believe that discrimination on the basis of handicap is being practiced.

(c) Staff members of the Texas Department on Aging shall make no referrals to agencies, institutions, organizations, facilities, or individual practitioners that engage in racial discrimination even through such referrals may not involve vendor payments.

§279.3. Compliance.

(a) Area agencies on aging will review periodically, including on-site visits where appropriate, the practices of their grantees and service providers to insure that their practices are in conformity with the Rehabilitation Act of 1973, §504, and 45 Code of Federal Regulations Part 84. Such reviews and visits will be appropriately documented. These reports shall be retained at the area agency and will be made available to representatives of the Department on Aging, the Commission on Human Rights, Department of Health and Human Services, the U.S. Civil Rights Commission, and such other agencies as may be designated by the Texas Department on Aging.

(b) The Texas Department on Aging shall, as part of the annual program reviews mandated by the Older Americans Act, review the practices and procedures of the area agencies on aging and their grantees to insure compliance with the Rehabilitation Act of 1973, §504. Program reviews will be documented and filed with appropriate area plans. These reports shall be made available for audits and inspections by the U.S. Department of Health and Human Services or its designees.

§279.4. Complaints Procedures. The following policies and procedures are applicable for complaints of discrimination on the basis of handicap, either physical or mental.

(1) Any person, including clients and applicants for services, who believes that he/her or any specific class of persons is subjected to discrimination based on handicap may himself/herself, or by representative, file a complaint with the Texas Department on Aging. The complaint should be in writing, contain the name and address of the person filing it, and briefly describe the action alleged to be prohibited by the regulations.

(2) A complaint should be filed in the office of the §504 coordinator within a reasonable time after the person filing the complaint becomes aware of the action alleged to be prohibited by the regulations.

(3) The executive director, Texas Department on Aging, or his designee, shall conduct such investigation of a complaint as may be appropriate to determine its validity. These rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

(4) The executive director, Texas Department on Aging, shall issue a written decision determining the validity of the complaint no later than 30 days after its filing.

(5) If discrimination has occurred, the department will take all necessary ac-

tion to correct the discriminatory practice(s).

(6) The complainant will be advised, in a timely fashion, of the findings of the department regarding his/her complaint and advised of the right to appeal to the Office for Civil Rights if not satisfied with the department's decision.

(7) The right of a person to prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies such as the filing of a §504 complaint with the Office for Civil Rights of the U.S. Department of Health and Human Services. Utilization of this grievance procedure is not a prerequisite to the pursuit of other remedies.

(8) These rules shall be liberally construed to protect the substantial rights of interested persons, to meet appropriate due process standards, and to assure Texas Department on Aging compliance with §504 and the regulations.

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 October 22, 1985.

TRD-859886

O.P. (Bob) Bobbitt
Executive Director
Texas Department on
Aging

Earliest possible date of adoption:
November 29, 1985

For further information, please call
(512) 444-2727.

Adopted

Rules

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

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 15. Consumer Services Division

Texas Weights and Measures

★ 4 TAC §15.11

The Texas Department of Agriculture adopts an amendment to §15.11, without changes to the proposed text published in the September 13, 1985, issue of the *Texas Register* (10 TexReg 3489).

The amendment to §15.11(a) was necessary to improve the collection of fees. The department will be able to collect fees more efficiently through a central billing and collection system.

The amendment to §15.11(b) was made to conform to statutory changes made by the 69th Legislature, 1985, and to increase the registration fee for weighing and measuring devices to an amount closer to the actual cost to the state of rendering such services.

The amendment to §15.11(c) was made only to be consistent with the numbering of §15.11(a) and (b) and does not include any substantive changes.

Section 15.11(a) establishes and provides in specific detail a new procedure for registering commercial weighing and measuring devices which gives the responsibility for billing of registrants and collection of fees to the Texas Department of Agriculture (TDA) state office.

Section 15.11(b) changes the fees for weighing and measuring devices from inspection fees to registration fees and increases the amounts of fees in accordance with legislation enacted by the 69th Legislature, 1985.

Section 15.11(c) restates existing fees for testing measuring devices located on raw mild storage tanks.

The following comments were received. Once implemented, the new registration system will give both industry and state government a hassle-free collection procedure. The revenues generated are substantially more than the costs of administering the program so that if less fees are charged, they could still cover the

costs of administering the program. The inspection program should cost less, as inspectors will have less responsibilities. The fees of \$5.00 per pump and the \$20 per meter for bulk meters are excessive. The fee should be assessed only to those pumps that have been inspected. The temporary procedure established for September 1-November 15 should be adopted as a permanent system. The billing and registration system needs to be clarified.

In favor of the rule is the Texas LP-Gas Association. Against the rule is the Texas Oil Marketers Association.

The agency disagrees that the fees should be raised only to the point of covering the cost of administering the program. As stated in the September 13 publication in the *Texas Register*, there were two reasons for increasing fees. To bring the amount of fees charged closer to the actual cost to the state of rendering such services, and to be in accordance with the intent of the 69th Legislature, 1985, to increase general revenue. The funds raised by fees go into the general revenue fund; thus, the amount of funds generated have no relation to, and should not be compared to, the cost of the program to the department. The funds for administering the program come from the department's regulatory budget.

The agency disagrees that the inspectors presently required to collect fees will have less responsibility under the new program. While the new system of billing and collection by the state headquarters will reduce the time spent on collecting fees, such time will allow inspectors to perform much needed inspections and reinspections in the Weights and Measures Program.

The agency disagrees that the adopted fees for pumps and bulk meters are excessive. The total amount of increased fees for pumps is below the actual cost to conduct pump inspections. Indeed the actual cost of this program is approximately \$10 per pump. There is no increase in the amount charged for bulk meters 100 gallons per minutes or more. The amount charged for bulk meters of less than 100 gallons per minute has been increased as a result of a recategorization of bulk meters. All bulk meters are now grouped into one class with one

fee charged for all, regardless of size. This new grouping was established to simplify the registration of bulk metering devices, avoid confusion by users, and because it takes an inspector the same amount of time and expense to inspect small bulk meters as it does to inspect large bulk meters

The agency disagrees that the fee should only be assessed to those pumps that have actually been inspected and that the temporary procedure established for September 1-November 15 should be adopted as a permanent system. The legislature in House Bill 1593 mandates registration prior to the commercial use of a pump, and has repealed the use of inspection fees. The new procedure is tied to registration, and not inspection. The only fee is the registration fee which will be collected and processed out of the Austin central office after November 15, 1985. The establishment of an interim procedure was necessary, because the proposed regulations would not be effective until approximately November 15, 1985.

The amendment to §15.11 is adopted under the Texas Agriculture Code, §13.1001 and §13.1151, which provides the Texas Department of Agriculture with the authority to establish a system of annual registration of pumps, scales, or bulk or liquefied petroleum gas metering devices and charge a fee within the statutorily prescribed range for the registration of such devices

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 October 22, 1985.

TRD-859853

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Effective date: November 12, 1985
Proposal publication date: September 13, 1985
For further information, please call
(512) 463-7583.

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TITLE 19. EDUCATION

Part II. Texas Education

Agency

Chapter 61. School Districts

Subchapter A. Operational Basis

★ 19 TAC §61.2

The Texas Education Agency adopts new §61.2, with changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2388). In subsection (a)(1), 1985 has been added after November so that it now reads: "The 1984-1985 annual performance report. . . meeting in November 1985." In subsection (a)(4), the word "report" should be singular, not plural as in the published proposed section. There were no other changes in the text

The Texas Education Code, §21.258, requires each school district to publish an annual performance report which will be available to the public. The form and content of the report are to be prescribed by the State Board of Education and the report must be filed with the State Board of Education

The 1984-1985 annual performance report must include an evaluation of the school year in terms of student performance, program offerings, staff quality, adequacy of facilities, the financial condition of the school district, and the impact of new curriculum requirements and the 1984 education reform legislation. Specific date requirements including student test scores, class size, attendance, dropout rates, bilingual and compensatory education, and expenditures also are required. The report must be adopted by the local board at its regularly scheduled meeting in November 1985 and must be submitted to the Central Education Agency by December 1, 1985.

Jerry Smith, of Spring Independent School District, requested that the date for approval by the local school board be changed to December, and that the date for submission of the report to the Texas Education Agency be no later than January 1, 1986. At the time the new section was initially considered by the board, the reporting dates were changed from October, for local adoption, and November submission to the November and December dates which were actually proposed and which remain unchanged in the adopted section. The agency is required to report to the legislature concerning information contained in the reports, and a later submission date would make meeting this reporting requirement difficult.

This new section is adopted under the Texas Education Code §21.258, which directs the State Board of Education to prescribe the form and content for the annual performance report.

§61.2. School District Annual Performance Report.

(a) General rules for the 1984-1985 annual performance report.

(1) The 1984-1985 annual performance report shall be adopted by each school board as the official review of district activities at their regularly scheduled meeting in November 1985.

(2) The purpose of the annual performance report is to comply with the Texas Education Code, §21.258, and to provide each local board of trustees the opportunity to engage in a structured planning review of 1984-1985 district performance.

(3) Each school board of trustees shall undertake the necessary steps to ensure local availability of the annual performance report to the professional staff of the district and to the residents of the district.

(4) The commissioner shall approve appropriate instructions for the completion of the annual performance report.

(5) The annual performance report shall be transmitted to the Central Education Agency no later than December 1, 1985.

(b) General information. General information shall contain narrative information concerning district operations for the year. Using local measures as appropriate, each district shall evaluate the school year in terms of student performance, program offerings, staff quality, facility adequacy, financial condition, impact of 1984 educational reform legislation, impact of new curriculum requirements, and impact of other significant changes.

(c) District data.

(1) Each district shall provide basic information for the 1984-1985 school year relating to measures of educational achievement (including assessment instruments used, results for 1984-1985, and comparison to prior years).

(2) Each district shall also provide a count of the number of classrooms, excluding instrumental and choral music classrooms, in which in any class period the number of students exceeds:

- (A) 20 for grades kindergarten-8;
- (B) 25 for grades nine-12; and
- (C) 10 for special education.

(3) Each district shall provide appropriate data for a bilingual education report.

(d) Campus-level data. Data shall be provided by campus for:

- (1) pupil/teacher ratio by program;
- (2) attendance ratios;
- (3) test scores;
- (4) dropout rates;
- (5) compensatory education report (students served, Foundation School Program funds);
- (6) disciplinary activities by action taken;
- (7) distribution of 1984-1985 teachers by prior year employment; and
- (8) expenditures from general fund

for instruction, instructional support, and campus administration.

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 October 21, 1985.

TRD-859827

W. N. Kirby
Commissioner of
Education

Effective date: November 11, 1985

Proposal publication date: July 26, 1985

For further information, please call
(512) 475-7077.

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Chapter 75. Curriculum

Subchapter E. Well-Balanced Curriculum

★ 19 TAC §75.141

The Texas Education Agency adopts an amendment to §75.141, with changes to the proposed text published in the July 12, 1985, issue of the *Texas Register* (10 TexReg 2217). As proposed, subsections (c), (d), and (e) added subject headings for each paragraph. In the adopted section, the subject headings have been deleted.

In subsection (d), grades one-three, the language has been changed in paragraphs (1) and (2). As proposed, subsection (d)(1) read: "English language arts. No less than 120 minutes per day shall be devoted to teaching English language arts." As adopted, subsection (d)(1) reads: "Language arts shall be taught daily and no less than 600 minutes per week." As proposed, subsection (d)(2) read: "Mathematics. No less than 60 minutes per day shall be devoted to teaching mathematics." As adopted, subsection (d)(2) reads: "Mathematics shall be taught daily and no less than 300 minutes per week."

In subsection (e), grades four-six, the language has been changed in paragraphs (1), (2), (4), and (5). As proposed, subsection (e)(1) read: "English language arts. No less than 90 minutes per day shall be devoted to teaching English language arts." As adopted, subsection (e)(1) reads: "Language arts shall be taught daily and no less than 450 minutes per week." As proposed, subsection (e)(2) read: "Mathematics. No less than 60 minutes per day shall be devoted to teaching mathematics." As adopted, subsection (e)(2) reads: "Mathematics shall be taught daily and no less than 300 minutes per week."

As proposed subsection (e)(4) read: "Health. The equivalent of 60 minutes per week shall be devoted to teaching health." As adopted, subsection (e)(4) reads: "Within each six weeks the equivalent of 60 minutes each week shall be devoted to teaching health."

As proposed, subsection (e)(5) read: "Physical education. The equivalent of 120 minutes per week shall be devoted to teaching physical education." As adopted, subsection (e)(5) reads. "The equivalent of 112 minutes per week for each subject shall be devoted to teaching physical education and fine arts. Districts may choose to alternate two and three periods of instruction weekly in fine arts and physical education by dropping to the equivalent of 90 minutes one week and increasing to the equivalent of 135 minutes the next week for each subject area on a rotating basis"

Subsection (e)(6) has been deleted in the adopted section. As a result of the deletion of paragraph (6), paragraph (7) becomes (6), paragraph (8) becomes (7), and paragraph (9) becomes (8), with no change in the text. There are no other changes in the text of this section from the way it was proposed.

By changing the time requirements for elementary instruction from daily to weekly requirements, the amended section allows districts greater flexibility in providing appropriate instruction in the elementary grades. The amended section also implements portions of the Texas Education Code, §21.136, concerning prekindergarten, which took effect beginning with the 1985-1986 school year. Section 21.136 provides for students to be enrolled in prekindergarten classes school districts relating to the eligibility of teachers to teach prekindergarten, the section has been amended to include certification requirements for teachers and funding provisions.

The amended subsection (d), describes the instruction requirements for grades one-three. Language arts are to be taught daily and no less than 600 minutes per week. Mathematics are to be taught daily and no less than 300 minutes per week.

In grades four-six, language arts are to be taught daily and no less than 450 minutes per week. Mathematics are to be taught daily and no less than 300 minutes per week. The section deletes the requirement 45 minutes per day for science and 45 minutes per day for social studies and requires instead the equivalent of 225 minutes per week for each subject within each six-week period. This gives more flexibility to local school districts in organizing the instructional day.

The section requires that, within each six weeks, the equivalent of 60 minutes each week shall be devoted to teaching health. The section requires the equivalent of 112 minutes per week for each subject be devoted to teaching physical education and fine arts. Districts may choose to alternate two and three periods of instruction weekly in fine arts and physical education by dropping to the equivalent of 90 minutes one week and increasing to the equivalent of 135 minutes the next week for each subject area on a rotating basis.

The amended section establishes half-day prekindergarten programs for children who come from families whose annual income is at or below subsistence and for children of limited English proficiency. The section requires districts to submit an application to the commissioner of education which contains an estimate of the number of students who will participate. For the purposes of calculating program funding, each student in average daily attendance in the half-day program will receive a weight of 0.75. In the event that funds appropriated by the legislature for these programs are insufficient to fund the program fully, the commissioner shall ratably reduce each district's allotment. The cost of the program is to be shared by the state and the local district.

The section also deals with the eligibility of teachers to teach prekindergarten. Teachers who provide instruction in prekindergarten programs shall possess certification or an endorsement in at least one of these categories: early childhood education, teacher of young children, kindergarten, elementary with bilingual or English as a second language (ESL), elementary, or vocational home economics with kindergarten endorsement.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Education Code, §21.101, which authorizes the State Board of Education to designate essential elements for subjects in grades prekindergarten-12, and to require that districts provide instruction in these elements as specified by the board.

§75.141. Description of a Well-Balanced Elementary Curriculum

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

(c) Kindergarten.

(1) No less than 40% of the instructional day shall be devoted to teaching English language arts.

(2) No less than 20% of the instructional day shall be devoted to teaching mathematics.

(3) The daily schedule shall include instruction in physical education.

(4) The weekly schedule shall include instruction in fine arts, health, science, and social studies.

(5) The essential elements in all subjects are the same for half-day and full-day kindergarten programs. Time restrictions in half-day programs will limit the depth of instruction.

(6) The school district shall develop and implement a written instructional plan detailing how the essential elements will be addressed in physical education, fine arts, health, science, and social studies.

(7) Instruction in other languages may be included in the language arts instruction described in paragraph (1) of this subsection.

(d) Grades one-three.

(1) Language arts shall be taught daily and no less than 600 minutes per week.

(2) Mathematics shall be taught daily and no less than 300 minutes per week.

(3) Within each semester, the equivalent of at least 100 minutes per week shall be devoted to teaching science.

(4) Within each semester, the equivalent of at least 100 minutes per week shall be devoted to teaching social studies.

(5) The daily schedule shall include instruction in physical education.

(6) The weekly schedule shall include instruction in fine arts and health.

(7) The school district shall develop and implement a written instructional plan detailing how the essential elements will be addressed in physical education, fine arts, health, science, and social studies.

(8) Each school district is encouraged to offer other languages to the extent possible.

(e) Grades four-six.

(1) Language arts shall be taught daily and no less than 450 minutes per week.

(2) Mathematics shall be taught daily and no less than 300 minutes per week.

(3) Within each six weeks, the equivalent of 225 minutes per week for each subject shall be devoted to teaching science and social studies.

(4) Within each six weeks, the equivalent of 225 minutes each week shall be devoted to teaching health.

(5) The equivalent of 112 minutes per week for each subject shall be devoted to teaching physical education and fine arts. Districts may choose to alternate two and three periods of instruction weekly in fine arts and physical education by dropping to the equivalent of 90 minutes one week and increasing to the equivalent of 135 minutes the next week for each subject area on a rotating basis.

(6) Each school district is encouraged to offer other languages to the extent possible.

(7) Upon approval of the commissioner of education, school districts with departmentalized grades four, five, and six may modify the time requirements in paragraphs (1)-(6) of this subsection. Such modification shall provide for instruction in the essential elements specified in Subchapter B of this chapter (relating to Essential Elements—Kindergarten-Grade Six) for the grade levels affected. School districts which wish to deviate from the time requirements in this section may submit an alternate plan to the commissioner of education for approval. The plan must indicate how the district will ensure that the required essential elements will be taught.

(8) The school district shall develop and implement a written instructional plan detailing how the essential elements and time requirements will be addressed in health, physical education, and fine arts.

(f) Special instructional activities.

Some instructional activities such as science field trips, visits to museums or historical sites, and resource speakers may necessitate occasional deviations from the elementary time requirements. In scheduling such activities, the district shall use professional discretion to assure that the activities are kept to a minimum and have specified instructional purpose.

(g) Provisions for prekindergarten programs. The following provisions apply to prekindergarten programs:

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

(6) Assignment of teachers. Teachers who provide instruction in prekindergarten programs shall possess certification or an endorsement in at least one of the following categories: early childhood education, teacher of young children, kindergarten, elementary with bilingual or English as a second language (ESL), elementary, or vocational home economics with kindergarten endorsement.

(7) Funding for prekindergarten.

(A) Available funds appropriated by the legislature from the Foundation School Program for the support of programs provided under the Texas Education Code, §21.136, shall be allocated to school districts in accordance with this subsection. The commissioner of education shall ratably reduce each district's allotment for the prekindergarten program if funds are not available to fund the program fully.

(B) Funding for the program shall be calculated using the participating district's basic allotment as adjusted by the price differential index and small district formula, if applicable, and the average daily attendance (ADA) of students served in this program as prescribed in the Texas Education Code, §16.006. The cost of the program is to be shared by the state and district in the same percentage used to determine the state/local shares under the Texas Education Code, Chapter 16.

(C) For purposes of calculating program funding, each prekindergarten student in ADA shall receive a weight of 0.75. Prekindergarten students are not to be included in counts for bilingual or compensatory education funding under §77.362 of this title (relating to Bilingual Education Allotment) or §89.191 of this title (relating to State Compensatory Education Allotment).

(D) Districts shall apply to the commissioner of education for funding of prekindergarten programs operated under this subsection. Applications for funding shall contain an estimate of the number of students who will participate in the program and other information necessary to assure the commissioner that programs will be operated in accordance with the guidelines specified in this subsection.

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 October 21, 1985

TRD-859882

W N Kirby
Commissioner of
Education

Effective date: November 13, 1985
Proposal publication date: July 12, 1985
For further information, please call
(512) 463-9882.

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Chapter 81. Instructional Resources

Subchapter F. Library Media Standards

★ 19 TAC §81.241

The Texas Education Agency adopts the repeal of §81.241, without changes to the proposal published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2390).

A new subchapter has been adopted to meet the legislative mandate to establish library media standards. To avoid conflicting agency requirements, §81.241 is repealed. The Texas Education Agency adopts a new Chapter 81, Subchapter F, concerning library media standards.

No comments were received regarding adoption of the repeal

This repeal is adopted under the Texas Education Code, §11.36, which directs the State Board of Education to establish standards for library services and personnel.

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 October 21, 1985

TRD-859829

W. N. Kirby
Commissioner of
Education

Effective date: November 11, 1985
Proposal publication date: July 28, 1985
For further information, please call
(512) 475-7077

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The Texas Education Agency (TEA) adopts new §81.241, with changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2390).

The new section, which was also adopted on an emergency basis, was effective September 1, 1985. Several individuals expressed concern that the requirements went beyond those which had been adopted previously to be effective on that date. As a result of these comments, the adopted section has been revised to give school districts time to meet the new

standards. Subsection (b) now contains two sets of requirements. The first set is effective September 1, 1985, and is the same as in previous sections, except that references to personnel units have been deleted. The second set, effective September 1, 1988, increases the number of books or other materials required per student from seven to 10 and requires that the library media center be open and supervised at least half of the instructional day.

These standards supersede the standards for library media services which were included in the principles, standards, and procedures for the accreditation of school districts, and which set staffing patterns in terms of personnel units, which are no longer used in the state funding system for school districts.

A district must provide the professional services of one or more certified librarians to direct and develop the library media program. Required minimum staffing patterns are set out in the new section. The district must provide a catalogued and centrally located collection of materials. Effective September 1, 1985, there must be seven books or other materials per student, increased to 10 per student by September 1, 1988. Districts are also encouraged to work cooperatively with other community institutions, such as the public library, that have institutional materials. Several individuals commented that the new standards went beyond those originally adopted to be effective September 1, 1985, and requested additional time for implementation.

The TEA responds that the section as adopted allows time for implementation of the new standards, as requested in the public comment received.

Dr. Jim O Rogers, executive director, Region IX Education Service Center, requested that small school districts, with only one section of each grade at the elementary level, be allowed to keep all media and materials for that grade in the classroom rather than in a centralized library.

The TEA responds that the intent of the section is to ensure that library services, under the direction of a professional, are available to students in Texas public schools. Retaining materials in the classroom, rather than in a central location, limits the access of students in other grades to materials which might be of interest to them. Where a district has multiple copies of materials, agency guidelines suggest that extra copies may be placed in the classroom.

This new section is adopted under the Texas Education Code, §11.36, which directs the State Board of Education to establish standards for library services and personnel.

§81.241. *Requirements for Library Media Programs.*

(a) Each local district must provide financial support for library media services that is adequate to meet the requirements of this section.

(b) The district shall provide the professional services of one or more certified librarians to direct and develop the library media program. The distribution of the librarians and paraprofessionals shall be balanced among the campuses and grade levels of the district.

(1) Effective September 1, 1985, required minimum staffing patterns are as follows.

(A) A district with 1,000 or fewer in average daily attendance (ADA) may enter into a cooperative agreement to provide professional services.

(B) A district with 1,001-2,000 ADA shall provide the full-time services of either two professionals or one professional and two paraprofessionals.

(C) A district with 2,001-3,000 ADA shall provide the full-time services of three professionals, or two professionals and two paraprofessionals.

(D) A district with more than 3,001 ADA shall provide the full-time services of three professionals, or two professionals and two paraprofessionals, or one professional and four paraprofessionals, plus one professional or two paraprofessionals for each thousand or major fraction thereof above 3,000.

(2) Effective September 1, 1988, required minimum staffing patterns are as follows.

(A) A district with 1-374 students in ADA must make the services of a professional librarian available.

(B) A district with 375-499 students in ADA must provide the services of a part-time professional librarian and a half-time paraprofessional librarian.

(C) A district with 500-749 students in ADA must provide the services of a half-time professional librarian and a half-time paraprofessional librarian.

(D) A district with 750-1,000 students in ADA must provide the services of a half-time professional librarian and a full-time paraprofessional librarian.

(E) A district with over 1,000 students in ADA must provide one full-time equivalent professional librarian per 1,000 ADA.

(F) Where the services of a paraprofessional are required by this subsection, the district may in all cases use the services of a professional librarian for the amount of time required and still be in compliance.

(G) Districts with 1,000 or fewer in ADA may enter into a cooperative agreement to provide the services required by this subsection.

(c) The district shall provide a catalogued and centrally located collection of materials that is available to faculty members and students to support instruction and

learning in the essential curriculum elements, and to satisfy individual interests.

(1) A collection of materials in a variety of formats must be centrally organized and housed, and made available to students and faculty members at the campus unit level. Single-campus districts may provide one centralized library media center to house the collection and render the services.

(2) Materials shall be selected using standard selection tools, personal examination, or both.

(3) The collection shall meet at least the following minimums:

(A) books—effective September 1, 1985, seven books per student; effective September 1, 1985, 10 books per ADA or 1,500 books total, whichever is greater.

(B) audiovisual items—items that may include filmstrips, slides, transparencies, study prints, pictures, sound recordings, maps, globes, kits, microforms, games, single-concept films, 16mm films, audio and video tapes, and microcomputer software, in a total of at least two items per ADA; and

(C) equipment—appropriate equipment for use of the materials.

(4) A proration of materials available from education service centers (ESC) may be counted in the minimum number of required audiovisual (AV) items according to the following formula: Total number of ESC audiovisual items over the total number of participating students, equal student per capita AV items.

(5) Inappropriate, worn, and/or obsolete materials and equipment shall be systematically weeded from the collection.

(6) Effective September 1, 1985, the library media center shall be open and supervised at least half of the instructional day.

(d) The districts are encouraged to work cooperatively with other community institutions that have instructional materials.

(e) The learning resources program shall include, but need not be limited to, the following services:

(1) an ongoing program is designed to teach and help students and faculty members to use library media materials and services;

(2) students and teachers have access to materials and services to facilitate and extend learning;

(3) students and teachers receive assistance in producing their own instructional materials;

(4) reference and bibliographic services help students and teachers to locate information and materials within the local library media center and from other sources; and

(5) faculty members are supplied with consultation and inservice programs concerning use of library media resources.

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 October 21, 1985.

TRD-859830

W. N. Kirby
Commissioner of
Education

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For further information, please call
(512) 475-7077.

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Chapter 85. Student Services Subchapter B. Guidance Services

★ 19 TAC §85.22

The Texas Education Agency adopts an amendment to §85.22 without changes to the proposed text published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2449).

School-community guidance centers are alternative educational settings designed to locate and assist students with problems which interfere with their education. In the past, school districts or cooperatives with an average daily attendance of at least 6,000 were eligible to apply for school-community guidance center funds. However, the General Appropriations Act, 69th Legislature, 1985, directed the agency to focus the school-guidance center program on those urban areas with high concentrations of adjudicated persons.

In addition, House Bill 72, 68th Legislature, 2nd Called Session, 1984, made several changes to the legislative authorization for the school-community guidance center program, including requirements for the development of a parental agreement that specifies the responsibilities of the parent of a student assigned to the center.

School-community guidance centers may be established by school districts located within the counties having the highest juvenile population in the state. Districts or cooperatives must have an average daily attendance of at least 6,000 students. Instructional staff in the school community guidance center must have a valid Texas teaching certificate. Other personnel must meet certification requirements appropriate for the type of service they are delivering to students. Before a student is admitted to a school-committee guidance center, the student's parents must be notified. While in attendance at the center, students shall be counted only once in the average daily attendance reported by the school district.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Education Code, Chapter 21, Sub-

chapter P, which authorizes the establishment of school-community guidance centers and directs the State Board of Education to make rules for training of personnel and performance of the required services at each center.

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 October 22, 1985.

TRD-859863 W. N. Kirby
Commissioner of
Education

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For further information, please call
(512) 463-9682

Subchapter H. Transportation Services Student Eligibility for Transportation Services

★ 19 TAC §85.171

The Texas Education Agency adopts an amendment to §85.171, without changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2391).

The Texas Education Code, §21.136, established programs for prekindergarten students. The amendment allows these students to be eligible for transportation services under the regular transportation funding formula.

Districts with students participating in prekindergarten and half-day kindergarten programs may apply for approved bus routes to transport students, including transportation at mid-day. All eligible students should attend the same half-day session.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program; and the Texas Education Code, §21.136, which establishes the prekindergarten program and includes funding for prekindergarten transportation as part of the regular school transportation system.

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 October 21, 1985.

TRD-859831 W. N. Kirby
Commissioner of
Education

Effective date: November 11, 1985
Proposal publication date: July 30, 1985
For further information, please call
(512) 463-9682.



★ 19 TAC §85.214

The Texas Education Agency adopts an amendment to §85.214, with changes to the proposed text published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2470). In subsection (e)(1), the words "approved by" were omitted from the published version of the proposed section and the word "and" was added to the end of the paragraph. Both of these errors will be corrected. In subsection (e)(3), a sentence was added to provide a deduction from the regional education service center fee, if a local district provides for some or all of its own course expenses.

State funding for school bus driver training was deleted from this biennial appropriation. Texas Civil Statutes, Article 6687b, require that all school bus drivers be trained in a course approved jointly by the Central Education Agency and the Texas Department of Public Safety. The amendment provides that regional education service centers, which offer the training program, may charge participating school districts for the course.

The cost of each training course will be determined annually by the commissioner of education. The cost of the course will be charged back to the participating school districts on a pro rata basis. Local districts may provide for some or all of their own courses and, if so, these expenses will be deducted from the service center fee.

Lee Laws, Austin Independent School District, commented that some larger school districts provide some or all of their own training and requested that the section include a provision so that this can continue.

The section was amended to include a provision for districts which offer some of the training on their own.

The amendment is adopted under Texas Civil Statutes, Article 6687b, §5(a), which require that all school bus drivers be trained in a course approved jointly by the Central Education Agency and the Texas Department of Public Safety.

§85.214. Operation of a School Bus.

- (a)-(b) (No change.)
- (c) All drivers employed to transport school children shall:
 - (1)-(2) (No change.)
 - (3) have undergone an annual physical examination completed on forms furnished by the Central Education Agency

which reveals the driver's physical and mental capabilities to operate a school bus safely;

(4) have an acceptable driving record in accordance with the standards developed jointly by the Central Education Agency and the Texas Department of Public Safety; and

(5) (No change.)

(d) (No change.)

(e) School bus driver training shall be provided as follows.

(1) The curriculum for school bus driver training will be developed by the Central Education Agency and the Texas Department of Public Safety.

(2) (No change.)

(3) The cost of each training course will be determined annually by the commissioner of education. The cost of the course will be charged back to the participating school districts on a pro rata basis by the regional education service centers. If a local district provides for some or all of its own course expenses (e.g., has its own instructor, materials, and classrooms), such expenses shall be deducted from the regional education service center fee.

(4) The transportation section of the Central Education Agency will monitor the training program through surveys and reports submitted by each regional education service center.

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 October 21, 1985.

TRD-859832 W. N. Kirby
Commissioner of
Education

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For further information, please call
(512) 463-9682.

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Chapter 105. Foundation School Program Subchapter C. Allocation of Personnel Units

★ 19 TAC §105.49

The Texas Education Agency adopts the repeal of §105.49, without changes to the proposal published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2392).

This section has been repealed, because it was no longer in compliance with the current fund allocation system in the Texas Education Code, Chapter 16.

New §105.49, concerning the Windham Independent School District allotment, has been adopted. This new section in-

corporates changes as a result of the General Appropriations Act, 69th Legislature, 1985.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §29.05, which directs the State Board of Education to approve the formula for allocations to the Texas Department of Corrections for schools operated under the Texas Education Code, Chapter 29, and the General Appropriations Act, Article III, 69th Legislature, 1985, which directs the State Board of Education to adopt rules to implement the funding provisions, in the Appropriations Act, for Windham Independent School District.

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 October 21, 1985.

TRD-859833

W. N. Kirby
Commissioner of
Education

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For further information, please call
(512) 463-9882.

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The Texas Education Agency adopts new §105.49, with changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2392).

In subsection (c), in response to public comment, the last sentence has been deleted. This sentence provided that no student may earn more than six hours of attendance per day. Due to special scheduling difficulties in the Windham district, some students to attend school for more than six hours in one day. As adopted, the funding formula allows attendance for these students to be counted.

The following errors in the publication of the proposed section are corrected. In subsection (b), the word program is changed to programs. In subsection (e), the third sentence begins as follows. "For each full-time equivalent student in average daily attendance in the special education program..." In the same sentence, IDS will be changed to ISD.

The General Appropriations Act, Article III, 69th Legislature, 1985, established a sum certain for financing the Windham Independent School District in the Texas Department of Corrections and directed the State Board of Education to adopt

rules to implement the provisions of the General Appropriations Act and to ensure accountability for the funds.

For each student in average daily attendance, the district will receive a basic allotment of \$1,350 for the 1985-1986 school year and each year thereafter, unless a greater amount is specified by appropriation. This basic allotment will be adjusted by the price differential index and by a weight of 1.333, to offset the district's lack of a local tax base. In addition, the allocation will be increased by 20%, because of the 12-month operation of the district. The district will also be allocated funds for special education, bilingual education, vocational education, and the career ladder.

Chris Tracy, deputy superintendent, Windham Independent School District, commented that the proposed cap of six hours of attendance per day would unnecessarily limit educational opportunities for some Windham students and requested that the cap be removed. The cap of six hours per day was deleted from the adoption.

This new section is adopted under the Texas Education Code, §29.05, and the Central Appropriations Act, Article III, 69th Legislature, 1985, which directs the State Board of Education to adopt rules for funding of the Windham Independent School District.

§105.49. Windham Independent School District (ISD) Allotment.

(a) Allocation of funds. Windham ISD shall be entitled to the annual allotment of Foundation School Program funds specified in the General Appropriation Act.

(b) Eligibility of students. To be eligible, a student must be in attendance not less than six hours a week. Only those students who are not graduates of an accredited high school and are able to profit from the programs are eligible.

(c) Average daily attendance. Average daily attendance, for the current year, is determined by the best four of eight weeks of attendance according to the Texas Education Code, §16.006. Five hours of attendance is equal to one day of attendance.

(c) Basic allotment. For each student in average daily attendance, excluding the time students spend each day in special education or vocational education programs, the Windham ISD is entitled to an allotment of \$1,350 for the 1985-1986 school year and for each school year thereafter, or a greater amount provided by appropriation. This basic allotment shall be adjusted by a price differential adjustment as required by the Texas Education Code, §16.102(a). In addition, the basic allotment shall be increased by a weight of 1.333, for basis allotment purposes only, to enable the district to operate a program comparable with regular school districts.

(e) Special education. State special education funds shall be allocated for eligi-

ble handicapped students who are expected to reside in the Windham ISD a minimum of four consecutive weeks, as documented by an appropriate authority. Windham ISD eligible handicapped students shall generate full-time equivalents based on the community class instructional arrangement. For each full-time equivalent student in average daily attendance in the special education program, Windham ISD is entitled to an annual allotment equal to the adjusted basic allotment multiplied by the community class instructional arrangement weight stated in §89.253 of this title (relating to School Districts Serving Out-of-District Handicapped Students Residing in Residential Care and Treatment Facilities).

(f) Bilingual education allotment. For each student in average daily attendance in a bilingual education or special language program under the Texas Education Code, Chapter 21, Subchapter L, Windham ISD is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1. Funds allocated under this section, other than the amount that represents the program's share of general administrative costs as specified in §77.362 of this title (relating to Bilingual Education Allotment), must be used in providing bilingual or special language programs.

(g) Vocational education allotment. For each full-time equivalent student in average daily attendance in an approved vocational education program, Windham ISD is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.45.

(h) Educational improvement and career ladder allotment. Windham ISD is entitled to an allotment for educational improvement and support of the career ladder equal to its average daily attendance multiplied by \$120 for the 1985-1986 school year and \$140 for the 1986-1987 school year and each school year thereafter.

(i) Twelve month operation of schools. The basic allotment, special education allotment, bilingual education allotment, and vocational education allotment shall be increased by 20% of the formula allocation because of the 12-month operation of the Windham ISD.

(j) Reduction of funds. The commissioner of education shall ratably reduce the allotment as necessary in order not to exceed the sum certain total foundation school program funds appropriated for Windham ISD.

(k) Use of funds. Foundation school program funds are to be expended only for academic and vocational education programs approved by the Central Education Agency.

(l) Report on program expenditures. A year-end report on program expenditures shall be submitted in accordance with guidelines developed by the commissioner of education.

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 October 21, 1985.

TRD-859834

W. N. Kirby
Commissioner of
Education

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For further information, please call
(512) 463-9682.

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Chapter 121. Personnel Accounting for State Funding Purposes

Subchapter B. Personnel Records

★ 19 TAC §121.14

The Texas Education Agency adopts an amendment to §121.14, without changes to the proposed text published in the August 20, 1985, issue of the *Texas Register* (10 TexReg 3163).

House Bill 72, 68th Legislature, 2nd Called Session, 1984, mandated a one-line salary schedule which includes no provision for changing an individual's pay step, when a higher degree is earned.

Once placed on the one-line salary schedule, an individual advances one step for each year of experience until step 10 is reached. September 1, 1985, has been set as the cut-off date after which earning a higher degree will not affect an individual's pay step.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program; and §16.056, which establishes the Texas public education compensation plan.

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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W. N. Kirby
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(512) 463-9682.

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Chapter 129. Student Attendance

Subchapter A. Student Attendance

★ 19 TAC §129.2

The Texas Education Agency adopts an amendment to §129.2, with changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2393).

In subsection (a), the word "year" was incorrectly printed as "years" in the phrase "entire school year," and is now corrected. New subsection (c) was added to clarify that half-day kindergarten programs must be a minimum of three hours daily. New subsections (d) and (e) were added to provide for waivers, for this school year only, for districts which had already planned programs of less than three hours or for districts which had previously offered full-day one semester or alternate day programs and for which it would be an extreme hardship to reschedule kindergarten programs for this school year.

Concern has arisen that full-day kindergarten programs which operate on alternate school days and full-day kindergarten programs which permit students to attend every day in the fall semester but not attend during the spring fail to provide the necessary continuity of instruction. This continuity of instruction is important to young students in establishing a sound foundation for learning.

School districts may offer either half-day or full-day kindergarten. Both types of programs must be scheduled for the full school year. Half-day programs must be at least three hours long each day. Provision is included for hardship waivers for this school year only.

Comments from individuals indicated that, in a few cases, school districts had already planned full-day half-year, full-day alternate-day, or less than three-hour half-day programs. For those districts for which compliance this school year would be a hardship due to personnel shortages, facilities, or transportation problems, provision for waivers was requested. In response to public comment, a provision for the required waivers was included for the 1985-1986 school year only.

This amendment is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

§129.2. Kindergarten.

(a) All children who are at least five years old but are not eligible for enrollment in the first grade are eligible for free attendance in kindergarten for either full-day or half-day attendance for the entire school year in the school district in which they reside or are otherwise entitled to attend for

Foundation School Program benefits.

(b) Districts that choose to offer a half-day kindergarten program must offer the program on a full-year basis. This provision precludes:

(1) full-day programs that operate for one semester only; and

(2) full-day programs that operate on alternate school days.

(c) Half-day kindergarten programs shall be a minimum of three hours of instruction daily.

(d) For the 1985-1986 school year only, school districts which have previously offered a full-day program for one semester only or a full-day program on alternate school days may request authorization from the commissioner of education to continue to operate such programs in cases of extreme hardship due to transportation, teacher shortage, or a lack of facilities. Attendance accounting figures for such districts shall be adjusted in accordance with instructions of the commissioner of education.

(e) School districts which have previously offered kindergarten programs of a minimum of two hours and 45 minutes may also request authorization from the commissioner of education to continue such programs for the 1985-1986 school year only if the district can show that changing to a three-hour program would cause a hardship.

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

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TRD-859836

W. N. Kirby
Commissioner of
Education

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For further information, please call
(512) 475-7077.

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Subchapter D. Student Attendance Accounting

★ 19 TAC §129.61

The Texas Education Agency adopts an amendment to §129.61, without changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2393).

The Texas Education Code, §16.006, requires the State Board of Education to set the weeks for student attendance accounting in the public schools.

Attendance for the fall semester will be counted for the four weeks beginning with the first Monday in October. Attendance for the spring semester will be counted for the four weeks beginning

with the third Monday in February. Average daily attendance for the district will be determined based on the best four weeks of the eight weeks reported. Records and reports concerning special programs will be specified by the commissioner of education. Teachers in vocational education will no longer be required to keep contact hour registers.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Education Code, §16.006, which requires the State Board of Education to set the weeks for student attendance accounting, and §16.005, which authorizes the board to make rules for administration of the Foundation School Program.

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

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TRD-859837 W. M. Kirby
Commissioner of
Education

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For further information, please call
(512) 463-9682.

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Chapter 141. Teacher Certification

Subchapter S. Testing Program

General Provisions

★ 19 TAC §141.421

The Texas Education Agency adopts an amendment to §141.421, with changes to the proposed text published in the August 9, 1985, issue of the *Texas Register* (10 TexReg 2988).

The dates in subsections (b)-(d) have all been changed to February 1, to clarify and simplify the testing process and to make as many dates consistent as possible. In subsection (b) one phrase should read "criteria for mastery shall be prescribed for each area", not "by each area."

The Texas Education Code, §13.032, requires the State Board of Education to require satisfactory performance after graduation on a comprehensive examination prescribed by the board as a condition for full certification as a teacher and satisfactory performance on a separate examination prescribed by the board for certification as a superintendent or other administrator.

Persons holding a valid Texas certificate with an effective date prior to February 1, 1986, must pass the Texas examination for current administrators and teachers

(TECAT) to be eligible for a position requiring a provisional or professional Texas certificate after June 30, 1986. Beginning February 1, 1986, persons seeking certification must pass the appropriate test or tests from the examinations for certification of educators in Texas (ExCET) tests. This requirement applies to certificates issued after completion of an approved college or university teacher education program or an alternative certification program. Beginning February 1, 1987, certification as a superintendent or other administrator for other certified professional positions will require satisfactory completion of an examination prescribed by the State Board of Education.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.032, which directs the State Board of Education to require satisfactory performance on specified examinations as a condition for admission into an approved teacher education program and as a condition for certification; and the Texas Education Code, §13.047, which directs the State Board of Education to require satisfactory performance on an examination prescribed by the board as a condition to continued certification for each teacher and administrator who has not taken an examination under the Texas Education Code, §13.023(e).

§141.421. Testing Requirements.

(a) (No change.)

(b) Beginning February 1, 1986, in order to be approved for a teacher's certificate, additional teaching fields or areas of specialization, or endorsements, persons, including those holding a valid out-of-state certificate, shall be required to achieve a satisfactory level of performance on one or more examinations prescribed by the State Board of Education. Content to be tested and the criteria for mastery shall be prescribed for each area by the State Board of Education after recommendations have been made by the Commission on Standards for the Teaching Profession through the commissioner of education. This requirement shall apply to certificates issued upon completion of an approved teacher education program in a college or university or an alternative teacher certification program.

(c) Beginning February 1, 1987, in order to be approved for certification as a superintendent or other administrator, or for other certified professional positions, persons, including those holding a valid out-of-state certificate, shall be required to achieve a satisfactory level of performance on an examination prescribed by the State Board of Education. Content to be tested and the criteria for mastery shall be prescribed by the State Board of Education after recommendations have been made by the Commission on Standards for the

Teaching Profession through the commissioner of education.

(d) For persons issued a valid Texas certificate with an effective date prior to February 1, 1986, to be eligible for continued certification after June 30, 1986, in a position requiring a provisional or professional Texas certificate, a person must perform satisfactorily on an examination of reading and writing prescribed by the State Board of Education except as specified in §141.442(d) of this title (relating to Reading and Writing Examination for Continued Certification for Teachers and Administrators). The board shall establish the standard for satisfactory performance on the reading and writing examination.

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 October 21, 1985.

TRD-859838 W. N. Kirby
Commissioner of
Education

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For further information, please call
(512) 463-9682.

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Basic Skills Tests Required for Admission to Teacher Education Programs

★ 19 TAC §141.431

The Texas Education Agency adopts an amendment to §141.431, without changes to the proposed text published in the August 9, 1985, issue of the *Texas Register* (10 TexReg 2988).

The Texas Education Code, §13.032, requires satisfactory performance on an examination of basic skills for admission into an approved teacher education program. The section provides for the operation of testing centers for the administration of these examinations.

Colleges and universities which operate approved teacher education programs and other selected institutions may be approved to operate a testing center. The approval criteria include requirements that the center director have professional qualifications in the field of testing, that facilities are adequate, and that test security can be assured.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.032, which directs the State Board of Education to re-

quire satisfactory performance on a competency examination of basic skills prescribed by the board as a condition to admission into an approved teacher education program.

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 October 21, 1985.

TRD-859839 W. N. Kirby
Commissioner of
Education

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For further information, please call
(512) 463-9682.

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Tests Required for Initial Certification and/or Continued Certification

★ 19 TAC §141.441, §141.442

The Texas Education Agency adopts new §141.442, with changes to the proposed text published in the August 9, 1985, issue of the *Texas Register* (10 TexReg 2987). New §141.441 is adopted without changes and will not be republished.

In §141.442 (a) and (b), the dates have been changed from May 1, 1986, to February 1, 1986, from maximum consistency in dates for the testing program. In subsection (e), the proposed section provided that the Texas examination for current administrators and teachers (TECAT) would be administered at least three times a year until January 1, 1989. In the adopted section, reference to the January 1, 1989, date has been deleted and the TECAT will be administered each year.

These sections implement the provisions of the Texas Education Code, §13.042 and §13.047, concerning tests required for initial certification and for continued certification of teachers and administrators.

New §141.441, concerning initial certification examinations, provides that these examinations will be criterion-referenced and competency-based. A passing score for each examination will be established by the State Board of Education. Candidates seeking a probationary teaching certificate who have completed an approved teacher education program must perform satisfactorily on an examination covering professional development and an examination for each specialization area or teaching field for which certification is sought. Candidates seeking the superintendent's certificate, other professional certificates, or an endorsement or delivery system certificate must perform satisfac-

torily on an examination in each area for which certification is sought, as must candidates for alternative certification.

New §141.442, concerns examinations for persons currently certified. For persons issued a valid Texas certificate with an effective date prior to February 1, 1986, to be eligible for continued certification after June 30, 1986, he or she must perform satisfactorily on an examination of reading and writing. The test approved by the State Board of Education will be administered at state expense at two scheduled administrations prior to June 30, 1986, to persons employed at public schools, state-supported institutions of higher education with approved teacher education programs, the Central Education Agency, and regional education service centers. A fee will be set by the State Board of Education for other persons wishing to take the examinations. Those persons who have not performed satisfactorily on the examination by June 30, 1986, may retake the examination at any subsequent administration at the established fee.

The section provides an exemption from the test for persons who perform satisfactorily on an examination which was administered by a school district and approved by the State Board of Education as an alternative examination. At this time, the Houston functional academic skills test is the only test approved as a substitute for the Texas examination of current administrators and teachers (TECAT).

No comments were received regarding adoption of the new sections.

These new sections are adopted under the Texas Education Code, §13.032, which directs the State Board of Education to require satisfactory performance on specified examinations as a condition for initial certification; and the Texas Education Code, §13.047, which directs the State Board of Education to require satisfactory performance on an examination prescribed by the board as a condition for continued certification for each teacher and administrator who has not taken an examination under the Texas Education Code, §13.023(e).

§141.442. *Reading and Writing Examination for Continued Certification for Teachers and Administrators.*

(a) A person issued a certificate with an effective date prior to February 1, 1986, may be exempted from the reading and writing examination required for continued certification after June 30, 1986, if the person has performed satisfactorily on an examination which was administered by a school district and approved by the State Board of Education. Districts with approved alternative examinations shall submit to the Central Education Agency a list of persons performing satisfactorily.

(b) Persons certified after February

1, 1986, are exempted from taking the reading and writing examination approved by the board under §141.421(d) of this title (relating to Testing Requirements).

(c) Two scheduled administrations at state expense shall be provided prior to June 30, 1986, to persons employed at public schools, state-supported institutions of higher education with an approved teacher education program, the Central Education Agency, and regional education service centers during the spring semester of the 1985-1986 school year who are required to take the reading and writing examination. A fee shall be recommended by the commissioner of education and approved by the board for administrations of the reading and writing examination to persons not eligible to take the examination at state expense. Persons eligible to take the examination at state expense who have not performed satisfactorily by June 30, 1986, may take the reading and writing examination at any subsequent administration at the established fee rate.

(d) The commissioner of education may grant approval for a one-year waiver from the requirements of §141.421(d) of this title (relating to Testing Requirements) to a person whose employing school district establishes an emergency need. This waiver may be requested only after a person has made two attempts to perform satisfactorily on the reading and writing examination. The waiver shall not be renewable.

(e) A schedule for testing shall be established by the commissioner of education. The commissioner shall designate the specific dates for administration prior to June 30, 1986, and may require school districts, if necessary, to change school calendars. The board shall approve a schedule for administration of the examination at least three times annually.

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 October 22, 1985.

TRD-859864 W. N. Kirby
Commissioner of
Education

Effective date: November 14, 1985
Proposal publication date: August 9, 1985
For further information, please call
(512) 463-9682.

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Chapter 145. Professional Environment

Subchapter C. Employment Assurances

★ 19 TAC §145.48

The Texas Education Agency adopts new §145.48, without changes to the proposed text published in the July 26, 1985, issue of the *Texas Register* (10 TexReg 2395). Two errors made in the publication of the proposed section should be corrected. Subsection (b) should say "guidelines shall be used by districts," not "in districts." Subsection (b)(2), in the phrase "for the purposes . . ." the word "purposes" should be plural.

The 69th Legislature, 1985, passed and the governor signed House Bill 505 amending the Texas Education Code, §13.909. This statute establishes a duty-free lunch period for public school teachers actively engaged in instruction and supervision of students and took effect September 1, 1985.

Section 145.48 requires school districts to provide teachers with a duty-free lunch period in accordance with the Texas Education Code, §13.909. The law permits districts to assign teachers one day a week to supervise students during the duty-free lunch period in cases of personnel shortage, extreme economic conditions, or unavoidable or unforeseen circumstances. These three terms are defined in the section.

The Texas Association of Secondary School Principals expressed concern during the public comment period about the optional use of noncertified personnel to supervise students during the lunch period. The agency believes, however, that in many school districts community volunteers are an important resource and one which the district can use to supervise students during lunch to enable teachers to have a duty-free lunch.

The Texas Federation of Teachers (TFT) commented in support of the optional use of community volunteers as lunch room monitors. The TFT requested that the section prohibit districts from combining classes of teachers to provide the duty-free lunch period. The organization also requested that the section permit the extreme economic conditions exemption to apply only if the cost of the duty-free lunch period alone would place the district in jeopardy with respect to a potential tax roll-back election.

The agency responds that the section does not specify a prohibition against combining classes; however, situations in which this practice resulted in interference with instruction of students would be handled through the regular accreditation process. Questions about the appropriateness of the extreme economic conditions exemption would need to

be examined on a case-by-case basis, with attention to the specific economic circumstances of the particular school district.

This new section is adopted under the Texas Education Code, §13.909, which provides for a duty-free lunch for teachers and which directs the State Board of Education to define in rule extreme economic conditions, personnel shortage, and unavoidable or unforeseen circumstances for purposes of implementation of Texas Education Code, §13.909.

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 October 21, 1985.

TRD-859840

W. M. Kirby
Commissioner of
Education

Effective date: November 11, 1985
Proposal publication date: July 26, 1985
For further information, please call
(512) 475-7077.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

Emergency Medical Services

★ 25 TAC §157.80, §157.81

The Texas Department of Health adopts new §157.80 and §157.81, with changes to the proposed text published in the June 14, 1985, issue of the *Texas Register* (10 TexReg 1964).

The sections are intended to provide for Emergency Medical Services (EMS) personnel certification for the RN and the LVN licensed to practice in Texas.

The sections establish minimum standards for the EMS certification of the RN and the LVN who is providing prehospital emergency care.

The following comments concerned the adoption of §157.80. One commenter said that subsection (b) on registered nurses was too restrictive, as any RN should be considered eligible for EMS certification. The department agrees with the comment and has added the following to subsection (b): "RNs not staffing a vehicle on a regular basis may apply for EMS certification under this section."

Several commenters said that the RN should have additional training in emer-

gency care and complete clinical requirements prior to testing for certification. The department agrees with the comment and has transferred the requirements in paragraph (d)(4) to (d)(2). As a result of this transfer, proposed paragraph (d)(2) has been renumbered as paragraph (d)(3) and paragraph (d)(3) has been renumbered as paragraph (d)(4).

Several commenters said it was an unfair advantage to allow the RN who failed the examination one year from the time of application to complete a course of instruction prior to retesting. All other persons requesting EMS certification and failing the examination have 90 days to retest. The department agrees with the comment and subsection (f) has been changed accordingly.

One commenter stated that RNs should not be granted certification without attending an entire EMS training course. The department disagrees with the comment, as the Emergency Medical Services Act, Texas Civil Statutes, Article 4447c, requires that in adopting certification standards, the education, training, and experience of health personnel be taken into consideration.

Other minor miscellaneous editorial changes have been made throughout the text, and subsection (h) has been added to cross-reference other applicable provisions in existing sections.

Concerning §157.81, one commenter said the LVN should not be given any equivalency for education and should attend an entire training course. The department agrees with the comment, and the section is so written. Clarifying language has been added in §157.81(i) and (j) has been added for the purpose of cross referencing other applicable provisions in existing sections.

Commenting on §157.80 were the University of Texas Health Science Center at Dallas; Texas State Technical Institute; Texas Emergency Nurse Association; Physicians Pro Tem, P.A.; Texas Chapter, American College of Emergency Physicians; and Texas Emergency Medical Service Advisory Council. No commenters were against the section; however, those organizations making comments had questions or concerns and made recommendations for changes to certain subsections of the section. No groups or associations commented on the adoption of §157.81; however, an individual made a recommendation which has been mentioned.

The new sections are adopted under Texas Civil Statutes, Article 4447c, §§3.02, 3.03, and 3.04, which provide the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act.

§157.80. *Emergency Medical Services Personnel Certification for the Registered Nurse.*

(a) Purpose. The purpose of this section is to establish the requirements for the Emergency Medical Services (EMS) person-

nel certification of the Registered Nurse (RN) licensed to practice in Texas. The requirements of this section are not intended to, and shall not be construed to, replace the requirements of the Nurse Practice Act, Texas Civil Statutes, Article 4513, or the rules promulgated under 22 TAC Part XI (relating to Board of Nurse Examiners).

(b) Registered nurses covered. Registered nurses licensed to practice in Texas and who staff an EMS vehicle on a regular basis shall obtain EMS personnel certification. Regular basis shall refer to those individuals whose primary responsibility is to provide staffing for a ground or air EMS vehicle. Registered nurses not staffing a vehicle on a regular basis may apply for EMS certification under this section.

(c) Levels of EMS personnel certification authorized. An RN may be certified as an emergency care attendant (ECA), basic emergency medical technician (B-EMT), specially skilled emergency medical technician (SS-EMT), or paramedic emergency medical technician (P-EMT) as defined in §157.62 of this title (relating to Definitions). B-EMT certification shall be required for RNs requesting SS-EMT or P-EMT certification.

(d) Certification requirements. The RN shall:

(1) complete the requirements of §157.63 (a)(3) and (4) of this title (relating to Certification) and, in addition:

(A) send a copy of current RN license;

(B) send a copy of American Heart Association (AHA) certification as follows:

(i) for ECA and B-EMT certification, a current AHA Basic Life Support (BLS) cardiopulmonary resuscitation (CPR) certificate; or

(ii) for SS-EMT or P-EMT certification, a current AHA Advanced Cardiac Life Support (ACLS) certificate; and

(C) send a copy of work history for the 36 months preceding date of application, including positions held and place of employment.

(2) complete extrication, clinical, in-hospital, and EMS vehicle requirements for B-EMT certification or complete clinical, in-hospital, and EMS vehicle requirements for SS-EMT or P-EMT certification as required in §157.77 of this title (relating to EMS Training Program and Course Approval).

(3) achieve a passing grade on all department skills examinations for the level of certification requested as required in §157.63(a)(5) of this title (relating to Certification).

(4) achieve a passing grade of 70 on the department's written examination for the level of certification requested, and, in addition, achieve a passing grade of 70 on the critical components of the examination. Clinical, in-hospital, and/or EMS vehicle requirements may be waived by a department evaluation of the 36 month work history. An RN who has 12 months combined experience in

an emergency department, operating/recovery department or other critical care units(s) or EMS vehicle experience, may have the requirements for like clinical experience waived for the level of certification requested.

(e) Certification period. After verification by the department of the information submitted by the RN, the RN who meets the requirements in subsection (d) of this section shall be certified for four years commencing on the date of issuance of a certificate and wallet-sized card signed by department officials. A certificate is not transferable. The wallet-size certificate shall be carried by all EMS personnel while on duty.

(f) Examination failure. The RN who fails either the department skills examination or the written examination may retake one time within 90 days of the initial examination date. A request for retake of the written examination shall be made to the department at least 30 days in advance of the expiration of the 90-day period. The R.N. who fails the retake shall complete the EMS training course as required in §157.77 of this title (relating to EMS Training Program and Course Approval) prior to being eligible for EMS certification.

(g) Recertification requirements. The RN who receives EMS personnel certification shall comply with the requirements of §157.64 of this title (relating to Recertification) and §157.76 of this title (relating to Continuing Education) to recertify.

(h) Other requirements. The following sections of this title shall be applicable to this section: §157.21 (relating to Criteria for Decertification, Emergency Suspension, Suspension, and Probation of Certificate); §157.22 (relating to Procedure for Revocation/Suspension of Certificate); §157.25 (relating to Criteria for Denial of Certification and Recertification); and §157.65 (relating to Procedure for Denial of Certification or Recertification).

§157.81. *Emergency Medical Services Personnel Certification for the Licensed Vocational Nurse.*

(a) Purpose. The purpose of this section is to establish the requirements for the emergency medical services (EMS) personnel certification of the Licensed Vocational Nurse (LVN) licensed to practice in Texas. The requirements of this section are not intended to, and shall not be construed to, replace the requirements of the Vocational Nurse Act, Texas Civil Statutes, Article 4528c, or the rules promulgated under 22 TAC Part XII (relating to Board of Vocational Nurse Examiners).

(b) Licensed vocational nurses covered. Licensed vocational nurses licensed to practice in Texas and who staff an EMS vehicle on a regular basis shall obtain EMS personnel certification. Regular basis shall refer to those individuals whose primary responsibility is to provide staffing for an EMS vehicle.

(c) Levels of EMS personnel certification authorized. The LVN may be certified as an emergency care attendant (ECA), a

basic emergency medical technician (B-EMT), a specially skilled-emergency medical technician (SS-EMT), or a paramedic-emergency medical technician (P-EMT) as defined in §157.62 of this title (relating to Definitions).

(d) Certification requirements:

(1) complete a department approved EMS training course as described in §157.77 of this title (relating to EMS Training Program and Course Approval);

(2) complete the application for examination;

(3) submit to the department the application and the applicable non-refundable fee;

(A) SS-EMT and P-EMT—\$18.75;

(B) ECA and B-EMT—\$12.50;

(C) EMS volunteer personnel—no fee;

(4) achieve a passing grade on all department skills examinations:

(A) ECA and B-EMT skills shall consist of:

(i) dressing and bandaging/splinting;

(ii) traction splints;

(iii) mechanical aids to breathing;

(iv) vital signs; and

(v) basic cardiopulmonary resuscitation;

(B) SS-EMT skills examinations shall consist of the skills examination requirements for ECA and B-EMT in paragraph (4)(A) of this subsection, and in addition:

(i) intravenous fluid therapy administration;

(ii) utilization of the antishock trousers; and

(iii) utilization of the endotracheal tube and esophageal obturator for airway control;

(C) P-EMT skills examinations shall consist of the skill examination requirements for ECA, B-EMT, and SS-EMT in paragraphs (4)(A) and (B) of this subsection, and in addition:

(i) emergency drug administration;

(ii) dysrhythmia recognition; and

(iii) defibrillation and cardioversion;

(5) achieve a passing grade of 70 on the department's written examination and in addition, achieve a passing grade of 70 on the critical components of the examination.

(e) Certification period. After verification by the department of the information submitted by the LVN, the LVN who meets the requirements in subsection (d) of this section shall be certified for four years commencing on the date of issuance of a certificate and wallet-sized card signed by department officials. A certificate is not transferable. The wallet-sized certificate shall be carried by all EMS personnel while on duty.

(f) Examination failure. The LVN who fails either the skills examination or the written examination may retest one time within 90 days of the initial examination date. A request for a retest of the written examination shall be made to the department at least 30 days in advance of the expiration date of the 90-day period.

(g) Allowable procedures. The LVN shall perform emergency care procedures as authorized by the Vocational Nurse Act, Texas Civil Statutes, Article 4528c, and rules adopted thereunder in 22 TAC Part XII (relating to the Board of Vocational Nurse Examiners) and as authorized by the Medical Practices Act, Texas Civil Statutes, Article 4495b, and rules adopted thereunder in 22 TAC Chapter 193 (relating to Standing Delegation Orders) and §§197.1-197.4 (relating to Emergency Medical Service).

(h) Recertification requirements. The LVN who receives EMS personnel certification shall comply with the requirements of §157.64 of this title (relating to Recertification) and §157.76 of this title (relating to Continuing Education) to recertify.

(i) Exception requirements. The LVN who has been providing staffing on a basic life support vehicle for at least six continuous months prior to the adoption of this section shall be considered to have met the ECA training requirements as required in subsection (d)(1) of this section. This exception shall be valid for one year following the adoption of this section.

(j) Other requirements. The following sections of this title shall be applicable to this section: §157.21 (relating to Criteria for Decertification, Emergency Suspension and Suspension, and Probation of Certificate); §157.22 (relating to Procedure for Revocation/Suspension of Certificate); §157.25 (relating to Criteria for Denial of Certification and Recertification); and §157.65 (relating to Procedure for Denial of Certification or Recertification).

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 October 23, 1985.

TRD-859877

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

Effective date: November 13, 1985
Proposal publication date: June 14, 1985
For further information, please call
(512) 465-2601

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Chapter 217. Milk and Dairy Fees

★25 TAC §217.81

The Texas Department of Health adopts new §217.81, without changes to the proposed text published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2472).

The new section provides for the uniform collection of milk and milk product permit and inspectional fees as mandated by House Bill 1593, §43, 69th Legislature, 1985.

The new section covers definitions; the issuance, renewal, and revocation of permits; permit and inspectional fees; and hearing procedures.

A commenter suggested that the imposition of a \$.01 per hundredweight inspectional fee on dairy products processed or manufactured in Texas plants but distributed for sale in other states would create a competitive disadvantage to Texas processors and manufacturers engaging in interstate commerce of dairy products. The agency disagrees since out of state processors and manufacturers exporting dairy products into Texas for sale are assessed the same \$.01 per hundredweight inspectional fee. Also, the fee structure was established by House Bill 1593, §43, 69th Legislature, 1985, and not by Board of Health rule.

The Dairy Products Institute of Texas was not against the adoption of the section; however, the commenter was concerned about the fee structure as spelled out in House Bill 1593, §43, 69th Legislature, 1985. The comment should be addressed to the legislature.

The new section is adopted under Texas Civil Statutes, Article 165-3, §2, which provide the Texas Board of Health with authority to set fees on milk and milk products; §2a, which provides the Texas Department of Health with the authority to adopt rules covering milk and milk products; and §§3, 4, and 6, which provide the board with the authority to issue and revoke permits.

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 October 23, 1985.

TRD-859878

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

Effective date: December 8, 1985
Proposal publication date: July 30, 1985
For further information, please call
(512) 458-7281.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety Chapter 3. Traffic Law Enforcement

Accident Investigation

★37 TAC §3.4

The Texas Department of Public Safety adopts an amendment to §3.4, without changes to the proposed text published in the September 17, 1985, issue of the *Texas Register* (10 TexReg 3552).

The amendment clarifies which accidents are reportable that occur other than on a public highway. The amendment to subsection (a)(1) and (3) removes and adds language to clarify which accidents are reportable under Texas Civil Statutes, Article 6701d, §43, and also corrects a statement to make it read the statute does apply.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6701d, §21 and §43, and Article 4413(b)(2), which authorize the Texas Department of Public Safety to investigate accidents and file any justifiable charges without regard to whether an accident occurred on a public highway, public property, or private property open to the public.

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 October 21, 1985.

TRD-859845

James B Adams
Director
Texas Department of
Public Safety

Effective date: November 12, 1985
Proposal publication date: September 17, 1985
For further information, please call
(512) 465-2000.

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Traffic Supervision

★37 TAC §3.57

The Texas Department of Public Safety (DPS) adopts an amendment to §3.57, without changes to the proposed text published in the September 17, 1985, issue of the *Texas Register* (10 TexReg 3553).

The amendment provides a convenience to a defendant in settlement of a traffic warrant. The defendant may use cash when a cashier's check or money order is not readily available, which will be a

time savings for the defendant and the DPS-commissioned officer.

The amendment allows a DPS-commissioned officer to accept cash money in settlement of a traffic warrant only when a cashier's check or money order is not readily available. The commissioned officer must execute the proper receipt, and the money and receipt must be mailed by the defendant to the proper court.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6701d, and Code of Criminal Procedure, Articles 2.16, 15.16, 15.18, 15.22, 42.15, 43.01, 43.02, and 45.52, which authorize the Texas Department of Public Safety to fully comply with the Code of Criminal Procedure by removing the agency restriction against the acceptance of cash for settlement of a traffic warrant.

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 October 21, 1985.

TRD-859846

James B. Adams
Director
Texas Department of
Public Safety

Effective date: November 12, 1985
Proposal publication date: September 17, 1985
For further information, please call
(512) 465-2000.

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State Board of Insurance Exempt Filings

State Board of Insurance Notifications Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.)

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

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved a filing by the Surety Association of America of a surety bond form and rate which will apply to manufactured housing, manufacturers, dealers, brokers, and installers.

Senate Bill 1267, effective September 1, 1985, amended the Texas Manufactured Housing Act to provide for the increased bonding amounts: manufacturer bonds—\$500,000; dealer bonds—\$100,000; broker bonds—\$80,000; installers bonds—\$20,000. The bond form has been amended to comply with the new law. The rate is \$20 per M per annum for this bond.

This filing is effective 15 days after it is published in the *Texas Register*. This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Ad-

ministrative Procedure and Texas Register Act.

Issued in Austin, Texas, on October 21, 1985.

TRD-859868

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: November 14, 1985
For further information, please call
(512) 463-6327.

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The State Board of Insurance has approved a filing by the Surety Association of America of a surety bond form and rate which applies to health spas.

Senate Bill 34, 1985, enacted the Health Spa Act on September 1, 1985. The Act provides for the regulation and bonding of health spas.

A health spa means a business primarily involved in the sale of memberships that provides the members use of the facilities of the health spa for a program of physical exercise.

The Act, §10, provides that on or before the 30th day after the health spa opens its facilities for the use of its members, the health spa shall file a surety bond or other security for the protection of its members.

The bond shall be payable to the state and shall be held for the benefit of any members of the health spa who suffer financial losses due to the insolvency or cessation of operation of the health spa. Financial losses shall mean and be limited to any unused and unearned portion of such member's dues or fees.

The Act further provides that a member may bring an action on the bond to recover against the surety, but regardless

of the number of claimants or claims filed against the bond, the liability of the surety may not exceed the aggregate amount of the bond.

The amount of the bond shall be 20% of the total value of the prepayments received by the health spa. However, the amount of the bond may not be less than \$20,000 or more than \$50,000. The health spa shall maintain the bond in the amount specified for a period of two years. Thereafter, the health spa shall continuously maintain a bond in the amount of \$5,000.

Section 10(d) calls for bonds under conditions known as adverse selection against the surety. Only new and/or less than trouble-free health spas are required to file a bond. Consequently, sureties are called upon to bond those health spas which are most likely to cause losses.

The rate is \$20 per M per annum. This rate is the same used in other jurisdictions where similar bonds required under adverse selection conditions exist. The rate is neither excessive, inadequate, nor unfairly discriminatory.

This filing is effective 15 days after it is published in the *Texas Register*. This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Acts.

Issued in Austin, Texas, on October 21, 1985.

TRD-859870

James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: November 14, 1985
For further information, please call
(512) 463-6327.

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The State Board of Insurance has approved a filing by the Surety Association of America of a bond and rate for a motor vehicle dealer.

The filing was previously approved on an emergency basis for a period of 120 days by board Order 47593. This filing is approved on a permanent basis.

This filing is effective 15 days after it is published in the *Texas Register*. This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on October 21, 1985.

TRD-859869 James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: November 14, 1985
For further information, please call
(512) 463-6327.

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The State Board of Insurance has approved a filing by Integrity Insurance Company of revised manual pages, rules, endorsements, and a rate filing.

Manual pages have been revised to include the following optional rules and endorsements:

(1) a rating rule permitting the option to base the residual value on a percentage of value basis;

(2) a rating rule providing optional liquidation coverage;

(3) a manual rule providing availability of repossession coverage.

The following endorsements have been proposed to provide for the optional coverages:

IIC-RV-RRC (6/85) liquidation coverage endorsement—This extension of coverage is made available to financial institutions which engage in buying lease paper. Protection is provided against loss should the leased automobile be subject to a total loss, especially a total loss in the early months of a lease. The loss potential results from the way in which a financial institution maintains its accounting records on such leased automobiles by spreading the profit over a long term. When a total loss occurs, the amount the financial institution maintains its accounting records on such leased automobiles by spreading the profit over a long term. When a total loss occurs, the amount the financial institution received as a pay of from the lessee's insurance company rarely if ever equals the amount they are carrying on their books. This endorsement is intended to provide coverage for such a gap.

IIC-RV-RCC (6/85) repossession endorse-

ment—This coverage is offered to financial institutions which carry residual value insurance and are faced with the need to repossess the vehicle during the term of the financial agreement. In such an instance, the repossession in fact becomes an early termination for which coverage would otherwise not be available under the policy.

IIC-RVP-1 (6/85) percentage of value—This endorsement is used when the insured has elected that a percentage of value residual value will be applicable.

The base rate for residual value published as a percentage of value will be 2.00%.

This filing is effective 15 days after it is published in the *Texas Register*. This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Acts.

Issued in Austin, Texas, on October 21, 1985.

TRD-859871 James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: November 14, 1985
For further information, please call
(512) 463-6327.

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

State Bar of Texas

Thursday, October 24, 1985, 9:30 a.m. The Executive Committee of the State Bar of Texas made an emergency addition to the agenda for a meeting held at the Texas Law Center, 1414 Colorado Street, Austin. The addition concerned the lawyer referral conflict, Justice of the Peace Section request; and Juvenile Section request. The emergency status was necessary because the necessity for attention to these matters only became apparent on October 22, 1985, and public necessity requires that these matters be dealt with at this meeting.

Contact: Adele Evans, P.O. Box 12487, Austin, Texas 78711, (512) 475-2288.

Filed: October 23, 1985, 10:11 a.m.
TRD-859876

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Texas Commission for the Blind

Friday, November 8, 1985, 12:30 p.m. The Policy Committee of the Board of the Texas Commission for the Blind will meet in Suite 512, 314 West 11th Street, Austin. According to the agenda, the committee will review and discuss current policies of the commission and review and discuss operating procedures of the board.

Contact: Jean Wakefield, 314 West 11th, Austin, Texas 78711, (512) 475-6810.

Filed: October 22, 1985, 3:33 p.m.
TRD-859859

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Criminal Justice Policy Council

Thursday, November 7, 1985, 10 a.m. The Criminal Justice Coordinating Council of the Criminal Justice Policy Council will meet in the third floor conference room, John H. Reagan Building, 14th and Congress Avenue, Austin. Items on the agenda include approval of September 17, 1985, meeting minutes, comments by chair and

members, old business, status report on council projects, new business; and a systemic approach to sunset review.

Contact: Ronald D. Champion, 410 Sam Houston Building, Austin, Texas 78701, (512) 463-1810.

Filed: October 23, 1985, 3:10 p.m.
TRD-859917

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State Depository Board

Monday, November 4, 1985, 2 p.m. The State Depository Board will meet in the office of the state treasurer, LBJ Building, 111 East 17th Street, Austin. Items on the agenda include consideration of depository applications received; consideration of centrally located depositories and concentration of account network; investment of eleemosynary funds; and an administrative report from the staff.

Contact: J. Stephen Ravel, P.O. Box 12608, Austin, Texas 78711, (512) 463-5971.

Filed: October 22, 1985, 11:17 a.m.
TRD-859848

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Texas Education Agency

Friday, October 25, 1985, 8:30 a.m. The Continuing Advisory Committee for Special Education of the Texas Education Agency met in emergency session in Room 1-100, William B. Travis Building, 1700 North Congress, Austin. Items on the agenda included general business of the Continuing Advisory Committee; report on compliance monitoring; reorganization; report on quality monitoring; a proposed rule concerning extended educational programming for handicapped students; committee goals; dyslexic screening; Learning Disabled Task Force report; discipline rule; discipline management plans; a handout on deinstitutionalization of state schools; and fire safety. The emergency status was necessary to ensure

that the committee could review the proposed rule on extended educational programming and the dyslexia screening item prior to the State Board of Education consideration of these issues.

Contact: Joye A. Scheffler, 1701 North Congress, Austin, Texas 78701, (512) 463-9427.

Filed: October 23, 1985, 3:54 p.m.
TRD-859924

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Employees Retirement System of Texas

Tuesday, November 5, 1985, 9 a.m. The Group Insurance Advisory Committee of the Employees Retirement System of Texas will meet in Room 332, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin. Items on the agenda include recognition of new members; approval of previous minutes; election of officers; open enrollment summary; discussion of current insurance matters; legislation affecting the Uniform Group Insurance Program; and other related insurance matters.

Contact: Henry D. Eckert, 18th and Brazos, Austin, Texas 78701-3207, (512) 476-6431.

Filed: October 22, 1985, 10:18 a.m.
TRD-859847

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Texas Statewide Health Coordinating Council

Friday, November 1, 1985. The Task Force on Regionalization of Specialized Medical Services of the Texas Statewide Health Coordinating Council will meet at 1100 West 49th Street, Austin. Times, rooms, and agendas follow.

10 a.m. In Room G-209, the Committee on Radiation Therapy, Open Heart Surgery/Cardiac Catheterization, End-Stage Renal Dialysis, and Transplantation will approve minutes of last meeting; discuss open heart

surgery/cardiac catheterization; radiation therapy; end-stage renal disease; transplantation; and a work schedule for the four study areas.

10 a.m. In Room G-107, the Perinatal, Pediatric, and Trauma Committee will approve minutes of last meeting and discuss perinatal activities, pediatric activities, atrauma activities, and a work schedule for the three activities.

1 p.m. In Room G-107, the task force will consider approval of minutes of August 23, 1985, meeting; report on reappointment of Statewide Health Coordinating Council; report of the committees; Perinatal, Pediatric, and Trauma Committee, Radiation Therapy, Open Heart Surgery/Cardiac Catheterization, End-Stage Renal Dialysis, and Transplantation Committee; discussion of reports and items for presentation to the Statewide Health Coordinating Council; and set the date of the next meeting.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: October 23, 1985, 2:12 p.m.
TRD-859899-859901

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Texas Housing Agency

Thursday, October 31, 1985, 10 a.m. The Board of Directors of the Texas Housing Agency will meet in the conference room, Suite 700, 411 West 13th Street, Austin. Items on the agenda summary include consideration and possible action on a resolution authorizing issuance, sale, and delivery of single family mortgage revenue bonds, 1985 Series B and C; approval of multifamily developments; multifamily program matters, including rules, public hearings, and applications; minority contractors report; financial advisory services; Finance and Audit Committee recommendations on adopting applicable appropriations act provisions; and administrative and miscellaneous matters relating to prior bond issues.

Contact: Earline Jewett, P.O. Box 13941, Austin, Texas 78711, (512) 475-0812.

Filed: October 23, 1985, 2:56 p.m.
TRD-859916

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Texas Department of Human Services

Thursday, October 31, 1985, 9:30 a.m. The Family Self-Support Services Branch Advisory Council of the Texas Department of Human Services will meet in Room 5-W, fifth floor, west tower, 701 West 51st Street, Austin. According to the agenda summary, the council will consider election of officers; an update on sunset review; fiscal year 1986 goals and objective; the six-year plan; sub-

committee reports on day care and family planning; advance payments for day care; and program updates.

Contact: Joan Reeves, P.O. Box 2960, Austin, Texas 79769, (512) 450-4140.

Filed: October 23, 1985, 4 p.m.
TRD-859926

Wednesday, November 6, 1985, 10 a.m.

The Indigent Health Care Advisory Committee of the Texas Department of Human Services will meet in Room 3-W, third floor, west tower, 701 West 51st Street, Austin. According to the agenda summary, the committee will consider election of a committee chairman; discussion of service definitions and reimbursement rate methodologies; finalizing client eligibility rules; and identification of facilitating management tools including optional forms, and suggested procedures.

Contact: Ernest Schmid, P.O. Box 2960, Austin, Texas 79769, (512) 450-3706.

Filed: October 23, 1985, 3:59 p.m.
TRD-859927

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State Board of Insurance

Wednesday, October 23, 1985, 2 p.m. The State Board of Insurance made an emergency revision to the agenda for a meeting held in Room 414, 1110 San Jacinto Street, Austin. According to the revised agenda, the board considered the commissioner's report concerning reconsideration of final adoption of rules on books and records; interagency contract with state treasurer for processing adjusters license fees; staff participation in orientation meeting of the House Insurance Subcommittee conducting interim study on the CATPOOL. The emergency status was necessary because the decisions needed to be made at the earliest possible time.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: October 22, 1985, 2:41 p.m.
TRD-859854

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State Board of Plumbing Examiners

Monday, November 4, 1985, 9:30 a.m. The State Board of Plumbing Examiners will meet at 929 East 41st Street, Austin. Items on the agenda include minutes of previous meeting; review of financial report; discussion of budget of fiscal year 1986; discussion of hardship cases; a letter from Texas Tech expressing appreciation for cross connection presentation; review examination data; discussion of license display; a report on use of mobile cross connection display;

a report on examinations; honorary cards for retirees; discussion of Governor White's letter regarding board member travel and per diem expenses; and election of officers.

Contact: Lynn Brown, P.O. Box 4200, Austin, Texas 78765, (512) 458-2145.

Filed: October 22, 1985, 1:41 p.m.
TRD-859852

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Proprietary School Advisory Commission

Tuesday, November 12, 1985, 10 a.m. The Proprietary School Advisory Commission will meet in Room 3-108, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will consider proposed amendments and revisions to 19 TAC §69.129, concerning degree granting schools; and proposed amendments to 19 TAC §69.127(b)(13), concerning maximum pupil-teacher ratio. Both of these sections are part of the guidelines and minimum standards for the operation of the Texas proprietary schools.

Contact: Joe L. Price, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9484.

Filed: October 23, 1985, 3:54 p.m.
TRD-859925

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Public Utility Commission of Texas

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Tuesday, November 5, 1985, 10 a.m. A prehearing conference is scheduled in Docket 6545—inquiry of the commission into the rates of Tri-County and Waterwood Telephone Companies.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 23, 1985, 1:47 p.m.
TRD-859919

Tuesday, November 5, 1985, 10 a.m. A prehearing conference held in Docket 6558—application of Fort Belknap Electric Cooperative, Inc., for authority to change rates.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 23, 1985, 1:48 p.m.
TRD-859920

Thursday, November 7, 1985, 10 a.m. A prehearing conference in Docket 6375—application of Central Power and Light Company for a rate increase.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 22, 1985, 2:57 p.m.
TRD-859855

Friday, November 8, 1985, 10 a.m. A prehearing conference in Docket 6546—application of Water Services, Inc., and Water Services Two, Inc., for a rate/tariff change.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 23, 1985, 1:48 p.m.
TRD-859921

Wednesday, January 8, 1986, 10 a.m. A hearing on the merits in Docket 6529—application of Romark Utility Company, doing business as Oak Terrace Water System, for authority to change rates.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 23, 1985, 1:48 p.m.
TRD-859922

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Texas Rehabilitation Commission

Friday, November 1, 1985, 2 p.m. The Executive Committee of the Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission will meet via teleconference call originating in Room 163, 118 East Riverside Drive, Austin. According to the agenda, the committee will consider approval of minutes and conflict of interest policy.

Contact: Roger A. Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: October 22, 1985, 1:40 p.m.
TRD-859850

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Sunset Advisory Commission

Friday, November 1, 1985, 10 a.m. The Sunset Advisory Commission will meet in the Senate Chamber, State Capitol, Austin. According to the agenda summary, the commission will consider background testimony by the Health and Human Services Coordinating Council, Texas Commission for the Deaf, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Diabetes Council, and Conservation Foundation.

Contact: Jeri Kramer, P.O. Box 13066 Austin, Texas 78711, (512) 475-1718.

Filed: October 23, 1985, 3:05 p.m.
TRD-859918

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Texas A&M University System

Saturday, October 26, 1985, 11 a.m. The Board of Regents of Texas A&M University System met in emergency session in Suite 7100, Century Club, Allied Bank Building, 1000 Louisiana Street, Houston. According to the agenda, the board considered an advance refunding of outstanding permanent university fund bonds of the Texas A&M University System. The emergency status was necessary because the time frame involved concerning bonds made it necessary to hold this meeting no later than this week.

Contact: Vickie E. Burt, Texas A&M University, College Station, Texas 77843, (409) 845-9603.

Filed: October 23, 1985, 3:41 p.m.
TRD-859923

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University of Texas System

Thursday, October 24, 1985, 10 a.m. The Board of Regents of the University of Texas System made an emergency revision to the agenda for a meeting held in Room E-6.200, Florence Bioinformation Building, University of Texas Health Science Center at Dallas, 5323 Harry Hines Boulevard, Dallas. According to the revised agenda, the board considered a negotiated contract for land acquisition in the vicinity of the Texas Medical Center, Houston. The emergency status was necessary because the information was received since the original posting of the agenda and required that the board consider this matter at the meeting.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: October 22, 1985, 3:14 p.m.
TRD-859856

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Texas Turnpike Authority

Thursday, October 31, 1985, 9 a.m. The Board of Directors of the Texas Turnpike Authority will meet in the Regency I room, Executive Inn, 3232 West Mockingbird Lane, Dallas. According to the agenda summary, the board will consider approval of minutes of the last Board of Directors' meeting and last permanent Contract Awards Committee meeting and actions, and approval of preliminary budgets for calendar year 1986; consider items pertaining to Houston Ship Channel bridge project, acceptance of toll rate review study and with respect to refinancing the current bond issue, approval of various projections, reports and contracts; consider items pertaining to the Dallas North Tollway Extension project, ratification of interagency cooperation contract, approval of contracts DNT-120 and DNT-136, and Dillon, Read and

Company as co-managers on Dallas North Tollway refunding; and consider ratification of actions of the chairman pursuant to Resolution 858 and purchase of right-of-way. The board also will meet in executive session.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 552-6200.

Filed: October 23, 1985, 10:24 a.m.
TRD-859881

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Texas Water Commission

Tuesday, December 3, 1985, 10 a.m. The Texas Water Commission will meet in the county courtroom, Ochiltree County Courthouse, 511 South Main Street, Perryton. According to the agenda summary, the commission will consider an application by Dudley's Feedlot Company, Rural Route 2, Box 84, Perryton, Texas 79070, for an amendment to Permit 01760 to add a settling basin and new retention pond three to be operated in series with the existing retention pond one. Existing retention pond two will continue to operate as an emergency (extra) pond. The applicant proposes to expand its feedlot operation from 70 acres to 74 acres which will contain a maximum of 7,000 cattle in open lots. Retention facilities will have two settling basins and four retention ponds with a total storage capacity of approximately 36 acre-feet. Disposal of the wastewater will be accomplished by natural evaporation and irrigation onto approximately 290 acres of farmland adjacent to the site. Manure generated at this site will be disposed of on cropland, to be used as a fertilizer and soil amendment. No discharge of pollutants into the water of the state is authorized by this permit.

Contact: Kevin McCalla, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 23, 1985, 2:15 p.m.
TRD-859902

Wednesday, December 4, 1985, 9 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider a petition filed by the executive director of the Texas Department of Water Resources for an amendment to Permit &R01257 which was issued to Solution Engineering, Inc., and Basic Resources, Inc., P.O. Drawer 30, Alice, Texas 78332, on August 7, 1978. The proposed amendment changes the original permit to add Basic Resources, Inc.; as a named permittee, require closure of the facility in phases under a definite time schedule, release Solution Engineering, Inc.; from its responsibility for cleaning of two areas which were never mined by Solution Engineering, Inc.; require at least one additional monitor well, and require one foot of clay cover as op-

posed to the two feet required in the existing permit.

Contact: Robert Caine, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 23, 1985, 2:14 p.m.
TRD-859903

Wednesday, December 4, 1985, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will consider an application by Fort Bend County Drainage District for approval of preliminary plans for construction of a levee or other improvement, Brazos River Basin, in Fort Bend County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898

Filed: October 22, 1985, 1:43 p.m.
TRD-859851

Thursday, December 5, 1985, 9 a.m. The Texas Water Commission will meet in the council chambers, Conroe City Hall, 505 West Davis, Conroe. According to the agenda summary, the commission will consider an application by Jesse Berwick, P.O. Box 1827, Conroe, Texas 77305, for proposed Permit 13193-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 15,000 gallons per day from the proposed parkway Place Subdivision Wastewater Treatment Facilities which are to serve a proposed residential subdivision.

Contact: Cynthia Hayes, P.O. Box 13087, Austin, Texas 78711 (512) 463-7875.

Filed: October 23, 1985, 2:14 p.m.
TRD-859904

Thursday, December 5, 1985, 9 a.m. The Texas Water Commission will meet for a rescheduled meeting in the council chambers, Conroe City Hall, 505 West Davis, Conroe. According to the agenda summary, the commission will consider an application by Earl and Guilda Dungan, doing business as Lake Livingston Properties, P.O. Box 10751, Houston, Texas 77292, for proposed Permit 13145-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day from the proposed Holiday Shores Subdivision II wastewater treatment plant which is to be constructed in phases to serve the proposed Holiday Shores subdivision.

Contact: Kevin McMalla, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 23, 1985, 2:14 p.m.
TRD-859905

Tuesday, January 7, 1986, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Agendas follow
Application by Tanglewood Lake Home-

owners Association for Application 4610 for a permit to maintain a dam and existing 48.08 acre-foot capacity reservoir on an unnamed tributary of Wichita River (also known as Big Wichita River) and Wichita River Red River Basin, for recreational use within a subdivision west of Wichita Falls, Wichita County. Applicant also requests authorization to divert 30 acre-feet of water per annum from the Wichita river, tributary of Red River, Red River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1985, 2:16 p.m.
TRD-859906

Amendment to Certificate of Adjudication 23-239A for La Joya Water Supply Corporation to change the purpose of use of the 43.25 acres from irrigation to municipal use, to change the place of use, and to change the point of diversion located in Hidalgo County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1985, 2:16 p.m.
TRD-859907

Application by City of Laredo on Certificate of Adjudication 23-2704A to amend Certificate of Adjudication 23-2704 to change the purpose of use of 20 acre-feet of Class A water right from irrigation to municipal purposes, to establish the place of use, to establish the point of diversion, and to divert the 20 acre-feet of water, all being more fully set out therein, in the Rio Grande Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1985, 2:16 p.m.
TRD-859908

Application by Woodridge Land Company for Application 4608 for a permit to construct and maintain a dam and reservoir on Huebner Creek, tributary of Leon Creek, tributary of San Antonio River, San Antonio River Basin, and to impound therein 18 acre-feet of water per annum for recreational purposes northwest of the Bexar County Courthouse in San Antonio.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1985, 2:16 p.m.
TRD-859909

Application by Rusk State Hospital for a permit to maintain an existing dam and 265.0 acre-foot capacity reservoir on One-Eye Creek, tributary of Box Creek, tributary of Neches River, Neches River Basin for recreation purposes, in Rusk, Cherokee County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1985, 2:15 p.m.
TRD-859910

Application by Andrew L. Boss, Jr., and Mary F. Boss, for a permit to divert and use 50 acre-feet of water per annum from the Guadalupe River, Guadalupe River, Guadalupe River Basin to irrigate 50 acres of land northwest of New Braunfels.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1985, 2:15 p.m.
TRD-859911

Application by City of Mathis for a permit to authorize the secondary use of not to exceed 50 acre-feet per annum of treated wastewater effluent to irrigate 100 acres of land in the Nueces River Basin, in San Patricio County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1985, 2:15 p.m.
TRD-859912

Application by Leroy Macha, *et al.* for a permit to divert and use 1,151.1 acre-feet of water per annum from Middle Bernard Creek, tributary of San Bernard River, Brazos-Colorado Coastal Basin, to irrigate 500 acres of land north-northwest of Wharton, Wharton County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: October 23, 1985, 2:15 p.m.
TRD-859913

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Regional Agencies Meetings Filed October 22

The Austin-Travis County Mental Health and Mental Retardation Center, Finance and Control met in emergency session in the executive conference room, 1430 Collier Street, Austin, on October 23, 1985, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 240.

The Lower Rio Grande Valley Development Council, Board of Directors, met in emergency session at 311 East Tyler, Harlingen, on October 24, 1985, at 1:30 p.m. Information may be obtained from Ken Jones, Texas Commerce Bank Building, Suite 707, 1701 West Highway 83, McAllen, Texas 78501, (512) 682-3481.

The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees, met at 3800 Avenue H, Lubbock, on October 28, 1985, at 5 p.m. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401-4088, (806) 763-4213.

TRD-859849

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Meetings Filed October 23

The Bastrop County Appraisal District, Appraisal Review Board, will meet at 1200 Cedar Street, Bastrop, on November 7, 1985, at 7:30 p.m. Information may be obtained from Lorraine Perry, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925.

The Bexar Appraisal District, Appraisal Review Board, met in emergency session at 535 South Main Street, San Antonio, on October 25, 1985, at 9 a.m. The Appraisal Review Board also will meet at the same location on November 1, 4-7, 12-15, 18-21, and 25-27, 1985, at 8:30 a.m. daily. Infor-

mation may be obtained from Bill Burnette, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511.

The Central Texas Mental Health and Mental Retardation Center, Board of Trustees, met at 408 Mulberry Drive, Brownwood, on October 28, 1985, at 4:30 p.m. Information may be obtained from Randy K. Harkey, P.O. box 250, Brownwood, Texas 76804, (915) 646-9574, ext 102.

The Lee County Appraisal District, Board of Directors, will meet at 218 East Richmond Street, Giddings, on October 30, 1985, at 9 a.m. Information may be ob-

tained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Panhandle Ground Water Conservation District 3, Board of Directors, met at 300 South Omohundro, White Deer, on October 28, 1985, at 9 a.m. Information may be obtained from Richard S. Bowers, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

TRD-859914

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In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Comptroller of Public Accounts Decision 15,640

For copies of the following opinion selected and summarized by the Administrative Law Judges, contact the Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with confidentiality statutes.

Summary of Decision. A large, tax-sophisticated corporation sought waiver of penalty. Two large-dollar transactions accounted for well over half of the audited deficiency, and the deficiency was almost half as much as the taxes remitted for the period. In one transaction, a Texas seller charged state and local tax but failed to collect MTA tax; the taxpayer claimed it should not be punished for failing to monitor purchases made in Texas. In the other transaction, a truck was bought out-of-state; the taxpayer claimed it ordinarily paid a use tax in such cases when it registered the vehicle, but his truck was never registered. The comptroller held that penalty was not waived. The taxpayer could be expected to monitor very large purchases and to know how it used its own vehicles and whether sales or use tax had been paid. Contrary to taxpayer's assertion, imposing penalty will serve the ends of tax administration; it will encourage the taxpayer and others to be more diligent.

Issued in Austin, Texas, on October 18, 1985

TRD-859867 Bob Bullock
Comptroller of Public Accounts

Filed: October 23, 1985
For further information, please call (512) 463-4606.

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Texas Economic Development Commission Private Activity Bond Allocation Report

Private activity bonds (PABs) which were induced on or after June 19, 1984, are subject to a cap, as stipulated in the Federal Deficit Reduction Act of 1984. This cap is equal to \$150 per capita or approximately \$2.3 billion for the State of Texas for calendar year 1985.

House Bill 690 states that the procedure for allocating this cap will be on a first-come, first-served basis, with the Texas Economic Development Commission (TEDC) being the tracking agency for the program. The information that follows is a summary report of the allocation activity for the week of October 14-18, 1985.

Total unallocated principal amount of private activity bonds authorized to be allocated as per the Federal Deficit Reduction Act of 1984 through October 18, 1985:

\$1,569,038,332.12

Comprehensive listing of bond issues which have received a reservation date as per House Bill 690 during the week of October 14-18, 1985:

Issuer	User	Amount
McKinney Industrial Development Corporation	Hendricks and Parker	\$1.1 million
Corpus Christi Industrial Development Corporation	Furman Plaza, Ltd.	\$3 million
City of Laredo	Tracer-Radcon, Inc.	\$600,000
Orange County Navigation and Port District Industrial Development Corporation	Polysar Gulf Coast, Inc.	\$1.2 million
Hunt County Health Facilities Development Corporation	Universal Health Services of Greenville, Inc.	\$4.5 million
City of Denton Industrial Development Authority	Safety Kleen Corporation	\$2.7 million

Total principal amount of private activity bonds issued through October 18, 1985;

\$795,311,310.63

Comprehensive listing of bonds issued as per House Bill 690 during the week of October 14-18, 1985:

Issuer	User	Amount
Bexar County Industrial Development Corporation	Halo Distributing Company	\$2.5 million
City of Denton Industrial Development Corporation	Martino Realty Company	2.5 million
Texas Small Business Industrial Development Corporation	FNB Properties	\$750,000
City of Dallas Industrial Development Corporation	Sealed Power	\$1.1 million
Central Waco Development Corporation	St. Charles Place	\$750,000

Pearland Industrial Pearland Mini- \$1 million
Development Storage
Corporation

Issued in Austin, Texas, on October 22, 1985.

TRD-859865 David V. Brandon
 Executive Director
 Texas Economic Development
 Commission

Filed: October 23, 1985
For further information, please call (512) 472-5059.

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General Land Office Consultant Proposal Requests

Pursuant to Texas Civil Statutes, Article 6252-11c, the General Land Office invites proposals from qualified surveyors to serve as consultant to the agency in a survey of the Canadian River. The 69th Legislature, 1985, appropriated funds to the land office for the purpose of conducting a gradient boundary line survey of the river. The land office is to determine the historical gradient line prior to any changes in the river caused by dams or other man-made alterations. The consultant will advise and supervise land office personnel both in the process of surveying the river and in conducting any necessary research prior to commencement of field work. Finally, the consultant will review the survey work and be responsible for signing and sealing the completed field notes and plat.

Land office survey crews will be composed of an instrumentman, two rodmen, and a licensed state land surveyor who will carry out the survey according to the directions of the consultant. The land office will furnish necessary equipment and supplies.

The selection of the consultant will be based on all factors deemed relevant by the land office. The land office considers several qualifications to be necessary to insure the skillful performance of the services set out previously. Surveyors submitting proposals should address these factors and substantiate the ability to provide these services and meet the following qualifications.

(1) Consultant must be properly registered and licensed with the Board of Examiners of State Land Surveyors, currently active in the surveying profession.

(2) Consultant must have sufficient experience working as a licensed state land surveyor to be capable and qualified in the judgment of the land office to direct and supervise Land Office survey crews.

(3) Consultant must be experienced and proficient in surveying abandoned riverbeds, steep bluffs, areas with thick brush, and other unaccommodating topography, and physically capable of field work in difficult terrain that may be required as an incident to the duties listed previously.

(4) Consultant must be skilled and practiced in conducting gradient line surveys, and be qualified to instruct land office survey crews in surveying gradient lines.

(5) Preference will be given to those surveyors with experience surveying the Canadian River, with further consideration being given to those having worked on any previous gradient boundary line surveys of the river

Commencement date of services under the contract will be mutually agreed upon between the land office and the consultant once the contract has been awarded. The survey must be completed within four to five months. Por-

tions of the river to be surveyed under the contract will be designated by the land office. The amount of the contract is not to exceed \$50,000. However, the contract is subject to the availability of funds appropriated to the land office for the purpose of conducting the survey.

Prospective consultants are invited to submit a consulting fee based on hourly charges for the services and subject to the conditions described previously.

Proposals must be submitted in writing on or before 10 a.m. on November 12, 1985, to General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

All proposals will be reviewed. The land office reserves the right to accept or reject any or all proposals. Questions regarding the foregoing invitation should be directed in writing to the previously stated address.

Issued in Austin, Texas, on October 22, 1985

TRD-859861 Dan Miller
 Deputy Commissioner for Legal
 Services
 General Land Office

Filed: October 22, 1985
For further information, please call (512) 475-6740.

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Pursuant to Texas Civil Statutes, Article 6252-11c, the General Land Office invites proposals from qualified surveyors to serve as consultant to the agency in a survey of the Red River. The 69th Legislature, 1985 appropriated funds to the land office for the purpose of conducting a gradient boundary line survey of the river. The land office is to determine the boundary between Texas and Oklahoma in accordance with any direction provided by the United States Supreme Court by locating the gradient line. The consultant will advise and supervise land office personnel both in the process of surveying the river and in conducting any necessary research prior to commencement of field work. Finally, the consultant will review the survey work and be responsible for signing and sealing the completed field notes and plat.

Land office survey crews will be composed of an instrumentman, two rodmen, and a licensed state land surveyor who will carry out the survey according to the directions of the consultant. The land office will furnish necessary equipment and supplies.

The selection of the consultant will be based on all factors deemed relevant by the land office. The land office considers several qualifications to be necessary to insure the skillful performance of the services set out previously. Surveyors submitting proposals should address these factors and substantiate their ability to provide these services and meet the following qualifications.

(1) Consultant must be properly registered and licensed with the Board of Examiners of State Land Surveyors, currently active in the surveying profession.

(2) consultant must have sufficient experience working as a licensed state land surveyor to be capable and qualified in the judgment of the land office to direct and supervise land office survey crews.

(3) Consultant must be skilled and practiced in conducting gradient line surveys and be qualified to instruct Land Office survey crews in surveying gradient lines.

(4) Preference will be given to those surveyors with experience surveying the Red River, with further consideration being given to those having worked on the previous gradient boundary line surveys of the river conducted by Colonel Arthur A. Stiles, boundary commissioner.

Commencement date of services under the contract will be mutually agreed upon between the land office and the consultant once the contract has been awarded. The survey must be completed within two years. Portions of the river to be surveyed under the contract will be designated by the land office and should include, but shall not be limited to, areas where state borders are disputed. The amount of the contract is not to exceed \$50,000. However, the contract is subject to acceptance by the United States Supreme Court should they choose to exercise jurisdiction over the Red River boundary dispute as well as any applicable orders of the United States Supreme Court and the actions of its duly appointed master. The contract is also subject to the availability of funds appropriated to the land office for the purpose of conducting the survey.

Prospective consultants are invited to submit a consulting fee based on hourly charges for the services and subject to the conditions described above.

Proposals must be submitted in writing on or before 10 a.m. on November 12, 1985, to General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

All proposals will be reviewed. The land office reserves the right to accept or reject any or all proposals. Questions regarding the foregoing invitation should be directed in writing to the previously listed address.

Issued in Austin, Texas, on October 22, 1985.

TRD-859880 Dan Miller
 Deputy Commissioner for Legal
 Services
 General Land Office

Filed: October 22, 1985
For further information, please call (512) 475-8740.

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Texas Department of Health Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Health is requesting proposals for consultant services.

Description of Services. Specific consultant services include the development of a six-year strategic plan for two state chest hospitals operated by the Texas Department of Health in San Antonio and in Harlingen. This approach assumes that strategic planning and budgeting must be integrated to ensure that both are driven by the same set of imperatives while taking into account the legislative appropriation request process used by this state. The plan should consider, but not be limited to, at least the following elements and areas:

(1) institution of a standard development process for on-going strategic planning for the hospitals. The planning system should be flexible enough to accommodate significant revisions in format, scope or context. It should specify all major categories of information re-

quired to sustain the planning effort, and it should specify the level of detail required;

(2) development of a six-year forecast for program improvement using measures of health care need rather than demand or utilization-based data;

(3) development of a six-year forecast for construction and/or renovation of hospital facilities based upon current mandated missions and on changes recommended by the plan;

(4) development of a six-year forecast of new and replacement capital equipment needs based upon current mandated missions and on changes recommended by the plan;

(5) consider the economic, medical, and social liabilities inherent in a state-operated facility designed to care for both chronic and acute care patients; consider as well the potentials for the provision of health care to the citizens of Texas represented by the operation of state-funded chronic and acute care facilities;

(6) propose methods for consumer involvement in the development of the initial six-year plan and devise methods for the on-going involvement of consumers;

(7) the six-year plan must include and reflect a conscious concern for cost containment;

(8) evaluate the organization and management structure of both hospitals and relationships with the Texas Department of Health, the parent organization.

Evaluation Procedures. Procedures used to evaluate the offers include:

(1) background, experience, and knowledge in developing a strategic plan for a publicly supported hospital;

(2) the offeror's ability to complete the project well and within the time frame allowed;

(3) submission of a proposal addressing all required areas;

(4) submission of examples of work previously completed of a like nature. Failure to submit samples will be sufficient reason to exclude the offeror from further consideration;

(5) letters of endorsement or recommendation from the governing body or chief executive officer (CEO) of previous hospital clients;

(6) offeror's plan for completing the project on or before the deadline to be stipulated in the contract.

The Texas Department of Health reserves the right to accept or reject any or all proposals submitted. The Texas Department of Health is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various elements which the department considers basic to a six-year strategic plan. The Texas Department of Health will base its choice on demonstrated competence, qualifications, and evidence of superior conformance to criteria. This request does not commit the Texas Department of Health to pay any costs incurred prior to execution of a contract. The department may request an oral presentation from selected finalists.

Evaluation Methodology. Written proposals and oral presentations (if requested) will be evaluated by a Consultant Selection Committee.

Contact Person. The contact person is Charles L. Hill, Director, Hospital Care Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7770.

Due Date. All proposals must be submitted by close of business on the 40th day after the first date of publica-

tion of this notice. Proposals must be mailed or delivered to the contact person.

Cost. The Consultant Selection Committee will assess the reasonableness of the total project cost and the cost-per-person-hour. Although not necessarily the deciding factor, this criterion will be significantly weighed. The respondents to this CPR should consider submission of a proposal with incremental costs.

Final Selection. Final selection will be made by the department, using the previously mentioned evaluation procedures. Award will not necessarily be made to the bidder offering the lowest price, but to the lowest and best bidder, considering price and results of the department's evaluation criteria.

Issued in Austin, Texas, on October 23, 1985.

TRD-859879 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: October 23, 1985
For further information, please call (512) 458-7770.

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State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

- (1) Application for incorporation of United Alliance Insurance Company, to be a domestic life insurance company. The home office is to be in Houston.
- (2) Application for incorporation of Trinity United Insurance Company, to be a domestic life insurance company. The home office is in Houston.
- (3) Application for incorporation of Western Alliance Insurance Company, to be a domestic life insurance company. The home office is in Houston.
- (4) Application for incorporation of Catholic Alliance Insurance Company, to be a domestic life insurance company. The home office is in Houston.
- (5) Application for incorporation of Alliance National Insurance Company, to be a domestic life insurance company. The home office is in Houston.
- (6) Application for admission to do business in Texas of American Western Life Insurance Company, a foreign life insurance company. The home office is in Salt Lake City, Utah.
- (7) Application for incorporation of Master Employers Dental Plan, Inc., to be a domestic health maintenance organization. The home office is in Dallas.
- (8) Application for a name change by BLC Life and Annuity Company, a foreign life insurance company. The home office is in Des Moines, Iowa. The proposed new name is Principal Life Insurance Company.
- (9) Application for a name change by Selected Risks Insurance Company, a foreign fire and casualty insurance company. The home office is in Branchville, New Jersey. The proposed new name is Selective Insurance Company of America.
- (10) Application for admission to do business in Texas of Fidelity General Life Insurance Company, a foreign life insurance company. The home office is in Radnor, Pennsylvania.

(11) Application for a name change by Old Faithful County Mutual Fire Insurance Company, a domestic county mutual insurance company. The home office is in Dallas. The proposed new name is Commodore County Mutual Insurance Company.

Issued in Austin, Texas, on October 18, 1985.

TRD-859843 James W. Norman
Chief Clerk
State Board of Insurance

Filed: October 22, 1985
For further information, please call (512) 463-8327.

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Texas Rehabilitation Commission Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Rehabilitation Commission is requesting proposals for consulting services.

Description of Services. The consultant, under general administrative direction, will serve as psychological consultant for the Disability Determination Division of the Texas Rehabilitation Commission in carrying out the prescribed procedures relating to the psychological aspects of completing disability determinations on applicants for social security disability benefits.

Duties of the consultant include:

- (1) review evidence and provide oral or written psychological consultation and advice, as needed, on individual cases;
- (2) contact by telephone treating physicians and psychologists, consultative physicians and psychologists, and other sources of medical and psychological information to clarify existing medical and psychological information contained in the file;
- (3) prepare letters and/or questionnaires for treating physicians and psychologists to supplement information in the file;
- (4) make psychological summaries on individual cases as needed to clarify apparent psychological inconsistencies;
- (5) review files to determine the appropriateness of consultative examination and diagnostic procedures prior to the authorization of such examinations;
- (6) make psychological presumptions as to onset of disability in the absence of onset psychological evidence;
- (7) review and analyze psychological information and make functional assessments as required;
- (8) review completed disability determinations; attach psychological consultant comments to the determination if he or she concurs in the decision. If he or she does not concur with the decision, attempts to reconcile the disagreement with the staff member(s) concerned;
- (9) assist in the in-service training of professional personnel in psychological related areas of the work;
- (10) maintain liaison and foster mutual understanding with psychologists in connection with the disability program;
- (11) attend monthly staff meetings relating to the Social Security Disability Program.

The services provided by the consultant shall be at the Texas Rehabilitation Commission office in Austin, and, upon mutual consent, at other designated locations for authorized medical and program related activities. The

consultant will be reimbursed for actual travel expenses incurred while on approved travel in connection with his or her work under this contract.

Limitations. The consultant contract will begin December 1, 1985, and will continue in effect until terminated in writing by either party on 15 days written notice. The consultant contract is subject to amendment upon consent of both parties.

Evaluation and Selection. Offers will be evaluated based upon demonstrated competence, knowledge, and qualifications; and reasonableness of the proposed fee for service, but selection need not be based on lowest fee. Interested parties should respond to this consultant proposal request by stating their cost per hour based upon a 30-hour work week.

Closing Date. The closing date for receipt of offers is November 8, 1985.

Contact Person. For further information, please contact David MacCabe, Deputy Commissioner, Disability Determination Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8120.

The Texas Rehabilitation Commission intends to award the contract to the consultant who previously performed the services unless a substantially better offer is submitted as determined by cost and the stated evaluation and selection criteria.

Issued in Austin, Texas, on October 21, 1985.

TRD-859844 Vernon H. Newman
Assistant Commissioner for Legal
Services
Texas Rehabilitation Commission

Filed: October 22, 1985
For further information, please call (512) 445-8126.

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Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of October 14-18, 1985.

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 Com-

mission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of October 14-18, 1985

Acme Brick Company, Fort Worth; wastewater treatment plant; approximately 3.8 miles southeast of the intersection of FM Road 331 and State Highway 36 in Austin County; 13192-10; new permit

City of Seguin; wastewater treatment plant; approximately one mile east of FM Road 466 and ¼ mile north of the Guadalupe River in Guadalupe County, 10277-03; new permit

North Austin Utilities, Inc., Austin; domestic wastewater treatment plant; approximately 2,000 feet north-northeast of the intersection of Yager Lane and IH 35 in Travis County; 13189-01; new permit

Brazos River Authority, Waco; sewage treatment plant; approximately two miles south of Sugar Land at the intersection of Beltz Road with U.S. Highway 59 in Fort Bend County; 11317-01; renewal

Town of Graham; wastewater treatment facilities; approximately 7,500 feet south of the intersection of State Highway 254 in Young County; 10487-01; renewal

City of Burton; wastewater treatment facilities; about 450 feet northwest of the Texas and New Orleans Railroad track crossing at U.S. Highway 290 in Washington County; 12193-01; renewal

City of Chico; wastewater treatment facilities; approximately one mile east of the City of Chico and 0.25 mile south of FM Road 1810, immediately north of Dry Creek in Wise County; 10023-01; renewal

City of Valley Mills; wastewater treatment facilities; approximately one mile northeast of the intersection of State Highway 6 and FM Road 56, northeast of the City of Valley Mills in Bosque County; 10307-01; renewal

City of Denison; sewage treatment plant; approximately 2,200 feet north and 1,600 feet east of the intersection of Center Street and FM 120 in Grayson County; 10079-03; renewal

Shell Offshore, Inc., Baytown; a plant that cleans and inspects drilling pipe at the intersection of FM Road 565 and the Southern Pacific Railroad in the City of Baytown in Chambers County; 02806; amendment

City of Houston; wastewater treatment plant; approximately 800 feet west of Zavalla Street in the City of Houston, Harris County; 10495-69; renewal

Cedar Bayou Park Utility District, Houston; wastewater treatment facilities; approximately 5,000 feet south of IH 10 at the Southern Pacific Railroad crossing of McGee Gully in Harris County; 11713-01; renewal

City of Lone Oak; wastewater treatment facilities; approximately 0.5 mile south of the intersection of U.S. Highway 69 and FM Road 1571 in Hunt County; 10760-01; renewal

City of Richland Springs; wastewater treatment facilities; approximately 0.5 mile east of FM Road 45 in San Saba County, 10665-01; renewal

Oakwilde Utility Company, Houston; wastewater treatment plant; immediately north of Mooney Road and east of Halls Bayou in the City of Houston in Harris County; 10236-01; amendment

Glenn Peters, Huntsville; wastewater treatment plant; approximately 4,000 feet south of the intersection of FM Roads 247 and 2628, approximately three miles north of the intersection of FM roads 247 and 980 in Walker County; 13174-01; new permit

American Home Savings Association of Texas, Garland; wastewater treatment facilities; on the north side of IH 20 immediately west of its junction with U.S. Highway 80 and approximately five miles west of the City of Terrel in Kaufman County; 11286-01; new permit

Harold E. Lawson, Rex E. Lawson, and James E. McEntire, doing business as L.M.L. Properties, Ir-

ving; wastewater treatment plant; approximately 3,000 feet west of the intersection of Cook Road and Mars Road, approximately 8,000 feet east-southeast of the intersection of IH-45 and Mars Road in Dallas County; 13204-01; new permit

Champlin Petrochemicals, Inc., Soltex Petrochemicals, Inc., and ICI Petrochemicals, Inc., doing business as Corpus Christi Petrochemical Company, Corpus Christi; waste disposal well; two miles north of Violet, in Nueces County; WDW 152 and WDW 153; amendment

Issued in Austin, Texas, on October 18, 1985.

TRD-859810 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: October 21, 1985
For further information, please call (512) 475-4514.

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Office of the Secretary of State Texas Register Publication Schedule

Following are the deadline dates of the November and December 1985 issues of the *Texas Register*. Unless noted by a ★, deadlines for a Tuesday edition of the *Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication.

Publication Schedule for the *Texas Register*

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
Friday, November 1	3RD QUARTERLY INDEX	
Tuesday, November 5	Wednesday, October 30	Thursday, October 31
★ Friday, November 8	Friday, November 1	Monday, November 4
Tuesday, November 12	Wednesday, November 6	Thursday, November 7
★ Friday, November 15	Friday, November 8	Tuesday, November 12
Tuesday, November 19	Wednesday, November 13	Thursday, November 14
Friday, November 22	Monday, November 18	Tuesday, November 19
Tuesday, November 26	Wednesday, November 20	Thursday, November 21
Friday, November 29	Monday, November 25	Tuesday, November 26
Tuesday, December 3	NO ISSUE PUBLISHED	
Friday, December 6	Monday, December 2	Tuesday, December 3
Tuesday, December 10	Wednesday, December 4	Thursday, December 5
Friday, December 13	Monday, December 9	Tuesday, December 10
Tuesday, December 17	Wednesday, December 11	Thursday, December 12
Friday, December 20	Monday, December 16	Tuesday, December 17
Tuesday, December 24	Wednesday, December 18	Thursday, December 19
★ Friday, December 27	Friday, December 20	Monday, December 23
Tuesday, December 31	NO ISSUE PUBLISHED	