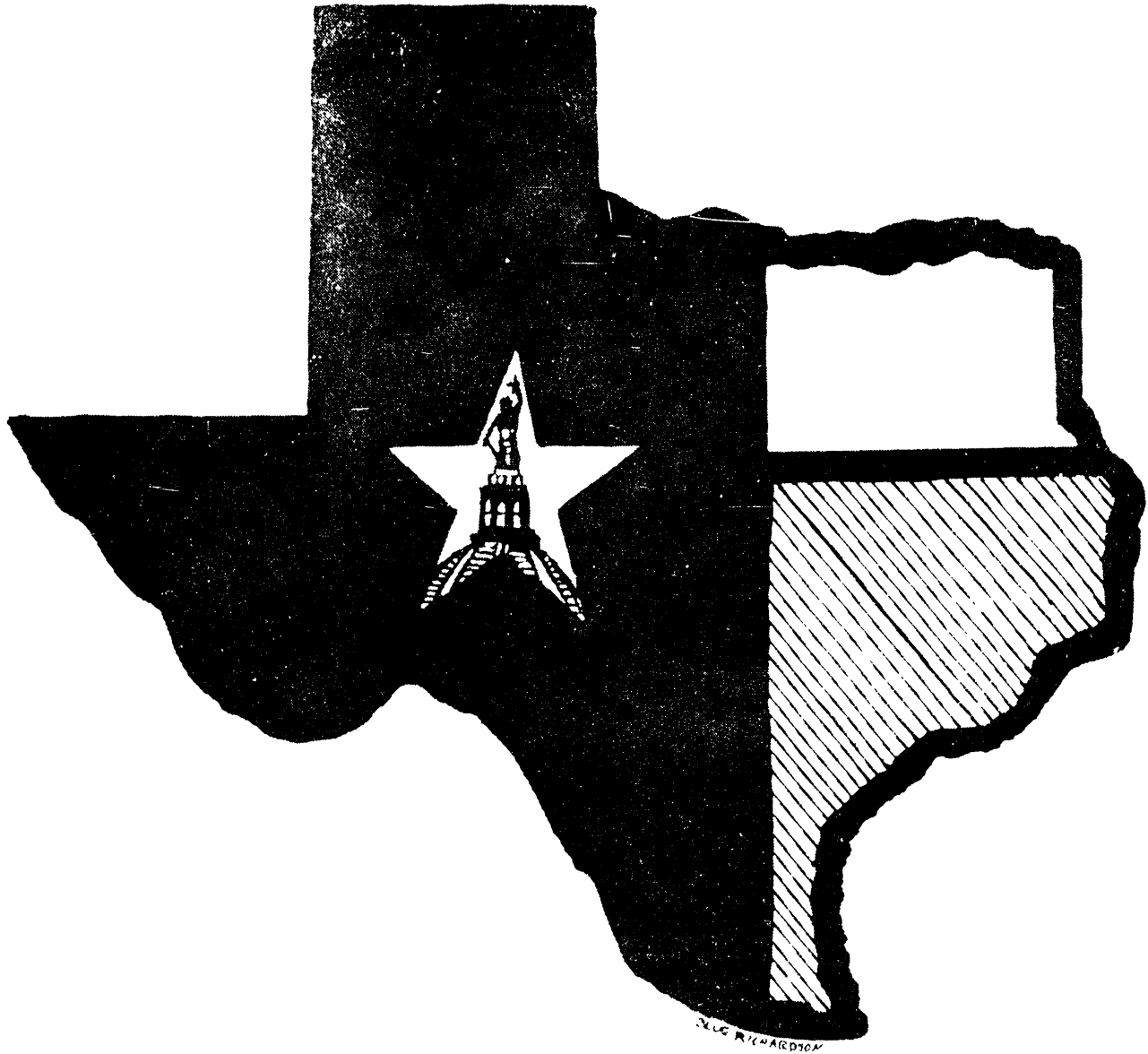


Texas Register

Volume 12, Number 57, July 28, 1987

Pages 2453-2487



Highlights

The **Comptroller of Public Accounts** adopts on an emergency basis an amendment to an amendment concerning definitions regarding bingo regulation and tax. Effective date - July 21. **page 2463**

The **Texas Department of Human Services** proposes new sections recodifying and rearranging the Vendor Drug Program. Proposed date of

adoption - November 2

page 2767

The **Texas State Board of Registration for Professional Engineers** adopts an amendment establishing clear guidelines for the proper sealing of engineering documents and deleting vague language. Effective date - September 1. **page 2779**

**Office of
the Secretary
of State**

Texas Register

The *Texas Register* (ISSN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1987 with the exception of January 6, September 1, December 1, and December 29 by the Office of the Secretary of State.

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Information Available: The 10 sections of the *Register* represent various facets of state government. Documents contained within them include:

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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 TexReg 3."

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



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Name: Joel Juarez
Grade: 5
School: Burton Hill Elementary, Ft. Worth

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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.

Executive Order

WPC 87-12

Establishing the Governor's Task Force on Accounting, Auditing and Financial Reporting.

WHEREAS, the current fiscal situation of State government poses new challenges for public administrators to utilize the resources of the State wisely and efficiently; and

WHEREAS, the State of Texas does not have a uniform statewide accounting system enabling State agencies and educational institutions to utilize standardized processes and procedures; and

WHEREAS, management or performance auditing is widely utilized in the private and public sectors to improve the effectiveness and efficiency of programs and operations; and

WHEREAS, the Executive and Legislative leaders do not have routine access to standardized financial data necessary to make informed decisions regarding State agencies and educational institutions; and

WHEREAS, many State financial functions, including, but not limited to, accounting practices, auditing practices, financial reporting practices, payroll practices and purchasing practices include redundant procedures which could be streamlined, improved or modernized, thereby reducing the costs and time required in each process.

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby create and establish the GOVERNOR'S TASK FORCE ON ACCOUNTING, AUDITING AND FINANCIAL REPORTING hereinafter referred to as the TASK FORCE.

The TASK FORCE will consist of not more than 30 members appointed by the Governor who shall serve at the pleasure of the Governor. The TASK FORCE shall be comprised of a broad representation from industry, education and other interested organizations and of other interested citizens.

The Governor shall designate a Chairman and Vice-Chairman from the membership who shall serve in those positions at the pleasure of the Governor.

The TASK FORCE is charged with the responsibilities of performing an in-depth study and review of State accounting, auditing and financial reporting practices; investigating promising innovations and improvements in the aforementioned areas; developing specific, detailed and implementable recommendations which the State should address in order to enhance accountability, efficiency and planning capabilities; making any other recommendations which the TASK FORCE deems appropriate; and performing other duties as requested by the Governor.

On or before January 1, 1988, the TASK FORCE shall make a written report of its activities and recommendations to the Governor.

The TASK FORCE shall meet at the call of the Chairman. The Chairman shall, with the consultation of the Governor, establish the agenda.

The members of the TASK FORCE shall serve without compensation or reimbursement of expenses.

All agencies of state and local government are hereby directed to cooperate with and assist the TASK FORCE in the performance of its duties.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Given under my hand this 15th day of June, 1987.

Issued in Austin, Texas, on July 10, 1987.

TRD-8705952

William P. Clements, Jr.
Governor of Texas

Proclamation 41-2189

Pursuant to Article III, Section 40 and Article IV, Section 8 of the Texas Constitution, I, William P. Clements, Jr., Governor of Texas, do hereby submit the following matters for consideration by the Seventieth Texas Legislature in its Second Called Session:

(1) legislation relating to state support for a consortium of semiconductor companies engaged in semiconductor research;

- (2) legislation relating to the duties of cities to pick up employees' contributions to the municipal pension system;
- (3) legislation relating to the payment of wages by employers doing business in the state;
- (4) legislation relating to the punishment for the offense of driving while intoxicated;
- (5) legislation relating to reductions in premium rates for comprehensive coverage of automobiles protected by anti-theft security systems;
- (6) legislation relating to the confinement of persons who are arrested in a county but are taken before a magistrate in another county;
- (7) legislation relating to the definition of "intoxication" in workers compensation cases;
- (8) legislation relating to the division and disposition of marital property and to spousal liability;
- (9) legislation relating to actions under Titles 1 and 2, Family Code, including an action for child support or possession of and access to a child and to the offense of criminal nonsupport;
- (10) legislation relating to adoption of the Revised Uniform Reciprocal Enforcement of Support Act;
- (11) legislation relating to the enforcement and collection of state taxes;
- (12) legislation relating to reports to the Texas State Board of Medical Examiners;
- (13) legislation relating to the definition of blood banks for the purpose of testing, confidentiality of records, "Operation Look-Back" procedures, and liability;
- (14) legislation relating to allowing as a condition of probation a contribution to Crime Stoppers;
- (15) legislation relating to the videotaped testimony of a child who is an alleged victim of an offense involving sexual abuse;
- (16) legislation relating to the criminal jurisdiction of statutory county courts;
- (17) legislation relating to the authorization, issuance, examination, approval, registration, and recording of certain bonds and other obligations by public entities;
- (18) legislation relating to the creation of an agricultural diversification program; and
- (19) legislation relating to the creation, duties and powers of the Texas Agricultural Finance Authority, and the development of and issuance of bonds for an agricultural financing program.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 15th day of July, 1987.

TRD-8705953

William P. Clements, Jr.
Governor of Texas

Attorney General

Description of attorney general submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Requests for Opinions

RQ-1154. Request from Chet Brooks, Chairman, Senate Committee on Health and Human Services, Austin, concerning whether a peace officer employed in a specialized police division under Texas Civil Statutes, Article 1269m-14B, is entitled to regular civil service benefits under Texas Civil Statutes, Article 1269m.
TRD-8705970



RQ-1155. Request from John L. Barnhill, Crosby County Attorney, Crosbyton, concerning the obligation of a county under Texas Civil Statutes, Article 2351(11), to provide for the relief of paupers.
TRD-8705971



RQ-1156. Request from Charles Chapman, Criminal District Attorney, San Marcos, concerning whether a loss of physical or mental faculties under Texas Civil Statutes, Article 6701 1-1, represents more than one district offense for purposes of a criminal complaint.
TRD-8705972



RQ-1157. Request from Emory C. Walton, Criminal District Attorney, Eastland, concerning whether a court-appointed counsel may be compensated for services rendered and expenses incurred prior to the time of appointment, and related questions.
TRD-8705973



RQ-1158. Request from Hal H. Hood, Commissioner, Firemen's Pension Commission, Austin, concerning whether the fire fighters relief and retirement fund is a trust fund.
TRD-8705974



RQ-1159. Request from Sam H. Smith, Executive Director, Board of Tax Professional Examiners, Austin, concerning whether the registration requirements of

Texas Civil Statutes, Article 7244b, apply to individuals who have contracted to perform property tax collection services for a taxing unit.

TRD-8705975



RQ-1160. Request from Gary A. Goff, Hockley County Attorney, Levelland, concerning whether an individual who contracts to serve as a special prosecutor may be paid for his services.
TRD-8705976



RQ-1161. Request from David H. Cain, Chairman, House Committee on Transportation, Austin, concerning whether a state representative may be employed by the Brazos Transit System, a recipient of state-administered federal funds.
TRD-8705977



RQ-1162. Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether human corpses may be transferred to a morgue only under the direction and supervision of a licensed funeral director or embalmer.
TRD-8705979



RQ-1163. Request from L. L. Bowman, III, Texas Savings and Loan Department, Austin, concerning whether information relating to reviews of particular savings and loan institutions are excepted from public disclosure by the Open Records Act, Texas Civil Statutes, Article 6252-17a.
TRD-8705980



RQ-1164. Request from Ray Farabee, Chairman, Senate State Affairs Committee, Austin, concerning the appointment of a county attorney pro tem for Shackelford County.
TRD-8705981



RQ-1165. Request from Rene Guerra, Criminal District Attorney, Edinburg, concerning the use of confiscated property by a criminal district attorney under Article 4476-15(b).
TRD-8705982

TRD-8705982



RQ-1166. Request from Chet Brooks, Chairman, Senate Committee on Health and Human Services, Austin, concerning whether a public hospital may grant staff privileges to a chiropractor.
TRD-8705983

TRD-8705983



RQ-1167. Request from Neal E. Birmingham, Cass County District Attorney, Linden, concerning whether \$30,000 is the aggregate limit in articles exempt from execution under the Property Code, §42.001 et. seq.
TRD-8705984

TRD-8705984



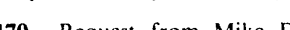
RQ-1168. Request from Tom Maness, Criminal District Attorney, Beaumont, concerning whether a provision of the city charter of the City of Groves is consistent with Texas Civil Statutes, Article 988b.
TRD-8705985

TRD-8705985



RQ-1169. Request from Theodore P. Steinke, Jr., Assistant District Attorney, Dallas County, Dallas, concerning whether records of an investigation into alleged criminal activity at the Dallas/Fort Worth International Airport are subject to required disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a.
TRD-8705986

TRD-8705986



RQ-1170. Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether personnel records of an assistant county attorney are subject to required disclosure under the Open Records Act, Article 6252-17a.
TRD-8705987

TRD-8705987



RQ-1171. Request from Henry B. Keene, Chairman, Texas Board of Pardons and Paroles, Austin, concerning whether a full pardon is equivalent to a restoration to citizenship under the Code of Criminal Procedure, Article 42.12, §24.
TRD-8705988



RQ-1172. Request from Terral R. Smith, Chairman, House Natural Resources Committee, Austin, concerning whether a school district is exempt from a surcharge imposed by the North Austin Growth Corridor Municipal Utility District.
TRD-8705989



RQ-1173. Request from Stan Schlueter, Chairman, House Ways and Means Committee, Austin, concerning whether an error or omission committed by a central appraisal district would permit the board of directors of a taxing unit to waive interest and penalties on a delinquent tax payment.
TRD-8705990



RQ-1174. Request from Larry R. Soward, Executive Director, Texas Water Commission, Austin, concerning whether a corporate guarantee given by the operator of a hazardous waste facility as a mechanism for demonstration of financial responsibility can be enforced if the owner or operator of a subsidiary corporation has signed a settlement agreement disclaiming liability.
TRD-8705992



RQ-1175. Request from Bill Baumann, Potter County Attorney, Amarillo, concerning whether the Amarillo Health Facilities Corporation is subject to the Open Meetings Act, Texas Civil Statutes, Article 6252-17.
TRD-8705993



RQ-1176. Request from Jo Ann Reeves, Executive Director, Texas Cosmetology Commission, Austin, concerning whether a holder of a cosmetology license is authorized to lease a portion of his facility to another licensee acting as his own employer, and related questions.
TRD-8705994



Opinions

JM-743 (RQ-885). Request from Gary Garrison, Ector County Attorney, Odessa, concerning the liability for medical costs of an individual in a county jail awaiting a hear-

ing for violation of parole conditions.

Summary of Opinion. Medical care for a parole violator incarcerated in a county jail pending a parole revocation hearing is the responsibility of the county under the provisions of the Code of Criminal Procedure, Article 104.002.

TRD-8705963



JM-744 (RQ-1027). Request from Kenneth H. Ashworth, Commissioner, Coordinating Board, Texas College and University System, Austin, concerning whether an institution of higher education is required to consider applications from all health maintenance organizations in determining what coverage to offer its employees.

Summary of Opinion. The Texas State College and University Employees Uniform Insurance Benefits Act, the Insurance Code, Article 3.50-3, requires an institution or agency subject to its provisions to consider applications to provide health care service from all health maintenance organizations approved by the state or federal governments.

TRD-8705964



JM-745 (RQ-1073). Request from Steve W. Simmons, District Attorney, El Paso, concerning whether a child protective services specialist for the Department of Human Services may be a foster parent for that agency.

Summary of Opinion. The question of whether a Department of Human Services child protective services specialist may serve as a foster parent is a question of fact that cannot be resolved in the opinion process.

TRD-8705965



JM-746 (RQ-1098). Request from Chet Brooks, Chairman, Committee on Health and Human Services, Texas State Senate, Austin, concerning obstetrical and post-natal services under the Indigent Health Care Act.

Summary of Opinion. Under the Indigent Health Care Act, Texas Civil Statutes, Article 4438f, a public hospital must provide to eligible residents medically necessary inpatient and outpatient health-care services. The determination of what specific services are medically necessary is a question of fact. A public hospital must continue to provide services it provided during the operating year that ended before January 1, 1985. In order to reduce the services it offers or to make its eligibility standards more restrictive, a public hospital must give notice and hold a public hearing in accordance with the Act, §13.02.

TRD-8705966



JM-747 (RQ-1000). Request from Robert W. Post, County Attorney, Cuero, concerning whether a commissioners court may call an election for the purpose of consolidating tax assessing and appraisal functions in the office of county tax assessor-collector.

Summary of Opinion. A commissioners court may not call an election for the purpose of consolidating tax assessing and appraisal functions in the office of county tax assessor-collector. The Tax Code, §6.26, permits an election for the consolidation of tax assessing and collecting only.

TRD-8705967



JM-748 (RQ-963). Request from Barry L. Macha, Criminal District Attorney, Wichita Falls, concerning the liability of a county for acts committed by members of a volunteer fire department.

Summary of Opinion. Counties are liable for the negligent acts of agents furnishing fire services pursuant to a contract authorized by Texas Civil Statutes, Articles 2351a-1 or 2351a-5, to the extent specified in the Texas Tort Claims Act. Incorporated volunteer fire departments furnishing such services pursuant to contract may be agents of the county in some circumstances. Counties are not liable for the intentional common law torts of agents furnishing fire protection service.

TRD-8705968



Open Records Decision

ORD-470 (RQ-1108). Request from James R. Raup, McGinnis, Lochridge & Kilgore, Austin, concerning availability under the Open Records Act, Texas Civil Statutes, Article 6252-17a, of information regarding the job performance of the principal of Crockett High School.

Summary of Decision. The Austin Independent School District received a request under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, for information related to a review committee's investigation of the job performance of the principal of Crockett High School. The district may withhold, in its discretion, the committee's report, summaries of the witnesses' testimony, and supporting documents submitted by the witnesses to the committee under the Act, §3(a)(11). The Open Records Act does not, however, prohibit the release of information protected only by §3(a)(11).

The district may not release information deemed confidential under the Open Records Act. A very small amount of the information at issue is protected by either §3(a)(1) or (14). Copies of the documents are marked accordingly.

TRD-8705969



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 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter V. Bingo Regulation and Tax

★34 TAC §3.544

The Comptroller of Public Accounts adopts on an emergency basis an amendment to an emergency amendment to §3.544, concerning definitions. The original emergency amendment was published in the May 8, 1987, issue of the *Texas Register* (12 TexReg 1486). The amendment amends the definition of bingo equipment and supplies.

The amendment is adopted on an emergency basis to allow licensed authorized organizations to purchase from

suppliers other than licensed manufacturers and distributors items generally furnished in the rental of a public hall, thus allowing the purchase of these items at the lowest available price, leaving more money available for use for charitable purposes.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Bingo equipment and supplies—Items used, made, or sold for use in bingo games.

(A) Bingo equipment and supplies include:

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

(iv) any other device, including a television monitor and display system, commonly used in the direct operation of the game.

(B) (No change.)

(C) **Bingo equipment also does not include furnishings generally provided in the rental of a hall regardless of whether or not bingo is conducted, such as:**

- (i) a television monitor system, a television camera, or a television set;
- (ii) a public address system; or
- (iii) tables and chairs.

Issued in Austin, Texas, on July 21, 1987.

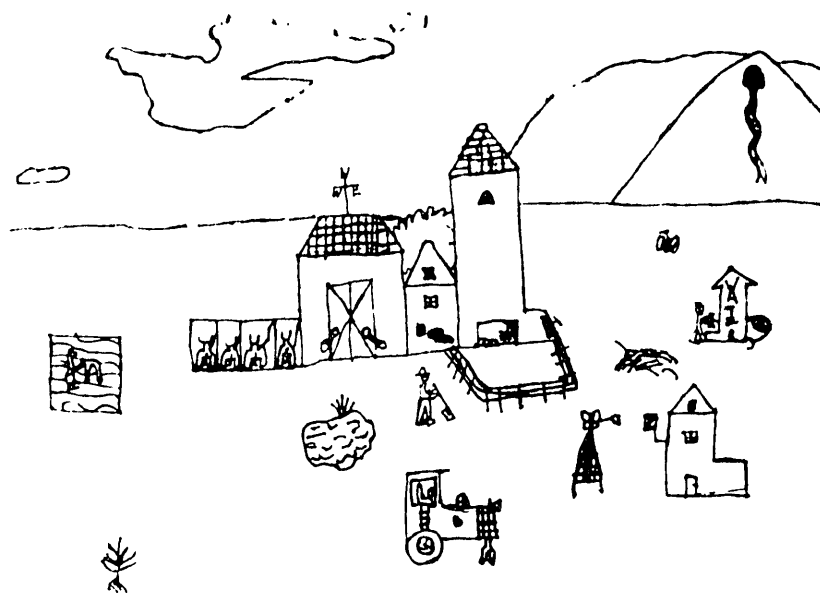
TRD-8706001

Bob Bullock
Comptroller of Public
Accounts

Effective date: July 21, 1987

Expiration date: September 1, 1987

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



Name: Matt Sterzinger
Grade: 4
School: Burton Hill Elementary, Ft. Worth

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 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas

Chapter 5. Transportation Division

Subchapter W. Registration of Commercial Carriers

★ 16 TAC §§5.501-5.506

The Railroad Commission of Texas proposes new §§5.501-5.506, concerning definitions, application for registration of commercial motor vehicles, liability insurance for commercial carriers, cab cards, cancellation of registration, and implementation. The new sections implement certain terms of Senate Bill 595 and House Bill 908 which were passed by the Legislature, 1987. The new sections provide for the registration of commercial motor vehicles by commercial carriers who were previously not regulated by the commission. The sections also provide for commercial carriers to register proof of liability insurance covering the carriers' commercial motor vehicles, and set the minimum amounts of insurance which cover those vehicles.

Ronald D. Stutes, hearings examiner, has determined that for each year of the first five years the sections as proposed will be in effect there will be fiscal implications as a result of enforcing and administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$3.5 million for 1988, \$3.961 million each year for 1989-1992; and an estimated increase in revenue of \$3.225 million for 1988, and \$4.5 million each year for 1989-1992. There will be no fiscal implications for local governments or small businesses.

Mr. Stutes 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 an improvement in the safety of commercial transportation operations which were previously not subject to commission regulation, and an increase in protection to the public who are involved in accidents with such vehicles by ensuring compensation for damages

suffered. The anticipated economic cost each year to persons required to comply with the sections as proposed is \$1.00 per commercial motor vehicle per year in registration fees, \$5.00 per commercial carrier per year in filing fees, and approximately \$100 per vehicle per year in increased insurance costs for those commercial carriers which do not already have the minimum levels of coverage.

The new sections require all operators of commercial motor vehicles to register those vehicles annually with the commission. Those operators would also be required to file proof of insurance with the commission in an amount determined by the size of vehicles operated. Commercial motor vehicles would be required to have a cab card in the vehicle when operating on the highways of the state. The registration would be revocable for violation of the rules of the commission.

The initial implementation of the new sections would require all commercial carriers to register their vehicles and file proof of the required level of insurance by February 1, 1988. Filings would be accepted beginning September 1, 1987.

Public comment is invited and may be submitted within 30 days to Ronald D. Stutes, Hearings Examiner, P.O. Drawer 12967, Austin, Texas 78711-2967.

The new sections are proposed under Senate Bill 595, 70th Legislature, 1987, signed by the governor on June 16, 1987, which provides the commission with the authority to register commercial motor vehicles; and House Bill 908, 70th Legislature, 1987, signed by the governor on June 16, 1987, which provides the commission with the authority to prescribe and register liability insurance for commercial motor carriers of property.

§5.501. Definitions.

(a) For the purposes of this subchapter, commercial motor vehicle shall mean any motor vehicle transporting property for a business purpose.

(b) For the purposes of this subchapter, commercial carrier shall mean any person or entity which operates or causes the operation of a commercial motor vehicle upon the public highways of the State of Texas.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the

following are not subject to the provisions of this subchapter:

(1) a contract carrier as defined in §5.04(a)(4) of this title (relating to Definitions);

(2) a motor carrier as defined in §5.04(a)(8)(B) of this title (relating to Definitions);

(3) a motor carrier as defined in §5.331 of this title (relating to Definitions);

(4) a motor carrier as defined in §5.371 of this title (relating to Definitions); and

(5) a carrier operating under an agricultural permit pursuant to subchapter X of this chapter (relating to Agricultural Permits).

§5.502. Applications for Registration of Commercial Motor Vehicles.

(a) Registration required. A commercial carrier shall not operate any commercial vehicle upon the public streets and highways of this state unless the commission has approved an application for the registration of such vehicle as prescribed by this subchapter. Each commercial carrier is responsible for the registration of all commercial motor vehicles used in its operations. A commercial carrier shall report to the commission any change in its operations prior to undertaking such changes by the filing of a supplemental application. A commercial carrier shall not operate any commercial motor vehicle without a valid cab card issued for that vehicle pursuant to §5.504 of this title (relating to Cab Cards).

(b) Form and execution of application. The application for the registration of such operation, and any supplemental application to report any change in operation, shall be in the form prescribed by the director. The application shall identify the name and principal business address of the commercial carrier, each commercial motor vehicle to be operated by or for the commercial carrier, and the information required by §5.503(b) of this title (relating to Liability Insurance for Commercial Carriers). The application shall be duly executed by an official of the commercial carrier.

(c) Filing of application. The application for the registration of such vehicles shall be filed with the Transportation Division, P.O. Drawer 12967, Austin, Texas 78711-2967.

(d) Equipment reports. Each commercial carrier shall identify all commercial motor vehicles used in the conduct of its operations by filing an equipment report prescribed by the director with the application. Each commercial motor vehicle shall be identified by its motor vehicle identification number, make, unit number, and gross vehicular weight. One registration number shall be assigned to all commercial motor vehicles registered by a single commercial carrier.

(e) Filing fee. The application shall be accompanied by a filing fee of \$5.00, plus a registration fee of \$1.00 for each vehicle registered. The fee shall be in the form of a check or money order made payable to the state treasurer of Texas.

(f) Incomplete applications. Any application for registration which is incomplete may be conditionally accepted by the director. Conditional acceptance shall in no way constitute approval of the application. The director will notify the applicant of the additional information necessary to complete the application. If the applicant does not supply all necessary additional information within 45 days, the application will be dismissed and the accompanying filing fee and registration fees will be retained by the state treasurer.

(g) Renewal of registration. Subject to the provisions of §5.506(c) of this title (relating to Implementation), registration of a commercial motor vehicle shall be effective for one year. To ensure timely renewal, all renewal applications should be received by the commission no later than 15 calendar days prior to expiration. Each commercial carrier will be assigned an annual date for renewal according to the last digit of the commercial carrier's registration number, as follows.

If the last digit is:	Renew before the first day of:
1	January
2	February
3	March
4	April
5	May
6	June
7	July
8	October
9	November
0	December

(h) Supplemental equipment report. When a commercial carrier which has commercial vehicles registered with the commission begins operating any commercial vehicle not currently registered, the carrier shall file with the commission a supplemental equipment report, and additional proof of insurance in the form set forth in §5.503(d) of this title (relating to Liability Insurance for Commercial Carriers). The supplemental equipment report shall be accompanied by a filing fee of \$5.00, along with a registration fee of

\$1.00. The director will issue a cab card with the carrier's existing registration number for each additional unit.

(i) Change of address. A commercial carrier shall notify the division of any change of address no later than the date of the change.

§5.503. Liability Insurance for Commercial Carriers.

(a) Filing required. Every commercial carrier shall file and maintain evidence of currently effective bodily injury and property damage liability insurance, in the amounts required by subsection (c) of this section, and such commercial carrier shall not operate any commercial motor vehicle upon the highways of this state unless the carrier has filed and the commission has accepted evidence, as prescribed by subsection (d) of this section, of currently effective insurance. Operation of a commercial motor vehicle over the public highways of this state without the appropriate insurance on file with the commission shall be a violation of this subchapter. Operation of a commercial motor vehicle over the highways of this state without the insurance coverage required by subsection (c) of this section shall be a violation of this subchapter.

(b) Application in connection with registration of commercial motor vehicles. The evidence of insurance required by this section shall be submitted with the application to register commercial motor vehicles required by §5.502 of this title (relating to Applications for Registration of Commercial Motor Vehicles).

(c) Minimum limits. The minimum amounts referred to in subsection (a) of this section are as follows.

(1) For commercial motor vehicles which are less than 10,000 pounds in gross vehicular weight, the minimum amount is \$100,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others.

(2) For commercial motor vehicles which are greater than 10,000 pounds in gross vehicular weight, but none which are greater than 26,000 pounds in gross vehicular weight, the minimum amount is \$300,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others.

(3) For commercial motor vehicles which are greater than 26,000 pounds in gross vehicular weight, the minimum amount is \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others.

(d) Proof required. The evidence of bodily injury and property damage liability insurance required shall be a sworn statement by an authorized agent of an insurance company holding a certificate of authority to transact such kinds of insurance business in

the State of Texas or by a surplus lines insurer approved by the State Board of Insurance. The cancellation of the policy of insurance which is the subject of the sworn statement may be effected only by the insurance company or the insured giving 30 days notice in writing to the commission. The 30 days notice period will be calculated from the date notice is actually received by the commission.

(e) Self insurance. Notwithstanding the provisions of subsections (a)-(d) of this section, a commercial carrier may be authorized to self insure for bodily injury and property damage liability in lieu of filing proof of insurance. The authorization for a commercial carrier to self insure may be granted on the same showings required of a motor carrier under the terms of §5.182 of this title (relating to Qualification as Self-Insurer).

(f) Suspension of Registration. If the insurance coverage on the operations of a commercial carrier with commercial motor vehicles lapses, the commercial carrier shall immediately cease all operations of commercial motor vehicles. The director shall notify the commercial carrier of the lapse, and that the commercial carrier's registration is subject to cancellation pursuant to the provisions of §5.505 of this title (relating to Cancellation of Registration).

(g) Additional filings and fee. Any additional proof of insurance filed with the commission shall be accompanied by a filing fee of \$5.00.

§5.504. Cab Cards.

(a) Form of cab card. The cab card referred to in this section shall be in the form prescribed by the director.

(b) Use of cab cards. The cab card shall be maintained in the cab of the commercial motor vehicle for which it was issued whenever the commercial motor vehicle is operated by, or for the commercial carrier identified on the cab card. The cab card shall not be used for any commercial motor vehicle except the vehicle for which it was originally issued.

(c) Inspection of the cab card. A cab card shall, upon demand, be presented by the driver to any authorized government personnel for inspection.

(d) Destruction of cab cards. Each commercial carrier shall destroy a cab card immediately upon its expiration or at the time the carrier discontinues use of a commercial motor vehicle for which a cab card has been issued. The commercial carrier shall notify the commission when it discontinues use of a registered commercial motor vehicle. If a new commercial motor vehicle is to be substituted for the discontinued vehicle, the same procedures shall apply as for the addition of a new vehicle.

(e) Alteration of cab card. Any erasure, alteration, or unauthorized use of a cab card shall render it void.

(f) Replacement of cab card. If a cab card is lost, destroyed, mutilated, or becomes

illegible, a new cab card may be issued under the same procedures as for the addition of a new vehicle.

§5.505. Cancellation of Registration.

(a) Conditions under which registration may be cancelled. The registration of a commercial carrier shall be subject to cancellation under any of the following conditions:

(1) failure to provide evidence of continuous insurance as required by §5.503 of this title (relating to Liability Insurance for Commercial Carriers);

(2) failure to maintain the required continuous insurance during the time the commercial carrier operates a commercial motor vehicle;

(3) violation of the Motor Carrier Act;

(4) violation of any rule or order of the commission.

(b) Notice of cancellation. No registration shall be cancelled or suspended without notice by certified letter, mailed to the commercial carrier's business address on file with the commission, setting a time and place for hearing at which any interested person may appear to show cause why the registration should not be cancelled.

(c) Surrender of cab cards, and cessation of operations. Upon issuance of a commission order cancelling or suspending a commercial carrier's registration under this section, the commercial carrier shall immediately return to the commission all cab cards issued to the commercial carrier. The commercial carrier shall concurrently cease all operations of commercial motor vehicles.

§5.506. Implementation.

(a) Registration.

(1) No commercial carrier shall be required to register its commercial motor vehicles, nor shall any commercial carrier be required to have cab cards in its vehicles prior to February 1, 1988. A commercial carrier may register the vehicles which it operates any time after September 1, 1987.

(2) Registration numbers will be randomly assigned to commercial carriers which originally register commercial motor vehicles before June 1, 1988. Commercial carriers which originally register commercial vehicles after June 1, 1988, will be assigned a registration number with the last digit according to the month in which the vehicles are registered, as follows.

If the month of initial registration is:	The last digit of the registration number will be:
January	1
February	2
March	3
April	4
May	5
June	6

July	7
August	7
September	8
October	8
November	9
December	0

(3) Incomplete applications filed prior to January 1, 1988, may be conditionally accepted by the director in accordance with the provisions of §5.502(d) of this title (relating to Application for Registration of Commercial Motor Vehicles). Notwithstanding the provisions of §5.502(d) of this title (relating to Application for Registration of Commercial Motor Vehicles), the incomplete application will not be returned before February 1, 1988.

(b) Insurance.

(1) No commercial carrier shall be required to file and maintain evidence of liability insurance prior to February 1, 1988. A commercial carrier may file evidence of liability insurance covering the commercial motor vehicles which it operates any time after September 1, 1987.

(2) The commission will not issue a cab card until the commercial carrier has registered the commercial motor vehicles which it operates, and has filed evidence of liability insurance.

(c) Initial renewal dates. The initial renewal date of the commercial carrier's registration shall be determined according to the last digit of the registration number, as follows.

If the last digit is:	Renew before:
1	January 1, 1989
2	February 1, 1989
3	March 1, 1989
4	April 1, 1989
5	May 1, 1989
6	June 1, 1989
7	July 1, 1989
8	October 1, 1988
9	November 1, 1988
0	December 1, 1988

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

Issued in Austin, Texas, on July 20, 1987

TRD-8705956 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
August 28, 1987
For further information, please call
(512) 463-7149.

TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part I. General Land Office
Chapter 11. Legal Division
Oil and Gas Leases, Mineral Classified Lands

★31 TAC §11.18

The General Land Office proposes new §11.18, concerning the requirement to drill wells offsetting commercially producing wells that are located within 1,000 feet of Relinquishment Act lands or are draining such lands.

This new section achieves uniformity between the administrative rules and recent amendments to the Natural Resources Code, §52.173, as enacted by the 70th Legislature in House Bill 2056.

Dan Miller, deputy commissioner for legal services, 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. Miller also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of the obligations of a lessee of Relinquishment Act lands and the conformity of the section with statute. 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 Dan Miller, Deputy Commissioner for Legal Services, General Land Office, Stephen F. Austin Building, Room 630, 1700 North Congress Avenue, Austin, Texas 78701.

The new section is proposed under the Texas Natural Resources Code, §31.051, which provides the commissioner with the authority to make and enforce rules consistent with the law.

§11.18. Offset Wells or Compensatory Royalty.

(a) An offset well shall be drilled by the lessee of Relinquishment Act lands when oil or gas is produced in commercial quantities from a well located within 1,000 feet of the leased Relinquishment Act land or in any case when such land is being drained. The lessee required to drill an offset well under this section shall begin in good faith and commence diligently the drilling of an offset well or wells on lands leased from the state within 100 days from the date of first production from the draining well or from the well located within 1,000 feet of the leased state land.

(b) Any offset well required under this section shall be drilled to a depth and in such

a manner as to prevent undue drainage of oil or gas from beneath the state land.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

(d) Upon written approval of the commissioner, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells required by this section. Compensatory royalties paid shall be at the royalty rate provided by the lease covering the state lands and shall be paid at the market value at the well of production from the well that is located within 1,000 feet of the leased state lands or that is draining the leased state land.

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

Issued in Austin, Texas, on July 22, 1987.

TRD-8706033 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption
August 28, 1987

For further information, please call
(512) 463-5009.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services Chapter 35. Pharmacy Services

The Texas Department of Human Services proposes the repeal of §§35.1-35.6, 35.101-35.102, 35.201-35.210, 35.301-35.302, 35.401-35.404, 35.501-35.504, 35.601-35.610, 35.701-35.710, 35.801-35.808, 35.901-35.904, 35.9801, 35.9803, and 35.9804 (comprising all of Chapter 35, Pharmacy Services); concerning administration; vendor applications; participation; hold procedure; medications, audits; pharmacy claims; reimbursement; limitations; the Texa Code Index—addition, retention, and deletion of drugs; and support documents; respectively. The agency also proposes new §§35.101-35.110, 35.201-35.205, 35.301-35.303, 35.401-35.408, 35.501-35.502, 35.601-35.610, 35.701-35.709, 35.801-35.804, and 35.9001, concerning participation; administration; medications; limitations, audits; reimbursement; pharmacy claims; the Texas Drug Code Index—addition, retention, and deletions; and support documents; respectively. In the new chapter, which concerns the Vendor Drug Program, the department is not proposing substantive changes; instead, the department is proposing to recodify and rearrange existing sections into a more logical order. The proposal includes some minor editorial changes for clarity.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed repeals and new sections will be in effect there will be no fiscal implications for state or local governments, or small businesses as a result of enforcing or administering the repeals and new sections.

Mr. Packard also has determined that for each year of the first five years the repeals and new sections are in effect the anticipated public benefit will be clearer and better organized department rules. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals and new sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-236, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

Subchapter A. Administration

★ 40 TAC §§35.1-35.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Resources, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.1. Covered Drugs.

§35.2. Standards For Tape Input Service Bureau Companies.

§35.3. Imprinters.

§35.4. Prescriber Identification Numbers.

§35.5. Evidence of Eligibility.

§35.6. Correspondence Concerning Vendor Drug Program.

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

Issued in Austin, Texas, on July 22, 1987.

TRD-8706010 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption:

November 2, 1987

For further information, please call
(512) 450-3766.

Subchapter B. Vendor Applications

★ 40 TAC §§35.101, §35.102

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human

Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.101. Application Forms.

§35.102. Contracts.

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

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Subchapter A. Participation

★ 40 TAC §§35.101—35.110

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.101. Requirements for Participation. Any pharmacy or pharmacist, who has a current license or registration with the Texas State Board of Pharmacy or is licensed under the laws of his respective state and is free from any pharmacy board restriction, may apply to become a provider in this program. Prescribing practitioners, who are authorized and licensed to practice the healing arts, as defined and limited by federal and state laws, and choose to provide their own pharmaceuticals, may also apply to become providers.

§35.102. Applications for Participation.

(a) Applications for participation are made to Vendor Drug Program Provider Enrollment, Texas Department of Human Services, P.O. Box 2960, Austin, Texas 78769.

(b) When an application is approved, the provider or his authorized representative must enter into a written contract with the department to acquire participating status. The provider is advised by letter of the effective date of his contract, his eligibility for the delivery fee add-on, and his vendor number. A contracted provider agrees to provide pharmaceutical services to Medicaid recipients in the same manner and to the same degree as they are provided to the general public.

§35.103. Confidentiality. The provider must not reveal to the public the identity of

any recipient of medical assistance. State law provides a criminal penalty for violation.

§35.104. *Access to Records.* On request, the provider must allow the department, the Texas Attorney General Medicaid Fraud Control Unit, and the Department of Health and Human Services staffs immediate access to the prescription files and to the drug acquisition records that pertain to the Title XIX Medical Assistance (Medicaid) Program for review or audit. These staffs must be given access to and a sample of the prescription files of the provider's non-Medicaid customers to determine the provider's usual and customary price. The identification of the prescription file may be removed. The provider must cooperate in regular reviews (general audits and utilization reviews) of the records of each recipient covered under the Medicaid Program.

§35.105. *Nondiscrimination.* The provider must provide services without discriminating on the basis of race, color, national origin, age, sex, or handicap.

§35.106. *Disclosure of Criminal Convictions.* On request, the provider must disclose to the department or to the United States Department of Health and Human Services the name of any person who has ownership or controlling interest in, or is an agent or managing employee of, the pharmacy when that person has been convicted of a criminal offense related to the person's involvement in any program under Title XVIII, XIX, or XX of the Social Security Act. The provider must also supply, on request, the ownership, management, control, and business transaction information required by 42 Code of Federal Regulations 455, Subpart B.

§35.107. *Termination of Participation.*

(a) The department reserves the right to reject any request for participation or to immediately terminate participation should the provider conduct his pharmaceutical practices in violation of the criteria of the Title XIX Vendor Drug Program, state or federal laws, or the ethics adopted by the profession.

(b) The department, on receipt of written request, provides a contract appeal to the provider if the department suspends or cancels the provider's participation in the program.

§35.108. *Provider Sanctions.*

(a) The department reserves the right to impose administrative sanctions on a provider who conducts his pharmaceutical practice in violation of the ethics adopted by the profession, any applicable federal or state laws, the criteria of the Vendor Drug Program, or the department's rules regarding fraud or abuse involving medical providers. Sanctions include, but are not limited to, termination or suspension from participation, suspension of payments, and recoupment of overpayments.

(b) On receipt of a written request, the department provides a contract appeal to a provider who has had department sanctions placed on him.

§35.109. *Definition of Placing a Pharmacy on vendor hold.* In the context of this chapter, the term "vendor hold" means detaining accrued vendor payments from the effective date of the hold until the release date.

§35.110. *Reasons for Placing a Pharmacy on Vendor Hold.* Reasons for placing a pharmacy on vendor hold are as follows:

(1) violation of the provisions of the Texas Title XIX Vendor Drug Program contract;

(2) failure to pay, within the allotted period of time, the amount of restitution as revealed by the audit of the pharmacy;

(3) request by the Office of the Investigator General, when that office is investigating a pharmacy for possible fraud;

(4) failure to renew the pharmacy's permit with the Texas State Board of Pharmacy;

(5) failure to file a required cost report. Failure by a provider who is required to file a cost report according to applicable instructions and within the prescribed time period results in a hold being placed on the provider's vendor payments. A hold remains in effect until all cost-reporting deficiencies are corrected. If the cost reporting deficiencies are not corrected within three months following the due date of the report, the contract of a provider required to file a cost report may be cancelled. The provider is notified of contract cancellation when this action is taken. Notice is considered to have been made as of the date of delivery to the United States Postal Service;

(6) failure to allow access to financial and other records. Failure by a provider to allow department representatives or the attorney general's Medicaid Fraud Control Unit staff access to financial and other records required to verify cost report information results in the provider's vendor payments being placed on hold. A hold remains in effect until access to the requested records is allowed. If access to the requested records is not provided within 31 days of the refusal, a contract of a provider required to file a cost report and selected for on-site audit may be cancelled. The provider is notified of contract cancellation when the action is taken.

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Subchapter C. Participation

★ 40 TAC §§35.201-35.203,
35.205-35.210

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections can be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.201. *Requirements for Participation.*

§35.202. *Applications for Participation.*

§35.203. *Termination of Participation.*

§35.205. *Access to Records.*

§35.206. *Non-Discrimination.*

§35.207. *Disclosure of Criminal Convictions.*

§35.208. *Confidentiality.*

§35.209. *Provider Sanctions.*

§35.210. *Retention of Eligibility Documents By the Provider.*

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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Subchapter B. Administration

★ 40 TAC §§35.201—35.205

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.201. *Covered Drugs.*

(a) Only those drugs listed in the latest edition of the Texas Drug Code Index

(TDCI) and supplements are covered by the program and are payable. Venosets, catheters, and other medical accessories are not covered and are not included when claiming for intravenous and irrigating solutions.

(b) Except for vitamins K and D3, fluoride for children, and products containing iron in its various salts, the department does not reimburse for vitamins and legend and nonlegend multiple ingredient anti-anemia products.

§35.202. *Pharmacy Services.* Under the Vendor Drug Program, pharmacy services include the dispensing to eligible recipients of covered legend and nonlegend drugs that appear in the latest revision of the Texas Drug Code Index and updates. If at least one legend drug (in therapeutic amount) is included in the ingredients, the Vendor Drug Program covers compounded prescriptions.

§35.203. *Prescriber Identification Numbers.*

(a) The department assigns a unique number to each of the prescribers appearing most frequently on the claims of each vendor.

(b) Vendors must write the identification number of the prescriber on each claim.

(c) If the prescriber has not been assigned a number, the vendor must write the complete name on the claim. The department assigns a number and advises the vendor.

§35.204. *Evidence of Eligibility.* Eligible individuals present the medical care identification card to the vendor each time a prescription is filled. Entries in the prescription record alert the pharmacist to the number of prescriptions a recipient has received in any given month.

§35.205. *Retention of Eligibility Documents by the Provider.* Providers must not hold a recipient's eligibility documents nor transfer those documents to another pharmacy, except on explicit instructions from the recipient or person authorized to act for the recipient. The provider must not require a recipient to leave eligibility credentials with the provider as a prerequisite for delivery of Medicaid services.

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Subchapter D. Hold Procedures

★ 40 TAC §§35.301, §35.302

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.301. *Definition of Placing a Pharmacy on Hold.*

§35.302. *Reasons for Placing a Pharmacy on Hold.*

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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Subchapter C. Medications

★ 40 TAC §§35.301-35.303

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.301. *Substitution of One Drug for Another in a Prescription.*

(a) Substitution is legal only if and when authorized by the prescribing physician.

(b) When generic equivalents are dispensed, the estimated acquisition cost of the drug used is claimed.

(c) Substitution authorization must be completely documented on the prescription.

§35.302. *Authorized Allotments.* Refills take precedence over new prescriptions, unless both the refill and the new prescription are in the same therapeutic category of drugs; in which case, the new prescription takes precedence. This principle is used in determining which prescription exceeds the authorized allotment.

§35.303. *Codeine Preparations.* State law requires that preparations containing codeine be dispensed only by prescription. Prepara-

tions that contain codeine are legend drugs for the purposes of the Texas Vendor Drug Program.

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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Subchapter E. Medications

★ 40 TAC §§35.401—35.404

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The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.401. *Substitution of One Drug for Another in a Prescription.*

§35.402. *Broken Prescriptions.*

§35.403. *Authorized Allotments.*

§35.404. *Codeine Preparations.*

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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Subchapter D. Limitations

★ 40 TAC §§35.401—35.408

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.401. *Availability of Funds.* The Vendor Drug Program is limited by the availability of appropriated funds. Services may be adjusted periodically depending on current availability of funds.

§35.402. *Prescription Requirements.*

(a) Payment for pharmaceuticals can be made only when these pharmaceuticals are prescribed by a practitioner licensed to prescribe legend drugs.

(b) The pharmacist must ensure that the original prescription conforms to the Texas State Board of Pharmacy rules concerning the records to be maintained by a pharmacy. To be reimbursed by the Vendor Drug Program, a prescription must be dispensed within 10 days of the date it is written. The date of issue is the first day. A signed prescription must be maintained in the dispenser's file and available for audit at any reasonable time. Telephone orders, where legal, must be documented in writing. The name of the prescribing physician and the signature of the dispensing pharmacist must be documented. If a pharmacy maintains prescription records in a data processing system, a hard copy of the prescription must be retained on file. The provider must conform to all regulations issued by the Drug Enforcement Agency and Texas State Board of Pharmacy concerning the recording of prescriptions in a data processing system.

(c) The dispensing pharmacist must date the prescription and initial the refills.

§35.403. *Number-of-Prescriptions Limit.* The number of prescriptions that each eligible recipient is entitled to receive each month, including new and refill prescriptions, is shown on the medical care identification card.

§35.404. *Refills.* As many as five refills may be authorized by the prescriber, but the total amount authorized must be dispensed within six months of the original prescription. Refills for controlled substances must conform to Drug Enforcement Agency and Texas State Board of Pharmacy rules. All refills are counted when determining compliance with the authorized refill limitation. In the absence of specific refill instructions, the prescription must be interpreted as not refillable. Refills are covered only when filled by the pharmacy where the original prescription was filled. If a prescription notes specific refill instructions, any future dispensings must be considered refills of the original prescription, unless the physician has been contacted for authorization to dispense a new supply of medication. If authorization is granted, a new and separate prescription is prepared.

§35.405. *Quantity Limitation.* The quantity of drugs prescribed depends on the prescribing practice of the physician and the needs of the patient. The Vendor Drug Program reimburses the provider for the prescribed quantity, provided the quantity does not exceed a six-month supply. The dispens-

ing of authorized refills must be consistent with the prescribed dosage schedule and existing federal and state laws. To be reimbursed by the Vendor Drug Program, a refill must be dispensed only after 75% of a previous dispensing of the same prescription would have been used if taken according to the accompanying doctor's orders. A recipient may obtain an early medication refill for a justifiable reason. A justifiable reason includes, but is not limited to, a dosage increase or an anticipated prolonged absence from the community. The reason must be noted on the prescription. Unless specific authorization is obtained from the physician, breakage, spillage, or loss of a medication are not considered justifiable reasons. The prescription obtained under this authorization is considered a new prescription.

§35.406. *Advertising.*

(a) No advertising is used to influence a recipient's free choice of a pharmacy and no advertising is used that, in the opinion of the department, is designed to or has the effect of promoting the volume of prescriptions provided under the Vendor Drug Program.

(b) Advertisements should convey only participation in the program.

(c) The sign supplied by the department may be used at the discretion of the pharmacy. Announcements of participation in the Vendor Drug Program may be made on radio, on television, in newspapers, or in the media. Bargains, premiums, or other considerations on prescriptions may not be advertised in any manner that would increase the provider's volume of Medicaid prescriptions.

§35.407. *Freedom of Choice.* Medicaid recipients may obtain pharmaceutical services from any qualified pharmacy that contracts with the department to provide services through the Vendor Drug Program.

§35.408. *Limitations on Provider Charges to Recipients.* A provider of Medicaid vendor drug services agrees to accept the vendor payment as payment in full for pharmaceutical services provided each recipient. The provider may neither charge nor take other recourse against Medicaid recipients, their family members, or their representatives for any claims denied or reduced by the department because of the provider's failure to comply with any department rule, regulation, or procedure.

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Subchapter F. Audits

★ 40 TAC §§35.501—35.504

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.501. *All Vendor Drug Providers in the Program or Subject to Audit.*

§35.502. *After Audit Procedures.*

§35.503. *Exception Notification.*

§35.504. *Investigations.*

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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Subchapter E. Audits

★ 40 TAC §§35.501, 35.502

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.501. *Vendor Drug Providers Subject to Audit.*

(a) All providers participating in the Vendor Drug Program are subject to periodic audit. When information from regional pharmacists or from computerized program management reports indicate a provider may have deviated from the standards of the Vendor Drug Program, an audit of that provider is considered top priority. When a provider withdraws from the program or there is a change in ownership, an audit of that provider also has high priority.

(b) Audits determine provider compliance with the program policies, procedures, and limitations outlined in these sections and the provider's contract. Data for transactions selected for audit are compared with data on the corresponding prescriptions. Erroneous payments and overpayments that occur because of noncompliance with program requirements are considered exceptions subject to restitution to the department.

(c) If a provider disagrees with the initial findings of an audit, the provider may present additional documentation to the department's auditor for review. Also, on written request, the department provides an informal audit review for a provider who wants to appeal audit exceptions and to present documentation not available at the time of audit. If the provider still disagrees and wants to appeal, the department, on receipt of a written request, provides a formal hearing according to department rules and regulations.

§35.502. Exception Notification. Vendor drug policy and audit staff advise the vendor by certified letter of the audit results, detailing the exceptions and requesting payment within 30 days. If restitution is not received within this time period, a vendor hold is placed on the payment of claims. If the vendor is no longer participating in the program, all unpaid claims are held and payments are placed on vendor hold until restitution is made. If no unpaid claims that can be held exist and restitution is not made, the case is referred to the attorney general's office for legal action.

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Subchapter G. Pharmacy Claims

★ 40 TAC §§35.601—35.610

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

- §35.601. *Overcharged Claims.*
- §35.602. *Claims for SSI Recipients.*
- §35.603. *Pharmacy Claim Form.*
- §35.604. *Rejected Claims.*
- §35.605. *Claim Adjustments.*
- §35.606. *Unacknowledged Claims.*
- §35.607. *Pharmacy Payment Register.*
- §35.608. *Pharmacy Claims Correction Report.*
- §35.609. *Pharmacy Claim Magnetic Tape Input.*
- §35.610. *Submittal of Special Claims.*

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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Subchapter F. Reimbursement

★ 40 TAC §§35.601—35.610

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.601. Legend and Nonlegend Medication. For all medication, legend and nonlegend, covered by the Vendor Drug Program and appearing in the Texas Drug Code Index (TDCI) and updates, the following requirements must be met.

(1) Reimbursement to the pharmaceutical provider is based on estimated acquisition cost (EAC), verifiable by invoice audit, plus the department's currently established dispensing fee per prescription, or the usual and customary price charged the general public, whichever is lower.

(2) Estimated acquisition cost is defined as wholesale estimated acquisition cost (WEAC) or direct estimated acquisition cost (DEAC), according to the pharmacist's usual purchasing source and the pharmacist's usual purchasing quantity, or as maximum allowable cost (MAC) for multisource products. All drug purchases from a central purchasing entity must be billed to the depart-

ment as direct purchases in the quantities purchased by the central purchasing agent. If the quantities are larger than those shown in the TDCI, the largest package size shown in the TDCI is used for billing and reimbursement purposes. The WEAC is established by the department using the current redbook or redbook update, less a percentage representing routine discounts received by pharmacists on wholesale drug purchases. The WEAC may not exceed wholesaler cost, as supplied by drug manufacturers, plus a percentage markup representing wholesaler operating costs and profits. The DEAC is established by the department using direct price information supplied by drug manufacturers. Providers are reimbursed only at the DEAC on all drug products that are available from select manufacturers/distributors who actively seek and encourage direct purchasing. The TDCI is used as the reference for drugs included in the scope of benefits and for allowable package sizes. No acquisition cost is billed to the department for samples dispensed.

(3) Reimbursement for nonlegend drugs is based on the usual and customary price charged to the general public or EAC, plus 50% of the EAC, whichever is lower. No dispensing fee is added to the price of nonlegend drugs, and 50% of the EAC may not exceed the assigned dispensing fee.

§35.602. Price Changes. Price changes for legend and nonlegend drugs are effective 30 days after receipt of the latest edition of the *redbook* or *redbook update* in the Office of Services to the Aged and Disabled, Vendor Drug Product Enrollment, Texas Department of Human Services.

§35.603. Nonlegend Drug Restrictions. Except insulin, nonlegend drugs are not reimbursed when dispensed to recipients in nursing facilities and other institutions where those drugs are included in the reimbursement formula. Also, these drugs may not be charged to a recipient or a person authorized to act for the recipient.

§35.604. Usual and Customary Price.

(a) The usual and customary price is the price the provider most frequently charges the general public for the same drug. If the department cannot determine a most frequent price, the median price is used. Items that the provider must consider when determining the usual and customary price include the following.

(1) The term "general public" does not include any person whose prescriptions are paid by third-party payors, including health insurers, governmental entities, and the Texas Medical Assistance (Medicaid) Program.

(2) When a discount is given (including, but not limited to, cash rebate, monetary price discount, coupon of value) or advertised for any segment of the general public, the discount must be included in the usual and customary price determination for Medicaid prescriptions if the Medicaid reci-

patient would otherwise have qualified as a member of that same segment of the general public. Some providers give discounts to non-Medicaid customers based on requirements similar to those specified in subparagraphs (A) and (B) of this paragraph. Providers must not use the following types of requirements as reasons to disqualify Medicaid recipients as members of the same segment of the general public receiving the discount:

(A) possessing or presenting a special identification card or document, or making a verbal request for a discount;

(B) paying for the prescription by a particular method.

(b) If a provider utilizes one pricing policy for cash recipient and a different pricing policy for charge recipient, the lower of the two pricing policies is the provider's usual and customary price.

(c) The provider must keep adequate records showing how the usual and customary charge to the general public was determined according to the requirements as stated in this section. On request, the provider must disclose the records to representatives of the following agencies: Texas Department of Human Services, Texas Attorney General's Medicaid Fraud Control Unit, and United States Department of Health and Human Services. The identification (name and address of non-Medicaid customers) may have been removed from these records. If the provider does not keep the records for the time period specified in his contract with the department, then the usual and customary price determination includes all discounts given or advertised by the provider, regardless of whether the Medicaid recipient would or would not have qualified as a member of the general public receiving the discount.

§35.605. *Texas Maximum Allowable Cost.*

(a) Multisource drugs included in the Vendor Drug Program's formulary, the Texas Drug Code Index (TDCI), are subject to Texas maximum allowable cost (TMAC) reimbursement limits. Multisource drugs are sorted into therapeutic categories based on the drug and strength, and in some cases, on the dosage form and package size. Drug products exempt from the drug substitution provisions of the Texas Pharmacy Act and drug products that the Federal Food and Drug Administration does not consider to be therapeutically equivalent to other pharmaceutically equivalent products are exempt from TMAC reimbursement limits. The department may choose to exempt other multisource drug categories from TMAC reimbursement limits.

(b) The TMAC reimbursement limit selected for each therapeutic category is determined using the wholesale estimated acquisition cost (WEAC) of all the drugs in the respective category. When a multisource drug is not available through a bona fide full-service drug wholesaler or is reimbur-

sable only on a DEAC basis, as defined by the department, then the direct estimated acquisition cost (DEAC) of that drug is included in the calculation of the TMAC reimbursement limit. The department retains the right to adjust the reimbursement limit in any category on an individual basis.

(c) The TMAC reimbursement limits are maximum reimbursement limits. If a pharmacy provider dispenses a drug with a WEAC or DEAC below the TMAC limit, reimbursement is made at the lower cost, based on the provider's source of purchase of the drug. If a drug is subject to both TMAC limits and federal maximum allowable cost limits, the lower of the two limits is the maximum reimbursement limit.

(d) A pharmacy provider that dispenses a drug that is subject to a TMAC limit, and bills the department for the service, must accept Medicaid reimbursement as payment in full. No additional dispensing fee or product cost amounts may be billed to the Medicaid recipient.

§35.606. *Brand-Name Drugs.*

(a) Physicians, who want to dispense a brand name on a prescription for a multisource drug with a maximum allowable cost, handwrites the phrase "brand necessary" on the face of the prescription. This procedure enables payment for the drug at the more expensive brand name estimated acquisition cost. To indicate this certification (override) on the pharmacy claim form, the provider must enter 6 in the block for the physician override. For telephone orders involving physician overrides, a written prescription must be obtained from the prescribing physician within 30 days from the time the order was placed.

(b) A physician override for a prescription is valid only for the life of the prescription. The life of a prescription is defined as the original dispensing and any authorized refills, not to exceed five refills or a six-month supply. The physician override cannot be forwarded or transferred to any other prescription for the same drug.

§35.607. *Reimbursement for Compounded Prescriptions.* Reimbursement for compounded prescriptions is based on estimated acquisition cost of the ingredients used, verifiable by invoice audit, plus the department's currently established dispensing fee per prescription or the usual and customary price charged to the general public, whichever is lower. There is no provision for a compounding fee over and above the dispensing fee.

§35.608. *Hospitals, Nursing Homes, and Government Institutions.* Government institutions, including tax-supported hospitals, are reimbursed on the basis of actual invoice cost, verifiable by audit, plus an assigned fee for medications dispensed to eligible recipients. Reimbursement is based on an agreement between the institution and the department.

§35.609. *Reimbursement to Hospitals and Physicians Who Dispense Drugs.* Reimbursements to licensed physicians who dispense their own drugs and to hospitals with outpatient pharmacies are based on actual invoice cost, verifiable by audit, plus a dispensing fee assigned by the department or the provider's usual and customary charge to the general public, whichever is lower.

§35.610. *Third-party Resources.* The Texas Vendor Drug Program assumes liability after Medicare or other third-party benefits are exhausted. Benefits available under the Texas Medical Assistance (Medicaid) Program are reduced to the extent that they are payable through other federal, state, or local program, insurance coverage, or third-party coverage to which the eligible recipient may be entitled, or to the extent coverage is provided under federal or state law. When these benefits are available, they are considered a resource. In agreement with the department, exceptions must be on an individual claim basis. Free benefits to recipients from other sources are considered a resource when determining what benefits, if any, are available under the Medicaid Program.

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Subchapter H. Reimbursement

★ 40 TAC §§35.701—35.710

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The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.701. *Legend and Non-legend Medication.*

§35.702. *Price Changes.*

§35.703. *Hospitals, Nursing Homes, and Government Institutions.*

§35.704. *Brand-Name Drugs.*

§35.705. *Reimbursement to Hospitals and Physicians Who Dispense Drugs.*

§35.706. *Reimbursement for Compounded Prescriptions.*

§35.707. *Third Party Resources.*

§35.708. *Usual and Customary Price.*

§35.709. *Nonlegend Drug Restrictions.*

§35.710. *Texas Maximum Allowable Cost.*

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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Commissioner
Texas Department of
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For further information, please call
(512) 450-3766.



Subchapter G. Pharmacy Claims

★ 40 TAC §§35.701—35.709

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.701. *Pharmacy Claims Form.*

(a) To receive payment from the department, the provider must complete and submit a pharmacy claim. A separate form or entry is submitted for each prescription or refill. Providers submitting claims on the pharmacy claim form furnished by the department must also complete and include one pharmacy claims transmittal card in each packet of pharmacy claims sent to the department. For the original dispensing and each subsequent refill, the provider indicates on the prescription the price and reimbursement method (wholesale estimated acquisition cost, direct estimated acquisition cost, or maximum acquisition cost) and Texas Drug Code Number, which is submitted to the department on the corresponding pharmacy claim. All criteria for pharmacy claims set forth in the pharmacy claim instructions apply to the information required on magnetic tape input. All tape service bureaus and vendors generating their own tapes must use the department's magnetic tape format. Claims may be submitted on magnetic tape through an approved tape service or approved vendor's magnetic tape system. Claims submitted over 60 days after the date of service are rejected. For claims on behalf of an individual who has applied for Medicaid coverage but has not yet been assigned

a recipient number on the date of service, the filing period does not commence until the date the individual has been assigned a number. The requirements in §35.402 of this title (relating to Prescription Requirements) are also waived for retroactive claims. The provider must ensure, however, that a prescription for a prior eligibility claim conformed to Texas State Board of Pharmacy regulations on the date of service, or a claim cannot be submitted.

(b) Quantity of drugs, as prescribed by the physician, always must be entered in the pricing unit box. The quantity shown as the pricing unit must be calculated after referencing the pricing unit shown in the Texas Drug Code Index. When the drug is dispensed in the original package intended for a single prescription, pricing unit is the quantity of the original package.

(c) The completed pharmacy claim must be submitted to the department with a pharmacy claims transmittal card.

(d) If all necessary information is not supplied, a claim cannot be processed or paid.

§35.702. *Overcharged Claims.* Overcharged prescription claims are not returned to the provider. The appropriate drug cost (wholesale estimated acquisition cost, direct estimated acquisition cost, or maximum allowable cost) listed in the computer drug file, plus the provider's assigned dispensing fee is paid. The amount claimed and the amount paid are shown on the payment register.

§35.703. *Rejected Claims.* If the department rejects claims because of errors, the pharmacy provider must return the corrected claims not later than 120 days after the date of service. The department does not pay claims returned after the 120-day time period.

§35.704. *Claim Adjustments.* The pharmacy provider must use the pharmacy claims billing request form to claim an adjustment for an overpayment or underpayment of a pharmacy claim. The provider must claim an adjustment within 120 days of the date on the pharmacy payment register.

§35.705. *Unacknowledged Claims.*

(a) The pharmacy provider must use the pharmacy claims billing request form to request research on claims for which the provider has received neither payment nor rejection notice.

(b) The pharmacy provider cannot use the pharmacy claims billing request form for claims originally sent via magnetic tape. Research on these claims must be through the tape service bureau. The pharmacy provider must request research on unacknowledged claims within 120 days of the date of service.

§35.706. *Pharmacy Claims Correction Report.*

(a) Claims returned to the provider with the pharmacy claims correction report

must be corrected and returned to the department within 30 days of the date of the report.

(b) The corrections may be made on the pharmacy claims that were returned or on a new form. When the corrections are made on a new form, both the original and the new claim must be submitted to the department.

(c) When a pharmacist returns a corrected pharmacy claim to the department, he must send a pharmacy claims transmittal card and write the words "corrected claims" on it.

§35.707. *Submission of Special Claims.*

(a) The pharmacy claims billing request is used to submit claims for prescriptions involving an excessive quantity, price, or dosage. These must be submitted within 60 days of the date of service. The form is also used to submit prior eligibility claims and to submit claims for compounded prescriptions. Compounded prescriptions must be approved by the department's regional pharmacist before payment.

(b) If filing of claims has been delayed more than 60 days pending department approval of Medicaid eligibility, the provider must enter the following statement on the explanation line on the form, "Retroactive Medicaid eligibility established—please waive claim filing deadline."

§35.708. *Pharmacy Claim Magnetic Tape Input.*

(a) The department has approved certain tape service bureaus to submit vendor drug claims on magnetic tape. All criteria for claims in the pharmacy claim instructions apply to the information required for magnetic tape input. All tape service bureaus and vendors generating their own tapes must adhere to the department's magnetic tape format.

(b) For each entry, the provider must supply the tape service bureau with correct information on the recipient's name and identification number, days supply, drug code, drug quantity, prescription number, prescription date, date of service, refills authorized, physician's identification number, physician's override if applicable, wholesale override if applicable, and the usual and customary price to the general public. The tape service bureaus may not determine the price nor change the usual and customary price as supplied by the provider.

§35.709. *Standards for Tape Input Service Bureau Companies.*

(a) Tapes must be received in the department's Pharmacy Claims Section before a designated time of the week to have claims processed for the next scheduled payment. The tapes are dated in the Pharmacy Claims Section, and a receipt is written. If the service bureau company wants to reuse the tapes, the service bureau company or representative leaves a receipt with Pharmacy Claims Section staff when picking up the tapes.

(b) The tape input service bureau must submit a listing of the company's input for each week. The format generally follows the payment register format. Additionally, there must be a summary, by vendor, of the total number of claims (per page, per tape and total input) and dollar amount. The weekly listings are in vendor number order.

(c) In computer programs, service bureau companies provide the correct numeric Texas Drug Code for all drugs and package sizes covered by the Texas Drug Code Index and updates. Use of a single code to cover a similar drug of several manufacturers is not permitted because the variation in estimated acquisition cost.

(d) Sequential numbers must be used by a service bureau company on claims, beginning with number one to infinity, so that claims can be referenced and located, researched, and audited by the department. The sequential number assigned claims by the service bureau company serve as the preprint number on the pharmacy claim form.

(e) Each service bureau company must handle its vendors' corrections. The service bureau must have a program in its processing system that allows it to recycle corrected claims. Dual input by a pharmacy provider, partially by tape and partially by use of the pharmacy claim form, must be avoided.

(f) Each week each service bureau company must submit an updated list of the vendors participating in its processing system. The Pharmacy Provider Enrollment section must be notified of participation of new vendors and cancellation of previous vendors. Specific beginning and ending dates for participating vendors must be included in the notification. The Pharmacy Provider Enrollment section must also be supplied with a copy of the contract between the service bureau company and its vendors.

(g) The Pharmacy Provider Enrollment section sends tape record layout format to potential contractors to ensure that the tape record layout conforms with the requirements of the Office of Information Systems.

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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Subchapter I. Limitations

★ 40 TAC §§35.801—35.808

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.801. *Availability of Funds.*

§35.802. *Prescription Requirements.*

§35.803. *Number-of-Prescriptions Limit.*

§35.804. *Refills.*

§35.805. *Quantity Limitation.*

§35.806. *Pharmacy Services.*

§35.807. *Advertising.*

§35.808. *Freedom of Choice.*

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Subchapter H. Texas Drug Code Index—Additions, Retentions, and Deletions

★ 40 TAC §§35.801—35.804

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.801. *Application for Addition of Drugs to the Texas Drug Code Index.*

(a) Any drug company may submit an application to the department for addition of a drug not currently listed in the Texas Drug Code Index (TDCI). Drug companies include any manufacturer, own label distributor, or relabeler.

(b) The drug company must complete the application form provided by the department. All questions on the form must be answered and all statements must be complete.

For a multisource drug, the drug company may reference the actual manufacturer's data, if the manufacturer's drug is listed in the TDCI.

(c) Sources other than drug companies may request the addition of a drug not currently listed in the TDCI. If the request is not from a drug company, the department requests the manufacturer to submit an application as described in subsection (b) of this section.

(d) The drug company and other sources, if applicable, are entitled to receive notification of approved or denied applications. If the application has been denied, the department states the reasons for the denial.

§35.802. *Review and Evaluation.*

(a) The department reviews each application to determine the need for a drug to be added to the Texas Drug Code Index. In determining need, the department considers the following:

(1) expansion of the prescriber's armamentarium by a new drug or an additional multisource drug;

(2) availability of the drug to pharmacies in Texas, as evidenced by current use of the drug by 10% of the providers in the Vendor Drug Program;

(3) the cost of the drug to pharmacies compared to:

(A) wholesale estimated acquisition cost (WEAC) or direct estimated acquisition costs (DEAC) listed in the *Redbook* (Annual Pharmacists' Reference); and

(B) other generically equivalent drug products.

(b) The department may deny an application for any of the following reasons:

(1) discovery of false or erroneous information or documentation on the application form;

(2) failure of the drug company to provide the department with documentation of the:

(A) approved New Drug Application (NDA) or Abbreviated New Drug Application (ANDA), if applicable;

(B) Food and Drug Administration (FDA) approval for marketing; or

(C) compliance with regulations in Current Good Manufacturing Practice for Pharmaceuticals (21 Code of Federal Regulations Part 211), if subparagraph (A) or (B) does not apply;

(3) failure of the drug company to provide the department with the National Drug Code (NDC), as defined by and filed with FDA, for the drug product as shown on the drug product container sold to the pharmacy;

(4) failure of the drug company to provide the department with the current DEAC to a pharmacy, cost to a wholesaler, or estimated wholesale cost to a pharmacy. The allowable WEAC and DEAC are the costs to a pharmacy, as determined by review of published or nonpublished prices resulting from routine marketing practices;

(5) determination that the drug is

included in one or more of the following classes:

- (A) amphetamines and obesity control drugs;
- (B) appliances;
- (C) cosmetics;
- (D) DESI-ineffective products;
- (E) diagnostic aids;
- (F) durable medical equipment (rental or purchase);
- (G) elastic stockings;
- (H) experimental drugs;
- (I) fertility drugs;
- (J) first aid supplies;
- (K) foods, food supplements, or additives;
- (L) immunizing agents;
- (M) irrigating sets;
- (N) IV sets;
- (O) medical devices;
- (P) medical supplies;
- (Q) oxygen;
- (R) products unsuitable for use outside of physician offices or health care facilities;
- (S) shampoos, unless medicated for parasite control;
- (T) skin lotions and creams (nonlegend cosmetic types);
- (U) soaps and soap substitutes;
- (V) supports and suspensories;
- (W) syringes and needles;
- (X) unit-dose or convenience packaging; and
- (Y) vitamin and hematinic combinations; or

(6) lack of need according to the considerations listed in subsection (a)(1), paragraphs (2) and (3) of this section.

§35.803. Resubmittal of a Denied Application.

(a) If an application for an addition is denied, the drug company may request reconsideration of the decision, unless the denial is based on the criteria in §35.802(b)(5) of this title (relating to Review and Evaluation). The request is presented to the formulary advisory subcommittee for reconsideration and recommendation. The department, however, retains the right to make the final decision.

(b) If an application or a request for reconsideration of an application for an addition is denied, the drug company may not resubmit the application for six months. The department, however, may reconsider a denied application during the six-month period.

§35.804. Retention and Deletion of Drugs.

(a) The department reviews the TDCI to evaluate the need for retaining or deleting drugs according to the following criteria.

(1) The department may delete a drug if the drug company fails to submit, on request, documentation of approval of:

- (A) an NDA;
- (B) an ANDA; and
- (C) any amendments to both applications.

(2) The department may delete a drug if the drug company fails to remove from pharmacies any drug recalled by the FDA. A drug may be deleted if the drug company fails to meet other federal requirements. If the drug company repeatedly fails to meet FDA or other federal requirements, the department may delete all drugs manufactured by the company.

(3) The department may delete a drug if the drug company fails to provide the department the current drug costs. This includes the direct estimated acquisition cost (DEAC) to a pharmacy, the cost to a wholesaler, and the wholesale estimated acquisition cost (WEAC) to a pharmacy. If the department retains a drug for which the cost was not reported, the department establishes the cost. The allowable WEAC and DEAC are the costs to a pharmacy, as determined by review of published or nonpublished prices resulting from routine marketing practices.

(4) The department may delete a drug for which no claims or a minimal number of claims have been received during the last 12 months. Deletion of the drug is based on the criteria in §35.802(a) and (b) of this title (relating to Review and Evaluation).

(5) The department deletes a legend drug if the same drug becomes available as an over-the-counter drug.

(6) The department may delete drugs not yet proven effective by the FDA.

(7) Effective on notification, the department deletes discontinued or permanently recalled drugs. This provision applies to:

- (A) drugs permanently recalled by the manufacturer;
- (B) drugs permanently recalled by the FDA; and
- (C) drugs no longer manufactured.

(8) The department deletes drugs for which federal matching funds are no longer available. Federal matching funds are not available for:

- (A) drugs determined to have been manufactured, packaged, or distributed in violation of, or not according to, current good manufacturing practice for pharmaceuticals or other current regulations;
- (B) drugs for which notice of opportunity for hearing has been published in the *Federal Register*.

(b) If a drug is deleted, the drug company is entitled to be notified and given an opportunity to request reconsideration of the decision, unless the deletion is based on criteria in subsection (a)(5)-(8) of this section. The department presents the request to the formulary advisory subcommittee for reconsideration and recommendation. The department, however, retains the right to make the final decision.

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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(512) 450-3766.

◆ ◆ ◆

Subchapter J. Texas Drug Code Index

★ 40 TAC §§35.901—35.904

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Human Services, 701 West 51st Street, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.901. Application for Addition of Drugs to the Texas Drug Code Index.

§35.902. Review and Evaluation.

§35.903. Resubmittal of a Denied Application.

§35.904. Retention and Deletion of Drugs.

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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◆ ◆ ◆

Subchapter U. Support Documents

★ 40 TAC §35.9001

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.9001. Reimbursement Methodology for the Pharmacy Dispensing Fee.

(a) Introduction.

(1) The Texas Department of Human Services reimburses contracted Medicaid pharmacy providers on a cost-related basis for prescription dispensing services and drug products provided to Medicaid recipients. This is accomplished through assignment of a dispensing fee for each prescription. The dispensing fee is determined after analysis of statewide financial and statistical information regarding the total cost of dispensing prescriptions.

(2) The methodology for determining the dispensing fee is based on the projected statewide average dispensing expense and the opportunity for profit for each prescription. The average dispensing expense is determined by applying the cost-finding methodology; the opportunity for profit is based on the total cost of the transaction to the provider. The cost-finding methodology provides for the gathering of financial and statistical information from providers in a consistent manner. Cost finding includes adjusting and recasting expense data to yield reasonable and reliable dispensing expenses for each provider. These dispensing expenses are projected from the various provider reporting periods to a future dispensing fee period with a projected dispensing expense per prescription calculated for each provider. The current statewide average dispensing expense has been determined to be \$3.26.

(b) Cost reporting.

(1) Cost reports. Financial and statistical information reflecting the operations of pharmacy providers in dispensing prescriptions is obtained from annual cost reports. The format and content of the annual cost report are prescribed by the department.

(A) Number of cost reports required each year for dispensing expense cost-finding determination. A sufficient number of cost reports are required each year to ensure statistical validity in cost-finding and dispensing expense determination. Cost reports are not required of hospital pharmacies.

(B) Providers required to file cost reports each year. A provider who has dispensed an average of at least 200 Medicaid prescriptions per month in its base period is required to file a cost report each year. (The base period is a 12-month period ending three months before the end of the provider's fiscal year.)

(C) Providers who are subject to an on-site audit. Providers required to file cost reports are subject to on-site audit of the information submitted on the cost report. The provider is required to make available financial and other records necessary for audit verification of reported information.

(D) Notice to provider to file a cost report. Providers required or selected to file a cost report are notified to file at least three months in advance of the due date of the cost report. Notice is considered to have been made as of the date of delivery to the

United States Postal Service.

(E) Statistical information required for each provider.

(i) Each provider is required to notify the department of its fiscal year used for federal income tax purposes when requested and to notify the department immediately when it changes its fiscal year.

(ii) Each provider is required to furnish the total number of prescriptions dispensed in its last fiscal year when requested by the department.

(iii) Each provider is required to furnish other operational information that the department determines is relevant to the cost-finding and expense determination process.

(2) Allowable costs. Generally, expenses incurred in the legal, normal conduct of business affairs are considered to be allowable costs. In this section, it is assumed that each transaction occurs at arm's length in a free and open market between a willing buyer and a willing seller with each seeking to maximize income. Exceptions are described in paragraph (3) of this subsection.

(3) Unallowable costs. The following list is not intended to include all possible unallowable costs. It is, rather, intended to be a general guide to unallowable costs that may not be considered in the cost-finding process.

(A) Unallowable costs to be adjusted by the department in the cost-finding process.

(i) Expenses which result from purchases of services, facilities, and supplies from organizations and parties related to the provider by common ownership or control, or by consanguinity or marriage. These expenses are adjusted to allowable costs (which are limited to the lower of reported and accrued expense), cost to the related organization, or price in the open market.

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

(I) Related to provider—The provider, to a significant extent, is associated or affiliated with the organization furnishing the services, facilities, or supplies. Related to provider also means that an owner, partner, stockholder, officer, or director is related by consanguinity or marriage to an individual providing services to the provider.

(II) Common ownership—Exists when an individual directly or indirectly possesses a significant ownership or equity interest in the provider and the related organization.

(III) Control—Exists where an individual or an organization has the power, directly or indirectly, to influence or direct the actions or policies of a related organization as well as the provider.

(B) Unallowable costs not to be included in cost finding. Unallowable costs not to be included in cost finding as reimbursable expenses of dispensing (dispensing

expenses do not include the cost of drugs) are:

(i)* advertising, except advertising required to meet statutory or regulatory requirements and to recruit employees;

(ii) allowance for bad debts;

(iii) business expenses not related to the dispensing of prescriptions;

(iv) depreciation and amortization; goodwill, noncompetitive agreements, and covenants; and unallowable items;

(v) discounts; including but not limited to cash, trade, quantity, and rebate from purchases of items used in dispensing activities. (Drug discounts are not a part of dispensing activities for dispensing expense determination purposes.);

(vi) dues; including but not limited to country clubs, private clubs, social clubs, and service clubs, except professional or business association dues;

(vii) entertainment expenses, except bona fide employee benefits;

(viii) fees from corporation or association board of directors; filing fees from limited partnership; and filing fees from a corporation;

(ix) insurance for unallowable items;

(x) interest for unallowable items;

(xi) personal expenses not related to the dispensing of prescriptions;

(xii) political contributions;

(xiii) travel, except expenses for transportation, meals, lodging, and registration fees to attend programs in the United States providing curricula directly related to drug therapy and usage which improve skills in the practice of pharmacy. (Prescription delivery expenses are allowable.) and;

(xiv) vacation expenses, except bona fide employee benefits.

(c) Method for determining the total transaction cost for each prescription. The total cost to the provider for each transaction is determined by adding the statewide average dispensing expense to the estimated acquisition cost (EAC) of the drug product.

(d) Dispensing fee determination. When determining the dispensing fee for each prescription transaction, the total transaction cost is divided by .945, and the result is reduced by the EAC. This methodology results in a 5.5% opportunity for profit on the selling price and yields a consistent profit margin on each transaction. The methodology does not intend to limit the actual profit of a particular provider.

(1) A provider offering and providing no-charge prescription delivery service to all Medicaid recipients requesting the service. An additional incentive, paid on each prescription transaction, may be allowed for providers who provide free prescription delivery services. The amount of this incentive is determined by the board of the Department of Human Services. On-site verification of no-charge delivery services is con-

ducted periodically by department staff. Providers must notify the department within 30 days of the date no-charge delivery services are added or deleted. An overpayment to a provider resulting from failure to report deletion of delivery services is recouped beginning with the 31st day after deletion of the service.

(2) Recoupment and appeals. An overpayment to a provider resulting from the use of an incorrect assigned fee is recouped. Appeals are resolved according to established procedures of the department.

(3) Exceptions to standard dispensing fees; hospital pharmacies. Hospital pharmacies are assigned a dispensing expense determined by multiplying the statewide average dispensing expense by five-tenths (0.5). The total transaction cost and the dispensing fee determinations are calculated as indicated in subsections (c) and (d) of this section. The reduced dispensing expense is used in lieu of the statewide average dispensing expense on each transaction. Hospital pharmacies are not eligible for the incentive paid for no-charge delivery.

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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Subchapter UUUU. Support Documents

★ 40 TAC §§35.9801, 35.9803, 35.9804

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The repeals are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§35.9801. *Contract Agreement.*

§35.9803. *Pharmacy Evaluation and Classification Form 707.*

§35.9804. *Reimbursement Methodology for the Pharmacy Dispensing Fee.*

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

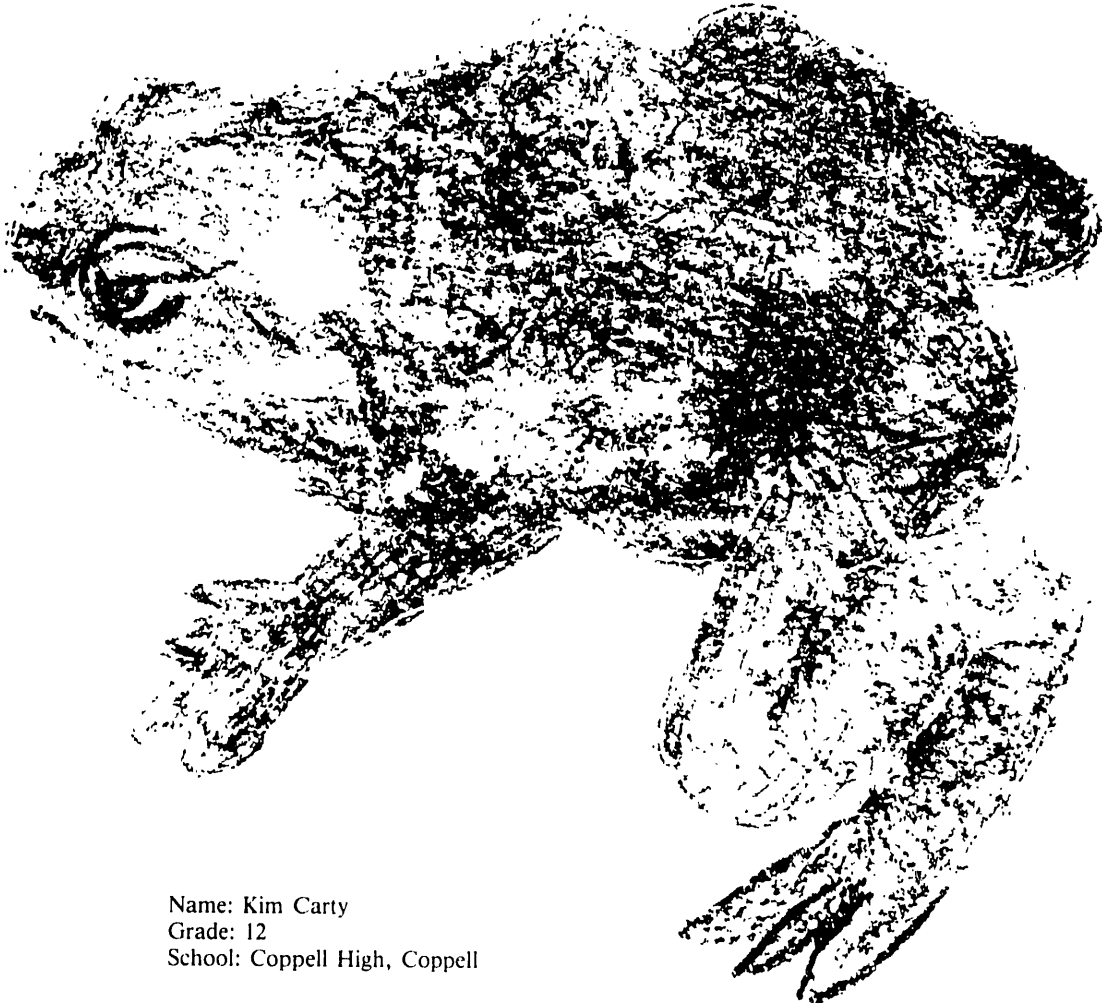
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Withdrawn

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

★ 25 TAC §§229.141-229.149

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed repeals, concerning synthetic narcotic drugs in the treatment of drug dependent persons. The text of the proposed repeals appeared in the February 6, 1987, issue of the *Texas Register* (12 TexReg 386). The effective date of this repeal is July 21, 1987.

Issued in Austin, Texas, on July 20, 1987.

TRD-8706004 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of
Health

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For further information, please call
(512) 458-7248.



Subchapter B. Permit and Application

★ 25 TAC §§229.281-229.289

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new sections, concerning permit and application requirements to insure the proper use of synthetic narcotic drugs in the treatment of drug dependent persons. The text of the proposed new sections appeared in the February 6, 1987, issue of the *Texas Register* (12 TexReg 388). The effective date of this withdrawal is July 21, 1987.

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Subchapter D. Operating Rules

★ 25 TAC §§229.321-229.324

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new sections, concerning operating rules to insure the proper use of synthetic narcotic drugs in the treatment of drug dependent persons. The text of the proposed new sections appeared in the February 6, 1987, issue of the *Texas Register* (12 TexReg 393). The effective date of this withdrawal is July 21, 1987.

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Subchapter A. General Provisions

★ 25 TAC §§229.271-229.273

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new sections, concerning the proper use of synthetic narcotic drugs in the treatment of drug-dependent persons. The text of the proposed new sections appeared in the February 6, 1987, issue of the *Texas Register* (12 TexReg 387). The effective date of this withdrawal is July 21, 1987.

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(512) 458-7248.



Subchapter C. Conditions of Operation

★ 25 TAC §§229.301-229.312

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new sections, concerning conditions of operation to insure the proper use of synthetic narcotic drugs in the treatment of drug dependent persons. The text of the proposed new sections appeared in the February 6, 1987, issue of the *Texas Register* (12 TexReg 391). The effective date of this withdrawal is July 21, 1987.

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Subchapter E. Hospital Methadone Detoxification Services

★ 25 TAC §§229.331-229.334

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new sections, concerning hospital methadone detoxification services to insure the proper use of synthetic narcotic drugs in the treatment of drug dependent persons. The text of the proposed new sections appeared in the February 6, 1987, issue of the *Texas Register* (12 TexReg 400). The effective date of this withdrawal is July 21, 1987.

Issued in Austin, Texas, on July 20, 1987.

TRD-8706009 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of
Health

Filed: July 21, 1987
For further information, please call
(512) 458-7248.



Adopted

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

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

TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers Chapter 131. Practice and Procedure

Examinations

★22 TAC §131.101

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.101, without changes to the proposed text published in the June 12, 1987, issue of the *Texas Register* (12 TexReg 1898).

The amendment makes the section consistent with the wording in the Texas Engineering Practice Act, §14(a), as amended by Senate Bill 604, 70th Legislature, 1987, which requires the applicant to pay the established examination fee for each exam scheduled.

The amendment establishes the requirement that an applicant who is approved to take examinations for registration must pay for each exam scheduled, and that the fee is established by the board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on July 20, 1987.

TRD-8705997

Kenneth J. Bartosh, P.E.
Executive Director
Texas State Board of
Registration for
Professional
Engineers

Effective date: September 1, 1987
Proposal publication date: June 12, 1987
For further information, please call
(512) 440-7723.

★22 TAC §131.138

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.138, with changes to the proposed text published in the June 12, 1987, issue of the *Texas Register* (12 TexReg 1898).

The amendment makes the section consistent with the wording of the Texas Engineering Act, §15, as amended by Senate Bill 605, 70th Legislature.

The amendment clarifies language in the initial paragraph of the section, establishes clear guidelines for the proper sealing of engineering documents, and deletes vague language.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.138. *Engineers' Seals.* Seals of two different sizes will be acceptable, a pocket seal, the size commercially designated as 15/8 inch seal, or a desk seal, commercially designated as a two-inch seal, to be of the design shown as follows:



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

(8) The registrant shall affix his seal, sign his name, and place the date of execution, only on engineering documents that have been issued by the registrant as completed work. Such documents should be accepted by clients for their purposes and/or by public authorities for final approval or issuance of a permit. Documents considered as incomplete by the registrant may be released temporarily for interim review and do not need to have the registrant's seal or signature affixed, but shall be dated; bear the responsible engineer's name, serial number, and professional engineer designation; and be clearly stamped to indicate the documents are for interim review and not intended for construction, bidding, or permit purposes. The use of signature reproductions, such as rubber stamps, or computer generated or other facsimiles shall not be permitted in lieu of actual signatures.

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

Issued in Austin, Texas, on July 20, 1987.

TRD-8705998

Kenneth J. Bartosh, P.E.
Executive Director
Texas State Board of
Registration for
Professional
Engineers

Effective date: September 1, 1987
Proposal publication date: June 12, 1987
For further information, please call
(512) 440-7723.

Professional Conduct and Ethics

★22 TAC §131.152

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.152, with changes to the proposed text published in the June 12, 1987, issue of the *Texas Register* (12 TexReg 1899).

The amendment clarifies the conditions under which an engineer may use the work of another engineer.

The amendment provides better clarification governing the conditions under which an engineer may use the work of another.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.152. *Independent Professional Judgment.*

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

(j) The engineer shall submit to a client only that work (plans, specifications, reports, etc.) done by him or under his responsible supervision; however, an engineer, as a third party, may complete, correct, revise, or add to the work of another engineer when engaged to do so by a client, provided:

(1) the client furnishes the documentation of such work submitted to him by the first engineer;

(2) the first engineer is notified in writing by the second engineer of the engagement referred to in paragraph (1) of this subsection immediately upon acceptance of the engagement; and

(3) any work completed, corrected, revised, or added to shall have a seal affixed by and become the responsibility of the second engineer.

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

Issued in Austin, Texas, on July 20, 1987.

TRD-8705999

Kenneth J. Bartosh
Executive Director
Texas State Board of
Registration

Effective date: September 1, 1987

Proposal publication date: June 12, 1987

For further information, please call
(512) 440-7723.



References

★22 TAC §131.71, §131.72

The Texas State Board of Registration for Professional Engineers adopts amendments to §131.71 and §131.72, without changes to the proposed text published in the June 12, 1987, issue of the *Texas Register* (12 TexReg 1897).

The amendments clarify the procedures for completing reference statements.

The amendments provide concise instructions for completing the reference statement and clearly state that references should be from registered professional engineers.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8, which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on July 20, 1987.

TRD-8705996

Kenneth J. Bartosh
Executive Director
Texas State Board of
Registration for
Professional
Engineers

Effective date: September 1, 1987

Proposal publication date: June 12, 1987

For further information, please call
(512) 440-7723.



Part XIII. Texas Board of
Licensure for Nursing
Home Administrators

Chapter 249. License
Certificates

★22 TAC §249.3

The Texas Board of Licensure for Nursing Home Administrators adopts an amendment to §249.3, without changes to the proposed text published in the June 19, 1987, issue of the *Texas Register* (12 Tex-Reg 1968).

The amendment changes the acronym used by licensed nursing home administrators from NHA to LNHA.

The amendment gives nursing home administrators the right and privilege of using the abbreviation "LNHA" after his or her name.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4442d, §8, which provide the Texas Board of Licensure for Nursing Home Administrators with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in the Social Security Act, §1908, the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the board.

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

Issued in Austin, Texas, on July 20, 1987.

TRD-8705951

Dottie Mathieson
Administrative
Technician II
Texas Board of
Licensure for Nursing
Home Administrators

Effective date: August 10, 1987

Proposal publication date: June 19, 1987

For further information, please call
(512) 458-1955.



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Commission on Alcohol and Drug Abuse

Saturday, August 1, 1987, 8:45 a.m. The Commissioners of the Texas Commission on Alcohol and Drug Abuse will meet in the Conference Room, 1705 Guadalupe, Austin. According to the agenda, the commissioners will approve minutes of the June 18, 1987, meeting and meet in executive session to consider employment of executive director.

Contact: Becky Davis, 1705 Guadalupe, Austin, Texas 78701, (512) 463-5510.

Filed: July 22, 1987, 11:48 a.m.
TRD-8706045



State Advisory Committee on Child Care Facilities

Wednesday, August 5, 1987, 9 a.m. The State Advisory Committee on Child Care Facilities of the Texas Department of Human Services will meet in the Habitat Hotel, 500 Highland Mall Boulevard, Austin. According to the agenda, the committee will approve minutes of the May 6, 1987, meeting; hear the assistant commissioner's report; consider proposed revision to by-laws; and election of new officers.

Contact: Doug Sanders, P.O. Box 2960, Austin, Texas 78769, (512) 450-3253.

Filed: July 23, 1987, 9:46 a.m.
TRD-8706065



Texas Employment Commission

Wednesday, July 29, 1987, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda, the commission will review prior meeting notes; consider internal procedures of commission appeals; consider and act on higher level ap-

peals in unemployment compensation cases on commission Docket 30; and set date for the next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: July 21, 1987, 2:34 p.m.
TRD-8705991



State Department of Highways and Public Transportation

Wednesday-Thursday, July 29-30, 1987, 10 a.m. and 9 a.m., respectively. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation will meet in Room 101, Auditorium, and Room 101-A, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin. According to the agenda, the commission will hear presentations in Room 101 by the public for various highway, bridge, and FM Road requests: Wilson; Jefferson and Chambers Counties; and Tarrant and Denton Counties. The commission will meet in Room 101-A to execute contract awards and routine minute orders; consider decisions on presentations from public hearing dockets; and review staff reports relative to planning and construction programs and projects.

Contact: Lois Jean Turner, Dewitt C. Greer State Highway Building, Room 203, 11th and Brazos Streets, Austin, Texas 78711, (512) 463-8616.

Filed: July 21, 1987, 1:32 p.m.
TRD-8705995



University of Houston System

Monday, July 27, 1987, noon. The Board of Regents of the University of Houston System met at 500 Enterprise Bank Building, 4600 Gulf Freeway, Houston. According to

the agenda, the board will discuss and/or approve acquisition of real property-system.

Contact: Micheal T. Johnson, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: July 22, 1987, 10:22 a.m.
TRD-8706034



Texas Industrial Accident Board

Tuesday, July 28, 1987, 9:30 a.m. The Texas Industrial Accident Board will meet in Room 107, First Floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board will approve minutes of the previous meeting, review staff proposal on compromise settlement agreements procedures, structured settlement procedures, promptness of payment procedures, and review all agency operations for budgetary and planning considerations.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7960.

Filed: July 22, 1987, 3:36 p.m.
TRD-8706051



Texas Board of Irrigators

Wednesday, July 29, 1987, 2 p.m. The Texas Board of Irrigators will meet in the Guadalupe Room, Y.O. Ranch Hilton, 2033 Sidney Baker, Kerrville. According to the agenda, the board approved minutes of the May 5, 1987, meeting; designate September 28-30, 1987, and January 4-6, 1988, as the date for the next L.I. exam and Lic. Installer exam; discuss the status and disposition of current and future appropriations; review and discuss recent notification from the attorney general addressing pending cases for the T.B.I.; discuss responsibilities of in-

vestigating board members in their attempts to resolve complaints, in a way that ensures that the L.I. Act and the board's rules are upheld; discuss status and disposition of outstanding complaints investigated by board members; House Bill 61 in current session; and hear the chairman's report on the present status of various items of interest to the board. The board will also meet in executive session to review and discuss the L.I. exam and Lic. Installer exam.

Contact: Joyce Watson, 17th and Congress Avenue, Austin, Texas 78711, (512) 463-7992.

Filed: July 21, 1987, 11:11 a.m.
TRD-8705957



Texas Juvenile Probation Commission

Friday, August 7, 1987, 10 a.m. The Board of the Texas Juvenile Probation Commission will meet at 2015 South IH-35, Austin. According to the agenda, the board will approve minutes of the June 12, 1987, meeting; hear the director's report; approve budget transfers for fiscal year 1987; administrative budget for fiscal year 1988; review and approve state aid allocations for fiscal year 1988; one-time adjustment grants; consider appointment of citizen member to Advisory Council; presentation of incentive fund plan; review and approve guidelines for challenge grants; discuss new rules required by Senate Bill 17. Members of the public are invited to attend and speak on any issue under the jurisdiction of the commission.

Contact: Bill Anderson, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: July 22, 1987, 2:23 p.m.
TRD-8706047



Texas Department of Labor and Standards

Friday, July 31, 1987, 2:30 p.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E.O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of Shelter America Mobile Home Brokers for alleged violations of the department's manufactured housing rules and regulations.

Contact: Craig F. Sandling, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: July 21, 1987, 3:51 p.m.
TRD-8706003

Friday, August 7, 1987, 9 a.m. The Manufactured Housing Division of the

Texas Department of Labor and Standards will meet in Room 105, E.O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division will consider suspension or revocation of the manufactured housing registration of Dynasty Manufactured Homes for alleged violation of the department's manufactured housing rules and regulations.

Contact: Craig F. Sandling, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: July 21, 1987, 3:51 p.m.
TRD-8706002



Legislative Budget Board

Tuesday, August 4, 1987, 9 a.m. The Legislative Budget Board will meet in Room 310, State Capitol, Austin. According to the agenda, the board will approve 1988 operating budget for the legislative budget office and consider any other business.

Contact: Jim Oliver, Room 207-A, State Capitol, Austin, Texas 78711, (512) 463-1166.

Filed: July 22, 1987, 4:12 p.m.
TRD-8706053



Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Thursday, July 30, 1987, 9 a.m. The Hearings Division will consider Dockets 7180, 7274, 7284, 7381, 7425, 7386, 7401, 2242, 6928, 7468, 7354, 7366, 7514, 7474, 7388, 7389, and 7163.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 22, 1987, 2:34 p.m.
TRD-8706049

Thursday, July 30, 1987, 11 a.m. The Administrative Division will approve minutes of the previous meeting; consider reports, discuss and act on budget and fiscal matters; issue of proposed staff request for proposal for management audit of Contel of Texas; participate in Federal Communication Commission's link up America lifeline program; revision of ballot forms for interim appeals from examiners' orders; and setting time and place for next meeting. The division will also meet in executive session to consider personnel and litigation matters.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 22, 1987, 2:35 p.m.
TRD-8706048

Monday, August 17, 1987, 9 a.m. The Hearings Division will consider Docket 7147—Application of Gulf States Utilities Company for approval of a joint venture cogeneration project and treatment of revenues.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 21, 1987, 2:51 p.m.
TRD-8706000

Monday, October 26, 1987, 10 a.m. The Hearings Division will consider Docket 7560—Application of Central Power and Light Company for approval of deferred accounting treatment of certain costs related to the South Texas Nuclear Project Unit 1.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 22, 1987, 2:34 p.m.
TRD-8706050



Texas State Treasury Department

Thursday, July 30, 1987, 9 a.m. The Cash Management Committee of the Texas State Treasury Department will meet in emergency session in Room 106, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the committee will determine the size of the 1987 tax and revenue anticipation note issue pursuant to Texas Civil Statutes, Article 4393-1. The emergency status is necessary because this meeting was delayed pending passage of appropriation and tax bills. The meeting must be held on an emergency basis in order to allow sufficient time to prepare for the 1987 note issue.

Contact: Anne L. Schwartz, P.O. Box 12608, Austin, Texas 78711, (512) 463-5971.

Filed: July 23, 1987, 9:30 a.m.
TRD-8706064



Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Dates, times, rooms, and agendas follow.

Monday, August 3, 1987, 2 p.m. The commission will meet in Room 118, to consider the adoption of 31 TAC §335.34; rule concerning industrial solid waste and hazardous waste by adding a new section; petition for adoption of rule amending the definition of existing hazardous waste management facility which concerns local standards for hazardous waste storage, processing, or disposal.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: July 21, 1987, 11:41 a.m.
TRD-8705960

Wednesday, August 12, 1987, 10 a.m. The commission will meet in Room 118, to determine whether emergency order 87-7E, granted by the commission on July 15, 1987, to Tricil Environmental Response, Inc., P.O. Box 19529, Houston, Texas 77224, should be affirmed, modified, or set aside by the Texas Water Commission.

Contact: Micheal L. Woodward, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: July 21, 1987, 11:41 a.m.
TRD-8705961

Monday, October 9, 1987, 10 a.m. The Office of Hearings Examiner will meet in Room 215, to consider Docket 7311-R—Application for water rate change in Harris and Montgomery Counties by B&B Sewer Company, Inc.

Contact: Duncan Norton, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 21, 1987, 11:40 a.m.
TRD-8705962



Regional Agencies Meetings Filed July 21

The Hays County Central Appraisal District, Board of Directors, met on the first floor, Courthouse Annex, 102 LBJ Drive, San Marcos, on July 24, 1987, at 5 p.m. The Appraisal Review Board will meet at the same location, on July 29, 1987, at 9 a.m. Information may be obtained from Lynnell Sedlar, 102 LBJ Drive, San Marcos, Texas, (512) 396-4777.

The Northeast Texas Municipal Water District, Board of Directors, met at Highway 250 South, Hughes Springs, on July 27, 1987, at 7 p.m. Information may be obtained from Homer Tanner, Box 955, Hughes Springs, Texas 75656, (214) 639-7538.
TRD-8705959



Meetings Filed July 22

The Golden Crescent Regional Planning Commission, Board of Directors, will meet in the GCRPC Boardroom, Regional Air-

port, Building 102, Victoria, on July 29, 1987, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Harris County Appraisal District, Board of Directors, will meet on the Eighth Floor, 2800 Loop West, Houston, on July 29, 1987, at 9 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291.

The High Plains Underground Water Conservation District #1, Board of Directors, will meet in the Conference Room, 2930 Avenue Q, Lubbock, on August 3, 1987, at 10 a.m. Information may be obtained from Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Hockley County Appraisal District, Appraisal Review Board, met at 1103-C, Houston Street, Levelland, on July 24, 1987, at 9 a.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Hunt County Tax Appraisal District, Appraisal Review Board, met in the Boardroom, 4801 King Street, Greenville, on July 24, 1987, at 8:30 a.m. Information may be obtained from Joe Pat Davis or Jeanette Jordan, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Central Appraisal District of Johnson County, Appraisal Review Board, will meet at 109 North Main, Cleburne, on August 4, 1987, at 9 a.m. Information may be obtained from Jackie Gunter, 109 North Main, Cleburne, Texas 76031, (817) 645-3987.

The Lee County Appraisal District, Board of Directors, will meet at 218 East Richmond Street, Giddings, on July 29, 1987, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Limestone County Appraisal District, Board of Directors, will meet in the Appraisal District Office, Limestone County Courthouse, Groesbeck, on July 29, 1987, at 5 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The Nolan County Central Appraisal District, Appraisal Review Board, will meet in Suite 317A, Nolan County Courthouse, Sweetwater, on July 28, 1987, at 1:30 p.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The Panhandle Ground Water Conservation District #3, Board of Directors, met at 300 South Omohundro, White Deer, on July 27, 1987, at 8 p.m. Information may be obtained from Gary L. Walker, P.O. Box 637, White Deer, Texas 79099, (806) 883-2501.

The San Jacinto River Authority, Board of Directors, will meet in the Alamo Room, Del Lago Resort and Conference Center, 600 Del Lago Boulevard, Montgomery, on July 31, 1987, at 9 a.m. Information may be obtained from Jack K. Ayer, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111.

The Tarrant Appraisal District, Appraisal Review Board, will meet in Suite 505, 1701 River Run, Fort Worth, on July 28-29, 1987, at 8:30 a.m. daily. Information may be obtained from Linda Freeman, 1701 River Run, Suite 505, Fort Worth, Texas 76101, (817) 332-9166.

TRD-8706030



Meetings Filed July 23

The Ark-Tex Council of Governments, Executive Committee, will meet in the Mount Pleasant Country Club, Mount Pleasant, on July 30, 1987, at 5:30 p.m. Information may be obtained from Susan J. Rice, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636.

The Central Plains Mental Health and Mental Retardation Center, Board of Trustees, will meet at 706 Canyon, Plainview, on July 30, 1987, at 7 p.m. Information may be obtained from Rick Van Hersh, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636.

The Lamar County Appraisal District, Appraisal Review Board, met at 1523 Lamar Avenue, Paris, on July 27, 1987, at 9 a.m. The Board of Directors will meet on August 3, 1987, at the same address. Information may be obtained from Rodney Anderson, 1523 Lamar Avenue, Paris, Texas 75460, (214) 785-7822.

The Central Appraisal District of Rockwall County, Appraisal Review Board, will meet at 106 North San Jacinto, Rockwall, on July 29, 1987, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 722-2034.

TRD-8706062



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.

Banking Department of Texas Applications to Acquire Control of a State Bank

Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On July 8, 1987, the banking commissioner received an application to acquire control of the Bank of Kerrville, Kerrville, by Roland Walters of Kerrville.

On July 16, 1987, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on July 16, 1987.

TRD-8705934 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: July 20, 1987

For further information, please call (512) 479-1200.



Texas Civil Statutes, Article 342-401a, require any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On July 15, 1987, the banking commissioner received an application to acquire control of Tarrant Bank, Fort Worth, by J. Howard Shelton, Thompson E. Purvis, Jr., Tarrant Bancshares, Incorporated, and Meto Miteff, all of Fort Worth.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on July 15, 1987.

TRD-8705950 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: July 20, 1987

For further information, please call (512) 479-1200.



Texas Economic Development Commission

Private Activity Bond Allocation Report

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1987 is \$1,227,750,000.

State legislation, 70th Legislature, Senate Bill 1382, was passed, effective June 20, 1987, to establish the allocation process. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

As a result of Senate Bill 1382, the aggregate amount for qualified mortgage bond subceiling is \$302,376,642, with \$201,584,428 available to the local housing authorities and \$100,792,214 available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$226,782,481, and the amount for all other bonds requiring an allocation is \$377,970,802.

Generally, the state ceiling will be allocated on a first-come, first-served basis within the applicable subceiling, with the Texas Economic Development Commission (the commission) administering the allocation system.

The information that follows is a summary report of the allocation activity for the period, July 13, 1987-July 17, 1987.

Weekly Report on the 1987 Allocation of the State Ceiling on Certain Private Activity Bonds as Pursuant to Senate Bill 1382

Total amount of state ceiling remaining unreserved for the \$302,376,642 subceiling for qualified mortgage bonds under Senate Bill 1382 through July 17, 1987: \$302,376,642.

Total amount of state ceiling remaining unreserved for the \$226,782,481 subceiling for state-voted issues under Senate Bill 1382 from July 13, 1987-July 17, 1987: \$226,782,481.

Total amount of state ceiling remaining unreserved for the \$377,970,802 subceiling for all other bonds under Senate Bill 1382 from July 13, 1987-July 17, 1987: \$372,470,802.

Total amount of the \$1,227,750,000 state ceiling remaining unreserved as of July 17, 1987: \$901,629,925.

Comprehensive listing of bond issues which have received a reservation date per Senate Bill 1382 from July 13, 1987-July 17, 1987: None.

Comprehensive listing of bonds issued and delivered as per Senate Bill 1382 from July 13, 1987-July 17, 1987: None.

Issued in Austin, Texas, on July 21, 1987.

TRD-8706031 David V. Brandon
Executive Director
Texas Economic Development
Commission

Filed: July 22, 1987
For further information, please call (512) 472-5059.



Texas Education Agency Modified Request for Proposals

This notice is submitted in accordance with Texas Civil Statutes, Article 6252-11c.

In February, the Texas Education Agency disseminated a request for proposal entitled Support Services for Developing and Administering the Basic Skills Tests to be used as a Condition for Admission into an Approved Teacher Education Program. The recent passage of House Bill 2182 delayed the selection of a contractor. Notices are being sent to the companies that submitted proposals as well as other prospective proposers. This notice includes modifications to the original request for proposal as a result of agreements reached by the State Board of Education and the Coordinating Board, Texas College and University System, concerning the new legislation.

Companies may supplement their proposals, withdraw their proposals, or submit new proposals. Any company may submit a new proposal provided it addresses the original request for proposal and the modifications, and the proposal is submitted by 5 p.m., August 21, 1987. For information or a copy of the request for proposal, contact Marvin Veselka, assistant commissioner for assessment and evaluation, Texas Education Agency, (512) 463-9533.

Issued in Austin, Texas, on July 20, 1987.

TRD-8705941 W. N. Kirby
Commissioner of Education

Filed: July 20, 1987
For further information, please call (512) 463-9212.



Request for Applications

The Texas Education Agency invites applications from school districts for a project titled Secondary Models for Increasing Graduation. Funding will be provided through the Education Consolidation and Improvement Act, Chapter 2, for approximately three model program sites. These models will be selected and funded at a level not to exceed \$100,000 per model. Each model will be funded for a period of 12 months (September 1987-August 1988). The objectives of this effort are to develop a multiservice, multifunded model for increasing graduation rates; to develop a system of identifying students at risk of not graduating from high school; to increase the academic functioning of students in the essential elements; to decrease the dropout rate of secondary level students; to increase the employability skills and employment rates of potential and actual school leavers; and to identify other funding sources to replace Chapter 2 funds at the close of the funding year in order to continue the projects' objectives. Each application will be reviewed to determine

the capability of the applicant to implement its proposed model. All specifications in the request for application must be addressed.

A copy of the complete request for application may be obtained by calling or writing the Document Control Center, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304. Applications may be delivered by mail or in person to the Texas Education Agency Document Control Center. Applications received after August 24, 1987, will not be considered for funding.

Issued in Austin, Texas, on July 14, 1987.

TRD-8705940 W. N. Kirby
Commissioner of Education

Filed: July 20, 1987
For further information, please call (512) 463-9212.



Texas Department of Health Intent to Revoke a Certificate of Registration

The Texas Department of Health, Bureau of Radiation Control, filed a complaint against the following registrant, pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8. The agency intends to revoke the certificate of registration, order the registrant to cease and desist use of radiation machine(s), and order the registrant to divest himself of such equipment, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with the order and the provisions of Texas Civil Statutes, Article 4590f. The complaint is as shown following this notice.

This notice affords the opportunity for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, the certificate of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a.m.-5 p.m. (except holidays).

The Texas Department of Health (the agency), Bureau of Radiation Control, Division of Compliance and Inspection, through its division director, and makes the following complaint against Lynn F. Gordon, D.D.S., 3000 North MacArthur, Irving, Texas 75062, (the registrant), holder of Certificate of Registration 5-14406.

Texas Regulations for Control of Radiation (TRCR) 12.11(b), requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On July 15, 1986, the registrant was billed \$122 for fees due Certificate of Registration 5-14406, covering the period from August 1986-July 1987. On April 30, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to

show compliance with all requirements of the law for retention of the certificate of registration. Payment of fees has not been received.

TRCR 32.7(a)(4) requires that the aluminum equivalent of the total filtration in the useful beam shall not be less than 2.5 millimeters for dental radiographic units capable of operation above 70 kilovolts peak. An inspection conducted by an agency representative on December 10, 1986, revealed that the General Electric and S. S. White dental radiographic machines failed to meet the requirement. A notice of violation was issued to the registrant on December 30, 1986, requesting a written reply providing steps taken to correct the violations and results achieved, steps taken to avoid repeating the violation, and the date full compliance would be achieved. No response was received by the agency. On February 19, 1987, the agency issued a second notice of violation by certified mail, requiring a written notification of corrective actions within 10 days of receipt of the notice. Receipt of the second notice was acknowledged on February 26, 1987. No response was received by the agency. On April 6, 1987, the agency issued a third notice of violation by certified mail, advising the registrant that if notification of corrective actions was not received within 10 days of receipt of the notice, the agency must consider issuing a complaint, requesting an order for revocation of the certificate of registration, requiring that the registrant cease and desist radiographic operations, and that the registrant divest himself of the radiographic equipment. Receipt of the third notice was acknowledged on April 9, 1987. No response has been received by the agency.

THEREFORE, the agency, as provided *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, Texas Civil Statutes, Article 4590f, §13, either disable the machine(s) or divest himself of it, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Issued in Austin, Texas, on July 16, 1987.

TRD-8705933 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: July 20, 1987

For further information, please call (512) 835-7000.



Texas Department of Human Services Request for Proposals

The Texas Department of Human Services (DHS) invites proposals for purchased food stamp issuance services. The request is filed under the provisions of the Texas Civil Statutes, Article 6252-11c.

Description. Over-the-counter food stamp issuance is the exchange of food coupon booklets for authorization to participate (ATP) cards. ATP cards will specify client name, case number, ID card number, total benefit amount, number of each denomination booklets to be issued, and month valid. Food stamp clients will present the issuance

agent with ATP and ID cards. The issuance agent will check to see that the ID card serial number matches the corresponding number on the ATP card. If so, the client will sign the ATP card in the presence of the issuance agent, who will then exchange the indicated number of each denomination of booklets for the signed ATP card. The issuance agent will write the issuance verification code (from the ID card) on the ATP card, date stamp the ATP card, and later batch it for delivery to DHS. To contract with DHS, the contractor must comply with the following: applicable federal and state laws, regulations, and policies; DHS service standards applicable to the service being purchased; generally accepted accounting principles and procedures recognized by the American Institute of Certified Public Accountants; and contractual terms such as those relating to sufficient operating capital, bonding requirements, assumption of liability for redemption errors, losses and audit exceptions, and contract termination. DHS will procure over-the-counter food stamp issuance services in Jefferson County—Beaumont area.

Terms of Contract. The contract will be for a 12-month period. DHS has the option of renewal on a non-competitive basis for additional periods. Contractors will be paid on a fee per transaction basis for eligible ATP cards processed.

Procedure of Contract Award. Proposals will be reviewed by a selection committee. Those proposals meeting the offer or response packet requirements will be considered for the contract award. The award will be made to the lowest bidder meeting the specified requirements.

Contact. To request a request for proposal package or additional information, contact Charles Jennings, Director of Program Control, Program Management Division, Mail Code 518-W, Texas Department of Human Services, P. O. Box 2960, Austin, Texas 78769, (512) 450-3467.

Closing Date. The closing date for receipt of proposals is noon on August 31, 1987.

Issued in Austin, Texas, on July 22, 1987.

TRD-8706032 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Filed: July 22, 1987

For further information, please call (512) 450-3766.



North Central Texas Council of Governments

Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under Texas Civil Statutes, Article 6252-IIC.

Background. The North Central Texas Council of Governments and the Fort Worth Transportation Authority invite proposals to develop a normative systems change plan for the Fort Worth Transportation Authority. The consultant will assess community attitudes regarding public transportation, collect data and conduct research for the plan, identify and analyze factors that influence attitudes about travel habits and nonutilization of the transit system, and develop a comprehensive communitywide normative systems change action program and an initial two-year action plan.

Contract Award Procedures. The firm selected to perform the systems change plan will be recommended by a consultant selection. The selection committee will use evaluation criteria and methodology consistent with the scope of services contained in the request for proposals. The executive board of the NCTCOG will render the consultant selection committee's recommendation, and if it is acceptable, will issue an award of contract.

The North Central Texas Council of Governments, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 United States Code 2000d-2000d-4, and 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, non-discrimination in federally assisted programs of the Department of Transportation issued pursuant to each Act, hereby notifies all bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, or national origin in consideration of an award.

The contract will comply with all federal and state laws and regulations applicable to subcontractors, including, but not limited to, equal employment opportunity, the Davis-Bacon Act, and records management.

Contact Person. For more information contact Shirley Henry, Administrative Aide, North Central Texas Council of Governments, 616 Six Flags Drive, Suite 200, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

Due Date. Proposals must be submitted no later than noon, August 13, 1987, to Linda S. Watson, Fort Worth Transportation Authority, P.O. Box 1477, 2304 Pine, Fort Worth, Texas 76101-1477.

Issued in Austin, Texas, on July 17, 1987.

TRD-8705958 William J. Pitstick
Executive Director
North Central Texas Council of
Governments

Filed: July 21, 1987

For further information, please call (817) 640-3300.



Texas Parks and Wildlife Department Texas Outdoor Recreation Plan Wetlands Addendum

The Texas Parks and Wildlife Department will prepare an addendum to the Texas outdoor recreation plan (TORP) regarding wetlands. This is required by provisions of the Emergency Wetlands Resources Act of 1986, Public Law 99-645, §303; guidelines of the National Park Service; and to maintain state eligibility to receive and use federal land and water conservation fund monies.

Subsequent to completion of the wetlands addendum and fiscal year 1988 congressional appropriations, revisions may also be required in the TORP Action Program and the local government project review procedures addendum of the TORP.

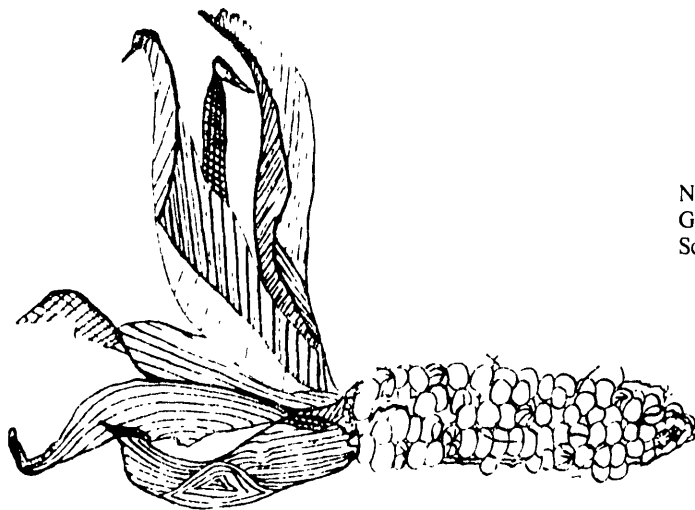
For further information, please contact Johnny Buck, Comprehensive Planning Branch, Parks Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4911.

Issued in Austin, Texas, on July 21, 1987.

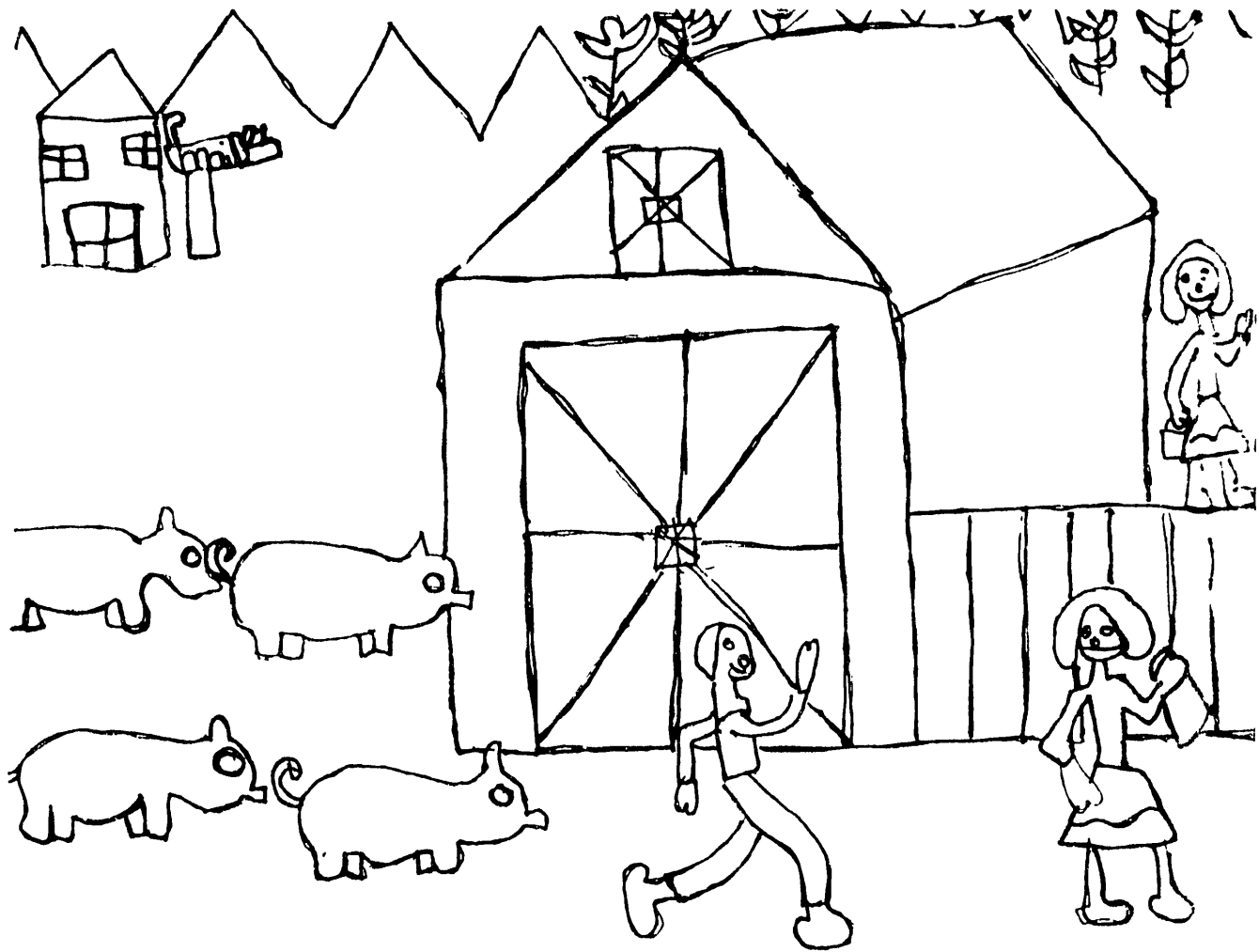
TRD-8705978 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife Department

Filed: July 21, 1987

For further information, please call (512) 389-4805.



Name: Jennifer Jadlot
Grade: 11
School: Coppell High, Coppell



Name: Courtney Newton
Grade: 5
School: Burton Hill Elementary, Ft. Worth



Name: Amy Pakalnis
Grade: 5
School: Burton Hill Elementary, Ft. Worth



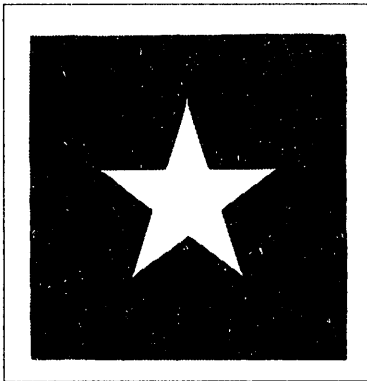
Name: Adrienne Holland
Grade: 4
School: Burton Hill Elementary, Ft. Worth



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