

# TEXAS REGISTER

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## Texas Register



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## How to Use the Texas Register

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

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions

**Secretary of State** - opinions based on the election laws

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following a 30-day public comment period.

**Open Meetings** - notices of open meetings.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative 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 the 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 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the

agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: 1-800-328-9352.

The Titles of the *TAC*, and their respective Title numbers are:

- 1 Administration
- 4 Agriculture
- 7 Banking and Securities
- 10 Community Development
- 13 Cultural Resources
- 16 Economic Regulation
- 19 Education
- 22 Examining Boards
- 25 Health Services
- 28 Insurance
- 30 Environmental Quality
- 31 Natural Resources and Conservation
- 34 Public Finance
- 37 Public Safety and Corrections
- 40 Social Services and Assistance
- 43 Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

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

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example:

TITLE 40 SOCIAL SERVICES AND ASSISTANCE  
Part I. Texas Department of Human Services  
40 TAC §3.704 . . . 950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

**Update by FAX:** An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the *TAC* number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard) (512) 463-5561

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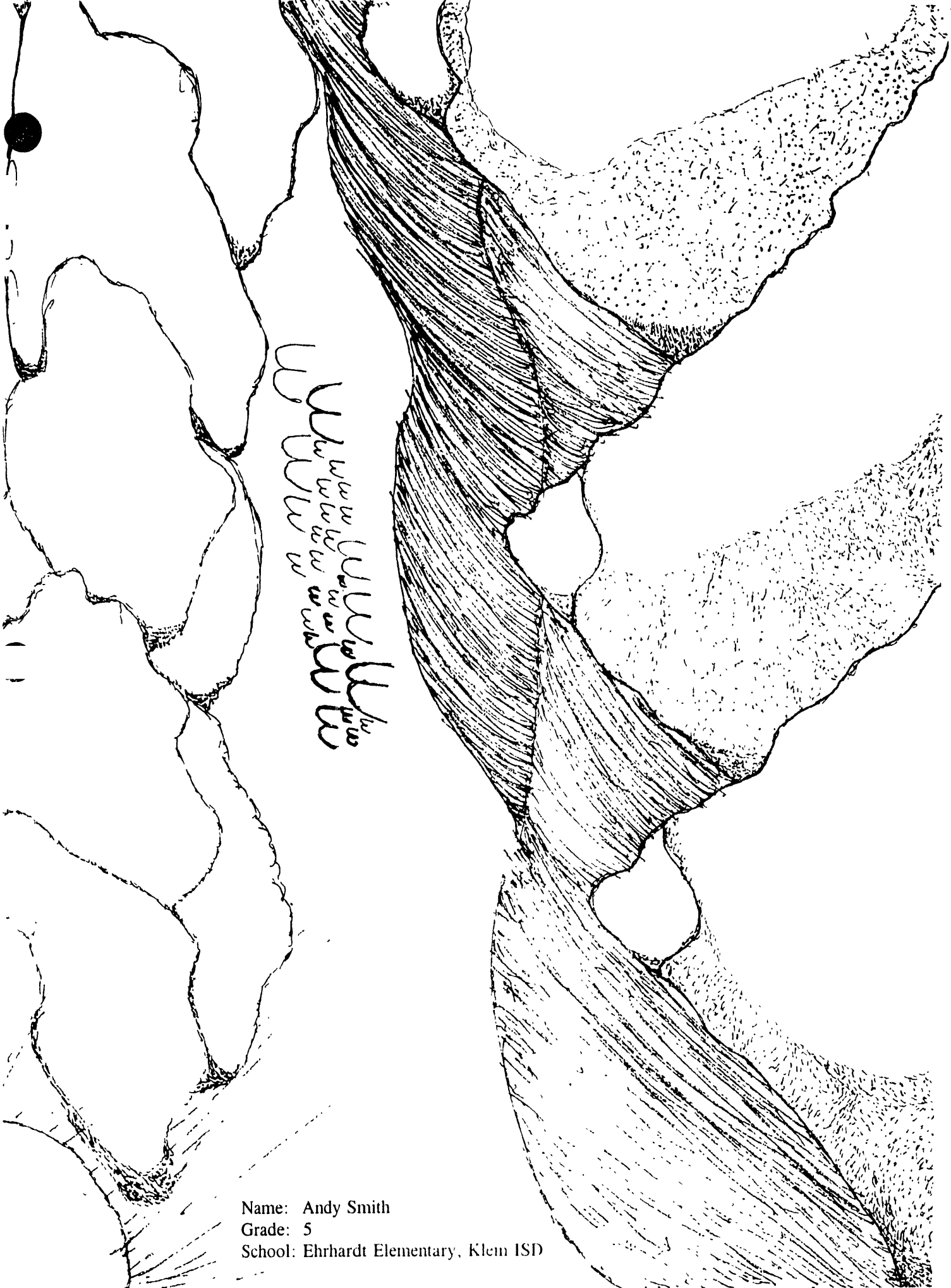
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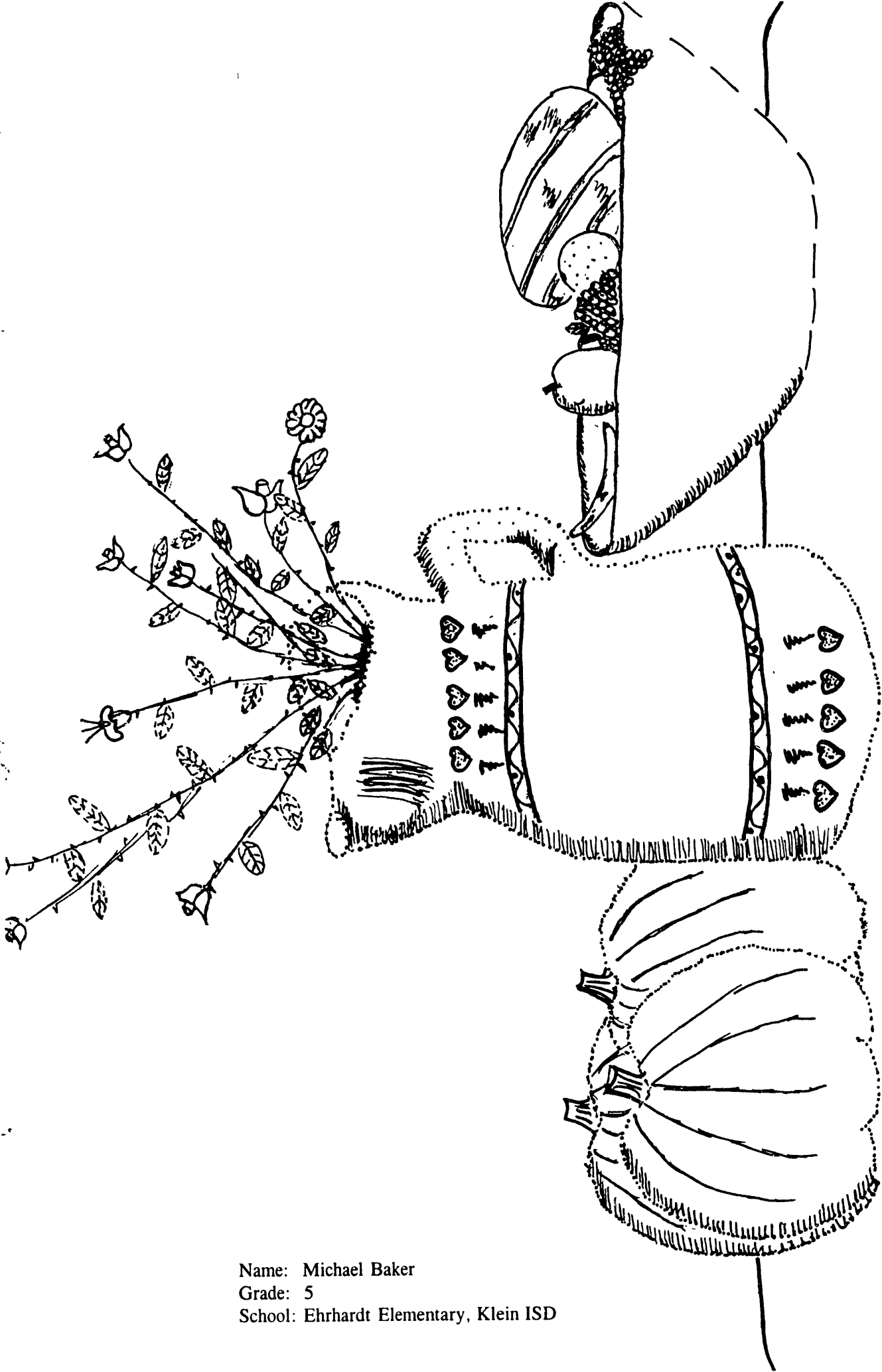
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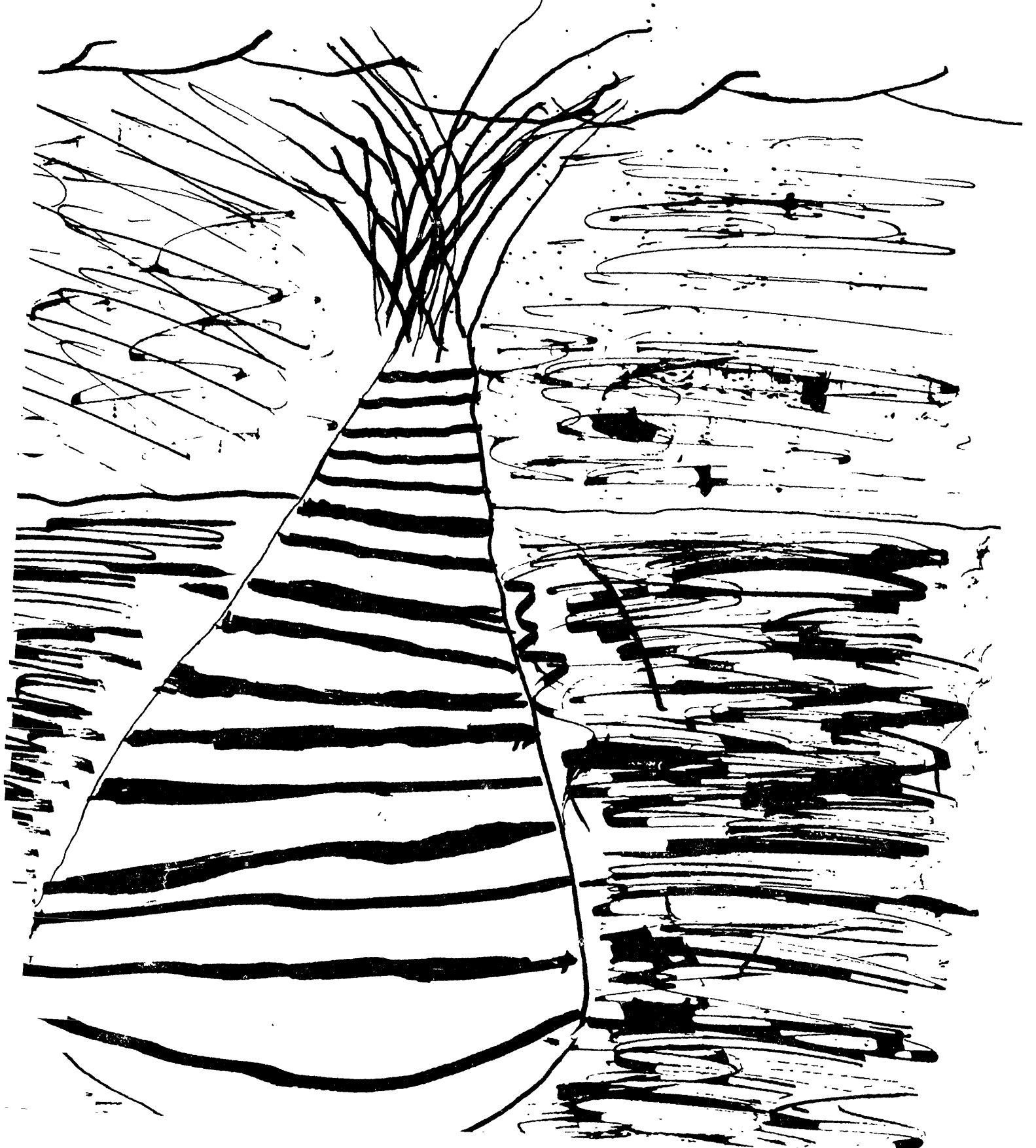
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Grade: 5  
School: Ehrhardt Elementary, Klein ISD

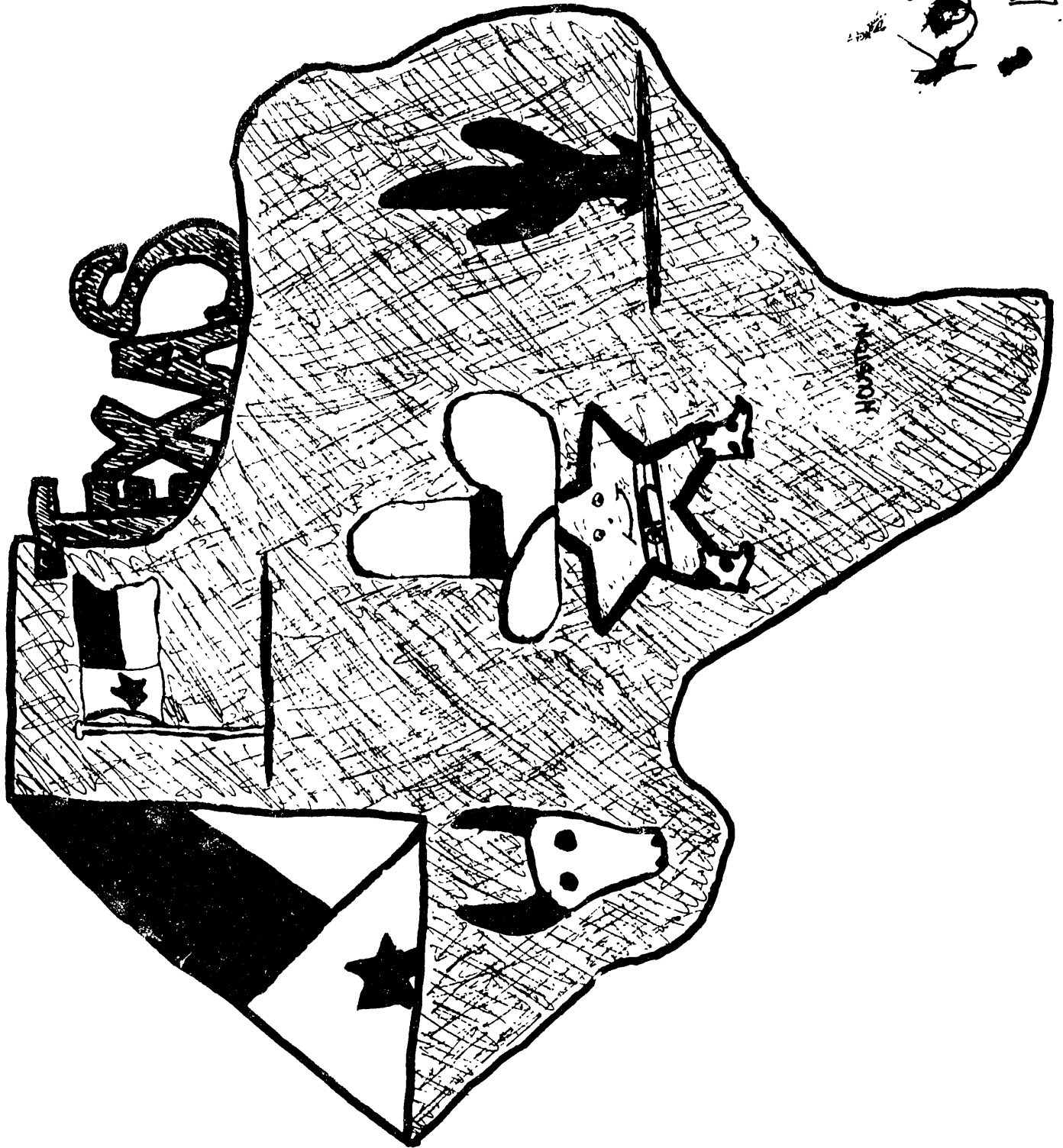


Name: Michael Baker  
Grade: 5  
School: Ehrhardt Elementary, Klein ISD

Name: Kevin Abell  
Grade: 4  
School: Mitchell Elementary, Plano ISD



Kelly  
Nowetner



Name: Kelly Nowetner

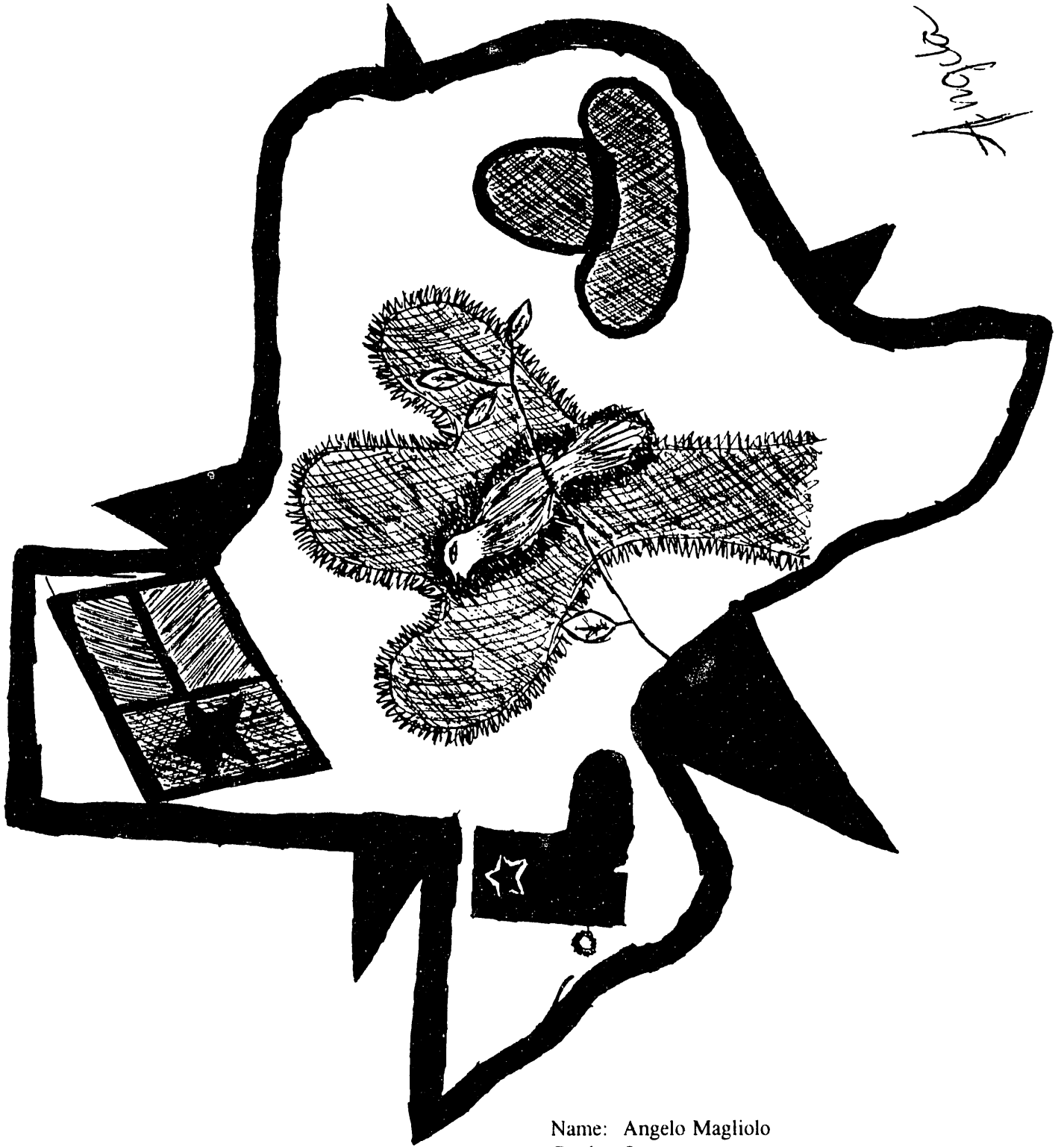
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School: Clear Lake Intermediate, Clear Lake ISD



Magliolo

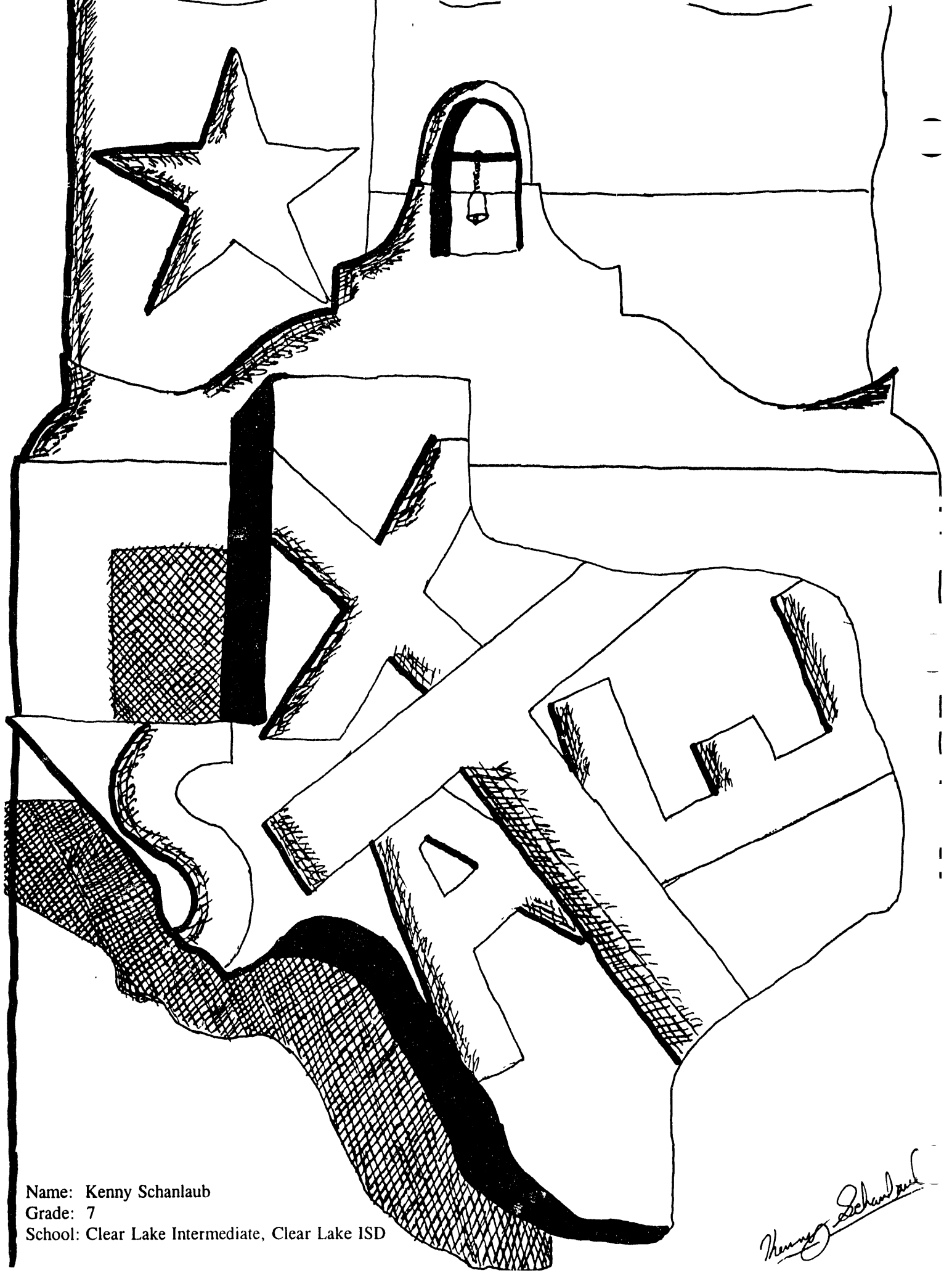
Angelo



Name: Angelo Magliolo

Grade: 8

School: Clear Lake Intermediate, Clear Lake ISD



Name: Kenny Schanlaub  
Grade: 7  
School: Clear Lake Intermediate, Clear Lake ISD

*Kenny Schanlaub*

# EMERGENCY RULES

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

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

## TITLE 22. EXAMINING BOARDS

### Part XXI. Texas State Board of Examiners of Psychologists

#### Chapter 466. Procedure

##### • 22 TAC §§466.1-466.43

The Texas State Board of Examiners of Psychologists adopts new §§466.1-466.43 on an emergency basis. These emergency rules are effective immediately for no more than 120 days after publication in the *Texas Register*.

The new sections are necessary to more effectively regulate the practice of psychology and to implement the requirements of Senate Bill 1424 by the 73rd Legislature of Texas. The emergency rules establish procedures for the orderly and efficient disposition of complaints before the Texas State Board of Examiners of Psychologists. New §§461.1-466.43 establish guidelines for the institution, conduct, informal disposition and hearing of contested cases. The new sections provide the complainant and the licensee or certificand an opportunity to be heard and require the presence of an attorney to advise the Board or Board's employees.

The Texas State Board of Examiners of Psychologists is mandated by the Legislature to determine the qualifications of persons offering to perform psychological services and to protect the public against exploitation and injury at the hands of the unqualified and unscrupulous. The fact that there currently exist no rules for the institution, conduct, informal disposition and hearing of complaints received by the Texas State Board of Examiners of Psychologists creates a universal peril to the health, safety and welfare of the public, thus necessitating the emergency adoption of new §§461.1-466.43.

The sections are adopted under the Psychologists' Certification and Licensing Act, §8(a) and §25C(a)(1), (2), and Texas Government Code, §2001.004(1). Section 8(a) of the Psychologists' Certification and Licensing Act provides the Board with authority to promulgate rules in accordance with the Constitution and Laws of this State. Section 25C(a)(1) and (2) require the Board to adopt rules governing informal disposition and proceedings before the Board. Texas Government Code, §2001.004(1), authorizes and requires each

state agency to adopt rules of practice setting forth the nature and requirements of all available formal and informal procedures. The new sections establish procedure in informal proceedings and contested cases before the Texas State Board of Examiners of Psychologists.

*§466.1 Objective and Scope* The objective of these sections is to obtain a just, fair and equitable disposition of any matter within the jurisdiction of the Board. To the end that this objective may be attained with the greatest expedition and at the least expense possible to the parties and the State, these sections shall be given a liberal construction. Except as provided by other applicable law, these sections govern the procedure for the institution, conduct and determination of proceedings before the Board. These sections do not apply to matters related solely to the internal personnel rules and practices of this agency. The provisions of the Psychologists' Certification and Licensing Act govern where ambiguity or differences exist between these sections and the Act. The provisions of these rules govern when in conflict with the Rules of the State Office of Administrative Hearings unless otherwise stated by law.

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

**Act**-The Psychologists' Certification and Licensing Act, Texas Civil Statutes Article 4512c.

**Administrative law judge**-An individual appointed by the Chief Administrative Law Judge of the State Office of Administrative Hearings under Texas Civil Statutes, Article 6252-13f, §3, and all amendments thereafter.

**Agency**-The Board and all divisions, departments and employees thereof.  
**Applicant or petitioner**-A party seeking a license or rule from the Board.

**Board**-The nine-member Texas State Board of Examiners of Psychologists.

**Board member**-One of the members of the Board, appointed pursuant to the Act, §4, and qualified under the Act, §5.

**Chair**-The chairperson of the Board.  
**Chief clerk**-The chief clerk of the Board.

**Contested case**-A proceeding, including, but not restricted to licensing and disciplinary action in which the legal rights, duties or privileges of a party are to be determined by the Board after an opportunity for an adjudicative hearing.

**Executive director**-The executive director of the Board designated in accordance with the Act, §7(b).

**License**-The whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

**Licensing**-The agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

**Official act**-Any act performed by the Board pursuant to a duty, right or responsibility imposed or granted by law.

**Party**-Each person or agency named or admitted as a party.

**Person**-Any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

**Pleading**-Any written petition, answer, motion, or other written instrument filed with the Board with respect to a contested case.

**Presiding officer**-The chair, the acting chair of the Board, or a duly authorized administrative law judge while acting with respect to a hearing.

**Register**-The Texas Register.

**Rule**-Any agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

#### *§466.3 Construction*

(a) A provision of a section referring to the Board is construed to apply to

the Board or the chair if the matter is within the jurisdiction of the Board

(b) Unless otherwise provided by law, any duty imposed on the Board may be delegated to a duly authorized representative. In such case, the provisions of any section referring to the Board or the chair shall be construed to also apply to the duly authorized representative.

(c) These sections shall not be construed so as to enlarge, diminish, modify or alter the jurisdiction, powers, or authority of the Board or the substantive rights of any party.

**§466.4. Records of Official Action.** All official acts of the Board shall be evidenced by a recorded or written record. The minutes of the Board shall constitute a written record. Official action of the Board shall not be bound or prejudiced by any informal statement or opinion made by any member of the Board or the employees of the agency.

**§466.5. Conduct and Decorum.**

(a) Parties, authorized representatives, witnesses, and other participants in Board proceedings shall conduct themselves with proper dignity, courtesy, and respect for the Board, the executive director, the administrative law judge, and all other participants. Disorderly conduct will not be tolerated.

(b) All authorized representatives shall observe the standards of ethical conduct prescribed for their professions.

(c) A violator of this rule may be excluded from the proceeding by the presiding officer for such period as is just and may be subject to such other reasonable and lawful disciplinary action as the Board may prescribe.

**§466.6. Computation of Time**

(a) In computing any period of time prescribed or allowed by these sections, order of the Board, or any applicable statute, the period shall begin on the day after the act, event or default in controversy and on the first day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a state-recognized holiday.

(b) Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties or order of the presiding officer upon written motion duly filed prior to the expiration of the applicable time period, showing good cause for an extension of time and stating that the need therefor is not caused by the neglect, indifference or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

**§466.7. Agreement to be in Writing.** No stipulation or agreement between the parties or their representatives with regard to any matter involved in any proceeding before the Board shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law.

**§466.8. Pleadings**

(a) Pleadings shall be typewritten or printed upon paper 8-1/2 inches wide and

11 inches long with left and right margins at least one inch wide. Exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible. The impression shall only be on one side of the paper and shall be double or one and one-half spaced, except that footnotes and lengthy quotations may be single spaced.

(b) Pleadings shall state their purpose, contain a concise statement of the facts in support thereof and a prayer for the desired relief.

(c) The original of every pleading shall be signed in ink by the party filing the document or by his or her representative. Pleadings shall contain the name, address and telephone number of the party filing the document and, if applicable, the attorney's state bar number and telecopier number. The signed original shall be filed with the Board.

(d) A certificate of service by the party or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient in this connection: "I hereby certify that have I this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, served copies of the foregoing pleading upon all other parties to this proceeding, by (state manner of service). Signature." Service of pleadings on and by a party shall be as specified in §466.11 of this title (relating to Service in Nonrulemaking Proceedings).

(e) In a contested case the petition and each pleading shall be numbered with the licensee's license number and the number assigned by the State Office of Administrative Hearings, centered and underscored six lines down from the top of the first page. Double spaced below the numbers shall be the heading as follows:

SOAH Docket No. \_\_\_\_\_

License No. \_\_\_\_\_

IN THE MATTER OF ) BEFORE THE TEXAS STATE  
 ) Board OF EXAMINERS OF  
 ) PSYCHOLOGISTS  
\_\_\_\_\_, RESPONDENT )

NAME OF PLEADING

(f) All allegations or responses

shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a

single set of circumstances; and a paragraph may be referred to by number in all subsequent pleadings, so long as the pleading

containing such paragraph has not been superseded by an amendment. Each violation founded upon a separate transaction or occurrence and each response thereto shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(g) Any pleading filed pursuant to a Notice of Hearing may be amended up to seven days prior to the hearing. Amendments after that time will be at the discretion of the presiding officer.

(h) All documents relating to any proceeding pending before the Board shall be filed with the chief clerk and the State Office of Administrative Hearings. A document is filed with the Board when it is received in the Board office or entered of record in a Board proceeding and is accompanied by the filing fee, if any, required by statute or Board rules. The received date noted on the document shall be considered prima facie evidence of the date of filing. Pleadings received after 5:00 p.m. local time of the Board shall be deemed filed the first day following that is not a Saturday, Sunday or official state holiday.

**§466.9 Docketing.** After an application, petition or other document initiating a new proceeding and requiring action by the Board is processed, the executive director or designee shall forward a copy to the State Office of Administrative Hearings.

**§466.10 Notice of Adjudicative Hearing.**

(a) Notice in a contested case is governed by the Administrative Procedure Act, Government Code, §2001.051.

(b) Notice shall be served as specified in §466.11 of this title (relating to Service in Nonrulemaking Proceedings).

**§466.11 Service in Nonrulemaking Proceedings.**

(a) Where service of notice by the Board is required, the Board shall serve in person or by mailing the Notice of Adjudicative Hearing, certified or registered mail, return receipt requested at the last address filed with the Board by the person entitled to receive such notice.

(b) Where personal service cannot be made as contemplated in subsection (a) of this section or the licensee's or certificate holder's whereabouts are unknown, then service of notice shall be by publication of the Notice of Adjudicative Hearing in a newspaper of general circulation in the county in which the licensee or certificate holder was last known to have his or her practice for once each week for two consecutive weeks, the last publication to be at least ten days prior to the date of the hear-

ing. Return of the service of notice by publication shall be by publisher's affidavit together with a copy of the published notice which shall be introduced into the record at the hearing.

(c) A copy of any document filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered to the other party of record by the filing party. If any party has appeared in the proceeding by an attorney, service shall be made upon such attorney. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the presiding officer striking the document from the record.

(d) The date of service by the Board is the date of receipt of the certified mailing or personal delivery.

**§466.12. Filing Fees.** Each application, petition or complaint which is intended to institute a proceeding before the Board shall be accompanied by the filing fee, if any, prescribed by law and these sections.

**§466.13 Notice of Rulemaking Proceedings.** In all rulemaking proceedings, the Board shall give notice according to the procedures set forth in the Administrative Procedure Act. This section shall not limit the Board's power to adopt emergency rules as set forth in the Administrative Procedure Act.

**§466.14. Informal Settlement Conference.** Prior to the institution of the Board's proceedings to revoke, suspend, annul or withdraw any license or certificate, the Board shall:

(1) give notice to the licensee or certificate holder of such proceeding as required by the Administrative Procedure Act, Government Code, §2001.054(c), and

(2) provide the licensee or certificate holder an opportunity to show compliance with the Act or rules of the Board by inviting the licensee or certificate holder to participate in an informal settlement conference.

**§466.15. Informal Disposition.**

(a) Pursuant to the Act, §25C, and the Administrative Procedure Act, Government Code, §2001.054 and §2001.056, informal disposition of any complaint or matter relating to the Act or of any contested case may be made by stipulation, agreed settlement, consent order or default.

(b) A psychologist assigned by the chair to assist in complaints review may determine that the public interest might be served by attempting to resolve a complaint or other matter pending before the Board

through an informal settlement conference prior to a formal disciplinary proceeding. In that event, the matter shall be set by the chief clerk for an informal settlement conference.

(c) In the event the consulting psychologist determines that a violation of the Act does not exist, the matter shall be referred to the Complaints Review Committee for disposition.

(d) The following procedure shall be followed in informal settlement conferences:

(1) One or more members of the Board and/or representatives of the Board shall conduct the settlement conference as the Board's representative, one of which shall be a licensed psychologist.

(2) The Board will provide the licensee or certificate holder with written notice of the time, date and place of the settlement conference. Such notification shall inform the licensee or certificate holder of the nature of the allegations, that the licensee or certificate holder may be represented by legal counsel or other representative, that the licensee or certificate holder may offer the testimony of witnesses, that the Board will be represented by one or more of its members and by legal counsel, and that the licensee's or certificate holder's attendance and participation is voluntary. A copy of the Board's rules concerning informal disposition of cases shall be enclosed with the notice of the settlement conference. Notice of the settlement conference, with enclosures, shall be sent by certified mail, return receipt requested, to the last known address of the licensee or certificate holder on file with the Board.

(3) Notice of the settlement conference with enclosures, shall be sent by certified mail, return receipt requested to the complainant at his or her current address on file with the Board. The complainant shall be afforded the opportunity to appear and testify or to submit a written statement for consideration at the settlement conference.

(4) The settlement conference shall be informal and will not follow the procedure established in this chapter for contested cases or follow the Texas Rules of Civil Evidence. The licensee or certificate holder, his or her representative, representatives of the Board and Board staff and legal counsel may question witnesses, make relevant statements, present affidavits, letters, reports or statements of persons not in attendance and may present such other information as may be appropriate.

(5) The Board's representative may call upon the Board's attorney at any time for assistance in conducting the settle-

ment conference and may question any person in attendance. Each participant in the settlement conference shall have an opportunity to make a statement

(6) The Board's representative shall prohibit or limit access to the Board's investigative file and attorney work product to the licensee, certificate holder or complainant

(7) The Board's representative shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee or certificate holder, the licensee's or certificate holder's representative, Board members and Board staff

(8) At the conclusion of the settlement conference, the Board's representative may make recommendations to the licensee or certificate holder for resolution of the issues. Such recommendations may include any disciplinary actions authorized by the Act and Board rules

(9) The licensee or certificate holder may either accept or reject the settlement recommendations proposed by the Board representative. An agreed order shall be drafted by Board counsel as soon thereafter as is practicable and mailed, certified mail, return receipt requested, to the licensee or certificate holder or his or her representative. The licensee or certificate holder shall have ten days after receipt of the agreed order to accept or reject the Board's offer of settlement. Notice of rejection shall be in writing

(10) Following acceptance and execution by the licensee or certificate holder of the agreed order and upon receipt by Board counsel, the order shall be submitted to the full Board at the next regularly scheduled Board meeting for approval or rejection

(11) Upon an affirmative majority vote, the order shall bear the signature of the chair of the Board or the officer presiding at such meeting and shall be included in the minutes of the Board

(12) If the Board does not approve the proposed agreed order, the licensee or certificate holder shall be so informed. The matter shall then be referred back to the Board representative who attended the licensee's or certificate holder's informal settlement conference and Board attorney for consideration of other appropriate action

(13) If the licensee or certificate holder rejects the proposed settlement offered by the Board representative, a formal petition for disciplinary action may be filed by the executive director and the matter referred to the State Office of Administrative Hearings for hearing

#### *§466.16 Confidentiality of Informal Settlement Conference*

(a) In order to encourage the resolution and early settlement of all contested matters through voluntary settlement procedures, a communication relating to the subject matter made by a licensee or certificate holder while participating in an informal settlement conference before the initiation of formal proceedings, is confidential and may not be used as evidence in any further proceeding

(b) An oral communication or written material used in or made a part of an informal settlement conference is admissible or discoverable if it is admissible or discoverable independent of the conference

(c) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the presiding officer to determine in camera, whether the facts, circumstances and the context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure

#### *§466.17 Prehearing Conference*

(a) In a contested case the presiding officer on his or her own motion or on the motion of a party may direct the party or his or her representative to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) formulating issues,
- (2) simplifying issues,
- (3) discussing matters to be officially noticed;
- (4) discussing the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record such as official records of the Board to the end of avoiding the unnecessary introduction of proof,
- (5) ruling on any previously filed motions,
- (6) discussing the procedures at a hearing;
- (7) discussing the limitation, where possible, of the number of witnesses, and
- (8) discussing such other matters as may aid in the simplification of the proceedings

(b) Action taken at the conference may be recorded by a court reporter or in an appropriate order as directed by the presiding officer

*§466.18. Recording of Hearings* Records of hearings shall be made by mechanical or electronic means at the discretion of the presiding officer.

#### *§466.19 Motions.*

(a) Any motion filed in a pending proceeding shall:

- (1) be in writing;
- (2) set forth the specific grounds and reasons therefor, and the relief sought,
- (3) be distributed to all parties of record over a certificate of service as outlined in §466.8(d) of this title (relating to Pleadings) and §466.11 of this title (relating to Service in Nonrulemaking Proceedings),
- (4) be filed with the presiding officer not less than five days prior to the hearing date,
- (5) if based on facts or matters which are not of record, be supported by an affidavit, and
- (6) be ruled on by the presiding officer at a prehearing conference or at the hearing.

(b) Motions for continuance or for dismissal of a complaint shall:

- (1) comply with subsection (a)(1)-(6) of this section, and
- (2) make reference to all prior motions of the same nature filed in the same proceeding and shall state whether all parties agree to the relief requested

(c) When a complaint has proceeded to its hearing date, pursuant to the notice issued therein, no continuance or dismissal shall be granted by the presiding officer without the consent of all parties involved

(d) Continuances will not be granted based on the need for discovery if discovery requests have not previously been served upon the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence previously undisclosed despite the diligence of the moving party. If the motion is filed less than five days prior to the hearing, the moving party shall immediately notify the official reporter of the disposition of the motion

*§466.20 Consolidated Hearings* A motion for consolidation of two or more applications, petitions or other proceedings shall comply with §462.19 of this title (relating to Motions). Proceedings shall not be consolidated unless:

- (1) the proceedings involve common questions of law and fact, and

(2) separate hearings would result in unwarranted expense, delay or substantial injustice.

**§466.21. Place and Nature of Hearing.** All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin.

**§466.22. Presiding officer.**

(a) A presiding officer shall conduct all hearings in accordance with the Administrative Procedure Act, the Act, the rules of this Board, the rules of the State Office of Administrative Hearings and all other applicable law

(b) Except for issuing final orders on the merits or dismissing petitions for disciplinary actions or applications for licensure or certification, the presiding officer shall have broad discretion in regulating the course and conduct of the hearing. The presiding officer shall have the following authority.

(1) to hold hearings and issue notices,

(2) to administer oaths and affirmations;

(3) to direct all parties to enter their appearance on the record,

(4) to examine witnesses;

(5) to receive evidence,

(6) to compel the attendance of witnesses and the production of papers and documents, subject to privileges and exemptions recognized by law;

(7) to authorize the taking of depositions, whether oral, telephonic or by video,

(8) to rule upon the admissibility of evidence and amendments to pleadings,

(9) to limit the number of witnesses whose testimony would be merely cumulative;

(10) to set reasonable times within which a party may testify, cross-examine witnesses, or present evidence,

(11) to impose sanctions,

(12) to recess any hearing,

(13) to fix the time for filing of briefs and other documents,

(14) to regulate the manner of examination of witnesses to prevent needless and unreasonable harassment, intimidation, expense, inconvenience or embarrassment of any witness or party at a hearing,

(15) to remove disruptive individuals;

(16) to rule on motions;

(17) to issue a proposal for decision, including proposed findings of fact and conclusions of law and a recommended order containing the elements specified in §466.36 of this title (relating to Proposals for Decision).

(18) to amend the proposal for decision or recommended order or both, based upon exceptions and replies filed by the parties; and

(19) to present and explain in person the proposal for decision to the Board for its consideration and final action

**§466.23. Record**

(a) The record in a contested case includes the matters listed in the Administrative Procedure Act, Government Code, §2001.060.

(b) Proceedings, or any part of them, shall be transcribed on written request of any party

(c) A person requesting a verbatim record shall pay the applicable reporting fees in the Board's court reporting services agreement.

(d) The court reporter shall provide the Board the original

(e) Should two or more parties make a request for a verbatim record, the cost shall be borne on a pro rata basis.

(f) The court reporter may sell copies of a transcript of a Board proceeding in accordance with the Board's court reporting services agreement, but the Board shall not be precluded from complying with the public's right of access to public information

**§466.24. Withdrawing the Application.**

(a) Absent Board authorization or agreement of the parties, an applicant may not withdraw his application without prejudice once the Board has received and taken jurisdiction over the application.

(b) An application which has become contested may not be withdrawn except with consent of the parties. The presiding officer will forward the request to withdraw the application and recommendation to the Board

**§466.25. Discovery**

(a) Discovery may be made in a contested case in accordance with the Administrative Procedure Act.

(b) Discovery shall be subject to the constraints provided by the Texas Rules of Civil Procedure for privileges, objections, protective orders and duty to

supplement as well as the constraints provided in the Administrative Procedure Act.

**§466.26. Evidence.**

(a) The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. Opportunity must be afforded all parties to respond and present evidence and argument of all issues involved

(b) Objections to evidentiary offers shall be made and shall be noted in the record. Formal exceptions to rulings of the presiding officer during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the presiding officer the action which he or she desires.

(c) If evidence is excluded from the record by an exclusionary ruling, the evidence may be included in the record by an offer of proof by the sponsoring party by dictating into the record or submitting in writing the substance of the evidence. An offer of proof shall be sufficient to preserve the evidence for review

(d) Office records of each patient shall have stapled thereto an affidavit in the form approved and furnished by the Board which contains the requisite elements to comply with the Texas Rules of Evidence, §902(10)b, relating to form of affidavits

(e) When numerous documents are offered, the presiding officer may limit those admitted to a number which are typical and representative and may, in his or her discretion, require the abstracting of the relevant date from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement the presiding officer shall require that all parties of record be given the right to examine the documents from which the abstracts were made

**§466.27. Official Notice** The presiding officer may take official notice of all facts judicially cognizable. In addition, the presiding officer may take official notice of any generally recognized facts within the specialized knowledge of the Board.

**§466.28. Protective Orders** On motion specifying the grounds and made by any person against or from whom discovery is sought, the presiding officer may make any

ruling in the interest of justice necessary to protect the party against whom discovery is sought. Specifically, authority as to such rulings extends to, although is not necessarily limited by, any of the following

(1) ruling that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified; or

(2) ruling that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the presiding officer

*§466.29 Orders Compelling Discovery Requests*

(a) Requests for orders compelling discovery shall contain a statement that, after due diligence, the desired information cannot be obtained through informal means, that good faith efforts at negotiation have failed to produce the requested discovery, and, that good cause exists for requiring discovery

(b) The request for a discovery order may be denied if the request is untimely or unduly burdensome in light of the complexity of the proceeding, if the requesting party has failed to exercise due diligence, if the discovery would result in undue cost to the parties or unnecessary delay in the proceeding, or for other good cause in the interest of justice

*§466.30 Sanctions* After notice and opportunity for hearing, an order imposing sanctions, as are just, may be issued by the presiding officer for failure to comply with an order, subpoena, or commission. The order imposing sanctions may

(1) disallow any further discovery of any kind or of a particular kind by the disobedient party,

(2) require the party, the party's representative, or both to obey the discovery order,

(3) require the party, the party's representative, or both to pay reasonable expenses, including attorney fees, incurred by reason of the party's noncompliance,

(4) direct that the matters regarding which the discovery order was made shall be deemed established in accordance with the claim of the party obtaining the order,

(5) refuse to allow the disobedient party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters into evidence,

(6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed, or

(7) dismiss the action or proceeding or any part thereof or render a decision by default against the disobedient party

*§466.31 Board Review of Discovery Orders.* Any discovery order or order imposing sanctions issued by the presiding officer is subject to review by an interlocutory appeal to the Board according to the stage of the proceeding. The appeal shall be filed with the Board within five days of the action that is the subject of the appeal. The appeal may be considered by the Board chair within 15 days after filing of the appeal. If the Board chair does not make a ruling on the appeal within 15 days after the filing thereof, then the appeal shall be considered denied and the ruling of the presiding officer shall be considered upheld

*§466.32 Stipulation.* Evidence may be stipulated by agreement of all parties. No stipulation or agreement shall be considered unless it is in writing and signed by the parties or their attorneys, or dictated into the record during the course of the proceeding. This section does not limit a party's ability to waive or modify by stipulation any right or privilege afforded by these rules, unless otherwise precluded by law

*§466.33 Exhibits*

(a) Exhibits to be offered in evidence at a hearing shall be of a size which will not unduly encumber the record. Whenever practicable, exhibits shall conform to the size requirements established by §466.8 of this title (relating to Form and Content of Pleadings). The pages of each exhibit shall be numbered consecutively

(b) The original or a true and correct copy of each exhibit offered in evidence shall be identified and tendered for inclusion in the record. Copies of the exhibit shall be furnished to the presiding officer, and to each party at or prior to the time the exhibit is offered in evidence

(c) If an exhibit is identified, objected to, and excluded, the presiding officer may determine whether or not the party offering the exhibit wishes to withdraw the offer, if so, the presiding officer shall permit the return of the exhibit to the party. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the presiding officer with the ruling, and shall be included in the record for the purpose of preserving an exception

*§466.34 Hearing Procedures.*

(a) The presiding officer shall open the hearing and make a concise statement of

its scope and purposes. Appearances shall then be entered by all parties. Thereafter, parties may make motions or opening statements

(b) Parties shall be permitted to make opening statements, offer direct evidence, cross-examine witnesses, and present supporting arguments. The Board or the applicant in a license hearing shall be entitled to open and close. The presiding officer may direct that closing argument be made in writing. The presiding officer may alter the order of procedure if necessary for efficient conduct of the hearing

(c) Voir dire examinations to evaluate the qualifications of a witness to testify may be permitted but will not be substituted for cross-examination.

(d) The Board or an applicant in a license hearing may rebut evidence and argument presented by the opposing party.

*§466.35. Oral Argument.* At the conclusion of the hearing, oral argument may be heard upon request of the parties or upon directive of the presiding officer. Reasonable time limits may be prescribed. The presiding officer may require or accept written briefs in lieu of oral arguments.

*§466.36. Proposals for Decision.*

(a) When required under the provisions of the Administrative Procedure Act a presiding officer shall file a proposal for decision which shall contain:

(1) a summary of the evidence adduced by each party;

(2) a statement of the presiding officer's reasons for the proposed decision;

(3) findings of fact expressed in clear, concise factual terms, neither summarizing nor reciting the evidence. Findings of fact must be based explicitly on the evidence and on matters officially noticed;

(4) conclusions of law necessary to the proposed decision,

(5) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the Board; and

(6) recommended disposition or discipline

(b) When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the presiding officer on each party, his or her representative, and the Board. Service of the proposal for decision shall be in accordance with §466.11 of this title (relating to Service in Nonrulemaking Proceeding).

(c) If findings of fact are stated in statutory language, each finding must be



accompanied by a concise and explicit statement of the facts supporting the finding.

(d) Only when the presiding officer request, a party or parties to submit findings of fact will it be necessary for the presiding officer to rule on each proposed finding in the recommended order.

*§466.37. Exceptions and Replies.*

(a) Any party of record who is aggrieved by the presiding officer's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within 20 days from the date of service of the proposal for decision. Replies to the exceptions may be filed by other parties within ten days of the filing of the exceptions. Exceptions and replies shall be filed with the presiding officer and the Board. Any extensions of time shall be as provided by §466.6 of this title (relating to Computation of Time).

(b) The form of exceptions and replies are as specified in §466.8 of this title (relating to Pleadings)

(c) Each exception or reply to a finding of fact shall be concisely stated and summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(d) Briefs shall be filed only when requested or permitted by the presiding officer

(e) Exceptions and replies shall be served upon every party of record by the filing party pursuant to §466.11 of this title (relating to Service in Nonrulemaking Proceedings)

*§466.38. Oral Argument* A request for oral argument before the Board may be incorporated in exceptions, replies to exceptions, motions for rehearing or in separate pleadings, but oral argument shall be allowed during its consideration of a proposal for decision only in the discretion of the Board.

*§466.39. Final Decisions and Orders.*

(a) The Board may consider the case upon the expiration of ten days after the time for filing of replies to exceptions to the Proposal for Decision.

(b) A copy of the decision or order shall be delivered or mailed, certified, re-

turn receipt requested to any party and to his or her representative.

(c) All final decisions and orders of the Board after consideration of a proposal for decision shall be in writing or stated in the record and signed by the chair or presiding officer. A final order shall including findings of fact and conclusions of law separately stated.

(d) As the Board has been created by the legislature to protect the public interest as an independent agency of the executive branch of the government of the State of Texas so as to remain the primary means of licensing and regulating the practice of psychology consistent with federal and state law and to ensure that sound principles of psychology govern the decisions of the Board, it shall hereafter be the policy of the Board to change a finding of fact or conclusion of law or to vacate or modify the proposed order of an administrative law judge when the proposed order is:

- (1) erroneous;
- (2) against the weight of evidence;
- (3) based on unsound principles of psychology;
- (4) based on an insufficient review of the evidence;
- (5) not sufficient to protect the public interest, or
- (6) not sufficient to adequately allow rehabilitation.

(e) If the Board modifies, amends or changes the administrative law judge's proposed Order, an order shall be prepared reflecting the Board's changes as stated in the record.

*§466.40. Motions for Rehearing.*

(a) A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by mail, of the final decision or order of the Board. Replies to the motion for rehearing may be filed within 15 days of the filing of the motion for rehearing.

(b) Board action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If Board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The Board may by written order extend the period of time for filing the mo-

tions and replies and taking Board action, except that an extension may not extend the period for Board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may be agreement with the approval of the Board provide for a modification of the times provided in this section.

(c) An order granting a motion for rehearing vacates the preceding final order. When the Board renders a new final decision, a motion for rehearing directed to the new decision is a prerequisite to appeal.

*§466.41. Costs of Appeal.* A party appealing a final decision of the Board in a contested case may be ordered by the Board to pay all or a part of the cost of preparation of the original or a certified copy of the record of the proceeding that is required to be transmitted to the review Court.

*§466.42. Disciplinary Review Panel.* A Disciplinary Review Panel, appointed by the Chair of the Board will consist of at least the Executive Director, General Counsel, Investigator, a psychologist licensed by the State of Texas, and a non-psychologist. The Chair of the Board will appoint the Chair of the Panel. The Panel has the authority to offer recommendations to the licensee or certificand for resolution of allegation(s) in an informal settlement conference.

*§466.43. Complaints Review Committee.* A Complaints Review Committee, appointed by the Chair of the Board, will consist of at least one psychologist and one non-psychologist. The Committee has the authority to review allegations in order to dismiss or continue the investigations.

Issued in Austin, Texas, on January 24, 1994.

TRD-9435127

Rebecca E Forkner  
Acting Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: January 24, 1994

Expiration date: May 25, 1994

For further information, please call: (512) 835-2036





Deidra Turnak

Name: Deidra Turnak  
Grade: 8  
School: Clear Lake Intermediate, Clear Lake ISD

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### Part IV. Office of the Secretary of State

#### Chapter 71. Office of the Secretary of State

##### Practice and Procedure

###### • 1 TAC §71.8

The Office of the Secretary of State proposes an amendment to §71.8, concerning Copies, Certified Copies, Fees for Copies

The amendment implements House Bill 1009, 73rd Texas Legislature, by temporarily establishing a 15% increase for copies of public records until the General Services Commission adopts the methods which state agencies shall use to determine the cost of providing copies of public records

Lorna S. Wassdorf, deputy assistant secretary of state, Statutory Filings Division, has determined that for the first five-year period the rule as proposed is in effect there will be no fiscal implications for state or local government

Ms Wassdorf also has determined that the public benefit anticipated as a result of enforcing the rule as proposed will be to recover the full cost to the agency of providing copies of public records

The cost of complying with the rule as proposed for small businesses and for persons who request copies of public records will be a 15% increase in the fees for noncertified copies of documents on file in the Office of the Secretary of State

Comments on the proposal may be submitted to Dan Procter, director, Texas Register, 1019 Brazos, Room 245, Austin, Texas 78701, (512) 463-5562

The amendment is proposed under the Government Code, §§552.261, 552.262, and §2001 which give the secretary of state the authority to charge for photographic reproductions of public records

The amendment affects the Government Code, §§552.262 and §552.263

§71.8 Copies, Certified Copies, Fees for Copies

(a)-(b) (No change)

(c) Fees for noncertified copies of documents on file in the Office of the Secretary of State shall be computed as follows

(1) ninety-eight [eighty-five] cents for the first page of a standard or legal size paper document,

(2) seventeen [fifteen] cents for each additional page of the same standard or legal size paper document, or additional copies of the same document;

(3) eighty-six cents for the first page of a microfilm document;

(4) twenty-nine cents for each additional page of the same microfilm document, or additional copies of the same document; and

(5) a fee of \$29.90 for each roll of microfilm.

(d)[(3)] When [when] noncertified copies are required to be mailed, the cost of postage will be added to the computed fee

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

Issued in Austin, Texas, on January 24, 1994

TRD-9435084 Audrey Selden  
Assistant Secretary of  
State

Earliest possible date of adoption March 4, 1994

For further information, please call (512) 463-5562

## Chapter 85. Microfilm

### • 1 TAC §85.1

*(Editor's note The text of the following section proposed for repeal will not be published The section may be examined in the offices of the Office of the Secretary of State or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)*

The Office of the Secretary of State proposes the repeal of §85.1, concerning fees and charges for microfilm copies The requirements under §85.1 are being incorporated

with amendments to §71.8 of this title (relating to Copies, Certified Copies; Fees for Copies)

Lorna S Wassdorf, deputy assistant secretary of state, Statutory Filings Division, has determined that for the first five-year period the rule as proposed is in effect there will be no fiscal implications for state or local government

Ms Wassdorf also has determined that the public benefit anticipated as a result of the repeal will be rules in compliance with House Bill 1009, 73rd Texas Legislature. There will be no cost of compliance associated with the repeal of the section for small businesses.

Comments may be submitted to Dan Procter, Texas Register, 1019 Brazos, Room 245, Austin, Texas 78701, (512) 463-5562

The repeal is proposed under the Government Code, §§552.261, 552.262, and 2001, which give the secretary of state the authority to charge for photographic reproductions of public records

The amendment affects the Government Code, §§552.262 and §552.263

### §85.1 Fees and Charges

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

TRD-9435204 Audrey Selden  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Earliest possible date of adoption March 4, 1994

For further information, please call (512) 463-5562

## Part V. General Services Commission

### Chapter 111. Executive Administration Division

#### • 1 TAC §§111.61-111.63

*(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*

General Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The General Services Commission proposes the repeal of §§111.61-111.63, concerning the cost of copies of open records. These sections are being repealed and replaced with new §§111.61-111.70 concerning charges for public records.

Gerald Heep, Director of Internal Audit, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Heep also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clearer rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under Texas Government Code, §552.261, which provides the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the section.

#### §111.61 General

#### §111.62 Standard Sized Pages

#### §111.63 Nonstandard Sized Pages of Records in Computer Banks, on Microfilm, or in Other Similar Record Keeping 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.

Issued in Austin, Texas, on January 25, 1994

TRD-9435217  
Judith M. Porras  
General Counsel  
General Services  
Commission

Earliest possible date of adoption: March 4, 1994

For further information, please call (512) 463-3583

#### ♦ ♦ ♦ • I TAC §§111.61-111.70

The General Services Commission proposes new §§111.61-111.70, concerning charges for public records. The new sections implement the provisions of House Bill 1009, Acts, 73rd Legislature with respect to the cost of providing records to the public and the charges that state agencies and other governmental entities may set to recover up to

the full costs of providing public records. The proposed rules will serve as guidelines for governmental bodies to consider as they analyze their costs and determine their charges.

Gerald R. Heep, Director of Internal Audit, has concluded that the first five-year period the proposed sections are in effect there should be positive fiscal implications for state and local governments as a result of implementing or administering these sections. The exact amount of the fiscal impact is not subject to determination as each agency has the authority to set its charge schedule. The Comptroller, in the Texas Performance Review (TPR) *Against the Grain* report, indicated that "the state could expect a minimum of \$1,560,000 per year after a fiscal-year phase-in period."

Mr. Heep also has determined that for each year of the first five years the sections are in effect the public benefit anticipated will be clearer guidelines for state agencies and governmental bodies in providing access to, and copies of, public records and in determining the charges to be set by each organization. The adoption of consistent and reasonable charges should result in better service to the public and in fees that are not so high as to bar access to public information.

Comments on the proposed rules may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Government Code, Chapter 552, §552.261 and §552.262, which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

#### §111.61 General

(a) The General Services Commission must

(1) periodically determine the actual cost of standard-size reproductions (up to 8 1/2 inches by 14 inches) and publish these cost figures for use by governmental bodies in determining charges for supplying copies of public information, and

(2) specify the methods and procedures that may be used in determining the amounts that may be charged to recover the full cost of providing copies of public records.

(b) Governmental bodies may use this section and §§111.61-111.70 of this title (relating to Cost of Copies of Open Records) both to calculate the costs of providing public information and also to set the charges a body may choose to establish for copies of public information. The cost of information is not necessarily synonymous with the charges made for public information.

(c) Chapter 428, Acts, 73rd Legislature, Regular Session (1993) requires state agencies to adopt rules that specify the charges the agency will make for copies of

public records. When a request for public records is made for more than 50 pages of readily available information, state agencies are authorized to establish charges up to the full cost to the agency of providing the copies.

(d) Each state agency is required by Chapter 428, Acts, 73rd Legislative, Regular Session (1993) to review its procedures for providing access to, and copies of, public information and to analyze the charges the agency makes for providing copies. To comply, an agency may utilize the cost methodology adopted by the Council on Competitive Government to analyze its costs. Each state agency is required to promulgate rules specifying the charges the agency will establish for copies of public information. To comply, an agency may consider these Commission rules. These rules do not diminish the authority of a state agency either to adopt an alternative methodology for calculating costs or to reduce or waive the charges that might be made for public information. These rules may also be used to determine what a state agency could charge another state agency for public information. The adoption of these rules by state agencies should promote uniformity throughout state government for providing public information.

(e) Utilization of standard charges enhances the public's understanding of how costs for public information have been calculated. The charges for providing public information may not be excessive and should be reasonable and not effectively bar access to information.

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

Full Cost—The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost should be determined in accordance with generally accepted methodologies. To determine full costs, governmental bodies may utilize the cost methodology adopted by the Council on Competitive Government.

Nonstandard-size copy—A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies.

Readily available information—Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm, but not information that requires more than 15 minutes to locate.

Standard-size copy—A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single-copy. A piece of paper that is printed on both sides is counted as two copies.

State agency—Any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or statute, including a university system or institution of higher education as defined in Texas Education Code, §61.003, other than a public junior college.

*§111.63. Suggested Charges for Providing Copies of Public Information.*

(a) The charges suggested in this section to recover costs associated with providing public information are based on estimated average costs to state agencies.

(b) Copy charge.

(1) Standard-size copy. The suggested charge for standard-size paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page.

(2) Nonstandard-size copy. The suggested charges for nonstandard copies are: Diskette—@ \$2.00; Computer magnetic tape—@ \$15.00; VHS video cassette—@ \$2.50; Audio cassette—@ \$1.00; Paper copy—@ \$5.00.

(3) The suggested charges in this subsection are to cover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

(c) Personnel Charge.

(1) The suggested charge for personnel costs incurred in processing a request for public information is \$15 an hour, which is the average hourly cost, including fringe benefits, to the State for classified state employees as of May 31, 1993. Where applicable, the personnel charge should be prorated to recover the cost for personnel time spent to take requests, locate documents, and reproduce requested information.

(2) A personnel charge may not be billed in connection with complying with requests that are for 50 or fewer pages of readily available information.

(d) Overhead Charge

(1) In response to a request either for information that is not readily available or for in excess of 50 pages of readily available information, a governmental body may include in the charges direct and indirect costs, in addition to the personnel

charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. It is suggested that, if a governmental body chooses to recover such costs, a charge be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge should not be made for requests for readily available information of fewer than 50 pages.

(3) It is suggested that the overhead charge be computed at 20% of any charge made to cover personnel costs associated with a particular request. For example, if one hour of personnel time is expended to respond to a particular request, the personnel charge would be \$15 and the overhead charge would be \$3.00.

(e) Microfiche and microfilm charge. If a governmental body already has information that exists on microfilm and has microfilm copies available, the suggested charge is the total of the costs of making the copy of the fiche or film. If a master copy of information in microform is maintained, the suggested charge is \$.10 per page plus a charge to cover any personnel time spent in making the copies. If the requestor prefers to have a copy of the fiche or film, itself, and the information on the fiche or film can be released in its entirety, the body should make a copy of the fiche or film available and charge for the cost of having such a copy made. The Texas State Library has the capacity to reproduce microfiche and microfilm for state agencies.

(f) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by state agencies to store such documents with the Texas State Library, which is equipped to provide such a service to state agencies free of charge. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services. Where a charge is made for documentation retrieval, no additional personnel charge should be factored in for time spent locating documents.

(2) It is suggested that such charge be waived if the request is for five pages or fewer of readily available information.

(g) Computer Resource Charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition,

lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) There is currently a wide range of computer capabilities. Many organizations with more advanced computer capabilities have already developed methodologies to recover the costs of computer utilization. It may be appropriate, nonetheless, in response to requests for public information, for governmental bodies with existing methodologies that choose to charge for CPU or other computer related costs to consider using the uniform charges suggested in these rules. These suggested computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to open records requests.

(3) The suggested charges in this subsection are averages based on a survey of state agencies with a broad range of computer capabilities. Each governmental body using this cost recovery charge should determine which category of computer type most closely fits its existing system and set its charge accordingly:

Type of System—Rate:

Mainframe (e.g., IBM ES-9000)—\$17.50 per minute;

Midrange (e.g., VAX-7000)—\$3.00 per minute.

Clinet/Server (e.g., AS-400; SUN)—\$1.00 per minute;

PC or LAN—\$.50 per minute.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. For example, the computer resource charge for a request that takes 20 seconds to execute on a mainframe system would be \$5.83.

(h) Programming time. If a particular request requires a programmer to enter data in order to execute an existing program or to create a new program so that requested information may be accessed, the governmental body may charge for the programmer's time. The average hourly salary of a programmer for the State of Texas is currently \$26.00 an hour, including fringe benefits, which is the suggested charge to be used in these rules. Any charge for programming time should be prorated. Only programming services should be charged at this hourly rate. Any personnel time spent in performing services other than programming should be charged at the rate specified for personnel as described in subsection (c)(1) of this section.

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information may be added to the total charge for public information

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party

(k) Fax charge. The suggested charge for a fax transmitted locally is \$.10 per page. The suggested charge for long distance transmission is \$.50 per page for a fax sent within the sender's area code, and \$1.00 per page for a fax transmitted to a different area code.

(l) Sales tax. Sales tax should not be added on charges for public information

(m) The Commission shall reevaluate and update annually the charges recommended in this section.

#### *§111.64 Temporary Increase in Charges for Public Information*

(a) Pursuant to Chapter 428, Acts, 73rd Legislature, Regular Session (1993), state agencies were required as of September 1, 1993 to temporarily increase by 15% the amount of any charges in place as of that date for providing copies of public information and by 25% of charges for providing a copy of mailing lists. These temporary increases in charges are only to remain in effect until such time as the agency adopts rules as required by Chapter 428.

(b) State agencies are urged to complete adoption of new rules regarding charges for public information as soon as possible, but no later than August 31, 1994

#### *§111.65 Access to Information Where Copies Are Not Requested.*

(a) Access to readily available information. A governmental body should not charge for making available for inspection readily available information. If, however, information is located at a remote document storage center and the body will incur a retrieval charge in order to make the information available, the requesting party may be charged the actual cost of retrieval. It is suggested that such a charge be waived if the request is for five or fewer pages of information.

(b) Access to information that is not readily available

(1) In response to requests for access to information where such information is not readily available, a governmental body may charge the requesting party the cost of preparing and making available such information. Preparation might involve retrieval of information from a database, and deletion of confidential information. In such a case, a body may recover the cost of personnel as set forth in §111.63(c)(1) of this title (relating to Suggested Charges for Providing Copies of Public Information).

(2) A requesting party may wish to examine information that is not readily available, but that may be the subject of repeated requests. If it is anticipated that requested material is or may be the subject of multiple requests, a paper or other copy of such information should be retained so that it may be made available in the future as readily available information. In such instances, the cost of providing the information may be amortized so that the initial requestor does not bear the entire cost.

*§111.66 Format for Copies of Public Information.* Although not required to do so by the Open Records Act, it is suggested that

governmental bodies accommodate a requesting party by providing information in the format requested. For example, if a requesting party asks that information be provided on a diskette, and the requested information is electronically stored, the governmental body may provide the information on diskette. A body is not required to acquire software or programming capabilities that it does not already possess to accommodate a particular kind of request.

#### *§111.67. Estimates and Waivers of Public Information Charges*

(a) A party requesting copies of public information will not always be aware of the amount of time and cost that may be involved in complying with a particular request. Where a particular request will involve considerable time and resources to process, governmental bodies are urged to advise the requesting party of what may be involved and to provide an estimate of date of completion and the charges that may result. All efforts should be made to process requests as efficiently as possible so that requested information will be provided at the lowest possible charge. Governmental bodies have the discretion to furnish public records without charge or at a reduced charge if it is determined that a waiver or reduction is in the public interest. When a body charges for public information, full disclosure should be made to the requesting party as to how the charges were calculated.

(b) A deposit may be required in the amount of the estimated charges if such charges exceed \$100.

#### *§111.68 Examples of Charges for Copies of Public Information*

(a) The following tables present a few examples of the calculations of charges for information

**TABLE 1**

Readily Available Information (fewer than 50 pages):

\$ .10 per copy x number of copies (standard-size paper copies) or cost of nonstandard copy (e.g., diskette)

+ Postage and shipping (if applicable)

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**\$ TOTAL CHARGE**

**TABLE 2**

Readily Available Information (more than 50 pages):

\$ .10 per copy x number of copies (standard-size copies) or cost of nonstandard copy (e.g., diskette)

+ Personnel charge (if applicable)

+ Overhead charge (if applicable)

+ Document retrieval charge (if applicable)

+ Actual cost of miscellaneous supplies (if applicable)

+ Postage and shipping (if applicable)

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**\$ TOTAL CHARGE**

**TABLE 3**

Information that is Not Readily Available.

Cost of copy (standard-size or nonstandard-size, whichever applies)

+ Personnel charge

+ Overhead charge

+ Computer resource charge (if applicable)

+ Programming time (if applicable)

+ Document retrieval charge (if applicable)

+ Actual cost of miscellaneous supplies (if applicable)

+ Postage and shipping (if applicable)

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**\$ TOTAL CHARGE**

*§111.69. The General Services Commission Charge Schedule.* The following is a summary of the charges for copies of public information that have been adopted by the Commission for internal use. These are also the suggested charges set forth in these rules:

Service Rendered—Charge:

(1) Standard-size paper copy—\$.10 per page;

(2) Nonstandard-size copy:

(A) Diskette—\$2.00 each;

(B) Magnetic tape—\$15 each;

(C) VHS video cassette—\$2.50 each;

(D) Audio cassette—\$2.50 each;

(E) Paper copy—\$.50 each;

(F) Other—Actual cost;

(3) Personnel charge—\$15 per hour;

(4) Overhead charge—20% of personnel charge;

(5) Microfiche or microfilm charge—\$.10 per page;

(6) Remote document retrieval charge—Actual cost;

(7) Computer resource charge:

(A) Mainframe—\$17.50 per minute;

(B) Midsized—\$3.00 per minute;

(C) Client/Server—\$1.00 per minute;

(D) PC or LAN—\$.50 per minute;

(8) Programming time charge—\$26 per hour;

(9) Miscellaneous supplies—Actual cost;

(10) Postage and shipping charge—Actual cost;

(11) Fax charge:

(A) local—\$.10 per page;

(B) long distance, same area code—\$.50 per page;

(C) long distance, different area code—\$1.00 per page;

(12) Other costs—Actual cost.

*§111.70. Billing Form.* It is suggested that all agencies use a billing form to itemize charges made for public information. An example of a billing form follows.



**PUBLIC RECORDS CHARGES  
BILLING**

<b>Description of Information</b>	_____	<b>Date</b>	_____
<b>Agency / Company</b>	_____	<b>Method of Payment:</b>	_____
<b>Address</b>	_____	Cash	_____
	_____	Check	_____
<b>Telephone No. ( ) -</b>	_____	Other	_____
	_____		_____
	<u>Number</u>		<u>Total</u>
<b>Standard-size Paper Copies</b>	_____ @ \$.10/page		\$ _____
<b>Nonstandard-size Copies:</b>			
- Diskette	_____ @ \$2.00/ea.		\$ _____
- Magnetic Tape	_____ @ \$15.00/ea.		\$ _____
- VHS Video Cassette	_____ @ \$2.50/ea.		\$ _____
- Audio Cassette	_____ @ \$1.00/ea.		\$ _____
- Paper	_____ @ \$ .50/ea.		\$ _____
- Other	_____ (actual cost)		\$ _____
<b>Personnel Charges:</b>	_____ @\$15.00/hr.		\$ _____
<b>Overhead Charges</b>			
(20% of Total Personnel Charges)	_____ x .20		\$ _____
<b>Computer Resource Charges:</b>			
- Mainframe	_____ @ \$17.50/min.		\$ _____
- Midrange	_____ @ \$3.00/min.		\$ _____
- Client/Server	_____ @ \$1.00/min.		\$ _____
- PC or LAN	_____ @ \$0.50/min.		\$ _____
<b>Programming Time</b>	_____ @ \$26.00/hr		\$ _____
<b>Postage / Shipping Charges</b>	_____ (actual cost)		\$ _____
<b>Fax Charges:</b>			
- Local	_____ @ \$0.10/page		\$ _____
- Long Distance / Same Area Code	_____ @ \$0.50/page		\$ _____
- Long Distance / Other Area Code	_____ @ \$1.00/page		\$ _____
<b>Other Charges:</b>			
(Description: _____)			\$ _____
<b>TOTAL CHARGES!:</b>			\$ _____

Note: Sales tax is not applicable on public records.

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 January 25, 1994.

TRD-9435216

Judith M. Porras  
General Counsel  
General Services  
Commission

Earliest possible date of adoption: March 4, 1994

For further information, please call (512) 463-3583

## Chapter 113. Central Purchasing Division

### Purchasing

#### • 1 TAC §§113.11, §113.12

The General Services Commission proposes amendments to §113.11 and §113.12, concerning the certification of delegated authority of all agencies and the certification program for research in higher education. The amendments are to update rules negated by the implementation of the Uniform Statewide Accounting System (USAS) on September 1, 1993.

Pat Martin, director, Purchasing Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Ms. Martin also has determined that for each year of the first five years the sections are in effect the public benefit that will be anticipated as a result of enforcing these sections will be the elimination of procedures that are no longer required. The implementation of the Uniform Statewide Accounting System and associated procedures has made these rules obsolete. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments may be submitted to Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article.

#### §113.11. Delegated Purchases.

(a)-(f) (No change.)

[(g) Requirements for certification of delegated authority.

[(1) Agencies are eligible for certification of delegated authority after maintaining a 90% compliance average or better for a continuous six-month period. Notification of an agency's eligibility for certification will be made by the executive

director of the commission to the agency head. An institution or other agency of higher education is eligible for immediate certification.

[(2) The certification of an institution or agency is subject to acceptance by the institution or agency, and requires the designation of a chief purchasing officer plus an alternate to act in the chief purchasing officer's absence. A copy of the signatures of the two designees must be provided to the commission. To accept certification, the chief purchasing officer must supply complete supporting documents for sample vouchers if the commission so requests. In addition, the commission is authorized to send a field auditor to the institution or agency purchasing office to conduct a compliance audit.

[(3) If an institution or agency is certified, the following statement signed by its chief purchasing officer must appear on or be attached to the duplicate copy of its payment vouchers: "I hereby certify that this payment complies with the statutes and all GSC rules and procedures pertaining to the delegation of purchasing authority."

[(A) Facsimile signatures on the certification statement are acceptable.

[(B) The institution's or agency's designated chief purchasing officer is responsible for compliance with the statutes and all commission rules and procedures.]

[(h) Retaining certification.

[(1) An institution or agency must maintain a minimal compliance level of 90% based upon commission sample audits to retain certification.

[(2) If an institution or agency falls below 90% compliance, the commission will notify the agency head and its chief purchasing officer of the deficiency and reason for non-compliance. The institution or agency will be placed on a three-month probationary period and required to remedial action. Certification will be revoked if the institution or agency fails rectify the deficiency during the probationary period.

[(3) The institution or agency may be recertified after it achieves 90% or better average compliance for a continuous six-month period.]

#### §113.12. Research in higher education.

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

(d) Purchases made under this authority shall be based on competitive bids whenever possible. If product competition is not available, the transaction must be

justified as proprietary. [An institution acting under this delegated authority shall forward the purchase documents to the commission for approval as part of the payment process.]

[(e) If an institution is certified in accordance with §113.11 of this title (relating to delegated purchases), it is required to submit documentation to the commission only when specifically requested by the commission to do so, or when making a purchase by means of competitive sealed proposals. Delegated purchases made by means of competitive sealed proposals, are excluded from the certification program.]

[(f)] The institution may consider factors such as quality, reliability, expected life span, compatibility with existing equipment and any other factors which may be legally considered when making a purchase under this authority. Bid invitations must include an evaluation plan describing the exact manner in which the factors will be evaluated. The evaluation plan must apply equally and impartially to each bid. An award may not be based on factors or criteria not specifically included in the bid invitation or otherwise permitted under the Act or these rules.

[(g)] An institution acting under this authority is required to maintain a qualified bidders list containing an adequate number of suppliers of research items. Bids must be solicited from the qualified bidders list, supplemented as appropriate by other sources identified by the institution.

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

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TRD-9435225

Judith M. Porras  
General Counsel  
General Services  
Commission

Earliest possible date of adoption: March 4, 1994

For further information, please call (512) 463-3583

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 18. Organic Food Standards and Certification

#### • 4 TAC §§18.1-18.8, 18.15, 18.17-18.24, 18.26, 18.27, 18. 29-18.39

(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 Agriculture or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin )

The Texas Department of Agriculture (the department) proposes the repeal of §§18.1-18.8, 18.15, 18.17-18.24, 18.26, 18.27, and 18.29-18.39 concerning a program for certification of organic food and fiber. The department is submitting separately proposed new sections in order to substitute those for these sections. The repeal is proposed to make Chapter 18 consistent with House Bill 2446, passed in the Texas 73rd Legislative Session (now codified at Texas Agriculture Code, Chapter 18 (Vernon, 1994 Supplement)), and the National Organic Food Production Act of 1990.

Brent Wiseman, Coordinator for Organic Programs, has determined that for the first five-year period the repeal is in effect, there will be fiscal implications for state government as a result of enforcing or administering the repeal. For the first five-year period the repeal and newly proposed sections are in effect, there will be an estimated increase in cost to state government of \$30,428 per year and an estimated increase in revenue to state government of \$20,480 per year, for a net loss to state government of \$9,948. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Wiseman also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a more efficient administration of the organic certification program, a benefit to producers, processors, distributors, and retailers as a result of increased marketability of certified organic food and fiber in-state, out-of-state, and internationally, increased consumer confidence and protection for purchasers of in-state and out-of-state certified organic food and fiber and improved understanding of organic food and fiber and organic certification. In addition, the state benefit anticipated as a result of enforcing the repeal and newly proposed sections will be the recovery of some costs to the state for certification of organic food and fiber and more effective administration and regulation of organic certification. The effect on small business for the first five-year period the repeal and newly proposed sections are in effect will be reduced fees for retailers. The effect on large business for the first five-year period that the repeal and newly proposed sections are in effect will be a decrease in cost of \$500 to a minimum of \$150 for small processors, an increase in cost from \$500 to an approximate \$1,000 for large processors and \$150 to an approximate \$1,000 for large distributors per year. The effect on individuals who are required to comply with the repeal and newly proposed sections will be a decrease in costs of \$150 to \$50 for small producers and an increase in costs of \$150 to an approximate \$1,000 for large producers per year.

Comments may be submitted to Brent W. Wiseman, Coordinator for Organic Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 45 days from the date of the publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, Title 2, Chapter 12, §12.002, which provides the Department with the authority to encourage the proper development of agriculture, horticulture, and related industries; the Texas Agricultural Code, Title 2, Chapter 12, §12.016, which authorizes the department to adopt rules as necessary for the administration of §§12.001-12.015 of the code; §12.0175, as amended by House Bill 2446, 73rd Legislature (1993) provides the department with the authority to charge an annual fee for administration of a certification program and a fee for a person who obtains a certificate of accreditation as an organic certifying agent; the Texas Agriculture Code, Chapter 18 (Vernon, 1994 Supplement), which provides the department with the authority to establish an organic certification program, and the National Organic Food Act of 1990 (Title 21) provides authority to the Commissioner of Agriculture to implement a State organic certification program for producers and handlers of agricultural products which have been produced using organic methods.

The code sections which will be affected by the proposals are the Texas Agriculture Code, Chapter 18 (Vernon, 1994 Supplement) and the Texas Agriculture Code, §§12.002, 12.016, and 12.0175.

*§18.1 Definitions*

*§18.2 Organic Production Practices.*

*§18.3. Soil Management.*

*§18.4. Soil Amendments and Fertilizers.*

*§18.5. Growth Regulators, Growth Promoters, Activators, Inoculants.*

*§18.6. Fertility Testing and Monitoring*

*§18.7. Crop Management*

*§18.8 Post-Harvest Handling*

*§18.15. Handling and Processing of Organic Crops.*

*§18.17. Other Processing Methods*

*§18.18. Laboratory Analysis*

*§18.19 Transfer of Certification*

*§18.20 Farm Certification*

*§18.21 Farm-Unit or Field Certification*

*§18.22 Transitional Periods*

*§18.23. Recertification.*

*§18.24. Transitional Labeling.*

*§18.26 Recordkeeping.*

*§18.27. Separation of Produce.*

*§18.29. Availability of Records for Review.*

*§18.30 Verification Documents.*

*§18.31. Recordkeeping by Department*

*§18.32. Auditing*

*§18.33. Application for Permission to Use the Texas Department of Agriculture "Certified Organic" Logo or the Texas Department of Agriculture "Organic Certification Pending-Transitional" Logo.*

*§18.34. Action on Application*

*§18.35 Termination of Permission to Use the Texas Department of Agriculture "Certified Organic" Logo or the Texas Department of Agriculture "Organic Certification Pending-Transitional" Logo.*

*§18.36 Logos.*

*§18.37. Use of Logos.*

*§18.38 Enforcement and Complaint Investigation*

*§18.39 Organic Certification Inspection Fees*

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 January 26, 1994

TRD-9435230

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption March 4, 1994

For further information, please call (512) 463-7583

◆ ◆ ◆  
• 4 TAC §§18.1-18.17

The Texas Department of Agriculture (the department) proposes new §§18.1-18.17, concerning a program for certification of organic

food and fiber. The department is submitting separately, a proposed repeal of Chapter 18 in order to substitute these new sections. The new sections are proposed to make Chapter 18 consistent with House Bill 2446, passed in the Texas 73rd Legislative Session (now codified at Texas Agriculture Code Ann., Chapter 18 (Vernon, 1994, Supplement)), and the National Organic Food Production Act of 1990.

The new sections change the Texas Department of Agriculture's Organic Certification Program from a voluntary to a mandatory certification, in accordance with House Bill 2446, which requires all persons in the State of Texas who produce, process, distribute and retail organic and transitional food and fiber to be certified by the department or an accredited certifying agent and provides procedures and fees for certification. The new sections also provide requirements and procedures for obtaining certification, provide for fees for different categories of certification, provide for accreditation of organic certifying agents operating in the state and requires that such certification be equivalent to the department's rules and procedures, provide enforcement procedures, provide for an advisory committee and include new requirements and procedures for the certification of organic cotton production, handling and processing of organic cotton products.

Brent W. Wiseman, Coordinator for Organic Programs, has determined that for the first five-year period the sections are in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. For the first five-year period the sections are in effect, there will be an estimated increase in cost to state government of \$30,428 per year and an estimated increase in revenue to state government of \$20,480 per year, for a net loss to state government of \$9,948. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Wiseman also has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing the sections will be a more efficient administration of the organic certification program, a benefit to producers, processors, distributors, and retailers as a result of increased marketability of certified organic food and fiber in-state, out-of-state, and internationally, increased consumer confidence and protection for purchasers of in-state and out-of-state certified organic food and fiber, and improved understanding of organic food and fiber and organic certification. In addition, the state benefit anticipated as a result of enforcing the new sections will provide recovery of some costs to the state for certification of organic food and fiber and more effective administration and regulation of organic certification. The effect on small business for the first five-year period the sections are in effect will be reduced fees for retailers. The effect on large business for the first five-year period that the sections are in effect will be a decrease in costs of \$500 to a minimum of \$150 for small processors, and an increase in costs from \$500 to an approximate \$1,000 for large processors and \$100 to an approximate \$1,000 for large distributors per year. The effect on persons who are

required to comply with the new sections will be: a decrease in costs of \$150 to \$50 for small producers and an increase in costs of \$150 to an approximate \$1,000 for large producers per year.

Comments may be submitted to Brent W. Wiseman, Coordinator for Organic Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 45 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, Title 2, Chapter 12, §12.002, which provides the department with the authority to encourage the proper development of agriculture, horticulture, and related industries, the Texas Agricultural Code, Title 2, Chapter 12, §12.016, which authorizes the department to adopt rules as necessary for the administration of the Code, §§12.001-12.015, §12.017, as amended by House Bill 2446, Texas 73rd Legislature (1993) provides the department with the authority to charge an annual fee for administration of a certification program not to exceed \$2,500 for each applicant to be certified as a producer, distributor, or retailer and a fee not to exceed \$5,000 for each applicant to be certified as a processor of organic food or fiber produced inside this state, and a fee not to exceed \$2,500 for each applicant to be certified as a distributor or retailer and a fee not to exceed \$5,000 for each applicant to be certified as a processor of organic food or fiber produced outside of this state, and a fee not to exceed \$2,500 for each person applying for a certificate of accreditation as an organic certifying agent, the Texas Agricultural Code, Chapter 18 (Vernon, 1994 Supplement), which provides the department with the authority to establish an organic certification program, and the National Organic Food Act of 1990 (Title 21) provides the authority to the Commissioner of Agriculture to implement a State organic certification program for producers and handlers of agricultural products which have been produced using organic methods.

The new sections which will be effected by the proposal are the Texas Agriculture Code, Chapter 18 (Vernon, 1994 Supplement) and the Texas Agriculture Code, §§12.002, 12.016, and 12.017.

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

**ASC'S United States Department of Agriculture, Agriculture Stabilization And Conservation Service**

**Agricultural product** Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human consumption or livestock consumption.

**Allelochemic** A naturally occurring substance significant to organisms of a species different from that of its source, for reasons other than food or fiber as such.

**Annual crop**—A crop which reaches maturity during a specific seasonal growing period and is harvested at maturity.

**Biological control**—The use of parasites, predators, or pathogens to suppress pest populations.

**Botanical pesticides**—Natural pesticides derived from plants.

**Certified organic farm**—A farm, or portion of farm, or site where agricultural products or livestock are produced, that is certified by the Texas Department of Agriculture (the department) or an organic certifying agent, as utilizing a system of organic farming as described by these rules.

**Code**—The Texas Agricultural Code.

**Commingled**—Inseparably mixed or interspersed with other food or fiber and not distinguishable from it.

**Contaminated**—As applied to organic food or fiber unfit for use because of the presence of illegal quantities of toxic, synthetic, or other prohibited substances, as applied to irrigation water or soil, unfit for use because of presence in the resulting crop of illegal quantities of toxic, synthetic, or other prohibited substances.

**Cover crop**—A crop planted primarily to prevent soil erosion, recover nutrients from the subsoil, increase water infiltration, and increase the levels of nitrogen and organic matter in the soil.

**Department of TDA**—The Texas Department of Agriculture.

**Distributor**—A person who is engaged in the business of selling food or fiber for resale, including, but not limited to, a wholesaler, broker, packer, repacker, shipper, or agent.

**Farm**—All agricultural land that is leased, owned, or otherwise held by and under the management of a certified producer or applicant for certification.

**Farm plan**—All documents relevant to the previous three years', current, and future management of an organic farm, including but not limited to written plans to rotate crops, build humus, and stabilize soil nutrients.

**Field**—A clearly demarcated, contiguous tract of agricultural land leased, owned, or otherwise held by and under the management of a certified producer or applicant for certification.

**Green manure crop**—A cover crop or other crop planted primarily to be plowed under to increase soil tilth and fertility.

**Guano**—Partially decomposed excrements of birds, bats, seals, or other animals.

**Handle**—To sell, process, or package agricultural products.

**Hazard Analysis Critical Control Point or HACCP**—A system designed to eliminate the potential of contamination and commingling of food and fiber products during handling and processing.

**Illegal quantities**—Amounts that are not lawful under federal or state statutes or regulations.

**Ingredient information panel**—An ingredient statement which shall appear on the primary display panel or on the information panel and shall list the ingredients in descending order of predominance. The ingredient statement shall be in letters and numbers at least 1/16 inch in height and shall be located before or after the name and address of the manufacturer, packer, or distributor.

**Julian date**—A calendar date expressed by a decimal number, three consecutive digits of which indicate the day of the year in a series from 001 (January 1) to 365 (December 31 of a nonleap year) or 366 (December 31 of a leap year).

**Livestock**—Cattle, sheep, goats, swine, poultry, equine animals used for food or fiber, fish used for food, wild or domesticated game, or other nonplant life.

**Logo**—The copyrighted "Texas Department of Agriculture Certified Organically Produced" and "Texas Department of Agriculture Transitional-Organic Certification Pending" logotypes.

**Low ecological profile**—As applied to a soil-, crop-, or pest-management practice, a practice that has a low degree of or no adverse effects on human health or the environment.

**Manuring**—The application to soil of the excreta of agricultural animals, including stable litter and paunch wastes, to increase tilth and fertility.

**Material use report**—A report of records required by the department or an organic certifying agent regarding the use of materials listed as allowed or allowed with restrictions, which have been used for production, processing, or handling of certified food or fiber.

**National list**—A list of substances categorized as allowed or prohibited for organic crop production inputs, processing ingredients and aids, and handling materials as provided under the Organic Food Production Act of 1990.

**Organic certifying agent**—A private organic certification organization, or a person accredited under this chapter.

**Organic farming**—A system of ecological soil management that relies on building humus levels through crop rotations, recycling organic wastes, and applying balanced mineral amendments and that uses, when necessary, mechanical, botanical, or biological controls with minimum adverse effects on health and the environment.

**Organic fiber**—Fiber that is produced under a system of organic farming and that is processed, packaged, transported and stored so as to maintain segregation and prevention of contamination from other fiber and from synthetic pesticides, prohibited defoliant and/or desiccants.

**Organic food**—Food for human or livestock consumption that is produced under a system of organic farming and that is

processed, packaged, transported and stored so as to retain maximum nutritional value without the use of artificial preservatives, coloring or other additives, ionizing radiation, or prohibited materials.

**Organic Food Production Act of 1990 or OFPA**—The national organic standards, Title 21, under the authority of the United States Department of Agriculture.

**Organically produced**—An agricultural product that is produced, handled or processed in accordance with these rules.

**Participant**—A producer, processor, retail store or distributor location certified to use the "Texas Department of Agriculture Certified Organically Produced" logo and/or the "Texas Department of Agriculture Transitional-Organic Certification Pending" logo.

**Person**—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

**Pesticide**—A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

**Pheromone**—A substance that is secreted by an organism to the outside and that causes a specific reaction in a receiving organism of the same species.

**Principal display panel**—A part of the label most likely to be seen by the consumer at retail sale. It is this part of the package which shall bear the declaration of net quantity of contents and statement of identity.

**Processing**—Cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing of food in a container.

**Processor**—A person who is engaged in the business of manufacturing raw agricultural commodities into food or fiber products.

**Producer**—A person who is engaged in the business of growing or producing food or fiber.

**Propagation materials**—Plant materials including seeds, transplants, cuttings, layerings, bulbs, tubers, slips, crowns, offsets, grafts, buddings, and root stocks or other plant materials used to cultivate plants.

**Raw manure**—Agricultural animals' excrement, both solid and liquid, that has not been aged, aerated, composted, fermented, aerobically digested, or otherwise humified or processed in such a way as to improve its value as a biological activator.

**Retailer**—A person, other than the operator of a restaurant, who is engaged in the business of selling certified food or fiber at retail to its ultimate consumer.

**SCS**—United States Department of Agriculture Soil Conservation Services.

**Semiochemical**—A pheromone, allelochemical, or other naturally occurring substance involved in the chemical interaction between organisms.

**Synthetic**—A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

**Texas Department of Agriculture (TDA) Material List**—A list of substances categorized as allowed, allowed with restrictions, or prohibited for organic crop production inputs, processing ingredients, and aids, and handling materials as provided under these rules or the OFPA.

**Toxin**—A chemical, drug, radiological agent, or biological agent that is present in an amount sufficient to cause significant adverse effects in humans, crops, livestock, other beneficial organisms or the environment.

**Transitional period**—A period of 36 months from the last date of application of a prohibited material during which a farm or field unit may be certified as Transitional-Organic Certification Pending. Upon completion of the required transitional period a farm or field unit may then be certified as Organically Produced.

## §18.2 Certification, Application, and Inspection

### (a) Certification

(1) The department shall certify producers, processors, distributors, and retailers of organic food or fiber in this state.

(2) A person may not label, market, advertise, or represent as organic or transitional any food or fiber that is sold, kept, offered, or exposed for sale, unless that person is

(A) certified directly by the department under this chapter, or

(B) certified by an organic certifying agent accredited by the department under this chapter.

(3) Certification process under this chapter shall become effective as follows:

(A) producers and processors may apply for certification upon the effective date of this chapter, and

(B) distributors and retailers may apply for certification 90 days after the effective date of this chapter.

(4) Producers, processors, distributors, and retailers will be certified on an annual basis from September 1 to August 31 of each year, except initial applicants whose certification will expire August 31.

(b) Application.

(1) Applications submitted under this chapter shall be in writing on a form prescribed by the department and submitted to the Coordinator for Organic Programs, Regulatory Programs Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(2) A separate application shall be submitted for each producer, processing facility, distribution facility, and retail location applying for certification, or a person or private organic certifying agent applying for accreditation.

(3) Producer applications will not be accepted for farms or field units in which crops will be harvested within 90 days of receipt of application by the department.

(4) Additional verification documents as prescribed in §18.13 of this title (relating to Producers), including inspection reports and the results of any required laboratory analysis as prescribed in §18.11 of this title (relating to Fertility, Water Quality, and Residue Testing), shall be submitted upon request by the department.

(5) Applicants who rely on restricted practices or sources, shall bear the burden of establishing.

(A) that these practices or sources are agronomically or scientifically required; and

(B) that the applicant has a plan to discontinue the use of these restricted practices over a set period of time.

(6) Upon the department's request, the Certification Review and Standards Advisory Committee shall review and make recommendations on any application or accreditation under this chapter

(7) Upon receipt of all required verification documents, including inspection reports, and the results of any required laboratory analysis, the department shall make an initial determination of whether such certification and permission should be granted or denied, and notify the applicant in writing, setting forth the reasons for such grant or denial

(c) Inspections of producers, processors, distributors, and retailers

(1) Initial inspections

(A) The department, upon receipt of an application or permission to use department logos under these rules, shall schedule an inspection of the appli-

cant's farm, facility, or site of each applicant who fulfills initial screening requirements.

(B) The department, or organic certifying agent, shall perform inspections of applicants for certification at a time when normal production or sales activity can be observed.

(C) Initial inspections shall be reported on a form prescribed by the department or the organic certifying agent.

(2) Annual renewal inspections.

(A) The department, or an organic certifying agent, shall conduct at least one on-site inspection per year of every farm, facility, or location for which a certification has been granted.

(B) The department, or an organic certifying agent, shall conduct at least one on-site inspection prior to or during harvest of certified producers and processors who produce and process annual crops for processed products.

(3) Enforcement inspections. The department may conduct unannounced inspections in cases of suspected violations of the department's Organic Standards and Certification or violations of such standards by an organic certifying agent accredited under this chapter

(d) Complaints

(1) Any person with cause to believe that any provision of this chapter has been violated may file a written complaint with the department setting forth the facts of the alleged violation.

(2) The department may investigate written complaints related to certified organic food or fiber.

(3) The department shall maintain for ten years, records of all complaints, investigations, and remedial actions. These records shall become part of the reviewing record of any proceeding involving a certified person or applicant for certification by the department or by an organic certifying agent accredited under this chapter

*§18.3 Certification Review and Standards Advisory Committee*

(a) The department shall appoint a Certification Review and Standards Advisory Committee which shall, at the department's request, review applications for certification and accreditation under this chapter. It shall advise the department on revisions to this chapter and administration of the Organic Standards and Certification Program.

(b) The appointment of each member may be for period of two years and may receive additional appointments to the Certification Review and Standards Advisory Committee.

(c) The department, with the advice of the Certification Review and Standards Advisory Committee, shall conduct an annual review and implementation of this chapter and propose amendments as necessary.

(d) The Certification Review and Standards Advisory Committee shall be made up of 12 members, of which four are organic producers, one is a processor of organic food or fiber, one is a retailer of organic food or fiber, two are technical advisors, agronomists, or horticulturists; and three are representatives of consumers.

(e) Members of the committee should be familiar with both organic production methods and the department's organic certification standards.

*§18.4 Accreditation of Organic Certifying Agents.*

(a) Organic certifying agents shall be accredited by the department by submitting an application, (certifying policies and procedures) and a nonrefundable annual fee prescribed by the department.

(b) The department may issue a certificate of accreditation under this chapter only if it determines that the applicant's:

(1) certification standards are equivalent to department certification standards, and

(2) policies and procedures are in compliance with the provisions of the Code, Chapter 18, this chapter, and orders of the department.

(c) An organic certifying agent accredited under this chapter shall provide a copy of all certification documents to the department within 15 days of certification of each certified producer, processor, distributor, and retailer

*§18.5 Fees*

(a) An application fee, as detailed in subsection (b) of this section, shall be paid in conjunction with submission of a new application or an application for renewing certification

(b) The department may require additional fees or refund fees submitted by producers, processors, distributors, and retailers for overpayment or underpayment of prescribed annual fees. Additional fees may be charged for additions of fields or categories to be certified after initial application fees are submitted

(1) Producers. Fees for certification are based on acreage to be certified. Acreage shall include actual production acres, cover crop and rotation acres, and all required buffer zone areas. The fee will be charged under the following schedule:

(A) less than one acre will be charged \$50;

(B) one to less than five acres will be charged \$75;

(C) five to less than 25 acres will be charged \$100,

(D) 25 to less than 50 acres will be charged \$125,

(E) 50 to 100 acres will be charged \$50,

(F) each additional increment or portion of 100 acres will be charged \$20, to a maximum of \$2,500,

(G) greenhouse fees will be based on the total square footage of greenhouse unit(s), in addition to an fees required for additional production acreage, buffer zone areas, or other areas required for certification. The fee will be charged under the following schedule:

(i) less than 1,000 square feet will be charged \$25,

(ii) 1,000 to less than 3,000 square feet will be charged \$50,

(iii) each additional increment or portion of 3,000 square feet will be charged \$25, to a maximum of \$2,500,

(H) certified producers who process their own certified raw ingredients into processed product, will be charged \$35 and submit an application for processor certification,

(I) certified producers who process other certified raw ingredients,

other than their own, into processed products will be charged \$35 and submit an application for processor certification; and

(J) certified producers who handle certified products, other than their own, will be charged \$35 and submit an application for distributor certification.

(2) Processors, Distributors, Wholesalers, Brokers, Packers, Repackers, Shippers, or Agents. Fees for application or renewal of a certification will be based under the following guidelines

(A) Each processing facility will be charged \$150 for the first category of certified product and \$75 for each additional category of certified product.

(B) Each distributor or handling location will be charged \$100 for the first category of certified product and \$50 for each additional category of certified product

(C) Fees will be based on the following categories:

- (i) bakery goods;
- (ii) bulk grains, beans, and seeds,
- (iii) cereals,
- (iv) canned fruits and vegetables;
- (v) canned soups, chili, and broths,
- (vi) chips, crackers, cookies, and granola products,
- (vii) coffee and teas,
- (viii) dairy products,
- (ix) frozen foods,
- (x) grains, flours, and mixes (packaged),
- (xi) herbs, herb products, spices, salt, and flavorings;
- (xii) juices and beverages,

(xiii) meat and meat products;

(xiv) nut butters, jams, jellies, honey, syrup, and molasses;

(xv) oils,

(xvi) snacks and candy;

(xvii) sprouts from seeds and beans,

(xviii) sweeteners and sugar;

(xix) food for livestock, including feed, forage or hay, and feed supplements or fillers;

(xx) cotton, cotton by-products and cotton textile products;

(xxi) vegetables,

(xxii) fruits and nuts; and

(xxiii) each additional category.

(3) Retailers Fees for application or renewal for certification will be charged \$30

(4) Organic Certifying Agents. Fees for application or renewal of accreditation will be \$500 to certify producers, \$500 to certify processors, and \$250 to certify distributors and retailers in the state.

(c) A person who fails to submit a renewal fee on or before the expiration date of the certification shall pay, in addition to the renewal fee, the late fee

*§18.6. Logos. Use of Logos, Approval of Printer, Drugs and Medicinal Claims and Labeling of Nonprocessed and Processed Food or Fiber*

(a) Logos

(1) The department shall have two registered logos as certification marks.

(A) Texas Department of Agriculture Certified Organically Produced logo One logo shall include the phrase "Texas Department of Agriculture Certified Organically Produced" and shall take the following form





(B) Transitional Logo A second logo shall include the phrase "Texas Department of Agriculture Transitional-Organic Certification Pending" and shall take the following form

[graphic]

(b) Use of logos

(1) Use of Certified Organically Produced logo The Texas Department of Agriculture Certified Organically Produced logo and the phrase "Texas Department of Agriculture Certified Organically Produced" shall be applied or used to refer only to food or fiber produced on land that the department has certified under this chapter

(2) Use of Transitional Logo. The Texas Department of Agriculture Transitional-Organic Certification Pending logo shall be applied or used to refer to food or fiber produced on land that the department classifies as in transition to organic certification under this chapter

(3) Use of other logos A person who is certified under this chapter may use department logos as provided by this chapter

(A) No person shall use, employ, adopt, or utilize the Texas Department of Agriculture Certified Organically Produced or Transitional-Organic Certification Pending logo in the selling, advertising, marketing, packaging or other handling of food or fiber products unless prior application has been made to the department for permission to make such use, employment, adoption, or utilization and approval has been granted

(B) No person shall utilize an organic or transitional certificate issued to a producer, processor, distributor, or retailer as a certification logo in the labeling, packaging, advertising, or marketing promotion of food or fiber products

(C) A person certified under this chapter may use the Texas Department of Agriculture Certified Organically Produced or Transitional-Organic Certification Pending Logo, whichever is applicable, on containers, labels, tags, signs, stickers, decals, or other packaging, promotional or information materials, subject to the conditions specified under this chapter

(D) A certified retailer or distributor may purchase such materials (except pressure-sensitive labels) only from an approved printer

(E) A certified producer, processor, or packer may purchase pressure-sensitive labels or packaging materials bearing a department logo only from an approved printer

(F) No hand-drawn department logo shall be used

(4) Out of state use Persons who process, distribute or retail Texas Department of Agriculture certified food or fiber outside the state of Texas, shall not label such certified food or fiber with the Texas Department of Agriculture "Certified Organically Produced" or "Transitional-Organic Certification Pending" logos without authorization by the department. Such authorization may be requested by submitting a form as prescribed by the department

(c) Approval of printers

(1) The department shall approve printers to manufacture signs, price cards, shelf talkers, pressure-sensitive labels, and other labeling or packaging materials bearing a department logo and shall maintain a list of approved printers

(A) The department shall furnish approved printers with a list of certified producers, processors, distributors, and retailers.

(B) Approved printers may sell materials bearing a department logo only to persons on this list

(C) An approved printer shall maintain records of purchasers, quantities, types of materials, and dates of sale of all materials bearing a department logo and make these records available to the department upon request

(d) Drugs and medicinal claims

(1) The department, or an organic certifying agent shall not certify drugs or drug ingredients under these rules

(A) No person shall use a Texas Department of Agriculture Certified Organically Produced or Transitional-Organic Certification Pending logo in connection with, nor represent as certified by the department, or an organic certifying agent, any product or any ingredient of a product that is regulated as a drug or that has been determined by a state or federal agency of competent jurisdiction to be subject to regulation as a drug

(B) No person shall use a department logo or represent any product or ingredient as certified by the department, or an organic certifying agent, in an advertisement (including, but not limited to, a printed or broadcast advertisement, advertorial, flier, point-of-purchase mate

rial, signage, or other printed material) that makes medicinal claims.

(e) Labeling of nonprocessed food or fiber. Certified food or fiber may be labeled using:

(1) the applicable logo applied to food or fiber certified in-state by a producer, processor, or packer certified under this chapter, or the logo of an organic certifying agent (if approved or made available by the organic certifying agent),

(2) a price card displaying a printed department logo or logo of an organic certifying agent; or

(3) both the applicable logo set forth in paragraph (1) of this subsection and the price card set forth in paragraph (2) of this subsection.

(f) Labeling of processed food or fiber

(1) Processed food or fiber products which contain 100% Texas Department of Agriculture certified organically produced raw ingredients, are processed under this chapter, and contain no prohibited ingredients, may include the term "Organic" and the Texas Department of Agriculture "Certified Organically Produced" logo on the principal display panel

(2) Processed food or fiber products which contain 100% Texas Department of Agriculture certified organically produced raw ingredients, but include additional ingredients, additives, or processing aids, shall state "the 'certified ingredient' in this product is organically produced and processed to Texas Organic Standards and Certified Registration, 4 TAC, Chapter 18," in a label on the principal display panel or other appropriate area on the packaging and may include the department "Certified Organically Produced" logo. All ingredients, including their percentage by weight, shall be listed in the ingredient information panel. The Texas Department of Agriculture certified organically produced ingredients shall be designated as "Certified Organically Produced" in the ingredient information panel

(3) Processed food or fiber which contains 100% Texas Department of Agriculture certified raw ingredients produced under this chapter as transitional, but includes other ingredients, additives, or processing aids, shall state "the 'certified ingredient' in this product is produced and processed to Texas Organic Standards and Certified, 4 TAC, Chapter 18, and is Transitional-Organic Certification Pending," in a label on the principal display panel or other appropriate area on the packaging and may include the department "Transitional-Organic Certification Pending" logo. All ingredients, including their percentage by weight, shall be listed in the ingredient in-

formation panel. The Texas Department of Agriculture certified transitional ingredients shall be designated as "Certified Transitional" in the ingredient information panel.

(4) Processed food or fiber products that meet the requirements for a certified organic product or containing certified organically produced raw ingredients, which are certified by a single organic certifying agent, and are processed under this chapter, may use the logo (if approved or made available by the organic certifying agent) and/or the name of the applicable organic certifying agent and the statement "processed to Texas Organic Standards & Certified, 4 TAC, Chapter 18." on the primary display or information panel as allowed under this chapter and the OFPA.

(5) Processed food or fiber products that meet the requirements for a certified organic product or containing certified organically produced raw ingredients, which are certified by multiple organic certifying agents, and are processed under this chapter, may use the term "Third-Party Certified" and the statement "processed to Texas Organic Standards and Certified, 4 TAC, Chapter 18." on the primary display or information panel as allowed under this chapter and the OFPA, including a list of the applicable organic certifying agents on the packaging.

#### §18.7. Recordkeeping and Auditing by the Department

##### (a) Recordkeeping

(1) The department shall create and maintain files including all communications and decisions relating to certification for a period of not less than ten years.

(2) The files shall include copies of notices sent to participants, minutes of meetings, correspondence, and administrative memoranda

##### (b) Auditing.

(1) The department may conduct or provide for audits of all documents that it uses to verify that certified products meet organic standards certified under this chapter or by an organic certifying agent.

(2) These audits shall include, where appropriate:

(A) a company inventory audit, listing percent accuracy in labeling, the amount bought and sold per product, the producer or destination, and the number of vendors and amount of product per vendor; or

(B) a farm audit, listing the amounts sold per product, date and destination, the area and location planted of each product, with dates of harvest

(3) Information contained in audit records that is exempt under the Texas Open Records Act shall remain confidential.

#### §18.8. Department Regulatory Authority.

(a) Denial, suspension, or revocation of organic certification or organic certifying agent accreditation.

(1) The department may deny, suspend, or revoke a certification of a producer, processor, distributor, or retailer or a certificate of accreditation issued to an organic certifying agent under this chapter if the person.

(A) submits an application or verification documents that contain insufficient information upon which to make a determination;

(B) provides verification documents that demonstrate noncompliance with any provision of this chapter;

(C) makes a false representation material to a matter governed by this chapter;

(D) violates or refuses to comply with the provisions of Chapter 18 of the Code, this chapter, or an order of the department; or

(E) has had a certification or accreditation revoked under this chapter.

(2) Proceedings for the revocation, denial, or suspension of certification shall be conducted in the manner provided for contested cases by the Texas Administrative Procedure Act, the Government Code, Chapter 2001, and Chapter 1 of this title (relating to General Procedures).

(3) If a person wishes to contest a determination or any required compliance under this chapter, notice of protest shall be filed with the coordinator for organic programs within 15 days of receipt of notice of such determination of the department.

(4) Revocation, denial, or suspension of a certification by an organic certifying agent shall be subject to review by the department under the procedures provided for contested cases by the Texas Administrative Procedure Act, the Government Code, Chapter 2001, and Chapter 1 of this title (relating to General Procedures).

##### (b) Stop-sale order.

(1) If food or fiber is being sold in violation of this chapter or a rule adopted under this chapter, the department may issue a written order to stop the sale of that

item of food or fiber by a person in control of the item. The person named in the order may not sell the item until:

(A) permitted by a court under paragraph (2) of this subsection; or

(B) the department determines that the sale of the item is in compliance with this chapter and rules adopted under the Code, Chapter 18

(2) The person named in the order may bring suit in a court in the county where the item is located. After a hearing, the court may permit the item to be sold if the court finds the item is not being sold in violation of this chapter or a department rule adopted under the Code, Chapter 18.

(3) This section does not limit the department's right to act under another section of this chapter.

#### §18.9 Penalties.

(a) Criminal penalty.

(1) A person commits an offense if the person knowingly:

(A) violates this chapter; or

(B) fails to comply with a notice, order, or rule of the department under this chapter or the Code, Chapter 18.

(2) An offense under this chapter is a Class C misdemeanor

(b) Civil penalty, injunction.

(1) A person who violates this chapter or a rule adopted under the Code, Chapter 18, is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues is a separate violation for purposes of a civil penalty assessment

(2) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(3) A civil penalty collected under this chapter or the Code, Chapter 18, shall be deposited in the general revenue fund. All civil penalties recovered in suits instituted by a county or district attorney under this chapter shall be divided between the state and the county in which the county or district attorney brought suit, with 50% of the recovery to be paid to the general revenue fund and 50% to the county

(4) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under the Code, Chapter 18. On

request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

(5) The civil penalty of an injunction is applicable only if the department chooses to use civil remedy as opposed to criminal penalty under the Penalties section of this chapter

#### §18.10. Pesticide Drift and Emergency Spray or Pest Management Programs

(a) Pesticide drift policy

(1) In cases where organic crops are exposed to pesticide drift, the certified producer and/or the organic certifying agent shall notify the department.

(2) If the pesticide residue level exceeds the residue level allowed under the OFPA, the crop shall not be sold as "Organically Produced" or "Transitional-Organic Certification Pending."

(3) Subsequent crops grown in a field exposed to pesticide drift may be sold as "Organically Produced" or "Transitional-Organic Certification Pending" subject to additional pesticide residue testing and approval by the department

(b) Emergency spray or pest management programs

(1) Producers shall comply with emergency spray or pest management programs and adhere to a pest management plan designated or authorized by the department

(2) The department shall provide the applicable officers and agents of federal, state, or local emergency spray programs or pest management programs with information on the location of certified organic and transitional farms or field units in each emergency spray or pest management zone

(3) Producers of certified organic or transitional cotton shall adhere to stalk destruction, planting dates, rules and guidelines set forth by the Texas Boll Weevil Eradication Foundation and other regulatory measures authorized by the department.

#### §18.11 Fertility, Water Quality and Residue Testing

(a) Testing and monitoring

(1) An applicant shall present the results of soil fertility test for each field or greenhouse unit to be certified initially and every third year thereafter.

(A) Soil may be tested and monitored using either the basic cation saturation ratios (BCSR) method or the suffi-

cient level of available nutrients (SLAN) method

(B) Other methods of testing for soil microbial levels, such as paper chromatography, radiorespirometry, dehydrogenase activity, and bioassays, are allowed.

(2) The department may require that the soil and subsoil of all fields to which substantial amounts of manure from off-farm sources are applied be tested for heavy metals, herbicides, or other suspected contaminants.

(3) An applicant for certification shall present water quality test results (if irrigated) for each source of water supplied to each field or greenhouse unit to be certified initially and every third year thereafter.

(A) In irrigated crop management, an initial application for certification shall include a basic irrigability analysis including pH, potability, water quality, salinization, etc.

(B) As a condition of recertification, a producer with a demonstrated water-quality or soil-salinization problem shall:

(i) retest for water quality or soil salinization the following year; or

(ii) submit tissue-test results for at least one edible crop each year until no residue from contaminated water is found in the crop, and at least every third year thereafter

(b) Residue testing

(1) The department or an organic certifying agent, shall require an initial pesticide residue test of soil and crop samples of each new applicant for certification, and for each applicant for renewal of certification as required

(2) The department or an organic certifying agent may require testing of certified food or fiber when it has a reasonable cause to suspect that it may have been contaminated

#### §18.12 Materials and Materials List

(a) For the purpose of this chapter, materials for crop production, processing, and handling are classified as follows

(1) Allowed. Materials allowed for production, processing or handling. Permission for use of these materials applies statewide

(2) Allowed with Restrictions. These materials may be used upon a demonstrated need, if a farm plan, use report, or other written plan is submitted by a certified

person or an applicant for certification shows that these restricted materials will be discontinued over time, or if no alternative materials are available. Materials may vary according to regional production practices, specific processing, or handling needs.

(3) Prohibited. These materials shall not be used for production, processing or handling. This applies statewide.

(b) The department shall publish in the *Texas Register*, a listing of materials categorized as allowed, allowed with restrictions, and prohibited. This list shall be known as the Texas Department Of Agriculture Organic Certification And Standards Materials List (TDA Materials List).

(c) Unless properly registered, pesticides requiring registration with the responsible state and federal agencies including the Environmental Protection Agency (EPA) and the department shall not be used.

(d) Manufacturers of materials other than those listed by name in the TDA Materials List or the National List, for production, processing, or handling of certified food or fiber shall submit information on the ingredients, manufacturing processes, and other supporting documents, as required by the department for approval as allowed or allowed with restrictions, prior to allowing certified producers, processors or handlers to use such materials. Materials determined by the department as prohibited shall not be used for production, processing, or handling.

#### §18.13 Producers

(a) Verification Documents. Verification documents consist of application forms, past three-year production and material input history, including ASCS and SCS records, farm plans, inspection reports, laboratory analyses, production practices, harvest and handling plans, showing the path taken by an organic food or fiber products through production, post-harvest handling, and distribution.

(b) Farm and field certification

(1) The department may certify land as organically produced only if harvest occurs at least three years after the most recent use of a prohibited material.

(2) Except as prohibited elsewhere in this chapter, producers of food and fiber who have satisfied all requirements for certification, except passage of the required transitional period, may be issued a transitional certification.

(3) Agricultural products from such a field shall not be sold under a transitional logo for the first 12 months following the date of the last application of a prohibited material.

(4) If any part of a certified farm or field unit is taken out of organic management, it may be recertified after passage of three years without the application of a prohibited material.

(5) A new applicant for certification shall document a three-year history of the land to be certified including:

(A) a three-year history of all crops or agricultural products produced;

(B) a three-year history of all material inputs including pesticides and fertilizers, and

(C) any additional supporting documentation as required by the department.

(6) An applicant for initial certification or renewal of certification shall submit, in a form prescribed by the department or an organic certifying agent, a detailed three-year farm plan that has been reviewed and accepted including:

(A) a three-year rotation and cover cropping plan to stabilize nutrients in the soil for each field to be certified,

(B) a one-year, field-by-field crop production plan, soil and plant fertility plan, and pest management plan,

(C) a 25-foot buffer zone for each field parameter separating land managed organically from other cultivated agricultural land,

(D) a 50-foot buffer zone for each field parameter separating land managed organically from other land to which a prohibited material is applied;

(E) a description of facilities and methods that will be used to keep farm equipment from contaminating organically managed fields or crops; and

(F) a description of facilities and methods that will be used to store and handle prohibited materials separately from materials listed as allowed or allowed with restrictions for organic production, processing, or handling.

(7) The department shall not certify part of a farm unless:

(A) there exists distinct, defined boundaries between fields under organic management and other fields; and

(B) the proposed acreage will be used for a bona fide trial of organic management methods.

(8) The department may not certify land that has no previous history as cultivated cropland, orchard, or improved pasture, and that is being converted to organic for the sole purpose of replacing land abandoned because of chemical contamination or depleted fertility resulting from previous farm-management practices.

(c) Separation of produce

(1) A producer of both organic agricultural products and other agricultural products on the same farm shall keep separate records for each of these two categories of products.

(2) A producer of the same crop or agricultural product both grown organically and nonorganically on the same farm shall prove to the department's satisfaction that he or she has in place physical facilities and management procedures adequate to ensure that there is no possibility of commingling.

(3) In the absence of such proof, no food or fiber of that type from that farm shall be certified or sold as TDA-Certified Organically Produced or Transitional-Organic Certification Pending.

(d) Soil management

(1) Fertility shall be fostered primarily by managing soil organic content through the proper tillage, crop rotation, and manuring.

(2) Soil management shall conform to recognized organic practices and principles of soil conservation.

(A) Crop rotation. Producers shall rotate according to a written rotation plan all crops that are not perennials, included in permaculture systems; grown in containers, or grown on a nonrotating basis in accordance with accepted regional practices but maintaining balanced fertility management with other allowed practices.

(B) Rotation plan. A rotation plan may include alternation of sod or forage and row crops; nitrogen-fixing crops, green manure crops, cover and nurse crops; deep-rooting crops, alternation of heavy and light feeders, or plants with allelopathic or mineral-accumulating properties.

(3) Manuring

(A) Raw manure may be applied to green manure crops, perennial crops; crops not for human consumption; or crops for human consumption, if the crop is harvested 60 days or more following the most recent application.

(B) Raw manure may not be applied to any crop in a way that significantly contributes to water contamination by nitrates or bacteria.

(C) Use of manure composted either by aerobic digestion (high heat) or controlled fermentation (low heat) is allowed.

(D) Use of liquid manure slurry is allowed if the slurry is aerated from a source that adds carbon to the slurry.

(e) Soil amendments and fertilizers

(1) In implementing an annual or overall three-year farm plan, a producer shall utilize green manure crops, nitrogen-fixing or cover crops, composted materials, nitrogen-fixing microorganisms; and other allowed materials for supplying plants with nitrates at low concentrations

(2) In implementing a temporary measure in an annual farm plan, a producer may utilize materials listed as allowed with restrictions provided that use is justified by soil and/or plant analysis (nutrient) testing

(f) Crop management

(1) Irrigation

(A) Irrigation management shall conform to recognized organic practices and water conservation principles

(B) Use of irrigation water that is known to be contaminated with toxic substances is prohibited. A producer shall apply for and the department or an organic certifying agent may grant a written exception to this paragraph if

(i) no other water is available, and

(ii) no toxic residues from contaminated water are present in certified crops, as determined by a tissue test per farm or field until no residue from contaminated water is found in the crop, and at least every third year thereafter

(2) Pest management

(A) Weed management

(i) A producer may use timely mechanical or hand cultivation; crop rotations, smother crops, mulching with organic materials, intercropping plant species such as legumes or green manure crops, practices that prevent introduction of weed seeds into fields, such as mowing borders, cleaning equipment, and use of weed free inputs, electrical or flame weeding equip-

ment; biodynamic preparations; and mowing or grazing.

(ii) A producer may use approved herbicidal soaps and oils, if applied to non-food plants; and synthetic or biodegradable plastic for mulches, row covers, and solarization, if such materials are removed at the end of each growing or harvest season, and not introduced into compost or mulch; and mulches made of recycled newspapers.

(B) Disease management.

(i) A producer shall plan production schedules, crop selection, location and sizing of plantings, and soil-management practices to prevent diseases.

(ii) A producer may use preventative management such as planting resistant varieties and rootstocks, timing plantings to avoid cycles of pest emergence; intercropping, crop rotations, and avoidance of excessive fertilization.

(iii) In greenhouses, a producer shall manage ventilation, humidity, and temperature to reduce disease incidence.

(iv) A producer may utilize materials listed as allowed with restrictions, if justified for immediate disease control.

(v) A producer may apply approved natural fruit waxes and shall indicate on the shipping containers the type of natural fruit wax applied to the enclosed certified products.

(C) Insect management.

(i) A producer shall plan production schedules, crop selection, location and sizing of plantings, and soil-management practices to prevent insect infestations.

(ii) A producer may use preventative management such as planting resistant varieties, timing plantings to avoid cycles of pest emergence, intercropping, crop rotations, and avoidance of excessive fertilization.

(iii) A producer may use mechanical or electrical controls, sticky traps, repellent crops and apparatus, vacuuming, water jets, physical barriers and traps, and sound

(iv) A producer may use pheromones used in traps, including use in monitoring pest occurrence, emergence, life cycles and mating disruptives.

(v) A producer may use pheromone traps or bait sticks containing prohibited pesticides, if these pesticides do not contact and are not added to soil or water.

(vi) A producer may use biological controls, release of natural predators and parasites and manipulation of the habitat, crops planted for insectories, supplemental food, and/or hosts of natural predators and parasites.

(vii) A producer may use other biological controls including entomopathic protozoa, nematodes, algae or other biological controls.

(viii) A producer may use microbial diseases including viral, bacterial, and entomopathic fungal diseases such as *Bacillus thuringiensis* (Bt), *Bacillus* spp., *Beauveria* spp., *Nosema* spp., and Nuclear Polyhedrosis Virus (NPV).

(ix) A producer may use materials listed as allowed with restrictions, if justified for immediate insect control measures.

(D) Management of rodents, gophers, deer, and other varmints. A producer may use for control or as a repellent

(i) live traps, physical barriers, sound, electrical devices, shooting, or materials listed as allowed in the TDA Material List or the National list, or

(ii) materials listed as allowed with restrictions in the TDA Materials List and the National List, if justified for immediate reduction of crop loss due to abnormal occurrence of these pests.

(E) Growth regulators, growth promoters, activators, and inoculants. A producer may use:

(i) natural enzymes, herbal preparations, biodynamic preparations, rhizobial inoculants, free-living nitrogen-fixing microbial cultures, blue-green algae, cellulolytic bacteria, natural rooting hormones, adjuvants or wetting agents for foliar applications; and materials listed as allowed in the TDA Material List; or

(ii) materials listed as allowed with restrictions in the TDA Material List if justified as a temporary measure in production of food or fiber.

(F) Propagation materials.

(i) A producer shall only use propagation materials that are certified organically produced unless the producer provides verification that they were grown with accepted organic practices and materials as defined under this chapter.

(ii) A producer shall use untreated seed unless the use of synthetic fungicide treated seeds for food or fiber:

(I) improves germination and stand establishment due to temporary conditions such as heavy, wet or cold soil conditions; and

(II) may be the only seed available for certain crop varieties.

(iii) A producer may use acid delinted seed for organically produced or transitional cotton.

(iv) Crops produced from propagation materials, other than synthetic fungicide treated seeds or acid delinted cotton seeds, which have been produced or treated with prohibited materials may not be sold as transitional within 12 months or organic within 36 months of planting or transplanting.

(v) A producer may use commercial soil mixes which contain materials listed as allowed in the TDA Material List or the National List.

(vi) A producer is prohibited to use soils, sand, gravel, or planting medium, or plant in soils that have been sterilized at temperatures higher than 180 degrees Fahrenheit.

(g) Recordkeeping.

(1) Producers shall maintain complete, auditable records including:

(A) general crop production practices,

(B) crops produced, harvesting and handling methods and records, including harvest dates and yields, product inventory and sales,

(C) records of use of materials listed as allowed or allowed with restrictions (including a material use report) in the TDA Material List or the National List for Pest Management, Fertility and Soil Management, and production of propagation materials;

(D) material use reports for manure, compost, or soil mixes used in transplant, field, or greenhouse production;

(E) material use reports for propagation materials used in transplants, field, or greenhouse production; and

(F) material use reports which shall be maintained and submitted to the department or the organic certifying agent for verification and approval, and shall include information (if applicable) on:

(i) type of material applied,

(ii) source of material;

(iii) label and manufacturer information;

(iv) date and rate of application;

(v) method and type of equipment used;

(vi) type of crop or propagation material applied;

(vii) field or greenhouse numbers as specified in farm maps to which material was applied; and

(viii) justification of need and plan to discontinue restricted practice or application over time; and

(G) records of application of natural fruit waxes, including information on type material applied, type of crop, and records of numbers of boxes or lots treated.

#### §18.14. Retailers.

(a) Retail outlets which sell unsealed, unpacked, or non-prepacked produce or other foods produced in this state or out-of-state, which are sold as organic or transitional, shall be certified.

(b) Retailers of all fiber and packaged food products labeled as organic or transitional, which are produced in this state or out-of-state, may voluntarily be certified under these rules.

(c) Retailers shall not represent as organic or as transitional any food or fiber that is known to contain prohibited materials or has been commingled or contaminated during storage, handling, or stocking.

(d) Retailers shall have in place physical facilities and management procedures adequate to prevent commingling or contamination of organic or transitional food or fiber products.

(e) Retailers shall display certification labeling as follows.

(1) Certified retailers shall conspicuously display a certificate of approval to sell or handle organic or transitional food or fiber.

(2) Retailers may display the type of certification (organically produced or transitional) of certified products and indicate the applicable organic certifying agent of each individual or type of product with the name and/or logo of such product.

(3) Products bearing a department logo shall be easily identifiable to consumers and shall be clearly distinguishable from similar products.

(f) Retailers shall maintain complete, auditable records for one year including:

(1) records of all organic or transitional products, including dates of purchase, receipts or invoices, and volumes of products purchased from producers, processors or distributors; and

(2) proof of certification of all products labeled as organic or transitional and record of the applicable organic certifying agent.

#### §18.15. Distributors.

(a) Distributors, including but not limited to, wholesalers, brokers, packers, repackers, shippers, or agents transferring orders of food or fiber produced in this state or out-of-state, which is sold as organic or transitional, shall be certified.

(b) Persons or certified producers who purchase certified food or fiber produced in this state or out-of-state which is sold as organic or transitional, for resale or redistribution, including but not limited to mail order, roadside stands, and farmers markets shall be certified.

(c) Distributors shall conspicuously display a certificate of approval to handle organic or transitional food or fiber.

(d) Distributors applying for certification, or renewal for certification, shall complete an application, including an organic handling plan, and a Hazard Analysis Critical Control Point (HACCP) system plan, which includes:

(1) an overall description of physical facilities and management procedures adequate to prevent commingling or contamination of organic or transitional food or fiber;

(2) a general description of the handling operation, handling procedures, and the types of organic food or fiber handled;

(3) a schematic flow chart showing the movement of organic food or fiber during handling, including identification of all equipment, machinery, and storage areas used; and

(4) a description of the hazard analysis for the handling operation and the identification of critical control points for the following areas of potential contamination (hazards) of the organic food or fiber, including information on:

(A) commingling of certified organic products with non-organic products and a description of the system of internal recordkeeping that documents the movement of each specific lot of organic food or fiber through each step of the handling operation;

(B) sanitizers, boiler chemicals, processing aids, prohibited substances, materials used in handling, and post-harvest applications;

(C) transportation and storage.

(D) pest control, including a description of the pest problems encountered in the handling operation, pest monitoring techniques used, and a description of pest control methods.

(E) food spoilage microorganisms, including a description of efforts to reduce solid waste, liquid waste, and airborne emissions produced by the handling operation, and

(F) general handling procedures

(5) A distributor may not represent as organic or transitional, any food or fiber that is known to contain prohibited materials or has been commingled or contaminated during storage, handling, packing or repacking, packaging, and transportation

(e) The following shall apply to post-harvest handling

(1) A distributor shall not

(A) add any synthetic ingredient which is prohibited under these rules including, but not limited to fumigants, sprouting inhibitors, ripeners, or growth regulators, preservatives, coloring agents, ionizing radiation, or synthetic waxes or oils;

(B) add any ingredient containing nitrates, heavy metals, or toxic residues in excess of those permitted.

(C) add any sulfites, nitrates, or nitrites.

(D) add any ingredients that are not organically produced in accordance with this chapter, unless such ingredients are included in the TDA Materials List or the National List, and represent not more than 5 0% of the weight of the total finished product (excluding salt and water).

(E) use any packaging materials, storage containers or bins that contain synthetic fungicides, preservatives, or fumigants.

(F) use any bag or container that had previously been in contact with any

substance in such a manner as to compromise the organic quality of such product.

(G) apply any material listed as allowed with restrictions on the TDA Material List or the National List to any certified product for immediate control of pests or food spoilage without justification of need.

(H) apply any prohibited disinfectants to storage containers and handling equipment without prior approval from the department or an organic certifying agent, including a specified waiting period that must expire before the handler uses the container or equipment for certified food or fiber, or

(I) use in such products, water that does not meet all Safe Drinking Water Act requirements

(2) A distributor shall

(A) handle perishable items only so as to avoid injuring them physically.

(B) dry crops to appropriate moisture levels by natural drying, aeration, or other mechanical drying apparatus.

(C) chill perishable crops by means of uncontaminated water baths, cold rooms, or icing, and maintain constant low temperatures at every stage of transportation and distribution;

(D) disinfest crops of spoilage organisms or fruit flies by hot-water dipping or vapor-heat treatments.

(E) suppress storage pests by physical means or with materials listed as allowed in the TDA Materials List or the National List, and

(F) indicate on the shipping containers the type of natural fruit wax applied to the enclosed certified products

(f) Distributors shall maintain complete, auditable records for one year including

(1) records of all organic or transitional products, including dates of purchase, sales, billings, receipts, invoices, and volumes of products purchased.

(2) proof of certification of all products labeled as organic or transitional and record of the applicable organic certifying agent, and

(3) records of application of natural fruit waxes, including information on

type material applied, type of crop, and records of numbers of boxes or lots treated.

*§18.16 Processors.*

(a) Processors of food or fiber produced in this state or out-of-state, which is sold as organic or transitional, shall be certified by the department or by an organic certifying agent.

(b) Processors shall conspicuously display a certificate of approval to handle and process organic or transitional food or fiber

(c) Processors applying for certification, or renewal for certification, shall complete an application, including an organic processing plan, and a Hazard Analysis Critical Control Point (HACCP) system plan, which includes.

(1) an overall description of physical facilities and management procedures adequate to prevent commingling or contamination of organic or transitional food or fiber.

(2) a general description of the processing operation, processing procedures, and the types of organic food or fiber processed.

(3) a schematic flow chart showing the movement of organic food or fiber during processing, including identification of all equipment, machinery, and storage areas used.

(4) a description of the hazard analysis for the processing operation and the identification of critical control points for the following areas of potential contamination (hazards) of the organic food or fiber, including information on:

(A) commingling certified organic products with non-organic products, and a description of the system of internal recordkeeping that documents the movement of each specific lot of organic food or fiber through each step of the processing operation.

(B) sanitizers, boiler chemicals, prohibited substances, post-harvest applications, processing ingredients, and processing aids.

(C) transportation and storage;

(D) pest control, including a description of the pest problems encountered in the processing operation, pest monitoring techniques used, and a description of pest control methods used.

(E) food spoilage microorganisms including a description of efforts to reduce solid waste, liquid waste, and airborne emissions produced by the processing operation; and

(F) general processing procedures.

(d) A processor may not represent as organic or transitional, any food or fiber that is known to contain prohibited materials or has been commingled or contaminated during storage, handling, processing, packaging, and transportation

(e) Raw ingredients and additives

(1) Each ingredient of any processed product sold as organic shall be from a certified organic source

(A) Processed products shall contain at least 95% certified organic ingredients by weight, excluding the ingredients water and salt from the calculation, and do not contain any prohibited ingredients or additives.

(B) A processed product sold as organic may include.

(i) ingredients that are not agricultural products, such as salt, yeasts, or other microbial cultures, or fermentation systems which are approved under this chapter;

(ii) organically produced honey, maple syrup, or other natural sweeteners,

(iii) natural preservatives, coloring agents, or other additives, such as natural absorbic acid or citric acid,

(iv) organically grown herbs, spices or other ingredients; or

(v) other ingredients or processing aids listed as allowed in the TDA Materials List or the National List

(f) Percentage of ingredients

(1) Processed products may not be labeled as "organic" on the principal display panel, unless they contain at least 95% certified organically produced ingredients by weight, excluding water and salt from the calculation, and do not contain any prohibited ingredients or additives

(2) Processed products which contain at least 50% certified organically produced ingredients by weight, excluding water and salt, to the extent that the department or an organic certifying agent has determined to permit the word "organic" on the principal display panel, only for the limited purpose of identifying the organically produced ingredients

(3) Processed products that contain less than 50% certified organically produced ingredients by weight, excluding water and salt, to the extent that the department or an organic certifying agent has determined to permit the word "organic" in the ingredient information panel, including the percentage of the product and each ingredient that is certified organically produced

(4) Seeds and beans used for producing edible sprouts must be 100% certified organically produced.

(g) Recordkeeping. Processors shall maintain complete, auditable records for two years including.

(1) records of all organic or transitional products, including dates of purchases, sales, billings, receipts invoices, and volumes of products purchased,

(2) proof of certification of all products labeled as organic or transitional and record of the applicable organic certifying agent

#### *§18.17 Harvest, handling, and processing of cotton*

(a) To ensure that organically produced fiber and by-products are certifiable, producers, distributors, and processors shall harvest, transport, store, and process organically produced fiber in a manner to ensure segregation and prevention from contamination. Methods and materials in manufacturing of organically produced cotton products must be low impact, energy conserving, or environmentally sound processing methods

(b) Harvesting and handling.

(1) Harvest aids

(A) A producer shall use:

(i) seasonal weather conditions such as frost and freeze, and/or

(ii) upon approval by the department or an organic certifying agent, use other materials listed in the TDA Materials List or the National List or other prescribed methods.

(B) A producer may use soaps, detergents or natural plant or vegetable-based oils listed in the TDA Materials List or the National List as a harvest aid for spindle picking methods

(C) A producer shall not use as a harvest aid, defoliation or desiccation by deliberate plant stress through direct fertility depletion.

(2) Equipment

(A) Cotton harvesting equipment, module units or containers compressing or holding cotton fiber, and module trucks or trailers shall be physically or mechanically cleaned to remove any lint or trash from previous harvesting

(B) An on-site inspection of all harvest equipment and/or authorization by the department or an organic certifying agent shall be completed for each field prior to harvest

(3) Handling

(A) Modules or containers of certified cotton shall be segregated in an area specified on each farm site by the department or an organic certifying agent. The department or an organic certifying agent shall be notified prior to relocation of any module or container of certified cotton

(B) Modules or containers of cotton fiber shall be segregated in an area specified for each processing site by the department or an organic certifying agent. The department or an organic certifying agent shall be notified prior to relocation or processing of certified cotton.

(C) Bale units of processed cotton fiber or containers or units of by-products shall be segregated in an area specified by the department or an organic certifying agent at each certified processing facility (gin) and/or each certified distributing (warehouse) location.

(D) Distributor (warehouse) locations shall be inspected and/or audited for records of certified bale units or by-products by the department or an organic certifying agent prior to shipment

(c) Processing (ginning)

(1) Ginning may include module feeding, suction feeding, conveying, drying, pre-cleaning, ginning, lint cleaning, baling and bagging, bale conveying, mote conveying, pressing and bagging gin trash conveying and storage, and seed conveying and storage

(2) Module feeding and/or suction feeding systems and initial conveyors must be cleaned physically or mechanically to remove any lint or trash prior to loading or feeding modules or container units of certified cotton into the ginning system

(3) Each stage of ginning shall ensure segregation and prevention from contamination

(4) At least one bale of compressed fiber or any additional volume or units determined by the department or an



organic certifying agent shall be segregated during processing of organic and/or transitional cotton. Each segregated bale or unit shall be audited and recorded as follows:

(A) the first segregated bale or unit of organic and/or transitional cotton processed after conventional cotton shall not be certified as organic or transitional;

(B) the first segregated bale or unit of transitional cotton processed after organic cotton shall be sold as transitional,

(C) the first segregated bale or unit of organic cotton processed after transitional cotton shall be certified as transitional, or

(D) gin trash, burrs, motes, and seeds which are segregated and prevented from contamination during each stage of ginning may be certified as organic or transitional consistent with the certification of the raw cotton from which they were derived

(5) Cotton fiber processing aids

(A) A processor (ginner) may use

(i) water or other humidity control method to enhance processing,

(ii) enzymes as a topical treatment to enhance processing due to excessive sugar or honeydew content, or

(iii) natural vegetable or plant oils or waxes as a topical treatment to enhance processing due to excessive sugar or honeydew content or processing of weathered cotton

(B) A processor (ginner) shall not use synthetic textile oils, synthetic waxes, or silicone based surfactants

(d) Processing of organically-produced fibers into textile materials.

(1) Processing of cotton fiber into non-wovens including filing, stuffing, batting, felting, health and beauty aid materials, interfacing, and other types. Processing may include

(A) fiber opening, conveying, feeding, blending, and cleaning,

(B) combing, garneting, or compacting;

(C) drying or bonding, or

(D) baling, wrapping or packaging

(2) All equipment used in the processes shall be physically or mechanically cleaned to remove any lint and/or a specified quantity of certified cotton, as it is being passed through each stage of processing, may be utilized to clean contact surfaces during each specific processing stage and to purge the equipment of any tufts of previously processed stock. Cleaning waste shall be discarded and may not be certified organic or transitional.

(A) Additional waste if segregated and prevented from contamination from other fiber and audited via lot, bin or weight, may be recycled or certified consistent with the certification of the raw cotton from which it was derived.

(B) Scouring of non-woven cotton fiber

(i) A processor may use hot water, low impact and biodegradable anionic, cationic, and non-ionic surfactants, citric or acetic acid, and protease, lipase, amylase, and cellulase enzymes

(ii) A processor shall not use hydrochloric or sulfuric acid as a processing ingredient

(C) Bleaching, bio-polishing, color brightening, and softening

(i) A processor may use

(I) hot water, protease, lipase, amylase, and cellulase enzymes, and citric acid or acetic acid, or

(II) soda ash, sodium silicate, caustic soda at a maximum concentration of 30% on weight of goods, and hydrogen peroxide at a maximum of 30% on weight of goods, if removed by a final enzymes and/or hot water and citric acid or acetic acid scour, so that no residual materials remain in the finished fabric.

(ii) A processor shall not use chlorine, sodium chlorite and sodium hypochlorite, optical brighteners and/or bluing, or perborate bleaches including sodium perborate and sodium monopersulfate.

(D) Bonding non-wovens materials.

(i) A processor may use mechanical compaction, webbing, and entangling, stitching, knitting and wefting, hydroentanglement, or polyvinyl alcohol (PVA) as a bonding agent

(ii) A processor shall not use adhesive or glue bonding agents; chemical solvent bonding; or synthetic polymer bonding.

(3) Processing knitted, woven or other fabric types

(A) Processing may include the following:

(i) opening, laydown, cleaning, and blending to feed bale units into the processing system,

(ii) carding, drawing, and combing for the production of sliver from certified bale units,

(iii) roving, winding, ring spinning, open-end spinning, air jet spinning, plying, and wrapping for production of yarn from sliver,

(iv) creeling, warping, and slashing of yarn packages onto beams for woven fabrics,

(v) weaving or knitting of fabrics,

(vi) compaction, Sanforizing, and finishing greige good, or

(vii) dyeing

(B) All equipment used in the processes listed above shall be physically or mechanically cleaned to remove any lint and/or a specified quantity of certified cotton, as it is being passed through each stage of processing, may be utilized to clean contact surfaces during each specific processing stage and to purge the equipment of any tufts of previously processed stock. Cleaning waste shall be discarded and may not be certified organic or transitional.

(C) Additional waste including raw stock cotton, carding, drawing, combing noils, sliver, roving, yarn, pneumafil, yarn, beam, or greige good fabric, if segregated and prevented from contamination from other fiber and volume recorded via lot, bin or weight, may be certified consistent with the certification of the raw cotton from which it was derived

(D) All packages including sliver, roving, yarn warp beams, and bolts of finished fabric shall be clearly marked during each stage of processing consistent with the certification of the raw cotton from which it was derived, including records via individual package numbers or lots, beam numbers or lots, or bolt numbers or lots, and volume or weight of each package or unit of waste stock to be certified.

(E) Treatment of cotton for opening, laydown, cleaning, and blending. A processor may use water or other humidity control methods to enhance feeding, enzymes as a topical treatment to enhance

processing due to excessive sugar or honeydew content, or natural vegetable oils, plant oils, and natural waxes as a topical treatment to enhance ease of processing of weathered cotton

(F) Preparation and conditioning of yarn

(i) A processor may use

(I) as a processing ingredient, beeswax or tallow wax;

(II) as a processing aid, paraffin based wax, if removed with allowed scouring materials later in the manufacturing process, or

(III) as a processing aid, soluble acid fugitive tint to identify individual yarn packages, if removed with allowed scouring materials later in the manufacturing process

(ii) A processor shall not use silicone resin or other synthetic based resins

(G) Preparation of beamed yarns for woven fabrics

(i) A processor may use

(I) starches derived from natural sources, including, corn starch and potato starch, hydrogenated tallow, or natural waxes as a processing ingredient for sizing,

(II) polyvinyl alcohol (PVA), gelatin, waxes, and glycerin as a processing aid, if removed by a allowed final scour which may include hot water, enzymes, and citric acid or acetic acid, so that no residual materials remain in the finished fabric

(ii) A processor shall not use synthetic resins, synthetic gums, or synthetic oils

(H) Desizing to remove processing aids in beamed yarns

(i) A processor may use hot water, citric acid or acetic acid; salt, protease, lipase, amylase and cellulase enzymes, low impact and biodegradable anionic, cationic, and non-ionic surfactants, sodium gluconate, or other organic chelating agents

(ii) A processor shall not use hydrochloric or sulfuric acid.

(I) Preparation of warp beam yarns or package yarns for dyeing.

(i) A processor may use

(I) as a processing aid, hot water, citric acid, acetic acid; low impact and biodegradable anionic, cationic and non-ionic surfactants; and soda ash; or

(II) sodium silicate, caustic soda at a maximum concentration of 3.0% on weight of goods; hydrogen peroxide at a maximum of 3.0% on weight of goods, as a processing aid, if removed by a final enzyme and/or hot water and citric or acetic acid scour, so that no residual materials remain in the finished fabric

(ii) A processor shall not use chlorine, sodium chlorite and sodium hypochlorite, optical brighteners and/or bluing, perborate bleaches including sodium perborate and sodium monopersulfate, or heavy metals or mordants

(J) Bleaching, bio-polishing, color brightening, and softening of fabrics for final finishing of greige good fabric or for fabric or garment dyeing

(i) A processor may use

(I) protease, lipase, amylase, and cellulase enzymes, hot water, and citric or acetic acid, or

(II) soda ash, sodium silicate, caustic soda at a maximum concentration of 3.0% on weight of goods, and hydrogen peroxide at a maximum of 3.0% on weight of goods as a processing aid, if removed by a final enzymes and/or hot water and citric or acetic acid scour, so that no residual materials remain in the finished fabric

(ii) A processor shall not use chlorine, sodium chlorite and sodium hypochlorite, optical brighteners and/or bluing, perborate bleaches including sodium perborate and sodium monopersulfate, or heavy metals or mordants

(K) Mechanical finishing of knit and woven fabrics A processor may use calendering, tentering, or Sanforizing for final finishing of greige good fabrics or for preparation for fabric or garment dyeing, or mechanical compaction and/or relaxation, and heat shrinkage

(L) Finishing knit or woven greige good fabric or fabric for garment dyeing

(i) A processor may use

(I) as a final finishing ingredient, enzymes as bio-polishes or

finishes, natural oils including coconut oil, banana oil, pine (tall) oil, or other natural plant or animal oils, natural fatty acids including oleic acid and stearic acid, other plant or animal acids, or tallow; and corn or potato starch; or

(II) cationic softeners, as a finishing aid in Sanforization or finishing, or polyvinyl alcohol (PVA) in glazing or beetling finishing

(ii) A processor shall not to use as a processing ingredient formaldehyde and formaldehyde-urea resins, silicone or silicone-based finishes, synthetic resins or resin-based finishes, synthetic gums or gum-based finishes, synthetic oils, or synthetic waxes

(M) Surface finishing of knit or woven fabrics A processor may use napping, sueding, or brushing

(N) Dyeing of package yarns, beams yarns, or fabric or garment dyeing A processor may use natural, low-energy, non-metal, reactive dyes, bifunctional dyes, or low impact dyes

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 January 26, 1994

TRD-9435229

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption March 4, 1994

For further information, please call (512) 463-7583

## TITLE 22. EXAMINING BOARDS

### Part XVII. Texas State Board of Plumbing Examiners

#### Chapter 361. Administration

##### General Provisions

###### • 22 TAC §361.1

The Texas State Board of Plumbing Examiners proposes an amendment to §361.1 concerning the definition of a "Registered Plumbing Apprentice." The proposed amendment delineates further the permissible tasks a registered apprentice may perform with regard to medical gas systems

Douglas A. Beran, Ph.D., chief fiscal officer/office manager, has determined there will be no fiscal implications as a result of enforcing or administering the rule

Dr. Beran also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be enhanced public health, safety, and welfare by ensuring medical gas systems have been installed in such a manner as to prevent infection and/or to prevent an unintended cross-connection of breathable and lethal gasses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be negligible.

Comments on the proposal may be submitted in writing to Dr Douglas A Beran at the Texas State Board of Plumbing Examiners, P O Box 4200, Austin, Texas 78765

The amendment is proposed under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law

The proposed amendment does not affect other statutes, articles, nor codes

*§361 I Definitions* The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise

*Registered Plumbing Apprentice* An individual other than a master plumber or journeyman plumber whose principal occupation is learning about and assisting in the installation of plumbing. A registered plumbing apprentice may assist a licensed journeyman or master plumber with a medical gas endorsement in the installation of medical gas systems, however, he or she may do so only under the direct supervision and within sight of the endorsee. The registered plumbing apprentice may not braze, assemble nor install required pipe markings

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 January 10, 1994

TRD-9435109  
Gilbert Kissling  
Administrator  
Texas State Board of  
Plumbing Examiners

Proposed date of adoption March 14, 1994

For further information, please call (512) 458-2145

## Chapter 363. Examinations

### Qualifications

#### • 22 TAC §363.1

The Texas State Board of Plumbing Examiners proposes an amendment to §363 1, concerning the eligibility criteria for an individual to qualify to take the journeyman plumber's examination. The amendment proposes that an applicant for the journeyman plumber's examination be a registered apprentice

Douglas A Beran, Ph D., chief fiscal officer/office manager has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Dr Beran 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 enhanced public health, safety, and welfare by ensuring each person has access to clean water because of plumbing installed and maintained by well-trained and competent plumbers. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the amendment as proposed will be contingent upon the fee applicable to the journeyman examination

Comments on the proposal may be submitted in writing to Dr Douglas A Beran at the Texas State Board of Plumbing Examiners, P O Box 4200, Austin, Texas 78765

The amendment is proposed under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law

The proposed amendment does not affect other statutes, articles, nor codes

### *§363 I Qualifications*

(a) (No change )

(b) Journeyman Plumber Each applicant must

(1) be a high school graduate or hold a General Equivalency Diploma (GED ), and

(2) have either of the following

(A) registration as a registered plumbing apprentice and at least 8,000 hours of experience working at the trade or such work experience and technical training combined to equal 8,000 hours, as verified by former employers, or

(B) a journeyman license from another state that need not be current at the time of application if the expired license is renewed in the state that issued it

(c) (No change )

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

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Administrator  
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#### • 22 TAC §363.11

The Texas State Board of Plumbing Examiners proposes an amendment to §363 11, concerning the Board's periodic review of providers of medical gas piping installation training programs. The amendment to §363 11 authorizes the Board to review no less than once each year medical gas piping installation training programs to ensure the training programs are being provided equitably across the State of Texas

Douglas A Beran, Ph D , chief fiscal officer/office manager, has determined that there will be fiscal implications as a result of enforcing or administering the section

The estimated additional cost on state government the first five-year period the section will be in effect is contingent upon the cost of redirected staff and actual travel costs necessary for staff to bring forward to the Board documentation regarding whether or not a particular training program(s) is being offered equitably across the state

The proposed amendment is not anticipated to have a fiscal impact on units of local government

The cost of compliance for small and/or large businesses and individuals that are approved providers of medical gas installer training programs is contingent upon whether or not they are found to be not providing their approved medical gas training programs equitably across the state. If the Board finds a particular approved trainer is not providing training equitably across the state, the cost for compliance is contingent upon the cost the approved trainer will incur to provide the training program equitably across the state

Dr Beran 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 enhanced public health, safety, and welfare by ensuring medical gas training programs are offered equitably across the state such that installers of medical gas piping systems across the state install medical gas piping systems properly to prevent an unintended cross-connection of breathable and lethal gases

Comments on the proposal may be submitted in writing to Dr Douglas A Beran at the Texas State Board of Plumbing Examiners, P O Box 4200, Austin, Texas 78765

The amendment is proposed under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law

The proposed amendment does not affect other statutes, articles, nor codes.

### *§363 11 Endorsement Training Programs*

(a) Medical gas piping installation training programs

(1) (No change.)

(2) Training programs in medical gas piping installation shall be reviewed at least annually by the board to ensure that programs have been provided equitably across the State of Texas

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

(b) (No change.)

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

Issued in Austin, Texas, on January 10, 1994

TRD-9435111

Gilbert Kissling  
Administrator  
Texas State Board of  
Plumbing Examiners

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For further information, please call (512) 458-2145

## Chapter 365. Licensing

### License Categories, Description; Scope of Work Permitted

#### • 22 TAC §365.3

The Texas State Board of Plumbing Examiners proposes an amendment §365.3 concerning eligibility criteria for an individual to qualify to take the journeyman plumber's examination. The amendment proposes that an applicant for the journeyman plumber's examination be a registered apprentice, meet certain educational requirements, and meet certain training requirements as verified by either current and/or former employers

Douglas A Beran, Ph.D., chief fiscal officer/officer manager, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Dr Beran 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 enhanced public health, safety, and welfare by ensuring each person has equitable access to clean water and appropriate plumbing facilities because of plumbing installed and maintained by well-trained and competent plumbers. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the amendment as proposed will be contingent upon their costs to obtain historical employment documentation from prior employers and the fee applicable to the journeyman examination

Comments on the proposal may be submitted in writing to Dr Douglas A Beran at the Texas State Board of Plumbing Examiners, P.O. Box 4200, Austin, Texas 78765.

The amendment is proposed under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe,

amend, and enforce all rules necessary to carry out the Plumbing License Law.

The proposed amendment does not affect other statutes, articles, nor codes

#### §365.3 License Qualifications

(a) An applicant may qualify for a license in one of the three categories or for an endorsement in one of the two categories by successfully completing the required examination and remitting the appropriate fee. Furthermore, in the case of plumbing inspectors, the political subdivision shall furnish proof of the applicant's employment

(b) To be eligible to take the Journeyman examination, the applicant must:

- (1) be a registered apprentice;
- (2) hold a high school diploma or General Equivalency Diploma (GED); and
- (3) meet the minimum trade experience requirements set forth below.

(A) Installation of piping for waste and vent drainage systems, 2,000 hours: During this period, a person should obtain the proper knowledge and skill to install different types of materials used in these systems, e.g., cast iron, plastics, copper.

(B) Installation of piping for domestic hot and cold water systems, 2,000 hours: during this period, a person should obtain the proper knowledge and skill to install different types of materials used in these systems, e.g., cast iron, plastics, copper, steel; the function, difference, and proper installation of various valves, e.g., gate, globe, mixing, etc.

(C) Installation of fixtures and equipment common to plumbing systems, 2,000 hours: During this period, a person should obtain the proper knowledge and skill to install different types of products used, e.g., water heaters, natural and L.P. gas fired equipment; proper installation of plumbing fixtures, faucets, water softeners and similar equipment; proper method for sizing and installation of gas applicant vents.

(D) Piping Hangers and Pipe Support systems, 500 hours: During this period, a person should obtain the proper knowledge and skill to install different types of hangers for piping support.

(E) Installation of Special Plumbing systems, 1,000 hours: During

this period, a person should obtain the proper knowledge and skill regarding medical gas systems, decorative fountains, lawn irrigation systems, solar panels.

(F) Understanding and implementing the Americans With Disabilities Act, 500 hours: During this period, a person should become knowledgeable in model plumbing codes and job safety and Occupational Safety and Health Administration (OSHA) requirements as they apply to the plumbing profession.

(G) When the registered apprentice applies to take the Journeyman examination, he/she must submit the Employer's Certification (Form E-6b; Rev. 7/89). This form certifies the applicant's work experience complies with the eligibility criteria for the Journeyman examination. If the applicant has met the criteria through employment with one employer, the Employer's Certification must be completed by that employer. However, if the applicant has met the criteria through employment with various employers, then the Employer's Certification must be submitted from each of those employers. Therefore, the Board recommends the applicant request an employer to complete the Employer's Certification each time the applicant discontinues employment with a particular employer.

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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For further information, please call (512) 458-2145

#### • 22 TAC §365.5

The Texas State Board of Plumbing Examiners proposes an amendment §365.5, concerning compliance with the mandatory continuing education requirement by inactive journeyman and master plumbers. The amendment proposes that any journeyman or master plumber no longer required to have a current license because of retirement or because of employment in an occupation which does not require the journeyman or master plumber license need not comply with the mandatory continuing education requirement and shall have his/her license marked inactive. However, should the individual return to the plumbing trade, he/she must satisfy the

mandatory continuing education requirement before the journeyman or master license will be renewed

Douglas A Beran, Ph D., chief fiscal officer/office manager, has determined there will be no fiscal implications for state government as a result of enforcing or administering the section during the first five-year period the section will be in effect. However, the estimated loss in revenue (tuition/fees) by approved providers of continuing education training (large and small businesses and individuals) will be contingent upon the number of inactive plumbers who will not participate in the mandatory continuing education programs because of their inactive license status.

Dr. Beran 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 enhanced public health, safety, and welfare by ensuring each person has access to clean water because of plumbing installed and maintained by well-trained and competent plumbers who will have undergone the mandatory continuing education training before reactivating their journeyman or master licenses. The anticipated economic cost to persons who are required to comply with the amendment as proposed will be contingent upon the fees applicable to renew applicable to renew their journeyman and/or master licenses and the tuition/fees required to undertake the mandatory continuing education training should they choose to reactivate their licenses.

Comments on the proposal may be submitted in writing to Dr. Douglas A Beran at the Texas State Board of Plumbing Examiners, P.O. Box 4200 Austin, Texas 78765.

The amendment is proposed under Texas Civil Statutes, Article 6243-101 which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law.

The proposed amendment does not affect other statutes, articles, nor codes.

#### §365.5 Renewals

(a) (d) (No change.)

(e) Beginning September 1, 1994 any journeyman plumber, master plumber, or plumbing inspector wishing to renew a license must submit to the administrator board-approved documentation of successful completion within the previous license year of six hours of board-approved continuing education. Any journeyman plumber or master plumber no longer required to have a current license because of retirement or of employment in an occupation which does not require the journeyman or master license may be exempted from complying with the continuing education requirements by submitting documentation each year in support of this fact and the license will be marked inactive. Should the individual return to the plumbing trade, he/she will

be required to abide by the continuing education requirement before the license may be renewed.

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 January 10, 1994

TRD-9435113 Gilbert Kissling  
Administrator  
Texas State Board of  
Plumbing Examiners

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For further information, please call (512) 458 2145

#### • 22 TAC §365.11

The Texas State Board of Plumbing Examiners proposes an amendment §365.11, concerning eligibility criteria for a journeyman plumber to qualify to take the master plumber's examination. The amendment to §365.11 is a "cleanup" to make §365.11 consistent with §363.1 concerning the number of years (two) an individual must have held the journeyman's license before applying for the master's plumber examination and license.

Douglas A Beran, Ph D., chief fiscal officer/office manager, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Beran 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 enhanced public health, safety, and welfare by ensuring each person has access to clean water because of plumbing installed and maintained by well-trained and competent plumbers. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible.

Comments on the proposal may be submitted in writing to Dr. Douglas A Beran at the Texas State Board of Plumbing Examiners, P.O. Box 4200, Austin, Texas 78765.

The amendment is proposed under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law.

The proposed amendment does not affect other statutes, articles, nor codes.

#### §365.11 Exemptions

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

(d) The board may waive the requirement that an individual hold a journeyman license for two years [one year] prior to eligibility for a master license, after consideration of a written request for an exemption due to hardship. Generally, the

board may consider the waiver if circumstances due to the withholding of the master license or examination would:

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

(e) (No change.)

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

Issued in Austin, Texas, on January 10, 1994.

TRD-9435114 Gilbert Kissling  
Administrator  
Texas State Board of  
Plumbing Examiners

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For further information, please call: (512) 458-2145

## Chapter 367. Enforcement

### General Provisions

#### • 22 TAC §367.4

The Texas State Board of Plumbing Examiners proposes an amendment to §367.4, concerning the public display of a master plumber's license number and company name. The amendment proposes that each master plumber engaged in plumbing contracting shall display his/her master license number and company name on both sides of all service vehicles used in conjunction with plumbing contracting by the master plumber. The display shall meet certain criteria set forth in the proposed rule.

Douglas A Beran, Ph D., chief fiscal officer/office manager, has determined that there will be fiscal implications as a result of enforcing or administering the rule. There will be no effect on state nor local government for the first five-year period the rule will be in effect. However, the cost of compliance with the rule for small businesses and large businesses will be contingent upon the costs incurred by each to display the master plumber's license and company name according to the criteria set forth in the proposed rule.

Dr. Beran also has determined that for each year of the first years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be enhanced public assurance that contracted plumbing is installed and maintained by well-trained, competent, and licensed plumbers. The anticipated economic cost to persons who are required to comply with the rule as proposed will be similar in nature to those anticipated for large and small businesses.

Comments on the proposal may be submitted in writing to Dr. Douglas A. Beran at the Texas State Board of Plumbing Examiners, P.O. Box 4200, Austin, Texas 78765.

The amendment is proposed under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law.

The proposed amendment does not affect other statutes, articles, nor codes

*§367.4. Display of License* Licensees shall display the license in their place of business and shall carry the license with them while engaged in work. Each licensed master plumber shall display permanently the master plumber license number and company name on both sides of all service vehicles used in conjunction with plumbing contracting by the master plumber. The letters and numbers shall be not less than two inches high and shall be in a color sufficiently different from the body of the vehicle so that the letters and numbers shall be plainly legible at a distance of not less than 100 feet.

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 January 10, 1994

TRD 9435115

Gilbert Kissling  
Administrator  
Texas State Board of  
Plumbing Examiners

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For further information, please call (512) 458-2145

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 320. Regional Assessment of Water Quality

##### Program for Water Quality Assessment by Watershed

##### • 30 TAC §320.21

The Texas Natural Resources Conservation Commission (Commission) proposes an amendment to §320.21, concerning the program for water quality assessment by watershed. Water Code, §26.0135, authorizes the commission to assess an annual fee against each permittee holding a permit for wastewater treatment or a permit for surface water rights for the purpose of supporting the costs of regional water quality assessment activities conducted by the commission and river authorities or other eligible local jurisdictions. In determining the revenue to be derived from these assessments the commission considers the funds available from all authorized sources and the requirements to meet budgeted expenses of the water quality assessment activities to which these fee revenues may be allocated.

Increases in the costs of the regional water quality program are anticipated for the

1994-1995 biennium. Federal funds and general state tax revenue sources for water quality programs will decrease over the same period. To meet the requirements for funds anticipated during the 1994-1995 biennium, the commission proposes to modify certain features of the fee rate schedules and amend the fee rates. Under the provisions of House Bill 2620, Acts of the 73rd Legislature, 1993, the commission is authorized to collect assessments up to a maximum amount of \$5 million annually. These proposed changes are intended to increase available revenues within the limits of House Bill 2620. These amendments also include definitional clarifications and additions, specification of fee calculations, and changes in billing procedures.

Section 320.21, relating to water quality assessment fees, is amended at subsection (a) to clarify or add certain definitions. The definitions of "flow" and "traditional pollutants" are amended to more accurately reflect the basis for assessment of a fee based on permitted flow limits. Definitions for "inactive permit", "wastewater permit", and "water right" are added to the section. Changes to §320.21(b) will clarify the basis for assessment of a fee under this section and specify that certain small domestic and agricultural users of surface waters are exempt from assessment. Section 320.21(c) is amended to clarify the application of these rules to wastewater permit holders, and others authorized to treat or discharge wastewater, and establish minimum and maximum fees and flat rates for certain types of permits. Section 320.21(d) is amended to clarify the application of these rules to holders of water rights permits and establish amended fee rates. Section 320.21(e), relating to the assessment of fees for water rights for irrigation, is deleted and subsequent subsections renumbered accordingly. Section 320.21(f) is redesignated as subsection (e) and amended to clarify the exemption from assessment for certain water rights which may be unavailable for use by the water right permittee. A new §320.21(i) is added to define due dates, payment procedures and penalties for late payment. Subsection (j) is amended to define assessment procedures for new, amended or cancelled permits. Subsection (k) is amended to define a process for future adjustments to fee rates if collections exceed statutory limits in any year. In addition, references to the "Texas Water Commission" in §320.21 are amended to reflect the consolidation of programs under the Texas Natural Resource Conservation Commission authorized by Senate Bill 2, Acts of the 72nd Legislature, First Called Session, 1991.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years the section as proposed is in effect there will be fiscal implications as a result of enforcement and administration of the section. The effect on state government will be an increase in revenue of approximately \$1.2 million in each of the fiscal years 1994-1998. The revenues collected are used to reimburse river authorities or other eligible agencies for the costs of development of regional water quality assessments. With this allocation of revenues to local agencies, costs to state government are not anticipated to in-

crease significantly. The effects on local governments will vary. River authorities and possibly other local jurisdictions may expand regional water quality assessment activities and the level of state financial support for such activities. Affected rate payers subject to these rules, which include most municipal governments and many utility districts, will be affected by increases in annual fee rates. Effects on local governments would be equivalent to those for any wastewater or water right permit holder.

For owners and operators of wastewater treatment facilities, the proposed fee increases will vary with the size of the facility and the permit discharge parameters specified in individual permits. The minimum increase for any permit is \$50. On the basis of permitted flow volume, fees could increase by as much as \$7,500 for the largest facilities (50 million gallon per day and greater) on the basis of contaminated discharges and up to \$3,000 for uncontaminated flows. The cost increases for traditional pollutants, from \$2.00 per pound per day to \$3.00 per pound per day could have significant effects, up to \$15,000 for some permits. The proposed increase in the minimum fee, from \$200 to \$300, will increase the costs for an estimated 1,460 permit holders by \$100. In addition, cost increases for evaporation and wastewater irrigation permits will increase from \$150 to \$200, affecting an estimated 1,062 permit holders. Of this total, 506 are agricultural permits, 173 industrial, 251 are private domestic and the remainder of 132 are municipal. The fee for inactive permits is also proposed to be increased from \$100 to \$150, affecting about 273 permit holders, the large majority of which are municipal or private domestic wastewater permits. Taking all factors into consideration, the proposed amendment could increase annual wastewater permit fees for certain facilities by up to \$25,000. It must be recognized, however, that these potential increases will be mitigated and, in many cases, cancelled altogether by the effect of the maximum fee (proposed) of \$40,000. The maximum fee increase anticipated is approximately \$12,000, although fee increases for most owner/operators will be significantly less than the theoretical maximums. In fact, for the approximately 4,000 wastewater permits in effect, the average fee increase will be less than \$300.

For holders of water rights, the effects of the proposed amendment will depend on the type of water use and the amount of water authorized to be used. Irrigation water rights will not be subject to an assessment. For consumptive water uses, the fee is currently \$20 per acre-foot up to 10,000 acre-feet and \$0.02 per acre-foot thereafter. The proposed fee for consumptive water uses is \$22 per acre-foot up to 20,000 acre-feet and \$.08 per acre-foot thereafter. The average fee for consumptive uses will increase by \$1,559 for municipal, \$1,035 for industrial and \$971 for mining. For non-consumptive water uses, the fee is currently \$0.02 per acre-foot up to 100,000 acre-feet and \$0.02 per acre-foot thereafter. Except for hydroelectric generation, the proposed fee for non-consumptive water uses is \$.021 per acre-foot up to 50,000 acre-feet and \$0.007 per acre-foot thereafter. For hydroelectric

generation, the proposed fee is \$.04 per acre-foot up to 100,000 acre-feet and \$.004 per acre-foot thereafter. The average fee for recreational water use and other miscellaneous non-consumptive uses will increase by \$175 and \$101, respectively. The average fee for hydroelectric use will increase by \$5,370.

The section will have fiscal implications for small businesses. Fee increases will vary with the size and pollutant potential of wastewater facilities or with the type and amount of water rights. These variables may not be indicative of the size of the concern owning such permits. Fees for smaller businesses may increase by a significant percentage in some instances, however the larger dollar increases will generally be restricted to larger companies. On the other hand, businesses which are rate payers to publicly-owned treatment facilities or water utilities may be collectively affected by increased rates for service if additional permit fee costs are passed directly on to customers. It is not anticipated that recovery of these costs by utility providers will significantly affect small businesses.

Mr. Minick 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 improvements in: the assessment of regional water quality, local participation in regional water quality planning programs, protection of the quality of the state's surface water resources, and compliance with the provisions of the Texas Water Code and the regulations of the Texas Natural Resource Conservation Commission. The costs to individuals who are not affected permit holders anticipated as a result of compliance with the section would be the same as those costs identified for small businesses which are ratepayers to public and private utilities. On an individual basis, these costs are not anticipated to be significant. Written comments on the proposal may be submitted to Stephen Minick, Budget and Planning Division, Texas Natural Resources Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. Written comments must be submitted not later than 5:00 p.m., on the 30th day following the publication of this proposal.

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the Texas Natural Resources Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and all other laws of the State of Texas and to establish and approve all general policy of the commission.

The amendment will also implement the specific provisions of Water Code, §26.0135.

#### §320.21. Water Quality Assessment Fees.

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

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

(5) Flow—The total by volume of all wastewater discharges authorized under a permit issued in accordance with the

Texas Water Code, Chapter 26 expressed as an average flow per day, a maximum flow per day, an annual average or an annual maximum, exclusive of variable or occasional stormwater discharges. Generally, the flow amount used to calculate fees is [based on] the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volumes of discharge apply only to internal outfalls, the flow amount used to calculate fees is [based on] the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

(6)-(7) (No change.)

(8) Inactive permit—A permit which authorizes a waste treatment facility, where the facility itself is not yet operational or where operation has been suspended.

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

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

(11)[(10)] MGD—Million gallons per day.

(12)[(11)] Mining use—The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

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

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

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

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

(14) [(13)] Navigation use—A recognized use that is not currently included in any water rights.

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

(16)[(15)] Other use—Any beneficial use not otherwise defined herein.

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

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

(19)[(18)] TOC—Total organic carbon.

(20)[(19)] Traditional pollutants—the wastewater parameters typically found in wastewater [discharge] permits, specifically oxygen demand (BOD/COD/TOC), total suspended solids (TSS) and ammonia. For the purpose of this section, COD and TOC are converted to BOD values, and the higher value is used in fee calculations. COD and TOC are expressed in terms of BOD at the rate of three pounds of TOC equal to one pound of BOD (3:1) or eight pounds of COD equal to one pound of BOD (8:1). [If the permit does not contain a BOD limit then the higher of COD or TOC should be used to derive the BOD value according to the calculation.]

(21)[(20)] TSS—Total suspended solids.

(22) Wastewater permit—A permit issued by the commission under

authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Health and Safety Code, Chapter 361). For the purpose of this section, a permit shall include any authorization under Water Code, Chapter 26, to treat or discharge wastewater, including a registration or permit by rule.

(23) **Water right**—A right acquired under the laws of the state and the rules of the commission to impound, divert, or use state water.

(b) For the purpose of recovery of the costs of development of regional water quality assessments and administration of the provisions of this chapter, a fee is assessed against water right holders and wastewater [discharge] permit holders in each watershed of the state in proportion to their right to use water from, or to [and] discharge wastewater into, the watershed. The fee calculation is based on the authorized limits contained in wastewater permits and water rights as of September 1 each year. All fee calculations are to be based on the parameters specified in the permit or water right without regard to the actual amount or quality of effluent discharged or the actual amount of water used. Fees do not apply to those domestic and livestock water use applications which are exempt from the need for authorization from the commission.

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

(1) for contaminated discharges, \$375 [\$300] per MGD [up to a maximum of 100 MGD; and \$10 for each additional MGD or fraction thereof];

(2) for uncontaminated discharges, \$1.75 [\$1.00] per MGD;

(3) for each traditional pollutant, \$3.00 [\$2.00] per pound per day. The annual fee assessed for each wastewater discharge permit shall be a minimum of \$300 [\$200] and shall not exceed \$40,000 [\$35,000]. The fee for a permit which does not authorize the discharge of wastewater,

including evaporation and land disposal permits, shall be \$200 [\$150]. The fee for an inactive permit shall be \$150 [\$100].

(d) For municipal or industrial water rights, or portions thereof, not directly associated with a facility or operation which is assessed a fee under subsection (c) of this section, and for all other types of water rights except irrigation, each water [Water] right holder [holders] not subject to subsection (c) of this section] shall pay a fee based on the authorization to impound, divert or use state water [right to appropriate water under a permit issued pursuant to the Texas Water Code, Chapter 11]. The fee for each [all] water right [rights] authorizing diversion of [entitled to divert] more than 250 acre-feet per year for consumptive use, other than [water rights appropriated] for irrigation, shall be \$.22 [\$.20] per acre-foot up to 20,000 [10,000] acre-feet, and \$.08 [\$.02] per acre-foot thereafter. Except for water rights for use for hydroelectric generation, the [The] fee shall be \$.021 [\$.02] per acre-foot for water rights [appropriated] for non-consumptive use above 2,500 acre-feet per year up to 50,000 [100,000] acre-feet, and \$.0007 [\$.002] per acre-foot thereafter. The fee for water rights for use for hydroelectric generation shall be \$.04 per acre-foot per year up to 100,000 acre-feet and \$.004 per acre-foot thereafter. [Holders of water rights appropriated for irrigation shall pay a minimum fee of \$50 per permit with no exceptions. If a water right includes irrigation use which has specific amounts stated for each of the multiple holders, each of these holders shall pay a separate \$50 fee for that permit. Water right holders entitled to divert for irrigation 100 acre-feet or less per year will be assessed only the \$50 minimum fee. For water right holders entitled to divert for irrigation more than 100 acre-feet per year, the fee shall be \$50 plus \$.07 per acre foot per year in excess of 100 acre-feet per year in addition to the minimum fee.]

(e) Water right holders entitled to divert for irrigation more than 100 acre-feet of water annually will be assessed \$.07 per acre-foot. If the amount of water actually diverted is less than the water entitlement, the water right holder for irrigation would be entitled to a credit at \$.07 per acre-foot for the difference between the total appropriated amount and the amount of water actually diverted. The 1990 water use reports will be the governing year for any claimed credits. Diverters claiming any credits would have to meet the following condition of verification: actual diversions would have to be verified by the commission's watermaster program or a federal entity (i.e. Bureau of Reclamation, United States Geological Survey or its designated contract employees, Corps of Engineers or the International Boundary and Water Com-

mission), political subdivision, or municipality. For those water right holders not required to file an annual use report with the Texas Water Commission, verification of any credits would have to be provided by any one of the above entities. Water right holders unable to provide this verification shall not be allowed any credits and shall be required to pay the full assessment.]

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

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

(g)[(h)] The portion of a water quality assessment fee recovered from a customer of a retail public utility may be listed on the customer's bill as a separate item and may be collected in addition to other regulatory assessments or charges for utility services.

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

(i) **Water quality assessment fees are due within 30 days of the billing date each year. However, for the first billing cycle after adoption of these rules, the fees are due within 60 days of the billing date. Fees shall be paid by check, either personal or certified, or by money order payable to the Texas Natural Resource Conservation Commission. A person failing to make payment of the fees imposed under this section when due shall be subject to a penalty of 5.0% of the amount due, and if the fees are not paid within 30 days after the day on which the fees are due, an additional 5.0% penalty shall be imposed. An annual interest rate of 12%, compounded monthly, shall be imposed on delinquent fees beginning 60 days from the date on which the fee is due.**

(j) **New wastewater permits and water rights granted after September 1 will be billed at the next regular billing date. Any change in authorization will not affect any fee already billed for the**



year in which the authorization change is made. Cancellation or revocation, whether by voluntary action on the part of the permittee or water right holder or as a result of proceedings initiated by the commission, will not constitute grounds for a refund of any water quality assessment fee previously paid [Water quality assessment fees for every year after the initial year of this program are due and payable to the commission by January 1 of each year. The commission shall establish procedures for billing and collection of the fee and notification of amounts due for each year. For the first year this program is in effect, water quality assessment fees are due and payable 30 days after issuance of the bill].

(k) The commission shall monitor both the collection of fees under this section and the allocation of fee revenues under §320.22 of this title (relating to Allocation of Water Quality Assessment Fee Revenue) for the river basins of the state. The commission shall adjust the fee rates established under this section to the extent necessary to ensure the adequate support of the programs undertaken to implement this chapter and the equitable assessment of fees within each watershed and region of the state. If the fees collected for this program in any fiscal year should exceed \$5 million by more than 1.0%, the commission shall make a proportional downward adjustment of the fee rates for the next fiscal year to attempt to limit the collection to \$5 million per year.

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 January 25, 1994.

TRD-9435209  
 Mary Ruth Holder  
 Director, Legal Division  
 Texas Natural Resource  
 Conservation  
 Commission

Earliest possible date of adoption: March 4, 1994

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

◆ ◆ ◆  
**TITLE 37. PUBLIC  
 SAFETY AND CORREC-  
 TIONS**

**Part III. Texas Youth  
 Commission**

**Chapter 81. Administrative  
 Provisions**

**General**

• **37 TAC §81.15**

The Texas Youth Commission (TYC) proposes new section §81.15, concerning policy references to institutions/Evins Regional Juvenile Center. The new rule will clarify that Evins Regional Juvenile Center is considered an institution for purposes of agency policy.

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

Mr. Franks 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 a more efficient rule making system. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under Human Resources Code §61.034, which provides the

Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements Human Resource Code §61.034.

◆ ◆ ◆  
**§81.15. Policy References to Institutions/Evins Regional Juvenile Center.**

(a) Policy. The term "institutions" as used in policies contained in the General Operating Policy Manual shall apply to Evins Regional Juvenile Center unless specifically stated otherwise.

(b) Rules.

(1) Responsibilities designated for the director of institutions also apply to the director of community services.

(2) Responsibilities designated for institution superintendents also apply to the Evins Regional Juvenile Center facility administrator.

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 January 25, 1988.

TRD-9435184  
 Steve Robinson  
 Executive Director  
 Texas Youth Commission

Earliest possible date of adoption: March 4, 1994

For further information, please call: (512) 483-5244

◆ ◆ ◆  
**Texas Department of Insurance Exempt Filing**

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

*(Editor's Note. As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97)*

*The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)*

The Commissioner of Insurance at a public hearing under Docket Number 2085 scheduled for March 7, 1994, at 8:30 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider an amendment proposed by the staff of the Workers' Compensation Division to the Procedures Section of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insur-

ance (Manual) to eliminate the filing of specimen policies, information pages, endorsements and cancellations with the Texas Department of Insurance.

The amendment as proposed by staff amends the Procedures Section of the Manual by eliminating the filing requirements for specimen policies, information pages, endorsements and cancellations with the Department of Insurance. Since the Workers' Compensation Division will no longer be reviewing these documents, it will not be necessary for the documents to be filed. In addition, the data to be included on the Information Page is being proposed to be updated to

include such items, if applicable, the premium for increased limits for employers' liability, the experience modifier, the negotiated experience modifier, the deductible credit, premium discount, the maintenance tax surcharge recoupment and the schedule rating factor.

A copy of the amendments containing the full text of the proposed amendments is available for review in the office of the Chief Clerk of

the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the amendments, please contact Angie Arizpe (512) 322-4147 (refer to Reference Number W-0194-01).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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 January 25, 1994.

TRD-9435191

Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

For further information, please call: (512) 463-6328

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# ADOPTED RULES

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

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

## TITLE 1. ADMINISTRATION

### Part IV. Office of the Secretary of State

#### Chapter 71. Office of the Secretary of State

##### Private Use of the State Seal of Texas

- 1 TAC §§71.40-71.42, 71.45, 71.46, 71.48, 71.50

The Office of the Secretary of State adopts amendments to §§71.40-71.42, 71.45, 71.46, 71.48, and new 71.50, concerning the private use of the state seal of Texas. Sections 71.41, 71.42, 71.45, 71.46, and 71.48 are adopted without changes, and will not be republished. Sections 71.40 and 71.50 are adopted with changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7897). Section 71.40 is adopted with two changes. One change adds certain exemptions to the definition of commercial purpose. The other change includes the term "state arms" in the definition of state seal of Texas. In addition, §71.50 is adopted with one change. Section 71.50 adopts the standard designs for the state seal and the state arms. The standard design for the reverse of the state seal is not adopted at this time.

Adoption of the amendments and new rule will implement legislative changes made by the 73rd Legislative Session(1993) and make rules consistent with existing law and procedure.

Comments were received from two commenters. The following is a summary of the comments.

One commenter objected to the use of Texas in the term "state seal of Texas" and suggested that "Texas" be deleted in the rules. This Office believes that including Texas in the definition adds clarification to the rules. Consequently, the agency declines to delete "Texas" from the term "state seal of Texas".

The commenter also suggested that the definition of commercial purpose be amended to include certain exemptions stated in House Bill 1463, enacted by the 73rd Legislative Session(1993). This commenter also suggested that the definition of the state seal

include the state arms. The agency agreed with the commenter and included these in the changes to §71.40.

The commenter proposed that the exemptions being added in §71.40 also be reflected in §71.42. The agency disagrees with this proposal and adopts §71.42 without change. Section 71.42 addresses the responsibilities of a manufacturer and/or vendor in the production of a product which is produced for distribution and uses the state seal of Texas. The exemptions mentioned pertain to the use of the state seal of Texas for historical, educational, or newsworthy purposes. Typical examples include the use in books and magazines as well as television and motion picture productions. As the manufacture of a product is not involved in such exemptions, the exemptions need not be addressed in §71.42.

A second commenter submitted information that indicated the cannon depicted as the cannon of the Battle of Gonzales may be an incorrect illustration. Accordingly, §71.50 is adopted with one change. The standard design for the reverse of the state seal will not be adopted until further study is concluded. The rules are adopted under the Texas Government Code, §2001.004(1) and the Texas Business and Commerce Code, §17.08, which provide the secretary of state with the authority to prescribe and adopt rules. The new rule implements Texas Civil Statutes, Article 6139f(d). The new rule and amendments affect the Business and Commerce Code, §17.08.

*§71.40. Definitions.* The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise, unless otherwise expressly provided, the past, present, or future tense includes the other; the masculine, feminine, or neuter gender each includes the other; and the singular and plural number each includes the other.

*Abuse*-Any departure from reasonable use: immoderate or improper use; use contrary to customary or accepted practices and protocols such as would be a misuse of the state seal of Texas.

*Annual gross receipts*-Gross receipts received during the calendar year.

*Applicant*-A person who has applied for license.

*Application*-The act of making a formal request for licensed permission to use the state seal of Texas.

*Benefit*-Anything reasonably regarded as an economic gain or an economic advantage.

*Calendar year*-Period of time from January 1st to December 31st, inclusive.

*Commercial purpose*- purpose that is intended to result in a profit or other tangible benefit but does not include:

(A) an official use in a state function or the use of the state seal of Texas or a representation of the state seal of Texas for a political purpose by an elected official of this state;

(B) the use of the state seal of Texas or a representation of the state seal of Texas in an encyclopedia, dictionary, book, journal, pamphlet, periodical, magazine, or newspaper incident to a description or history of seals, coats of arms, heraldry, or the state of Texas;

(C) the use of the state seal of Texas or a representation of the state seal of Texas in a library, museum, or educational facility incident to descriptions or exhibits relating to seals, coats of arms, heraldry, or the state of Texas;

(D) the use of the state seal of Texas or a representation of the state seal of Texas in a theatrical, motion-picture, television or similar production for a historical, educational, or newsworthy purpose; or

(E) the use of the state seal of Texas or a representation of the state seal of Texas for another historical, educational, or newsworthy purpose if authorized in writing by the secretary of state.

*Denial*-A refusal to grant a license

*Elected official*-Any individual who has been elected to an office of state government which is filled by the choice of the voters, which including a member of the legislature.

**General public**—Any person of any nation, state, county, municipality, or community including individuals who are employed by the State of Texas.

**Gross receipts**—Total amount of money or the value of the benefits received from the sale of licensed products.

**License**—Permission by the secretary of state to conduct the use, manufacture, distribution, mass production, replication, sale or incorporation into advertisement, draft, or design the state seal of Texas within the accepted criteria of this title.

**Licensed product**—A state seal of Texas product which has been approved by a license.

**Licensee**—The applicant who receives permission to use the state seal of Texas.

**Manufacturer**—Any individual, partnership, corporation, or other legal entity which transforms raw or prepared materials into a product for trade or sale, including a publisher, printer, or advertiser.

**Nonexact representation**—A deceptively similar representation of the state seal of Texas, including a state agency's seal which incorporates the state seal of Texas.

**Nonofficial use**—Any use of the state seal of Texas that is not an official use.

**Official use**—The use of the state seal of Texas by an officer or employee of this state in performing a state function.

**Person**—An individual or legal entity, including a corporation, partnership, or an association.

**Political purpose**—Any purpose designed to obtain or publicize a public office or position.

**Product**—A good or service produced, manufactured, or provided, either by natural means, by hand, or with tools, machinery, chemicals, or the like.

**Representation of the state seal of Texas**—Includes a nonexact representation that the secretary of state determines is deceptively similar to the state seal of Texas.

**Reverse side of the state seal of Texas**—Comprised of a shield, consisting of a depiction of the Alamo, the cannon of the Battle of Gonzales, and Vince's Bridge. The shield is encircled by live oak and olive branches, and the unfurled flags of the kingdom of France, the kingdom of Spain, the United Mexican States, the Republic of Texas, the Confederate States of America, and the United States of America. Above the shield is emblazoned the motto, "Remember the Alamo," and beneath it are the words, "Texas one and indivisible," with a white five-pointed star hanging over the shield, centered between the flags

**Revocation**—An unconditional cancellation and nullification of an existing license by the Office of the Secretary of the State of Texas.

**State agency**—Any administrative department, or commission established by the State of Texas Constitution, the governor, or the Texas Legislature.

**State arms**—Comprised of a white star of five points, on an azure ground, encircled by olive and live oak branches.

**State function**—A state governmental activity authorized or required by law.

**State seal of Texas**—A seal which:

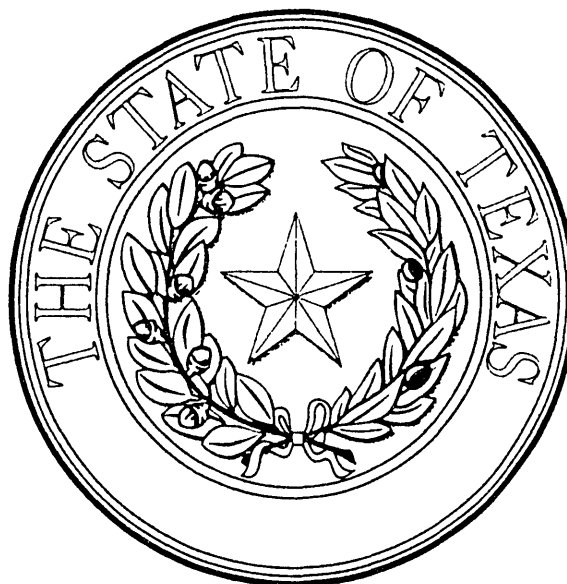
(A) contains a five-point star encircled by olive and live oak branches, and the words "the State of Texas,"; or

(B) depicts the reverse side of the state seal of Texas; or

(C) portrays the state arms.  
Statute—Texas Business and Commerce Code, §17.08.

**Suspension**—A temporary stop order to previously licensed uses.

§71.50. *Standard Designs.* The following illustrations depict the standard designs for the state seal and the state arms.



STATE SEAL



## STATE ARMS

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

Issued in Austin, Texas, on January 24, 1994.

TRD-9435125

Audrey Selden  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Effective date: February 14, 1994

Proposal publication date: November 2, 1993

For further information, please call: (512)  
463-5570

### Part V. General Services Commission

#### Chapter 111. Executive Administration Division

##### Administration

###### • 1 TAC §111.2

The General Services Commission adopts new §111.2, concerning definitions, without changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7901).

The new section states definitions for words and terms that pertain generally to the activities of the commission.

The section is a restatement in simpler and clearer language of definitions that were previously contained in §113.2 pertaining to the commission's central purchasing division.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435218

Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: February 16, 1994

Proposal publication date: November 2, 1993

For further information, please call: (512)  
463-3583

#### Chapter 113. Central Purchasing Division

##### Purchasing

###### • 1 TAC §113.2, §113.6

The General Services Commission adopts amendments to §113.2, concerning definitions and §113.6 concerning bid evaluation and award, without changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7902).

The amendment to §113.2 adds definitions for terms relating to recycling in order to assist state agencies in achieving statutory mandated goals for the procurement of products with recycled material content, remanufactured products, and environmentally sensitive products. The amendment to §113.6 permits the commission to resolve tie bids by drawing lots.

Rule §113.2 provides definitions for terms relating to the purchase of recycled, remanufactured and environmentally sensitive products. Rule §113.6 allows the commission to resolve tie bids by drawing lots.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Articles 601b, §3.01 and §3.33, which provide the General Services Commission with the authority to promulgate

rules necessary to accomplish the purpose of Article 3.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435219 Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date February 16, 1994

Proposal publication date November 2, 1993

For further information, please call: (512) 463-3583

## Purchasing

### • 1 TAC §113.7

The General Services Commission adopts an amendment to §113.7, concerning Competitive Sealed Proposals, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6161).

The amendment is necessary to implement House Bill 2626, §12, 73rd Legislature, which amends Texas Civil Statutes, Article 601b, by adding §3 0221, pertaining to competitive sealed proposals.

The amendment sets forth procedures to be followed when making purchases by means of competitive sealed proposals of supplies, material or equipment that cost \$1 million or more, or routine services that cost \$100,000 or more.

One comment on the proposed amendment was received. The commenter objected to the prohibition against other agencies using the procedure; observed that "competitive sealed proposals" is not defined, suggested that the criteria for evaluating competitive bids set forth in Texas Civil Statutes, Article 601b, §3.11(e) make it very difficult to conduct competitive bidding without holding discussions with offerors, and therefore the distinction between competitive bidding and competitive sealed proposals is not significant. The commenter also stated that: it is unrealistic to require complex service requirements to be so completely defined as to make interaction with bidders unnecessary, agencies might function more effectively if they were free to use competitive sealed proposals to distinguish between offerors; the procurement process should be based primarily on the nature of the requirement, and the dollar thresholds appear arbitrary; and the requirement of obtaining commission approval of purchases in open meeting is unnecessarily restrictive.

Texas National Research Laboratory Commission commented against the proposed amendment.

The agency does not agree that the rules should allow other agencies to utilize the competitive sealed proposals procedure for the purchases in question because that is expressly forbidden by the statute. The

agency also disagrees that the requirement of obtaining commission approval in open meeting is unnecessarily restrictive; this too is required by statute. The agency does not agree that a definition is required for "competitive sealed proposals" because the process is adequately described in the statute as well as in rules already in effect. The agency does not agree that there is no significant difference between competitive bidding and competitive sealed proposals; the two procedures are legally distinct.

The amendment is adopted under Texas Civil Statutes, Article 601b, Article 3, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purposes of the Article

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435226 Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: February 16, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 463-3583

### • 1 TAC §113.11

The General Services Commission adopts an amendment to §113.11, concerning delegated purchases, without changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6779).

The amendment to §113.11 increases the limit for spot purchases from \$10, 000 to \$15,000 and changes "disadvantaged businesses" to "historically underutilized businesses"

The amendment clarifies the scope of spot purchases and emergency purchases that are delegated to state agencies

One comment was received supporting the delegated purchase limit from \$10, 000 to \$15,000.

Comments for the section were received from The University of Texas at Arlington.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3.01, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 3.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435224 Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: February 16, 1994

Proposal publication date: October 5, 1993

For further information, please call: (512) 463-3583

### • 1 TAC §113.19

The General Services Commission adopts an amendment to §113.19, concerning the catalogue purchase procedure for automated information systems, without changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7902).

The amendment to ensures compliance with federal requirements so that pending purchases necessary to provide federally funded human and protective services may be completed on time.

The amendment provides a protest procedure for federally funded catalogue purchases.

Two written comments were received. One commenter questioned the need for a new protest procedure since existing rule 111.3 establishes a procedure for other bid protests, and pointed out the difference between the proposed procedure and the procedure of §111.3 in that a fee may be required for the new procedure. The commenter suggested that the imposition of a fee may be an impediment to protests. The second comment expressed the opinion that the proposed procedure should satisfy federal concerns and recommended its adoption.

The Texas Department of Human Services commented in favor of the proposed amendment.

EDS commented against the proposed amendment.

The agency disagrees that existing rule 111.3 provides a procedure for catalogue purchase protests. Catalogue purchasing decisions are the exclusive responsibility of the agency making the purchase. The catalogue procedure is different from the procedures reviewed under §111.3, and the agency believes an independent review of the matter is appropriate. Since no state agency has been funded for the work that may be required under the catalogue protest procedure, which is required by federal funding agencies, the costs of the process must be borne either by the state agency involved or by the protestant. The agency chose to permit recovery of costs from the protestant. Reasonable cost recovery fees should not impede legitimate protests.

The amendment is proposed under Texas Civil Statutes, Article 601b, §3.081, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the section.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435221

Judith Porras  
General Counsel  
General Services  
Commission

Effective date: February 16, 1994

Proposal publication date: November 2, 1993

For further information, please call: (512) 463-3583

◆ ◆ ◆  
**Chapter 117. Centralized  
Services Division**

**Central Store**

• 1 TAC §117.51

The General Services Commission adopts an amendment to §117.51, concerning central supply store operations, without changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7903).

The amendment to §117.51 specifies the nature of central supply store operations and the responsibilities of user state agencies.

The amendment streamlines and consolidates existing rules, and outlines the scope of central supply store operations for governmental entities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 601b, Article 11, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of the Article.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435222

Judith Porras  
General Counsel  
General Services  
Commission

Effective date: February 16, 1994

Proposal publication date: November 2, 1993

For further information, please call: (512) 463-3583

◆ ◆ ◆  
**Central Store**

• 1 TAC §§117.52-117.57

The General Services Commission adopts the repeal of §§117.52-117.57, concerning central supply store operations, without changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7903).

The repeal will consolidate existing rules. The significant content of these repealed sections is to be consolidated into amended §117.51.

The repeal of §§117.52-117.57 will delete burdensome language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 601b, Article 11, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of that Article.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435223

Judith M Porras  
General Counsel  
General Services  
Commission

Effective date: February 16, 1994

Proposal publication date: November 2, 1993

For further information, please call: (512) 463-3583

◆ ◆ ◆  
**TITLE 4. AGRICULTURE**

**Part I. Texas Department  
of Agriculture**

**Chapter 3. Boll Weevil  
Eradication Program**

• 4 TAC §§3.50-3.57

The Texas Department of Agriculture (the department) adopts new §§3.50-3.57, concerning the prohibition of planting of cotton in boll weevil eradication zones and the requirement for participating in the boll weevil eradication program established by the Texas Boll Weevil Eradication Foundation (the foundation). Section 3.52 and §3.56 are adopted with changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (19 TexReg 167). Sections 3.50-3.51, 3.53-3.55, and 3.57 are adopted without changes and will not be republished.

The new sections are adopted to carry out the authority provided the department in the Agriculture Code, §74.118, and to carry out the intent of the 73rd Legislature in furthering the successful implementation of the boll weevil eradication program. Section 3.52(a) has been changed to clarify that the department will act upon request of the foundation to designate prohibited areas. Section 3.56(d) has been changed to provide for notice to known lenders of a violation and to clarify that the department will act to enforce compliance upon notice by the foundation that a violation has occurred. New §3.50 and §3.51 provide a statement of authority and purpose and definitions. New §3.52 provides for the prohibition of planting of commercial and non-commercial cotton. New §3.53 provides for public notices of prohibitions. New §3.54 provides requirements for participation in the boll weevil eradication program. New §3.55 provides for public notice of participating requirements. New §3.56 provides for penalties for failure to comply with the new sections and procedures to be followed by the department when a violation requires the destruction of cotton. New §3.57 provides for an appeal of a

penalty assessed by the department under these rules.

The new sections are adopted under the Texas Agriculture Code, §74.118, which provides the department with the authority to adopt rules prohibiting the growing of cotton in eradication zones, requiring participation in the boll weevil eradication program, and establishing penalties for failure to comply with such rules.

**§3.52. Prohibition of Planting of Commercial and Non-Commercial Cotton.**

(a) Commercial cotton shall not be planted in any area within an eradication zone where upon request of the foundation the department has determined that the location of that cotton would jeopardize the success of the eradication program in that zone or present a hazard to public health and safety. Such an area shall be designated by the department as a prohibited planting area.

(b) In making a determination as to whether or not planting of commercial cotton shall be prohibited in an area, the department may consider the factors listed in §3.23 of this title (relating to Protection of Individuals Livestock, Wildlife, and Honeybee Colonies) and §3.24 of this title (relating to Guidelines for Establishment of Foundation Rules, Procedures and Methods of Treatment), and the recommendation of the foundation board.

(c) Non commercial cotton shall not be planted in any eradication zone, except under a special permit issued by the department prior to planting.

**§3.56. Assessment of Penalties; Destruction of Cotton.**

(a) Each cotton grower in an eradication zone shall comply with the requirements of §3.54 of this title (relating to Requirement for Program Participation). Upon notification to the department by the foundation that a violation has occurred, a grower who violates those requirements shall be assessed a penalty.

(b) For a violation of §3.54(b)(1) which requires reporting of acreage, a grower shall be assessed a penalty in the amount of \$25 per acre.

(c) For a violation of §3.54(b)(2) which requires payment of the assessment established by the foundation, a grower shall be assessed a penalty in the amount of \$25 acre.

(d) Upon notice by the foundation that a grower has failed to comply with a prohibition notice provided in accordance with §3.53 of this title (relating Notice of Prohibitions), or the prohibition against the growing of non-commercial cotton, the department shall take the following actions:

(1) immediately upon identification of a field that is out of compliance with a notice of prohibition, the department shall give writing notice to any farm owner and to the operator in charge of the field and it known, any lender having an interest in the field or cotton that the field and any cotton growing in the field is in violation of these rules, instructing the owner and operator to destroy any cotton within seven days after the date the written notice received;

(2) if the owner or operator cannot be located after reasonably diligent effort has been made by the department to locate such persons, the department shall publish the notice in a newspaper of general circulation in the county in which the land is located and post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation; and

(3) if not response is received by the department from either the owner or operator within four days after the date of posting of the notice at the field, or if the department considers the response inadequate, the department shall have the cotton destroyed.

(e) The department may take any other action necessary to complete destruction of cotton to prevent the spread of boll weevils from the infested area.

(f) All costs incurred by the department in the destruction of the cotton in accordance with subsection (d) of this section shall be reimbursed by the grower.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435205 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: February 14, 1994

Proposal publication date: November 26, 1993

For further information, please call: (512) 463-7583

◆ ◆ ◆  
**TITLE 19. EDUCATION**  
**Part II. Texas Education**  
**Agency**  
**Chapter 61. School Districts**  
**Subchapter H. School Facilities**  
**Standards**

• **19 TAC §§61.101-61.104**

(Editor's Note: In the January 14, 1994, issue of the Texas Register (19 TexReg 265),

the Texas Education Agency (TEA) adopted new §§61.101-61.104, concerning school facilities standards, with changes to the proposed text as published in the September 24, 1993, issue of the Texas Register (18 TexReg 6509). The public comments section of the preamble was incomplete. The following comments were received regarding adoption of the rules.)

Comment. Concerning §61.101(a), a commentator recommended clarifying that the subsection includes not only definitions, but also terms and procedures.

Agency response. The agency agreed to make the change

Comment. Concerning §61.101(a)(4), a commentator recommended clarifying the definition of the term "environmental concerns" and deleting subparagraphs (A) and (B) listing types of environmental conditions and site acquisition information.

Agency response. The agency disagreed with the process of information delivery, but agreed that the information received would add economic burdens on some districts. Therefore, the agency agreed to make the recommended changes. These changes were deleted when the agency made changes recommended later during the public comment period

Comment. Concerning §61.101(a)(5), a commentator recommended adding the district's long-range school facility plan and educational specifications to the requirements for final design documents

Agency response. The agency agreed to make the changes. These changes were deleted when the agency made changes recommended later during the public comment period

Comment. Concerning §61.101(a)(8), a commentator recommended deleting the term "long-term school facility planning committee" and its definition and adding the term "school facility advisory committee" and its definition.

Agency response. The agency agreed to make the changes. These changes were deleted when the agency made changes recommended later during the public comment period.

Comment. Concerning §61.101(b), a commentator recommended changing the effective date concerning approval by a district board of trustees to September 1, 1994

Agency response. The agency agreed to make the change

Comment. Concerning §61.101(c), a commentator recommended that documentation of educational adequacy should include a long-range facility plan and educational specifications.

Agency response. The agency agreed to make the changes. These changes were deleted when the agency made changes recommended later during the public comment period.

Comment. Concerning §61.103, a commentator recommended defining educational adequacy as a process requiring a school district to prepare a long-range school facility plan,

educational specifications, and an assessment of the district's financial resources.

Agency response. The agency agreed to make the changes. These changes were deleted when the agency made changes recommended later during the public comment period

Comment. Concerning §61.104(b), a commentator recommended deleting some language and modifying other language relating to building code adoption in districts without existing codes

Agency response. The agency disagreed. The language as proposed adds to the strength of health and safety issues that should not be minimized. The plan review section would add quality assurances and reduce school district liability with minimum cost considerations

Comment. Concerning §61.102(2)(B), a commentator recommended that space requirements for a science lab should be added to the standards and that a combined lecture/lab be increased in size to provide safer science conditions in public schools

Agency response. The agency agreed with the desire to provide safer space in all public schools and will, at the earliest time, incorporate the recommended increases in space requirements

Comment. Concerning §61.103, a commentator objected to the establishment of mandates without state funding to pay for expenses associated with long-range planning and the development of educational specifications

Agency response. The agency disagreed with the commentator's premise. The state legislature directed TEA to establish standards for all school facilities constructed after September 1, 1992, and those facilities must meet the standards in order to be financed with state or local tax funds

Comment. Concerning §§61.101-61.104, comments were received approving and endorsing revised language that deletes the process activities at the local district level as directed by the State Board of Education

Agency response. In addition to changes made as a result of comments received, the agency made minor editorial changes for clarification purposes to §61.101(a)(1)(c), 61.101(a)(2), 61.101(a)(6), 61.101(b), 61.101(c), 61.103(b), and 61.103(c)

Comments were received from Austin ISD, Tuluso-Midway ISD, Calhoun County ISD, the Texas Association of School Boards; the Texas Association of School Administrators, Southwest Texas University, Henslee, Ryan, Groce Attorneys, and Ferrell/Brown and Associates

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

Issued in Austin, Texas, on January 10, 1994

TRD-9434450 Cnss Cloutt  
Associate Commissioner,  
Policy Planning and  
Evaluation  
Texas Education Agency



Effective date: January 31, 1994

Proposal publication date:

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

## TITLE 22. EXAMINING BOARDS

### Part X. Texas Funeral Service Commission

#### Chapter 201. Licensing and Enforcements—Practice and Procedure

##### • 22 TAC §201.14, §201.15

The Texas Funeral Service Commission adopts new §201.14 and §201.15 without changes to the proposed text as published in the December 7, 1993, issue of the *Texas Register* (18 TexReg 4995)

New §201.14 outlines the statutory requirements of Texas Civil Statutes, Article 4582(b), §4 1, which mandates the adoption of the rule in the new §201.15. New §205.15 sets out the manner in which the three agencies will coordinate their statutory responsibilities, in the area of prepaid funeral services and transactions.

The new rules are designed to improve the regulation of the prepaid funeral industry and to provide more appropriate and timely responses to consumer complaints through better coordination between the three agencies.

No comments were received regarding adoption of the rules.

The new rules are adopted under Texas Civil Statutes, Article 4582b, §4.1, which provide the Texas Funeral Service Commission with the authority to enter into the mandated Joint Memorandum of Understanding with the Texas Department of Banking and the Texas Department of Insurance and to promulgate it as a rule. These rules are also adopted under the provisions of Texas Civil Statutes, Article 4582b, §5, which authorize the commission to adopt rules necessary to administer the Act.

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

Issued in Austin, Texas, on January 24, 1994.

TRD-9435124

Larry A. Farrow  
Executive Director  
Texas Funeral Service  
Commission

Effective date. February 14, 1994

Proposal publication date: December 7, 1993

For further information, please call. (512) 834-9992

## Part XVII. Texas State Board of Plumbing Examiners

### Chapter 363. Examinations

#### Qualifications

##### • 22 TAC §363.1

The Texas State Board of Plumbing Examiners adopts an amendment to §363. 1, concerning qualifications, without changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8744).

The adoption of this amendment is justified because the public health, safety, and welfare will be enhanced by ensuring each person has access to clean water and clean air because of plumbing inspected by competent plumbing inspectors.

The amendment to §363.1 alters the experience requirement for an individual to apply for the plumbing inspector's license.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6243-101, which provide the Texas State Board of Plumbing Examiners with the authority to prescribe, amend, and enforce all rules necessary to carry out the Plumbing License Law.

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

Issued in Austin, Texas, on January 10, 1994.

TRD-9435108

Gilbert Kissling  
Administrator  
Texas State Board of  
Plumbing Examiners

Effective date: February 14, 1994

Proposal publication date: November 26, 1993

For further information, please call: (512) 458-2145

## TITLE 40. SOCIAL SER- VICES AND ASSIS- TANCE

### Part I. Texas Department of Human Services

#### Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

##### Subchapter I. Nursing Services

The Texas Department of Human Services (DHS) adopts amendments to §§19. 804, 19.810, 19.1306, 19.1521, and 19.1912, and adopts the repeal of and new §19.1929, in its Long Term Care Nursing Facility Require-

ments rule chapter. The amendment to §19.810 is adopted with changes to the proposed text as published in the December 10, 1993, issue of the *Texas Register* (18 TexReg 9169). The amendments to §§19.804, 19.1306, 19.1521, and 19.1912, and the repeal of and new §19.1929 are adopted without changes to the proposed text, and will not be republished.

The justification for the amendments, repeal, and new section is to allow certain health professionals to accept physicians' orders in nursing facilities in their areas of practice only, require nursing facilities' emergency disaster plans to be coordinated with local emergency management coordinators, and to delete staff development requirements which are overly prescriptive.

Portions of §19.804 which do not directly pertain to the duties of the director of nursing services have been moved to §19.810, which pertains to the general practice of nursing. Section 19.1306(f) has been expanded to include other health professionals and moved to §19.810, a more appropriate location. Other changes are for clarity and brevity.

The amendment to §19.1521 will enable emergency management coordinators to include nursing facilities in their planning for potential natural disasters, thereby further ensuring the safety of residents in the facilities.

The new rules regarding respite care have been added to §19.1912(g).

Section 19.1929 is amended to allow nursing facilities flexibility to determine and meet staff development needs as their unique situations require.

The amendments, repeal, and new section will function by ensuring improved care for nursing facility residents.

During the public comment period, DHS received comments from the State Board of Examiners for Speech-Language Pathology and Audiology. The commenter recommended that DHS change the term "certified speech pathologists" to "licensed speech-language pathologists" in §19.810(k)(2). DHS agrees, and is adopting the section with the recommended change.

##### • 40 TAC §19.804, §19.810.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendments implement the Human Resources Code, §§22. 002 and 32.001-32.040.

##### §19.810. Nursing Practices.

(a) Licensed nurses must practice within the constraints of applicable state laws and regulations governing their practice and must follow the guidelines contained in the facility's written policies and procedures.

(b) Regarding the administration of intravenous fluids or medications, extracting blood for laboratory tests, or the insertion of a nasogastric tube, the Licensed Vocational Nurse must have been instructed and have demonstrated competence in the technique.

(c) (No change.)

(d) Enteral tube feedings (i. e. NG, gastrostomy, jejunostomy, etc.) shall be given in accordance with physicians' orders by a licensed nurse using established feeding procedures.

(e) (No change.)

(f) Urinary catheters shall be inserted/irrigated in accordance with physicians orders by licensed nurses using established procedures.

(g) Monitoring of specific restraints must include observations of the resident at least every hour with changing and positioning as described in §19.401(a) of this title (relating to Resident Behavior and Facility Practice). Locked restraints are not allowed, except for dutch doors which are allowed as long as the requirements in §19.401 of this title (relating to Resident Behavior and Facility Practice) are met

(h) Fecal impactions must be removed by licensed nurses.

(i) Suctioning must be done by certified respiratory care practitioners, licensed nurses, or physicians.

(j) It is the duty of the facility nursing staff to assure that the routine reduction and/or debridement or manicure of nails on hands and feet is performed. Physician orders are not required unless the debridement is medically contraindicated. A physician's order is required for podiatric services.

(k) When a licensed nurse takes a verbal or telephone order from a physician, podiatrist, or dentist, the nurse must sign the order. The facility must obtain the physician's, podiatrist's, or dentist's signature on the order and return it to the clinical record in a timely manner.

(1) A licensed nurse may accept a physician's, dentist's, or podiatrist's order for the administration of medications or treatments when that order originates with one of the licensed practitioners and is merely communicated to the registered or licensed vocational nurse through another person. The nurse is required to question any order which he suspects is not correct.

(2) Licensed physical therapists, licensed occupational therapists, respiratory care practitioners, qualified dietitians, and licensed speech-language pathologists may accept physician orders only within their standards of practice and when they relate directly to their field of practice.

(l) Nurses must enter, or approve and sign, nurses' notes in the following instances

(1) at least monthly. Routine charting for Medicaid recipients must reflect the recipient's ability as assessed on the way he performs his activities of daily living at least 60% of the time;

(2) at the time of any physical complaints, accidents, incidents, change in condition or diagnosis, and progress. All of these situations must be promptly recorded as exceptions and included in the clinical record.

(m) Any significant adverse changes in the resident's physical or emotional condition must be promptly reported to the attending physician. Every attempt to make the reports and every contact made with the attending physician must be documented in the clinical record.

(n) If permitted by written policies of the nursing facility, a registered nurse may determine and pronounce a person dead in situations other than when an individual is being supported by artificial means which preclude determination that the person's spontaneous respiratory and circulatory functions have ceased. The facility's nursing staff and the medical staff or consultant must have jointly developed and approved such policies. The policy must include the following points:

(1) The apparent death of a resident must be reported immediately to the attending physician, relatives, and any guardian or legal representatives.

(2) The body of a deceased resident must not be removed from the facility without a physician's or registered nurse's authorization. Telephone authorization is acceptable, if not in conflict with local regulations. Authorization by a justice of the peace, acting as a coroner, is sufficient when the attending or consulting physician or registered nurse is not available.

(3) Any death which involves trauma, or unusual or suspicious circumstances, must be reported immediately to the authorities, in accordance with local regulations, and to the Texas Department of Human Services (DHS), in accordance with §19.1921(p) of this title (relating to General Requirements for a Nursing Facility). Deaths must also be reported to DHS monthly, as specified in §19.2001(d) of this title (relating to Licensure).

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435174

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1994

Proposal publication date: December 10, 1993

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

### Subchapter N. Pharmacy Services

#### • 40 TAC §19.1306

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendments implement the Human Resources Code, §§22.002 and 32.001-32.040.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435175

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1994

Proposal publication date: December 10, 1993

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

### Subchapter P. Physical Plant and Environment

#### • 40 TAC §19.1521

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendments implement the Human Resources Code, §§22.002 and 32.001-32.040.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435176

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1994

Proposal publication date: December 10, 1993

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

## Subchapter S. Reimbursement Methodology for Nursing Facilities

### • 40 TAC §19.1802

The Texas Department of Human Services (DHS) adopts an amendment to §19.1802, concerning cost reporting procedures, in its Long-Term Care Nursing Facility Requirements chapter. The amendment is adopted without changes to the proposed text as published in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9701).

The justification for the amendment is to remove inconsistencies between the penalties described in the rate-setting methodology and the penalties for administrative contract violations.

The amendment will function by eliminating inconsistencies in existing rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §§22.001, 22.002, and 32.001-32.041.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435233 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: April 1, 1994

Proposal publication date: December 17, 1993

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

### • 40 TAC §19.1912, §19.1929

The amendment and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds; and the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long term care

nursing facilities. The new section and amendment implement the Human Resources Code, §§22.002 and 32.001-32.040.

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

Issued in Austin, Texas, on January 25, 1993.

TRD-9435178 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1994

Proposal publication date: December 10, 1993

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

### • 40 TAC §19.1929

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The repeal implements the Human Resources Code, §§22.002 and 32.001-32.040.

§19.1929. *Staff Development*

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435177 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1994

Proposal publication date: December 10, 1993

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

## Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

### Subchapter D. Reimbursement Methodology

#### • 40 TAC §27.403

The Texas Department of Human Services (DHS) adopts an amendment to §27.403, concerning cost reporting procedures, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) chapter. The amendment is adopted without changes to the proposed text as published in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9701).

The justification for the amendment is to remove inconsistencies between the penalties described in the rate-setting methodology and the penalties for administrative contract violations.

The amendment will function by eliminating inconsistencies in existing rules.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §§22.001, 22.002, and 32.001-32.041.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435232 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: April 1, 1994

Proposal publication date: December 17, 1993

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

## Part XIX. Texas Department of Protective and Regulatory Services Chapter 708. Medicaid Targeted Case Management Program

### Program Requirements

#### • 40 TAC §§708.1-708.4

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§708.1-708.4, without changes to the proposed text as published in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9703). The justification for the proposal is to establish the TDPRS Medicaid Targeted Case Management Program, which serves Medicaid recipients who are receiving foster care, child protective services, adoption assistance, or adult protective services. The targeted case management services include assessment, case planning, case coordination, and case plan reassessment, and are consistent with the current practice in TDPRS.

The proposal will function by increasing federal funds available for TDPRS programs.

No comments were received regarding adoption of the proposal.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (503), which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Com-

mission with the authority to administer federal medical assistance funds.

The new sections implement TDPRS's response to Senate Bill 5, General Appropriations Act, 73rd Legislature, Regular Session, Article V, §154 (Texas Performance Review Riders).

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

Issued in Austin, Texas, on January 25, 1994.

TRD-8435181

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Protective and  
Regulatory Services

Effective date: February 15, 1994

Proposal publication date: December 17, 1993

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



# OPEN MEETINGS

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

**Emergency meetings and agendas.** Any of the governmental entities listed 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. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

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

## Texas Department of Agriculture

Thursday, March 3, 1994, 10:00 a.m.  
1700 North Congress Avenue, Room 928B  
Austin

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of 4 Texas Administrative Code, §7.21(a) and §7.22(4) by George Ferris, George's Spraying Service.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: January 27, 1994, 9:48 a.m.

TRD-9435257

## Texas Commission on Alcohol and Drug Abuse

Monday, February 7, 1994, 10:00 a.m.  
710 Brazos, Perry Brooks Building, Eighth Floor Conference Room  
Austin

According to the complete agenda, the Audit Review Committee will call to order; discuss outsourcing of internal audit functions; and adjourn.

Contact: Ous E. Williams, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8720.

Filed: January 27, 1994, 8:29 a.m.

TRD-9435249

## Texas Board of Architectural Examiners

Friday, February 4, 1994, 10:00 a.m.  
8213 Shoal Creek Boulevard, Suite 107  
Austin

According to the agenda summary, the Personnel/Resource Committee will call to order; recognition of guests; roll call; chairman's opening remarks; consider/act on approval of minutes; consider/act on personnel matters; and adjournment.

Contact: LaVonne L. Garland, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78757, (512) 458-1363.

Filed: January 25, 1994, 2:46 p.m.

TRD-9435200

## Texas Certified Self-Insurer Guaranty Association

Wednesday, February 2, 1994, 1:30 p.m.  
Rooms 910-911, Southfield Building, 4000 South IH-35  
Austin

According to the agenda summary, the Texas Certified Self-Insurer Guaranty Association will call to order; approval of minutes of January 5, 1994 and January 20, 1994; discussion and possible action on the

following applicants: J.C. Penney Company, Inc. and Subsidiaries, Waffle House, Inc., Watkins Associated Industries, Inc. and Subsidiaries, Poly-America, Inc., and its Affiliates; discussion and possible action on: TCSIGA Management Services, director's and officers liability insurance; discussion of future public meetings; and adjournment.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: January 25, 1994, 1:47 p.m.

TRD-9435192

## Texas Department of Criminal Justice-CJAD

Thursday-Friday, February 24-25, 1994, 10:00 a.m. and 9:00 a.m. respectively.  
8100 Cameron Road, Building B, Suite 600, Austin  
Austin

According to the agenda summary, the Judicial Advisory Council will greet and welcome; introduction of new JAC members; recognition of Virginia Grote; introduction of new TDCJ-CJAD staff; update from TDCJ-CJAD staff; funding and fiscal management, planning and program development, substance abuse felony punishment facilities, program audits and operations, state jail felony facilities, legal issues, adoption of funding priorities for FY'95 grant funding requests; adoption of future JAC meetings: time, date, place and adjourn.

Contact: Lisa Velasquez, 209 West 14th Street, Suite 400, Austin, Texas 78701, (512) 305-9300

Filed: January 26, 1994, 4:16 p.m.

TRD-9435241

## Texas Education Agency

Thursday-Friday, February 3-4, 1994, 9:00 a.m.

William B. Travis Building, Room 1-104, 1701 North Congress Avenue

Austin

According to the agenda summary, the Commission on Standards for the Teaching Profession Committee on Thursday will commence with open activities such as roll call, introductions, adoption of the agenda, and a vision statement. At 9:30 a.m., the information update will commence with presentation of the Institute for Performance-Based Accountability report, the State Board of Education report, and a presentation on the Pre-Service Institute Program Review. Action items to be of the materials discussed include an update on teaching standards. At 1:30 p.m., there will be an overview of the materials discussed in the morning session. At 1:45 p.m., the committee will review and make recommendations on alternative certification program reviews. Closing comments begin at 3:30 p.m. On Friday, at 9:00 a.m., the committee will discuss strategic planning, including dissemination of the institute product and March meeting logistics. The meeting will conclude at 10:30 a.m. with a summary of material covered and suggestions for future meetings.

Contact: Delia G. Quintanilla, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337

Filed: January 26, 1994, 4:51 p.m.

TRD-9435248

## Office of the Governor

Friday, February 11, 1994, 9:00 a.m.

Capitol LaQuinta Inn, 300 East 11th Street, Room 310

Austin

According to the complete agenda, the Texas Crime Stoppers Advisory Council Criminal Justice Division will call to order; approval of minutes; 1994 state conference update; program manager's report; report on public speaking school and participants; and adjournment.

Contact: David Cobos, P.O. Box 12428, Austin, Texas 78711, (512) 463-1784.

Filed: January 25, 1994, 1:14 p.m.

TRD-9435189

## Texas Department of Health

Friday, February 11, 1994, 10:00 a.m.

Room T-607, 1100 West 49th Street

Austin

According to the complete agenda, the Texas HIV Medication Advisory Committee will discuss approval of minutes of previous meeting; and discuss and possibly act on: staff reports (client data and budget); National Institute of Allergies and infectious Diseases recommendations and update for antiretroviral drugs; new pharmaceutical products; and date of next meeting.

Contact: Sheral Skinner, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7357. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 26, 1994, 8:53 a.m.

TRD-9435213

Friday, February 18, 1994, 2:00 p.m.

First Floor Auditorium, Parkland Memorial Hospital, 5201 Harry Hines Boulevard

Dallas

According to the complete agenda, the Trauma Technical Advisory Committee will hold a public forum to receive input on changes in the Texas trauma rules, trauma-related legislation and mandated participation in trauma system development by acute care hospitals and emergency medical services firms.

Contact: Bill Millwee, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6740. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 26, 1994, 8:53 a.m.

TRD-9435212

## Texas Health Benefits Purchasing Cooperative

Friday, February 4, 1994, 9:30 a.m.

1525 Elm Street, United Bank and Trust Building (Downtown)

Dallas

According to the complete agenda, the Texas Health Benefits Purchasing Cooperative will review and adopt minutes of previous meeting; discussion of bids for administrator; discussion of participating carriers RFP; discussion of actuary bids;

discussion of consulting contract; and report of interim executive director.

Contact: Rebecca Lightsey, 1005 Congress Avenue, Suite 550, Austin, Texas 78701, (512) 472-3956.

Filed: January 26, 1994, 2:52 p.m.

TRD-9435238

## Texas Higher Education Coordinating Board

Friday, February 4, 1994, 1:00 p.m.

Room G.108 (Executive Conference Room), Medical School Building, University of Texas HSC-Houston

Houston

According to the agenda summary, the Technology Committee will discuss consideration of matters relating to the committee on Technology.

Contact: Roger Elliott, P.O. Box 12788, Austin, Texas 78711, (512) 483-6130.

Filed: January 27, 1994, 9:15 a.m.

TRD-9435254

Wednesday, February 9, 1994, 1:30 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

According to the complete agenda, the Joint Advisory Committee will discuss update on recommended college preparation curriculum; school-college collaborations: San Antonio University-school collaboration, and teacher/development/minority student preparation initiative; developments in state postsecondary review and CPDT waiver/joint approval processes; update on Texas Council on Workforce and Economic Competitiveness; TASP issues: requirements for students with disabilities; and requirements for community and technical college programs.

Contact: Maricela Oliva, P.O. Box 12788, Austin, Texas 78711, (512) 4683-6101.

Filed: January 27, 1994, 9:16 a.m.

TRD-9435255

## Texas Department of Housing and Community Affairs

Tuesday, February 15, 1994, 1:30 p.m.

Texas Department on Aging, 1949 IH-35 South, Third Floor Conference Room

Austin

According to the agenda summary, the Texas Weatherization Policy Advisory

Council will review minutes; weatherization funding update; weatherization program monitoring status; review of state plan/application; and utility relations/reports.

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-(800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: J. Al Almaguer, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3866.

Filed: January 26, 1994, 9:11 a.m.

TRD-9435215

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**Lamar University System,  
Board of Regents**

Saturday, January 29, 1994, 1:00 p.m.

Scrappin Valley (4.5 Miles North of 255 Intersection with Highway 87

Jasper

According to the complete agenda, the Lamar University System, Board of Regents called to order; considered mission and organizational alternatives of the John Gray Institute; executive session-held under provisions of Texas Civil Statutes, Article 6252-17, evaluation of the president of the John Gray Institute; reconvened open meeting; considered actions related to mission, organization and leadership of the John Gray Institute; and adjourned.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: January 26, 1994, 11:32 a.m.

TRD-9435234

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**Texas Department of Licens-  
ing and Regulation**

Tuesday, February 8, 1994, 9:00 a.m.

920 Colorado Street, E. O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations: Manufactured Housing Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Armando Gutierrez for violation of Texas Civil Statutes, Article 5221f, §7(d), 16 TAC §69.125(e)(1), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192

Filed: January 26, 1994, 4:17 p.m.

TRD-9435244

Tuesday, February 8, 1994, 10:30 a.m.

920 Colorado Street, E. O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations: Manufactured Housing Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for John Tapia for violation of Texas Civil Statutes, Article 5221f, §7(d), 16 TAC §69.125(e)(1), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192

Filed: January 26, 1994, 4:17 p.m.

TRD-9435245

Tuesday, February 15, 1994, 9:00 a.m.

920 Colorado Street, E. O. Thompson Building, Third Floor,

Austin

According to the complete agenda, the Inspections and Investigations: Boiler Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for J. N. White doing business as D. J. Carwash System for violation of Texas Civil Statutes, Article 9100, Texas Health and Safety Code, §755.021, 16 TAC §65.20(c)(1)(C), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192

Filed: January 26, 1994, 4:17 p.m.

TRD-9435242

Wednesday, February 16, 1994, 9:00 a.m.

920 Colorado Street, E. O. Thompson Building, Third Floor,

Austin

According to the complete agenda, the Inspections and Investigations: Property Tax Consultant Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Charles Lee Cook doing business as Diamond Consultants for violation of Texas Civil Statutes, Article 8886, §2, 16 TAC §66.20(a), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192

Filed: January 26, 1994, 4:17 p.m.

TRD-9435243

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**Texas State Board of Medi-  
cal Examiners**

Wednesday, February 2, 1994, 9:00 a.m.

1812 Centre Creek Drive, Suite 203

Austin

According to the complete agenda, the Texas State Board of Acupuncture Examiners, Grandfathering, Reciprocity, and Application Committee will call to order; roll call; discussion regarding formulation of rules related to grandfathering, reciprocity, and application forms; and adjourn.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: January 25, 1994, 1:12 p.m.

TRD-9435186

Thursday-Saturday, February 10-12, 1994, 9:00 a.m.

1812 Centre Creek Drive, Suite 203

Austin

According to the complete agenda, the Texas State Board of Acupuncture Examiners, Grandfathering, Reciprocity, and Application Committee will call to order; roll call; discussion regarding formulation of rules related to grandfathering, reciprocity, and application forms; and adjourn.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: January 25, 1994, 1:13 p.m.

TRD-9435187

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**Texas National Guard Ar-  
mory Board**

Friday, February 4, 1994, 4:00 p.m.

Armory Board Headquarters Building, 2200 West 35th Street (Building 64, Camp Mabry)

Austin

According to the agenda summary, the Texas National Guard Armory Board will discuss administrative matters; executive director's update; construction/renovation/maintenance update; property/leases; and establish date of next meeting.

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763, (512) 406-6907.

Filed: January 27, 1994, 9:57 a.m.

TRD-9435261

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**Texas Natural Resource Conservation Commission**

Wednesday, February 16, 1994, 10:00 a.m.

William B. Travis State Office Building, Room 1-111, 1701 North Congress Avenue  
Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on San Antonio Municipal Utility District Number One's application for standby fees.

Contact: Tom Broyles, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: January 25, 1994, 2:16 p.m.

TRD-9435196

Friday, February 18, 1994, 10:00 a.m.

TNRCC Park 35 Office Complex, Building D (formerly Technology Center B), Room 100-13 N, 12118 IH-35 North

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on Three Lakes Municipal Utility District Number One's standby fee application.

Contact: Joseph W. O'Neal, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: January 25, 1994, 2:14 p.m.

TRD-9435194

Wednesday, March 9, 1994, 9:00 a.m.

Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue  
Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will hold a hearing on Montgomery County Municipal Utility District Number 43's application for standby fees for unimproved property in the District.

Contact: Gloria A. Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: January 25, 1994, 2:15 p.m.

TRD-9435195

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**Texas Low-Level Radioactive Waste Disposal Authority**

Wednesday, February 9, 1994, 7:00 p.m.

Austin Stouffer Hotel, Bosque Room, 9721 Arboretum Boulevard

Austin

According to the complete agenda, the Board of Directors will call to order; discussion of proposed rulemaking for operation and management of the disposal site; site maintenance and monitoring; acceptance of low-level waste at the site under §402.216, Health and Safety Code; and for exclusion of types of low-level waste that are incompatible with disposal operations under §402.219, Health and Safety Code; and adjourn.

Contact: Lawrence R. Jacobi, Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292

Filed: January 27, 1994, 8:45 a.m.

TRD-9435251

Thursday, February 10, 1994, 8:30 a.m.

John H. Reagan Building, Room 103

Austin

According to the agenda summary, the Quarterly Board will meet in executive session to discuss pending litigation; approve minutes; hear the general manager's report on the year-to-date financial status; be updated on national compacts; be given status reports on the license application; site access, and agency contracts; hear a report on the community development and county working groups, public information program, and the quality assurance program. The board will consider proposed contracts for emergency services in Hudspeth County and UT, BEG; amendments to current contracts; approval of the Hudspeth County Master Plan; and proposed rulemaking for operation and management, site maintenance and monitoring, and acceptance criteria for waste. The board will hear public comments and adjourn.

Contact: L. R. Jacobi, Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292

Filed: January 27, 1994, 8:45 a.m.

TRD-9435252

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**Texas County and District Retirement System**

Friday, February 4, 1994, 10:00 a.m.

1300 Lamar Street, Houston Center

Houston

According to the complete agenda, the Board of Trustees will review, consider, and act on TCDRS investment policies, practices, and personnel; and consider purchase of office building.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701-1688, (512) 476-6651.

Filed: January 26, 1994, 8:52 a.m.

TRD-9435211

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**The University of Texas Health Center at Tyler**

Thursday, February 3, 1994, 11:30 a.m.

Biomedical Research Building, Room 116-UTHCT, Highway 155 at 271

Tyler

According to the complete agenda, the Animal Research Committee will discuss approval of minutes; acting chair report; veterinarian report; new business-protocol number 120, Regulation of Extrinsic Activation of Blood Coagulation; and adjournment.

Contact: Louisa Schmid, Ph.D., P.O. Box 2003, Tyler, Texas 75710, (903) 877-7657.

Filed: January 27, 1994, 8:42 a.m.

TRD-9435250

◆ ◆ ◆  
**Texas Workers' Compensation Research Center**

Wednesday, February 2, 1994, 10:00 a.m.

300 West 15th Street, Committee Room 5, William P. Clements, Jr. Building

Austin

According to the complete agenda, the Board of Directors will discuss and act on the following items: call to order; approval of minutes of meeting of January 5, 1994; public participation; announcements; action on matters considered in executive session of January 5, 1994; report from subcommittee on policy recommendations on fees for open records and publications; discussion and possible appointment of subcommittees to clarify research agenda items 2 and 3, research progress report; discussion and possible approval of Annual Report; discussion of Agency Strategic Plan submission process; schedule March meeting date; and adjournment.

Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 346-6197 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Lavon Guerrero, 3636 Executive Center Drive, Suite G-22, Austin, Texas 78731, (512) 346-6197.

Filed: January 25, 1994, 1:13 p.m.

TRD-9435188



## Regional Meetings

### Meetings Filed January 25, 1994

The Austin-Travis County MHMR Center (Emergency Revised Agenda) Board of Trustees met at 1430 Collier Street, Board Room, Austin, January 27, 1994, at 8:00 a.m. The emergency meeting was due to an item added that needs immediate Board decision at this meeting. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141 TRD-9435206.

The Deep East Texas Private Industry Council Incorporated Public Relations Committee will meet at 118 South First Street, Lufkin, February 2, 1994, at 10:00 a.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9435193.

The Leon County Central Appraisal District Appraisal Review Board met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, January 28, 1994, at 2:00 p.m. Information may be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 526-2252. TRD-9435202.

The Middle Rio Grande Development Council (Emergency Revised Agenda) Texas Review and Comment System Committee met at the Civic Center, Reading Room, 300 East Main, Uvalde, January 26, 1994, at 4:00 p.m. The emergency meeting was needed to include application for review in order to meet deadline requirements. Information may be obtained from

Dora T. Flores, P. O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9435203.

The Region 18 Education Service Center Board of Directors will meet 2811 LaForce Boulevard, Midland, February 3, 1994, at 6:00 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9435198.

The South Plains School Workers' Compensation Program will meet at the Spot Restaurant, Fourth and College Avenue, Levelland, February 2, 1994, at Noon. Information may be obtained from Russ Edwards, 1205 Lakeshore Drive, Marble Falls, Texas 78654, (210) 693-2508. TRD-9435185.

The UniForce, Alamo Quality Work Force Planning Committee met at the San Antonio College Koehler Cultural Center, 310 West Ashby, San Antonio, January 31, 1994, at 3:00 p.m. Information may be obtained from Walter Ague, 1300 San Pedro, San Antonio, Texas 78212, (210) 731-0700. TRD-9435173.

### Meetings Filed January 26, 1994

The Dewitt County Appraisal District Appraisal Review Board will meet at 103 Bailey Street, Cuero, February 3, 1994, 9:00 a.m. Information may be obtained from Kay Ruth, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9435240.

The Region 18 Education Service Center (Revised Agenda) Board of Directors will meet 2811 LaForce Boulevard, Midland,

February 3, 1994, at 6:00 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9435227.

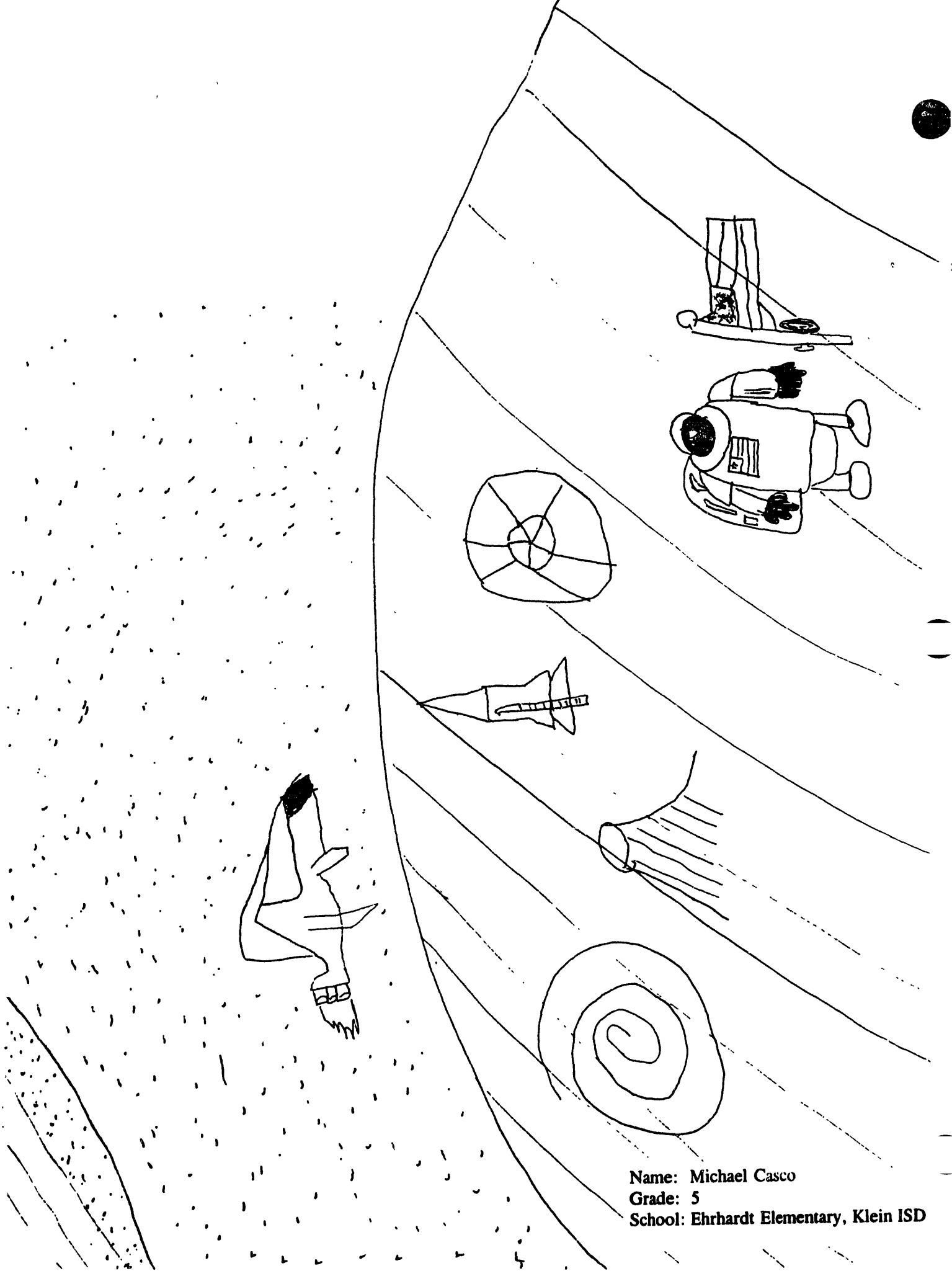
The UniForce, Alamo Quality Work Force Planning Committee met at the San Antonio College Koehler Cultural Center, 310 West Ashby, San Antonio, January 31, 1994, at 3:00 p.m. Information may be obtained from Walter Ague, 1300 San Pedro, San Antonio, Texas 78212, (210) 731-0700. TRD-9435236.

### Meetings Filed January 27, 1994

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, January 31, 1994, at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9435260.

The Education Service Center, Region VI Board of Directors will meet at Downtown Location-Board Room of Region VI, 1301 Sam Houston Avenue, Huntsville, February 7, 1994, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9435258.

The Martin County Appraisal District Board of Directors will meet at the Appraisal Office, 308 North St. Peter, Stanton, February 3, 1994, at 7:00 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823. TRD-9435259.



Name: Michael Casco  
Grade: 5  
School: Ehrhardt Elementary, Klein ISD

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Office of the State Auditor

### Notice of Opportunity to Comment

The 73rd Texas Legislature enacted House Bill Number 2663 (codified at §81.028(7) and §140.005, Local Government Code), which establishes a voluntary "Least Cost Review Program." The purpose of the program is to provide a method of comparing the cost of public improvements constructed by counties and other local governments to the cost of public improvements constructed on the basis of competitive bids submitted by the private sector. House Bill 2663 directs the State Auditor, in consultation with the Comptroller of Public Accounts, to develop cost comparison forms and instructions for the Least Cost Review Program. The State Auditor and the Comptroller are also directed to consult with large and small governmental entities and the construction industry prior to promulgating the forms and instructions.

The State Auditor and the Comptroller are seeking comments regarding the proposed forms and instructions developed for the Least Cost Review Program. Copies of the proposed forms and instructions may be obtained by submitting a request to Least Cost Review Program, State Auditor's Office, P.O. Box 12067, Austin, Texas 78711-2067, Attention: Donald McPhee. Comments concerning the proposed forms and instructions should be submitted in writing no later than March 31, 1994. Comments may be sent by mail to the above address or by facsimile machine at (512) 479-4884.

Additional questions concerning the Least Cost Review Program may be directed to Donald McPhee at (512) 479-4700.

Issued in Austin, Texas, on January 24, 1994.

TRD-9435201      Lawrence F. Alwin, CPA  
State Auditor  
Office of the State Auditor

Filed: January 25, 1994

## Texas Department of Commerce

### Request for Proposal

**Number 94-001.** This request for proposal for consultant services is filed pursuant to Texas Government Code, Chapter 2254, Subchapter B.

The Texas Department of Commerce (Commerce) requests proposals from qualified companies or organizations for consulting services to prepare the final fiscal year 1993 OMB Cost Allocation Plan based on actual expenditures for the fiscal year ending August 31, 1993.

During fiscal year 1993, Commerce administered millions of dollars of federal funds for the Job Training Partnership Act (JTPA) program. Commerce recouped its indirect costs from the program based on provisional rates approved by the United States Department of Labor (DOL). Currently, the Department has a policy board, two ancillary boards, and 13 operating divisions, three which are primarily program divisions: Work Force, Business Development, and Tourism.

The offerer selected to prepare the Cost Allocation Plan must demonstrate the necessary qualifications and experience listed in the Qualifications section and will be required to perform the various services and generate the reports listed in the Scope of Services section. The acceptance of an offer by Commerce, made in response to this request, will be based on demonstrated competence, knowledge and qualifications of the offerer and reasonableness of the offeror's proposed fee, in addition to other factors described below.

**Scope of Services-Cost Allocation Plan.** The successful candidate will be required to develop detailed cost allocation plans, and render the following services and reports:

1. Identify the sources of financial information to be used.
  2. Classify all Commerce divisions and boards.
  3. Inventory all Federal and other programs administered by Commerce
  4. Determine administrative departments.
  5. Determine allocation bases for allocating services to benefiting divisions.
  6. Develop allocation data for each allocation base.
  7. Prepare cost allocation worksheet based upon actual expenditures for fiscal year 1993.
  8. Identify in a separate schedule the federally reimbursable indirect costs.
  9. Summarize costs by benefiting division.
  10. Collect cost data for all of the programs included in the inventory of Federal programs and other programs administered by Commerce.
  11. Determine indirect cost rates throughout Commerce on an annual basis.
  12. Formalize plan and present to the Department of Labor
  13. Negotiate final plan and secure approval from the Department of Labor.
  14. Provide indoctrination session for assigned personnel.
- Consultant staff will accumulate and analyze all data that

is required. Commerce is not expected to provide any staff time to the consultant; no time sheets will be required and no accounting methods or records need be changed. The cost allocation plan must be completed and submitted to DOL no later than May 30, 1994.

**Qualifications.** Each company or organization submitting an offer must present evidence or otherwise demonstrate to the satisfaction of Commerce that such entity:

1. Has experience and/or ability to prepare and negotiate a Cost Allocation Plan.
2. Has an understanding of cost allocation issues and preparation of Cost Allocation Plans for governmental entities.
3. Can execute such a proposition within the required timeframe.

**Instructions/Requested Information.** Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of a work plan to accomplish the requirements described in the "Scope of Services".
2. Resumes for each individual to be assigned to the project. Each resume must contain, at a minimum, a description of the individual's educational and professional experience relevant to this project.
3. Qualifications of the firm, including company size, number of offices, number of personnel, and general areas of expertise, etc.
4. The proposed total amount for providing the desired services.
5. The geographical location of offeror's principal place of business and/or office where services are to be performed.
6. Three references from previous clients for whom you have provided similar services.
7. Your affirmative action policy, including equal opportunity goals, and information regarding internal recruitment efforts for minority and women employees, sub-contractors, and joint ventures. Provide an employee profile showing the number and percentage of male, female and minority employees by job category, and describe the degree of ownership and control of your organization by minorities and women. Describe the degree to which certified minority and/or women-owned businesses (historically underutilized businesses) will participate in this contract.
8. Describe your past experience in cost allocation issues.
9. Provide a brief description of those characteristics that make your company particularly qualified to carry out the requirements of this RFP including your experience with cost allocation issues, negotiations of cost allocation plans, etc.

**Evaluation and Award Criteria.** Evaluation of proposals will include contacting references and reviewing responses for the qualifications noted above and the following:

1. **Qualifications of Personnel**—Experience and/or ability to develop cost allocation plans for governmental entities.
2. **Work Plan**—Clarity and completeness of the work plan demonstrating an accurate understanding of project requirements.

3. **Cost to complete** all tasks associated with this project.

**Conflict of Interest.** The offeror shall identify an officer or employee of Commerce who has financial interest, directly or indirectly, in the offeror's firm or who is related within the second degree of consanguinity (blood) or affinity (marriage) to a person having such a financial interest, together with a full disclosure of the nature of such financial interest, and the relationship if applicable. If there is no such person, the offeror shall so state in the proposal submitted in response to this Request for Proposal. The offeror must disclose and identify on the face of the proposal whether:

1. an officer, employee, or paid consultant of the offeror is a member of the policy board, the executive director, or an employee of the Texas Department of Commerce;
2. an officer, manager, or paid consultant of the offeror is married to a member of the policy board, the executive director, or an employee of the Texas Department of Commerce;
3. a member of the policy board, the executive director, or an employee of the Texas Department of Commerce directly owns, controls, or has any interest in offeror;
4. a member of the policy board, the executive director, or an employee of the Texas Department of Commerce receives compensation from offeror for lobbying activities as defined in Chapter 305 of the Texas Government Code; and
5. it has donated anything of value within the preceding two years to the Texas Department of Commerce or any other state agency. Disclosures shall include the nature and value of the donation and the date the donation was made. If the donation is ongoing, the last date that the donation was available to the agency shall be used to determine the date of donation.

If none of the above apply, the offeror shall so state in the proposal submitted in response to this RFP. Please note that your proposal may be disqualified based on the response to the above. Governmental entities are exempt from completing this section.

**Prior State Employment.** The offeror shall disclose whether any of the personnel whom the offeror proposes to use in performing the requested services have been employed by an agency of the State of Texas at any time during the two years preceding the date of admission of this proposal. If such employment has existed, the offeror shall disclose the agency and the nature of the previous employment with such agency; the date of termination of the employment; and the annual rate of compensation for the employment at the time of termination. If such employment has not existed then the offeror shall so state in the proposal.

Your response must be received no later than 5:00 p.m., March 3, 1994. Responses received after this date and time will not be considered. We anticipate entering into the resulting contract on or about March 8, 1994.

Commerce reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. Selected candidates may be asked to make oral presentations to Commerce. Commerce is under no legal obligation to enter into a contract with any offeror on the basis of this request and intends any material provide herein only as means of identifying the scope of services requested.

The state assumes no responsibility for expenses incurred in preparing responses to this solicitation. Please hand deliver your response to Steve Hudson, Texas Department of Commerce, 816 Congress Avenue, Suite 1200, Austin, Texas 78701, or address your responses to Steve Hudson, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, (512) 320-9655.

Issued in Austin, Texas, on January 25, 1994.

TRD-9435183      Deborah C. Kastrin  
Acting Executive Director  
Texas Department of Commerce

Filed: January 25, 1994

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## Texas Education Agency Notice of Public Hearings

The State Board of Education (SBOE) Task Force on the Education of Students with Disabilities will hold a series of public hearings to obtain input for the development of a policy to improve special education services. The hearings will be held from 3:30 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:00 p.m. Hearings may adjourn before the stated ending time if all who pre-registered or registered on-site have been called to give testimony. Hearings will be held at the following locations:

Monday, February 14, 1994—Region IV Education Service Center, 7145 West Tidwell, Houston, Texas;

Thursday, February 17, 1994—Region XI Education Service Center, 3001 North Freeway, Fort Worth, Texas;

Tuesday, March 1, 1994—Region XVI Education Service Center, 1601 South Cleveland, Amarillo, Texas;

Thursday, March 3, 1994—Region XIX Education Service Center, 6611 Boeing Drive, El Paso, Texas;

Tuesday, April 19, 1994—Region I Education Service Center, 1900 West Schunior, Edinburg, Texas; and

Tuesday, April 26, 1994—Region IX Education Service Center, 301 Loop 11, Wichita Falls, Texas;

The task force is seeking a wide range of public input in order to assist in the development of a policy statement, recommendation to guide implementation of the policy, and a report of the task force's work.

In order to allow the task force to hear from as many groups as possible, professional associations and education advocacy organizations are encouraged to coordinate proposals within their memberships and make one presentation on behalf of the group.

Anyone wishing to testify should register in advance by containing the Division of Policy Planning and Evaluation (512) 463-9701 no later than 5:00 p. m. on the last working day preceding the public hearing. Information requested includes: name, organizational affiliation (if any), address, telephone number, item or topic that will be addressed, and whether any special accommodations will be required for individuals with disabilities. Interpreters will be available at the public hearings. To accommodate as many speakers as possible, presenters will be limited to a three-minute presentation. Presenters are asked to supply 35 copies of their testimony.

Those individuals wishing to give testimony who are unable to pre-register may register on-site the day of the hearing. If time permits, these individuals will be allowed

to give testimony on a first-come first-served basis following those who have pre-registered.

Additional information concerning this hearing and future hearings may be obtained from the Division of Policy Planning and Evaluation, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, at (512) 463-9701.

Issued in Austin, Texas, on January 24, 1994.

TRD-9435231      Lionel R. Meno  
Commissioner of Education

Filed: January 26, 1994

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## Texas Environmental Awareness Network

### Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Tuesday, February 8, 1994, at 9:00 a.m., at Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

For information about the meeting, or to place an item on the agenda, contact Bob Murphy, TEAN Chair, by mail at 4200 Smith School Road, Austin, Texas 78744, or at (512) 389-4360, or by Fax at (512) 389-4394.

Issued in Austin, Texas, on January 25, 1994.

TRD-9435228      John Williams  
Secretary  
Texas Environmental Awareness Network

Filed: January 26, 1994

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## Texas Department of Housing and Community Affairs

### Notice of Public Hearing

The Texas Department of Housing and Community Affairs (TDHCA) announces that a public hearing will be held to receive comments on the proposed 1994 state plan for the Texas Weatherization Assistance for Low-Income Persons (WAFLIP) Program.

The public hearing will be held at 10:00 a.m. on Tuesday, February 15, 1994, in the Third Floor Conference Room of the Texas Department on Aging, 1949 IH-35 South, Austin, Texas. At the hearing, TDHCA representatives will provide a description of the Federal Fiscal Year 1994 Texas Weatherization Assistance Program State Plan and Application.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the Federal Fiscal Year 1994 Texas Weatherization Assistance Program State Plan and Application. Any duplicate comments are requested to be submitted in written form only. Written comments from those who cannot attend the hearing in person may be provided by February 17, 1994, to Larry Crumpton, Director of Community Affairs, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941.

Copies of the proposed state plan will be available during the second week of February. A copy may be requested by calling J Al Almaguer at (512) 475-3866 or by writing Mr Almaguer at the previous address given. Individuals who require auxiliary aids or services should contact Aurora Carvajal, ADA responsible employee at (512) 475-3822 or RELAY TEXAS at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangement can be made

The Texas Department of Housing and Community Affairs does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or in the provision of services

Issued in Austin, Texas, on January 24, 1994.

TRD-9435214 Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed January 26, 1994

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**Texas Department of Human Services**  
**Notice of Public Hearing**

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the departments proposed reimbursement rates for the Community Living Assistance and Support Services (CLASS) Waiver program. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on February 15, 1994, at 9 a.m. in the Board/Auditorium of the Texas Department of Mental Health and Mental Retardation (TDMHMR) Building at 909 West 45th Street, Austin. Texas Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on, or after February 1, 1994, by contacting Sherri Williams, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817. Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sherri Williams, (512) 450-4817 by February 4, 1994, so that appropriate arrangements can be made.

Issued in Austin, Texas, on January 25, 1994.

TRD-9435179 Nancy Murphy  
Section Manager, Policy and Document  
Support  
Texas Department of Human Services

Filed January 25, 1994

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**Texas Department of Insurance**  
**Notice of Hearing**

The Commissioner of Insurance at a public hearing under Docket Number 2085 scheduled for March 7, 1994, at 8:30 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider an amendment proposed by the staff of the Workers' Compensation Division to the Procedures Section of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Manual) to eliminate the filing of specimen policies, information pages,

endorsements and cancellations with the Texas Department of Insurance.

The amendment as proposed by staff amends the Procedures Section of the Manual by eliminating the filing requirements for specimen policies, information pages, endorsements and cancellations with the Department of Insurance. Since the Workers' Compensation Division will no longer be reviewing these documents, it will not be necessary for the documents to be filed. In addition, the data to be included on the Information Page is being proposed to be updated to include such items, if applicable, the premium for increased limits for employers' liability, the experience modifier, the negotiated experience modifier, the deductible credit, premium discount, the maintenance tax surcharge recoupment and the schedule rating factor.

A copy of the amendments containing the full text of the proposed amendments is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the amendments, please contact Ms. Angie Arizpe (512) 322-4147 (refer to Reference Number W-0194-01).

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Issued in Austin, Texas, on January 25, 1994.

TRD-9435180 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: January 25, 1994

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**Request for Proposals**

RFP 454-4-735. The Texas Department of Insurance (the department) has issued a Request for Proposals for certain licensing testing services under the Insurance Code, Article 21.01-1.

On January 24, 1994, the department issued a Request for Proposals for the purpose of acquiring a contractor to provide testing services which meet the examination requirements for persons seeking license as agents, solicitors, counselors, or adjusters under the Insurance Code.

**Project Description.** The selected contractor shall provide the department with testing services that include examination development, test scheduling, examination site arrangement, and test administration, grading, reporting and analysis. The selected contractor shall cooperate with advisory boards, if any, appointed by the Commissioner of Insurance under the Insurance Code, Article 21.01-1. The required services are described in the department's Request for Proposals and in 28 Tex. Admin. Code §§19.1101 through 19.1110.

**Contact.** Parties interested in submitting a proposal in response to the department's Request for Proposals should contact Mr. Jim Helfrich, Director of Purchasing & Contracting, Texas Department of Insurance, P. O. Box 149104, MC 108-1B, 8th Floor, Tower 1, Hobby Building, 333 Guadalupe, Austin, TX 78714-9104.

**Closing Date.** Proposals in response to the department's Request for Proposals must be received by the department no later than 3:00 p.m., February 17, 1994.

**Award Procedure.** All proposals will be subject to evaluation by an evaluation committee based on the evaluation criteria set forth in the Request for Proposals. The evaluation committee will submit its recommendations to the Commissioner of Insurance. The selection of the contractor will be made after a public hearing in accordance with Article 21.01-1. See also 28 Tex. Admin. Code §§19.1101 through 19.1110.

The department reserves the right to reject any or all proposals or offers deemed not to be in the best interests of the department or the State of Texas. The department will not make any payments to any contractor for services performed or costs incurred under the terms of or in connection with any contract awarded as a result of the department's issuance of the Request for Proposals. Selected contractor's sole compensation will be through contractor's collection from applicants of certain specific fees which have been approved by the department in writing as described in the Request for Proposals. The department will not make any payments for any costs incurred by any contractor in preparing a proposal response to the Request for Proposal; such costs may not be recouped by the successful contractor under the terms of any resulting contract.

#### **Anticipated Schedule.**

It is anticipated that the selection of a contractor effective September 1, 1994 will proceed according to the following approximate timetable: INSERT SLICK

The department reserves the right to change these dates. The department will send notices of changes to any of the above items which directly impact the award process to vendors which received copies of the Request for Proposals as issued on January 24, 1994 and to parties which request copies of the Request for Proposals from the department. The department may or may not appoint advisory boards prior to September 1, 1994.

Issued in Austin, Texas, on January 25, 1994.

TRD-9435210      Linda K von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance'n

Filed: January 25, 1994

## **Texas State Library and Archive Commission**

### **Miscellaneous**

#### **Appointment to Local Government Records Committee**

Notice is hereby given, pursuant to Texas Government Code, §441.163, for the purpose of making an appointment to the Local Government Records Committee.

Bob Frost, Records Management Officer, Tarrant County Junior College District, 1500 Houston Street, Fort Worth, Texas 76102 has been appointed to serve on the committee for a term to expire February 1, 1995. Mr. Frost replaces Dr. Frances Noll, also of the Tarrant County Junior College District, who resigned.

Issued in Austin, Texas, on January 25, 1994.

TRD-9435182      Raymond Hitt  
Assistant State Librarian  
Texas State Library

Filed: January 25, 1994

## **Texas Department of Licensing and Regulation**

### **Correction of Error**

The Texas Department of Licensing and Regulation adopted new §74.65, concerning elevators. The rule appeared in the January 25, 1994, *Texas Register* (19 TexReg 508).

The second paragraph of the preamble contained an error as submitted. It should read "The section defines the purpose, method of reporting, procedure for calling meetings, and make-up of the Elevator Advisory Board."

## **Texas Lottery Commission**

### **Request for Proposals for Lottery Radio Network Production Services**

The purpose of this Request for Proposals (RFP) is to obtain proposals for the production and distribution of a weekly syndicated radio show for the Texas Lottery Commission. The shows shall consist of two, one-minute programs per week. Program format may include opening and closing music, on-air talent as program host(s) and pre-recorded actualities. Program format is subject to change at the direction of the Lottery.

The intent of the Texas Lottery Commission is to obtain the services of an audio production facility to produce a regularly syndicated Lottery radio show. The Successful Proposer will be required to provide the technical equipment, talent and crew required to produce the show, duplicate it and ship the audio tapes to the radio stations that comprise the Texas Lottery Radio Network. The Successful Proposer will be responsible for providing the audio tapes to those stations according to established schedules. The Successful Proposer will be responsible for creating and composing original theme music for the show.

The Texas Lottery is headquartered in Austin and would prefer a production facility in the general vicinity in order to avoid additional expenses associated with shipping and travel. However, consideration will be given to all qualified proposers, regardless of the facility location, and the award will be made in the best interests of the Lottery to the proposer who can provide the best production services at the most reasonable cost

To obtain a copy of the RFP, please contact: Kimberly Kiplin, General Counsel, Texas Lottery Commission, 6937 North Interstate 35-Room 508, Austin, Texas 78752. Fax (512) 451-1586.

Issued in Austin, Texas, on January 26, 1994

TRD-9435220

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission

Filed: January 26, 1994

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**Texas Natural Resource Conservation  
Commission**  
**Bankruptcy Notice**

Notice of an Application by Harris County Municipal Utility District Number 202 for Authorization to Proceed in Federal Bankruptcy.

The Texas Natural Resource Conservation Commission has received an application by Harris County Municipal Utility District Number 202 (the District), in care of Herman I. Little, Jr., Smith, Murdaugh, Little & Bonham, 1200 Travis Street, Suite 1800, Houston, Texas 77002-6098 for Authorization to Proceed in Federal Bankruptcy. The application has been authorized by the Board of Directors of the District. A hearing will be held no less than 30 days from the date of this notice.

The District seeks to obtain Commission authorization to file for protection under Chapter 9 of the Federal Bankruptcy Code, 11 United States Code, §901-941, as amended. The District is proposing to seek Bankruptcy Court approval of a plan of adjustment of the District's debts. The District's plan of adjustment is outlined briefly as follows: Upon successful resolution of the District's lawsuit against the major landowner in the District and foreclosure of the judgment lien on this landowner's property within the District, the District proposes to levy a marketable tax rate, hire a developer to begin developing the District-owned property, and eventually sell this property and other currently undeveloped property within the District, while paying District bondholders on an amended debt service schedule.

The Commission shall investigate the financial condition of the District, including its assets, liabilities and sources of revenues, to determine if the District cannot, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debt and other obligations as they mature. If the Commission determines that the District is not able to meet its debt and other obligations as they mature, the Commission may authorize the District to proceed in bankruptcy. If, however, the Commission determines the District is able to meet its debt and other obligations, the Commission shall deny the District's application Hearing Authority, §50.060 of the Texas Water Code, and 30 TAC §293.88, Rules of the Texas Natural Resource Conservation Commission.

Any person wishing to protest the application of the District is requested to file a written notice of such protest with the Water Utilities Division of the Commission within 30 days of the date of this notice. The protest should specifically "request a public hearing", briefly state the person's interest in the application and the reasons for the protest. Written protests should be submitted to the Water Utilities Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, Attention: Susan Walton. If the Commission determines that the protest shows reason that the District is able to meeting its debt and other obligations, or that an evidentiary public hearing would serve the public interest,

the Commission may direct the Office of Hearing Examiners to conduct an evidentiary public hearing, after issuance of proper and timely notice of the hearing. Copies of the protest must be furnished to the District. Information concerning participation in hearings may be obtained by contacting the Public Interest Counsel, at the same address or by telephone at (512) 239-6363.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf or hearing impaired, readers, large print, or braille) are requested to contact Mamie M. Black in the Office of the Chief Clerk at (512) 463-8537 at least two work days prior to the hearing so that appropriate arrangements can be made.

Issued in Austin, Texas, on December 30, 1993.

TRD-9435116

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: January 24, 1994

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**Notices of Receipt of Application and  
Declaration of Administrative  
Completeness for Municipal Solid  
Waste Permit Applications**

Attached is a Notice of Receipt of Application and Declaration of Administrative Completeness for a municipal solid waste permit issued during the period of January 14-28, 1994.

This application has been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Natural Resource Conservation Commission. Persons should be advised that the application is subject to change based on such evaluation.

Notices are issued pursuant to the Texas Health and Safety Code, §361.0665. Any person who may be affected by the facility is entitled to request a hearing from the Commission. The Commission will issue further notice of the application and the terms of any proposed draft permit once the technical evaluation is completed.

Information concerning permit applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Waste Management of Texas, Inc.; Alvin; Type I, two miles east of the intersection of State Highway 6 and State Highway 35 on the north side of State Highway 6, Alvin and League City ETJ, Galveston County, Texas; new; MSW1721-A.

Issued in Austin, Texas, on January 28, 1994.

TRD-9435197

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: January 25, 1994



## Texas Department of Protective and Regulatory Services Correction of Error

Texas Department of Protective and Regulatory Services submitted a proposed amendment to §700.316 in its Child Protective Services Chapter. The rule appeared in the January 18, 1994, issue of the *Texas Register* (19 TexReg 343).

The amendment contained an error as published.

On page 344, paragraph (8) contained information that was inadvertently bolded to indicate new language. It should read:

"(8)[(7)] Lump-sum Income. Nonrecurring [Non-recurring] lump-sum payments received after certification for foster care assistance are generally considered as countable income. Exceptions are detailed in Sections 3.3208 through 3.3213 of this title (relating to Income) in the AFDC chapter of rules. If the lump-sum payment plus other countable income for a month is equal to or greater than the cost of foster-care [foster care] maintenance, the child is ineligible for a period of time. The period of ineligibility is determined by dividing the amount of the lump-sum payment and other countable income by the monthly cost of care. The resulting whole number is the number of months the child is ineligible for foster care assistance. Any remaining amount from this division is considered as income the first month after the period of ineligibility."

## Request for Proposal

The Texas Department of Protective and Regulatory Services is requesting proposals to conduct an annual training conference, entitled "Texas Families Today and Tomorrow," for social work professionals and foster and adoptive parents.

**Description:** The purpose of the conference is to provide strategies necessary for preventing maltreatment of children and for addressing the needs of children who have been abused and/or neglected. The conference will be held during the Spring of 1995.

**Eligible Applicants:** Eligible offerors include government entities, private non-profit and profit agencies, and individuals, particularly offerors who have multiple sources of funding and are educational institutions offering social work curriculum. Historically Underutilized Businesses are encouraged to submit proposals.

**Limitations:** Funding of the selected proposal will be dependent upon available federal and/or state appropriations. The department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the department.

**Term and Total Value:** The effective dates of any contract awarded under this RFP will be June 1, 1994, through

August 31, 1995. A maximum amount of \$25,000 is available to fund the conference.

**Offeror's Conference:** An offeror's conference is scheduled to be held on February 14, 1994. All respondents to this RFP will be notified of the offeror's conference location and time.

**Deadlines:** All proposal to be considered for funding through this RFP must be received by 4:00 p.m., March 31, 1994. Proposals received after this deadline will be accepted only if postmarked no later than March 30, 1994. Modifications to the original proposal must also be received prior to the closing date of March 31, 1994.

**Evaluation and Selection:** A panel of program and administrative staff from the department will rank and score the proposals. The evaluation method and criteria will be specified in advance. Considerations are service description, previous relevant experience, and budget information.

**Contact Person:** To obtain a complete copy of the RFP, please contact Ann M. Olsen, Program Specialist, protective Services for Families and Children, Texas Department of Protective and Regulatory Services, (MC E-559), P.O. Box 1409030, Austin, Texas 78714-9030, (512) 450-4869.

Issued in Austin, Texas, on January 25, 1994.

TRD-9435180 Nancy Murphy  
Section Manager, Policy and Document  
Support  
Texas Department of Protective and  
Regulatory Services

Filed: January 25, 1994

## Center for Rural Health Initiatives Correction of Error

The Center for Rural Health Initiatives submitted a Request for Proposal which appeared in the "In Addition Section" of the January 14, 1994, issue of the *Texas Register* (19 TexReg 300). The Request for Proposal contained errors as published.

On page 300, paragraph one should read "The Center for Rural Health..."

On page 300, paragraph two should read "**Background.** Rural Texas is diverse, with different economies, demographics, employment sector..."

On page 301, paragraph one should read "**Budget Limitations.** The CRHI will provide a maximum of \$25,000 each for up to five proposals. These funds can be used to cover the costs of salaries, fringe benefits, travel, supplies..."

On page 301, paragraph four should read "**Proposals Submission Requirements.** Application packets may be obtained by contacting the Center for Rural Health Initiatives, 211 East Seventh Street, Suite 915, P.O. Box 1708, Austin, Texas 78767-1708, (512) 479-8891."

On page 301, paragraph seven should read "**Proposal contents.** Proposals must follow the format as described in the application packet applicants..."

## 1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A M	ALL NOTICES OF OPEN MEETINGS BY 10 A M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14

29 Friday, April 22	Monday, April 18	Tuesday, April 19
30 Tuesday, April 26	Wednesday, April 20	Thursday, April 21
31 Friday, April 29	Monday, April 25	Tuesday, April 26
32 Tuesday, May 3	Wednesday, April 27	Thursday, April 28
33 Friday, May 6	Monday, May 2	Tuesday, May 3
34 Tuesday, May 10	Wednesday, May 4	Thursday, May 5
35 Friday, May 13	Monday, May 9	Tuesday, May 10
36 Tuesday, May 18	Wednesday, May 11	Thursday, May 12
37 Friday, May 20	Monday, May 16	Tuesday, May 17
38 Tuesday, May 24	Wednesday, May 18	Thursday, May 29
39 Friday, May 27	Monday, May 23	Tuesday, May 24
40 Tuesday, May 31	Wednesday, May 25	Thursday, May 26
41 *Friday, June 3	Friday, May 27	Tuesday, May 31
42 Tuesday, June 7	Wednesday, June 1	Thursday, June 2
43 Friday, June 10	Monday, June 6	Tuesday, June 7
44 Tuesday, June 14	Wednesday, June 8	Thursday, June 9
45 Friday, June 17	Monday, June 13	Tuesday, June 14
46 Tuesday, June 21	Wednesday, June 15	Thursday, June 16
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 6	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6

68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29
75 Friday, October 7	Monday, October 3	Tuesday, October 4
Tuesday, October 11	THIRD QUARTERLY INDEX	
76 Friday, October 14	Monday, October 10	Tuesday, October 11
77 Tuesday, October 18	Wednesday, October 12	Thursday, October 13
78 Friday, October 21	Monday, October 17	Tuesday, October 18
79 Tuesday, October 25	Wednesday, October 19	Thursday, October 20
80 Friday, October 28	Monday, October 24	Tuesday, October 25
81 Tuesday, November 1	Wednesday, October 26	Thursday, October 27
82 Friday, November 4	Monday, October 31	Tuesday, November 1
83 Tuesday, November 8	Wednesday, November 2	Thursday, November 3
Friday, November 11	NO ISSUE PUBLISHED	
84 Tuesday, November 15	Wednesday, November 9	Thursday, November 10
85 Friday, November 18	Monday, November 14	Tuesday, November 15
86 Tuesday, November 22	Wednesday, November 16	Thursday, November 17
87 Friday, November 25	Monday, November 21	Tuesday, November 22
Tuesday, November 29	NO ISSUE PUBLISHED	
88 Friday, December 2	Monday, November 28	Tuesday, November 29
89 Tuesday, December 6	Wednesday, November 30	Thursday, December 1
90 Friday, December 9	Monday, December 5	Tuesday, December 6
91 Tuesday, December 13	Wednesday, December 7	Thursday, December 8
92 Friday, December 16	Monday, December 12	Tuesday, December 13
93 Tuesday, December 20	Wednesday, December 14	Thursday, December 15
94 Friday, December 23	Monday, December 19	Tuesday, December 20
95 Tuesday, December 27	Wednesday, December 21	Thursday, December 22
96 *Friday, December 30	Friday, December 23	Tuesday, December 27