

# TEXAS REGISTER

## IN THIS ISSUE

Volume 19, Number 9, February 4, 1994

Page 735-842

### **Governor's Office**

#### Appointments Made January 24, 1994

Texas Health Benefits Purchasing Cooperative Board of Trustees . . . . . 745

Texas State Library and Archives Commission . . . . . 745

Teacher Retirement System of Texas Board of Trustees . . . . . 745

Donley County . . . . . 745

### **Emergency Sections**

#### Texas State Board of Public Accountancy

Professional Conduct

22 TAC §501.44 . . . . . 747

### **Proposed Sections**

#### Texas Ethics Commission

Reporting Political Contributions and Expenditures

1 TAC §20.206 . . . . . 749

Conduct of Lobbyists

1 TAC §§34.7, 34.9, 34.11 . . . . . 749

1 TAC §§34.9, 34.11, 34.13 . . . . . 750

Gifts to Regulatory Agency Officers and Employees

1 TAC §§48.1, 48.3, 48.5, 48.7, 48.9 . . . . . 750

#### Texas Office of State-Federal Relations

Federal Grant Assistance

1 TAC §§451-451.9 . . . . . 751

#### Public Utility Commission of Texas

Substantive Rules

16 TAC §23.12 . . . . . 753

#### Texas Alcoholic Beverage Commission

Licensing

16 TAC §33.23 . . . . . 754

#### Texas Education Agency

Advisory Committees

19 TAC §§161.001-161.003 . . . . . 755

School Districts

19 TAC §61.010 . . . . . 755

The TAC Titles Affected on Page 839

Contents Continued Inside



The Texas Register is printed on recycled paper



a section of the Office of the Secretary of State P.O. Box 13824 Austin, TX 78711-3824 (512) 463-5561 FAX (512) 463-5569

Secretary of State John Hannah, Jr.

Director Dan Procter

Assistant Director Dee Wright

Circulation/Marketing Roberta Knight Jill S. Ledbetter

TAC Editor Dana Blanton

TAC Typographer Madeline Christer

Documents Section Supervisor Patty Webster

Document Editors Janiene Allen Robert Macdonald

Open Meetings Clerk Jaime Alworth

Production Section Supervisor Ann Franklin

Production Editors/Typographers Carla Carter Mimi Sanchez Chad Kissinger

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except March 11, July 22, November 11, and November 29, 1994. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90, six-month printed, \$75 and electronic, \$70 Single copies of most issues are available at \$7 per copy.

Material in the Texas Register is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the Texas Register Director, provided no such republication shall bear the legend Texas Register or "Official" without the written permission of the director. The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

POSTMASTER: Please send form 3579 changes to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

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.



22 TAC §523.31.....	798
22 TAC §523.32.....	798
22 TAC §523.61.....	799
22 TAC §523.62.....	799
22 TAC §523.63.....	799
22 TAC §523.64.....	799
22 TAC §523.65.....	799
22 TAC §523.71.....	800
22 TAC §523.72.....	800
22 TAC §523.73.....	800
<b>Texas Natural Resource Conservation Commission</b>	
Consolidated Permits	
30 TAC §§305.501-305.507.....	800
Industrial Solid Waste and Municipal Hazardous Waste	
30 TAC §§335.321-335.323, 335.325-335.329, 335.331-335.332.....	802
<b>Employees Retirement System of Texas</b>	
Insurance	
34 TAC §§81.1, 81.3, 81.5, 81.7.....	806
<b>Texas Department of Criminal Justice</b>	
State Jail Felony Facilities	
37 TAC §§157.1, 157.3, 157.4, 157.11, 157.13.....	810
<b>Texas Department of Human Services</b>	
Title IV-A Emergency Assistance Program	
40 TAC §§13.101, 13.105, 13.110.....	810
Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification	
40 TAC §19.604.....	811
40 TAC §19.1103, §19.1104.....	811
40 TAC §19.1807.....	811
Community Care for Aged and Disabled	
40 TAC §48.6003.....	811
40 TAC §48.6004.....	812
Legal Services	
40 TAC §79.2501.....	812

**Texas Commission for the Blind**

    Cooperative Activities

40 TAC §171.3.....	812
--------------------	-----

Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L.....	812
---	-----

**Open Meetings Sections**

Texas Department on Aging.....	815
Texas Department of Agriculture.....	815
Texas Commission on Alcohol and Drug Abuse.....	816
Texas Alternative Fuels Council.....	817
State Board of Barber Examiners.....	817
Texas Bond Review Board.....	817
Texas Catastrophe Property Insurance Association.....	817
Texas Planning Council for Developmental Disabilities.....	817
State Employee Charitable Campaign State Policy Committee.....	818
Texas Employment Commission.....	818
Texas General Land Office.....	818
Texas Department of Health.....	818
Health and Human Services.....	818
Texas Incentive and Productivity Commission.....	818
Texas Department of Insurance.....	818
Texas Department of Licensing and Regulation.....	819
Texas Natural Resource Conservation Commission.....	819
Texas Board of Pardons and Paroles.....	820
Texas Office for Prevention of Developmental Disabilities.....	821
Texas Department of Public Safety.....	821
Public Utility Commission of Texas.....	821
Texas Racing Commission.....	821
Railroad Commission of Texas.....	821
Texas Real Estate Commission.....	822
State Securities Board.....	822
The Supreme Court of Texas.....	822
Board of Tax Professional Examiners.....	823
Texas Department of Transportation.....	823

University of Houston System.....	823
University of North Texas System .....	823
Regional Meetings.....	824

***In Addition Sections***

<b>Texas Alternative Fuels Council</b>	
Invitation to Propose.....	825
<b>Office of the Attorney General</b>	
Texas Clean Air Act Enforcement Settlement Notices .....	826
<b>Comptroller of Public Accounts</b>	
Notice of Request for Proposals.....	826
<b>Office of Consumer Credit Commission</b>	
Notice of Rate Ceilings.....	827
<b>Texas Education Agency</b>	
Correction of Error .....	827
<b>Employees Retirement System of Texas</b>	
Request for Proposals.....	827
<b>Texas Department of Health</b>	
Licensing Actions for Radioactive Materials.....	827
Notice of Intent to Revoke Certificates of Registration .....	830
Notice of Intent to Revoke Radioactive Material Licenses.....	830
Texas HIV/STD Medication Program Funding for Mail-Order Pharmacy Services Request for Proposals.....	831

<b>Texas Health and Human Services Commission</b>	
Public Notice .....	831

<b>Texas Department of Housing and Community Affairs</b>	
Request for Proposal .....	831

<b>Texas Department of Human Services</b>	
Request for Proposal .....	832

<b>Texas Department of Insurance</b>	
Company License Applications.....	832

<b>Texas Natural Resource Conservation Commission</b>	
Bankruptcy Notice.....	833

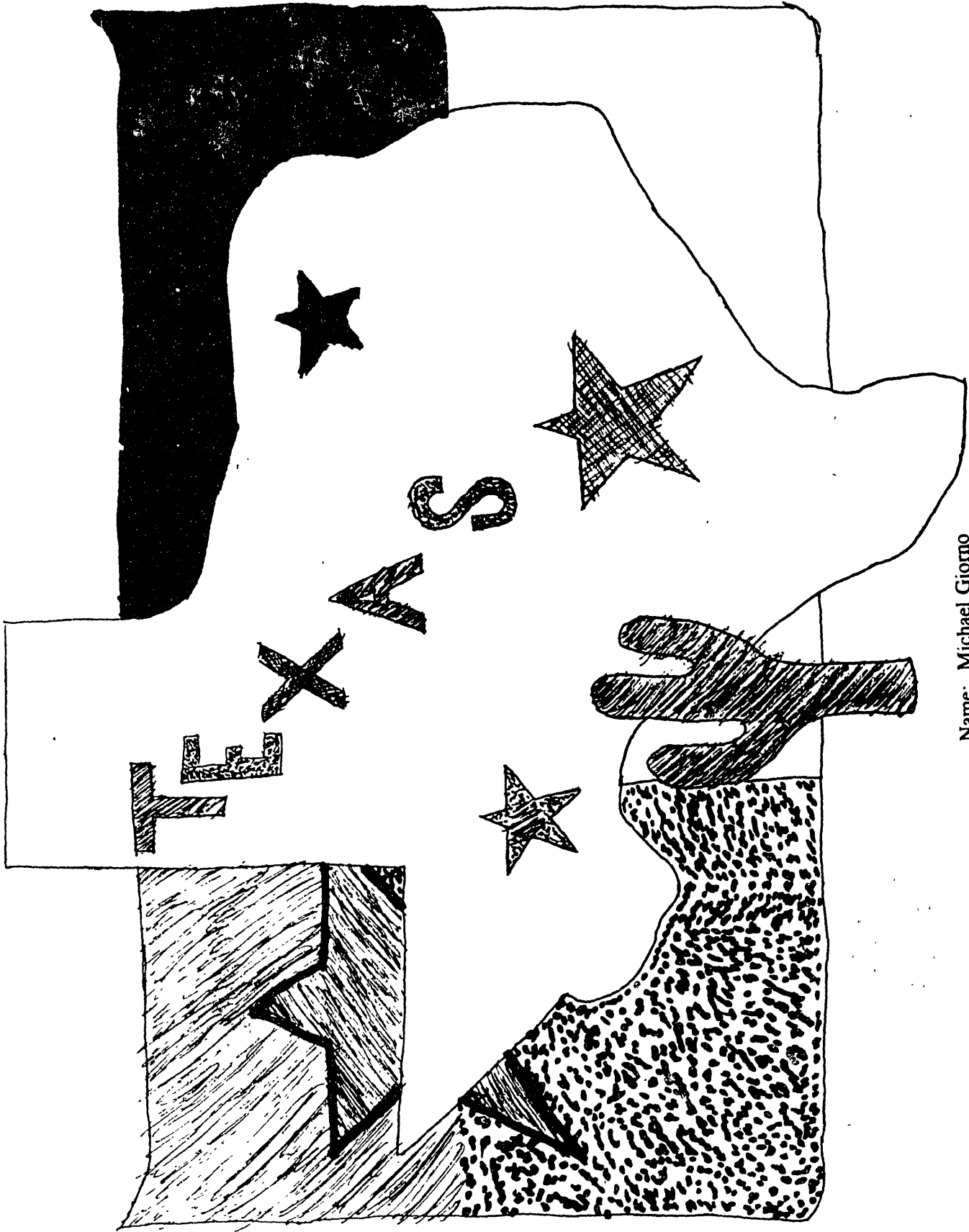
Enforcement Orders .....	833
Extension of Deadline for Written Comments.....	834

Notice of Opportunity .....	834
<b>Texas Low-Level Radioactive Waste Disposal Authority</b>	
Notice of License Application Information Meeting.....	836

<b>Texas Office of State-Federal Relations</b>	
Request for Applications-State Match Pool.....	836

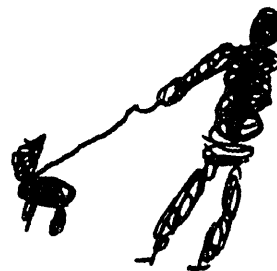
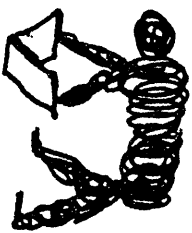
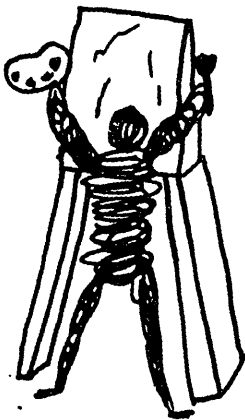
<b>Texas Department of Transportation</b>	
Request for Applications.....	837

<b>University of Texas at Austin</b>	
Request for Proposals.....	838



Name: Michael Giorno  
Grade: 7  
School: Clear Lake Intermediate, Clear Lake ISD

Michael Giorno

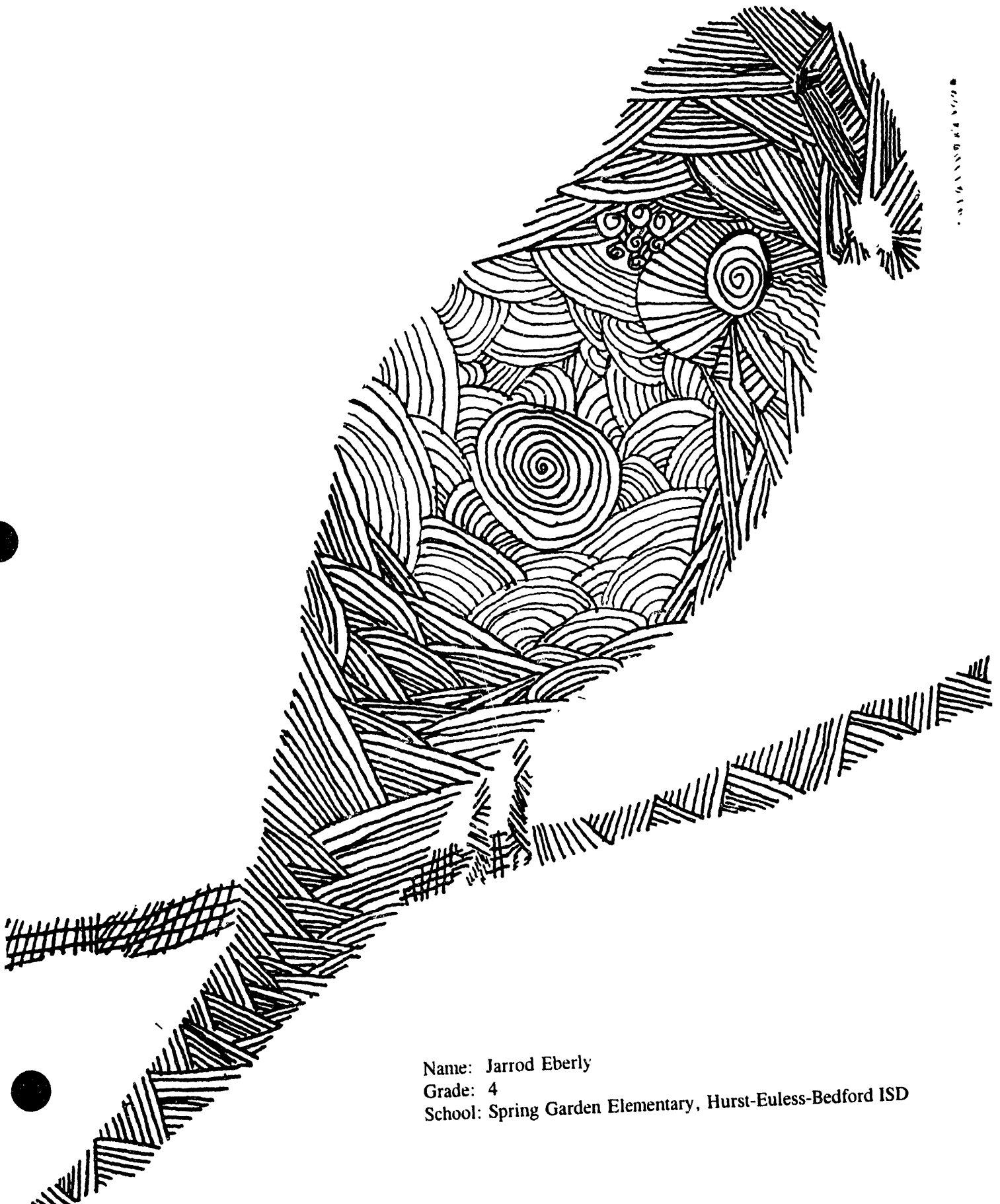


Name: Laura Wedleick  
Grade: 10  
School: Colony Bend Elementary, Fort Bend ISD



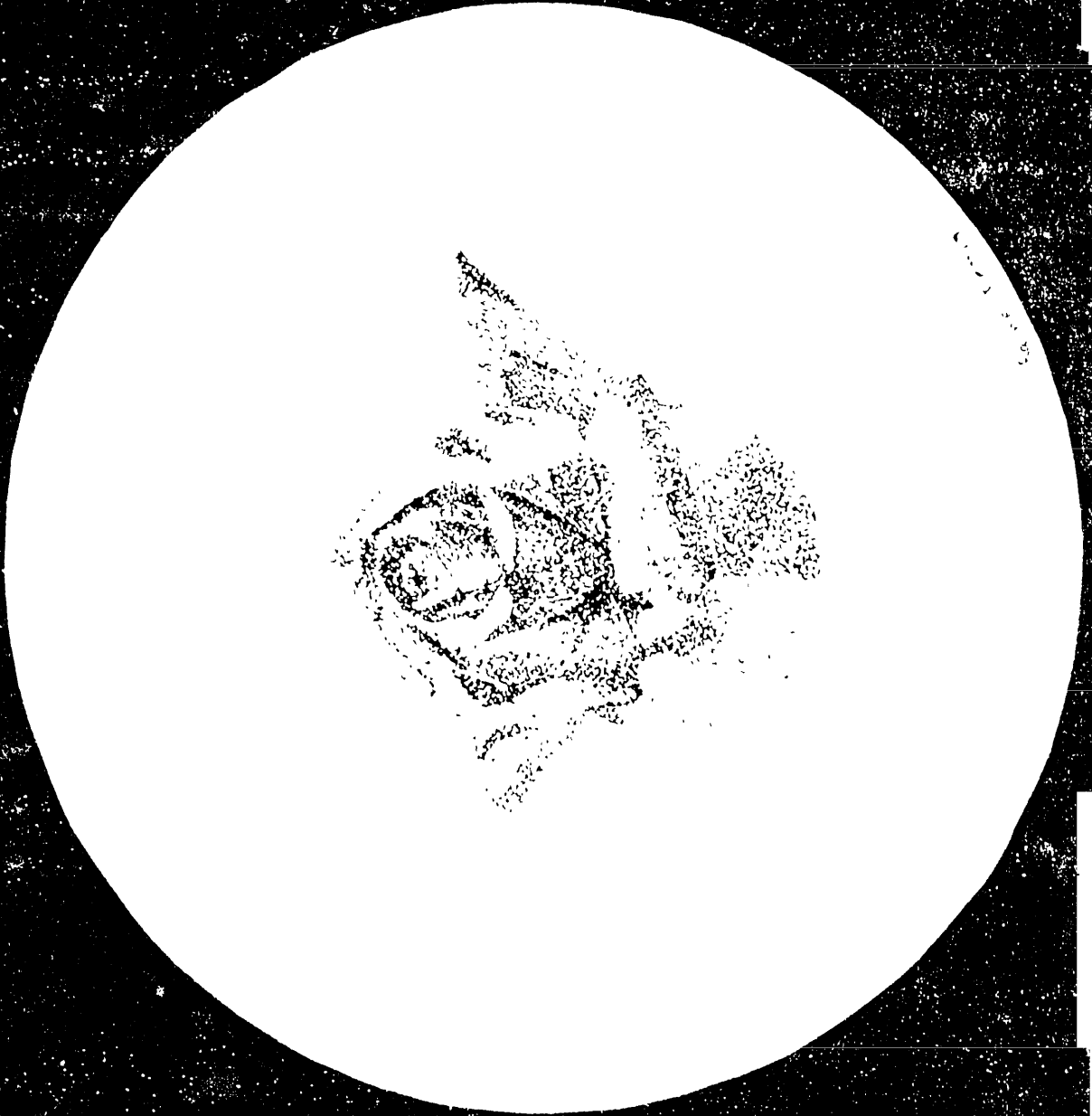
Name: Trisha Trevino  
Grade: 4  
School: Spring Garden Elementary, Hurst-Euless-Bedford ISD





© 2000 JARROD EBERLY

Name: Jarrod Eberly  
Grade: 4  
School: Spring Garden Elementary, Hurst-Euless-Bedford ISD



Name: Rachel Fettig  
Grade: 8  
School: Hendrick Middle School, Plano ISD

# THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the **Texas Register** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments Made January 24, 1994

To be a member of the **Texas Health Benefits Purchasing Cooperative Board of Trustees** for a term to expire February 1, 1995. Maria E. Crowley, 7320 Williamswood, Dallas, Texas 75252. Ms. Crowley is being appointed to a new position pursuant to House Bill Number 2055, 73rd Legislature.

To be a member of the **Texas State Library and Archives Commission** for a term to expire September 28, 1999. Marvin A. Rich, 9607 Cedarhurst, Houston, Texas 77096. Mr. Rich will be replacing Harriette Willeford-Whatley of Fairfield, whose term expired.

To be a member of the **Texas State Library and Archives Commission** for a

term to expire September 28, 1999. Rich, The Honorable Patrick Heath, 121 South Second Street, Boerne, Texas 78006. Mayor Heath will be replacing Byron Louis Lefore of San Antonio, whose term expired.

To be a member of the **Teacher Retirement System of Texas Board of Trustees** for a term to expire August 31, 1999. Lee R. Williamson, Ed D., 9A Mayfair Terrace, Wichita Falls, Texas 76308. Dr. Williamson will be replacing Frank Monroe of Dallas, whose term expired.

To be a member of the **Teacher Retirement System of Texas Board of Trustees** for a term to expire August 31, 1999. Kathryn S. Stream, Ph.D., 2029 Pembroke, Denton, Texas 76205. Dr. Stream will be replacing C. A. Roberson of Fort Worth, whose term expired.

Pursuant to §26.012 of the Texas Government Code, the Honorable W. R. Christal, County Judge, Donley County, previously had certified his disqualification to act as County Judge in the following case pending the Donley County court: Cause Number 2594, Estate of Thelma Gertrude Christal, deceased. In the County Court of Donley County, Texas, Judge Christal has requested the appointment of a Special Judge to hear this matter. I do hereby appoint the Honorable Hugh Reed, County Judge of Armstrong County, to act as Special County Judge in the above-numbered case, and respectfully request that you issue a commission to Judge Reed for that purpose.

Issued in Austin, Texas, on January 27, 1994

TRD-9435264

Ann W. Richards  
Governor of Texas

◆ ◆ ◆



Name: Katie McKinley  
Grade 8  
School: Clear Lake Intermediate, Clear Lake ISD

# 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 XXII. Texas State Board of Public Accountancy

#### Chapter 501. Professional Conduct

#### Other Responsibilities and Practices

##### • 22 TAC §501.44

The Texas State Board of Public Accountancy on an emergency basis adopts the repeal of §501.44, concerning Soliciting. The repeal of §501.44 is being simultaneously proposed in this issue of the *Texas Register*.

The emergency repeal is required to alleviate the concern by some licensees that the board will apply this rule to their conduct while *Endenfield et al v Fane*, 113 S Ct 1792 (1993) is the controlling case law on soliciting.

The board finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires repeal of this rule on fewer than 30 days' notice.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to adopt such rules as may be necessary or advisable to carry in effect the purposes of the law, and §21, which lists those actions or omissions for which the board may take disciplinary action against its licensees.

##### §501.44 *Soliciting*

Issued in Austin, Texas, on January 20, 1994

TRD-9435295

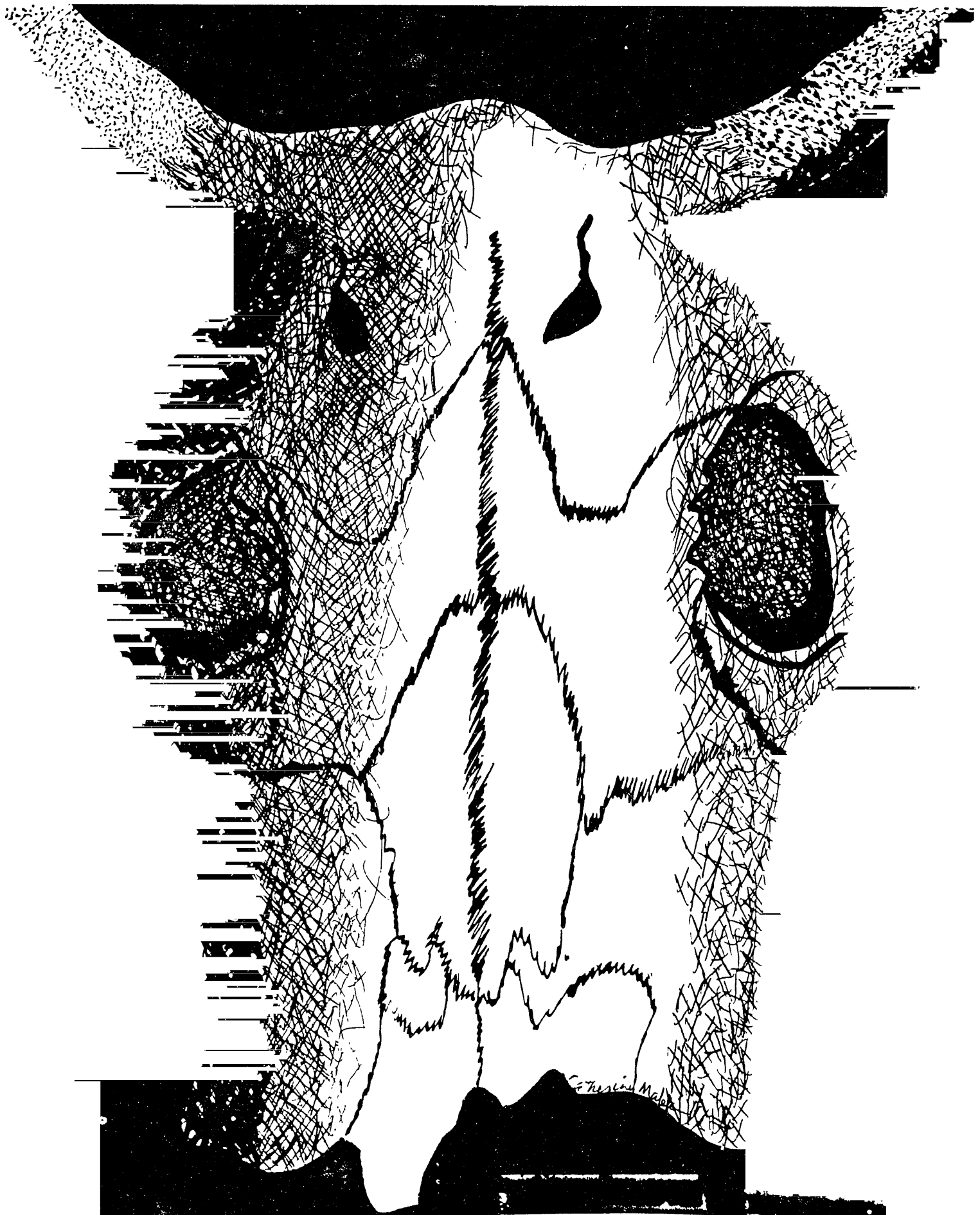
William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date January 28, 1994

Expiration date May 29, 1994

For further information, please call (512)  
505-7066





Name: Catherine Malek  
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 II. Texas Ethics Commission

#### Chapter 20. Reporting Political Contributions and Expenditures

##### Subchapter C. Reporting Requirements for a Candidate

###### • 1 TAC §20.206

The Texas Ethics Commission (the commission) proposes new §20.206, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. This section provides guidelines to candidate when transferring his appointment of campaign treasurer to another filing authority. It also provides for the automatic termination of a candidate's appointment of campaign treasurer with the former filing authority.

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

Mr. Mathieson 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 better understanding of the procedure used in transferring an appointment of campaign treasurer from one filing authority to another. 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. Mr. Mathieson also has determined that this rule will have no local employment impact.

Comments on the proposed rule from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting

during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules.

Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new section is proposed under Texas Government Code, Chapter 571, §571.062, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

#### §20.206 Transfer of Campaign Treasurer Appointment

(a) If a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment.

(b) The original appointment terminates on the filing of the copy with the appropriate authority or on the tenth day after the date the decision to seek a different office is made, whichever is earlier.

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 27, 1994

TRD-9435381 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: March 7, 1994

For further information, please call (512) 463-5800

## Chapter 34. Conduct of Lobbyists

### Subchapter A. Restrictions on Lobby Expenditures

#### • 1 TAC §§34.7, 34.9, 34.11

The Texas Ethics Commission (the commission) proposes new §§34.7, 34.9, and 34.11, concerning the conduct of persons registered as lobbyists with the commission. These sections were previously adopted under §§34.9, 34.11, and 34.13 respectively.

Jim Mathieson, assistant general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Mathieson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a better understanding of the commission's organization and operational structure and the administrative procedures and requirements it has established to carry out its obligations under the law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. Mr. Mathieson also has determined that these rules will have no local employment impact.

Comments on the proposed rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules.

Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new sections are proposed under Texas Government Code, Chapter 571, §571.062.

which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

**§34.7. Gift of Cash or Negotiable Instrument.**

(a) A registrant may not give a member a gift of cash or a negotiable instrument.

(b) This section does not apply to a gift that is a political contribution regulated by this title and under Election Code, Title 15 (relating to Regulating Political Funds and Campaigns).

**§34.9. Gifts to a Member by a Related Registrant.** Neither §34.1 of this title (relating to Maximum Annual Lobby Expenditures) nor §34.7 of this title (relating to Gift of Cash or Negotiable Instruments) prohibits or restricts a gift to a member by a registrant who is related to that member within the second degree of affinity or consanguinity, as determined in accordance with Government Code, Chapter 573, Subchapter B (relating to Relationships by Consanguinity or by Affinity)

**§34.11. Loans to a Member by a Registrant**

(a) Except as permitted under subsection (b) or (c) of this section, a registrant shall not make a loan to a member, or guarantee or endorse a loan by another person to a member.

(b) This section does not apply to prohibit a loan by a registrant under the following circumstances:

(1) the registrant making the loan is a corporation or other business entity that has been legally and continuously engaged in the business of lending money for more than one year before the loan is made, and

(2) the loan to the member is made in the due course of business by that registrant

(c) This section does not prohibit a loan, or the guarantee or endorsement of a loan, to a member by a registrant who is related to the member within the second degree of affinity or consanguinity, as determined in accordance with Government Code, Chapter 573, Subchapter B (relating to Relationships by Consanguinity or by Affinity)

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 27, 1994

TRD-9435379 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption March 7, 1994

For further information, please call: (512) 463-5800

◆ ◆ ◆  
**• 1 TAC §§34.9, 34.11, 34.13**

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

The Texas Ethics Commission proposes the repeal of §§34.9, 34.11, and 34.13, concerning the conduct of those persons registered as lobbyists with the commission pursuant to the Government Code, Chapter 305. The sections are being repealed because §34.11 is being amended, and each section is being renumbered and newly proposed as follows:

**Repealed section Proposed section:**

Section 34.9-34.7.

Section 34.11-34.9

Section 34.13-34.11

Jim Mathieson, assistant general counsel, 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.

The public benefit is not applicable. There will be no effect on small businesses or costs to persons required to comply with the proposed repeals.

Comments on the proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comments period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, 1 (800) 325-8506.

The repeals are proposed under Texas Government Code, Chapter 571, §571.062, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

**§34.9. Gift of Cash or Negotiable Instrument**

**§34.11. Gifts to a Member by a Related Registrant**

**§34.13. Loans to a Member by a Registrant**

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 27, 1994

TRD-9435380 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: March 7, 1994

For further information, please call: (512) 463-5800

◆ ◆ ◆  
**Chapter 48. Gifts to  
Regulatory Agency Officers  
and Employees**

**Subchapter A. Prohibition on  
Acceptance of a Benefit;  
Recusal**

**• 1 TAC §§48.1, 48.3, 48.5, 48.7,  
48.9**

The Texas Ethics Commission (the commission) proposes new §§48.1, 48.3, 48.5, 48.7, and 48.9, concerning the solicitation or acceptance of gifts by regulatory agency officers and employees, definition of the terms agency and benefit, recusal of a commissioner or a commission employee from any discussion or action involving a person who has given the commissioner or employee a benefit, and disclosure of the basis for recusal if not confidential. In addition, the rules set forth exceptions to recusal. These sections provide guidelines to agency officers and employees in soliciting and accepting gifts from any person who is either regulated by the agency or has an interest in a transaction that may be substantially affected by a commissioner or agency employee.

Jim Mathieson, assistant general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Mathieson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a better understanding of the procedure used in transferring an appointment of campaign treasurer from one filing authority to another. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. Mr. Mathieson also has determined that this rule will have no local employment impact.

Comments on the proposed rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed



rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new sections are proposed under Texas Government Code, Chapter 571, §571.062, which provides the commission with the authority to promulgate rules to implement laws administered and enforced by the commission.

*§48.1. Rule Required To Be Adopted by Certain State Agencies.*

(a) In this section, "agency" means any department, commission or board that:

(1) is in the executive branch of the state government;

(2) is under the direction of an officer or governing body that is not subject to impeachment;

(3) has authority that is not limited to a geographical portion of the state,

(4) was created by the constitution or a statute of this state, and

(5) has constitutional or statutory authority to engage in rule-making, adjudication, or licensing

(b) This section is intended to implement Government Code, §571.063 (relating to Rules Concerning Gifts to Regulatory Agency Officers and Employees)

(c) Each agency shall adopt rules that limit the acceptance of benefits from a person who appears before or is regulated by that agency

(d) Rules adopted under this section shall be at least as restrictive as the commission's rules set forth in the remaining sections of this subchapter. An agency may adopt rules that are more restrictive than these rules

(e) Before December 31, 1995, or the first anniversary of the creation of the agency, whichever is later, the chief legal counsel or other appropriate officer of each agency shall submit to the executive director of the commission a copy of the rules adopted by the agency under this section and a statement that such rules satisfy the requirements of this section, or an explanation of why such a statement cannot be made

(f) Any revision, withdrawal, or repeal of a rule adopted under this section shall be submitted under this section for commission approval before final action by the agency to revise, withdraw, or repeal the rule

(g) The commission may delegate any of its duties under this section to the executive director

*§48.3 Benefit Defined* In this subchapter, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage to the beneficiary or to any other person in whose welfare the beneficiary has a direct and substantial interest, and includes any gift, award, or memento that is required to be reported under Government Code, Chapter 305 (relating to Registration of Lobbyists)

*§48.5 Rule Cumulative of Statutory Restrictions* This subchapter is cumulative of all statutory prohibitions and restrictions on the acceptance of benefits.

*§48.7 Acceptance of Certain Benefits Restricted* A commissioner or employee may not solicit or accept, for the commissioner or employee nor for another person, any travel or lodging from a person who is:

(1) interested in a contract, purchase, claim, or other pecuniary transaction that may be substantially affected by the performance or nonperformance of the commissioner's or employee's official duties, or

(2) subject to regulation, inspection, or investigation by the commission

*§48.9 Recusal*

(a) A commissioner who accepts a benefit shall recuse himself or herself from any discussion or action taken by the commission with regard to any matter in which the commissioner knows or should know the donor of the benefit may have a personal or economic interest. If disclosure of the required recusal would not tend to reveal information made confidential by law, the commissioner must disclose the recusal and the basis for the recusal at the time of the recusal

(b) A commission employee who accepts a benefit shall not participate in the disposition of any matter in which the employee knows or should know the donor of the benefit may have a personal or economic interest

(c) A commission employee reused under subsection (b) of this section from participating in the disposition of any matter shall notify his or her immediate supervisor of the recusal and the reason for the recusal

(d) Recusal under subsection (a) of this section is not required if the matter in question affects an entire profession or class of business entities and the interest that would otherwise require recusal is no different than that of any other member of the affected profession or class

(e) Recusal under this section is not required if the benefit is an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Business and Commerce Code, §3.104 (relating to Form of Negotiable Instruments; "Draft;" "Check;" "Certificate of Deposit;" "Note").

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 27, 1994.

TRD-9435378

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption. March 7, 1994

For further information, please call: (512) 463-5800

◆ ◆ ◆  
**Part XVII. Texas Office  
of State-Federal  
Relations**

**Chapter 451. Federal Grant  
Assistance**

**Subchapter A. The State  
Match Pool for Federal Dis-  
cretionary Grant Assistance**

**• 1 TAC §§451.1-451.9**

The Texas Office of State-Federal Relations proposes new §§451.1-451.9, concerning the administration of and disbursement of funds from its State Match Pool

Jane Hickie, executive director of the Texas Office of State-Federal Relations, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Ms. Hickie also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more effective use of public financial resources and better leverage of federal financial assistance to the State of Texas

Comments on the proposed sections may be submitted to Dr. Mary E. Lee, State Match Pool Administrator, Texas Office of State-Federal Relations, P.O. Box 13005, Austin, Texas, 78711 for a period of 30 days following publication

The new sections are proposed under Texas Government Code, §751.022(b)(8), which empowers the Texas Office of State-Federal Relations with general rule-making authority, and the General Appropriations Act of 1993 (Article 1-3, Rider 5), which authorizes the Texas Office of State-Federal Relations to establish and administer a federal grants initiative that will draw additional federal dollars to Texas

These sections establish the Texas Office of State-Federal Relations State Match Pool to implement this initiative.

*§451.1. Introduction to and Purpose of the State Match Pool*

(a) Background. The State Match Pool is a pilot program administered by the Texas Office of State-Federal Relations. The program provides state agencies with a pool of state funds to which they may apply for matching monies to meet the match requirements of federal discretionary grant programs. Often, state agencies are eligible to apply for federal funds under these programs, but lack the necessary match amount within their own budget. The intent of the 73rd Legislature, as specified in the General Appropriations Act of 1993, is that increased activity associated with the program shall generate sufficient general revenue to pay for the 1994-1995 biennial appropriation of \$10 million for this purpose. The Texas Office of State-Federal Relations has therefore determined that the State Match Pool pilot program shall give preference to those federal grant proposals that include realistic projections of economic growth in the state as a direct outcome to be expected from completion of the proposed grant activities.

(b) Goal. The primary goal of the State Match Pool pilot program is to increase opportunities for state agencies to engage in enterprising, innovative projects that benefit the Texas economy by increasing their opportunities to obtain state funds to match federal discretionary grant funds for these projects.

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

(1) Director-The executive director of the Texas Office of State-Federal Relations

(2) Federal discretionary grant programs-Programs of the federal government that award grants or contracts on a competitive, non-formula basis. In general, this definition is intended to be consistent with, but not limited to, Type "B" Project Grant assistance programs as defined in the 27th Edition of the *Catalog of Federal Domestic Assistance (June 1993, page XV)*

*§451.2. Program Coverage* State Match Pool funds shall only be used to meet the matching monies requirements of federal discretionary grant programs under which funds are available during a state funding biennium to be awarded to state agencies

*§451.3. Eligibility for Funds*

(a) State agencies. State agencies applying to a federal discretionary grant program for project funding are eligible to

also apply for State Match Pool funds. While an applicant to the State Match Pool must be a state agency, grant activities proposed by a state agency under a partnership of the agency with other state and non-state entities are encouraged.

(b) Fiscal Certification. The Chief Executive Officer or the Chief Financial Officer of the state agency making application for State Match Pool funds must provide a letter certifying that the requested match amount is unavailable within his or her own budget.

*§451.4. Maximum and Minimum Awards.*

(a) Amount. No minimum or maximum award amount is set. However, the maximum award amount is clearly limited by the amount of the biennial appropriation to the State Match Pool.

(b) Percentage. In no case shall the amount of State Match Pool funds awarded to a single project exceed 40% of the total projected costs for that project.

*§451.5. Application for State Match Pool Funds* The Texas Office of State-Federal Relations may establish a competitive application process and may require state agencies to submit standardized documents in applying to the State Match Pool.

*§451.6. Review of Applications*

(a) Application review panels. Applications may be reviewed, rated, and recommended for funding by members of an application review panel.

(b) The director shall approve the admittance of applications to the State Match Pool.

*§451.7. Availability of Funds.*

(a) Admittance to the pool. Admittance of an application to the State Match Pool qualifies the applicant to receive State Match Pool funds pending award notification from the federal grant program to which they have applied for funding and subject to the availability of State Match Pool funds at the time of the federal award. State Match Pool funding amounts shall be allocated to qualified applications for subsequent encumbrance of funds to qualified applicant agencies in date-order of federal award notification. Other application information such as date of receipt of the State Match Pool application may be used to further calculate the ordering of applications for encumbrance of funds.

(b) Over-commitment of funds. The Texas Office of State-Federal Relations does not expect that every qualified application will be accepted for federal funding. Therefore, the Texas Office of State-Federal Relations may over-commit funds. When

the Texas Office of State-Federal Relations determines that a qualified State Match Pool applicant's proposal has been rejected by the federal program, the application will be removed from the qualified pool and funding amounts previously allocated to that application shall be re-allocated to other applications. When The Texas Office of State-Federal Relations has determined that a qualified State Match Pool applicant's proposal has been approved for funding by the federal program, State Match Pool funds shall be encumbered to the state agency awardee, subject to the availability of funds.

(c) Non-availability of funds. The Texas Office of State-Federal Relations expects that availability of State Match Pool funds will decrease significantly as time passes during a state funding biennium. When all monies appropriated by the Texas Legislature to the Texas Office of State-Federal Relations State Match Pool for a funding biennium have been encumbered to qualified applicants receiving federal awards, remaining qualified applicants shall be notified that funds are no longer available to be encumbered to the applicant agency.

*§451.8. Award Process*

(a) Awardee notification. When the Texas Office of State-Federal Relations has determined that a qualified State Match Pool applicant's proposal has been approved for federal funding by the federal program under which the grant was requested, the qualified applicant shall be notified whether or not State Match Pool funds are currently available to be encumbered to the State Match Pool awardee.

(b) Award disbursement. Subsequent disbursement of State Match Pool funds encumbered to a state agency may be guided by federal rules concerning disbursement of monies under the federal program awarding the grant. State Match Pool monies shall be disbursed prior to project commencement only if required by federal rules under the federal program awarding the grant.

*§451.9. Awardee Responsibilities* In order to receive disbursements of State Match Pool monies that have been encumbered to them, state agency awardees may be required under contractual arrangement with the Texas Office of State-Federal Relations to.

(1) have a system established in writing to ensure that appropriate officials provide necessary agency reviews and approvals for the expenditure of funds and for monitoring project performance and adherence to federal award terms and conditions,

(2) have financial management systems that meet the requirements of the State Auditor,

(3) retain financial records, supporting documents, statistical records, and other materials pertinent to the award for a period of three years following submission of the final project report and make these available to the Texas Office of State-Federal Relations upon request;

(4) be responsible for performing the duties and tasks described under all project grant agreements with the federal program awarding the grant,

(5) provide the Texas Office of State-Federal Relations with copies of all project documentation required by the federal program awarding the grant, including periodic project reports, final project reports, and all fiscal reports,

(6) provide project demonstrations, site inspections or additional project documentation, including written materials to substantiate benefit to the Texas economy, as requested by the Texas Office of State-Federal Relations or the advisory board,

(7) honor intellectual property rights of project participants as outlined in any agreements made to facilitate fulfillment of award activities,

(8) agree that the award may be suspended or terminated if the awardee fails to comply with OSFR terms and conditions of the award or if the federal award is suspended or terminated,

(9) agree that no person shall be excluded from participation in, be denied benefits or, or be otherwise subjected to discrimination under a State Match Pool award on the grounds of race, color, national origin, religious affiliation, handicap, or sex,

(10) agree that the Texas Office of State-Federal Relations shall not be held liable in the event of damages to persons or property which may occur in the course of activities conducted as a result of the award

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 31, 1994

FD-9435383

David A. Talbot  
General Counsel  
Office of the Governor

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 463-7295

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Financial Records and Reports

###### • 16 TAC §23.12

The Public Utility Commission of Texas proposes an amendment to §23.12(e), concerning a Cost Allocation Manual for the Local Exchange Carriers in Texas. This proposal is formulated subsequent to the publication of questions in the June 11, 1993, issue of the *Texas Register* (18 TexReg 3716), and receipt of comments for creating a Cost Allocation Manual that establishes a mechanism for separating costs of regulated telephone service from the costs of nonregulated products and services.

This proposal provides for LECs to annually file their Cost Allocation Manual, an independent audit attesting that the CAM is consistent with the requirements of this subsection, an attestation statement that the CAM was followed throughout the year, and nonregulated/regulated percentages by account for prior and current years. The Tier 1 LEC's (companies with \$100 million or more in operating revenues) would file the CAM they provide the FCC, with the Public Utility Commission of Texas. The Tier 2 LEC's (companies with less than \$100 million in operating revenues) would be required to formalize their accounting procedures as they relate to the allocation of costs between regulated and nonregulated activities.

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

Mr. Dhingra 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 in ensuring access to the LEC's cost allocation manuals. These manuals will provide for a separation of regulated and nonregulated telephone costs and aid the Commission in determining whether or not nonregulated activities are being subsidized by the revenues generated from the regulated activities. There will be some cost effects on small businesses as a result of enforcing the section. There will be some one-time cost effects associated with implementing separate accounts, and thereafter, costs associated with auditing the accounts, on small businesses as a result of enforcing the section. There is no additional anticipated economic cost to utilities who are required to comply with the proposed changes.

Mr. Dhingra also has determined that for each year of the first five years the section is in effect there will be no effect on employment in the geographical areas affected by implementing the requirements of this section.

Comments on the proposed amendment (13 copies) may be submitted to John M. Renfrow, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to project Number 11289.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and to enforce rules establishing Cost Allocation Manual requirements.

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 1446c

#### §23.12. Financial Records and Reports

(a)-(d) (No change)

(e) Cost Allocation Manual (CAM).

(1) A Local Exchange Carrier (LEC) that provides both intrastate regulated and intrastate nonregulated products or services shall maintain a current intrastate cost allocation manual on file with the Commission.

(A) If the Federal Communication Commission (FCC) requires the LEC to file an interstate cost allocation manual, and the LEC uses the same allocation basis on the intrastate costs, the LEC shall file a current copy of its interstate manual with the Commission, by May 1st, and shall follow the interstate procedures set forth by the FCC for intrastate cost allocation purposes.

(B) If a LEC follows an affiliate company's interstate CAM as filed with the FCC and uses the same allocation basis on the intrastate costs, then the LEC shall file a current copy of its sister company's interstate manual with the Commission, by May 1st, and shall follow the interstate procedures set forth by the FCC for intrastate cost allocation purposes.

(2) The LEC's Intrastate Cost Allocation Manual shall contain the following sections and information.

(A) Introduction. Includes a discussion of the cost accounting concepts, language and applications utilized throughout the CAM.

(B) Nonregulated Activities. Contains a matrix which identifies each nonregulated product and service and the accounts associated with that nonregulated product or service.

(C) **Incidental Activities.** Defines, identifies and contains a list of incidental activities and the justification for treating each as incidental.

(D) **Chart of Affiliates.** A chart showing all of the LEC's corporate affiliates as defined in Public Utility Regulatory Act (PURA), Article I, §3(i).

(E) **Transactions with Affiliates.** Statements identifying affiliates that engage in or will engage in transactions with the local exchange carrier and describing the nature, terms, and frequency of such transactions.

(F) **Cost Apportionment Table.** Identifies the specific methodologies applied to each account to apportion costs between regulated operations and nonregulated operations.

(G) **Time Reporting Procedures.** Describes the time reporting system used by the telephone operating units, how frequently the reporting system is updated and the methods used to train, implement, monitor, and reinforce accurate time reporting by employees.

(3) The LEC's Cost Allocation Manual shall divide the total costs in each FCC Uniform System of Accounts Part 32 account into regulated, nonregulated, and common cost pools, as appropriate. Costs shall be apportioned to regulated and nonregulated cost pools on the basis of direct assignment. Any remaining costs shall be assigned to the common cost pool. After initial assignment, costs included in the common cost pool shall be apportioned to the regulated and nonregulated cost pools utilizing one of the apportionment methods approved by the Commission. The Part 32 accounts, appropriate cost pools, and approved apportionment methods are specified in the Commission approved form entitled, Cost Allocation Matrix, which is available from the Commission's central records office.

(4) Annually, by May 1st, each LEC shall file with the Commission the following information regarding the most recent calendar year:

(A) its Cost Allocation Manual;

(B) an audit by independent auditors attesting that the company has designed and implemented its CAM in a manner consistent with the requirements of this subsection. In addition, the independent auditors should provide the

same level of assurance as a financial statement audit;

(C) estimates of the dollar effects of all CAM manual revisions summarized by revision as it impacts each Part 32 account;

(D) a statement signed by a company officer attesting to the fact that the Cost Allocation Manual was followed throughout the year; and

(E) a report providing information on the level of regulated/nonregulated activities shall be submitted. The report shall be formatted on a Part 32 account Cost Pool basis and indicate on a dollar and percentage basis the level of regulated and nonregulated activities.

(5) A LEC is not required to file the information specified in paragraph (4)(B) and (E) of this subsection if:

(A) the only nonregulated activities in which the LEC engages is customer premise equipment and/or inside wire; or

(B) the LEC has no more than 5.0% interest, either directly or indirectly, in a nonregulated subsidiary;

(C) a LEC exclusively engaged in regulated activities is not required to file the Cost Allocation Manual with the Commission. Such a LEC shall annually, by May 1st, file with the Commission a statement signed by a company officer attesting to the fact that the LEC was engaged in only regulated activities throughout the 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 28, 1994.

TRD-9435363  
John M. Renfrow  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Earliest possible date of adoption. March 7, 1994

For further information, please call (512) 458-0100



## Part III. Texas Alcoholic Beverage Commission

### Chapter 33. Licensing

#### Bonds

##### • 16 TAC §33.23

The Texas Alcoholic Beverage Commission proposes an amendment to §33.23, concerning setting the annual surcharge for all holders of certificates, permits or licenses issued by the commission as required by Texas Alcoholic Beverage Code, §5.50(b), effective September 1, 1993.

The section amends subsection (b) by lowering the annual surcharge from \$300 to \$160. The section adds an additional subsection regarding the refund of any amounts previously collected in excess of \$160.

Brian Guenther, acting director of licenses and permits, has determined that for the first five-year period the rule is in effect there will be fiscal implications as a result of enforcing or administering the rule. This determination is based upon an estimation of the numbers of permits or licenses the commission will issue within the fiscal year. The estimation is determined by taking an average of the current and previous two years licenses and permits issued and applying the appropriate surcharge.

For state government the estimated revenue for each of the first five years is \$1,253,760, with estimated additional cost being insignificant. There will be no fiscal implications for units of local governments.

The public benefit cost is that the regulated alcoholic beverage industry will bear the entire amount of the cost of regulation by the Texas Alcoholic Beverage Commission. The effect on small businesses cannot be determined but is considered to be minimal and would not anticipate having a disproportionate impact on those in the alcoholic beverage industry. The cost will be borne by persons licensed to sell alcoholic beverages and individual citizens will not be impacted except as this may inflate the price of a drink to a retail customer.

Comments on the proposal may be submitted to Brian Guenther, Acting Director of Licenses and Permits, P.O. Box 13127, Austin, Texas 78711. The telephone number is (512) 206-3327.

The amendment is proposed under the Texas Alcoholic Beverage Code, Subchapter (B), §531, which provides the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code, and §5.50(b) which specifically mandates the surcharges.

The following statute will be impacted by the passage of this amendment. Alcoholic Beverage Code, §§11.32, 28.02, 32.02, 61.35, and 74.02.

§33.23. *Alcoholic Beverage License and Permit Surcharges.*

(a) (No change)

(b) In order to cover the costs of the administration of the mixed beverage tax by the comptroller, all holders of mixed beverage permits and private club registration permits shall pay in addition to the 20% surcharge, an annual surcharge of [\$300] \$160

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

(e) Any annual surcharge paid after September 1, 1993, in excess of \$160, in addition to the 20% surcharge shall be refunded to mixed beverage and private club permit holders.

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 31, 1994

TRD-9435391

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 206-3204

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

### Chapter 61. School Districts Subchapter AA. Commissioner's Rules

#### School Finance

##### • 19 TAC §61.1010

The Texas Education Agency (TEA) proposes new §61.1010, concerning standards that limit administrative cost expenditures by school districts. The section establishes standards against which districts' administrative-to-instructional cost ratios are compared. Districts with excess administrative expenditures can meet these standards by reducing administrative expenditures and/or increasing instructional expenditures.

Kevin O'Hanlon, chief legal counsel, has determined that for the first five-year period the rule is in effect there will be fiscal implications as a result of enforcing or administering the rule. However, because districts can achieve the proposed standards by decreasing administrative expenditures, increasing instructional expenditures, or some combination of the two, the effects on state and local government cannot be estimated. In general, the enabling legislation creates a mechanism through which the state recovers excess administrative expenditures and districts experience a reduction in revenue equal to that excess.

Mr O'Hanlon and Criss Cloudt, associate commissioner for policy planning and evaluation, have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of en-

forcing the rule will be a decrease in the expenditure of school district funds on administration, an increase in the expenditure of school district funds on instruction, or some combination of the two. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

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

The new rule is proposed under the Texas Education Code, §16.205, which authorizes the State Board of Education to adopt standards that limit school districts' administrative costs.

#### §61.1010 Standards for School District Administrative Cost Ratios

(a) Administrative cost ratio standards are established on the basis of the refined average daily attendance (ADA) of a school district for the prior year, unless the district qualified in that prior year for a sparsity adjustment:

(1) For an ADA of 10,000 or more, the standard is 0.1105

(2) For an ADA of 5,000-9,999, the standard is 0.1250

(3) For an ADA of 1,000-4,999, the standard is 0.1401

(4) For an ADA of 500-999, the standard is 0.1561

(5) For an ADA of less than 500 without a sparsity adjustment, the standard is 0.2654

(6) For a district that qualified for a sparsity adjustment, the standard is 0.3614

(b) For the administrative cost limits calendar that begins in May 1994, prior year refers to the 1992-1993 school year. For the administrative cost limits calendar that begins in May 1995, prior year refers to the 1993-1994 school 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 31, 1994

TRD-9435408

Criss Cloudt  
Associate Commissioner,  
Policy Planning and  
Evaluation  
Texas Education Agency

Earliest possible date of adoption March 7, 1994

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

## Chapter 161. Advisory Committees

### Subchapter AA. Commissioner's Rules

#### • 19 TAC §§161.1001-161.1003

The Texas Education Agency (TEA) proposes new §§161.1001-161.1003, concerning advisory committees. The sections specify the procedures for establishing advisory committees and list all committees currently in effect.

Criss Cloudt, associate commissioner for policy planning and evaluation, has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. The effect on state government will be an estimated additional cost of \$794,022 in fiscal year (FY) 1994, \$384,321 in FY 1995, \$274,792 in FY 1996, and \$197,668 in FY 1997. There will be no effect on state government in FY 1998. There will be no effect on local government.

Ms. Cloudt has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be streamlined management of public education advisory committees and complete disclosure of information about advisory committees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

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

The new rules are proposed under the Texas Education Code, §11.954 and §11.957, which authorize the commissioner of education to adopt rules concerning the purpose, task, reporting procedures, and abolishment of advisory committees.

#### §161.1001 Establishment of Advisory Committees

(a) The commissioner of education has general authority to establish advisory committees and to appoint the membership of advisory committees, subject to confirmation by the State Board of Education (SBOE). The commissioner may establish an advisory committee based on state or federal law or SBOE recommendation or as the commissioner deems expedient. Each petition from the public to establish an advisory

sory committee shall be presented in writing to the commissioner.

(b) Rules governing SBOE confirmation of advisory committees are located in the State Board of Education Operating Rules, Chapter 6, relating to Advisory Groups.

§161.1002. *Texas Education Agency Operating Procedures.* The commissioner of education shall adopt and implement Texas Education Agency (TEA) operating procedures governing establishment and operation of public education advisory committees. For each committee listed in §161.1003 of this title (relating to Advisory Committees), the commissioner shall include the following information as an attachment to the operating procedures:

- (1) name of the committee;
- (2) purpose of the committee;
- (3) task of the committee and the manner in which the committee shall report to the commissioner; and
- (4) date by which the committee shall be abolished.

§161.1003. *Advisory Committees.* The following public education advisory committees are in effect:

- (1) Texas Commission on Braille Textbook Production;
- (2) Committee of Practitioners for Career and Technology Education;
- (3) State Committee of Practitioners - Chapter 1 Handicapped Program;
- (4) Committee of Practitioners - Chapter 1;
- (5) Chapter 2 Advisory Committee;
- (6) Texas Collaborative Transition Grant Advisory Committee;
- (7) Task Force on the Education of Students with Disabilities;
- (8) Texas Environmental Education Advisory Committee;
- (9) Commissioner's Advisory Council on the Education of Gifted Students;
- (10) Council for Personnel Preparation for the Handicapped;
- (11) Advisory Task Force on the Education of Homeless Children and Youth;
- (12) Policy Committee on Public Education Information;
- (13) State Parent Advisory Council for Migrant Education;
- (14) Minority Recruitment Advisory Committee;

(15) State Advisory Board on National and Community Service;

(16) Academic Excellence Indicator System (AEIS); Parent Report Card Advisory Committee;

(17) Investment Advisory Committee on the Permanent School Fund;

(18) Texas Preschool Evaluation Project Advisory Committee;

(19) Texas Education Program Manual Task Force;

(20) Roundtable on School Safety and Violence Prevention;

(21) Statewide Site-Based Decision Making Advisory Committee;

(22) Special Education Effectiveness Studies Project Advisory Committee;

(23) Continuing Advisory Committee for Special Education;

(24) Advisory Committee on Student Assessment;

(25) Committee on Student Learning;

(26) State Panel on Student Skills and Knowledge;

(27) Texas Successful Schools Award System Advisory Committee;

(28) Committee on Teacher Appraisal/Assessment;

(29) Commission on Standards for the Teaching Profession;

(30) Educational Technology Advisory Committee; and

(31) State Textbook Committees for Proclamation 1992.

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 31, 1994.

TRD-9435409  
Crisis Cloudt  
Associate Commissioner,  
Policy Planning and  
Evaluation  
Texas Education Agency

Earliest possible date of adoption: March 7, 1994

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



## TITLE 22. EXAMINING BOARDS

### Part IX. Texas State Board of Medical Examiners

#### Chapter 161. General Provisions

##### • 22 TAC §161.1

The Texas State Board of Medical Examiners proposes an amendment to §161.1, concerning board meetings. The proposed amendment will define the regulations related to board member attendance.

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

Mr. Weitz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that board members are in compliance with the Medical Practice Act and that sufficient board members are available for a quorum. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

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

Article 4495b, §2.04(a) is affected by this proposed amendment.

##### §161.1. Meetings.

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

(c) It is a ground for removal from the board if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year. If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president shall then notify the governor that a potential ground for removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the

member fails to attend at least a portion of a regularly scheduled board meeting on each day that the meeting is held or fails to attend at least a portion of a scheduled committee meeting to which the member is assigned on each day that such a meeting is held unless the board member's failure to be present is due to required attendance at a meeting of the full board, the disciplinary panel, or a committee of the board. Any dispute or controversy as to whether or not an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee an opportunity to be heard and after allowing discussion by other members of the board. [It shall be incumbent upon each member of the Texas State Board of Medical Examiners to be in attendance at each meeting of the board in fulfillment of his or her duties as a member. If for any good and sufficient reason he or she determines that he or she will be unable to attend any regular or called meeting, he or she shall notify the executive director or secretary of the board of his or her impending absence before such meeting is called to order and give the reason for such absence. The executive director or secretary will then report to the board in session the absence of such member and the reason therefore. Any member of the board believing the reason for such absence insufficient may institute a motion for the reprimand or censorship of such member.]

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 28, 1994

TRD-9435327 Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 834-7728, Ext. 402

## Chapter 175. Schedule of Fees and Penalties

### • 22 TAC §175.1

The Texas State Board of Medical Examiners proposes an amendment to §175.1, concerning fees for the Federation Licensing Examination (FLEX) and the United States Medical Licensing Examination (USMLE). The proposed amendment will delete the fees for repeat of the FLEX and set a fee for the repeat of the USMLE.

Ivan Hurwitz, director of licensure, 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. Hurwitz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to identify and collect fees for the repeat of the USMLE examination and delete fees for the FLEX examination, which is no longer in existence. 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 \$500 per examinee.

Comments on the proposal may be submitted to Pat Wood, P O Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

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

Article 4495b, §2.09(k) is affected by this proposed amendment.

§175.1 Fees. The board shall charge the following fees:

(1)-(4) (No change)

(5) examination fees (required and payable each time applicant is scheduled for examination)

(A) USMLE Step 3-\$500;

I-\$300.] [(A) FLEX Component

II-\$300.] [(B) FLEX Component

(B)[(C)] Jurisprudence-\$30,

(C)[(D)] SPEX-\$275

(6)-(17) (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 28, 1994

TRD-9435326 Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 834-7728, Ext. 402

## Chapter 187. Procedure

### Subchapter B. Prehearing

#### • 22 TAC §187.19, §187.24

(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 State Board of Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Braes Street, Austin.)

The Texas State Board of Medical Examiners proposes the repeal of §187.19 and §187.24 concerning show compliance proceeding and informal disposition. Extensive rewrite of the sections was found necessary, therefore, repeal of the existing sections with simultaneous new sections is proposed.

Tim Weitz, general counsel, 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. Weitz 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 clarification of the 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 Pat Wood, P O Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

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

Cross Index—Article 4495b, §4.02 and §4.025, and the Administrative Procedures Act, §2001.054 and §2001.056, Texas Government Code.

#### §187.19 Show Compliance Proceeding

#### §187.24 Informal Disposition

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 31, 1994

TRD-9435323 Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption March 7, 1994

For further information, please call: (512) 834-7728, Ext. 402

The Texas State Board of Medical Examiners proposes new §187.19 and §187.24 concerning show compliance proceeding and informal disposition. These proposed new sections will establish procedures for the conducting of informal settlement conferences and show compliance proceedings.

Tim Weitz, general counsel, has determined that there will be no fiscal implications as a result of enforcing or administering the sections.

Mr Weitz, also has determined that the public benefit will be the streamlining of the administrative process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134.

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

Cross Index—Article 4495b, §4.02 and §4.025; and the Administrative Procedures Act, §2001.054 and 2001.056, Texas Government Code.

*§187.19. Show Compliance Proceeding* Pursuant to the Medical Practice Act, §4.02, and the Administrative Procedure Act, Government Code, §2001.054, the following rules shall apply to show compliance proceedings

(1) Prior to institution of board proceedings to revoke, suspend, or take disciplinary action relating to a license or to involuntarily modify restrictions on a license, the physician shall be given an opportunity to show compliance with all requirements of law for the retention of an unrestricted license either in writing or through a personal appearance at an informal meeting with one or more representatives of the board at the option of the licensee.

(2) An opportunity to show compliance under paragraph (1) of this subsection shall not be required prior to a temporary suspension under the Medical Practice Act, §4.13, or in accordance with the terms of an agreement between the board and a licensee.

(3) The opportunity to show compliance under this section shall be extended to a licensee in writing by certified mail—return receipt requested, overnight or

express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board.

(4) Prior to a show compliance proceeding under this section, the licensee shall be provided with a brief written statement of the nature of the allegations to be addressed at the show compliance proceeding along with a brief written statement of the provisions of the Act which may be grounds for board Procedure disciplinary action. These statements shall be provided to the licensee by certified mail—return receipt requested, overnight or express mail, or registered mail to the last mailing address of the licensee or the licensee's attorney on file with the board. The licensee shall also be provided with written notice of the time, date, and location of the show compliance proceeding and the rules governing the proceeding by certified mail—return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board.

(5) A licensee shall be afforded an opportunity to show compliance with the law as provided for under this section; however, a licensee's refusal or failure to take such an opportunity when offered, or when scheduled with proper notice to the licensee, shall not require that an additional show compliance opportunity be made available. In the discretion of the board's representative(s) an additional show compliance opportunity may be afforded to a licensee who refused a previous opportunity or failed to attend a scheduled show compliance proceeding.

(6) One or more members of the board or a district review committee shall conduct the show compliance proceeding as the board's representative(s). When a board member and a district review committee member conduct a show compliance proceeding, the board member shall serve as chairman of the proceeding. In the event that the representatives consist of two board members or two district review committee members, the representative who has seniority on the board or committee shall serve as the chairman of the proceeding. In the event a public member of the board or a district review committee serves as the only board representative in such a proceeding, a board consultant or the board's executive director, if the executive director is a physician, may serve as a medical advisor to the representative.

(7) The show compliance proceeding shall allow:

(A) the board staff to present a synopsis of the allegations and the facts which the board staff reasonably believes could be proven by competent evidence at a hearing;

(B) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing;

(C) presentation of evidence by the staff and the licensee which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board's representative(s) are relevant to the proceeding;

(D) representation of the licensee by counsel;

(E) presentation of oral or written statements by the licensee or the licensee's counsel;

(F) presentation of oral or written statements or testimony by witnesses; and,

(G) questioning of witnesses.

(8) The board's representative(s) shall exclude from the show compliance proceeding all persons except witnesses during their testimony or presentation of statements, the licensee, the licensee's attorney or representative, board members, district review committee members, and board staff.

(9) During the show compliance proceeding, the board's legal counsel or a representative of the Office of the Attorney General shall be present to advise the board's representative(s) or the board's employees.

(10) Except with the agreement of the licensee, during the deliberations of the board's representative(s) at a show compliance proceeding, the board representative(s) shall exclude the board staff who presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's attorney or representative, the complainant, witnesses, and the general public. A board legal counsel or representative of the Office of the Attorney General shall be available to assist the representative(s) in their deliberations.

(11) After a show compliance proceeding has been held, the staff of the board and the board's representative(s) shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to the contacts with board members and administrative law judges concerning the case.



(12) To the extent possible, board members and district review committee members are required to serve as representatives at show compliance proceedings an equal number of times during a calendar year. In the event a board member or district review committee member has a complaint regarding the frequency or infrequency of service as a representative required for any member, the complaint may be routed in writing to the Director of Hearings for the board who shall then bring the complaint to the attention of the Disciplinary Process Review Committee for a resolution by a majority vote of the committee.

(13) The show compliance proceeding may be held in conjunction with and simultaneously with an informal settlement conference held pursuant to Section 187.24 of this title (relating to Informal Disposition).

(14) The board's representative(s) may call upon the board staff at any time for assistance in conducting the show compliance proceeding.

(15) The board's representative(s) shall prohibit or limit access to the board's investigative file by the licensee, the licensee's attorney or representative, the complainant, witnesses, and the public consistent with the Medical Practice Act, §4.05(c).

(16) At the conclusion of the show compliance proceeding, the board's representative(s) shall make recommendations for disposition of the complaint or allegations which may include recommendations of dismissal and closure of the related investigation. In the event a dismissal and closure of the investigation is not recommended, the representative(s) shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases.

(17) The licensee may have the show compliance proceeding recorded and reduced to writing at the licensee's expense after providing written notice to the Director of Hearings for the board at least one day in advance of the show compliance proceeding. Recording and transcribing equipment shall be provided by the licensee. Efforts to mediate the disputed matters or discussions concerning possible settlement options shall not be recorded.

*§187.24. Informal Disposition.* Pursuant to the Medical Practice Act, §4.02 and §4.025, and the Administrative Procedure Act, Government Code, §2001.056, the following rules shall apply to informal dispositions of any complaint or matter relating to

the Act or of any contested case.

(1) The board may make an informal disposition of any complaint or matter relating to the Act or of any contested case by stipulation, agreed order, agreed settlement, consent order, or default.

(2) In the event the board makes such a disposition of a complaint, contested case, or other matter, the disposition shall be in writing and, if appropriate, the writing shall be signed by the licensee.

(3) To facilitate the expeditious disposition of complaints or contested cases, the board may provide a licensee with an opportunity to attend an informal settlement conference. The informal settlement conference may be held in conjunction with and simultaneously with a show compliance proceeding held pursuant to §187.19 of this title (relating to Show Compliance Proceeding).

(4) If the opportunity for an informal settlement conference is provided to a licensee, the licensee shall be provided with a brief statement of the nature of the allegations to be addressed at the conference along with a brief statement of the provisions of the Act which may be grounds for board disciplinary action. These statements shall be provided to the licensee by certified mail-return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board. The licensee shall also be provided with written notice of the time, date, and location of the conference and the rules governing the proceeding by certified mail-return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board.

(5) One or more members of the board or a district review committee shall conduct the informal settlement conference as the board's representative(s). When a board member and a district review committee member conduct such a conference, the board member shall serve as chairman of the conference. In the event that the representatives consist of two board members or two district review committee members, the representative who has seniority on the board or committee shall serve as the chairman of the conference. In the event a public member of the board or a district review committee member serves as the only board representative in such a conference, a board consultant or the board's executive director, if the executive director is a physician, may serve as a medical advisor to the representative.

(6) The informal settlement conference shall allow

(A) the board staff to present a synopsis of the allegations and the facts which the board staff reasonably believes could be proven by competent evidence at a hearing;

(B) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing,

(C) presentation of evidence by the staff and the licensee which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board's representative(s) are relevant to the proceeding,

(D) representation of the licensee by counsel,

(E) presentation of oral or written statements by the licensee or the licensee's counsel,

(F) presentation of oral or written statements or testimony by witnesses, and,

(G) questioning of witnesses.

(7) The board's representative(s) shall exclude from the informal settlement conference all persons except witnesses during their testimony or presentation of statements, the licensee, the licensee's attorney or representative, board members, district review committee members, and board staff.

(8) During the informal settlement conference, the board's legal counsel or a representative of the Office of the Attorney General shall be present to advise the board's representative(s) or the board's employees.

(9) Except with the agreement of the licensee, during the deliberations of an appropriate settlement, the board's representative(s) at an informal settlement conference shall exclude the board staff which presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's attorney or representative, the complainant, witnesses, and the general public. A board legal counsel or representative of the Office of the Attorney General shall be available to assist the representative(s) in their deliberations.

(10) After an informal settlement conference has been held, the staff of the board and the board's representative(s)

shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with board members and administrative law judges concerning the case.

(11) To the extent possible, board members and district review committee members are required to serve as representatives at informal settlement conferences an equal number of times during a calendar year. In the event a board member or district review committee member has a complaint regarding the frequency or infrequency of service as a representative required for any member, the complaint may be routed in writing to the Director of Hearings for the board who shall then bring the complaint to the attention of the Disciplinary Process Review Committee for a resolution by a majority vote of the committee.

(12) At the informal settlement conference, the board's representative(s) will attempt to mediate disputed matters, and the board's representative(s) may call upon the board staff at any time for assistance in conducting the informal settlement conference.

(13) The board's representative(s) shall prohibit or limit access to the board's investigative file by the licensee, the licensee's attorney or representative, the complainant, witnesses, and the public consistent with the Medical Practice Act, §4.05(c)

(14) Although notes may be made by the participants, mechanical or electronic recordings shall not be made of settlement discussions, mediation efforts, and the informal settlement conference.

(15) The settlement conference shall be informal and shall not follow the procedures established under this title for contested cases.

(16) At the conclusion of the informal settlement conference, the board's representative(s) shall make recommendations for disposition of the complaint or allegations which may include recommendations of dismissal and closure of the related investigation. In the event a dismissal and closure of the investigation is not recommended, the representative(s) shall make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases. The board's representative(s) may make recommendations to the licensee for resolution of the issues. Such recommendations may include any disciplinary actions authorized by the Act and such other reasonable restrictions or remedial actions in the public interest. These recommendations may be subsequently modified by the board's representative(s) or staff based on new

information, a change of circumstance, or to expedite a resolution in the interest of protecting the public. The board's representative(s) may also conclude that the board lacks jurisdiction or that a violation of the Act or the board's rules has not been established, and may recommend that the investigation be closed or referred for further investigation. These recommendations may be adopted, modified, or rejected by the duly convened board or through the duly authorized actions of the board's Disciplinary Process Review Committee.

(17) The licensee may either accept or reject the settlement recommendations proposed by the board's representative(s). If the licensee accepts the recommendations, the licensee shall execute the settlement agreement in the form of an agreed order or affidavit as soon thereafter as is practicable. If the licensee rejects the proposed agreement, the matter shall be referred to the board's staff for appropriate disposition as directed by the board's representative(s) or the Disciplinary Process Review Committee. The secretary-treasurer or executive director may also schedule the matter for a hearing as described in Subchapter C of this chapter (relating to Hearings).

(18) Following acceptance and execution by the licensee of the settlement agreement, the agreement shall be submitted to the board for approval.

(19) The following relate to consideration of an agreed disposition by the board.

(A) Upon an affirmative majority vote, the board shall enter an order approving the proposed settlement agreement. The order shall bear the signature of the president of the board or of the officer presiding at such meeting and shall be referenced in the minutes of the board.

(B) If the board does not approve a proposed settlement agreement, the licensee shall be so informed and the matter shall be referred to the board staff for appropriate action to include dismissal, closure, further negotiation, further investigation, an additional informal settlement conference or a hearing.

(C) To promote the expeditious resolution of any complaint or matter relating to the Act or of any contested case, with the approval of the executive director, a member of the Executive Committee, or the Disciplinary Process Review Committee, board staff may present a proposed settlement agreement to the board for consideration and acceptance without conducting an informal settlement conference. If the board does not approve such a proposed

settlement agreement, the licensee shall be so informed and the matter shall be referred to the board staff for appropriate action to include dismissal, closure, further negotiation, further investigation, an informal settlement conference or a hearing.

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 28, 1994.

TRD-9435322

Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: March 7, 1994

For further information, please call: (512) 834-7728, Ext. 402

## Chapter 198. Unlicensed Practice

### • 22 TAC §198.1

The Texas State Board of Medical Examiners proposes new §198.1, concerning the unlicensed practice of medicine. The proposed new section will formalize the procedure for handling complaints made to the board regarding the unlicensed practice of medicine or the performance of any medical procedure without the required permit, registration, or license.

Tim Weitz, general counsel, has determined that there will be no fiscal implications as a result of enforcing or administering the section.

Mr. Weitz also has determined that the public benefit anticipated as a result of enforcing the section as proposed will be to handle complaints regarding unlicensed practice of medicine in an efficient and expeditious manner. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

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

Cross Index—Article 4495b, §3.07.

#### §198.1. Unlicensed Practice.

(a) In the absence of board jurisdiction, complaints to the board regarding the unlicensed practice of medicine or the performance of any medical procedure without

the required permit, registration, or license, shall be routed to one or more of the following for appropriate handling including further investigation, prosecution, and/or injunctive relief.

- (1) the Office of the Attorney General,
- (2) the Texas Department of Public Safety,
- (3) the United State Drug Enforcement Administration,
- (4) the Texas Department of Health,
- (5) the local district or county attorney's office with jurisdiction,
- (6) the local law enforcement agency,
- (7) any state or federal licensing board or other agency which maintains jurisdiction over a person who is the subject of the complaint

(b) In any instance in which the board may have concurrent jurisdiction with another agency over the subject of a complaint related to the unlicensed practice of medicine or the performance of any medical procedure without the required permit, registration or license, the board may pursue further investigation and appropriate disciplinary action before or after routing the complaint to such an agency

(c) The routing of a complaint to another agency as provided by this chapter shall be in writing unless to do so is likely to jeopardize any further investigation, prosecution, or injunctive relief

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 28, 1994

TRD-9435325      Bruce A Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 834-7728, Ext 402

◆      ◆      ◆  
**Chapter 199. Public  
Information**

• 22 TAC §§199.1-199.3

The Texas State Board of Medical Examiners proposes new §§199.1-199.3, concerning public information. The proposed new sections explain the duties of the Public Information Committee and outlines the rules regarding requests to speak at board meetings and requests for written information

Tim Weitz, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Mr Weitz also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to better inform the public of opportunities to speak at board meetings and request information from the board, as well as to better identify the functions of the Public Information Committee. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed

Comments on the proposal may be submitted to Pat Wood, P O Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time

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

Cross Index--Article 4495b, §2 09(a) and §2 09(z)

§199.1 Public Information Committee

(a) The board shall maintain the Public Information Committee as a standing and permanent committee of the board

(b) As set forth in Chapter 161 of this title, the responsibilities and authority of the Public Information Committee include those duties and powers set forth below and in this chapter, as well as such other responsibilities and authority which the board from time to time may delegate

- (1) develop informational brochures for distribution to the public,
- (2) review and make recommendations to the board in regard to press releases, newsletters, and other publications,
- (3) exhibit display booths at conventions,
- (4) study and make recommendations to the board regarding all aspects of public information or public relations,
- (5) make recommendations to the board regarding matters brought to the attention of the Public Information Committee

§199.2 Requests to Speak

(a) To provide the public with a reasonable opportunity to appear before the board and to speak regarding issues under the board's jurisdiction, written requests to speak may be submitted to the attention of

the Public Information Committee at the board's current mailing address

(b) A requester will be notified in writing of the date and time for an opportunity to appear and speak before the Public Information Committee. The time allotted for any particular speaker will be determined in the discretion of the chairman or presiding member of the committee based on the subject matter and available time

(c) The Public Information Committee shall make any necessary recommendations to the board regarding matters brought to the committee's attention by the public and shall report matters of interest to the board through the committee minutes

§199.3 Requests for Information

(a) The public may obtain copies of board newsletters, brochures, pamphlets, press releases and other board publications by written request to the attention of the Public Information Committee at the board's current mailing address

(b) Public records of the board may be obtained to the extent allowed by law through a written request pursuant to the Open Records Act of Texas submitted to the attention of the Director of Hearings/Records Custodian at the board's current mailing address

(c) The provision of written materials or records provided pursuant to a request made under this chapter shall be subject to applicable charges under this title and state law.

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 28, 1994

TRD-9435324      Bruce A Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 834-7728, Ext 402

◆      ◆      ◆  
**Part XIV. Texas  
Optometry Board  
Chapter 279. Interpretations**

• 22 TAC §279.5

The Texas Optometry Board proposes an amendment to §279.5, concerning basic competence examination findings that must be performed by the optometrists and which cannot be delegated to an assistant. With a legislative change to §512 of the Texas Optometry Act during the 73rd Legislature (Texas Civil Statutes, Article 4552), this rule

is required to remove one step that is no longer a part of the basic competence examination.

Lois Ewald, executive director, 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

Ms Ewald also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the examination given to the patient will be given by the optometrist in areas requiring professional judgment, and not delegated to staff members. The rule clarifies those specific examination requirements. 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 Lois Ewald, Executive Director, Texas Optometry Board, 9101 Burnet Road, Suite 214, Austin, Texas 78758

The amendment is proposed under Texas Civil Statutes, Article 4552, §2 14, which provide the Texas Optometry Board with the authority to adopt procedural and substantive rules

#### §279 5 Board Interpretation Number Five

(a)-(d) (No change)

(e) The optometrist or therapeutic optometrist shall, in the initial examination of the patient, make and record, if possible, the following findings of the condition of the patient, but not necessarily limited to the following findings:

(1)-(4) (No change)

(5) assessment of binocular functions, and

(6) amplitude or range of accommodation, [ and ]

[(7) amplitude or range of convergence ]

(f) (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 25, 1994.

TRD-9435291 Lois Ewald  
Executive Director  
Texas Optometry Board

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 835-1938

## Part XXII. Texas State Board of Public Accountancy

### Chapter 501. Professional Conduct

#### Other Responsibilities and Practices

##### • 22 TAC §501.44

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

The Texas State Board of Public Accountancy proposes the repeal of §501 44, concerning Soliciting. The rule is being simultaneously repealed on an emergency basis in the same issue of the *Texas Register*

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

Mr Treacy also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to remove a rule superseded by federal case law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

The repeal is proposed under Texas Civil Statutes, Article 41a01, §6, which provide the Texas State Board of Public Accountancy with the authority to adopt such rules as may be necessary or advisable to carry in effect the purposes of the law, and §21, which lists those actions or omissions for which the board may take disciplinary action against its licensees

The repeal implements Texas Civil Statutes, Article 41a-1, §6 and §21

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 20, 1994

TRD-9435382 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption February 28, 1994

For further information, please call (512) 505-7066

## Chapter 513. Registration

### Registration of Partnerships

#### • 22 TAC §513.34

The Texas State Board of Public Accountancy proposes an amendment to §513 34, concerning Limited Liability Companies

The proposed amendment brings the rule into compliance with legislation effective September 1, 1993, and clarifies which application form is being referenced.

William Treacy, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule

Mr Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a rule consistent with the controlling legislation and a clarified rule. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed

Comments on the proposal may be submitted to J Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, §17, which allows partnerships to practice accountancy if one of the partners is a corporation, and §20, which allows corporations to engage in the practice of accountancy

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 17, and 20.

#### §513 34. Limited Liability Company

(a) In addition to other requirements of these sections with respect to the name of a professional limited liability company (PLLC) engaged in the practice of public accountancy, the name of each PLLC registered with this board must include one of the following designations:

(1) "Professional Limited Liability Company" ["Limited"];

(2) "PLLC" ["Ltd.], or

(3) "P.L.L.C." ["LC"]

[(4) "LLC", or

[(5) Limited Liability Company ]

(b) If only one licensee is involved in the practice of the PLLC it cannot use the term "and company", "and associates," or any other term which is misleading to the general public as a part of the name. However, the term "and company" or "and associates" may be used as long as the names of

the employees licensed by this board are shown on page three of the application for registration as a Professional Limited Liability Company.

(c) The words "professional limited liability company" or "PLLC" or "P.L.L.C." ["L.L.C."] must appear in or with the firm name each time it is used

(d) A limited liability company formed before September 1, 1993, that complied with the Texas Limited Liability Company Act, Article 2.03 or Article 7.03, §A, on the date of formation, is not required to change its name and must include one of the following designations:

- (1) "Limited Company;
- (2) "L.C.,"
- (3) "L.C.,"
- (4) "L.L.C.,"
- (5) "P.L.L.C.,"
- (6) Ltd Co.,
- (7) Limited Liability Company

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 20, 1994

TRD 9435321

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption February 28, 1994

For further information, please call (512) 505-7066

## TITLE 30. ENVIRONMENTAL QUALITY

### Part 1. Texas Natural Resource Conservation Commission

#### Chapter 265 Procedures Before Public Hearings

##### Subchapter C Special Procedures for Freezing the Process

###### • 30 TAC §§265.21-265.35

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes new Subchapter C §§265.21-265.35 concerning Special Procedures for Freezing the Process, new Subchapter D, §§265.36-265.49, concerning Discovery in Hearings Held Under Subchapter C, and new Subchapter E, §§265.50-265.55 concerning Special Sanctions Rules Relating to Freezing the Process. These rules were based on recommendations of the Permit Hearing Task

Force, a group of representatives from environmental, industry-related and other special interest groups assembled to consider ways in which the hearings process could be streamlined and made more fair. Concurrent with the proposed amendments is the proposed repeal of Chapter 274, Complex Hearing Rules.

The significant aspects of Subchapter C provide for an expedited hearings process that freezes the application prior to hearing for hazardous waste, industrial solid waste, municipal solid waste, and air quality applications, and other hearings designated by the examiner on or before the date jurisdiction is established as specified in §265.21(a). This subsection specifies as well that applications may either be included in, or excluded from applicability of these rules by agreement of the parties with examiner approval or for good cause by the examiner.

The first step in this expedited hearings process §265.22(a)(1), requires the Executive Director after completing technical review to prepare a proposed permit based on the application submitted and to develop an initial position recommending issuance, issuance with additional or different permit provisions, or denial of the permit with a document summarizing the basis for denial.

Section 265.22(a)(2) provides that while the Executive Director may subsequently change his position based on evidence adduced in the hearing or other new information, he shall notify all parties and they will be afforded an opportunity to respond.

Section 265.23 provides for a first preliminary hearing at which the examiner will establish a procedural schedule and deal with other preliminary matters. At this first preliminary hearing the applicant will respond to the Executive Director's position and support the proposed permit by submitting all proposed findings of fact that the applicant believes will support the application's issuance.

Section 265.24 sets out a procedural schedule to be implemented for hearings conducted under Subchapter C. While the scheduled periods are presumptively the maximum time limits, they may be extended when necessary in exceptional circumstances for good cause by the Examiner or by agreement of the parties with approval of the Examiner for good cause. There are three scheduled discovery periods as follows: following the first preliminary hearing §265.24(a) provides for a first discovery period lasting 60-90 days. On the last day of the first discovery period the protestants will identify issues based on the proposed findings of fact submitted by the applicant and protestants may also raise new issues and proposed findings of fact in accord with §265.24(b). A second discovery period lasting 60-90 days allows for the applicant to conduct discovery of the protestants culminating in the applicant's response to issues raised by protestants and if desired amendment to the application and proposed findings of fact in accord with §265.24(d) and §265.25(a)(1). Following the second discovery period the Examiner will determine pursuant to §265.25(a)(1) whether the degree and nature of amendments to the application require remand to the Executive Director for

further technical review and notice. If the application is not remanded the application is frozen and no further amendments are allowed as found in §265(a)(2).

The sole exception for late amendments is located in §265.25(b)(3), which allows the applicant to respond with a minor amendment and new proposed findings if protestants are allowed for good cause to raise a new issue regarding a proposed finding of fact which was not previously raised by the protestants as a concern or contested item on their issue list. The reason for inclusion of §265.25(b)(3) is to provide a mechanism for protestants to raise major environmental, site-specific problems which were not known to them at the end of the first discovery period. Preliminary discussions with the regulated community reveals their concern that this provision will allow protestants to withhold relevant issues. However, many of these entities have indicated they would not object to the provision if they can respond to late issues with a major amendment. The Office of Hearings Examiners recommends allowing only minor amendments in response, because allowing major amendments would in effect "thaw" the process. Further, not allowing major amendments will encourage applicants to assure there is no major environmental, site specific problem prior to filing applications.

Section 265.24(e) provides for a third discovery period of 30-50 days to follow the freeze of the application. Section 265.36(a)(3) specifies that parties may discover matters relative to any changes by the applicant and by the staff in response to the applicant, as well as the staff's position regarding protestant's issues. Within seven-ten days of the conclusion of the third discovery period and prior to final preparation for hearing, §265.24 provides for a prehearing conference at which the Examiner will determine the stipulated issues and contested issues that remain, identifying these in a prehearing order.

Section 265.26 and §265.27 provide procedures for identification and limiting of number of witnesses. Section 265.28 provides for rebuttal testimony by the applicant only except when the Executive Director presents evidence which could not have been reasonably anticipated by protestants when they presented their case. In the latter case protestants may also present rebuttal testimony. Section 265.29 provides for use of prefiled testimony as directed by the examiner or by election of individual parties with notification. Section 265.30 specifies situations in which the testimony may be supplemented at the discretion of the examiner. Section 265.31 and §265.32 provide procedures for subpoena of witnesses and production of documentary evidence. Section 265.33 makes witnesses subject to remedies available in district court, if after being subpoenaed such witnesses fail to appear at the hearing. Section 265.34 allows the Examiner to exclude irrelevant, immaterial, or unduly repetitious evidence and to admit evidence not otherwise admissible if it is of a type commonly relied upon by reasonably prudent men. Section 265.35 allows the examiner to permit additional evidence at any time if it appears necessary to the administration of justice.

Subchapter D, Discovery in Hearings Held under Subchapter C, and Subchapter E, Special Sanctions Rules Relating to Freezing the Process, are essentially the same as the sanction and discovery rules concurrently being repealed in Chapter 274, with the exception of proposed §265.36 and §265.37. While voluntary discovery may be sought at any time by any party pursuant to subsection (c) of §265.36, the rule relates to the three discovery periods previously discussed: identifying which parties may discover against whom for each period. Discovery is limited, in the third period, to scope of issues as provided in §265.24(b) and the applicant's response as provided in §265.24(d) of the chapter. The examiner has discretion to limit or expand discovery and to identify which of the time periods apply to parties not fitting into the categories discussed above. Subsection (b) of the rule also provides guidelines for discovery from the Executive Director.

Forms to be used as guidelines are being developed for use for discovery under Subchapter D. These forms, which include an Agreed Protective Order, Agreement for Entry with Release and Indemnification, may be obtained by contacting Claire Arenson at the address referenced later in this preamble or by calling (512) 463-7875.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years these sections as proposed are in effect there are no significant fiscal implications anticipated for state government, local government or small businesses as a result of administration of the sections. The application of these rules to specific contested cases may have some effects on costs of individual proceedings. Generally, the effects will be to reduce the time required and the total costs of contested proceedings, however, these potential cost savings cannot be determined at this time.

Mr. Minick also has determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of enforcement of and compliance with the rules will be a more rapid resolution of contested case hearings. There are no economic costs anticipated to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to TNRCC, Attention Claire Arenson, Chief Hearings Examiner, Office of Hearings Examiners, P.O. Box 13087, Austin, Texas 78711-3087.

The new sections are proposed under Water Code, §5.103 and §5.105, which authorize the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission.

The new rules implement the provisions of Water Code, §5.103(b) and Health and Safety Code, §382.029, which authorize the Commission to adopt procedural rules to be followed in a commission hearing.

#### §265.21 *Applicability*

(a) The provisions of this subchapter shall apply to permit hearings in the areas of hazardous waste, industrial

solid waste, municipal solid waste, and air quality, as well as to other hearings designated by the examiner on or before the date jurisdiction is established. Except by agreement of the parties, the provisions of this subchapter do not apply to permit hearings at which jurisdiction is established prior to the effective date of this subchapter. An application may either be included in, or excluded from, the applicability of this subchapter or any portion of this subchapter by agreement of the parties, with the approval of the examiner, or, for good cause, by the examiner. Good cause may include without limitation a finding that the lack of complexity of a proceeding in a hearing does not warrant the implementation of all or a portion of this subchapter.

(b) The provisions of other chapters of this title and other subchapters of this chapter are inapplicable to proceedings to which this subchapter applies only to the extent that such provisions conflict with this subchapter.

#### §265.22 *Procedures Applicable to the Executive Director and Public Interest Counsel*

##### (a) Executive Director

(1) Evaluation and assessment to issue or to deny. After the executive director has conducted his technical review of an application, the executive director shall prepare a proposed permit based on the application submitted. The executive director shall develop an initial position recommending issuance, issuance with additional or different permit provisions, or denial of the permit. If the executive director recommends issuance with additional or different permit provisions, he shall specify those provisions in a document separate from the proposed permit. If the executive director's recommendation is to deny, he shall issue a document summarizing the basis for his position. The proposed permit and additional documents prepared by the executive director shall be forwarded to the Chief Clerk's Office for filing and setting. This provision does not impair the executive director's ability to return applications pursuant to §281.18 and §281.19 of this title, (relating to Applications Returned and Technical Review).

(2) The executive director may change his position based on evidence or other new information. The executive director shall timely notify all parties on the record or in writing if he changes his opinion and the other parties shall be afforded the opportunity to respond.

(b) Public Interest Counsel. The Public Interest Counsel shall comply with all time frames and procedures required of protestants pursuant to this chapter.

§265.23. *First Preliminary Hearing.* After the required notice has been given and requests for hearing have been received, an examiner will convene a public hearing to take jurisdiction over the application, accept public commentary, designate parties, and set a discovery and procedural schedule. At this hearing the examiner shall address the jurisdiction of the commission over the proceeding. If jurisdiction is established, the following shall occur:

(1) The examiner shall accept public commentary and name the parties.

(2) The examiner shall set acceptable methods of service of pleadings, motions, and discovery.

(3) The applicant shall submit proposed findings of fact.

(4) The applicant shall identify what constitutes the application and shall provide a total of two copies of the permit application, for uses by all of the protestants in the case. These copies shall include all notices of deficiency and the applicant's response to those notices.

(5) The executive director and the applicant shall provide their witness lists.

(6) The parties shall raise claims of confidentiality of portions of the application or agency files in a request for a protective order.

(7) The examiner shall establish a procedural schedule for the hearing consistent with the provisions of §265.24 of this title (relating to Procedural Schedule).

#### §265.24 *Procedural Schedule*

(a) The following procedural schedule shall be implemented for hearings conducted pursuant to this subchapter:

(1) *First Discovery Period.* The first discovery period shall extend 60 to 90 days beginning immediately after the date jurisdiction is established, as set out in full in §265.36(a)(1) of this title (relating to Discovery in Hearings Held under Subchapter C).

(2) *Protestant's List of Issues.* On the last day of the first discovery period the protestants shall identify issues based on the proposed findings of fact submitted by the applicant pursuant to §265.23(3) of this title (relating to First Preliminary Hearing), and shall include a statement as to the basis of the protestant's dispute on each issue. In addition, on the last day of the first discovery period, protestants may also raise new issues and proposed findings of fact.

(b) *Second Discovery Period.* The second discovery period shall extend 60 to 90 days beginning immediately after the

protestants' list of issues, as set out in full in §265.36(a)(2) of this title (relating to Discovery in Hearings Held under Subchapter C).

(c) Applicant's Response. The applicant may respond to issues raised by the protestants no later than the last day of the second discovery period. The applicant may amend its application and proposed findings of fact at this time in response to the issues raised by the other parties.

(d) Third Discovery Period This period shall extend 30 to 50 days immediately following the conclusion of the second discovery period, and shall be limited in accordance with §265.36(a)(3) of this title (relating to Discovery in Hearings Held under Subchapter C).

(e) Prehearing Meeting. A prehearing meeting shall be held within three working days of the conclusion of the third discovery period. The prehearing meeting is a meeting of the parties without the examiner. At this meeting, the parties shall prepare for submission of findings of fact, stipulations, and exhibits to the examiner at the prehearing conference. The parties may have the proceedings transcribed.

(f) Prehearing Conference and Order Within four-seven days of the prehearing meeting, the Examiner will hold a prehearing conference. Consistent with §265.25(b) of this title (relating to Freezing the Process), the examiner shall determine the issues which remain and which findings of fact have been stipulated. Exhibits shall be submitted and marked. At hearing all objections to exhibits, which could have been cured if timely raised, shall be deemed waived if they were not raised during the prehearing conference. Parties wishing to offer exhibits at any time subsequent to the prehearing conference shall notify all other parties as soon as practicable of intention to seek leave to submit additional exhibits. The examiner has the discretion to permit the offer of exhibits not submitted at the prehearing conference for good cause. Good cause includes the need for one party to prepare an exhibit in response to another party's exhibit first seen at the prehearing conference, the need to prepare an exhibit in response to the direct testimony of another party and other cases which are justified by the party seeking to submit the exhibit. The examiner shall set final case time limitations at or before the prehearing conference. The examiner shall incorporate these determinations in a written prehearing order.

(g) Final Preparation Final preparation for hearing shall extend no more than 14 calendar days from the date of issuance of the prehearing order.

(h) Evidentiary Hearing The evidentiary hearing shall extend no more than 30 calendar days in duration immediately

following final preparation for hearing, subject to extension by the Examiner for good cause. The examiner shall set reasonable time limitations for the presentation of the cases of all parties in order to limit the hearing to this time period.

(i) Proposal for Decision The Examiner shall issue a Proposal for Decision within 45 to 60 days from the conclusion of the evidentiary hearing.

(j) The scheduled periods set out in this subsection are presumptively the time limits but they may be extended in exceptional circumstances for good cause by the Examiner or by agreement of the parties with approval of the Examiner for good cause. Good cause may include without limitation a finding that the complexity of a proceeding warrants extension of one or more of the scheduled periods.

#### §265.25. Freezing the Process.

##### (a) The Application.

(1) In accordance with §265.24(d) of this title (relating to Procedural Schedule), the applicant may amend its application and proposed Findings of Fact in response to issues raised by other parties. The applicant may respond by amendment and new proposed findings of fact. Given the nature and degree of amendment, the application may be remanded by the examiner to the executive director for further technical review. The application may be subject to additional notice, discovery and hearing requirements.

(2) Subsequent to the time for filing a response pursuant to §265.24(d) of this title (relating to Procedural Schedule), the applicant may not amend its application or proposed Findings of Fact to address issues timely and adequately identified by the protestants pursuant to §265.24(b) of this title.

(b) Narrowing Issues. At the prehearing conference, the examiner shall require all parties to address stipulating to each of the applicant's proposed findings of fact. The applicant's proposed findings shall be treated as follows.

(1) A proposed finding stipulated by all parties shall be regarded as established.

(2) A proposed finding that has not been stipulated, was on the other parties' issue list, and for which the other parties have a reasonable basis for continuing to contest the issue, may be raised as an issue at the hearing. The reasonableness of the other parties' basis for contesting the issue may receive further inquiry by the examiner during the prehearing conference. If the examiner determines that the other parties have not shown a reasonable basis

for contesting the finding and the executive director did not raise the issue as a basis for permit denial, the examiner shall deem the finding stipulated.

(3) A proposed finding of fact to which the protestants refuse to stipulate, but which was not on the protestants' issue list, shall receive further inquiry by the examiner. Upon a showing of good cause, with consideration of whether the protestants' position reasonably acts as a surprise to the applicant, the issue may be raised at the hearing in which event the applicant may respond to the new issue with an application minor amendment and new proposed Findings of Fact.

§265.26 Identification of Witnesses. The examiner shall require the parties to exchange lists of witnesses who will be called to testify at the evidentiary hearing. The witness lists shall include the names and addresses of the witnesses and a brief description of the subject matter of their anticipated testimony.

(1) The witness lists of the applicant and the executive director shall be submitted on the day jurisdiction is established over the proceeding, and may be amended by these parties to address the protestants' list of issues within ten days after close of the second discovery period.

(2) The witness list of the protestants shall be submitted when the protestants list their issues. The witness lists of the protestants and the executive director may be amended to address the applicant's response within ten days of the applicant's response. The applicant shall have sufficient time, as determined by the examiner, to take discovery on newly added protestant witnesses.

(3) The applicant may call rebuttal witnesses not identified on its witness list only on a showing of good cause and after the parties are afforded a reasonable opportunity to conduct discovery.

(4) In addition to amendments authorized by paragraphs (1)-(3) of this subsection, the examiner may allow a party to amend its witness list upon a showing of good cause. There is a continuing obligation to update witness lists as soon as the need for and identity of the new witness is reasonably known.

§265.27 Limiting the Number of Witnesses. At the request of a party or on the examiner's own motion, the examiner may reduce excessive numbers of witnesses identified pursuant to §265.26 of this title (relating to Identification of Witnesses) as follows.

(1) The examiner may direct the party to do one of the following

(A) voluntarily reduce its listed witnesses to a specified number, or

(B) provide a summary of the expected testimony of each witness sufficiently specific to show the need for the testimony

(2) The examiner may use the witness lists provided under this section to strike witnesses whose testimony would be unduly repetitious or irrelevant, or in order to render discovery and the hearing process manageable

(3) If a party fails or refuses to comply with the directions of the examiner, the examiner may limit or strike the testimony of witnesses called by the party in any reasonable manner

§265.28 *Rebuttal.*

(a) The applicant, as the party with the burden of proof, is the only party allowed to present a rebuttal case as a matter of right. In all cases, the applicant shall be allowed to close with its rebuttal

(b) The protestants may present a rebuttal case when the executive director presents evidence which could not have been reasonably anticipated at the time the protestants presented their case

(c) Rebuttal cases must be presented within the time limitations set by the examiner in the prehearing order

§265.29 *Prefiled Testimony*

(a) Unless otherwise directed by the examiner, any party shall have the option to prefile all or any part of the testimony of all or any one of its witnesses. One party's election to prefile shall not control another party's decision regarding whether to prefile testimony. If a party decides to use prefiled testimony, it shall notify the other parties and the examiner at least 60 days before the evidentiary hearing begins, identifying the relevant witness(es)

(b) The examiner may direct all parties to prefile their entire direct cases. If all direct testimony is prefiled, whether by examiner's order or by agreement of the parties:

(1) No party shall be allowed to go beyond the scope of its prefiled testimony on direct examination, and

(2) The examiner may limit or prohibit non-adverse cross-examination if unnecessary to the development of a complete evidentiary record

(c) The live presentation of prefiled testimony at the evidentiary hearing shall be limited to introductory material,

corrections to the prefiled testimony, and a brief summary of not more than ten minutes.

(d) The examiner shall set the deadline for the filing of prefiled testimony at a reasonable time before the evidentiary hearing. The factors the examiner shall consider include the complexity of the material, the expected length of the material, the number of witnesses or issues that are to be presented by prefiled testimony, and the acceptable method of presenting objections.

§265.30 *Supplementing Prefiled Testimony and Objections*

(a) At the discretion of the examiner, prefiled testimony may be supplemented with the introduction of newly discovered evidence, or when it becomes obvious to the witness that the original prefiled testimony was false or incomplete, or when substantive evidence has been excluded as a result of the examiner's ruling on an objection to prefiled testimony

(b) If prefiled testimony is supplemented as provided in this section, the other parties may be afforded the opportunity to supplement their prefiled testimony or prefiled objections. Supplementation by the other parties shall be limited to those subjects which were supplemented by the original witness

§265.31 *Subpoena of Witnesses and for the Production of Documentary Evidence*

(a) On his own motion or on the written request of any party to a complex hearing pending before him, on a showing of good cause, and on deposit of sums as required by the Administrative Procedure Act and §263.34 of this title (relating to Evidence), the examiner shall issue a subpoena addressed to the sheriff or constable of the State of Texas, or any other person authorized to serve subpoenas as provided in the Texas Rules of Civil Procedure, Rule 178, to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings. The Office of Hearings Examiners may develop a standard subpoena request form which the examiner may require the requesting party to complete and return as a prerequisite to issuance of a subpoena

(b) If a subpoena also commands the person to whom it is directed to produce books, papers, documents or tangible things designated therein, the examiner, on motion made reasonably and in any event at or before the time specified in the subpoena for compliance therewith, may

(1) quash or modify the subpoena if it is unreasonable and oppressive, or

(2) condition denial of the motion to quash or modify upon the advancement by the person on whose behalf the subpoena is issued, of the reasonable costs of producing the books, papers, documents, or tangible things.

§265.32. *Form of Subpoena.* The heading of the subpoena shall be "The Texas Natural Resource Conservation Commission." It shall state the style of the hearing, that the hearing is pending before the Texas Natural Resource Conservation Commission, the time and place at which the witness is required to appear, and the party at whose insistence the witness is summoned. It shall be signed by the examiner, but need not be under the seal of the commission and the date of issuance shall be noted thereon. It may be made returnable forthwith, or on any date for which hearing of the docketed matter may be set. It shall be addressed to any sheriff or constable of the State of Texas or other person authorized to serve subpoenas as provided in the Texas Rules of Civil Procedure, Rule 178.

§265.33 *Witness Shall Attend Hearing.* Every witness summoned in any hearing shall attend the hearing from day to day, and from place to place, until discharged by the examiner or party summoning such witness. If any witness after being duly subpoenaed shall fail to attend, such witness may be subject to any remedies available through district court to the party summoning the witness.

§265.34 *Evidence*

(a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence will be excluded

(b) Whenever necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, 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.

§265.35 *Additional Testimony.* When it appears to be necessary to the administration of justice, the examiner may permit additional evidence to be offered at any time

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



Earliest possible date of adoption: March 7, 1994

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

◆ ◆ ◆  
Subchapter D. Discovery in  
Hearings Held Under  
Subchapter C

• 30 TAC §§265.36-265.49

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

§265.36. *Discovery in Hearings Held under Subchapter C*

(a) Except where otherwise ordered by the examiner, discovery in hearings held under Subchapter C of this Chapter will be separated by time and manner into three distinct periods. Within the timeframe set for each period in this subsection, the examiner shall have the discretion to set the duration of each discovery period

(1) First Discovery Period. The first discovery period shall last between 60 and 90 days from the date that jurisdiction is taken by the agency. This period is reserved for the protestant's discovery from the applicant, and the applicant's limited discovery of the nature and funding of the protestant

(2) Second Discovery Period. The second discovery period shall last between 60 to 90 days from the end of the first discovery period. Discovery during this period shall consist of the following

(A) the protestant may discover from the staff,

(B) the applicant may discover from the protestant and the staff; the number of interrogatories available to the applicant during the second discovery period shall be reduced by the number of interrogatories submitted during the first discovery period,

(C) the staff may discover from the protestant and the applicant

(3) Third Discovery Period. The third discovery period shall last between 30 to 50 days from the end of the second discovery period. During this period, any discovery by the protestant or the applicant

from the staff shall be limited to the staff's position regarding the applicant's response, and the staff's position regarding the protestants' issues. Discovery from the applicant and the protestant shall be limited to the scope of the listed issues as provided in §265.24(b) of this title (relating to Procedural Schedule) and the applicant's response as provided in §265.24(d) of this title. The examiner shall have discretion to limit or expand discovery in this period further in the interest of fairness. The examiner shall identify which of the time periods listed above apply for discovery for those parties not fitting into the categories discussed above as appropriate.

(b) Discovery from the Executive Director. Whenever discovery is sought of the staff of the executive director in any of the discovery periods, it shall be in accord with the following provisions:

(1) Beginning at the time jurisdiction is taken, all parties shall have access to all unprivileged documents in the agency's files without the necessity of submitting an Open Records request or a Request for Production. It shall be the agency's responsibility to ensure that documents protected from discovery as provided for under law are removed from agency public files and that all assertions of privilege by the executive director relating to those agency files are made at the time jurisdiction is taken or other timely manner.

(2) The executive director shall answer Interrogatories and Requests for Production during the second and third discovery periods.

(3) The executive director shall be subject to depositions during the second and third discovery periods, only under the following conditions:

(A) Each deposition shall be limited to a total of four hours.

(B) Any party seeking to depose a staff witness shall attempt to set the time and date of the deposition through agreement with the staff.

(C) The staff shall not be required to submit to a date for the deposition less than ten days from the date of the request.

(D) The staff shall not be required to submit to a deposition any later than a date 20 days prior to the prehearing meeting

(E) All depositions of staff witnesses shall be taken in Austin in one of the TNRCC office buildings.

(F) All of these requirements may be waived by agreement of the staff or by the examiner on a showing of good cause.

(c) Voluntary discovery may be sought at any time by any party.

§265.37. *Forms and Scope of Discovery; Protective Orders; Supplementation of Responses.*

(a) Forms of discovery. For purposes of hearings held under Subchapter C of this chapter, all forms of discovery are deemed compellable. Permissible forms of discovery for complex hearings include:

(1) oral or written depositions of any party or nonparty;

(2) written interrogatories;

(3) requests of a party for admissions of facts and the genuineness or identity of documents or things;

(4) requests and motions for production, examination, and copying of documents or other tangible materials; and

(5) requests and motions for entry upon and examination of real property.

(b) Scope of discovery. Except as provided in subsection (c) of this section, unless otherwise limited by order of the examiner in accordance with these rules, the scope of discovery is as follows.

(1) In general. Parties may obtain discovery regarding any matter which is relevant to the subject matter in the pending proceeding. It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. It is also not grounds for objection that an interrogatory propounded pursuant to §265.40 of this title (relating to Interrogatories to Parties) involves an opinion or contention that relates to fact or the application of law to fact, but the examiner may order that such an interrogatory not be answered until after designated discovery has been completed or until a prehearing conference or other later time. It is also not grounds for objection that a request for admission propounded pursuant to §265.41 of this of this title (relating to Requests for Admissions) relates to statements or opinions of fact or of the application of law to fact or mixed questions of law and fact or that the documents referred to in a request may not be admissible at trial.

(2) Documents and tangible things. A party may obtain discovery of the existence, description, nature, custody, condition, location and contents of any and all documents (including papers, books, ac-

counts, drawings, graphs, charts, photographs, electronic or videotape recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom production is sought, into reasonably usable form) and any other tangible things which constitute or contain matters relevant to the subject matter in the proceeding. A person is not required to produce a document or tangible thing unless it is within the person's possession, custody or control. Possession, custody or control includes constructive possession such that the person need not have actual physical possession. As long as the person has a superior right to compel the production from a third party (including an agency, authority or representative), the person has possession, custody or control. The executive director and the public interest counsel of the commission are not required to amass, assemble, collect, compile, gather, and/or sort the materials described in this paragraph if those materials are readily available in the commission's records.

### (3) Land

(A) During the appropriate discovery period, a party may obtain a right of entry upon designated land or other property in the possession or control of a person upon whom a request or motion to produce is served when the designated land or other property is relevant to the application which is the subject of the hearing for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. This provision is not intended to affect any statutory rights authorizing access. If a person has a superior right to compel a third person to permit entry, the person with the right has possession or control. Upon request of the controller or possessor of the land, the examiner may order that entry upon the land be subject to any existing safety regulations or protections of trade secrets or processes. Unless otherwise ordered by the examiner, the parties shall enter into a standard Agreement for Entry Upon Land which contains the following:

- (i) a release and indemnification provision,
- (ii) allowance for all parties to split samples,
- (iii) a provision that the controller of the land shall allow entry within a reasonable period of time after the request, and
- (iv) a provision that the controller of the land shall have the right to accompany the party entering the property.

(B) The parties may request and the examiner will rule on whether a party intending to take samples shall be required to reveal the types of samples and

methodology and parameters of tests performed on those samples prior to or subsequent to entry upon land.

(4) Potential parties and witnesses. A party may obtain discovery of the identity and location (name, address and telephone number) of any potential party and of persons having knowledge of relevant facts. A person has knowledge of relevant facts when he or she has or may have knowledge of any discoverable matter. The information need not be admissible in order to satisfy the requirements of this subsection and personal knowledge is not required.

(5) Experts and reports of experts. Discovery of the facts known, mental impressions and opinions of experts, otherwise discoverable because the information is relevant to the subject matter in the pending proceeding but which were acquired or developed in anticipation of trial and the discovery of the identity of experts from whom the information may be learned may be obtained only as follows:

(A) General. A party may obtain discovery of the identity and location (name, address and telephone number) of an expert who may be called as an expert witness, the subject matter of which the witness is expected to testify, the mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert. The disclosure of the same information concerning an expert used for consultation and who is not expected to be called as an expert witness at trial is required if the consulting expert's opinion or impressions have been reviewed by a testifying expert.

(B) Reports. A party may also obtain discovery of documents and tangible things including all tangible reports, physical models, compilations of data and other materials prepared by an expert or for an expert in anticipation of the expert's hearing and deposition testimony. The disclosure of material prepared by an expert used for consultation is required even if it was prepared in anticipation of trial if the consulting expert's opinions or impressions have been reviewed by a testifying expert.

(C) Determination of status. The examiner has discretion to compel a party to make the determination and disclosure of whether an expert may be called to testify within a reasonable and specific time.

(D) Reduction of report to tangible form. If the discoverable factual observations, tests, supporting data, calcula-

tions, photographs, or opinions of an expert who will be called as an expert witness have not been recorded and reduced to tangible form, the examiner may order these matters reduced to tangible form and produced within a reasonable time.

(6) Statements. Any person, whether or not a party, shall be entitled to obtain, upon written request, his own statement previously made concerning the matter which is the subject of the hearing, or its subject matter, which is in the possession, custody or control of any party. If the request is refused, the person may move for an examiner's order under the Administrative Procedure Act, Texas Government Code, Chapter 2001.091. For the purpose of this paragraph, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it, and

(B) a stenographic, mechanical, electrical or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded.

(c) Exemptions. The following matters are protected from disclosure by privilege:

(1) Work product. The work product of an attorney, subject to the exceptions of Texas Rules of Civil Evidence, §503(d), which shall govern as to work product as well as to attorney-client privilege.

(2) Experts. The identity, mental impressions and opinions of an expert who has been informally consulted or of an expert who has been retained or specially employed by another party in anticipation of, or preparation for, trial or any documents or tangible things containing such information if the expert will not be called as an expert witness, except that the identity, mental impressions and opinions of an expert who will not be called to testify as an expert and any documents or tangible things containing such impressions and opinions are discoverable if the consulting expert's opinion or impressions have been reviewed by a testifying expert.

(3) Written statements. The written statements of potential witnesses and parties, when made in connection with, or in anticipation of, the prosecution, investigation, defense or protest of the particular application or petition that is the subject of the proceeding, except that persons, whether parties or not, shall be entitled to obtain, upon request, copies of statements they have previously made concerning the

application or petition or its subject matter and which are in the possession, custody, or control of any party. The term "written statements" includes

(A) a written statement signed or otherwise adopted or approved by the person making it; and

(B) a stenographic, mechanical, electrical or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded. For purpose of this paragraph, a photograph is not a statement.

(4) Party communications. Communications between agents or representatives or the employees of a party to the hearing or communications between a party and that party's agents, representatives or employees, when made in connection with the prosecution, investigation, defense or protest of the particular application or petition that is the subject of the particular proceeding, or in anticipation of the prosecution, protest, or defense of any claims made in a part of the pending hearing. This exemption does not include communications prepared by or for experts that are otherwise discoverable. For the purpose of this paragraph, a photograph is not a communication.

(5) Other privileged information. Any Matter Protected from Disclosure by Any Other Privilege. Upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means, a party may obtain discovery of the materials otherwise exempt from discovery by paragraphs (3) and (4) of this subsection. Nothing in this subsection shall be construed to render non-discoverable the identity and location of any potential party, any person having knowledge or relevant facts, any expert who is expected to be called as a witness during trial, or of any consulting expert whose opinions or impressions have been reviewed by a testifying expert.

(d) Presentation of objections. Either an objection or a motion for protective order made by a party to discovery shall preserve that objection without further support or action by the party unless the objection or motion is set for special hearing and determined by the examiner. At any reasonable time, any party may request a special hearing on any objection or motion for protective order. The failure of a party to obtain a ruling prior to trial on any objection to discovery or motion for protective order does not waive such objection or motion. In objecting to an appropriate re-

quest within the scope of subsection (b) of this section, a party seeking to exclude any matter from discovery on the basis of an exemption or immunity from discovery, must specifically plead the particular exemption or immunity from discovery relied upon and at or prior to any special hearing, shall produce any evidence necessary to support such claim either in the form of affidavits served at least seven days before the special hearing or by testimony. If the examiner determines that an in camera inspection and review by the examiner of some or all of the requested discovery is necessary, the objecting party must segregate and produce the discovery to the examiner in a sealed wrapper or by answers made in camera to deposition questions, to be transcribed and sealed in event the objection is sustained. When a party seeks to exclude documents from discovery and the basis for objection is undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights rather than a specific immunity or exemption, it is not necessary for the examiner to conduct an inspection and review of the particular discovery before ruling on the objection. After the date on which answers are to be served, objections are waived unless an extension of time has been obtained by agreement or order of the examiner or good cause is shown for the failure to object within such period.

(e) Protective orders. On motion specifying the grounds and made by any person against or from whom discovery is sought under these rules, the examiner may make any order in the interest of justice necessary to protect the movant from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. Insofar as the applicant is claiming confidentiality of any part of the permit application, the applicant shall request a protective order at the time that jurisdiction is taken. All other claims of confidentiality shall be handled as they arise, according to the timelines established under subsection (a) of this section. Unless amended by the examiner, a standard order developed by the Office of Hearings Examiners shall be used. Motions or responses made under this section may have exhibits attached including affidavits, discovery pleadings, or any other documents. Specifically, the examiner's authority as to such orders extends to, but is not limited by, any of the following:

(1) ordering 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,

(2) ordering that the discovery be undertaken only by such method or upon

such terms and conditions or at the time and place directed by the examiner.

(f) Duty to supplement. A party who has responded to a request for discovery that was correct and complete when made is under no duty to supplement his response to include information thereafter acquired, except the following shall be supplemented not less than 30 days prior to trial unless the examiner finds that a good cause exists for permitting or requiring later supplementation.

(1) A party is under a duty reasonably to supplement his response if he obtains information upon the basis of which

(A) he knows that the response was incomplete and incorrect when made,

(B) he knows that the response, though correct and complete when made is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading; or

(2) If the party expects to call an expert witness when the identity or the subject matter of such expert witness' testimony has not been previously disclosed in response to an appropriate inquiry directly addressed to these matters, such response must be supplemented to include the name, address and telephone number of the expert witness and the substance of the testimony concerning which the expert witness is expected to testify, as soon as is practical, but in no event less than 30 days prior to trial, except on leave of the examiner.

(3) In addition, a duty to supplement answers may be imposed by order of the examiner or agreement of the parties, or at any time prior to trial, through new requests for supplementation or prior answers.

(g) Discovery Disputes

(1) Discovery motions. All discovery motions shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of examiner intervention have been attempted and failed.

(2) Motions to Compel and for Protective Orders. Whenever a discovery dispute arises, the disputing party shall file a motion to compel or for protective order. Any response shall be filed within five working days of receipt. The response may be a showing of good cause for extra time to respond. The examiner shall rule within five working days of the response.

(3) Finality of Examiner's Ruling. No discovery issues shall be certified to the commission.

§265.38 *Stipulations Regarding Discovery Procedure* Unless the examiner orders otherwise, the parties may, by written agreement

(1) provide that depositions be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and

(2) modify the procedures provided by these rules for other methods of discovery. An agreement affecting a deposition upon oral examination is enforceable if the agreement is recorded in the deposition transcript

§265.39 *Discovery and Production of Documents and Things for Inspection, Copying or Photography.*

(a) Procedure Any party may serve upon any other party a request

(1) to produce and permit the party making the request or someone acting on his behalf, to inspect, sample, test, photograph, and/or copy, any designated documents or tangible things which constitute or contain matters within the scope of and subject to the limitations of §265.37 of this title (relating to Forms and Scope of Discovery; Protective Orders, Supplementation of Responses) which are in the possession, custody or control of the party upon whom the request is served, or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation within the scope of §265.37 of this title (relating to Forms and Scope of Discovery, Protective Orders, Supplementation of Responses)

(3) the request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner for making the inspection and performing the related acts

(4) the party upon whom the request is served shall make the documents available in Texas and shall serve a written response which shall state, with respect to each item or category of items, that inspection or other requested action will be permitted as requested, and he shall thereafter comply with the request, except only to the extent that he makes objections in writing to particular items, categories or items, stating specific reasons why such discovery should not be allowed

(5) a true copy of the request and response, together with proof of the service thereof on all parties shall be filed promptly with the examiner by the party

making it, except that any documents produced in response to a request need not be filed

(6) party who produces documents for inspection shall produce them as they are kept in the usual course of business, or shall organize and label them to correspond with the categories in the request. The examiner may require all documents to be produced in usable form, which may require production of computer disks. The examiner may also require a party to provide reasonable indicies to its documents or computerized information produced in response to discovery requests, and to maintain a log of documents produced

(7) testing or examination shall not extend to destruction or material alteration of an article without notice, hearing, and prior approval by the examiner

(8) in order to avoid unnecessary duplication, the examiner shall, whenever convenient, group parties for document production

(9) the examiner may determine on a case by case basis a reasonable allocation of costs associated with the production.

(b) Time The request shall be served upon every party to the hearing. The party upon whom the request is served shall serve a written response and objections, if any, within 21 days after the service of the request. The time for making a response may be shortened or lengthened by the examiner

(c) Order. If objection is made to a request or to a response, either party may file a motion and seek relief pursuant to §265.37 of this title (relating to Forms and Scope of Discovery, Protective Orders, Supplementation of Responses), or §265.50 of this title (relating to Abuse of Discovery, Sanctions)

§265.40 *Interrogatories to Parties*

(a) Any party may serve upon any other party written interrogatories to be answered by the party served, or, if the party served is a public or private corporation, or a partnership or association, or governmental agency, by an officer or agent who shall furnish such information as is available to the party. Upon request of the examiner, a true copy of the interrogatories and the written answers or objections, together with proof of service, shall be filed promptly with the examiner by the party making them, except that when an interrogatory is answered by reference as permitted in paragraph (2) of this subsection, the records so referenced need not be filed

(1) Service When a party is represented by an attorney, service of interrogatories and answers to interrogatories

shall be made on the attorney unless service upon the party himself is ordered by the examiner. Copies of all interrogatories and answers to interrogatories shall be sent to every other party.

(2) Scope Interrogatories may relate to any matters which can be inquired into under §265.37 of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses), but the answers, subject to any objections as to admissibility, may be used only against the party answering the interrogatories. Where the answer to an interrogatory may be derived or ascertained from public records, or from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and, if applicable, to afford the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. The specification of records provided shall include sufficient detail to permit the interrogating party to locate and identify as readily as can the party served, the records from which the answers may be ascertained.

(3) Discovery Periods The availability of interrogatories shall be limited according to the discovery period, as described in §265.36 of this title (relating to Discover in Hearings)

(A) In the first or second discovery period each party shall be allowed to serve one set of interrogatories, as permitted in the Texas Rules of Civil Procedure, Rule 168(5). If the applicant has used interrogatories during the first discovery period, the interrogatories shall be considered as part of the total number of interrogatories the applicant is allowed during the second discovery period.

(B) In the third discovery period, each party shall also be allowed a second set of 20 interrogatories

(b) Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered but the examiner, on motion of the deponent or the party interrogated, may make such protective order as justice requires.

(c) Unless other time limits are set by the examiner or by agreement of the parties, the party upon whom the interroga-

ories have been served shall serve answers upon the party submitting the interrogatories within the time specified by the party serving the interrogatories, which specified time shall not be less than 21 days after the service of the interrogatories. The examiner may enlarge or shorten the time for serving answers or objections.

(d) The number of questions, including subsections, in a set of interrogatories served during the first or second discovery period shall be limited so as not to require more than 30 answers. In the second set of interrogatories allowed in the third discovery period, the interrogatories shall be limited so as not to require more than 20 answers. Each part of a compound question will be considered a separate question. No more than two sets of interrogatories may be served by a party to any other party, except by agreement or as may be permitted by the examiner upon a showing of good cause. The examiner may reduce or enlarge the number of interrogatories or sets of interrogatories if justice so requires. Furthermore, the examiner may group parties specifically for discovery purposes, in order to limit the number of questions that must be answered by any party. In the event that parties are grouped, the examiner may increase the allowable number of interrogatories beyond that specified in the Texas Rules of Civil Procedure, Rule 168(5) to the extent fairness requires. The provisions of §265.37 of this title (relating to Forms and Scope of Discovery, Protective Orders, Supplementation of Responses) are applicable for the protection of the party from whom answers to interrogatories are sought under this section.

(e) The interrogatories shall be answered separately and fully in writing under oath. Answers to interrogatories shall be preceded by the question or interrogatory to which the answer pertains. True copies of the interrogatories, and answers and objections thereto, shall be served on all parties or their attorneys, and copies thereof shall be provided to any additional parties upon request. The answers shall be signed and verified by the person making them and the provisions of §263.7 of this title (relating to Affidavit by Representative) shall not apply.

(f) A party may serve written objections to specific interrogatories or portions thereof. Objections must be served within 14 days of receiving the interrogatories. Answers only to those interrogatories, or portions thereof, to which objection is made, shall be deferred until the objections are ruled upon and for such additional time thereafter as the examiner may direct.

#### §265.41 Requests for Admissions

##### (a) Request for admission

(1) At any time after jurisdiction over the application or petition has been

taken by the examiner, except as provided in §265.51 of this title (relating to Sanctions for Failure to Serve or Deliver Copy of Pleadings and Motions), a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of §265.37 of this title (relating to Forms and Scope of Discovery, Protective Orders, Supplementation of Responses) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Except by agreement of the parties or upon leave of the examiner, a party may serve only one set of admissions upon any other party.

(2) Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection or copying. Whenever a party is represented by an attorney of record, service for a request for admissions shall be made on his attorney unless service on the party himself is ordered by the examiner. Upon request of the examiner, a true copy of a request for admissions or of a written answer or objection, together with proof of the service thereof, shall be promptly filed with the examiner by the party making it.

(3) Each matter of which an admission is requested shall be separately set forth. The examiner may specify the dates by which the admission may be served, answered, specifically denied or objected to as provided in this section. The matter is admitted without necessity of an examiner's order unless, within 14 days after service of the request, or within such time as the examiner may allow, or as otherwise agreed by the parties, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.

(4) If objection to a requested admission is made, the reason therefore shall be stated.

(5) The answer to a requested admission shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder.

(6) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or easily

obtainable by him is insufficient to enable him to admit or deny.

(7) A party who considers that a matter of which an admission is requested presents a genuine issue for hearing may not, on that ground alone, object to the request, he may, subject to the provisions of §265.50 of this title (relating to Abuse of Discovery, Sanctions), deny the matter or set forth reasons why he cannot admit or deny it.

##### (b) Effect of admissions

(1) Any matter admitted under this section is conclusively established as to the party making the admission unless the examiner, on motion and for good cause shown, permits withdrawal or amendment of the admission.

(2) Subject to the provisions of §265.37 of this title (relating to Forms and Scope of Discovery, Protective Orders, Supplementation of Responses) governing duty to supplement discovery responses, the examiner may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause for such withdrawal or amendment if the examiner finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the proceeding will not be subserved thereby.

#### §265.42 Depositions

(a) Type of Deposition. The types of depositions allowed shall include those under the Texas Rules of Civil Procedure, Rule 202. The deposing party shall have the option of selecting the type of deposition, but in all cases a recording shall be made. When a party seeks a deposition that is not transcribed by a court reporter, any other party may, at its own cost, provide for a court reporter.

(b) Deposition Witnesses. The examiner may order that all deposition witnesses be made available in Texas. At the time of deposition the witness shall be prepared to testify about those issues and opinions for which the witness is identified.

§265.43 Issuance of Commission to Take Deposition. On his own motion or on the written request of any party to a contested case pending before him, and on deposit of sums as required by the Administrative Procedures Act, an examiner shall issue a commission, addressed to the several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects as may be

necessary and proper for the purposes of the proceeding.

**§265.44 Witness Shall Comply with Discovery.** In the case of failure of a person to comply with a subpoena or commission to take deposition issued pursuant to these rules, the party requesting the subpoena or commission to take deposition, may bring suit to enforce the subpoena or commission to take deposition in a district court, either in Travis County, or in the county in which the subject hearing may be held.

**§265.45 Non-Stenographic Recording; Deposition by Telephone**

(a) Non-Stenographic Recording. Any party may cause the testimony and other available evidence at a deposition upon oral examination to be recorded by other than stenographic means, including videotape recordings, upon leave of the examiner, and the non-stenographic recording may be presented at trial in lieu of reading from a stenographic transcription of the deposition, subject to the following

(1) Any party intending to make a non-stenographic recording shall give five days' notice to all other parties by mail, return receipt requested, and shall specify in said notice the type of non-stenographic recording which will be used.

(2) After notice is given, any party may make a motion for relief under §265.37 of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses). If a special hearing session is not held prior to the taking of the deposition, the non-stenographic recording shall be made subject to the examiner's ruling at a later time.

(3) Any party shall have reasonable access to the original recording and may obtain a duplicate copy at his own expense

(4) The expense of a non-stenographic recording shall not be taxed as costs, unless before the deposition is taken, the parties so agree, or the examiner so orders, for good cause shown, on motion and notice

(5) The non-stenographic recording shall not dispense with the requirement of a stenographic transcription unless the examiner shall so order on motion and notice before the deposition is taken and such order shall make such provision concerning the manner of taking, preserving and filing the non-stenographic recording as may be necessary to assure that the recorded testimony will be intelligible, accurate and trustworthy. Such order shall not prevent any party from having stenographic transcription made at his own expense. In the event of an appeal, the non-stenographic

recording shall be reduced to writing at the expense of the party making the recording.

(b) Deposition by telephone. The parties may stipulate in writing, or the examiner may, upon motion, order that a deposition be taken by telephone. For the purposes of this section and §265.43 of this title (relating to Issuance of Commission to Take Deposition) and §274.71 of this title (relating to Abuse of Discovery; Sanctions), a deposition taken by telephone is taken in the district and at the place where the deponent is to answer questions propounded to him

**§265.46 Failure of Party or Witness to Attend or to Serve Subpoena; Expenses.**

(a) Failure of party giving notice to attend. If the party giving the notice of the taking of an oral deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the examiner may recommend that the commission order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

(b) Failure of witness to attend. If a party gives notice of the taking of an oral deposition of a witness and the witness does not attend because of the fault of the party giving the notice, if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the examiner may recommend that the commission order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees

**§265.47 Deposition Examination, Cross-Examination and Objections**

(a) Written cross-questions on oral examination. At any time before the expiration of ten days from the date of the service of the notice to take oral deposition, any party, in lieu of participating in the oral examination may serve written questions on the party proposing to take the deposition who shall cause them to be transmitted to the officer authorized to take the deposition who shall propound them to the witness and record the answers verbatim.

(b) Oath. Every person whose deposition is taken upon oral examination shall be first cautioned and sworn to testify the truth, the whole truth and nothing but the truth

(c) Examination. The witness shall be carefully examined, his testimony shall be recorded at the time it is given and thereafter transcribed by the officer taking the deposition or by some person under his personal supervision

(d) Objections to testimony. The officer taking the oral deposition shall not sustain objections made to any of the testimony or fail to record the testimony of the witness because an objection is made by any of the parties or attorneys engaged in taking the testimony. Any objections made when the deposition is taken shall be recorded with the testimony and reserved for the action of the examiner before whom the cause is pending. Absent express agreement recorded in the deposition to the contrary

(1) objections to the form of questions or the nonresponsiveness of answers are waived if not made at the taking of an oral deposition, and

(2) except as provided in paragraph (1) of this subsection, or unless otherwise provided by agreement of the parties recorded by the officer in the deposition transcript, the examiner shall not be confined to objections made at the taking of testimony

**§265.48. Submission to Witness, Changes, Signing**

(a) When the testimony is fully transcribed, the deposition officer shall transmit or provide the original deposition transcript to the witness or if the witness is a party with an attorney of record, to the attorney of record, for examination and signature, by the witness before any officer authorized to administer an oath, unless such examination and signature are waived by the witness and by the parties

(b) No erasures or obliterations of any kind are to be made to the original testimony as transcribed by the deposition officer. Any changes in form or substance which the witness desires to make shall be furnished to the deposition officer by the witness, together with a statement of the reasons given by the witness for making such changes. The changes and the statement of the reasons for the changes shall be attached to the deposition by the depositions officer. The deposition transcript and any changes shall then be subscribed by the witness under oath, before any officer authorized to administer an oath, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign

(c) If the witness does not sign and return the original deposition transcript within 20 days of its submission to him or his counsel of record, the deposition officer shall sign a true copy of the transcript and state on the record the fact of the waiver of examination and signature or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor. The copy of the deposition transcript may then be used as fully as

though signed, unless on motion to suppress, made as provided in §265.49 of this title (relating to Use of Deposition Transcripts in Commission Proceedings), the examiner determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

*§265.49 Use of Deposition Transcripts in Commission Proceedings*

(a) Use of deposition transcript in same proceeding

(1) Use of depositions. At trial or upon a hearing on a motion, any part or all of a deposition taken in the same proceeding, insofar as admissible under the Texas Rules of Civil Evidence, may be used by any person for any purpose against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof. Further, the Texas Rules of Civil Evidence shall be applied to each question and answer as though the witness were then present and testifying. Depositions shall include the original transcripts or any certified copies thereof. Unavailability of the deponent is not a requirement for admissibility.

(2) Included within meaning of "same proceeding." Substitution of parties pursuant to these rules does not affect the right to use depositions previously taken.

(3) Parties joined after deposition taken. If one becomes a party after a deposition is taken and has an interest similar to that of any party described in paragraphs (1) or (2) of this subsection, the deposition is admissible against him if he has had a reasonable opportunity, after becoming a party, to redepose the deponent, and has failed to exercise that opportunity.

(b) Use of deposition transcript taken in different proceeding. At trial or upon the hearing of a motion or an interlocutory proceeding before an examiner, any part or all of a deposition taken in a different proceeding may be used subject to the provisions and requirements of the Texas Rules of Civil Evidence. Further, the Texas Rules of Civil Evidence shall be applied to each question and answer as though the witness was then present and testifying.

(c) Motion to suppress. When a deposition transcript has been delivered by the deposition officer and notice of delivery given at least one entire day before the day on which the case is called for trial, errors and irregularities in the notice of delivery, and errors in the manner in which the testimony is transcribed or the deposition transcript is prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with by the deposition officer under §265.48 of this title (relating to Submission to Witness, Changes, Signing) are waived, unless a mo-

tion to suppress the deposition transcript or some part thereof is made and notice of the written objections made in the motion is given to every other party before trial commences.

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 31, 1994

TRD-9435406

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption March 7, 1994

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

◆ ◆ ◆  
**Subchapter E. Special Sanctions Rules Relating to Freezing the Process**

• 30 TAC §§265.50-265.55

The new sections are proposed under the Texas Water Code, §5103 and §5105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

*§265.50 Abuse of Discovery, Sanctions.*

(a) Motion for sanctions or order compelling discovery. A party, upon reasonable notice to all other parties and to all other persons affected thereby, may apply for sanctions or an order compelling discovery as follows:

(1) Motion. According to subparagraphs (A)-(C) of this paragraph, the discovering party may move for an order compelling a designation, an appearance, an answer or answers, or inspection or production in accordance with the request, or apply to the examiner for imposition of any sanction authorized by subsection (b)(2) of this section without the necessity of first having obtained an examiner's order compelling such discovery.

(A) if a party or other deponent which is a corporation or other entity fails to designate the persons or persons to testify on the deponent's behalf, and, if the deponent so desires, the matters on which each person designated will testify, or

(B) if a party, or other deponent, or a person designated to testify on behalf of a party or other deponent fails

(i) to appear before the

officer who is to take his deposition, after being served with a proper notice; or

(ii) to answer a question propounded or submitted upon oral examination or upon written questions; or

(C) if a party fails

(i) to serve answers or objections to interrogatories submitted under §265.40 of this title (relating to Interrogatories to Parties), after proper service of the interrogatories, or

(ii) to answer an interrogatory submitted under §265.40 of this title (relating to Interrogatories to Parties), or

(iii) to serve a written response to a request for inspection under §265.39 of this title (relating to Discovery and Production of Documents and Things for Inspection, Copying or Photographing), after proper service of the request, or

(iv) to respond that discovery will be permitted as requested or fails to permit discovery as requested in response to a request for inspection submitted under §265.39 of this title (relating to Discovery and Production of Documents and Things for Inspection, Copying or Photographing)

(D) when taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(E) if the examiner denies the motion in whole or in part, the examiner may make such protective order as he would have been empowered to make on a motion pursuant to §265.37 of this title (relating to Forms and Scope of Discovery, Protective Orders, Supplementation of Responses)

(F) Material misrepresentations, including misleading statements or omissions of material information in any application material, or in response to a discovery request or in testimony, constitutes a violation and may be punished by the Examiner with the full range of sanctions, including a recommendation of denial, of the relief requested in the hearing by the responsible party.

(2) Evasive or incomplete answer. For purposes of this section, an evasive or incomplete answer is to be treated as a failure to answer.

(3) Disposition of motion to compel award of expenses.

(A) If the motion is granted, the commission may, after opportunity for

hearing, order a party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay the movant, the reasonable expenses incurred in obtaining the order, including reasonable attorney fees, unless the commission finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust

(B) If the motion is denied, the commission may, after an opportunity for hearing, order the movant or attorney advising such motion to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including reasonable attorney fees, unless the commission finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the commission may, after an opportunity for hearing, apportion in its order the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner

(D) In determining the amount of reasonable expenses, including attorney fees, to be awarded in connection with a motion, the commission shall award expenses which are reasonable in relation to the amount of work reasonably expended in obtaining an order compelling compliance or in opposing a motion which is denied

(E) Commission orders described in paragraph (3)(A)-(C) of this subsection shall be subject to review on appeal from the commission's final order

(4) Providing person's own statement. If a party fails to comply with any person's written request for the person's own statement as provided in §265.37(b)(6) of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses), the person who made the request may move for an order compelling compliance with §265.37(b)(6) of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses) If the motion is granted, the movant may recover the expenses incurred in obtaining the order, including attorney fees, which are reasonable in relation to the amount of work reasonably expended in obtaining the order

(b) Failure to comply with order or with discovery requests

(1) Sanctions by court If a deponent fails to appear or to be sworn or to answer a question after being directed to do

so by an examiner, the failure may be appealed to district court by the movant as provided by law.

(2) Sanctions by examiner and commission If a party or an officer, director, or managing agent of a party or a person designated under subsection (a)(1) of this section to testify on behalf of a party fails to comply with proper discovery requests or to obey an order to provide or permit discovery, including an order made under subsection (a) of this section, the examiner may impose any of the sanctions authorized by §265.20 of this title (relating to Sanctions for Failure to Comply with Discovery Ruling) or he may, after notice and hearing, make such orders, or recommendations to the commission, in regard to the failure as are just, and among others, the following:

(A) an examiner's order disallowing any further discovery of any kind or of a particular kind by the disobedient party;

(B) a recommendation that the commission issue an order charging all or any portion of the expenses of discovery or taxable hearing costs or both against the disobedient party or the attorney advising him,

(C) an examiner's order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order,

(D) an examiner's order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting him from introducing designated matters in evidence,

(E) an examiner's order striking out pleadings, or parts thereof, or staying further proceedings until the order is obeyed The commission may issue an order dismissing, with or without prejudice, the application, petition, or proceedings or any part thereof, or

(F) in lieu of any of the foregoing orders or recommendations or in addition thereto, the commission may order the party failing to obey the order or the attorney advising him, or both, to pay, at such time as ordered by the commission, the reasonable expenses, including reasonable attorney fees, caused by the failure, unless the commission finds that the failure was substantially justified or that other circumstances make an award of expenses un-

just Such an order shall be subject to review on appeal when the commission's order becomes final and appealable pursuant to the Administrative Procedures Act, Government Code, Chapter 2001, Subchapter F.

(c) Abuse of discovery process in seeking, making, or resisting discovery If the examiner finds a party is abusing the discovery process in seeking, making, or resisting discovery or if the examiner finds that any interrogatory or request for inspection or production is unreasonably frivolous, oppressive, or harassing, or that a response or answer is unreasonably frivolous or made for the purposes of delay, then the examiner, or the commission may, after notice and hearing, impose any appropriate sanction authorized by §265.50 of this title (relating to Sanctions for Failure to Comply with Discovery Ruling) or authorized by subsection (b)(2)(A)-(D), and (F), of this section, or recommend that the commission dismiss the proceedings as authorized by subsection (b)(2)(E) of this section. Such order of sanction shall be subject to review on appeal when the commission's order becomes final.

(d) Failure to comply with §265.41 of this title (relating to Requests for Admissions)

(1) Deemed admission Each matter of which an admission is requested shall be deemed admitted unless, within the time provided for in §265.41 of this title (relating to Requests for Admission), the party to whom the request is directed serves upon the party requesting the admissions a sufficient written answer or objection in compliance with the requirements of §265.41, addressed to each matter of which an admission is requested For purposes of this section, an evasive or incomplete answer may be treated as a failure to answer

(2) Motion The party who has requested the admission may move to determine the sufficiency of the answers or objections Unless the examiner determines that an objection is justified, the examiner may order that an answer be served. If the examiner determines that an answer does not comply with the requirements of §265.41 of this title (relating to Requests for Admission), the examiner may order either that the matter be admitted or that an amended answer be served The provisions of subsection (a)(3) of this section apply to the award of expenses incurred in relation to the motion

(3) Expenses on failure to admit If a party fails to admit the genuineness of any document or the truth of any matter as requested under §265.41 of this title (relating to Requests for Admission) and if the party requesting the admissions thereafter proves the genuineness of the document or



the truth of the matter, he may apply to the examiner for an examiner's recommendation that the commission order the other party to pay the movant the reasonable expenses incurred in making that proof, including reasonable attorney fees. The commission may make the order unless the commission finds that

(A) the request was held objectionable pursuant to §265.41(a) of this title (relating to Requests for Admission),

(B) the admission sought was of no substantial importance,

(C) the party failing to admit had reasonable grounds to believe that he might prevail on the matter, or

(D) there was other good reason for the failure to admit

(e) Failure to respond to or supplement discovery. A party who fails to respond to or supplement his response to a request for discovery shall not be entitled to present evidence which the party was under a duty to provide in a response or supplemental response or to offer the testimony of an expert witness or of any other person having knowledge of discoverable matter, unless the examiner finds that good cause, sufficient to require admission, exists. The burden of establishing good cause is upon the party offering the evidence and good cause must be shown in the record.

*§265.51 Sanctions for Failure to Serve or Deliver Copy of Pleadings and Motions.* If any party fails to serve on or deliver to the other parties a copy of any pleading, plea, motion, prefiled testimony or prefiled objections, or other application for an examiner's order, the examiner may, in his discretion, on notice and hearing

(1) order all or any part of such document stricken,

(2) direct that such party shall not be permitted to present grounds for relief, protest or defense contained therein, or

(3) recommend that the commission require such party to pay to the other parties the amount of reasonable costs and expenses, including reasonable attorney fees, incurred as a result of the failure, or make such other order with respect to the failure as may be just pursuant to §265.37 of this title (relating to Forms and Scope of Discovery, Protective Orders, Supplementation of Responses).

*§265.52 Financial Sanctions for Special Hearing Sessions, Objections*

(a) If the examiner elects to recommend that the commission award costs pursuant to this section, the examiner shall receive evidence of such costs at hearing

(b) If the commission finds, upon the examiner's recommendation, that a special hearing session, including a telephone conference call, results from any of the following acts or omissions of any of the parties, the commission may order that costs, including reasonable attorney fees, for the special hearing session be awarded to the prevailing parties

(1) not dealing in good faith,

(2) asserting a position, delaying a hearing, or taking other action when a party knows or when it is obvious that such action would merely harass or maliciously injure another,

(3) concealing or failing to disclose that which the party is required by law, by order of the examiner, or by agreement of the parties to reveal,

(4) knowingly using perjured testimony or false evidence, or using such testimony or evidence when it is obvious to the culpable party or when the culpable party should have known that the testimony was perjured or the evidence was false,

(5) knowingly making a false statement of law or fact, or making such a statement when it is obvious to the culpable party or when the culpable party should have known, that the statement of law or fact was false,

(6) stating or alluding to any matter that the party has no reasonable basis to believe is relevant to the case and that will not be supported by admissible evidence,

(7) asking any question that the party has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person,

(8) asking questions in such a manner or form that will result in unreasonably delaying the hearing,

(9) engaging in undignified or discourteous conduct which is degrading to any other party or to the examiner, or

(10) intentionally or habitually violating any established rule of procedure, of professional conduct, or of evidence

(c) The commission may, upon recommendation of the examiner, order a party and/or the party's attorney to pay to the other parties the reasonable expenses, including reasonable attorney fees, incurred by the other parties as a result of

(1) proving at hearing any matter to which the sanctioned party refused to stipulate prior to hearing but which is

clearly not an issue, provided evidence at hearing establishes that the sanctioned party had no reasonable evidentiary basis for refusing to stipulate to the matter,

(2) disruptive conduct of any party, party's witness, or party's attorney during hearing. Disruptive conduct may include, but is not limited to, the repeated failure of a party's witness to provide responsive answers while testifying, making repetitive, frivolous, or excessively lengthy objections, loud, discourteous, contemptuous, profane, argumentative, or provocative behavior by a party, the party's witness, or the party's attorney; or the continuation of a course of conduct at hearing in violation of a ruling made by the examiner,

(3) a special hearing session, including a telephone conference call, being held

(A) to consider a request for a protective order,

(B) to resolve discovery disputes,

(C) to determine if a party is not complying with any orders issued by the examiner,

(D) to consider prefiled objections, objections to interrogatories, or objections to admissions, or

(E) for any similar reason

(d) Objections. If the commission finds that any objections, including but not limited to, objections raised during open hearing, prefiled objections, objections to interrogatories, and objections to admissions are baseless, needlessly voluminous or lengthy, are raised in bad faith, or for the purpose of delay, the commission may order the party and/or the party's attorney raising the objections to pay the reasonable costs, including reasonable attorney fees, incurred by the other parties as a result of the filing of the objections

(e) The commission's final order may direct that the violating party pay those costs to the other parties, which include the executive director and the public interest counsel of the commission. Any costs awarded to the executive director and the public interest counsel shall be deposited into the State Treasury in the manner provided by law.

*§265.53 Failure to Identify Witnesses.* Absent good cause, a party shall be barred from calling a witness who was not listed on that party's prehearing witness list, when used, or who failed to give prefiled testimony

§265.54 *Failure to Identify Testimony* Absent good cause, a witness shall be barred from testifying about matters which were not identified in that witness' prehearing testimony summary, when used, or in that witness' prefiled testimony.

§265.55 *Barring Exhibits*

(a) Absent good cause, an exhibit shall not be accepted into the record

(1) which was not prefiled with the prefiled testimony,

(2) was not identified on the proffering party's prehearing exhibits list, if any, or

(3) was not timely submitted to the examiner and to all other parties, as aligned, prior to trial as required

(A) by any of the examiner's prehearing orders,

(B) by written agreement of the parties, or

(C) by this chapter

(b) This section does not apply to cross examination exhibits

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 31, 1994

TRD 9435407 Mary Ruth Holder  
Director, Legal Services  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 463 8069

Chapter 274 Expediting the Complex Hearings

The Texas Natural Resource Conservation (TNRCC or Commission) proposes the repeal of Chapter 274 §§274.1-274.9, 274.21-274.24, 274.41-274.63, and 274.71-274.76, concerning Expediting the Complex Hearings. Repeal of these rules is based on recommendations of the Permit Hearing Process Task Force, a group of representatives from environmental, industry-related and other special interest groups assembled to consider ways in which the hearings process could be streamlined and made more fair.

The Task Force recommended that the complex hearings process does not produce the time and cost savings anticipated, especially

during discovery prior to the application being declared technically complete. Concurrently with repealing these sections the Commission is proposing amendments and new rules in Chapter 265, Procedures Before Public Hearing, which include special procedures for freezing the application prior to hearing and discovery and sanction procedures. The Task Force believes the repeal of complex hearings process rules and adoption of amendments to Chapter 265 will streamline and make the hearings process more fair. Proposed amendments to Chapter 265 are published in this issue of the *Texas Register*.

Stephen Minick, division of budget and planning, has determined that for the first five years there will be no fiscal implications to state or local governments or to small businesses as a result of the repeal of these rules.

Mr. Minick also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of the repeal will be a more efficient conduct of contested case hearings. There are no economic costs anticipated to persons who are affected by the proposed repeal of these rules.

Comments on the proposed repeal may be submitted to TNRCC, Attention Claire Arenson, Chief Hearings Examiner, Office of Hearings Examiners, P.O. Box 13087, Austin, Texas 78711-3087.

Subchapter A. General Rules

• 30 TAC §§274.1-274.9

*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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.*

The repeals are proposed under Water Code, §5 103 and §5 105, which authorize the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission.

§274.1 *Applicability*

§274.2 *Definitions*

§274.3 *Expanded First Notice of Application*

§274.4 *Expanded Second Notice of Application and/or Hearing for Complex Hearings*

§274.5 *Assessment of Transcription Costs for Complex Hearings*

§274.6 *Amending the Application*

§274.7 *Withdrawing the Application*

§274.8 *Pleading Surprise Cost*

§274.9 *Legal Documents, Size and Form*

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

Issued in Austin, Texas, on January 31, 1994

TRD-9435398 Mary Ruth Holder  
Director, Legal Services  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption March 7, 1994

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

Subchapter B. Prehearing Procedures for Complex Hearings

• 30 TAC §§274.21-274.24

*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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.*

The repeals are proposed under Water Code, §5 103 and §5 105, which authorize the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission.

§274.21 *Taking Jurisdiction, Early Designation of Parties*

§274.22 *Prehearing Conference*

§274.23 *Prefiled Testimony and Objections*

§274.24 *Supplementing Prefiled Testimony and Objections*

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 31, 1994

TRD-9435399 Mary Ruth Holder  
Director, Legal Services  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption March 7, 1994

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

**Subchapter C. Discovery and Evidence**

**• 30 TAC §§274.41-274.63**

*(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 Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Water Code, §5 103 and §5 105, which authorize the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission

§274.41 *Discovery in Complex Hearings*

§274.42 *Subsequent Designation of Additional Parties; Discovery*

§274.43 *Service of Documents During Permit Drafting, Local Repository for Application.*

§274.44 *Forms and Scope of Discovery, Protective Orders, Supplementation of Responses*

§274.45 *Stipulations Regarding Discovery Procedure*

§274.46 *Discovery and Production of Documents and Things for Inspection, Copying or Photography*

§274.47 *Written Interrogatories, Compellable Discovery*

§274.48 *Interrogatories to Parties*

§274.49 *Requests for Admissions*

§274.50 *Subpoena of Witnesses and for the Production of Documentary Evidence*

§274.51 *Form of Subpoena*

§274.52 *Witness Shall Attend Hearing*

§274.53 *Deposition to Perpetuate Testimony*

§274.54 *Evidence*

§274.55 *Issuance of Commission to Take Deposition*

§274.56 *Witness Shall Comply With Discovery*

§274.57 *Non-Stenographic Recording, Deposition by Telephone*

§274.58 *Failure of Party or Witness to Attend or to Serve Subpoena, Expenses*

§274.59 *Deposition Examination, Cross Examination and Objections*

§274.60 *Submission to Witness, Changes, Signing*

§274.61 *Use of Deposition Transcripts in Commission Proceedings*

§274.62 *Additional Testimony*

§274.63 *Rebuttal*

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 31, 1994

TRD-9435400 Mary Ruth Holder  
Director, Legal Services  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption March 7, 1994

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

**Subchapter D. Sanctions**

**• 30 TAC §§274.71-274.76**

*(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Water Code, §5 103 and §5 105, which authorize the Commission to adopt any rules necessary to carry out its powers and duties under the Code and other laws of this state and to establish and approve all general policy of the Commission

§274.71 *Abuse of Discovery, Sanctions*

§274.72 *Sanctions for Failure to Serve or Deliver Copy of Pleadings and Motions*

§274.73 *Financial Sanctions for Special Hearing Sessions, Objections*

§274.74 *Failure to Identify Witnesses*

§274.75 *Failure to Identify Testimony*

§274.76 *Excluding Exhibits*

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 31, 1994

TRD-9435404 Mary Ruth Holder  
Director, Legal Services  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption March 7, 1994

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

**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**Part I. Texas Department of Public Safety**

**Chapter 15. Driver's License Rules**

**Examination Requirements**

**• 37 TAC §15.55**

The Texas Department of Public Safety proposes an amendment to §15.55, concerning Waiver of Road Test. The title of the section is changed for uniformity with text. Paragraph (3) is added to clarify language relating to examination requirements for advance in grade. Paragraph (4) is added for clarifying a knowledge test and a skills test.

Tom Haas, chief, 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. The amendment is promulgated under the authority of the Texas Tax Code, Title 2, therefore, no analysis of the effect on small businesses is required.

John Hall, inspector, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to simplify the process for obtaining a Texas Driver's License by not requiring a knowledge test when the applicant has been licensed in another jurisdiction. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6687b, §1A, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer this act.

**§15.55 Waiver of Knowledge and Skills Tests [Road Test]** Knowledge and skills [road] tests are waived for persons holding a valid out-of-state license when applying for a Texas license of the same or lower type

(1) The skills [road] test is waived for applicants who hold a valid driver's license from another state, territory, province of Canada, military service of the United States, or United States Armed Forces license

(2) For applicants with expired or no license, the complete examination will be given, including the skills [road] test

(3) If the same or lower class of license is applied for, the applicant must pass only the vision tests. The knowledge and skills tests will be waived for all applicants who present a valid out-of-state license. If an advance in grade is applied for, the applicant must pass the vision tests and appropriate knowledge tests and a skills test.

(4) The term "knowledge test" means written, computerized, or automated tests. The term "skills test" means driving or road tests.

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 20, 1994

TRD 9435293 James R. Wilson  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 465-2000

## Reciprocity in Driver Licensing

### • 37 TAC §15.92

The Texas Department of Public Safety proposes an amendment to §15.92, concerning Interstate and Armed Forces Reciprocity. The amendment provides that members of the military or its civilian components of a NATO country may drive in Texas on their country's license or be issued a Texas license after they have met all of the licensing requirements except for the knowledge and skills tests which will be waived.

Tom Haas, chief, 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.

John Hall, inspector, has determined that for each year of the first five years the section is

in effect the public benefit anticipated as a result of enforcing the section will be to simplify the process for obtaining a Texas Driver's License by not requiring a knowledge test when the applicant has been licensed in another jurisdiction. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6687b, §1A, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer this Act.

**§15.92 Interstate and Armed Forces Reciprocity** The Department grants like reciprocity for driver licensing to residents of other states.

(1)-(5) (No change)

(6) The Department adheres to the NATO Agreement signed in 1951 which provides that the receiving state shall either

(A)-(B) (No change)

(C) permit members of the military and its civilian components to operate a vehicle in Texas with the permit, license, or military driving permit, appropriate for the class of vehicle being driven, issued by the sending state (country) or a subdivision, or issue its own permit (Texas license) after the applicant has taken the required vision [and written] tests and paid the required fee. The written knowledge tests and driving skills [driving] test will be waived when applying for a Texas license of the same or lower type [in this instance]. The members of the military or its civilian components of a NATO country may drive in Texas on their country's license appropriate for the class of vehicle being driven or be issued a Texas license after they have met all of the licensing requirements except for the written and driving tests [road test], which will be waived unless applying for an advance in grade. This provision applies only to the actual members of the military or its civilian components, and it does not apply to the spouse or dependent of the member.

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 20, 1994

TRD-9435292 James R. Wilson  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption March 7, 1994

For further information, please call (512) 465-2000

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 52 Emergency Response Services

The Texas Department of Human Services (DHS) proposes amendments to §§52.101, 52.501, and 52.502, concerning definitions of program terms, billing and claims payment, and reimbursement methodology, in its Emergency Response Services (ERS) chapter. The purpose of the amendments is to streamline the ERS reimbursement methodology by combining units of service, decreasing the number of cost areas, deleting sections regarding DHS ownership of home unit equipment to reflect current practices, and revising the language for clarification.

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

Mr. Ratford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the public will have a better understanding of the reimbursement methodology. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Kathy E. Hall at (512) 450-3702 in DHS's Rate Analysis Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison Policy and Document Support-009, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### Definitions

##### • 40 TAC §52.101

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendment implements §§22.001-22.024 of the Human Resources Code.

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

[Local] The geographic area to be served by the provider agency, within the

radius of a local telephone call to the largest city or town covered by the emergency response contract.]

[Long distance-The geographic area to be served by the provider agency, outside the local call area of the largest city or town covered by the emergency response contract ]

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 31, 1994

TRD-9435392

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Proposed date of adoption May 1, 1994

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



## Claims

### • 40 TAC §52.501, §52.502

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendments implement §§22 001-22 024 of the Human Resources Code

#### §52 501 Billing and Claims Payment

(a) The Texas Board of Human Services sets the unit rate ceiling as specified in §52.502 of this title (relating to Reimbursement Methodology for Emergency Response Services), [ceilings for local and long distance service delivery based on data obtained from the cost report that each provider agency submits to the department. The department establishes the methodology for setting the reimbursement unit rate ceilings and establishes allowable and unallowable costs and cost report requirements ]

(b) The Texas Department of Human Services (DHS) [department] reimburses the provider agency according to the rate [rate(s)] specified in the contract for the [each] unit of service to each client for whom the provider agency has received an approval for CCAD services referral response form authorizing the provider agency to provide emergency response services

(c) The long-distance rate may apply if the client lives outside the local call area of the largest city or town within the geographic area to be served by the provider agency ]

(c)(d) DHS [the department] pays the contract-specific unit rate not to exceed the departmentally set rate [rate(s)]

(1) If the provider agency serves private-pay persons according to DHS [department] standards, the contract-specific unit rate cannot exceed the average private-pay rate

(2) DHS [Department] staff calculate the private-pay rate by totaling the rates charged to private-pay persons receiving services and dividing the total by the number of private-pay persons. The resultant figure is the maximum unit rate for the entire contract period

(3) DHS [The department] does not pay separate installation fees, one-time fees, or special fees. These fees, however, can be considered in determining the private-pay monthly rate by amortizing them over a 12-month period

(d)(e) DHS [The department] reimburses the cost of the required emergency response equipment through the contract-specific unit rate. This equipment includes the call button, the home communicator unit that relays emergency signals, jacks, and adapters. The cost of equipment at the response center is not reimbursable

(e)(f) DHS [The Texas Department of Human Services (DHS)] negotiates [may negotiate] a single-unit rate [that combines local and long distance service delivery]. The single rate must not exceed the [highest] ceiling [The rate should be approximately proportional to the projected number of local and long distance clients ]

(f)(g) The unit of service for emergency response services is one calendar month. The provider agency is eligible for payment for a full month of service if the client receives services for any part of the month

(g)(h) The provider agency must not charge or take other recourse against the client, family members, or persons acting on the client's behalf for any claim DHS [the department] denied or reduced because the provider agency failed to meet DHS [department] rules, policies, or procedures

(h)(i) The provider agency is not entitled to payment if

(1) services are not authorized on the approval for CCAD services referral response form,

(2) the monthly systems check for each client is not conducted according to DHS [department] rules and procedures, or

(3) services are delivered after the client's service delivery authorization date has expired or was terminated

(i) [(j)] DHS may withhold a provider agency's vendor payments for reasons including, but not limited to, the following

(1) failure to comply with the terms of the contract,

(2) failure to comply with rules in the provider manual,

(3) failure to comply with licensure requirements, or

(4) termination of the contract (voluntary or involuntary).

(j)(k) If the contract is terminated, DHS [the department] places a vendor hold on one or more of the provider agency's contracts with DHS [the department]. The vendor hold is not released until

(1) a close-out audit is conducted and resolved, or

(2) an irrevocable letter of credit in a format approved by DHS [the department] is submitted to release all or a portion of vendor payments on hold

(k)(l) DHS renegotiates rates annually with existing provider agencies based on the unit rate ceiling [ceilings] in effect

#### §52 502 Reimbursement Methodology for Emergency Response Services

##### (a) Cost reporting

(1) Content of cost report. Each provider agency must submit financial and statistical information at least annually in a cost report prescribed by the Texas Department of Human Services (DHS) [department]

##### (2) (No change )

(3) Reporting period. The provider agency must prepare the cost report to reflect its activities during the previous fiscal year. At DHS's [the department's] discretion, cost reports may be required for other periods

(4) Failure to file an acceptable cost report. Failure to file a cost report according to all applicable rules and instructions may result in DHS [the department] withholding all provider agency payments until the provider agency submits an acceptable report

##### (5) (No change )

(6) Financial audits. Desk audits and on-site audits are performed periodically on all provider agencies participating in the program. The frequency and nature of the audits are determined by DHS [the department] but are not less than that required by federal regulations relating to the administration of the program. Failure to allow DHS [the department] to perform an audit in sufficient detail to verify reported information may result in the provider agency payments being withheld

##### (7)-(8) (No change )

(9) Amended Cost Report Due Dates. All contracted providers must submit cost reports to DHS [the Texas Department

of Human Services (DHS)] in a manner prescribed by DHS [the department] DHS accepts amended cost reports submitted on the request of the provider until 180 days after the due date of the cost report [or 15 working days prior to the public hearing on proposed rates, whichever occurs first] Since this is a prospective reimbursement system without a provision for reconciliation, amended cost reports filed after this date have no effect on the rate and are not accepted [Amended cost report information that cannot be verified by 10 working days prior to the hearing will not be used in rate determination ]

(10) (No change )

(b) Reimbursement rate ceiling determination

(1) The reimbursement rate ceiling is determined on a per-month basis [for local and long distance service] The ceiling applies to all provider agencies uniformly, regardless of geographic location or other factors

(2) The reimbursement rate ceiling is determined by the analysis of financial and statistical data submitted by provider agencies on cost reports and, as deemed appropriate, a market survey analysis of emergency response equipment suppliers

(3) The median cost of home unit equipment, as determined from the market survey of emergency response equipment suppliers, is used for rate ceiling determination The median cost depreciated over a five-year period is factored into the per-month rate ceiling Interest expenses incurred to purchase the home unit equipment are an allowed cost and are considered in the rate ceiling determination ]

(3)[(4)] The rate ceiling determination process recasts reported expense data in a consistent manner to determine per-month allowed costs Reported expenses are combined into three [eight] cost areas- [ ] responder, program operations, and facility.

[(A) salaries and fringe benefits,

[(B) travel,

[(C) telephone,

[(D) building,

[(E) maintenance,

[(F) training,

[(G) administration; and

[(H) home unit equipment ]

(4)[(5)] Allowable expenses are projected from the provider agency's reporting period to the next ensuing rate period Economic inflators or adjusters determined reasonable and appropriate by DHS [the department] are used to calculate a prospective expense

(5)[(6)] The Texas Board of Human Services is responsible for approving the reimbursement rate ceiling

(7) The reimbursement rate ceiling may not exceed the intermediate care facility (ICF) reimbursement rate set by the Texas Board of Human Services ]

(c) Contract-specific unit rate The actual rates for each contract are negotiated between DHS [determined through the procurement process with department] staff and the provider agency

[(1) Provider agencies that are currently providing services with department-owned equipment that was purchased on a cost reimbursement basis receive the unit rate less the equipment reimbursement until the department's five-year disposition rights on the purchased equipment expire Services provided with department-owned equipment after the five-year limitation expires may be reimbursed at a rate that includes the equipment reimbursement

[(2) The contract-specific unit rate for each type of service includes reimbursement for salaries and fringe benefits, travel, telephone, building, maintenance, training, administration, and home unit equipment expenses

[(3) The equipment reimbursed under the unit rate becomes the provider agency's property ]

[(4)] The contract-specific unit rate DHS [the department] pays the provider agency is the full cost for emergency response services The provider agency must not bill the client for any additional charges

(d) -(e) (No change )

(f) Unallowable costs Unallowable costs are expenses the provider agencies incurred that are not directly or indirectly related to providing contracted services according to applicable laws, rules, and standards The following list of expenses is not inclusive but rather a guide to the various unallowable costs frequently seen in cost reports

(1)-(2) (No change )

(3) business expenses from business operations not related to providing ser-

vices for which DHS [the department] has contracted,

(4)-(7) (No change.)

(8) expenses incurred for services not related to providing services contracted for by DHS [the department],

(9)-(14) (No change )

(15) insurance expenses for life insurance premiums if the beneficiary is the provider agency, and for insurance on assets not related to delivering services for which DHS (the department) has contracted,

(16) interest expense on loans for assets not related to delivering of services for which DHS (the department) has contracted (interest expenses must be reduced or offset by interest income except interest income from funded depreciation accounts or qualified pension funds),

(17) personal compensation to persons not providing services contributory to delivering services for which DHS (the department) has contracted,

(18) personal expenses not related to delivering services for which DHS (the department) has contracted,

(19) (No change )

(20) rental or lease expense on any item not related to delivering services for which DHS (the department) has contracted,

(21) tax expenses for federal, state, or local income tax, and any tax levied on assets not related to delivering services for which DHS [the department] has contracted, [and]

(22) transportation expenses for vehicles not generally suited to functions related to delivering services for which DHS [the department] has contracted Mileage can be included at a cost per mile not to exceed the current reimbursement rate set by the legislature for state employees travel Mileage is allowable if documentation is adequate and if the expense incurred was related to delivering services for which DHS [the department] has contracted; and [ ]

(23) the expense of base-station equipment at the response center.

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 31, 1994

TRD-9435393

Nancy Murphy  
Section Manager Policy  
and Document Support  
Texas Department of  
Human Services

Proposed date of adoption May 1, 1994

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

# WITHDRAWN RULES

---

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

---

## TITLE 22. EXAMINING BOARDS

### Part XXII. Texas State Board of Public Accountancy

#### Chapter 501 Professional Conduct

#### Other Responsibilities and Practices

- 22 TAC §501.40

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91 24(b), the proposed amendment to §501.40, submitted by the Texas State Board of Public Accountancy has been automatically withdrawn, effective January 28, 1994. The withdrawal as proposed appeared in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8844)

TRD-9435297

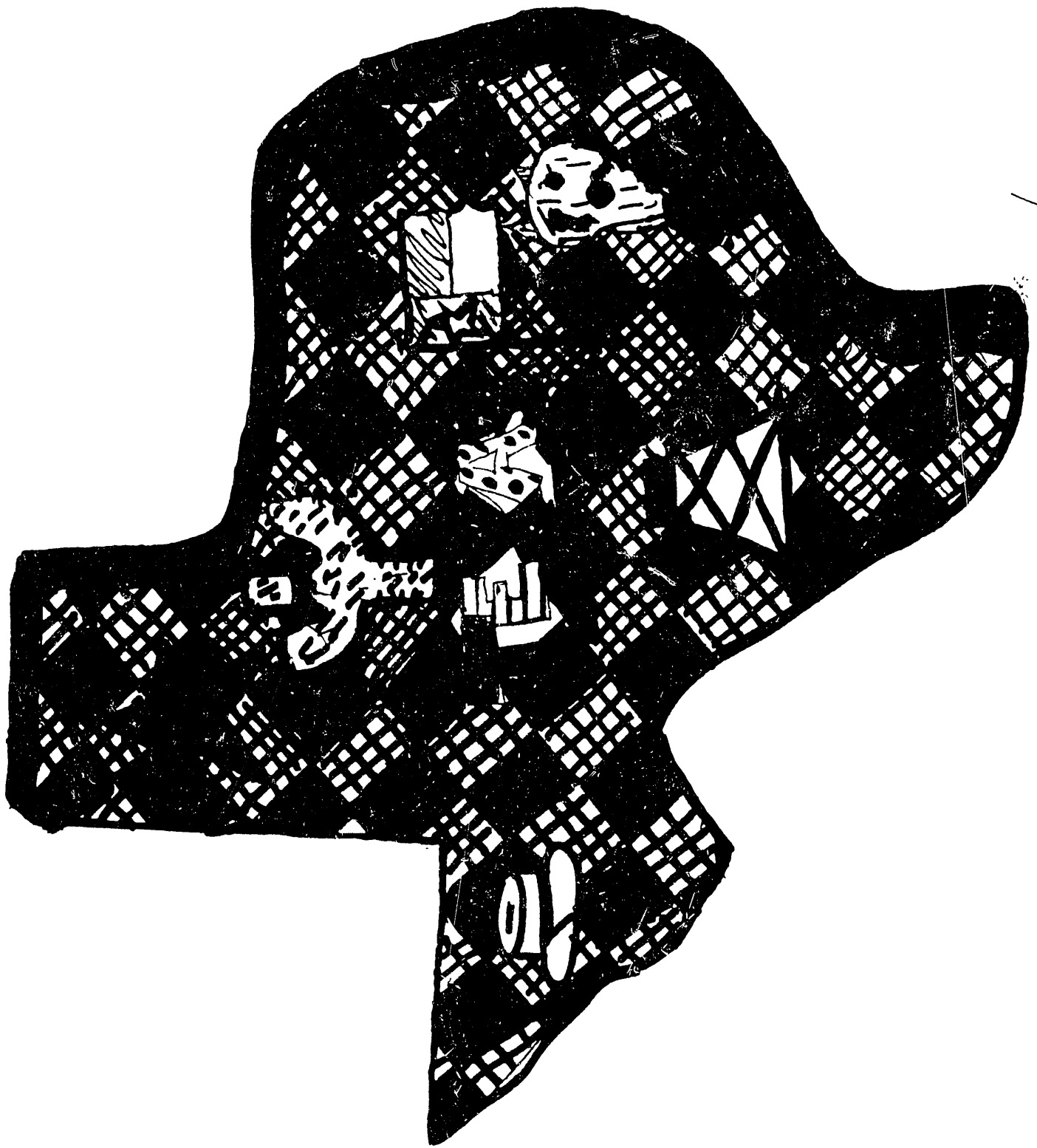


- 22 TAC §501.44

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91 24(b), the proposed amendment to §501.44, submitted by the Texas State Board of Public Accountancy has been automatically withdrawn, effective January 28, 1994. The withdrawal as proposed appeared in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8845)

TRD-9435294





Angela Varela

Name: Angela Varela  
Grade: 8  
School: Clear Lake Intermediate, Clear Lake ISD



# 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 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

#### Conservation Rules and Regulation

##### • 16 TAC §§3.26, 3.52, 3.66

The Railroad Commission of Texas adopts amendments to §§3.26, 3.52, and 3.66 (Statewide Rules 26, 52 and 71) with changes to the proposed text as published in the August 20, 1993, issue of the *Texas Register* (18 TexReg 5545)

Adoption of the proposed amendments will eliminate the need for obtaining exceptions to §3.26 and §3.66 in order to use lease automated custody transfer (LACT) equipment and other devices to effect custody transfer of oil and condensate. The use of LACT equipment insures more accurate volume determination before moving oil or condensate off-lease.

Two commenters suggested incorporating Chapter 6.1 of API's Manual of Petroleum Measurement Standards (MPMS) in place of API Standard 11N in the amended §3.66 and §3.6. The commission finds that such substitution should be made in that the Manual is better supported than the Specification and includes Specification 11N by reference.

Exxon Pipeline, OXY USA, Inc. and Texas Mid Continent Oil & Gas Association generally support these amendments. There were no comments opposing the proposed amendments. The rules as adopted do not affect any other rules or statutes.

The amendments are adopted pursuant to the Texas Natural Resources Code, Title 3, Chapters 81 and 85, which provides the Railroad Commission with authority to regulate the measurement of oil and condensate.

##### §3.26 *Separating Devices and Tanks*

(a) Where oil and gas are found in the same stratum and it is impossible to separate one from the other, or when a well has been classified as a gas well and such

gas well is not connected to a cycling plant and such well is being produced on a lease and the gas is utilized under Texas Natural Resources Code, §§86.181-86.185, the operator shall install a separating device of approved type and sufficient capacity to separate the oil and liquid hydrocarbons from the gas, which separating device shall be kept in place as long as a necessity therefore exists, and, after being installed, such device shall not be removed nor the use thereof discontinued without the consent of the commission. All oil and any other liquid hydrocarbons as and when produced shall be adequately measured according to the pipeline rules and regulations of the commission before the same leaves the lease from which they are produced. Sufficient tankage and separator capacity shall be provided by the producer to adequately take daily gauges of all oil or any other liquid hydrocarbons unless LACT equipment, installed and operated in accordance with the latest revision of American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 6.1 or another method approved by the commission or its delegate, is being used to effect custody transfer.

(b)-(d) (No change)

##### §3.52 *Oil Well Allowable Production*

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

(c) All oil allowable volumes shall be measured in a manner consistent with Rule 71(9) (§3.66) of this title (relating to Measuring and Testing of Crude Oil Volumes Tendered to a Pipeline).

(d)-(f) (No change)

§3.66 *Pipeline Tariffs* Every person owning, operating, or managing any pipeline, or any part of any pipeline, for the gathering, receiving, loading, transporting, storing, or delivering of crude petroleum as a common carrier shall be subject to and governed by the following provisions. Common carriers specified in this section shall be referred to as "pipelines," and the owners or shippers of crude petroleum by pipelines shall be referred to as "shippers."

(1)-(8) (No change)

(9) Measuring, testing, and deductions (reference Special Order Number 20-63,098, effective June 18, 1973)

(A) Except as provided in subparagraph (B) of this paragraph, all crude oil tendered to a pipeline shall be gauged and tested by a representative of the pipeline prior to its receipt by the pipeline. The shipper may be present or represented at the gauging or testing. Quantities shall be computed from correctly compiled tank tables showing 100% of the full capacity of the tanks.

(B) As an alternative to the method of measurement provided in subparagraph (A) of this paragraph, crude oil and condensate may be measured and tested, before transfer of custody to the initial transporter, by

(i) Lease Automatic Custody Transfer (LACT) equipment, provided such equipment is installed and operated in accordance with the latest revision of American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 6.1, or,

(ii) an device or method, approved by the commission or its delegate, which yields accurate measurements of crude oil or condensate.

(C) Adjustments to the quantities determined by the methods described in subparagraphs (A) or (B) of this paragraph shall be made for temperature from the nearest whole number degree to the basis of 60 degrees Fahrenheit and to the nearest 5/10 API degree gravity in accordance with the volume correction Tables 5A and 6A contained in API Standard 2540, American Society for Testing Materials 01250, Institute of Petroleum 200, first edition, August 1980. A pipeline may deduct the basic sediment, water, and other impurities as shown by the centrifugal or other test agreed upon by the shipper and pipeline, and 1.0% for evaporation and loss during

transportation The net balance shall be the quantity deliverable by the pipeline. In allowing the deductions, it is not the intention of the commission to affect any tax or royalty obligations imposed by the laws of Texas on any producer or shipper of crude oil

(D) A transfer of custody of crude between transporters is subject to measurement as agreed upon by the transporters.

(10)-(22) (No change)

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

Issued in Austin, Texas, on January 24, 1994

TRD-9435375 Mary Ross McDonald  
Assistant Director  
Texas Natural Resource  
Conservation  
Commission

Effective date: February 18, 1994

Proposal publication date: August 20, 1993

For further information, please call (512) 463-6802

## TITLE 22. EXAMINING BOARDS

### Part VI. State Board of Registration for Professional Engineers

#### Chapter 131. Practice and Procedure

##### Board Rules

###### • 22 TAC §131.33

The State Board of Registration for Professional Engineers adopts an amendment to §131.33, concerning petition for adoption of rules, without changes to the proposed text as published in the November 16, 1993, issue of the *Texas Register* (18 TexReg 8443).

The section specifies the information which must be submitted to petition the board to adopt, delete, or amend a rule and also provides the correct definition for the suggested effective date of the proposal

No comments were received regarding adoption of the amendment

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

*§131.33 Petition for Adoption of Rules* Any interested person can request the board to adopt, delete, or amend a rule by filing a petition with the executive director, accompanied by any fee required by statute or board rules. The petition must be

filed with the executive director, at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. Such a petition will include, but need not be limited to, the following:

(1) (No change)

(2) Reference. Reference to the rule which it is proposed to make, change or amend, or delete, so that it may be identified, prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any. The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.

(3) A suggested effective date. The desired effective date should be stated.

(4)-(7) (No change.)

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

Issued in Austin, Texas, on January 26, 1994

TRD-9435235 Charles E. Nemir, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Effective date: February 16, 1994

Proposal publication date: November 16, 1993

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

### Part IX. Texas State Board of Medical Examiners

#### Chapter 163. Licensure

###### • 22 TAC §§163.1-163.9

The Texas State Board of Medical Examiners adopts the repeal of §§163.1-163.9, concerning licensure, without changes to the proposed text as published in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7264)

Changes mandated by the legislature through Senate Bill 1062 required extensive rewrite of the licensure rules.

The section will function by omission.

No comments were received regarding adoption of the repeals.

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

Cross Index—Article 4495b, §§3.01, 3.03, 3.0305, 3.031, 3.04, 3.05, 3.08, 5.035, 5.04

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 28, 1994

TRD-9435328 Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Effective date: February 18, 1994

Proposal publication date: October 19, 1993

For further information, please call (512) 834-7728, Ext 402

###### • 22 TAC §§163.1-163.15

The Texas State Board of Medical Examiners adopts new §§163.1-163.15, concerning licensure. Sections 163.1, 163.6, and 163.7 are adopted with changes to the proposed text as published in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9663). Sections 163.2-163.5, and §§163.8-163.15 are adopted without changes, and will not be republished.

Justification for the section: Changes mandated by the 74th Legislature through Senate Bill 1062 required extensive rewrite of the licensure rules.

The section will function by identifying procedures for licensing qualified physicians in an effective and efficient manner.

Several comments were received from a medical school and the National Board of Osteopathic Medical Examiners which addressed the combinations of examinations accepted for licensure. These were noted and some were accepted by the Board, which are reflected in the adopted rules.

One other comment was made by Texas Osteopathic Medical Association. This comment was contradictory to the language in Senate Bill 1062.

The new sections are adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

Cross Index—Article 4495b, §§3.01, 3.03, 3.0305, 3.031, 3.04, 3.05, 3.08, 5.035, 5.04

*§163.1 Definitions.* The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

Ability to communicate in the English language—An applicant who has passed the Educational Council for Foreign Medical Graduates (ECFMG) English test within three attempts. The Executive Director will review on a case-by-case basis the application of any applicant who did not pass the ECFMG English test within three attempts and it will be at his discretion to

evaluate the applicant's eligibility for licensure.

Acceptable approved medical school—A medical school or college located in the United States or Canada that was approved by the Board at the time the degree was conferred

Acceptable unapproved medical school—A school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred but whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board.

Affiliated Hospital—Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

Applicant—One who files an application as defined in this section.

Application—An application is all documents and information necessary to complete an applicant's request for licensure including the following.

(A) forms furnished by the board, completed by the applicant

(i) All forms and addenda requiring a written response must be printed in ink.

(ii) Photographs must meet United States Government passport standards.

(B) a fingerprint card, furnished by the board, completed by the applicant, that must be readable by the Texas Department of Public Safety,

(C) all documents required under §163.7 of this title (relating to Licensure Documentation), and

(D) the required fee, payable by check through a United States bank.

Eligible for licensure in country of graduation—An applicant who has completed all requirements for licensure in the country in which the medical school is located except for any citizenship requirements

Equivalent registration—An applicant for licensure by endorsement must apply for licensure based upon another state or provincial license that requires as part of its registration.

(A) a form signed by the physician,

(B) a fee, and

(C) periodic registration of a physician's license.

Examinations accepted by the board for licensure by endorsement—

(A) United States Medical Licensing Examination (USMLE), passed within three attempts, with a score of 75 or better on each step, all steps must be passed within seven years;

(B) Federation Licensing Examination (FLEX), after July 1985, passed within three attempts, passage of both components within seven years with a score of 75 or better on each component,

(C) Federation Licensing Examination (FLEX), prior to June 1985, passed within three attempts, with a FLEX weighted average of 75 or better in one sitting,

(D) National Board of Medical Examiners Examination (NBME),

(E) National Board of Osteopathic Medical Examiners Examination (NBOME);

(F) Medical Council of Canada Examination (LMCC), and

(G) state board examination (with the exception of Florida, Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico after June 30, 1963) and Special Purpose Examination (SPEX),

(H) one of the following examination combinations, passed within three attempts with a score of 75 or better on each part, component, or step, prior to 1998

(i) FLEX I plus USMLE 3;

(ii) USMLE 1 and USMLE 2 plus FLEX II,

(iii) NBME I and NBME II plus USMLE 3,

(iv) NBME I or USMLE 1 plus NBME II or USMLE 2 plus NBME III or USMLE 3

Examinations administered by the board for licensure by examination—To be eligible for licensure by examination an applicant must sit for the required examination administered by the board and pass with a score of 75 or better on each part. All steps or components must be passed within seven years. The board shall administer Step 3 of the United States Medical Licensing Examina-

tion (USMLE) after December 31, 1993; the Federation Licensing Examination (FLEX), before January 1, 1994, and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

Full force—Applicants for licensure by endorsement must possess a license in another jurisdiction which is in full force and not restricted, canceled, suspended or revoked. A physician with a license in full force may include a physician who does not have a current, active, valid annual permit in another jurisdiction because

(A) that jurisdiction requires the physician to practice in the jurisdiction before the annual permit is current, or

(B) that jurisdiction requires the physician, prior to practicing in that jurisdiction, to hold a current professional liability insurance policy before the annual permit is current.

Good professional character—An applicant for licensure must not be in violation of or committed any act described in the Medical Practice Act, §3.08

Hardship—The practice of medicine in a Texas county with less than three active full time physicians in the entire county

One-year training program—Applicants who are graduates of acceptable approved medical schools must successfully complete one year of postgraduate training approved by the board that is

(A) accepted for certification by an American Specialty board that is a member of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists, or

(B) accredited by one of the following.

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association,

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada,

(iv) the Royal College of Physicians and Surgeons of Canada; or

(v) the College of Family Physicians of Canada, or

(C) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners

**Requisite qualifications**—An endorsement applicant who is a graduate of an unapproved acceptable medical school who.

(A) has for the preceding five years been a licensee of another state or a Canadian province;

(B) is not the subject of a sanction imposed by or disciplinary matter pending in any state or Canadian province in which the applicant is licensed to practice medicine; and

(C) is either specialty board certified by a board that is a member of the American Board of Medical Specialities or the Advisory Board for Osteopathic Specialists or successfully passes the Special Purpose Examination (SPEX).

**Sponsor**—A licensed Texas physician who:

(A) holds a current annual registration in this state that is current and in full force,

(B) has no past, present or pending disciplinary matters in any jurisdiction; and

(C) will be on site to supervise a physician who has been issued a temporary license for out-of-state practitioners under the Medical Practice Act, §3 0305.

Substantially equivalent to a Texas medical school—A medical school or college located outside the United States or Canada must be an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences; to provide advancement of knowledge through research; to develop programs of graduate medical education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The medical school shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The medical school shall include, but not be limited to, the following characteristics.

(A) The facilities for basic sciences and clinical training (i.e., laborato-

ries, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(B) The admissions standards shall be substantially equivalent to a Texas medical school.

(C) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled anatomy, biochemistry, physiology, microbiology and immunology, pathology, pharmacology and therapeutics, and preventive medicine, as defined by the Texas Higher Education Coordinating Board

(D) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, and surgery, as defined by the Texas Higher Education Coordinating Board

(E) The curriculum shall be of at least 130 weeks in duration.

(F) All allopathic or osteopathic medical education instruction taught in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education and the Council on Postsecondary Accreditation as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States.

**Three-year training program**—Applicants who are graduates of unapproved medical schools must successfully complete three years of postgraduate training in the United States or Canada:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; and

(vi) all programs approved by the board after August 25, 1984, or

(B) a board-approved program for which a Faculty Temporary License was issued; or

(C) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

**Unapproved medical school**—A school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred.

§163.6. *Procedural Rules for Licensure Applicants.*

(a) Applicants for licensure.

(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;

(2) whose application for licensure which has been filed with the board office and which is in excess of two years old from the date of receipt, shall be considered inactive. Any fee previously submitted with that application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee. All examination fees will be forfeited if the applicant fails to complete the application 60 days prior to the applicant's scheduled examination date or if the applicant fails to appear for the scheduled examination;

(3) will be allowed to sit for the Texas medical jurisprudence examination only three times. After the third failure of the Texas medical jurisprudence examination, and after each subsequent failure, an applicant for licensure shall be required to appear before a committee of the board to address the applicant's inability to pass the Texas medical jurisprudence examination and to re-evaluate the applicant's eligibility for licensure;

(4) who in any way falsify the application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be allowed to sit for the examination or be issued a Texas license,

(5) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be allowed to sit for the examination or be issued a Texas license,

(6) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application and fee are filed with the board.

(7) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(8) must have the application for licensure complete in every detail 60 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to being considered by the board for licensure, as required by §163.9 of this title (relating to Temporary Licensure-Regular), and

(9) who previously held a Texas medical license may be required to complete additional forms as required

(b) Applicants for licensure by examination

(1) who are graduates of acceptable approved medical schools, may sit for the examination prior to complying with the one year graduate training requirement,

(2) who are graduates of unapproved medical schools, may sit for the examination after the completion of their 36th month of approved graduate training,

(3) must apply for and sit the required examination in this state. The examination may be taken for a total of three attempts,

(4) whose application is received by the board between August 1 and January 31 will be scheduled to sit for the

following June examination. Applications for licensure by examination received by the board between February 1 and July 31 will be scheduled to sit for the following December examination. Applications must be complete in every detail 60 days prior to the examination before an applicant will be admitted to the examination, and

(5) who wish to request reasonable accommodations, due to a disability, must submit the request upon filing the application

(c) Applicants for licensure by endorsement

(1) are required to complete an oath swearing that

(A) the license certificate under which the applicant has most recently practiced medicine in the state or Canadian province from which the applicant is transferring to this state or in the uniformed service in which the applicant served is in full force and not restricted, canceled, suspended or revoked;

(B) the applicant is the identical person to the certificate or diploma was issued,

(C) no proceedings have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of the certificate, license, or au-

thority to practice medicine in the state, Canadian province, or uniformed service of the United States in which it was issued, and

(D) no prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony,

(2) who have not been examined for licensure in a ten-year period prior to the filing date of the application must have passed Day III or Component II of the FLEX prior to June 1988, or SPEX, unless the applicant has obtained

(A) specialty certification, recertification or an examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists within the preceding ten years, or

(B) through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board,

(3) who are required to sit for a SPEX exam, will be scheduled for the examination, unless otherwise notified, based on the date the board receives their application. Applications must be complete in every detail 60 days prior to the examination before an applicant will be admitted to the examination

**Application filed between:**

**Feb 1 and Apr 30**

**May 1 and Jul 31**

**Aug 1 and Oct 31**

**Nov 1 and Jan 31**

**will be scheduled for the:**

**Sep SPEX**

**Dec SPEX**

**Mar SPEX**

**Jun SPEX**

**§163.7 Licensure Documentation**

(a) An applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may include, but are not limited to, those listed in subsections (b)-(d) of this section

(b) Documentation required of all applicants for licensure

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of either a birth certificate and translation if necessary to prove that the

applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation

(2) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to this board for all examinations used in Texas or another state for licensure

(4) Dean's Certification. Each applicant for licensure must have a certificate of graduation submitted directly from the medical school on a form provided by the board. The applicant shall attach a recent photograph, meeting United States Government passport standards, to the form before submitting to the medical school. The school shall have the Dean of the medical school or designated appointee sign the form attesting to the information on the

form and placing the school seal over the photograph.

(5) Medical Diploma. All applicants for licensure must submit a copy of their medical diploma.

(6) Evaluations. All applicants must provide evaluations, on a form provided by the board, of their professional affiliations for the past ten years or since graduation from medical school, whichever is the shorter period

(7) Premedical School Transcript. Each applicant must submit a copy of the record of their undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(8) Medical School Transcript. Each applicant must have his or her medical school submit a transcript of courses taken and grades obtained.

(9) National Practitioner Data Bank (NPDB). Each applicant must contact the NPDB and have a report of action submitted directly to the board on the applicant's behalf.

(10) Federation of State Medical Boards History Report. Each applicant must contact the Federation of State Medical Boards and have a history report submitted directly to the board on the applicant's behalf.

(11) Physician's Profile. Each applicant must have a "Physician's Profile" report submitted directly to the board on the applicant's behalf from

(A) American Medical Association, or

(B) American Osteopathic Association

(12) National Credentials Verification Service (NCVS). Each applicant that has contracted with NCVS to provide verification of documents may request that a copy of the NCVS file be submitted directly to the board.

(13) Fingerprint Card. Each applicant must complete a fingerprint card and return to the board as part of the application.

(14) Graduate Training Verification—each applicant must submit a certificate showing successful completion of required training. The certificate must show the beginning and ending dates of the program and state that the program was successfully completed. An applicant may have the Program Director of the program in which the applicant trained submit a letter, addressed to this board, submitted directly to this board stating the beginning and ending dates of the program and attesting to successful completion.

(15) Temporary License Affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(16) Additional Photograph. Applicants required to sit for the FLEX, USMLE, or SPEX examinations must submit a recent photograph that meets United States Government passport standards.

(c) Applicants for licensure by endorsement must satisfy the appropriate requirements listed in subsections (a) and (b) of this section and the following:

(1) Endorsement. Each applicant for licensure by endorsement must have a state or province endorse him or her to this board. The endorsement must indicate that the license is current and in full force and that it has not been restricted, canceled, suspended, or revoked. Each endorsement must indicate the basis of licensure (by endorsement or examination) or the applicant must request that the endorsing state submit a letter to this board stating the basis of licensure. The endorsing board should include a description of any sanctions imposed by or disciplinary matters pending in the state or Canadian province.

(2) State License Registration. Each applicant must submit a copy of a certificate issued by the state which is endorsing him or her to this board. The certificate must show the license number and date of expiration of the current registration.

(3) Specialty Board Certification. Each applicant that has obtained certification by a board that is a member of the American Board of Medical Specialties or the American Osteopathic Association must submit a copy of the certificate issued by the member showing board certification.

(4) Continuing Medical Education (CME). Each applicant must provide copies of certificates showing completion of at least equal to the number of CME hours required by the endorsing state.

(5) Medical License Verifications. Each applicant will have every state, excluding the state that is endorsing him or her to this board, in which he or she has ever been licensed, regardless of the current

status of the license, submit on his or her behalf, directly to this board a letter verifying the status of the license and any a description of any sanctions or pending disciplinary matters.

(d) Applicants for licensure by examination who are graduates of unapproved foreign medical schools must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section. Applicants for licensure by endorsement who are graduates of unapproved foreign medical schools must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a)-(c) of this section. The required documents are as follows.

(1) Educational Commission for Foreign Medical Graduates (ECFMG) certificate. Applicants must submit a copy of a valid ECFMG certificate unless they have completed a Fifth Pathway program.

(2) Educational Commission for Foreign Medical Graduates (ECFMG) interim certificate. Each applicant that has completed a Fifth Pathway program must submit a copy of his or her ECFMG interim certificate.

(3) Educational Commission for Foreign Medical Graduates (ECFMG) Examination History Report. Each applicant must request that ECFMG furnish directly to this board a report of the number of examinations taken by the applicant leading to ECFMG certification, the result of each examination, and the type of examination taken.

(4) Unique Documentation. The board may request documentation unique to an individual unapproved medical school and additional documentation as needed to verify completion of medical education.

(5) Certificate of Registration. Each applicant must provide a copy of his or her certificate to practice in the country in which his or her medical school is located. If a certificate is unavailable, a letter, submitted directly to this board, from the body governing licensure of physicians in the country in which the school is located, will be accepted. The letter must state that the applicant has met all the requirements for licensure in the country in which the school is located. If an applicant is not licensed in the country of graduation due to a citizenship requirement, a letter attesting to this, submitted directly to this board, will be required.

(6) Clinical Clerkship Affidavit. A form, supplied by the board, to be completed by the applicant, is required listing each clinical clerkship that was completed as part of an applicant's medical education. The form will require the name of the clerk-

ship, where the clerkship was located (name of hospital and location of hospital) and dates of the clerkship

(e) Applicants may be required to submit other documentation, which may include the following

(1) Translations Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation will have to be submitted along with the translated document

(2) Arrest Records If an applicant has ever been arrested a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board

(3) Malpractice If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must have the following submitted

(A) have each medical liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance,

(B) for each claim that becomes a malpractice suit have the attorney representing the applicant in each suit submit a letter directly to this board explaining the allegation, dates of the allegation and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit and if any money was paid the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided,

(C) a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations

(4) Inpatient Treatment for Alcohol/Substance Abuse or Mental Illness Each applicant that has been admitted to an inpatient facility within the last ten years for the treatment of alcohol/substance abuse or mental illness must submit the following

(A) an applicant's statement explaining the circumstances of the hospitalization,

(B) an admitting summary and discharge summary, submitted directly from the inpatient facility,

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended,

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee

(5) Outpatient Treatment for Alcohol/Substance Abuse or Mental Illness Each applicant that has been treated on an outpatient basis within the last ten years for alcohol/substance abuse or mental illness must submit the following

(A) an applicant's statement explaining the circumstances of the outpatient treatment,

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended, and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee

(6) Additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure must be submitted

(7) A copy of the DD214 indicating separation from any branch of the United States military must be submitted

(f) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis

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 28, 1994

TRD 9435329 Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Effective date February 18, 1994

Proposal publication date December 17, 1993

For further information, please call (512) 834-7728, Ext 402

◆ ◆ ◆

## Part XIV. Texas Optometry Board

### Chapter 273. General Rules

#### • 22 TAC §273.5, §273.6

The Texas Optometry Board adopts amendments to §273.5 and §273.6, without changes to the proposed text as published in the December 24, 1993, issue of the *Texas Register* (18 TexReg 9890)

Section 273.5 is necessary to clarify the educational requirement for faculty members seeking limited licensure. The education, required of all licensee candidates, is that the candidate be a graduate of a college of optometry which has been accredited by the Council on Optometric Education of the American Optometric Association

Section 273.6 is necessary to clarify the educational requirement for provisional licensure. Because a provisional licensee is required to take and pass the licensure examination for therapeutic optometry, the licensee must meet the same criteria of education as other therapeutic optometry licensees. The rule clarifies that the applicant must have satisfied the therapeutic education required for graduates of accredited colleges of optometry after January 1, 1991

No comments were received regarding adoption of the amendments

The amended sections are adopted under the provisions of Texas Civil Statutes, Article 4552, §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules

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 21, 1994

TRD 9435290 Lois Ewald  
Executive Director  
Texas Optometry Board

Effective date February 18, 1994

Proposal publication date December 24, 1993

For further information, please call (512) 835-1938

## ◆ ◆ ◆ Part XXII. Texas State Board of Public Accountancy

### Chapter 501 Professional Conduct

#### General Provisions

#### • 22 TAC §501.2

The Texas State Board of Public Accountancy adopts an amendment to §501.2, concerning Professional Conduct without changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8843). The change is

the deletion of the definition of the practice of public accountancy

The amendment redefines advertising to comply with *Edenfield et al v Tunc*, 113 S Ct 1792 (1993) The new rule will be a rule in conformity with a United States Supreme Court opinion

Commenter one was pleased with the last two sentences but wondered if they conflicted with proposed §501 44(c) In response to this comment, the proposed amendment to §501 44(c) is being withdrawn, and existing §501 44 is being repealed

Commenter two said he had no problem with the proposed changes but felt the 36-month retention period would be costly to CPAs and suggested it be deleted In response, a committee of the board considered but rejected a shorter retention period

Commenters three, four and six supported the proposed amendment

Commenter five objected to the use of "informative and objective" because all messages are informative and objective In response, not all advertising is informative and objective Informative and objective advertising is permitted it is not required

The amendment is adopted under Texas Civil Statutes, Article 41a-1 §6 which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, and §21, which states the reasons for disciplinary action by the board

§501 2 Definitions The following words and terms when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise

Advertisement A message which is transmitted to multiple persons by or at the direction of a certificate or registration holder and which has reference to the availability of the certificate or license holder to perform professional services If messages are transmitted orally or by any written or electronic medium they must be recorded, transcribed or otherwise retained for a period of at least 36 months from the date of the last transmission or use Advertising that is informative and objective is permitted Such advertising shall be in good taste and be professionally dignified

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 20, 1994

TRD 9435316 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18 1994

Proposal publication date December 3, 1993

For further information, please call (512) 505-7066



## Other Responsibilities and Practices

### • 22 TAC §501.38

The Texas State Board of Public Accountancy adopts new §501 38, concerning Professional Conduct, with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7089) The changes are the deletion of the last sentence which was then rewritten and incorporated into the penultimate sentence

The new rule allows licensees to have a passive interest in a business that is not registered with the Board and is providing accounting services The section will function by clarifying as to when a licensee may own an interest in a non registered entity providing accounting services and extent of that ownership

One comment was received concerning adoption of the rule The comment was received from Stephen Braunstein of Peterson Consulting

Mr Braunstein has no objection to CPAs having passive investments in firms providing public accounting services His objections were that the proposed rule was unnecessarily vague, was subject to abuse by selective enforcement and that the proposed rule could be subject to a legal challenge which might be costly for the Board to defend

Mr Braunstein felt the lack of definition of "material" would lead to selective enforcement and was vague He suggested using the Securities and Exchange Commission's definition of "material," which is 50% of the equity interest in a public entity

Mr Braunstein thought the definition of "passive interest" was vague, and wondered what "significant influence on the management of the entity" meant He asked why there was a management restriction when there was an ownership restriction

Board staff recommended the issue of "material" be examined and considered based on the facts and circumstances surrounding each case to allow flexibility Further "material" and "significant" are concepts familiar to CPAs and these terms are used by the American Institute of Certified Public Accountant's Generally Accepted Auditing Standards Generally Accepted Accounting Principles, and other authoritative pronouncements

In some situations a certificate or registered holder may own an interest that is not material but the certificate or registration holder may have a significant influence on management which would override his less than material ownership interest

The Board has no control over litigation brought by others Consequently, no change has been made to the rule based on these comments

The amendment is adopted under Texas Civil Statutes, Article 41a-1 §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may

be necessary to carry in effect the purposes of the law, §2, regarding the definition of public accountancy, and §15B, requiring the Board to register practice units

§501 38 Ownership in a Passive Interest A certificate or registration holder is permitted to own a passive interest in an entity not registered with the Board, even though the entity provides accounting services to the public, when the entity is publicly held (registered under the Securities Act 1993), or the interest of the certificate or registration holder is not material in relation to the net worth of the entity A passive interest does not exist when the certificate or registration holder has a significant influence on the management of the entity It is presumed not to be a passive interest when any owner or manager of the entity is a close relative as defined in §501 11(e) (relating to independence) of these rules or someone in the same household as the certificate or registration holder

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

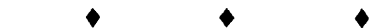
Issued in Austin, Texas, on January 28, 1994

TRD 9435296 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information please call (512) 505 7066



### • 22 TAC §501.43

The Texas State Board of Public Accountancy adopts an amendment to §501 43 concerning Professional Conduct, with changes to the proposed text as published in the December 3, 1993 issue of the *Texas Register* (18 TexReg 8844) The changes are adding "improperly or due to some special relations" at the end of subsection (b)(7) adding "untrue" to subsection (b) (9), which should now read "makes untrue comparisons", adding "that are not based upon verifiable facts" to the end of subsection (b)(10), moving proposed §501 44(b) to this section and making it a new §501 43(c), replacing "solicited" and "solicitation" with "contacted" and "contact" in new §501 43(c) moving proposed §501 44(d) to this section and making it a new §501 43(d), moving proposed §501 44(e) to this section and making it a new §501 43(e), moving proposed §501 44(f) to this section and making it a new §501 43(f), deleting "and (e)" and changing "do not" to "does not," changing subsection (c) to new subsection (g), deleting proposed §501 43(c)(9), deleting proposed §501 43(c)(11), and the resulting redesignations of the new §501 43(g) caused by the two deletions mentioned



The proposed amendment to §501.44 is being withdrawn, and existing §501.44 is being repealed on an emergency basis. Because elements of proposed §501.44 are being adopted as changes to §501.43, comments concerning §501.44 are being addressed here.

The amendment expands the types of actions which are prohibited by this rule.

The board received nine comments from individuals on the proposed amendment to §501.43.

Commenter one favored the amendment but did not state his reasons.

Commenter two said the amendment would allow clients to receive quality work at competitive prices.

Commenter three opposed proposed amendments to subsections (b)(7) and (b)(8) as being unnecessary because they were already covered in subsections (b)(1)-(3). He also opposed subsections (b)(9) and (10) because they could hurt CPAs attempting to obtain new clients in non-traditional areas.

Commenter four opposed subsection (b)(9) because comparisons to other CPAs could help the public select a CPA. He opposed subsection (b)(10) because endorsements could help the public select a CPA. He opposed subsections (b)(9) and (10) because they insulate poor CPAs, because they were an unnecessary restriction, and because they do not help protect the public.

Commenter five neither opposed nor supported the amendment. He suggested §501.43 and §501.44 concerning Soliciting, be combined into one rule to be captioned Advertising and Soliciting.

Commenter six opposed the amendments because they were too broad and suggested they be rewritten more narrowly to address the board's specific concern. He gave an example of a CPA being interviewed on television on tax laws and said the current rule would require the CPA to control the content of the interview and to obtain and retain copies of the interview each time it is broadcast.

Commenter seven opposed subsections (b)(9) and (10) because they were confusing and because they restrained trade.

Commenter eight opposed subsection (c)(6) because of the vagueness of "harass" and "annoy."

Commenter nine opposed the amendment stating he preferred the American Institute of Certified Public Accountants' rule 502 on Advertising and Soliciting because it is shorter and easier to understand and apply.

In response to commenter three, subsections (b)(7) and (8) are more specific than subsections (b)(1)-(3) and are included to make it clearer as to the kind of conduct which is misleading or deceptive and thus prohibited.

In response to commenters four, six, and seven, the board changed the text of subsection (b)(9) to prohibit only untrue comparisons and only testimonials or endorsements not based upon verifiable facts. These changes allow the public to compare and select CPAs

based on valid information, narrows the rule to address the Board's specific concerns, removes any possible confusion about the rule, and avoids restraint of trade because the conduct prohibited is narrower and is of legitimate state interest.

In response to commenter five, the board agrees and has merged the proposed rule revisions contained in §501.44 into §501.43 and titled the rule Advertising.

In response to commenter six' hypothetical situation, under the current rule definition of advertising his concern would not exist.

In response to commenter eight, the definitions of "harass" and "annoy" should not be so specific that, by omission, it might implicitly approve some harassing conduct merely because it is not specifically listed. At the same time, subsection (c) provides an example of prohibited harassing conduct.

In response to commenter nine, the board feels both the public and the licensees would be better served by a rule more specific than the one referenced by the commenter.

Since proposed §501.44(b), (d), (e) and (f) were relocated to §501.43 and adopted it is appropriate to include the comments received on these former subsections of §501.44.

Commenter one welcomed the overall changes to §501.44 but objected to the "should know" language of §501.44(b) because it required him to be a mind reader.

Commenter two objected to the "should know" language of §501.44(b) because of its vagueness and suggested it be either removed or clarified. He also requested assurance the rule would comply with the Federal Trade Commission's (FTC) Cease and Desist Order, paragraph 4, in *FTC v. American Institute of Certified Public Accountants*, Cause Number 297, no date given.

Commenter three said §501.44(e) was misplaced in the section dealing with Soliciting. He also gave the example of a television interview.

Commenter four said §501.44 was overly strict and prevented legitimate marketing of CPAs.

Commenter five objected to §501.44(f)(3), wondering how a CPA would know when the professional services are not being provided by another CPA.

Commenter six objected to the "should know" language of §501.44(b) wondering how one could prove this unless a prospective client informed the CPA.

Commenter seven suggested §501.44 should be reduced to only subsection (a) because the rest of the section restricts a prospective client from receiving improved service.

Commenter eight said the board should adopt the AICPA's rule 502.

Commenter nine said he wholeheartedly supported proposed §501.44. He felt clients would receive quality work at competitive prices.

In response to commenters one, two and six' concerns about how a certificate or registra-

tion holder should have known of the prospective client's desire not to be solicited, the staff suggests that the circumstances, facts, conversations and communications surrounding the contact will be examined to ascertain what information was available at the time and whether the decision to re-contact was reasonable under the then existing circumstances.

In response to commenter two's request for assurance that the rules comply with an FTC Order, all of the Board's rules are reviewed by its General Counsel, §501.43 and §501.44 were reviewed by the Office of the Attorney General, and the Board has an obligation to comply with all relevant and pertinent orders applicable to the Board.

In response to commenter three's suggestion that §501.44(e) was misplaced, the subsection was moved to the new subsection 501.43(e).

In response to commenters four and seven's objections that §501.44 was overly strict, prevented legitimate marketing and restricted a prospective client from receiving improved services, the Board withdrew proposed §501.44(a) and (c) and deleted §501.44. The Board made textual changes to §501.43, which made the rule more narrow or specific, and which allow legitimate marketing to a prospective client who can now make a better informed decision.

In response to commenter five's comments on §501.44(f)(3) staff suggests the operative part is that the solicitation is made to someone seeking professional services. This is not a "cold call" to someone randomly selected hoping they may need professional services. The prospective client has affirmatively taken some action to make his desire for professional services known to the profession. Section 501.44(f)(3) is only applicable as an exclusion or exemption from the record retention requirement of §501.44(d).

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §21, which states the reasons for disciplinary action by the Board.

#### §501.43 Advertising

(a) A certificate or registration holder shall not use or participate in the use of

(1) any communication (written, oral or electronic) having reference to the certificate or registration holder's professional services which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim, nor

(2) any form of communication having reference to the certificate or registration holder's professional services, which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching or vexatious or harassing conduct.

(b) A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to, a statement or claim which

(1) contains a misrepresentation of fact,

(2) is likely to mislead or deceive because it fails to make full disclosure of relevant facts,

(3) is intended or likely to create false or unjustified expectations of favorable results,

(4) implies educational or professional attainments or licensing recognition not supported in fact,

(5) represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged,

(6) contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived,

(7) implies the ability to influence any court, tribunal, regulatory agency or similar body or official improperly or disclose some special relations,

(8) consists of self-laudatory statements that are not based on verifiable facts,

(9) makes untrue comparisons with other accountants, or

(10) contains testimonials or endorsements that are not based upon verifiable facts

(c) It shall be a violation of these rules for a certificate or registration holder to persist in contacting a prospective client when the prospective client has made known to the certificate or registration holder or the certificate or registration holder should have known the prospective client's desire not to be contacted. Any attempt to continue a contact, which the certificate or registration holder knows or should know is unwanted, is not permitted

(d) In the case of direct mail communication, the certificate or registration holder shall retain a copy of the actual mailing along with a list or other description of persons to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the certificate or registration holder for a period of at least 36 months from the date of the last transmission or use

(e) Subsection (d) of this section does not apply to persons when

(1) the solicitation is made to a person who is at that time a client of the certificate or registration holder,

(2) the solicitation is invited by the person to whom it was made, or

(3) the solicitation is made to a person seeking to secure the performance of professional services currently not being provided by another certificate or registration holder

(f) In the case of radio and television broadcasting, the broadcast shall be recorded and the certificate or registration holder shall retain a recording of the actual transmission

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

(1) Broadcast Any transmission over the airwaves or over a cable or wireline system, whether or not the broadcaster received any consideration or compensation for such transmission

(2) Coercion Compelling by force so that one is constrained to do what his free will would otherwise refuse

(3) Compulsion Driving or urging by force or by physical or mental constraint to perform or forbear from performing an act

(4) Direct personal communication Either a face to face meeting or a conversation by telephone

(5) Duress Any conduct which overpowers the will of another

(6) Harassing Any word, gesture or action which tends to annoy, alarm and verbally abuse another person

(7) Intimidation Willfully to take, or attempt to take, by putting in fear of bodily harm

(8) Overreaching Tricking, outwitting, or cheating a person into doing an act which he would not otherwise do

(9) Threats Any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent

(10) Vexatious Without reasonable or probable cause or excuse

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 20, 1994

TRD 9435317

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date December 3, 1993

For further information, please call (512) 505 7066

## Chapter 511. Certification as CPA

### Certification

#### • 22 TAC §511.167

The Texas State Board of Public Accountancy adopts an amendment to §511.167, concerning revoking or relinquishing a certificate or registration, with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7089). The change redesignates §511.167(b)(9)(C) as §511.167(c)

The amendment functions by reducing the space and effort previously expended in storing and securing certificates and registrations

No comments were received concerning adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §21, which authorizes the Board to revoke licenses and certificates and to accept surrenders of certificates and licenses

#### §511.167. Revoking or Relinquishing a Certificate or Registration

(a) Any individual holding a certificate or registration issued by the board may, at any time and for any reason, subject to the approval of the board, relinquish that certificate or registration to the board. An individual relinquishing the certificate or registration may not apply for reinstatement, but may apply for the issuance of a new certificate upon completion of all requirements for the issuance of such certificate. If an individual relinquishes the certificate or registration during the course of a disciplinary investigation or proceeding conducted by the board, this fact shall be disclosed in any later application for a new certificate and shall be considered before the issuance of a new certificate

(b) The board may revoke the certificate or registration issued by the board after notice and hearing as provided in the Act §21, for any of the following causes:

(1) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining a registration under this or any prior Acts or in obtaining a license to practice public accountancy under this Act,

(2) dishonesty, fraud, or gross negligence in the practice of public accountancy,

(3) violation of any of the provisions of the Act, §8 or §20A, as they may apply to a person certified or registered by the board.

(4) violation of the rules of professional conduct promulgated by the board under the authority granted by the law.

(5) final conviction of a felony or imposition of deferred adjudication in connection with a criminal prosecution of a felony under the laws of any state or of the United States.

(6) final conviction of a felony or imposition of deferred adjudication in connection with a criminal prosecution, an element of which is dishonesty or fraud, under the laws of any state or of the United States.

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or public accountant by any other state for any cause other than failing to pay an annual registration fee in such other state.

(8) suspension or revocation of or a voluntary consent decree concerning the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action.

(9) failure of a certificate holder or registrant to obtain an annual license under the Act, §9, within either

(A) three years from the expiration date of the license to practice, last obtained, or renewed by the certificate holder or registrant, or

(B) three years from the date upon which the certificate holder or registrant was granted the certificate or registration, if no license was ever issued.

(10) conduct indicating a lack of fitness to serve as a certified public accountant

(c) Any certificate returned to the board for revocation or relinquishment may be destroyed by the board. If an application for reinstatement is later granted by the board and the certificate has been destroyed by the board, a duplicate certificate may be issued

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 20, 1994

TRD-9435314 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
• 22 TAC §511.168

The Texas State Board of Public Accountancy adopts an amendment to §511.168, concerning Certification, without changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8846)

The amendment clarifies that applicants for reinstatement of Certificate must pay all due fees and become current on continuing professional education prior to issuance of a new certificate. The amendment will function by ensuring that recertified licensees are current on all fees and have completed continuing professional education prior to offering their services to the public

No comments were received regarding adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law §15, which allows the board to charge fees, and §15A, which requires continuing professional education

Issued in Austin, Texas, on January 20, 1994

TRD-9435313 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date December 3, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
• 22 TAC §511.169

The Texas State Board of Public Accountancy adopts an amendment to §511.169, concerning Certification, without changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8847)

The amendment clarifies that applicants for reinstatement of registration must pay all due fees and become current on continuing professional education prior to issuance of a new certificate. The amendment will function by ensuring that reinstated registrants who are current on all fees and have completed continuing professional education prior to offering their services to the public

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, §15, which allows the board to charge fees, and §15A, which requires continuing professional education

Issued in Austin, Texas, on January 20, 1994

TRD-9435312 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date December 3, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
Chapter 519 Practice and  
Procedure

• 22 TAC §519.23

The Texas State Board of Public Accountancy adopts an amendment to §519.23, concerning Practice and Procedure, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7090)

The amendment allows the board to assess the cost of preparing the record against an appealing licensee

The rule will function by shifting part of the cost of preparing a record from the board to some licensees

No comments were received concerning adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and the Administrative Procedure Act, Government Code, Chapter §2001.177, which allows the board to assess record preparation costs by rule

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 20, 1994

TRD-9435311 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date December 15, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
• 22 TAC §519.26

The Texas State Board of Public Accountancy adopts an amendment to §519.26, concerning Informal Conferences, without changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8847)

The amendment allows the executive director or the committee to decide whether an informal conference should be held, and places the conducted proceedings of the informal

conference under the control of the committee chair

The rule will function by allowing shorter and more efficient informal conferences

Comments were received from two CPAs concerning adoption of the rule. The two comments opposed adoption of the rule.

One commenter stated he opposed adoption, but did not state any reasons.

The second commenter opposed adoption because she felt the right to cross-examine witnesses and to examine evidence was an absolute necessity for the defense.

Staff notes that this particular rule addresses only the conduct and procedure of Informal Conferences, which are attempts to settle cases and are also proceedings preparatory to contested case hearings before an Administrative Law Judge. During the contested case hearings licensees are afforded their constitutional rights, including cross-examination of witnesses and examination of evidence. Therefore, no changes were made to the proposed text based on these two comments.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, §22, which addresses hearings and procedure of contested cases, and the Administrative Procedure Act, Government Code, Chapter §2001.054 which addresses hearings and procedure of contested cases.

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 28, 1994

TRD 9435310 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date December 3, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
• 22 TAC §519.27

The Texas State Board of Public Accountancy adopts an amendment to §519.27, concerning Practice and Procedure, with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7090). The changes are the addition of "clearly" at the end of §519.27(i) which is intended to modify each of the following six paragraphs, and the addition of "or auditing standards" at the end of §519.27(i)(3).

The amendment recognizes APTRA's recodification, APTRA's name change, uses administrative law judges instead of hearings officers, clarifies that the administrative law judge will serve a copy of the proposal for

decision on all parties, and sets forth the policy reasons for which the board may revoke or modify an administrative law judge's recommendations.

The rule has current statutory references and a written revocation and modification policy.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, §21, which describes the Board's disciplinary procedures, Chapter 2001 of the Government Code, which contains part of the former APTRA, and Chapter 2003 of the Government Code, which contains those parts of former APTRA which addressed the State Office of Administrative Hearings.

§519.27 Hearings in Disciplinary Action

(a) General rule. Hearings in disciplinary actions shall be governed by the provisions of this chapter, the Public Accountancy Act of 1991 and any amendments to it, and the Administrative Procedure Act, Government Code, Chapter 2001. Hearings shall be conducted by an administrative law judge, or the board en banc.

(b) Prehearing conferences. In any disciplinary actions, the administrative law judge, on his own motion or on the motion of any party, may direct the parties, their attorneys, or representatives to appear before him at a specified time and place for a conference prior to the hearing for the purpose of considering

- (1) the simplification of issues,
- (2) agreement regarding admissions or stipulations of fact to avoid the unnecessary introduction of proof,
- (3) the procedure at the hearing, including, but not limited to, the use of prefiled testimony and objections,
- (4) the limitation, where possible, of the number of witnesses,
- (5) objections to evidence to be offered at the hearing, and
- (6) such other matters as may aid in the simplification of the proceedings and disposition of the matters in controversy, the administrative law judge shall cause any action taken at a prehearing conference to be recorded in an appropriate order.

(c) Administrative law judge. All proposals for decisions of an administrative law judge shall be given full dissemination to all members of the board. If the decision of the administrative law judge is adverse to a party to the proceeding other than the board itself, a final decision by the board

may not be made until a proposal for decision is served on the parties, and an opportunity is afforded each party adversely affected to file exceptions and present briefs to the board. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the administrative law judge which conducted the hearing. The proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties. The parties by written stipulation may waive compliance with this section.

(d) Filing of exceptions and replies. Any party of record may, within 15 days of the date of service of the proposal for decision, unless the administrative law judge has set a shorter or longer period of time, file exceptions to the proposal for decision. Replies to these exceptions shall be filed within 15 days after the date of filing the exceptions unless the administrative law judge has set a shorter or longer period of time. A request for extension or decrease of time within which to file exceptions or replies shall be filed with the administrative law judge, and a copy of the request shall be served on all parties of record by the party making the request. The administrative law judge shall promptly notify the parties of the decision with regard to these requests. Additional time shall be allowed only when the interests of justice so require. Upon the expiration of the time for filing exceptions or replies to exceptions, or after time for filing exceptions or replies to exceptions, or after the replies and exceptions have actually been timely filed, the proposal for decision will be considered by the board and either adopted, modified and adopted, or remanded to the administrative law judge. If remanded to the administrative law judge, the revised proposal for decision thereafter rendered by the administrative law judge shall be clearly labeled as an amended proposal for decision. A copy of the proposal for decision shall be served forthwith by the administrative law judge on each party, or each party's attorney of record, and the board. Service shall be in accordance with the board's rules.

(e) Form of exceptions and replies. Exceptions and replies to exceptions shall conform as nearly as practicable to the rules provided for pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and that evidence and any arguments and legal authority relied upon shall be grouped under the exceptions to which they relate. Any party filing exceptions and replies shall provide the board with an original and 17 copies.

(f) Oral argument before the board. Any party may request oral argument before the board before the final determination of any proceeding, but oral argument shall be allowed only at the discretion of the board. A request for oral argument may be incorporated in the exception, reply to exceptions, or in a separate pleading. In the event oral argument is granted by the board, each party who has filed exceptions and replies may be limited to a maximum of 20 minutes for presentation thereof. The board shall require one spokesman per party and position.

(g) Motion for rehearing. In the event a motion for rehearing is filed, the executive director shall have authority to act for the board in either granting or denying such motion.

(h) Administrative cost recovery rule. The board may for good cause and in accordance with the Public Accountancy Act 1991, after notice and hearing, impose direct administrative costs in addition to other sanctions provided by law or these rules. Direct administrative costs include, but are not limited to, attorneys' fees, investigative costs, witness fees and deposition expenses, travel expenses of witnesses, fees for professional services of expert witnesses, the cost of a study, analysis, audit or other projects the board finds necessary in preparation of the state's case.

(i) Changes to recommendation. To protect the public interest and to ensure that sound accounting principles govern the decisions of the board, it is 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 clearly

- (1) erroneous,
- (2) against the weight of the evidence,
- (3) based on unsound accounting principles or auditing standards,
- (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 of the licensee.

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 28, 1994

TRD-9435315

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
• 22 TAC §519.34

The Texas State Board of Public Accountancy adopts an amendment to §519.34, concerning forms and scope of discovery, protective orders and supplementation of responses, with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7091). The changes replace "a administrative law judges" with "an administrative law judges" in §519.34(c)(5), capitalize the "E" in "Enforcement" at the start of §519.34(h)(2), change "managing agency" to "managing agent" in §519.34(h)(3), and correct the citation in §519.34(h)(7) to read "(b)(1)-(5)" instead of "(b)(1)(1-5)". The amendment establishes several possible sanctions for refusing to properly engage in discovery and changes hearing officer to administrative law judge.

The amendment will function by ensuring a more open and candid discovery process in contested case hearings.

No comments were received regarding adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules necessary or advisable to effectuate the Act, §21, which describes the Board's procedures, and Government Code, Chapter 2003, which addresses administrative law judges.

*§519.34 Forms and Scope of Discovery Protective Orders, Supplementation of Responses*

(a) Forms of discovery. Permissible forms of discovery include:

- (1) oral or written deposition of any party or nonparty,
- (2) written interrogatories,
- (3) request of a party for admissions of facts and the genuineness or identity of documents or things, and
- (4) requests and motions for production, examination, and copying of documents or other tangible materials.

(b) Scope of discovery. Except as provided in subsection (c) of this section, unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

- (1) In general. Parties may obtain discovery regarding any matter which is relevant to the subject matter in the pending proceeding whether it relates to the pending application, petition, protest, claim, or defense of any other party. It is not grounds for objection that the information sought will be inadmissible at hearing if the

information sought appears reasonably calculated to lead to the discovery of admissible evidence. It is also not grounds for objection that an interrogatory propounded pursuant to §519.37 of this title (relating to Interrogatories to Parties) involves an opinion or contention that relates to fact or the application of law to fact, but the administrative law judge may order such an interrogatory not be answered until after designated discovery has been completed or until a prehearing conference or other later time. It is also not grounds for objection that a request for admission propounded pursuant to §519.38 of this title (relating to Requests for Admissions) relates to statements or opinions of fact or of the application of law to fact or mixed questions of law and fact or that the documents referred to in a request may not be admissible at hearing.

(2) Documents and tangible things. A party may obtain discovery of the existence, description, nature, custody, condition, location, and contents of any and all documents (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, and any other data compilations from which information can be obtained and translated if necessary, by the person from whom production is sought, into reasonably usable form) and any other tangible things which constitute or contain matters relevant to the subject matter in the proceeding. A person is not required to produce a document or tangible thing unless it is within the person's possession, custody, or control. Possession, custody, or control includes constructive possession such that the person need not have actual physical possession. As long as the person has a superior right to compel the production from a third party (including an agency, authority, or representative), the person has possession, custody, or control.

(3) Potential parties and witnesses. A party may obtain discovery of the identity and location (name, address, and telephone number) of any potential party and of persons having knowledge of relevant facts. A person has knowledge of relevant facts when he or she has or may have knowledge of any discoverable matter. The information need not be admissible in order to satisfy the requirement of this subsection and personal knowledge is not required.

(4) Experts and reports of experts. Discovery of the facts known, mental impressions, and opinions of experts, otherwise discoverable because the information is relevant to the subject matter in the pending proceeding but which were acquired or developed in anticipation of hearing and the discovery of the identity of experts from whom the information may be obtained only as follows:

(A) In general A party may obtain discovery of the identity and location (name, address, and telephone number) of an expert who may be called as an expert witness, the subject matter of which the witness is expected to testify, the mental impressions and opinions held by the expert, and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert The disclosure of the same information concerning an expert used for consultation and who is not expected to be called as an expert witness at hearing is required if the consulting expert's opinions or impressions have been reviewed by a testifying expert

(B) Reports A party may also obtain discovery of documents and tangible things including all tangible reports, physical models, compilations of data, and other materials prepared by an expert or for an expert in anticipation of the expert's hearing and deposition testimony The disclosure of material prepared by an expert used for consultation is required even if it was prepared in anticipation of the hearing if the consulting expert's opinions or impressions have been reviewed by a testifying expert

(C) Reduction of report to tangible form If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert who will be called as an expert witness have not been recorded and reduced to tangible form, the administrative law judge may order these matters reduced to tangible form and produced within a reasonable time

(5) Statements Any person, whether or not a party, shall be entitled to obtain, upon written request, his own statement previously made concerning the matter which is the subject of the hearing, or its subject matter which is in the possession, custody, or control of any party If the request is refused, the person may move for an administrative law judge's order under the Administrative Procedure Act, Government Code, Chapter 2001 For purposes of this paragraph, a statement previously made is

(A) a written statement signed or otherwise adopted or approved by the person making it, or

(B) a stenographic, mechanical, electrical, or other type of recording, or any transcription thereof, which is a substantially verbatim recital of a statement

made by the person and contemporaneously recorded

(c) Exemptions The following matters are protected from disclosure by privilege

(1) Work product The work product of an attorney, subject to the exceptions of Texas Rules of Civil Evidence, §503(d), which shall govern as to work product as well as to attorney-client privilege

(2) Experts The identity, mental impressions, and opinions of an expert who has been informally consulted or of any expert who has been retained or specially employed by another party in anticipation of, or preparation for, hearing or any documents or tangible things containing such information if the expert will not be called as an expert witness, except that the identity, mental impressions, and opinions of an expert who will not be called to testify as an expert and any documents or tangible things containing such impressions and opinions are discoverable if the consulting expert's opinions or impressions have been reviewed by a testifying expert

(3) Written statement The written statements of potential witnesses and parties, when made in connection with, or in anticipation of the prosecution, investigation, defense, or protest that is the subject of the proceeding, except that persons, whether parties or not, shall be entitled to obtain, upon request, copies of statements they have previously made concerning the subject of the proceeding and which are in the possession, custody, or control of any party The term "written statements" includes

(A) a written statement signed or otherwise adopted or approved by the person making it, and

(B) a stenographic, mechanical, electrical, or other type of record, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded For purposes of this paragraph, a photograph is not a statement

(4) Party communications Party communications are communications between agents or representatives or the employees of a party to the proceeding or communications between a party and that party's agents, representatives, or employees, when made in connection with the prosecution, investigation, defense, or protest of the particular proceeding, or in anticipation of the prosecution, protest, or defense of any claims made as part of the proceeding This exemption does not include communications prepared by or for

experts that are otherwise discoverable. For the purpose of this paragraph, a photograph is not a communication

(5) Other privileged information, any matter protected from disclosure by any other privilege. Upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means, a party may obtain discovery of the materials otherwise exempt from discovery by paragraphs (3) and (4) of this subsection. Nothing in this subsection shall be construed to render nondiscoverable the identity and location of any potential party, any person having knowledge of relevant facts, any expert who is expected to be called as a witness during hearing, or of any consulting expert whose opinions or impressions have been reviewed by a testifying expert

(d) Presentation of objections Either an objection or a motion for protective order made by a party to discovery shall preserve that objection without further support or action by the party unless the objection or motion is set for special hearing and a determination is made by the administrative law judge. At any reasonable time, any party may request a special hearing on any objection or motion for protective order The failure of a party to obtain a ruling prior to the hearing on any objection to discovery or motion for protective order does not waive such objection or motion In objecting to an appropriate request within the scope of subsection (b) of this section, a party seeking to exclude any matter from discovery on the basis of an exemption, privilege, or immunity from discovery, must specifically plead the particular exemption, privilege, or immunity from discovery relied upon at or prior to any special hearing, shall produce any evidence necessary to support such claim either in the form of affidavits filed and served at least seven days before the special hearing or by testimony If the administrative law judge determines that an in camera inspection and review by the administrative law judge of some or all of the requested discovery is necessary, the objecting party must segregate and produce the discovery to the administrative law judge in a sealed wrapper or by answers made in camera to deposition questions, to be transcribed and sealed in the event the objection is sustained When a party seeks to exclude documents from discovery and the basis for objection is undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights rather than a specific immunity or exemption, it is not necessary for the administrative law judge to conduct an inspection and review of the particular discovery before ruling on the objection After the date on which answers

are to be served, objections are waived unless an extension of time has been obtained by written agreement or order of the administrative law judge or good cause is shown for the failure to object within such period

(e) Protective orders On motion specifying the grounds and made by any person against or from whom discovery is sought under these rules, the administrative law judge may make any order in the interest of justice necessary to protect the movant from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights. Specifically, the administrative law judge's authority as to such order extends to, but is not limited by, any of the following

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

(2) ordering that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the administrative law judge

(f) Duty to supplement A party who has responded to a request for discovery that was correct and complete when made is under no duty to supplement his response to include information thereafter acquired, except the following shall be supplemented not less than 30 days prior to hearing unless the hearings officer finds that good cause exists for permitting or requiring later supplementation

(1) A party is under a duty reasonably to supplement his response if he obtains information upon the basis of which

(A) he knows that the response was incomplete and incorrect when made,

(B) he knows that the response, though correct and complete when made, is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading

(2) If the party expects to call an expert witness when the identity or the subject matter of such expert's testimony has not been previously disclosed in response to an appropriate inquiry directly addressed to these matters, such response must be supplemented to include the name, address, and telephone number of the expert witness, and the substance of the testimony concerning which the expert witness is expected to testify, as soon as is practical, but

in no event less than 30 days prior to hearing except on leave of the administrative law judge

(3) In addition, a duty to supplement any and all responses may be imposed by order of the administrative law judge or by written agreement of the parties, or at any time prior to hearing, through new requests for supplementation of prior answers.

(g) Discovery motions All discovery motions shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of administrative law judge intervention have been attempted and failed

(h) Discovery sanctions Requirements concerning discovery sanctions include the following.

(1) Motions for sanctions or order compelling discovery Upon reasonable notice to all party representatives and affected persons, a party may apply to the administrative law judge for an order compelling discovery. A party may not request sanctions under paragraph (3) of this subsection without having first obtained an order compelling discovery.

(2) Enforcement in district court If a person fails to comply with a subpoena or a commission for deposition issued by an administrative law judge, the agency or party requesting the subpoena or commission for deposition may seek its enforcement in district court in any manner provided by law

(3) Failure to comply with order or with discovery request If a party, or an officer, director, or managing agent of a party, or a person designated to testify on behalf of a party fails to comply with proper discovery requests or to obey an order compelling discovery, an administrative law judge may, after opportunity for hearing, make orders in response to the failure, including any of the following orders

(A) preventing the disobedient party from further discovery of any kind, or of a particular kind,

(B) deeming any facts pertaining to the order, or any other facts, to be established, as claimed by the moving party,

(C) disallowing the disobedient party from supporting or opposing designated claims or defenses, or prohibiting the party from introducing designated matters in evidence,

(D) striking out pleadings or parts of pleadings, staying further action until the order is obeyed, dismissing the

proceeding with or without prejudice, or rendering a judgment against the disobedient party, and

(E) assessing costs in obtaining sanctions as direct administrative costs pursuant to the Act, §21(b)(6), and §519.27(h) of this title (relating to Practice and Procedure)

(4) Abuse of discovery process The administrative law judge may impose any of the sanctions listed above on a party who abuses the discovery process in seeking or resisting discovery or who files a request, response, or answer that is frivolous, oppressive, or made for the purpose of delay

(5) Failure to respond to or supplement discovery A party who fails to respond to or supplement a discovery request or refuses to supplement a response to a discovery request may not present evidence that the party was under a duty to provide in a response or supplemental response, and may not offer the testimony of an expert witness or of any other person having knowledge of the discoverable matter, unless the administrative law judge finds good cause to permit the evidence despite the noncompliance. The burden of establishing good cause is upon the party offering the evidence, and good cause must be shown in the record

(6) Impermissible communications Unless permitted by law, a party representative shall not communicate with the administrative law judge or the Board without the knowledge of all other parties. The administrative law judge or the Board may impose any of the preceding sanctions for impermissible communication

(7) Record of basis for sanction The administrative law judge shall state the specific basis for any sanction in the order. A party sanctioned under subsection (b)(1) (5) of this section may raise the issue of sanctions in the exceptions to the proposal for decision and in the motion for rehearing

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 28, 1994

TRD-9435309

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066



## Professional Education

### Continuing Professional Education Standards

#### • 22 TAC §523.28

The Texas State Board of Public Accountancy adopts an amendment to §523.28, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7094)

The amendment redefines continuing education to be continuing professional education

The rule will function by clarifying continuing professional education rules which result in a better educated licensee

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law and §15A, which requires licensees to participate in continuing professional education

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

Issued in Austin, Texas, on January 20, 1994

TRD-9435308 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

#### • 22 TAC §523.29

The Texas State Board of Public Accountancy adopts an amendment to §523.29, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7094)

The amendment redefines continuing education to be continuing professional education

The rule will function by clarifying continuing professional education rules, which result in a better educated licensee

No comments were received concerning adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §15A, which requires licensees to participate in continuing professional education

§523.29 Minimum Hours Required as a Participant A minimum of 50% requirement must be from involvement as a participant in a qualified continuing professional education program

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

Issued in Austin, Texas, on January 20, 1994

TRD-9435307 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

#### • 22 TAC §523.30

The Texas State Board of Public Accountancy adopts an amendment to §523.30, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7094)

The amendment redefines continuing education to be continuing professional education

No comments were received concerning adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §15A, which requires licensees to participate in continuing professional education

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

Issued in Austin, Texas, on January 20, 1994

TRD 9435306 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

#### • 22 TAC §523.31

The Texas State Board of Public Accountancy adopts an amendment to §523.31, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7094)

Continuing Education to be continuing professional education

No comments were received concerning adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §15A, which requires licensees to participate in continuing professional education

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

Issued in Austin, Texas on January 20, 1994

TRD-9435305 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

#### • 22 TAC §523.32

The Texas State Board of Public Accountancy adopts new §523.32, concerning Continuing Professional Education, without changes to the proposed text as published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8847)

The new rule requires licensees to complete at least four hours of ethics study every three years as part of the mandatory 120 hours of continuing professional education

No comments were received regarding adoption of the new section

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law, and §15A, which requires licensees to complete 120 hours of continuing professional education every three years, but leaves it to the board to define the requirements

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

Issued in Austin, Texas, on January 20, 1994

TRD 9435304 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date December 3, 1993

For further information, please call (512) 505-7066



## Mandatory Continuing Professional Education (CPE) Program

### • 22 TAC §523.61

The Texas State Board of Public Accountancy adopts an amendment to §523. 61, concerning Mandatory CPE Program, with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7090) The changes are changing "Sources of Continuing Education" to "Sources of Continuing Professional Education" at the end of 523.61(b).

The amendment clarifies continuing professional education rules which result in better educated licensees, redefines continuing education to be continuing professional education, and deletes unnecessary language.

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA certificates or registrations and §15A, which requires continuing professional education.

#### §523.61. Establishment of Mandatory CPE Program.

(a) A mandatory CPE program was established pursuant to the Public Accountancy Act of 1979, Texas Civil Statutes, Article 41a-1, §6(a), which provided the board with authority to adopt a system of required continuing professional education for licensees.

(b) A licensee shall be responsible for ensuring that CPE credit hours claimed conform to the board's standards as outlined in §§523.21-523.31 of this title (relating to Program Presentation Standards; Instructors; Program Sponsors; Learning Environment; Evaluation; Program Measurement; Credits for Instructors and Discussion Leaders; Credits for Published Articles and Books; Minimum Hours Required as a Participant; Limitation for Nontechnical courses, and Alternative Sources of Continuing Professional Education).

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

Issued in Austin, Texas, on January 20, 1994.

TRD-9435303 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: February 18, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 505-7066

### • 22 TAC §523.62

The Texas State Board of Public Accountancy adopts an amendment to §523. 62, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7095).

The amendment clarifies subsection (b) by rewording and editing and changes continuing education to continued professional education.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the 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 20, 1994

TRD-9435302 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: February 18, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 505-7066

### • 22 TAC §523.63

The Texas State Board of Public Accountancy adopts an amendment to §523 63, concerning relating to Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7095).

The amendment removes the requirement of not practicing public accountancy while on active military duty as a condition of exemption and changes continuing education to continuing professional education.

No comments were received concerning adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §15A, which requires licensees to participate in continuing professional education.

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

Issued in Austin, Texas, on January 20, 1994.

TRD-9435301 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: February 18, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 505-7066

### • 22 TAC §523.64

The Texas State Board of Public Accountancy adopts an amendment to §523. 64, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7096).

The amendment redefines continuing education to be continuing professional education, to clarify the specific education desired, and clarifies continuing professional education rules which result in better educated licensees.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and Section 15A, which requires licensees to participate in continuing professional education.

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

Issued in Austin, Texas, on January 20, 1994.

TRD-9435300 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: February 18, 1994

Proposal publication date: December 15, 1993

For further information, please call: (512) 505-7066

### • 22 TAC §523.65

The Texas State Board of Public Accountancy adopts an amendment to §523. 65, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7096).

The amendment redefines continuing education to continuing professional education and clarifies continuing professional education rules which result in better educated licensees.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §15A, which requires continuing professional education.

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

Issued in Austin, Texas, on January 20, 1994

TRD 9435299

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
**Registered Continuing Professional Education Sponsors**

◆ ◆ ◆  
**• 22 TAC §523.71**

The Texas State Board of Public Accountancy adopts an amendment to §523.71, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7097)

The amendment redefines continuing education to be continuing professional education, to clarify the specific education desired and clarified, continuing professional education rules which result in a better educated licensee

No comments were received concerning adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law and §15A, which requires licensees to participate in continuing professional education

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

Issued in Austin, Texas, on January 20, 1994

TRD 9435298

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
**• 22 TAC §523.72**

The Texas State Board of Public Accountancy adopts an amendment to §523.72, concerning Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7097)

The amendment redefines continuing education to be continuing professional education, to clarify the specific education desired

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §15, which requires licensee to participate in continuing professional education

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

Issued in Austin, Texas, on January 20, 1994

TRD-9435319

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

◆ ◆ ◆  
**Registered Continuing Professional Education Sponsors**

◆ ◆ ◆  
**• 22 TAC §523.73**

The Texas State Board of Public Accountancy adopts an amendment to §523.73, concerning Continuing Professional Education, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7097).

The amendment redefines continuing education to be continuing professional education, to clarify the specific education desired.

No comments were received concerning adoption of the rule

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law and §15, which requires licensee to participate in continuing professional education

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

Issued in Austin, Texas, on January 20, 1994

TRD-9435318

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date February 18, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 505-7066

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 305. Consolidated Permits

##### Subchapter M. Waste Treatment Fee Program

###### • 30 TAC §§305.501-305.507

The Texas Natural Resource Conservation Commission (Commission) adopts amendments to §§305.501-305.506 and new §305.507, concerning the waste treatment fee program, without changes to the proposed text as published in the November 23, 1993, issue of the *Texas Register* (18 TexReg 8648)

Water Code, §26 0291, authorizes the Commission to assess an annual fee against each permittee holding a permit for wastewater treatment or discharge issued under Water Code, Chapter 26. 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 activities to which these fee revenues may be allocated. In determining the amount of the fee, the Commission may consider permitting factors such as flow volume, toxic pollutant potential, levels of traditional pollutants and heat load. In addition, the Commission may consider the designated uses and the ranking classifications of the waters affected by discharges from the permitted facility. To meet the requirements for funds anticipated during the 1994-1995 biennium, the Commission proposes to modify certain features of the rate schedule for determination of waste treatment fees and increase the fee rates.

Fee assessments for all permits will increase under this rule. The rule as adopted will increase the rate per each point assigned to a permit from \$70 to \$75. In addition, other changes will increase the point values for permitted flow volume assigned to certain permits and increase the fee assessments. Revenue increases of approximately \$1,160,000 per year are anticipated.

Comments on the proposed rule were received from Occidental Chemical Corporation, Texas Association of Dairymen, Associated Milk Producers, Inc., Texas Poultry Federation, City of Big Spring, City of Abilene, and Texas Municipal League. Generally, respondents were opposed to the increases in fee rates and questioned the justification for the increases and the economic impacts on affected permit holders. Other issues were raised concerning the Commission's authority to adopt proposed changes in fees for certain types of wastewater operations and the need to clarify certain provisions of the rule.

Most commenters questioned the justification for the fee increases and the proposed uses of additional revenue. The Commission clearly recognizes that any state-mandated increase in cost will be of concern to businesses and local governments. The fees in question are authorized to be used to support water quality regulatory activities in conjunction with other funds, essentially general revenues and federal funds. Both general revenue appropriations and federal funds will be reduced for water quality programs in FY 1994-1995. Reductions in alternative sources of funds create an increased demand for fee revenue sources. To meet increasing demands for new and improved services to be provided by the agency, including permit processing, enforcement, public participation and information management, the Commission has dedicated all available fund balances. Also, the Commission is facing significant new costs for office space and related support systems due to the relocation and physical consolidation of the agency as required under Senate Bill 2, Acts of the 72nd Legislature, First Called Session, 1991. These additional one-time and recurring costs must be allocated to each source of dedicated revenue and each program area. The Commission would note that the increase in revenue and the total amounts to be collected are consistent with the Commission's request for appropriations approved by the Legislature in Senate Bill 5, Acts of the 73rd Legislature (the General Appropriations Act). The preamble to the proposed rule cited both increased costs and reductions in other sources of revenues as justifications for fee increases. While these are both valid reasons, the Commission does agree with the several commenters who suggested that reductions in other sources of revenue were the more significant of the causes leading to the proposed amendments.

One commenter noted that the proposed rule did not include specific definitions for the different groups into which industrial wastewater discharges are classified based on pollutant potential. This classification is based on a schedule which relates the type of facility and its Standard Industrial Classification to pollutant potential. The schedule has been and will continue to be provided with each invoice delivered annually to each permittee. In addition, the Commission will publish the schedule as a future appendix to Chapter 305, Subchapter M, in order to provide broader distribution of the guidance document and public notice of its role in the fee schedule.

Other comments were received which stated that the proposed fee increases would impose unacceptable costs to agricultural operations, primarily confined animal feeding operations, which have already made substantial investments in state-mandated water pollution control facilities. Most of these operations are wastewater treatment facilities which discharge to evaporation ponds or land disposal (irrigation) facilities. It was also suggested that the proposed fee increases do not equitably derive the costs of water quality regulation from all users who benefit from the preservation of water quality. Agricultural interests are also concerned that fee increases will affect operating costs which cannot be recovered under fixed wholesale pricing

structure for commodities. The Commission acknowledges that the increases will affect agricultural permit holders and that substantial monetary investments have been made by the industry to alleviate water quality control problems. The agency feels, however, that the anticipated state-wide impact of \$51,000, an average of \$100 per facility, is justified in terms of maintaining adequate levels of funding for water quality programs and does not critically impact any one operator or the industry as a whole. The Commission agrees with the assessment of these respondents that there are "users" who benefit from the state's water quality programs who are assessed less (or none) of the costs paid by some persons subject to this rule. The Commission lacks the legal authority, however, to collect revenue from all users to more equitably support water quality programs and is constrained by the limits of statute and the current appropriation authority approved by the legislature. Another commenter felt that the classification of agricultural facilities as industrial facilities under this subchapter was inappropriate. The issue of whether an agricultural permit should be classified as industrial is beyond the scope of the rules adopted here. This subchapter classifies such permits consistent with other agency waste treatment permitting regulations. For the purposes of assessing fees, the distinction between "agricultural" or "industrial" permit has no significant effect. It is the specific parameters of an individual permit that determine the amount of an assessment more than the classification of permit type.

Other commenters stated that the fee increases which will affect municipal governments could not be justified given the significant costs incurred and to be incurred to meet new and stricter state and federal water quality standards. As we stated in our response regarding agricultural facilities, the significant costs of water quality infrastructural and regulatory costs on local governments and their utility rate payers is clearly recognized. While the costs imposed through fee assessments by the state to operate regulatory programs are a very small part of these overall costs, we agree that these costs are also significant, particularly to smaller operators and municipalities. It is important to note that the statutory maximum fee of \$11,000 which can be assessed against any one permit results in the most significant impact of the fee increases being felt by smaller to moderate sized facilities, rather than the largest. We have attempted to apportion the impact of the fee increases as equitably as possible within this very significant constraint. We cannot agree, however, that the increases are not justified if they are clearly authorized by statute, are within the legislative budget authority of the Commission and are necessary to maintain the existing levels of effort in the Commission's water quality regulatory programs. This commenter also questioned the extent to which the agency has considered the designated uses and the ranking classifications of the waters affected by discharges from permitted facilities. The authority of the agency to use such criteria in establishing rates is granted under provisions of Water Code, §26.0291, and was acknowledged in the preamble to the pro-

posed rule. The rate schedule, however, does not include a specific parameter which relates to the effects of a specific discharge to a specific receiving water. It is the opinion of the agency that, while such an approach is legally and technically justifiable, the complexities of evaluating and differentiating different stream segments would not be practicable or cost effective at this time.

Another comment was received in opposition to the proposed rule on the basis that the existing fee for wastewater facility inspection was being replaced with an assessment with much broader authority which was not based on waste discharge permit parameters and further, that fees should not increase without increases in the number or frequency of inspections. This commenter also stated that the fiscal impact of the rule was unclear. The agency disagrees with this characterization of the proposal. The changes to be adopted will affect only the way the fee is calculated and the amount of the fee. No expansion of the use of the fee revenues or the types of facilities to which the fee applies is contemplated or intended. The deletion of the word "inspection" from the definition of the fee simply makes it consistent with the authorizing statutory language which states that the fee is to be used "in inspecting waste treatment facilities and enforcing the laws of the state, and the rules of the commission, governing waste discharge and waste treatment facilities" (emphasis added), which would include permitting, enforcement and related program areas and their support and administrative costs. As discussed earlier, it is not simply cost increases of inspections that are the basis for the fee increase. As to the issue of broader authority, the fees as adopted will not apply to any facility not currently subject to a fee. The only change adopted which relates to the issue of a permit being subject to a fee is the clarification that permits by rule (general permits) are subject to assessment. This change will allow the agency to simplify the permit process and mitigate the regulatory impact on small facilities which qualify for permits by rule without reducing required revenue levels.

Several commenters pointed out that the total fiscal impact of the proposed rule was not clearly stated in the preamble. The fiscal note to the proposed rule did include a typographical error. The note stated that income to the state would increase by "\$1,160,00", which should have been correctly stated as "\$1,160,000". This error was acknowledged and a notice of correction to the proposed rule was filed and published in the December 10, 1993, issue of the *Texas Register* (18 TexReg 9225).

Comments were received which questioned the authority of the Commission to assess a fee for facilities which were not discharge facilities. The contention is that the statutory authority limits the assessment of a fee to permits which authorize a discharge and would not apply to permits which are treatment permits and do not authorize a discharge. We disagree. In clarifying this point, it should be understood that all permits under Water Code, Chapter 26, are "discharge" permits. Some discharges are authorized to surface waters, others to evaporation ponds, and

others to land, by way of irrigation. It is this discharge which is, in fact, the basis for the requirement for a permit under Chapter 26. Most discharge permits are for treatment facilities, although some, such as stormwater permits, may not involve treatment of wastewater. This general use of the term "discharge" in Chapter 26 must be compared with the much more limited application of the term as it has been used in reference to Water Code, §26.0291 and its use in the preamble to the proposed rules. Under the waste treatment facility fee schedule, a distinction is made between facilities which discharge to surface waters and those which do not. The rationale is that the variable permit parameters, such as flow volume and pollutant load, are not applicable to facilities which are not authorized to discharge to surface waters. The fee schedule treats these evaporation and land disposal facilities differently based solely on the fact that their discharge points are different. In earlier versions of these sections, these facilities were referred to as "no discharge" permits. This term was deleted in prior revisions to these sections for the specific purpose of avoiding the obvious confusion due to the use of a term which really had no meaning under Water Code, Chapter 26. Similarly, this commenter was also concerned that the rule as amended would result in the assessment of a fee against facilities which are not subject to permits under Water Code, Chapter 26, in violation of the provisions of Water Code, §26.0291. We disagree that the proposed rule exceeds the authority granted under Water Code, §26.0291, which authorizes a fee "on each permittee for each waste discharge permit held by the permittee." The change adopted will clarify that, for the purposes of fee assessments, the term "permit" will include any authorization of a waste discharge under the provisions of Water Code, Chapter 26. The Commission is authorized, under Water Code, §26.040, to control and set requirements for small waste discharges by rule, rather than by individual permit. It is the opinion of the Commission that this use of the term "permit" is not inconsistent with the definition of the term under Water Code, §26.001, and the intent of the fee authority, which is to assess the costs of water quality regulation against those who discharge wastes. The effect of this change will be to allow the Commission to continue its efforts to reduce the administrative burden of permit application and approval for operators of small facilities by permitting minor discharges by rule, without significantly reducing the revenues available to the state to address water quality program requirements.

The amendments are adopted under the Water Code, §26.0291, which authorizes the Texas Natural Resource Conservation Commission to revise fee rates for waste treatment facilities in order to fund regulatory programs for waste treatment facilities, and Water Code, §5.102 and §5.105, which provide the Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the Commission.

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

Issued in Austin, Texas, on January 25, 1994.

TRD-9435208 Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: February 14, 1994

Proposal publication date: November 23, 1993

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

◆ ◆ ◆

## Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

### Subchapter J. Industrial Solid Waste and Hazardous Waste Fee System

- 30 TAC §§335.321-335.323,  
335.325-335.329, 335.331, 335.332

The Texas Natural Resource Conservation Commission adopts amendments to §§335.321-335.323, 335.325-335.329, 335.331, and 335.332. Sections 335.323, 335.325, and 335.326 are adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8154). Sections 335.321, 335.322, 335.327-335.329, 335.331, and 335.332 are adopted without changes and will not be republished.

The Health and Safety Code, Chapter 361, Subchapter D, authorizes the commission to establish an industrial solid waste and hazardous waste fee system related to the generation and disposition of waste and the operation of waste management facilities subject to permits. Under the current fee program, annual assessments are levied based on the quantities of industrial solid waste and hazardous waste generated and the capacity of permitted treatment, storage and disposal facilities. In addition, monthly fees are assessed based on the actual amounts of waste which are managed at permitted facilities. Senate Bill 1201, Acts of the 73rd Legislature, 1993, amended the Health and Safety Code, Chapter 361, Subchapter D, to require certain changes in the fee program. Senate Bill 1201 authorizes increases in the maximum fees that may be assessed for the generation of wastes and the treatment, storage or disposal of wastes at both commercial and non-commercial facilities. The maximum annual generation fee is increased from \$1,000 to \$10,000 for Class I non-hazardous industrial solid waste and from \$25,000 to \$50,000 for hazardous waste. The maximum fee for management of waste is increased from \$20 per ton to \$40 per ton. The assessment of fees on a monthly basis for treatment, storage and disposal of hazardous waste is expanded to include assessments on the commercial dis-

posal of Class I non-hazardous industrial solid waste. Fees for disposal of Class I waste are proposed to be set at the limits authorized by Senate Bill 1201, that is, 20% of the applicable rate for disposal of hazardous waste. In addition, the commission is authorized under the bill to establish penalties and interest charges for late payment of fees which do not exceed rates charged by the Comptroller of Public Accounts for the payment of delinquent sales taxes. Under this revised authority the commission adopts amended rate schedules and increased maximum fees to be assessed. The maximum fee for disposal of hazardous waste is increased from \$20 per ton to \$30 per ton. This amount is less than the maximum authorized by statute, but will enable the commission to exercise discretion in the future regarding the maximum fees to be established and revenues to be collected.

Section 335.323 (relating to Generation Fee Assessment) is changed by adding additional language to clarify the assessment of fees on the generation of industrial wastewaters. Section 335.323(c) is divided into four new subsections. Section 335.323 provides for an exemption for the assessment of hazardous waste fees for wastewaters which exhibit a characteristic of hazardous waste and which are treated and rendered non-hazardous. The additional provisions, in new paragraphs (1) and (2), will clarify that a hazardous waste which is treated to a standard of a Class I waste will be assessed as a Class I waste and a Class I waste which is treated to a standard of a Class II waste will not be assessed a generation fee. In addition, language is added at new paragraph (4) to clarify that a waste stream subject to assessment which is subsequently treated to meet another waste classification is not subject to additional assessment of a generation fee.

Section 335.325 (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) is changed by deleting a provision which was proposed to be added to the section. This provision would have added new §335.325(p) to authorize a reduced fee for the underground injection of certain waste streams which are high in naturally occurring inorganic salts. This provision was recommended by the staff in response to a petition for rulemaking filed with the commission on behalf of Merichem Company. The provision is being deleted from the section as adopted at this time to allow the staff to further evaluate the effects of the proposal and develop more specific guidance for implementation of the proposed change. It is the intention of the commission to publish at a later date a separate proposal for additional amendments to §335.325 to address the petition for rulemaking and comments received on the amendments as originally proposed. Proposed new §335.325(p) is deleted and new §335.325(q) is redesignated accordingly. In addition, §335.326 (relating to Dry Weight Determination) is changed to delete a proposed new §335.326(c), which incorporated provisions to define which waste streams high in inorganic salts would be eligible for the reduced fee under the proposed §335.325(p), which is deleted and is not adopted at this time. The provisions will be

reconsidered and re-proposed in conjunction with the commission's further evaluation of the changes

Comments on the proposed rules were received from Texas Eastman, Merichem Company, DuPont, Texas Chemical Council, ASARCO, and Texas Instruments. DuPont and Texas Chemical Council were generally in support of the proposed amendments but expressed concern over the broad financial implications for industry and the rate of recent fee increases. Other commenters responded concerning specific provisions of the rules and suggested modifications. One commenter suggested that the proposed rates for incineration of certain hazardous wastewater treatment sludges were inequitable when compared with rates for other methods of waste disposition, and especially deep well injection. The commission recognizes that a number of valid arguments can be made concerning the rates proposed for underground injection as opposed to those for other management methods, particularly for aqueous wastes. We feel, however, that a variety of factors must be evaluated in assessing this inequity, including the exemption of certain wastewaters from generation fees. It must be recognized also that the determination of a fee for either method on the basis of total weight or dry weight is set by law and cannot be superseded by rule. Because of the complexity of the issue and the implications for a number of potentially affected facilities, however, the commission intends to further evaluate the proposal and will incorporate any recommendations in subsequent rulemaking. A similar comment related to the proposal to assess a reduced fee for the underground injection of certain wastes high in inorganic salts. While the proposed rate would be 40% of the fee for other wastes similarly disposed, it was suggested that a rate of 20% would be more appropriate. This proposal is based on the ratio of fees established for commercial disposal of hazardous and non-hazardous waste, the rate for disposal of a Class I non-hazardous waste being 20% of the rate for disposal of a hazardous waste. We disagree. We agree with the contention that the waste constituents at issue, inorganic salts, are not hazardous constituents. The waste streams at issue, however, are classified and regulated as hazardous wastes, rather than Class I wastes, and are in our opinion justifiably addressed in the proposed rates. Although we disagree with the alternate proposal, the 40% rate is not adopted at this time. As stated earlier, this provision is deleted from the rules as adopted and its consideration will be postponed pending further evaluation and re-proposal, in which case the issue of relative rates for these waste streams can be continued. Other commenters also addressed this issue and suggested that clearer guidance and technical criteria were needed in the determination of wastes which would qualify for a reduced fee and the methods of measurement of inorganic salt constituents. These comments will be considered in the development of any subsequent proposed rule.

Other comments were received concerning the inclusion of incineration under the fee schedule for commercial disposal of Class I

waste. The position of the commenter is that incineration is not specifically defined as disposal within the definition of "disposal" under Health and Safety Code, §361.003. The definition of disposal cited says, in part, that disposal means the discharge of waste so that the waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner (emphasis added). We would agree that incineration clearly involves a change in waste character and there are distinct differences between incineration and either landfilling or underground injection as methods of waste disposition that warrant different treatment under any program for technical regulation. For the purpose of assessing fees, however, we feel that the practice of incineration is adequately covered in the statutory definition of disposal and appropriately included in the rate structure for commercial waste management.

Additional comments were received that requested consideration of a provision to exempt non-hazardous wastewaters from the assessment of generation fees under §335.323 (relating to Generation Fee Assessment). We partially agree, although we do not agree that all wastewaters should be exempted. Under §335.323, characteristic hazardous wastewaters are exempt from hazardous waste assessment if treated on-site to be non-hazardous. Under the rule, a hazardous waste treated to a standard of a Class I non-hazardous waste would be assessed at a lower rate as a Class I waste. Language has been added to §335.323 as adopted to clarify that a Class I waste treated on site in the same manner to a standard of a Class II waste will be exempted from generation fee assessment altogether. Also, the issue of waste reporting requirements as they relate to fee assessments was the subject of comments. The concern is that if a quantity of a wastewater stream is reported both before and after treatment, the potential exists to over-report the actual total quantity and initiate both Class I and hazardous fee billings for the same volume of waste. We agree with this concern and have included language in §335.323 as adopted to clarify that such duplicative assessment is not intended. It should be noted that existing procedures for resolution of disputed billings should provide a straightforward process for handling any inadvertent billings resulting from incorrect or duplicate reports. The commission is committed as well to analyzing the existing reporting programs and accounting programs to determine whether automated means are available to resolve any inconsistencies between waste reporting and fee revenue requirements. A third comment related to this subject for the purpose of clarifying the obligations for a waste generator whose wastewater stream is received by a publicly-owned treatment facility. Section 335.325 (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) requires that an owner or operator of a waste treatment, storage or disposal facility is liable for a fee for wastes managed on-site, but exempts wastewater facilities permitted under Water Code, Chapter 26. Since a generator contributing wastewater as a retail customer of a publicly-

owned treatment facility is not the owner or operator of a facility, there would be no basis for an assessment on the generator.

The amendments are adopted under the Health and Safety Code, Chapter 361, as amended by Senate Bill 1201, Acts of the 73rd Legislature, 1993, which provides the Texas Natural Resource Conservation Commission with the authority to establish an industrial solid waste and hazardous waste fee program and implement fee assessments for industrial solid waste and hazardous waste generators, waste management facilities and permit applicants and under Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission the authority to adopt any rules necessary to carry out its powers, duties and responsibilities.

The sections will implement provisions of Health and Safety Code, §361.013 and §§361.131-361.134, 361.136, 361.139, and 361.140.

### §335.323 Generation Fee Assessment

(a) An annual generation fee is hereby assessed each generator which generates Class I industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class I nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than \$50. The annual generation fee for hazardous waste shall not be more than \$50,000 and for nonhazardous waste not more than \$10,000.

(b) Hazardous wastes subject to the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) and precluded from the quantity determinations of such section shall be considered for the purposes of this subchapter in the total volume of hazardous waste generated and subject to fee assessment.

(c) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, relating to characteristics of hazardous waste, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) are exempt from

the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class I industrial solid wastes because they meet the criteria for a Class I waste under the provisions of §335.505 of this title (relating to Class I Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) and no

longer meet the criteria for a Class I waste are exempt from the assessment of waste generation fees

(3) These exemptions or adjustments in fee assessment in no way limit a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(4) A wastewater stream treated to meet a different waste classification is subject to only one assessment under this section.

(d) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(e) Wastes which are recycled shall be exempt from any generation fee assessed under this section.

(f) Generation fees are to be assessed according to the following schedule:

(1) hazardous waste:

Waste Reported (Tons)

Less than 1 ton  
From 1 - 50 tons  
Greater than 50 tons

Annual Fee

No charge  
\$100  
\$2 per ton

(2) nonhazardous waste

Waste Reported (Tons)

Less than 1 ton  
From 1 - 100 tons  
Greater than 100 tons

Annual Fee

No charge  
\$50  
\$.50 per ton

(g) Any claim of exemption from or adjustment to the assessment of a generation fee under this section must be made in writing to the executive director prior to the due date of the assessment

*§335.325. Industrial Solid Waste and Hazardous Waste Management Fee Assessment*

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing or disposal facility, except as provided in subsections (b)-(e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class I industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) is not subject to a hazardous waste management fee

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing or disposal facility for

hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing or disposal facility for the storage of hazardous wastes if such wastes are stored within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time).

(e) A fee may not be imposed under this section on the operation of a facility

permitted under the Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed \$40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (k) of this section.

(i) for the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k)-(p) of this section, waste management fees shall be assessed according to the following schedule:

(1) Hazardous Waste.

<u>Disposition</u>	<u>Noncommercial</u>		<u>Commercial</u>	
	<u>In State</u>	<u>Imported</u>	<u>In State</u>	<u>Imported</u>
Landfill	\$15/ton	\$19/ton	\$30/ton	\$37.50/ton
Land Treatment	\$12/ton	\$15/ton	\$24/ton	\$30/ton
Underground Injection	\$9/dwt	\$11/dwt	\$18/dwt	\$22.50/dwt
Incineration	\$8/ton	\$10/ton	\$16/ton	\$20/ton
Processing	\$4/ton	\$5/ton	\$8/ton	\$10/ton
Storage	\$1/ton	\$1/ton	\$2/ton	\$2/ton
Energy Recovery	\$4/ton	\$4/ton	\$8/ton	\$8/ton
Fuel Processing	\$3/ton	\$3/ton	\$6/ton	\$6/ton

(2) Class I Non-hazardous Waste.

<u>Disposition</u>	<u>Noncommercial</u>		<u>Commercial</u>	
	<u>In State</u>	<u>Imported</u>	<u>In State</u>	<u>Imported</u>
Landfill	N/A	N/A	\$6/ton	\$7.50/ton
Land Treatment	N/A	N/A	\$4.80/ton	\$6/ton
Underground Injection	N/A	N/A	\$3.60/dwt	\$4.50/dwt
Incineration	N/A	N/A	\$3.20/ton	\$4/ton

(k) For wastes which are generated out of state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration and disposal of hazardous waste fuels shall be the same for wastes generated out of state and in state.

(l) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section

shall apply to the quantity of waste in any month which has been in storage for more than 90 days or the number for which an extension has been granted under §335 69 of this title (relating to Accumulation Time)

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin

(o) The fee rate for incineration of aqueous wastes containing 5 0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reports) No fee for disposal of a solid waste under Chapter 330, Subchapter P, shall be assessed in addition to a fee for disposal under this section

#### §335 326. Dry Weight Determination

(a) The method of calculating the dry weight of each waste stream subject to assessment under §335 325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) shall be determined initially and at any time the waste stream undergoes a significant change in water content using the appropriate method(s) as specified in this section Determinations shall be made from a representative sample collected by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization

(1) Wastes which contain suspended solids greater than or equal to 15% of the sample on a weight basis shall have the dry weight determination calculated using the method specified in Appendix I in §335.332 of this title (relating to Appendices I and II)

(2) Aqueous-based wastes which contain suspended solids less than 15% of the sample by weight basis and which contain a single liquid phase shall have the dry weight determination calculated using Standard Methods for the Examination of Water and Wastewater, 15th Edition, Method 209A, pages, 92-93 or equivalent method in later editions

(3) Organic-based wastes which contain suspended solids less than 15% of the sample by weight and which contain a single liquid phase shall have the dry weight determination calculated using

(A) 1981 Annual Book of ASTM Standards, Part 30; Method E203, pages 803-812 or equivalent method in later editions; or

(B) The method specified in Appendix II in §335 332 of this title (relating to Appendices I and II)

(4) Wastes which do not meet any of the criteria specified in paragraphs (1)-(3) of this subsection shall have the dry weight determination calculated using

(A) The 1981 Annual Book of ASTM Standards, Part 23, Method D96, pages 64-81 or equivalent method in later editions; or

(B) The method specified in Appendix II in §335 332 of this title (relating to Appendices I and II), or

(C) The 1981 Annual Book of ASTM Standards, Part 23, Method D95, pages 59-63 or equivalent method in later editions Method D96 determines the water and sediment content of the sample The calculations shall be modified to determine only the water content

(5) The method for calculating the dry weight shall be that method specified in Appendix I in §335 332 of this title (relating to Appendices I and II) or an alternate method selected by the generator pursuant to §335 327 of this title (relating to Alternate Methods of Dry Weight Determination), if the waste cannot be analyzed by one of the other required methods of this section due to interfering constituents Documentation identifying the method of analysis and describing the interference shall be maintained by the generator

(b) Wastes containing free liquids which are designated for disposal in a landfill and must be solidified prior to disposal shall have the dry weight determination made on the waste, prior to the addition of the solidification agent

(c) For purposes of a fee assessed under §335 325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment), the dry weight of a waste disposed in an underground injection well, to which brine, inorganic salts, or other authorized agents are added to maintain density control to assure compliance with no-migration requirements of 40 Code of Federal Regulations, 148, Subpart C, shall be determined prior to the addition of the agent. No solid waste, as defined by the Health and Safety Code, §361 003(37), may be excluded from the determination of dry weight under this subsection

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

Issued in Austin, Texas, on January 26, 1994.

TRD-9435237

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date February 16, 1994

Proposal publication date November 9, 1993

For further information, please call (512) 239-6087

## TITLE 34. PUBLIC FINANCE

### Part IV. Employees Retirement System of Texas

#### Chapter 81. Insurance

##### • 34 TAC §§81.1, 81.3, 81.5, 81.7

The Employees Retirement System of Texas (ERS) adopts amendments to §§81 1, 81 3, 81 5, and 81 7 Sections 81 1, 81 5, and 81 7 are adopted with changes to the proposed text as published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9838) Section 81 3 is adopted without changes and will not be republished

These amendments are justified by updating the rules to reflect the program conversion from a carrier insured health plan to a plan of health coverage fully self-insured by the ERS, clarifying when health and other insurance coverages begin for eligible newborn children, newborn grandchildren, and other added dependents, and making several technical corrections to the rules

The amendments will function by improving explanation of the terms of coverage regarding ERS members and their dependents, particularly with regard to newborn children, newborn grandchildren, and other dependents added to coverage under the insurance program

The law firm of Akin, Gump, Strauss, Hauer & Feld, L L P submitted comments concerning §81 1 The firm suggested changing the wording under the definition of "Self-insured health plan" in order to clarify the meaning that the ERS does not exclude HMOs from bidding on administering the state's health plan The ERS agreed with this suggestion and reworded the definition

The amendments are adopted under the Insurance Code, Article 3 50-2, §4, which provides the Board of Trustees of the ERS with the authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of the Texas Employees Group Insurance Benefits Act



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

AD&D-Accidental death and dismemberment.

Board or trustee-The board of trustees of the Employees Retirement System of Texas

Committee or GBAC-The Group Benefits Advisory Committee as established by the Act, §18

Evidence of insurability-Such evidence required by a qualified carrier for approval of coverage or changes in coverage pursuant to the rules of §81.7(f) of this title (relating to Enrollment and Participation)

HMO-A health maintenance organization approved by the board to provide health care benefits to eligible participant, in the program in lieu of participation in the program's self-insured health plan.

ORP-The Optional Retirement Program as provided in the Government Code, Chapter 830.

Preexisting condition-Any physical or mental condition, including pregnancy, for which the participant received medical advice or was treated by a practitioner during the six-month period immediately preceding the effective date of the participant's coverage, excluding treatment of a medical condition resulting from congenital or birth defects. However, if the evidence of insurability requirements set forth in §81.7(f) must first be satisfied, the six-month period for purposes of determining the preexisting conditions exclusion will be the six-month period immediately preceding the date of the employee's completed application for coverage.

Program-The Texas Employees Uniform Group Insurance Program as established by the board

Self-insured health plan-That plan of health coverage fully self-insured by the Employees Retirement System of Texas and administered by a qualified carrier or HMO

TRS-The Teacher Retirement System of Texas

### *§81.5 Eligibility*

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

(d) Dependents of employees and retirees. The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. A newly acquired dependent is eligible for coverage on the date the individual becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before the employee's or retiree's dependents are eligible for that type of coverage. A newborn natural child or eligible newborn grandchild is covered automatically on date

of birth. A retiree's dependents are eligible for dependent life insurance coverage only if that coverage was in effect the day before the retiree became eligible for retiree life insurance; however, where the retiree was precluded from adding dependent life coverage because eligible dependents were either active employees or covered as dependents of an active employee, the retiree may add dependent life coverage upon an eligible dependent's termination of employment other than by retirement. The request to add this coverage must be submitted within 30 days following the date the dependent terminates employment other than by retirement. A dependent may not be simultaneously covered for basic term life and dependent term life. A family member who is covered as an employee or retiree is not eligible to be covered as a dependent in the program. A dependent may not be covered by more than one employee or retiree for the same coverage. Double coverage is not permitted for any participant in the program.

(e)-(f) (No change.)

(g) Disability retirement. An applicant who is approved for disability retirement is entitled to retiree insurance coverages as provided in §81.7(c) of this title (relating to Enrollment and Participation). An ORP participant granted ORP disabled retiree status in the program, as established by the disability test used by the system, is eligible to remain in the program for the amount of time the person would be eligible for benefits had retirement coverages been under the Teacher Retirement System of Texas. Initial or continued eligibility for insurance coverage for an ORP disabled retiree will be determined by the system under the following provisions.

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

(3) The effective date of coverage for an ORP disabled retiree in the program is the first of the month following the date the application for ORP disabled retiree status in the program is received by the system, or the first of the month following the date employment is terminated, whichever is later.

(h) Former members of the legislature. On application to the trustee and on arrangement for the payment of contributions, a person who has at least eight years of creditable legislative service, as defined in the Government Code, §812.002, on ending his or her service in the legislature, continues to be eligible for participation in the program under the Act. Except as provided in this section, former members of the legislature will be subject to the same eligibility rules and effective dates that apply to active members of the legislature.

(i) Former employees of the legislature. On application to the trustee and on

arrangement for the payment of contributions, a person who has at least ten years of creditable service in the system, as defined in the Government Code, §812.003, as an employee of the legislature, on ending his or her service for the legislature, continues to be eligible for participation in the program under the Act. Except as provided in this section, a former legislative employee will be subject to the same eligibility rules and effective dates that apply to an active employee of the State of Texas.

(j) Continuation of health and dental coverages only for certain spouses and dependent children of employees/retirees, and for certain terminating employees, their spouses, and dependent children (as provided by the Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272).

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

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

(4)-(9) (No change.)

### *§81.7. Enrollment and Participation.*

(a) Full-time employees and their dependents.

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

(4) Unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits), a newborn natural child or eligible newborn grandchild will be covered immediately and automatically from the date of birth in the health plan in effect for the employee or retiree.

(A) If there are no other dependents covered at the time of birth, the newborn natural child or eligible newborn grandchild will be automatically covered in the same health plan in which the employee or retiree is then covered. To continue coverage for more than 30 days after the date of birth, an application for health coverage must be submitted within 30 days after the date of birth.

(B) If health coverage for dependent children was already in effect, an application to add a subsequent newborn

natural child or eligible newborn grandchild must be completed before verification of coverage for the newborn dependent will be provided to the health carrier

(5) The effective date of a newborn natural child's or eligible newborn grandchild's life and AD&D insurance will be the 14th day after the date of birth, unless the newborn natural child or eligible newborn grandchild is then confined to a hospital or other institution for medical care; in which case, the newborn natural child or eligible newborn grandchild's life and AD&D insurance coverage will become effective on the day after the day the newborn natural child or eligible newborn grandchild is released from the hospital or institution. The effective date of all other eligible dependents' life and AD&D insurance coverages will become effective as stated in paragraph (3) of this subsection, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility, in which case, the life and AD&D insurance coverage will become effective on the day after the day the dependent is released from the hospital or institution

(6) The effective date of self-insured health plan coverage for an employee's or retiree's dependent, other than a newborn natural child or eligible newborn grandchild, will be as stated in paragraph (3) of this subsection, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility, in which case, the self-insured health plan coverage will be effective on the day after the day the dependent is released from the hospital or institution

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

(e) Special rules for additional or alternative coverages

(1)-(3) (No change)

(4) An employee, retiree, or other eligible participant in the Uniform Group Insurance Program enrolled in an HMO, whose contract is not renewed for the next fiscal year will be eligible to make one of the following elections

(A) (No change.)

(B) enroll in the self-insured health plan without evidence of insurability by completing an application during the annual limited enrollment period, if the participant is eligible to enroll in another approved HMO. The preexisting conditions exclusion will apply, as defined in subsection (g) of this section. The effective date of the change in coverage for the employee/retiree shall be September 1. Eligible dependents shall be subject to evidence of insurability requirements. The preexisting

conditions exclusion will apply as defined in subsection (g) of this section. The effective date of coverage for dependents may be either September 1 or the first day of the month following the date approval is received by the employing agency,

(C) enroll in the self-insured health plan without evidence of insurability by completing an application during the annual limited enrollment period, if the participant is not eligible to enroll in another approved HMO (an approved HMO is not available to the participant). Eligible dependents shall not be subject to evidence of insurability requirements. The preexisting conditions exclusion will not apply except that, if the participant's or dependent's enrollment in the self-insured health plan occurs within 12 months of the initial date of coverage under the current term of employment or retirement, the exclusion will apply for the remainder of such 12-month period. The effective date of the change in coverage will be September 1; or

(D) if the participant does not make one of the elections, as defined in subparagraphs (A)-(C) of this paragraph, the participant will automatically be enrolled in the basic plan. Evidence of insurability and preexisting conditions exclusion for the participant and the participant's dependents will apply as referenced in subparagraph (B) of this paragraph.

(5) An employee, retiree, or other eligible program participant enrolled in an HMO whose contract is terminated during the fiscal year or which fails to maintain compliance with the letter of agreement will be eligible to make one of the following elections

(A) change to another approved HMO for which the participant is eligible. The effective date of the change in coverage will be determined by the board,

(B) enroll in the self-insured health plan without evidence of insurability if the participant is not eligible to enroll in another approved HMO. Application of the preexisting conditions exclusion and the effective date of the change in coverage will be determined by the board; or

(C) if a participant is eligible to enroll in another HMO, the board may allow the participant to enroll in the self-insured health plan without evidence of insurability and the preexisting conditions exclusion. The effective date of the change in coverage will be determined by the board

(f) Changes in coverages beyond the first 31 days of eligibility.

(1) An employee or retiree who wishes to add or increase coverage, add eligible dependents to the self-insured health plan, or change coverage from an HMO to the self-insured health plan more than 30 days after the initial date of eligibility must make application for approval by providing evidence of insurability acceptable to the system. Unless not in compliance with Chapter 5 of this title (relating to Flexible Benefits), coverage will become effective on the first day of the month following the date approval is received by the employee's agency benefits coordinator or by the system, if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee in a leave without pay status, it will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal

(2) The evidence of insurability provision applies only to those employees, retirees, or eligible dependents who.

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

(C) enrolled in any coverage under the basic plan and later dropped or were canceled from such coverage, except as provided in subsection (h)(2) and (3) of this section

(3) An employee or retiree who wishes to add eligible dependents to the employee's or retiree's HMO coverage may do so during the annual enrollment period, when a spouse terminates employment, when a dependent loses health coverage or reasons other than voluntary cancellation, when a dependent moves into the service area of the employee's or retiree's HMO, and as provided in paragraph 10 of this subsection, unless not in compliance with Chapter 85 of this title.

(4) An employee or retiree, who moves his or her place of residence into an HMO service area, is eligible to apply for coverage on or within the first 30 days after the date of residence in the HMO service area. Coverage will become effective on the first of the month following the date of application

(5) An employee, retiree, COBRA continuant, surviving spouse, TRS annuitant, ORP annuitant, elected state official, former member or employee of the legislature, or judge, who is enrolled in an approved HMO and permanently moves his

or her place of residence out of that HMO's service area to a location where the participant is no longer eligible to be enrolled in any approved HMO, will be allowed to enroll in the self-insured health plan and other optional coverages held immediately prior to the date of change in residence. Coverage in the HMO will be canceled on the last day of the month in which the previously described participant moved from the service area, and the coverages in the self-insured health plan will become effective on the day following the day HMO coverage is canceled. The evidence of insurability rule shall not apply in these cases. The preexisting conditions exclusion shall apply if the return to the self-insured health plan occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.

(6) When a covered dependent of an employee/retiree permanently moves out of the employee/retiree's HMO service area, the employee/retiree must make one of the following elections, to become effective on the first day of the month following the date the dependent moved out of the employee/retiree's HMO service area:

(A) (No change.)

(B) change coverage to an HMO for which the employee/retiree and covered dependent are eligible. If there is no HMO for which all are eligible, then the employee/retiree and covered dependent may enroll in the self-insured health plan. The evidence of insurability rule shall not apply. The preexisting conditions exclusion shall apply if the return to the self-insured health plan occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.

(7) Persons wishing to change from one HMO to another HMO in the same service area or change from the self-insured health plan to an HMO will be allowed an annual opportunity to do so. Such opportunity will be scheduled prior to September 1 of each year at times announced by the system. The preexisting conditions exclusion and evidence of insurability provision will not apply in these cases. Coverages in the new HMO will be effective September 1. Persons in a declined or canceled status may apply for coverages in an HMO for which they are eligible during the annual limited enrollment period. Coverage in the HMO will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1.

(8) Participants who are enrolled in the self-insured health plan and do not reside in any HMO service area will be provided an annual opportunity to enroll eligible dependents in dependent health coverage without evidence of insurability. Such opportunity will be scheduled during the annual enrollment period. Coverage will be effective September 1.

(9)-(11) (No change.)

(g) Preexisting conditions exclusion. The preexisting conditions exclusion shall apply to employees, retirees, and eligible dependents who are enrolled in the self-insured health plan. The exclusion for benefit payments shall apply for a full 12 months from the effective date of coverage for a preexisting condition, as defined in §81.1 of this title (relating to Definitions). The preexisting conditions exclusion will not apply to:

(1) an eligible newborn natural child or eligible newborn grandchild,

(2) (No change.)

(3) an individual allowed to return to the self-insured health plan because the individual moves permanently out of an HMO service area except that, if the return to the self-insured health plan occurs within 12 months of the initial date of coverage under the current term of employment, the exclusion will apply for the remainder of the 12-month period for any condition for which the participant received medical advice or was treated by a physician during the six-month period immediately prior to the initial date of coverage under the current term of employment;

(4) (No change.)

(5) an individual (including previously covered dependents) transferring employment with no break in service from the University of Texas System or the Texas A&M University System to a department in the program.

(6) (No change.)

(h) (No change.)

(i) Continuing coverage in special circumstances.

(1) Continuation of health, dental, and optional coverages for terminating employees. A terminating employee is eligible to continue all coverages through the last day of the month in which employment is terminated.

(2) Continuation of health, dental, and life coverages for employees in a leave without pay status. An employee in a leave without pay status may continue the types and amounts of health, life, and dental coverages in effect on the date the employee entered that status for a maximum period of up to 12 months. The maximum

period may be extended for up to 12 additional months for a total of 24 continuous months, provided the extension is certified by the department to be for educational purposes. During this period, the employee, other than an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 (Public Law 103-3), may not change coverage except that, employees in a leave without pay status may add new dependents, including newborns; reduce or cancel coverage, and make such coverage changes as are permitted during the annual enrollment period as described in subsection (f)(7) of this section. Disability income coverage for an employee in a leave without pay status will be suspended beginning on the first day of the month in which the employee enters the leave without pay status and continuing for those months in which the employee remains in that status. Suspended disability income coverage for an employee returning to active duty from a leave without pay status will be reactivated effective on the first day the employee returns to active duty if the entire period of unpaid leave was certified by the agency as approved leave without pay. The coverages of an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 may continue at the same level of benefits and contributions that would have been in place if the employee had not taken the leave.

(3) Continuation of health, dental, and life coverages for a former member or employee of the legislature. A former member or employee of the legislature, who is eligible to continue to participate in the program, must notify the system within 30 days after leaving office or employment of the employee's intent to continue the coverage in effect. Coverage will be canceled if a premium is not received within 30 days of the due date. A former member or employee of the legislature is not eligible to continue disability insurance coverage.

(4) Continuation of health, dental, and life coverages for a former judge. A former State of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the types and amounts of coverages, other than disability income, that were in effect during the calendar month immediately prior to the month in which the former judge did not serve on judicial assignments. These coverages may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge continues to be eligible for assignment. Disability income coverage during the period will be canceled on the first day of the month during which the former judge does not serve

on a judicial assignment. To reinstate canceled disability income coverage once service on judicial assignments is resumed, a former judge must submit evidence of insurability acceptable to the system. If approved, disability income coverage will become effective on the first day of the month following the date approval is received by the employing department.

(5)-(11) (No change.)

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

Issued in Austin, Texas, on January 28, 1994.

TRD-9435410 Charles D Travis  
Executive Director  
Employees Retirement  
System of Texas

Effective date. February 21, 1994

Proposal publication date. December 21, 1993

For further information, please call: (512) 867-3336

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part VI. Texas Department of Criminal Justice

#### Chapter 157. State Jail Felony Facilities

- 37 TAC §§157.1, 157.3, 157.4, 157.11-157.13

The Texas Department of Criminal Justice adopts amendment to §§157.1, 157.3, 157.4, and 157.11-157.13, concerning designation of regions all allocation of admission to the Texas Department of Criminal Justice State Jail Division, without changes to the proposed text as published in the August 31, 1993, issue of the *Texas Register* (18 TexReg 5384). Under the Texas Government Code, §507.003, as added by Acts of the 73rd Legislature, 1993, the Texas Board of Criminal Justice is required to designate not fewer than nine regions in the state for the purpose of providing regional state jail felony facilities. Under the proposed rule, the state is divided into a total of 13 regions, with the six largest judicial districts (each of which serves a municipality of 400,000 or more) being designated as separate regions. Under the Texas Government Code, §507.004(1), as added by Acts of the 73rd Legislature, 1993, the Texas Department of Criminal Justice is required to adopt and enforce a regional allocation policy for the purpose of allocating the number of facilities and beds to each region established under §157.3 of this title. The allocation policy adopted by the board will become effective when state jail felony facilities are located in all regions.

Under the proposed rules, the board policy allocates state jail felony facility capacity to a region based on the sum of the fixed percentages established by the allocation formula for

admissions to the institutional division as adopted by the board in §152.3(f) of this title in July 1993 (to be effective September 1, 1993) for the counties located in that region, multiplied by the total number of state jail felony facility beds authorized by the 73rd Legislature, 1993, for construction (22,000). The actual number of facilities and beds allocated to a particular region is equal to the number of beds derived using the formula, with a range of plus or minus 500 beds.

Under the Texas Government Code, §507.004(2), as added by Acts of the 73rd Legislature, 1993, the Texas Board of Criminal Justice is also required to adopt and enforce an intra-regional allocation policy for each region for the purpose of allocating the number of facilities and beds within a region to the community supervision and corrections departments in that region, unless those departments by their own agreement establish the allocation of beds in the region. The allocation policy adopted by the board or by community supervision and corrections departments within a region, as applicable, will become effective when state jail felony facilities are located in all regions

Under the proposed rule, the Intra-regional allocation policy established by the board allocates state jail felony facility capacity to a community supervision and corrections department based on their proportionate share of the beds allocated to the region in §157.12 of this title using the fixed percentage established by the allocation formula for admission to the Institutional division as adopted by the board in §152.3(f) of the title in July 1993 (to be effective September 1, 1993) for the county or counties served by the community supervision and corrections department, multiplied by the available capacity for the region as established §157.12 of this title. The Intra-regional allocation policy as it applies to a particular region will be in effect only if the community supervision and corrections departments in that region are unable by their own agreement to establish the allocations of beds in the region. The board must receive written notice on or before September 1, 1994, of the Intra-regional allocation policy for a region if one is established by the community supervision and corrections departments by their own agreement. The agreement must be documented in a form to be prescribed by the director of the community justice assistance division.

Only one comment was received in response to the proposed rules. The comment, which was received from the firm of Green & McElreath, Certified Public Accountants, noted that one the chart which lists the proposed regional allocation of state jail facilities, the column headed "percentage" actually represents "ratios". The commenter modified the figures in the column to reflect percentage by moving the decimal point and adding "%" of the end of each figure in the column

No change to the rules is being made as a result of the comment. The Board is adopting an allocation policy for state jails based on the percentages established by the allocation formula for admissions to the Institutional Division. In order to be consistent with the language used in 37 TAC §152.3(f), no change is being made to the chart.

The new sections are adopted under Government Code, Title 4, Subchapter D, §507.003 and §507.004 Texas Civil Statutes, which provide the Texas Department of Criminal Justice with the authority to designate regions and promulgate policies for allocation of admissions to the State Jail Division.

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 31, 1994.

TRD-9435397 Carl Reynolds  
General Counsel  
Texas Board of Criminal  
Justice

Effective date: February 21, 1994

Proposal publication date: August 13, 1993

For further information, please call. (512) 463-9693

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 13. Title IV-A Emergency Assistance Program

##### Program Requirements

- 40 TAC §§13.101, 13.105, 13.110

The Texas Department of Human Services (DHS) adopts new §§13.101, 13.105, and 13.110, concerning overview, eligibility, and service provision, in its new Chapter 13, Title IV-A Emergency Assistance Program. The new sections are adopted without changes to the proposed text as published in the December 24, 1993, issue of the *Texas Register* (18 TexReg 9921).

The justification for the new sections is to establish the Title IV-A Emergency Assistance Program. This program serves child protective services clients with a documented risk of child abuse or neglect or who are at risk of having a child removed from the home as determined by Texas Department of Protective and Regulatory Services caseworkers. DHS adopts the new sections on the basis that an interagency cooperative agreement between DHS and TDPRS will delineate each agency's responsibilities in providing services

The sections will function by making additional services available to help stabilize families with children at risk of abuse or neglect

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 34, which provides the department with the authority to administer public assistance and emergency relief programs. The new sections implement the Human Resources Code, §22.002 and §34.001

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

Issued in Austin, Texas, on January 31, 1994

TRD-9435413 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: March 1, 1994

Proposal publication date December 24, 1993

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

## Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) adopts amendments to §§19.604, 19.1104, and 19.1807, and adopts new §19.1103, concerning Preadmission Screening and Annual Resident Review (PASARR), rehabilitative services system, rate setting methodology, and specialized services, in its Long-Term Care Nursing Facility Requirements rule chapter Section 19.1103 and §19.1807 are adopted with changes to the proposed text as published in the November 23, 1993, issue of the *Texas Register* (18 TexReg 8664). The amendments to §§19.604 and 19.1104 are adopted without changes to the proposed text, and will not be republished

The justification for the amendments and new section is to maximize federal Medicaid dollars by providing mental retardation and/or related conditions specialized therapy services through several existing Medicaid programs, including DHS's Goal-Directed Therapy program. The Goal-Directed Therapy program provides physical therapy, occupational therapy, and speech and language pathology services on a prior-approval basis to recipients residing in nursing facilities and receiving Medicaid benefits. In addition, the amendments include changes in reference from the Texas Department of Health to DHS which now administers the Bureau of Long-Term Care.

The amendments and new section will function by ensuring that services provided to Medicaid nursing facility recipients are similar to the services provided to the general resident population in nursing facilities.

During the public comment period, DHS received comments from Advocacy, Inc., the Texas Health Care Association, and United Cerebral Palsy of Texas, Inc. A summary of the comments and DHS's response to the comments follow.

Comment Two commenters suggested that DHS adopt §19.1103(a) with added language to clarify specialized services and the intent of the section. Also, in reference to this sec-

tion, one commenter recommended that referrals should not be limited to TXMHMR case managers and that DHS should allow family, staff, and legal representatives to make recommendations for specialized services.

Response DHS agrees and has added the recommended clarifying language and deleted the language that would limit referrals to TXMHMR case managers.

Comment One commenter questioned the removal of the administrative fee for processing claims from §19.1104.

Response The intent of this amendment is to prevent possible duplication of payments for services covered in the reimbursement methodology. Staff time and copying costs related to preparation of the Form 4116, State of Texas Purchase Voucher, are covered as part of the nursing facility per diem, which is calculated from the cost report. DHS is adopting this section without changes.

In addition to changes resulting from public comments, DHS is adopting §19.1807 with a change to include subsection (f) which was inadvertently omitted from the proposal.

### Subchapter G. Resident Assessment

#### • 40 TAC §19.604

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 provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §32.021(c) and §32.024.

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 31, 1994.

TRD-9435414 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: April 1, 1994

Proposal publication date: November 23, 1993

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

### Subchapter L. Specialized Rehabilitative Services

#### • 40 TAC §19.1103, §19.1104

The new section and amendment 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 new section and amendment implement the Human Resources Code, §32.021(c) and §32.024.

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 31, 1994.

TRD-9435415 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: April 1, 1994

Proposal publication date: November 23, 1993

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

## Chapter 48. Community Care for Aged and Disabled

### 1915(c) Medicaid Home and Community-Based Waiver Services for Aged and Dis- abled Adults Who Meet Cri- teria for Alternatives to Nursing Facility Care

The Texas Department of Human Services (DHS) adopts an amendment to §48.6003 and the repeal of §48.6004 without changes to the proposed text published in the November 23, 1993, issue of the *Texas Register* (18 TexReg 8666).

The justification for the amendment and repeal is to permit DHS to identify and serve those individuals who choose to live in the community and whose needs cannot be met without the Nursing Facility Waiver.

The amendment and repeal will function by placing a cost ceiling on the clients' plan of care, modifying and clarifying some targeting criteria, and deleting Priority One as an eligibility criteria.

The department received one comment regarding the adoption of the proposal. Texas Health Care Association commented that some tasks require trained personnel to perform, and those tasks should only be performed under licensed supervision. The department agrees and has addressed these comments in the draft provider manual.

#### • 40 TAC §48.6003

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department 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 Human Resources Code §22.001 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 31, 1994.

TRD-9435394

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: March 1, 1994

Proposal publication date: November 23, 1993

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



• 40 TAC §48.6004

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department 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 Human Resources Code §22.001 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 31, 1994.

TRD-9435395

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: March 1, 1994

Proposal publication date: November 23, 1993

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



Chapter 79. Legal Services

Subchapter Z. Reimbursement Rates for Prosecution of Intentional Program Violations

• 40 TAC §79.2501

The Texas Department of Human Services (DHS) adopts an amendment to §79.2501, concerning rates of reimbursement, in its Legal Services rule chapter, without changes to the proposed text as published in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9702).

The justification for the amendment is to establish payment amounts for contested and uncontested fraud prosecution cases involving Aid to Families with Dependent Children (AFDC) program and Food Stamp program benefits.

The amendment will function by providing for appropriate reimbursement of county and district attorneys for the costs involved in prosecuting public assistance fraud cases.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public assistance and nutritional assistance programs.

The amendment implements the Human Resources Code, §33.011(e).

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 31, 1994

TRD-9435417

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 IV. Texas Commission for the Blind

Chapter 171. Cooperative Activities

• 40 TAC §171.3

The Texas Commission for the Blind adopts an amendment to §171.3, without changes to the proposed text as published in the December 24, 1993, issue of the *Texas Register* (18 TexReg 9922).

The amendment has been adopted in order to comply with House Bill 7, Article 1, §1.06, as passed by the 72nd Texas Legislature, and to comply with the Human Resources Code, §41.001, as passed by the 71st Texas Legislature, which revised the list of participating agencies to a memorandum of understanding for services to multiproblem children and youth and incorporated references to the Health and Human Services Commission.

The section provides for increased coordination of services to children and sharing of data related to service data and the implementation of a system of community resource coordination groups to coordinate services for all multiproblem children and youth.

No comments were received regarding adoption of the amendment

The amendment is adopted under the Human Resources Code, Title 5, Chapter 91, which provides the agency with the authority to negotiate interagency agreements with other state agencies to provide services for individuals who have both a visual disability and another disabling condition so that those multiply disabled individuals may be provided the most beneficial services with the greatest possible economy.

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-9435289

Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Effective date: February 18, 1994

Proposal publication date: December 24, 1993

For further information, please call (512) 459-2600



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 notices of actions taken by the Department of Insurance pursuant to Chapter 5,*

*Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.*

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

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

The Commissioner of Insurance at a public hearing held at 9:00 a.m. on January 27,

1994, under Docket Number 2083, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, adopted a staff proposal to repeal Rule II-A-2 in the Farm and Ranch Section and Rule II-A-2 in the Farm and Ranch Owners Section of the Texas Personal Lines Manual (Manual) to eliminate in its entirety the requirement of ten or more acres of land as a qualifying factor for eligibility for Farm and Ranch and Farm and Ranch Owners policies. The Commissioner adopted the staff proposal in lieu of a proposal by the Continental Insurance Companies to amend the two rules to reduce the requirement of ten or more acres of land to three acres as a qualifying factor for eligibility for Farm and Ranch and Farm and Ranch Owners policies. The two proposals were considered at the same time under the same docket number. Notice of both proposals (Reference Number O-1193-31) was published in the December 17, 1993 issue of the *Texas Register* (18 TexReg 9704).

The repeal of the two rules does not change or eliminate the other Manual requirements for property to qualify for coverage under Farm and Ranch and Farm and Ranch Owners policies. The repeal will result in insurers being able to provide farm and ranch coverage and farm and ranch owners coverage for insureds that would otherwise be eligible for this coverage but have less than ten acres. For example, certain farms such as emu and

ostrich farms can be successfully operated on less than ten acres. However, because of the ten-acre requirement for farm and ranch coverage and farm and ranch owners coverage, these farms were not eligible for farm and ranch coverage and farm and ranch owners coverage, and because these farms have buildings and equipment that do not qualify the residence for coverage under a homeowner's policy, they also were not eligible for homeowner's coverage. With the repeal of the ten-acre requirement, owners of farm or ranch operations of less than ten acres that also qualify under the other eligibility rules for Farm and Ranch and Farm and Ranch Owners coverage will be able to obtain coverage under the Farm and Ranch and Farm and Ranch Owners policies.

The Commissioner has determined that because of other Manual rules that require property to be used for farm and ranch purposes to qualify for coverage under the Farm and Ranch and Farm and Ranch Owners policies there is no reason to continue an acreage requirement if insurers are willing to write these policies on property of less than ten acres. The repeal will result in individual insurers determining as an underwriting matter whether to cover farm and ranch operations of less than ten acres that otherwise qualify for such coverage under the Farm and Ranch or Farm and Ranch Owners policies, rather than the determination being based on a Manual rule prohibition.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 535, 5.98, 5.101, and 5.96

The two rules repealed by the Commissioner are filed with the Chief Clerk under Reference Number O-1193-31 and are incorporated by reference by Commissioner Order Number 94-0081

Consistent with the Insurance Code, Article 5.96(h), prior to March 1, 1994, the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

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 28, 1994

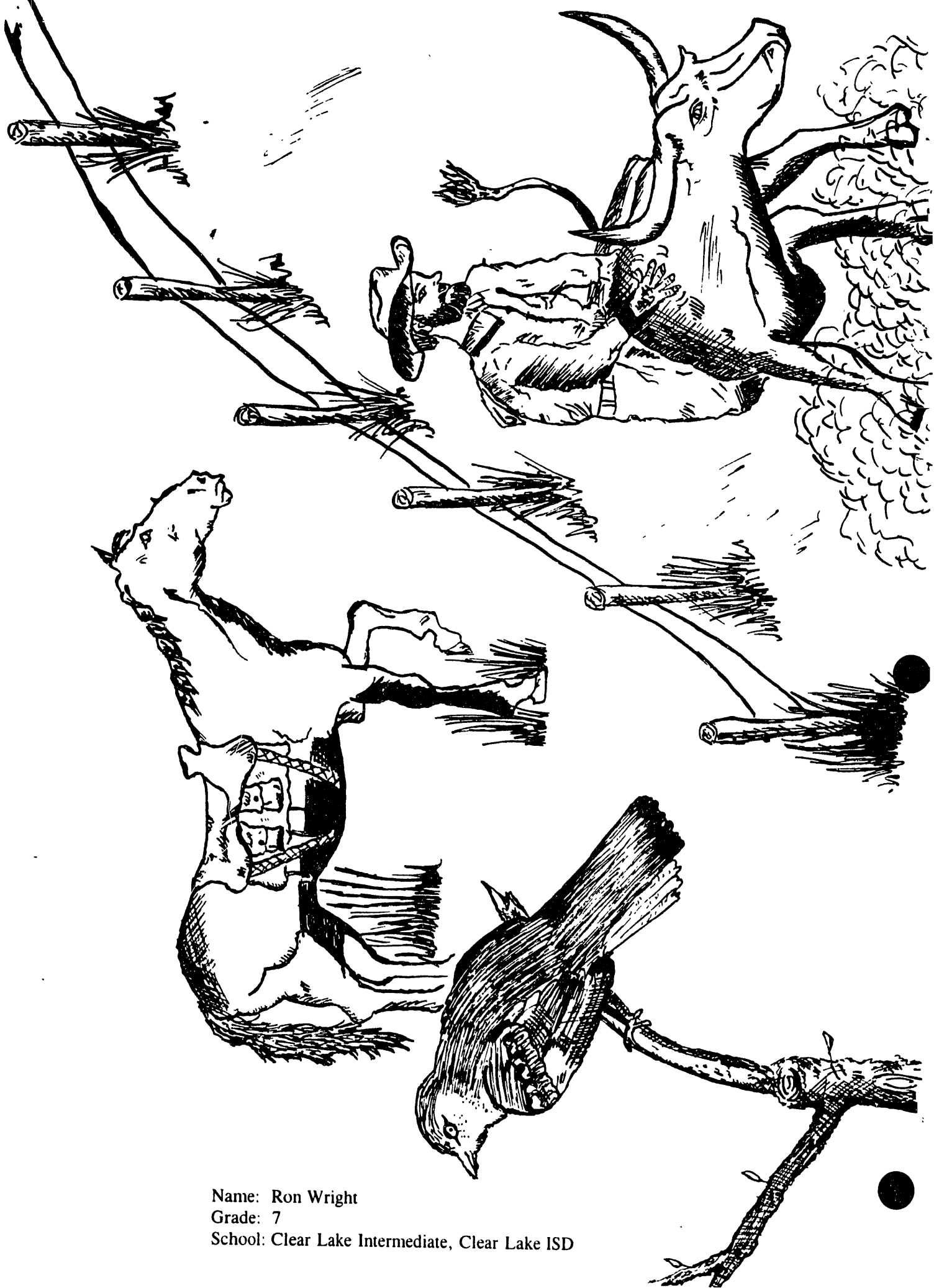
TRD-9435386

Linda K von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Effective date March 1, 1994

For further information, please call (512) 463-6328

◆ ◆ ◆



Name: Ron Wright  
Grade: 7  
School: Clear Lake Intermediate, Clear Lake ISD



# 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 on Aging

Wednesday, February 9, 1994, 9:00 a.m.

1949 South IH-35, Third Floor Large Conference Room

Austin

According to the complete agenda, the Minority Elderly Committee will consider and possibly act on: call to order; approve minutes of the June 9, 1993, meeting; financial report; summary of 1993 minority conference evaluations; review 1994 minority conference request for proposal (RFP), bidders presentation, and recommendation to Board; develop 1994 minority elderly committee work plan/activities; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: February 1, 1994, 9:13 a.m.

TRD-9435475

Wednesday, February 9, 1994, 9:00 a.m.

1949 South IH-35, Third Floor Small Conference Room

Austin

According to the agenda summary, the Area Agency on Aging (AAA) Operations Committee will consider and possibly act on call to order; minutes of December 2, 1993, meeting; proposed fiscal year 1994 bond fee residential repair awards; proposed distribution of additional bond fee funds for fiscal year 1994; publish various new, revised, repealed and re-located rules relating to TDoA Operations, AAA Operations and

Service Delivery in *Texas Register* for 30-day review and comment; publish rules in *Texas Register* relating to compliance with Senate Bill 383 for 30-day review and comment; continuation of two advisory committees and establish dates for the duration of both; confirm membership of two advisory committees; establish schedule for public hearing's on rules; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: February 1, 1994, 9:13 a.m.

TRD-9435476

Wednesday, February 9, 1994, 1:15 p.m.

1949 South IH-35, Third Floor Small Conference Room

Austin

According to the complete agenda, the Networking/Advocacy/Legislation Committee will consider and possibly act on: call to order; minutes of January 5, 1994, meeting; meet in conjunction with Planning Committee to review draft Position Papers on Long Term Care, TDoA Agency Status, Medicaid Waivers, The Role of Area Agencies on Aging (AAAs), and Health Care Reform, discuss first meeting of Senior Advocacy Coalition, attendance, and agenda, general announcements, and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: February 1, 1994, 9:12 a.m.

TRD-9435473

Wednesday, February 9, 1994, 9:00 a.m.

1949 South IH-35, Third Floor Large Conference Room

Austin

According to the complete agenda, the Planning Committee will consider and possibly act on: call to order; minutes of December 2, 1993, meeting; meet in conjunction with Networking/Advocacy/Legislation Committee to review draft Position Papers on Long Term Care, TDoA Agency Status, Medicaid Waivers, The Role of Area Agencies on Aging (AAAs), and Health Care Reform; review fiscal year 1994 area plans for the following AAAs and recommend to Board with no conditions: Alamo, Bexar, Brazos Valley, Dallas, Houston-Galveston, Middle Rio Grande, and Permian Basin; review strategic planning process; review quarterly report to Administration on Aging; review quarterly discretionary grants report; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: February 1, 1994, 9:13 a.m.

TRD-9435474

## Texas Department of Agriculture

Monday-Tuesday, February 7-8, 1994, 10:00 a.m. and 9:00 a.m., respectively.

1700 North Congress Avenue, Room 924A  
Austin

According to the agenda summary, the Texas Agricultural Finance Authority will call to order; introduction and orientation of new board members; election of vice chair and secretary/treasurer of board; discussion and action on: minutes of previous meeting, adoption of rules for Young Farmer Loan Guarantee Program; Young Farmer Loan Guarantee Program assessment fee and refund process; Young Farmer Loan Guarantee Program policy and procedures; Revenue Bond Program; bids for demand survey; applicant eligibility for Texas Agricultural Finance Authority Loan Guaranty Program; request by Development Corporation of Abilene regarding Mesquite Country, Inc.; Guaranty of United Bean Marketing Coop; Guaranty of Texas Hill Country Food Processors, Inc.; Guaranty of Wright Fibers, Inc.; applications to Texas Agricultural Finance Authority Loan Guaranty Program; consent on grants to be awarded by Texas Agricultural Diversification Program; discussion and action on legal counsel contract; discussion of other business; and adjourn.

Contact: Robert Kennedy, P.O. Box 12847,  
Austin, Texas 78711, (512) 463-7639.

Filed: January 28, 1994, 3:03 p.m.

TRD-9435361

Tuesday-Wednesday, February 8-9, 1994,  
1:00 p.m. and 8:00 a.m., respectively.

Harvey Hotel, 3100 I-40 West  
Amarillo

According to the agenda summary, the Texas Wheat Producers Board will discuss action call meeting to order, minutes of December meeting, financial report, year-to-date report; setting of assessment level, report; presentation of information, organizational structure and objectives; past quarter and future activities report, report and action: line item presentations on budget and research and education requests; United States Wheat meeting, WETEC; wheat utilization; NAWG foundation; NAWG directors meeting; Perryton Economic Development building materials demonstration; reports of meetings and board-related activities; discussion and action adoption of 1994-1995 budget, report from TDA; new business; and adjourn.

Contact: Bill Nelson, 2201 Civic Circle,  
Amarillo, Texas 79109-1853, (806)  
352-2191.

Filed: January 28, 1994, 11:19 a.m.

TRD-9435330

Thursday, February 10, 1994, 7:00 p.m.  
Texas Agricultural Extension Office, High-  
way 36

Rosenberg

According to the complete agenda, the Upper Coastal Bend Pest Management Committee will discuss overview of Texas Department of Agriculture Cotton Stalk Destruction Program; industry perspective; pest management committee report; recap of 1993 Cotton Stalk Destruction Program, and questions and answers.

Contact: Darrell Williams, P.O. Box  
12847, Austin, Texas 78711, (512)  
463-7619.

Filed: January 28, 1994, 1:59 p.m.

TRD-9435356

Friday, February 11, 1994, 8:00 a.m.

Radisson Inn Airport, 7909 IH-40 East  
Amarillo

According to the agenda summary, the Texas Corn Producers Board will call to order; action on minutes of December meeting; financial statements; Executive Session-discussion on contract for executive director, in accordance with the Texas Government Code, §551.074; adjourn Executive Session; call to order; action on Executive Session; update on Ethanol Plant; biennial election, presentation and action on request for funding; County Agents Association request for funding, Texas Agriculture Lifetime Leadership request for funding; promotional grant request; 1994 research request for funding; 1993 research report and request for 1994 research funding; prioritization and discussion on 1994 research requests for funding; action on 1994 research requests for funding; date and location of May board meeting; and adjourn.

Contact: Carl King, 218 East Bedford,  
Dimmitt, Texas 79027, (806) 647-4224.

Filed: January 28, 1994, 4:24 p.m.

TRD-9435369

Friday, February 11, 1994, 10:30 a.m.

Del Lago Conference Center, 600 Del Lago  
Boulevard

Montgomery

According to the complete agenda, the Aquaculture Executive Committee will call to order, approval of minutes; introduction of Agency Aquaculture Coordinators; discussion on Aquaculture Liaison Officer-Tim Moore, presentation by Texas Department of Agriculture on marketing Texas Aquaculture; discussion by Texas Parks and Wildlife on regulation of protected government finfish and exotic species, status report on General Land Office Aquaculture projects, discuss other business, and adjourn

Contact: Jim Jones, P.O. Box 12847,  
Austin, Texas 78711, (512) 463-7563

Filed: January 31, 1994, 3:33 p.m.

TRD-9435432

Tuesday, February 15, 1994, 10:00 a.m.

Harris County Extension Center, #2  
Abercrombie Drive

Houston

According to the complete agenda, the Texas Rice Producers Board will approve/make changes on minutes of previous meeting; presentation: financial report; review and possible action: revenue and expense budget; discussion and possible action: Waterfowl Habitat proposal and National Rice Federation proposal; review and discuss: any other business; and adjourn.

Contact: Curtis Leonardt, P.O. Box  
740250, Houston, Texas 77274, 1 (800)  
888-7423.

Filed: January 28, 1994, 1:59 p.m.

TRD-9435355

## Texas Commission on Alcohol and Drug Abuse

Monday, February 7, 1994, 9:00 a.m.

710 Brazos Street, Suite 800

Austin

According to the complete agenda, the Criminal Justice Issues Committee call to order; Criminal Justice Treatment Initiative update; Juvenile Justice Treatment Initiative; in-prison therapeutic community request for proposals; in-prison therapeutic community evaluation request for proposals; Ellis II Substance Abuse Felony Punishment Facility; transitional treatment center Transportation; proposed contract for training curriculum development, in-prison therapeutic community and substance abuse felony punishment facility provider budgets; prior pending business; new business; adjourn.

Contact: Ted Sellers, 710 Brazos Street,  
Austin, Texas 78701, (512) 867-8132.

Filed: January 28, 1994, 12:07 p.m.

TRD-9435350

Tuesday, February 8, 1994, 5:30 p.m.

710 Brazos Street, Perry Brooks Building,  
Eighth Floor Conference Room

Austin

According to the complete agenda, the Grant and Contract Review Committee call to order, approval of minutes from January 5, 1994, invitation for bids; and adjourn.

Contact: Steve Casillas or Lynn Brunn-  
Shank, 710 Brazos Street, Austin, Texas  
78701-2576, (512) 867-8265.

Filed: January 28, 1994, 2:05 p.m.

TRD-9435358

◆ ◆ ◆  
**Texas Alternative Fuels Council**

**Thursday, February 10, 1994, 9:00 a.m.**

105 West 15th Street, Room 101, John H. Reagan Building

Austin

According to the complete agenda, the Texas Alternative Fuels Council will call to order, consideration of minutes from January 14, 1993, council meeting; Executive Session, employment of council administrator; pending and proposed litigation, consideration of employment of council administrator, information items, public comment, and adjournment

**Contact:** Soll Sussman, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5039.

**Filed:** January 28, 1994, 9 26 a m

TRD-9435287

◆ ◆ ◆  
**State Board of Barber Examiners**

**Tuesday, February 8, 1994, 8:30 a.m.**

9101 Burnet Road, Suite 103

Austin

According to the agenda summary, the Board Members will open the meeting with roll call, read and possibly approve minutes from November 2, 1993, meeting, sign teacher and school certificates, appearances of Ronnie Brown, Johnny Garcia, C Kimbrough-Stephenson, and Sarah Woelk before the board; hear discussion and possible action on reports to the board by the Executive Director, read, discuss, and possibly act on letters to the board, new business, discuss and possibly act upon LaVeta Sweeney's prior resignation, travel for board, three-day extension for application deadline for exams, walk-ins on test day, Board approval of merit increases, promotions, demotions, change of exam day to the 15th of each month, or thereafter, memo regarding recycling policy, individual that requested information about obtaining a permit to operate a barber college, Board members will interview, and possibly take action to hire a new Accountant II, then it will go into executive session to meet with Assistant Attorney General's to seek legal advice regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director, Mike Rice, and Inspector Bettie Sam, and/or hear complaints or charges against the Executive Director, Mike Rice and/or

Bettie Sam, pursuant to Texas Government Code, §551 071; return to open session to possibly act on items in preceding executive session as required, return to executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director, Mike Rice, and/or Bettie Sam, pursuant to Texas Government Code, §551 074; return to open session to possibly act on items in preceding executive session as required; and adjourn.

**Contact:** B Michael Rice, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040

**Filed:** January 27, 1994, 4.42 p m.

TRD-9435284

**Tuesday, February 8, 1994, 8:30 a.m.**

9101 Burnet Road, Suite 103

Austin

Revised agenda

According to the complete agenda, an appearance before the board by Eugene D Mitchell, Barber from Angleton, Texas

**Contact:** B Michael Rice, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040

**Filed:** January 31, 1994, 3 38 p m

TRD-9435433

◆ ◆ ◆  
**Texas Bond Review Board**

**Tuesday, February 8, 1994, 10:00 a.m.**

Committee Room #5, Fifth Floor, Clements Building, 300 West 15th Street

Austin

According to the agenda summary, the Staff Planning will call to order, approval of minutes, discussion of proposed issues, other business, and adjourn

**Contact:** Albert L. Bacarisse, 300 West 15th, Suite 409, Austin, Texas 78701, (512) 463-1741

**Filed:** January 31 1994, 1 24 p m

TRD-9435425

◆ ◆ ◆  
**Texas Catastrophe Property Insurance Association**

**Friday, February 11, 1994, 9:00 a.m.**

ICPIA Office, 2801 South Interregional Highway

Austin

According to the complete agenda, the Board of Directors will call to order and reading of Antitrust statement, approval of

the minutes of the November 19, 1993, board meeting; report of the chairman; report of the general manager; report of the counsel; report of the accountant; report of long range planning committee; report of agents commission committee; windstorm inspection services; mobile home limits of liability; any other business that may come before the board; and adjourn

**Contact:** Charles F McCullough, 2801 South Interregional, Austin, Texas 78741, (512) 444-7007.

**Filed:** January 27, 1994, 10 59 a m.

TRD-9435263

◆ ◆ ◆  
**Texas Planning Council for Developmental Disabilities**

**Thursday, February 10, 1994, 9:00 a.m.**

Executive Committee Meeting, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

According to the complete agenda, the Executive Committee Meeting will call to order, introductions, public comments, approval of minutes of January 20, 1994, chair's report, executive director's report, review of associate member applications, budget status report, fiscal year 1994 budget adjustments, stipends for individuals, review of stipends grant applications, and adjourn

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Denese Holman at (512) 483-4081

**Contact:** Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081

**Filed:** January 31, 1994, 12 06 p m

TRD-9435422

◆ ◆ ◆  
**Thursday-Friday, February 10-11, 1994, 1:30 p.m. and 9:00 a.m. respectively.**

Austin North Hilton & Towers, 6000 Middle Fiskville Road

Austin

According to the agenda summary, the Quarterly Council Meeting on Thursday will call to order, introductions, public comments, approval of minutes of November 18-19, 1993, recognition of former associate members, Advocacy and Public Information Committee report, Executive Committee report, Chair's report, Executive

Director's report, recess, Friday, reconvene, introductions, public comments; continuation of unfinished business, Nominating Committee report; Planning & Evaluation Committee report, Grants Management Committee report, UT-Austin University Affiliated Program (UAP) update, Advocacy, Inc update, announcements; and adjourn

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Denese Holman at (512) 483-4087

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas, 78751, (512) 483-4081

Filed: January 31, 1994, 12 06 p m  
TRD-9435423

### State Employee Charitable Campaign State Policy Committee

Friday, February 5, 1994, 10:00 a.m.  
Capitol Extension, E2 018  
Austin

According to the complete agenda, the State Employee Charitable Campaign State Policy Committee will discuss organizational meeting, overview of administrative rules and responsibilities, consideration of campaign timeline, local campaign areas and local committee chairs, and discussion of goals and objectives

Contact: Tom Tobin, 1400 Rio Grande, Austin, Texas 78701, (512) 473-2249

Filed: January 28, 1994, 4 43 p m  
TRD-9435374

### Texas Employment Commission

Tuesday, February 8, 1994, 9:00 a.m.  
Room 644, TEC Building, 101 East 15th Street  
Austin

According to the agenda summary, the Texas Employment Commission will hear prior meeting notes, staff reports, internal procedures of Commission Appeals, consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 6, and set date of next meeting

Contact: C Ed Davis, 101 East 15th Street,

Austin, Texas 78778, (512) 463-2291

Filed: January 31, 1994, 3:19 p m  
TRD-9435430

### Texas General Land Office

Monday, February 7, 1994, 1:30 p.m.

111 East Loop North (Houston Port Authority Board Room)

Houston

According to the complete agenda, the Oil Spill Commission will call to order, approval of minutes from December 6, 1993, meeting, guest speaker (Ted Thorjussen of Houston-Galveston Navigation Safety Committee), oil spill division program updates, other business, set next meeting date, and adjournment.

Contact: Stephanie Morris, 1700 North Congress Avenue, Room 730, Austin, Texas 78701, (512) 463-6556

Filed: January 28, 1994, 3 03 p m  
TRD-9435359

### Texas Department of Health

Thursday, February 24, 1994, 1:00 p.m.

Room T-607, 1100 West 49th Street

Austin

According to the complete agenda, the Community Oriented Primary Care/Primary Health Care Services Program Advisory Committee will discuss approval of the minutes of the June 17, 1993, meeting, discuss and possibly act on Community Oriented Primary Care reorganization, Public Health Care Services Program (PHCSP) annual report, revised outcome measures and update on Texas Department of Health immunization initiative, new and continuing grant applications, election of officers, and selection of next meeting date

Contact: John Dombroski, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771 For ADA assistance, call Richard Butler (512) 458-7695 or TDD (512) 458-7708 at least two days prior to the meeting

Filed: January 31, 1994, 3 33 p m  
TRD-9435431

### Health and Human Services Corporation

Monday, February 7, 1994, 8:30 a.m.

Senate Office Building, 15th and Lavaca  
Austin

According to the complete agenda, the Blue Ribbon Policy Group will make recommendations which will be used in developing the strategic plan and budget priorities. House Bill 7 passed by the 72nd Legislature requires the Commission to submit a strategic plan and consolidated budget to the Legislature by October 1994.

No public testimony will be taken at this meeting

People with disabilities who have special needs may contact Monique Jackson at the Health and Human Services Commission at (512) 502-3200

Contact: Monique Jackson, 4807 Spicewood Springs Road, Building 4, Austin, Texas, (512) 502-3200

Filed: January 31, 1994, 11.34 a m.  
TRD-9435421

### Texas Incentive and Productivity Commission

Monday, February 7, 1994, 10:00 a.m.

Clements Building, Second Floor, Room #204B, 15th and Lavaca

Austin

Revised agenda

According to the agenda summary, the Texas Incentive and Productivity Commission will add employee suggestion to agenda item V, consideration of employee suggestions for approval Office of the Attorney General 302-0104 Nathan Henderson

Contact: M Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393

Filed: January 28, 1994, 4 35 p m  
TRD-9435372

### Texas Department of Insurance

Monday, February 7, 1994, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the complete agenda, the Department request by Lumbermens Mutual Docket Number 454-94-099 for hearing on premiums withheld from Bordereaux report pursuant to a workers' compensation insurance claims audit

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code, #113-A, Austin, Texas 78701, (512) 463-6527

Filed: January 28, 1994, 12:06 p.m.

TRD-9435348

Tuesday, February 8, 1994, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fourth Floor, Suite  
408

Austin

According to the complete agenda, the Department will consider whether disciplinary action should be taken against Joe Thomas Elliott, Jr., Flint, Texas, Docket Number 454-93-829, who holds a Group I, Legal Reserve Life Insurance Agent's license issued by the Texas Department of Insurance

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code, #113-A, Austin, Texas 78701, (512) 463-6527

Filed: January 28, 1994, 12:06 p.m.

TRD-9435347

Wednesday, February 9, 1994, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fourth Floor, Suite  
408

Austin

According to the complete agenda, the Department will consider the application of James W. Glenn, Victoria, Texas, Docket Number 454-94-168, for a Group I, Legal Reserve Life Insurance agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code, #113-A, Austin, Texas 78701, (512) 463-6527

Filed: January 28, 1994, 12:06 p.m.

TRD-9435346

Thursday, February 10, 1994, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fourth Floor, Suite  
408

Austin

According to the complete agenda, the Department will consider the Form A application of Regal Holding Company, Docket Number 454-94-070, for the acquisition of Comonco Insurance Company.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code, #113-A, Austin, Texas 78701, (512) 463-6527

Filed: January 28, 1994, 12:06 p.m.

TRD-9435345

Thursday, February 10, 1994, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fourth Floor, Suite  
408

Austin

According to the complete agenda, the Department request by Pulse Medical Staffing,

Docket Number 454-94-134, for a hearing on an experience modifier endorsement applicable to workers' compensation insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code, #113-A, Austin, Texas 78701, (512) 463-6527

Filed: January 28, 1994, 12:06 p.m.

TRD-9435344

Friday, February 11, 1994, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fourth Floor, Suite  
408

Austin

According to the complete agenda, the Department will consider the application of William Morris Risby, Dallas, Texas, Docket Number 454-93-611, for a local recording agent's license to be issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code, #113-A, Austin, Texas 78701, (512) 463-6527

Filed: January 28, 1994, 12:05 p.m.

TRD-9435344

Friday, February 11, 1994, 1:00 p.m.

State Office of Administrative Hearings,  
300 West 15th Street, Fourth Floor, Suite  
408

Austin

According to the complete agenda, the Department will consider whether disciplinary action should be taken against Frank Frederick Swirski, San Antonio, Texas, Docket Number 454-93-744, who holds a Group I, Legal Reserve Life Insurance Agent's license issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code, #113-A, Austin, Texas 78701, (512) 463-6527

Filed: January 28, 1994, 12:06 p.m.

TRD-9435342

## Texas Department of Licensing and Regulation

Monday, February 14, 1994, 1:30 p.m.

920 Colorado, E. O Thompson Building,  
Room 1012

Austin

According to the complete agenda, the Architectural Barriers Advisory Committee will discuss procedural rules, complaint procedures, matters relating to non-submittals, inspections, and variances/appeals.

Contact: Rick Baudoin, P.O. Box 12157,  
Austin, Texas 78711, (512) 463-3519.

Filed: February 1, 1994, 9:51 a.m.

TRD-9435480

## Texas Natural Resource Conservation Commission

Wednesday, February 9, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F.  
Austin Building, Room 118

Austin

According to the agenda summary, the Commission will consider approving the following matters on the uncontested agenda: Class 2 modes to hazardous waste permits; new water quality permits; amendment to water quality permit; water district matters; water utility matters; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but limited to rescheduling an item in its entirety or for particular action at a future date or time

Contact: Doug Kitts, P.O. Box 13087,  
Austin, Texas 78711-3087, (512) 463-7905.

Filed: January 31, 1994, 4:37 p.m.

TRD-9435471

Wednesday, February 9, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F.  
Austin Building, Room 118

Austin

According to the agenda summary, the Commission will consider approving the following matters on the contested agenda: water quality enforcement, solid waste enforcement; hazardous waste enforcement; air quality enforcement; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but limited to rescheduling an item in its entirety or for particular action at a future date or time

Contact: Doug Kitts, P.O. Box 13087,  
Austin, Texas 78711-3087, (512) 463-7905.

Filed: January 31, 1994, 4:23 p.m.

TRD-9435469

Thursday, February 10, 1994, 10:00 a.m.

6300 Ocean Drive, Texas A&M University  
Corpus Christi, Conrad Blucher Institute,  
Main Conference Room

Corpus Christi

According to the complete agenda, the Management Committee of the Corpus Christi Bay national Estuary Program will call to order; read and approve minutes for January 6, 1994, meeting, discuss draft of the fiscal year 1995 annual work plan and the State-EPA management conference agreement, discuss various program activities including the upcoming public kick-off celebration to be held during the summer; establish time, date, place and agenda for next meeting; and adjourn.

Contact: Richard Volk, TAMU-CC, Campus Box 290, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: February 1, 1994, 9:42 a.m.

TRD-9435479

Friday, February 25, 1994, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 1149A

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of Montgomery County Municipal Utility District Number 15

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: January 28, 1994, 1:57 p.m.

TRD-9435351

Friday, February 25, 1994, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 1149A

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of Tyler Pipe Industries, Inc.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875

Filed: January 28, 1994, 1:57 p.m.

TRD-9435352

Friday, February 25, 1994, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 1149A

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of Gulf Coast Machine and Supply Company

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875

Filed: January 28, 1994, 1:58 p.m.

TRD-9435353

Friday, February 25, 1994, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 1149A

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of Calabrian Chemicals Corporation.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: January 28, 1994, 1:58 p.m.

TRD-9435354

◆ ◆ ◆  
**Texas Board of Pardons and Paroles**

Monday-Wednesday, February 7-9, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: January 27, 1994, 1:29 p.m.

TRD-9435269

Monday-Friday, February 7-11, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

Filed: January 27, 1994, 1:28 p.m.

TRD-9435266

Thursday, February 10, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: January 27, 1994, 1:29 p.m.

TRD-9435270

Thursday-Friday, February 10-11, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: January 27, 1994, 1:28 p.m.

TRD-9435268

Thursday-Friday, February 10-11, 1994, 1:00 p.m. and 9:00 a.m., respectively.

Route 5, Box 258-A

Gatesville

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

Filed: January 27, 1994, 1:28 p.m.

TRD-9435267

◆ ◆ ◆  
**Texas Office for Prevention  
of Developmental  
Disabilities**

**Sunday, February 15, 1994, 10:00 a.m.**  
4900 North Lamar Boulevard  
Austin

According to the complete agenda, the Statewide Bicycle Helmet Coalition Meeting will call to order; round table introductions; comments or corrections to the December 6, 1993, meeting notes; task force report: legislation, education, data collection, helmet distribution; bicycle safety grant report: Austin, San Antonio, Houston; new issues and discussion; meeting schedule; and adjournment.

**Contact:** Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas, 78756, (512) 483-5042

**Filed:** January 31, 1994, 4:37 p.m.

TRD-9435470

◆ ◆ ◆  
**Texas Department of Public  
Safety**

**Monday, February 7, 1994, 1:00 p.m.**  
DPS Headquarters, 5805 North Lamar Boulevard  
Austin

According to the complete agenda, the Public Safety Commission will discuss approval of minutes; budget matters; internal audit report; personnel matters; pending and contemplated litigation; real estate matters; public comment; miscellaneous; and other unfinished business.

**Contact:** James R. Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752

**Filed:** January 28, 1994, 2:01 p.m.

TRD-9435357

◆ ◆ ◆  
**Public Utility Commission of  
Texas**

**Monday, February 7, 1994, 9:00 a.m.**  
7800 Shoal Creek Boulevard  
Austin

According to the complete agenda, the Public Utility Commission of Texas will hold a workshop on Project Number 11365, Integrated Resource Planning (IRP), in the Commission's office.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 27, 1994, 10:40 a.m.

TRD-9435262

◆ ◆ ◆  
**Thursday, February 10, 1994, 9:00 a.m.**  
7800 Shoal Creek Boulevard  
Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12712; petition of Gulf States Utilities to lower its fixed fuel factor and for good cause exemption to Public Utilities Commission Substantive Rule 23.23(b)(2).

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, (512) 458-0100.

**Filed:** January 31, 1994, 1:25 p.m.

TRD-9435426

◆ ◆ ◆  
**Texas Racing Commission**

**Monday, February 7, 1994, 10:00 a.m.**  
John H. Reagan Building, Room 103, 105 West 15th Street  
Austin

According to the complete agenda, the Texas Racing Commission will call to order; roll call; vote to propose and adopt the following amendments and new sections: §§305.82, 309.25, 321.66, 321.110, 305.35, 305.44, 305.45, 305.49, 311.106, 321.73, 321.109, 313.405, 303.43, 309.199, 311.153, 319.111, 321.234, 309.355, and 311.172; presentation by staff and discussion of strategic planning process and sunset review process; consideration and action on the following: request by Valley Greyhound Park for approval of simulcasting; request by Sam Houston Race Park for change in live race dates for 1994; resolution relating to amendments to licensed enclosures, resolution relating to pre-opening simulcasting; request by Retama Park for approval of security for opening date and amendment to site of licensed enclosure, old and new business; and adjourn.

**Contact:** Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461.

**Filed:** January 28, 1994, 4:35 p.m.

TRD-9435373

◆ ◆ ◆  
**Railroad Commission of  
Texas**

**Monday, February 7, 1994, 9:30 a.m.**  
1701 North Congress Avenue, First Floor

Conference Room 1-111  
Austin

According to the complete agenda, the Commission will consider and act on the Surface Mining and Reclamation Division Director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Melvin Hodgkiss, P.O. Box 12967, Austin, Texas 78701, (512) 463-6901.

**Filed:** January 28, 1994, 11:41 a.m.

TRD-9435335

**Monday, February 7, 1994, 9:30 a.m.**  
1701 North Congress Avenue, First Floor  
Conference Room 1-111  
Austin

According to the complete agenda, the Commission will consider category determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

**Contact:** Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755

**Filed:** January 28, 1994, 11:42 a.m.

TRD-9435339

**Monday, February 7, 1994, 9:30 a.m.**  
1701 North Congress Avenue, First Floor  
Conference Room 1-111  
Austin

According to the complete agenda, the Commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

**Filed:** January 28, 1994, 11:41 a.m.

TRD-9435338

**Monday, February 7, 1994, 9:30 a.m.**  
1701 North Congress Avenue, First Floor  
Conference Room 1-111  
Austin

According to the complete agenda, the Commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division Director's report on division administration, budget, procedures, and personnel matters

**Contact:** Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

**Filed:** January 28, 1994, 11:41 a.m.

TRD-9435337

**Monday, February 7, 1994, 9:30 a.m.**  
1701 North Congress Avenue, First Floor  
Conference Room 1-111  
Austin

According to the complete agenda, the Commission will consider and act on the Division Director's report on budget, personnel, and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.  
Filed: January 28, 1994, 11:41 a.m.  
TRD-9435336

**Monday, February 7, 1994, 9:30 a.m.**  
1701 North Congress Avenue, First Floor  
Conference Room 1-111  
Austin

According to the agenda summary, the Commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.  
Filed: January 28, 1994, 11:54 a.m.  
TRD-9435341

**Monday, February 7, 1994, 9:30 a.m.**  
1701 North Congress Avenue, First Floor  
Conference Room 1-111  
Austin

According to the complete agenda, the commission will consider and act on the Personnel Division Director's report on division administrations, budget, procedures, and personnel matters. The commission will meet in Executive Session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel. The following matters will be taken up for consideration and/or decision by the commission, commission budget, fiscal, administrative or procedural matters, strategic planning; personnel and staffing, including restructuring or transferring the Oil Field Theft Division.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6981.  
Filed: January 28, 1994, 11:40 a.m.  
TRD-9435333

**Monday, February 7, 1994, 9:30 a.m.**  
1701 North Congress Avenue, First Floor  
Conference Room 1-111  
Austin

According to the complete agenda, the Commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.  
Filed: January 28, 1994, 11:41 a.m.  
TRD-9435334

◆ ◆ ◆  
**Texas Real Estate Commission**

**Monday, February 7, 1994, 8:30 a.m.**  
Conference Room 236B, Second Floor,  
TREC Headquarters Office, 1101 Camino  
La Costa  
Austin

According to the agenda summary, the Travel Expense Committee will discuss and possibly act on recommended travel and expense guidelines.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.  
Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.  
Filed: January 27, 1994, 4:12 p.m.  
TRD-9435279

**Monday, February 7, 1994, 9:30 a.m.**  
Conference Room 235, Second Floor,  
TREC Headquarters Office, 1101 Camino  
La Costa  
Austin

According to the agenda summary, the Commission will consider and possibly act on: election of vice-chairman and secretary; staff reports; committee reports; possible action to propose amendments to 22 TAC §§537.11, 537.21, 537.22, 537.26, 237.27, repeal of §537.25, and adoption of new §§537.37-537.39, concerning standard contract forms; request from Texas Real Estate Inspector Committee for authority to issue advisory opinions or respond to public inquiries; proposal of amendment to 22 TAC §535.222, concerning inspection standards; approval of MCE providers and MCE courses or other providers and courses; approval of revised mission statement; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071; authorization of payments from

recovery funds; consideration of compliant information; entry of orders in contested cases; and Motion for Rehearing in Hearing Number 94-01-931449.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.  
Filed: January 27, 1994, 4:15 p.m.  
TRD-9435280

◆ ◆ ◆  
**State Securities Board**

**Friday, February 11, 1994, 9:00 a.m.**  
State Office of Administrative Hearings,  
Clements Building, 300 West 15th Street,  
Suite 408  
Austin

Rescheduled from January 28, 1994  
According to the agenda summary, the Board will hold a hearing for the purpose of determining whether the registration of L. A. Bernard and Company as a dealer in securities in Texas should be revoked and whether an order should be issued prohibiting the offer and sale of securities of Respondent L. A.B. and Company, Lynn A. Bernard, Jr., and LABCO Capital Corporation, and further prohibiting LABCO Capital from acting as an unregistered dealer.

Contact: David Grauer, 221 West Sixth Street, Austin, Texas 78701, (512) 474-2233.  
Filed: January 27, 1994, 4:38 p.m.  
TRD-9435283

◆ ◆ ◆  
**The Supreme Court of Texas**

**Thursday, February 10, 1994, 5:00 p.m.**  
Courtroom, Criminal Justice Center, 16th  
and Avenue H  
Huntsville

According to the complete agenda, the Task Force on Judicial Ethics will hear public comment, statements, and other communications concerning possible amendments to the Texas Code of Judicial Conduct, specifically including, but not limited to, Canon V of the Code and the political activity of judges.

Contact: Irene Luvaul, P.O. Box 12248, Austin, Texas 78711, (512) 463-1344.  
Filed: January 28, 1994, 3:58 p.m.  
TRD-9435368

**Wednesday, March 2, 1994, 4:30 p.m.**



Corpus Christi Ballroom "A", Marriott Hotel, 900 North Shoreline Boulevard

Corpus Christi

According to the complete agenda, the Task Force on Judicial Ethics will hear public comment, statements, and other communications concerning possible amendments to the Texas Code of Judicial Conduct, specifically including, but not limited to, Canon V of the Code and the political activity of judges.

Contact: Irene Luvaul, P.O. Box 12248, Austin, Texas 78711, (512) 463-1344.

Filed: January 28, 1994, 3:58 p.m.

TRD-9435367

Wednesday, March 23, 1994, 4:30 p.m.

Hilton Hotel, 2401 East Lamar Boulevard  
Arlington

According to the complete agenda, the Task Force on Judicial Ethics will hear public comment, statements, and other communications concerning possible amendments to the Texas Code of Judicial Conduct, specifically including, but not limited to, Canon V of the Code and the political activity of judges.

Contact: Irene Luvaul, P.O. Box 12248, Austin, Texas 78711, (512) 463-1344.

Filed: January 28, 1994, 3:58 p.m.

TRD-9435366

Thursday, April 7, 1994, 5:00 p.m.

Sheraton Hotel, 5701 South Broadway

Tyler

According to the complete agenda, the Task Force on Judicial Ethics will hear public comment, statements, and other communications concerning possible amendments to the Texas Code of Judicial Conduct, specifically including, but not limited to, Canon V of the Code and the political activity of judges.

Contact: Irene Luvaul, P.O. Box 12248, Austin, Texas 78711, (512) 463-1344.

Filed: January 28, 1994, 3:58 p.m.

TRD-9435365

Wednesday, April 20, 1994, 4:30 p.m.

Fort Worth/Arlington Ballroom, Lubbock Plaza Hotel, 3201 Loop 289 South

Lubbock

According to the complete agenda, the Task Force on Judicial Ethics will hear public comment, statements, and other communications concerning possible amendments to the Texas Code of Judicial Conduct, specifically including, but not limited to, Canon V of the Code and the political activity of judges.

Contact: Irene Luvaul, P.O. Box 12248, Austin, Texas 78711, (512) 463-1344.

Filed: January 28, 1994, 3:58 p.m.

TRD-9435364

## Board of Tax Professional Examiners

February 15, 1994, 3:00 p.m.

Big Bend Ballroom, Hyatt Regency Hotel, 208 Barton Springs Road

Austin

According to the agenda summary, the Board of Tax Professional Examiners will call to order; roll call of board members; announcement of a quorum and public notice of meeting was published and posted; approval of minutes of the December 8, 1993 meeting; discussion and appropriate action on determining the registrant renewal fee for 1995; discussion and appropriate action on the certification, recertification and reclassification of registrants; executive director's report; report from the chair of the Professional Standards Committee; an overview of Texas' Strategic Budgeting Process; public comment; executive session under the authority of Section 551.074 of the Government Code for evaluation of executive director; reconvene open meeting for discussion and/or decision on the matter considered in executive session; election of board officers; and adjournment.

Contact: Pete Stone, 4301 Westbank Drive, Austin, Texas 78746

Filed: January 31, 1994, 10:45 a.m.

TRD-9435429

## Texas Department of Transportation

Thursday, January 27, 1994, 4:00 p.m.

Dewitt C. Greer Building (First Floor), 125 East 11th Street

Austin

Emergency meeting

According to the complete agenda, the Texas Transportation Commission considered the application of the Knights of the Ku Klux Klan, pursuant to Title 43, Texas Administrative Code, §25.801, et seq. to participate in the Adopt-A-Highway Program.

Reason for Emergency: Immediate action was required on advice of the Attorney General in order to preserve and protect the welfare of citizens and the traveling public.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: January 27, 1994, 1:05 p.m.

TRD-9435265

## University of Houston System

Tuesday, February 1, 1994, 2:00 p.m.

1600 Smith, 34th Floor, Conference Room One, University of Houston System Offices

Houston

According to the complete agenda, the Board of Regents-Facilities Planning and Building Committee discussed the following: architect presentations; student life building; and UH-downtown.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7440.

Filed: January 27, 1994, 4:28 p.m.

TRD-9435282

## University of North Texas

Wednesday, February 2, 1994, 11:30 a.m.

University of North Texas Conference Room, Administration Building

Denton

According to the complete agenda, the Board of Regents discussed resolution authorizing the issuance of consolidated University revenue bonds, Series 1994, awarding the sale of the bonds to the best bidder therefor and resolving other matters related thereto.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76293, (817) 396-8515.

Filed: January 27, 1994, 2:53 p.m.

TRD-9435277

## University of Texas System

Thursday, February 10, 1994, 10:00 a.m.

Conference Rooms A & B, Tenth Floor, R. Lee Clark Clinic Building, U. T. M. D. Anderson Cancer Center, 1515 Holcombe Boulevard

Houston

According to the agenda summary, the Board of Regents and Standing Committees will consider amendments to RRR; Chancellor's Docket (submitted by System Administration); insurance matters; 1995 budget policies and limitations; degree programs; fee; graduate tuition rates; agreements; appointments to endowed academic positions; housing rates; buildings and grounds matters including project authorization, preliminary and final plans, appoint-

ment of architects and engineers, award of contracts, and appropriations; investment matters; acceptance of gifts, bequests and estates, establishment of endowed positions and funds; real estate matters; and potential litigation as detailed on the attached complete agenda.

Contact: Arthur H. Dilly, P.O. Box N, U. T. station, Austin, Texas, 78713-7328, (512) 499-4402.

Filed: January 31, 1994, 1:20 p.m.

TRD-9435424

◆ ◆ ◆  
**Regional Meetings**

**Meetings Filed January 27, 1994**

The Central Plains Center for MHMR and SA (Emergency Revised Agenda) Board of Trustees met at 308 South Columbia, Plainview, January 27, 1994, at 6:00 p.m. The emergency status was due to meet deadline, information was not received in time to respond within time frame. Information may be obtained from Gail P. Davis, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9435281.

The Dawson County Central Appraisal District Board of Directors met at 1806 Lubbock Highway, Lamesa, February 2, 1994, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9435278.

◆ ◆ ◆  
**Meetings Filed January 28, 1994**

The Barton Springs/Edwards Aquifer Conservation District Board of Directors-Work Session met at 1124-A Regal Row, Austin, February 3, 1994, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124-A Regal Row, Austin, Texas 78748, (512) 282-8441. Fax: (512) 282-7016. TRD-9435286.

The Coryell County Appraisal District Board of Directors met at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, February 3,

1994, at 6:00 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9435349.

The Creedmoor Maha Water Supply Corporation Board of Directors met at 1699 Laws Road, Mustang Ridge, February 2, 1994, at 7:00 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113. TRD-9435288.

The Dallas Area Rapid Transit Committee-of-the-Whole met at 1401 Pacific Avenue, DART Conference Room "C", First Floor, Dallas, February 1, 1994, at 1:00 p.m. Information may be obtained from Jacqueline Young, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3371. TRD-9435332.

The East Texas Council of Governments Executive Committee met at the Tyler Inn and Conference Center, Tyler, February 3, 1994, at 1:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9435362.

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee-Work Session will meet in the Bexar County Public Works Conference Room, Vista Verde Building, 233 North Pecos-La Trinidad, Room 420, San Antonio, February 4, 1994, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9435360.

The Shackelford Water Supply Corporation Regular Monthly Directors met at the Fort Griffin Restaurant, Albany, February 2, 1994, at 1:00 p.m. Information may be obtained from Gaynell Perkins, P.O. Box 1295, Albany, Texas 76430, (817) 345-6868. TRD-9435331.

◆ ◆ ◆  
**Meetings Filed January 31, 1994**

The Bandera County Appraisal District Appraisal Review Board will meet at 1116 Main Street (former Bandera Bulletin Building), Bandera, February 18, 1994, at 10:00 a.m. Information may be obtained from P. H. Coates, P.O. Box 1119,

Bandera, Texas 78003, (210) 796-3039, FAX: (210) 796-3672. TRD-9435467.

The Education Service Center, Region XVI Board of Directors will meet at the Region XVI Education Service Center 1601 South Cleveland, Amarillo, February 4, 1994, at 11:30 a.m. Information may be obtained from Jim Holmes, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521. TRD-9435427.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, February 10, 1994, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9435468.

The North Plains Ground Water Conservation District Number Two Board of Directors will meet at 603 East First Street, Dumas, February 8, 1994, at 10:00 a.m. Information may be obtained from Richard Bowers or Carla Gray, 603 East First Street, Dumas, Texas 79029, (806) 935-6401. TRD-9435472.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, February 8, 1994, at 4:00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75879, (409) 283-3736. TRD-9435419.

The Upper Rio Grande, Quality Work Force Planning-Region VIII will meet in the West Dining Room, Alpine, February 4, 1994, at 11:30 a.m. (CST). Information may be obtained from Mark J. Walder, 1155 Westmoreland, #235, El Paso, Texas 79925, (915) 779-6623. TRD-9435388.

◆ ◆ ◆  
**Meetings Filed February 1, 1994**

The Galveston Bay National Estuary Program Local Government's Advisory Committee will meet in the Houston-Galveston Area Council Board Room A (Second Floor), 3555 Timmons Lane, Houston, February 11, 1994, at 10:00 a.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9435477.

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Alternative Fuels Council Invitation to Propose

The Texas Alternative Fuels Council was created by the Texas Legislature (Senate Bill 737, Acts of 73rd Legislature, Regular Session, 1993) to coordinate a comprehensive statewide program to support the use of environmentally beneficial alternative fuels in vehicle fleets owned by state and local governments, political subdivisions and other eligible entities. The Council's programs are intended to both accelerate the transition to alternative fuels and ease its financial impact on state and local governments. The Council is to utilize the alternative fuels conversion fund to finance programs and activities supporting or encouraging the use of alternative fuels.

Pursuant to Texas Natural Resources Code, §113.284(b), the Texas Alternative Fuels Council (hereinafter AFC) hereby solicits offers from qualified entities, including state agencies, cities counties, school districts, mass transit authorities or departments, individuals, businesses (including Historically Underutilized Business), institutions of higher education, and health care facilities for grants for alternative fuel conversion and infrastructure projects that initiate or expand the use of alternative fuel vehicles (AFVs). Proposal may include, but are not limited to, the conversion of existing late model vehicles or the incremental costs of original equipment manufactured (OEM) AFVs. Vehicles that will be considered include, but are not limited to, the following: heavy- and light-duty trucks, school and transit buses, sanitation vehicles, law enforcement vehicles, vans, passenger cars, vehicles used for monitoring local utility usage, and other special-use vehicles. Organizations responding should be capable of providing fleet operations and maintenance support for their vehicles.

In determining which projects to fund, emphasis will be placed on projects that directly place alternative fuel vehicles on the road and/or develop refueling infrastructure, that provide matching funds from their own revenues or from other sources such as private ventures or other sources of funding, and that demonstrate life-cycle savings or other savings. Substantial funds will be directed to Texas non-attainment areas, taking into consideration both the non-attainment areas, taking into consideration both the non-attainment level and the percentage of emissions contributed by mobile sources. Priority will also be given to borderline non-attainment areas and other areas where aggressive fuel programs could help prevent the area's air quality from deteriorating to non-attainment levels.

The following fuels are eligible as "alternative fuels" for purposes of qualifying for funds. "natural gas (compressed or liquified); liquified petroleum gas (LPG or propane);

electricity; methanol or methanol/gasoline blends of 85% (M85) or greater; ethanol or ethanol/gasoline blends of 85% (E85) or greater; or hydrogen."

It is anticipated that each allocation will range between \$25,000 and \$250,000, depending on the project's scope, leveraged or matching funds, and other resources. The total cost of a project may exceed the amount of funding provided by the Council, for example, by securing matching funds for the project. Up this Request for Proposal. The selection committee may choose not to fund any of the proposals received in response to this Request for Proposal or to award any portion of the funds.

The following schedule will be strictly adhered to in all actions relative to this procurement: From February 1, 1994, to April 1, 1994, applicants may submit questions and a notice of their intent to submit a proposals to AFC.

All proposals must be received by close of business at 5:00 p.m. Central Standard Time on Friday, April 1, 1994, at the following address: Texas Alternative Fuels Council, Sam Houston State Office Building, Room 104, 201 East 14th Street, Austin, Texas, 78701. An application is considered filed when actually received in the AFC office, or when postmarked showing the application was received and accepted by the United States Postal Service, a common carrier, or its equivalent at least four calendar days prior to April 1, 1994.

Following the evaluation of the proposals, a complete list of successful applicants will be published in the *Texas Register*.

A proposers conference will behalf in Austin on Friday, February 18, 1994, from 10:00 a.m. to Noon in Room 118, Stephen F. Austin State Office Building, 1700 North Congress Avenue, for the purpose of reviewing the application and answering and questions regarding the application and the evaluation process. Any proposer with questions is encouraged to attend. After this conference, only those questions pertinent to the understanding of the Request for Proposal will be answered. Questions will be received at the Texas Alternative Fuels Council, Sam Houston Office Building, Room 104, Austin, Texas 78701, (512) 463-3262 between the hours of 8:00 a.m. and 5:00 p.m. Central Standard Time. Questions may also be sent via facsimile between the hours of 8:00 a.m. and 5:00 p.m. Central Standard Time on or before April 1, 1994.

Any contract resulting from this Request for Proposal shall contain provisions prescribe by the AFC prohibiting discrimination in employment.

For more information and a Copy of the Application Contact: Texas Alternative Fuels Council, Sam Houston State Office Building, Room 104, 201 East 14th Street, Austin, Texas 78701, (512) 463-3262.

Issued in Austin, Texas, on January 28, 1994

TRD-9435256 Garry Mauro  
Chairman  
Texas Alternative Fuels Council

Filed: January 27, 1994

◆ ◆ ◆  
**Office of the Attorney General**  
**Texas Clean Air Act Enforcement**  
**Settlement Notices**

Notice is given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Section 382.096 of the Texas Health and Safety Code provides that before the State may settle a judicial enforcement action under the Clean Air Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

**Case Title and Court.** City of Houston, Texas and State of Texas v. Scott Apple and Four Seventy Corporation, Cause Number 88-45572 in the 269th District Court of Harris County, Texas.

**Nature of Defendant's Operations.** Scott Apple and Four Seventy Corporation own and/or operate a commercial motor vehicle sales facility which allegedly did not comply with provisions of the Texas Clean Air Act relating to emission control devices.

**Proposed Agreed Judgment.** The proposed Agreed Final Judgment contains provisions for civil penalties.

**Civil Penalties and Attorney's Fees.** The judgment requires the Defendant to pay \$1,500 in civil penalties plus court costs to the City of Houston and \$1,000 in civil penalties plus \$500 in attorney's fees to the State of Texas.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the judgment, should be directed to Susan Theisen, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012. Written comments must be received by March 4, 1994, at 5:00 p.m. Written comments may be sent by facsimile machine to Susan Theisen at (512) 320-0052.

Issued in Austin, Texas, on January 26, 1994.

TRD-9435239 Jerry Benedict  
Assistant Attorney General  
Office of the Attorney General

Filed: January 26, 1994

◆ ◆ ◆  
**Comptroller of Public Accounts**  
**Notice of Request for Proposals**

**Notice of Request for Proposals.** The Office of the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for a management and performance review of the University Interscholastic

League (UIL). The purpose of the RFP is to obtain proposals to perform a comprehensive review of the effectiveness and efficiency of the financial, program, and management policies of the UIL. The review will examine ways to contain or reduce costs, improve management strategies; and maximize services to member schools in a cost effective manner. The review shall also evaluate the UIL rulemaking process and determine the efficiency and effectiveness of the current UIL governance structure. The successful proposer will be expected to begin performance of the contract on or about March 21, 1994.

**Contact.** Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room G26, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the previously referenced address on Tuesday, February 8, 1994, between 3:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter.

**Closing Date.** Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Tuesday, March 8, 1994. Proposals received after this time and date will not be considered.

**Award Procedure.** All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the deputy comptroller, who will make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP—February 8, 1994, 3:00 p.m. (CZT); Mandatory Letter of Intent and Questions Due—February 17, 1994, 4:00 p.m. (CZT); Proposals Due—March 8, 1994, 4:00 p.m. (CZT); and Contract Execution—March 16, 1994, or as soon thereafter as possible.

Issued in Austin, Texas, on January 31, 1994

TRD-9435396 Tres Lorton  
Senior Legal Counsel  
Comptroller of Public Accounts

Filed: January 31, 1994

◆ ◆ ◆  
**Office of Consumer Credit**  
**Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer <sup>(1)</sup>/Agricultural/ Commercial <sup>(2)</sup> thru \$250,000</u>	<u>Commercial<sup>(2)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	01/31/94-02/06/94	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	02/01/94-02/28/94	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

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

TRD-9435275 Al Endsley  
Consumer Credit Commissioner

Filed: January 27, 1994

◆ ◆ ◆

### Texas Education Agency Correction of Error

In the January 25, 1994, issue of the *Texas Register* (19 TexReg 535), an error as published appears in the "In Addition Section", Request for Application #701-94-009. In the section of the RFA titled "Dates of project," the concluding sentence was omitted. The sentence should read, "Applicants should plan for a starting date of Monday, September 1, 1994, and an ending date of Wednesday, August 31, 1995."

◆ ◆ ◆

### Employees Retirement System of Texas Request for Proposals

In accordance with Texas Insurance Code, Article 3.50-2, § 4, as amended, the Employees Retirement System of Texas (ERS) announces a Request for Proposals (RFP) to underwrite a dental indemnity plan under the Texas Employees Uniform Group Insurance Program (UGIP). Proposals will include, but not be limited to, schedules of benefits to be provided, terms of coverage, and guaranteed rates. Enrollment by employees and retirees in dental coverage is voluntary. The premium is payroll deducted but is fully paid by participating employees and retirees.

Firms wishing to respond to this request must be licensed by the Texas Department of Insurance and have superior recognized expertise and specialization in underwriting and administering group dental insurance plans in the State of Texas.

The RFP instructions which detail information regarding the project are available upon request from the Employees Retirement System of Texas.

The deadline for receipt of the proposals in response to this request will be 5:00 p.m. on March 1, 1994.

The ERS reserves the right to accept or reject any proposals submitted. The ERS is under no legal requirement to execute a resulting contract on the basis of this advertisement.

The ERS intends to use responses as a basis for further negotiations of specific project details. The ERS will base its choice on cost, demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria.

This RFP does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interest of the State of Texas.

For further information regarding this notice, or to obtain copies of the RFP instructions, please contact James W. Sarver, Director, Group Insurance Division, Employees Retirement System of Texas, 18th and Brazos, P.O. Box 13207, Austin, Texas, 78711-3207, (512) 867-3217.

Issued in Austin, Texas on January 28, 1994.

TRD-9435411 Charles D. Travis  
Executive Director  
Employees Retirement System of Texas

Filed: January 31, 1994

◆ ◆ ◆

### Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Houston	Proportional Technologies, Inc.	L04747	Houston	0	01/13/94

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Arlington	Medical Physics Consultants	L03319	Arlington	5	12/31/93
Arlington	Metroplex Hematology Oncology Associates	L03211	Arlington	35	12/13/93
Austin	Texas Department of Health	L01594	Austin	20	12/31/93
Austin	CEDRA Corporation	L04427	Austin	5	01/04/94
Corpus Christi	Doctors Regional Medical Center	L02816	Corpus Christi	29	01/12/94
Crockett	Houston County Hospital	L01411	Crockett	14	01/07/94
Dallas	Endocrine Associates of Dallas, P.A.	L02668	Dallas	15	01/06/94
Dallas	Dallas Cardiology Associates, P.A.	L04607	Dallas	4	01/05/94
Dallas	R. H. D. Memorial Medical Center	L02314	Dallas	29	01/05/94
Dallas	The U.T. Southwestern Medical Center at Dallas	L00384	Dallas	62	01/05/94
Dallas	Baylor College of Dentistry	L00323	Dallas	23	12/22/93
Dallas	Syncor International Corporation	L02048	Dallas	74	12/22/93
Deer Park	Solvay Polymers, Inc.	L00088	Deer Park	42	01/10/94
Fort Stockton	The University of Texas System	L04648	Midland	1	01/06/94
Fort Worth	Sterigenics International, Inc.	L03851	Fort Worth	10	01/06/94
Fort Worth	All Saints Hospital Cityview	L04105	Fort Worth	5	01/12/94
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	53	01/12/94
Harlingen	Valley Diagnostic Medicine and Surgical Clinic, P.A.	L02933	Harlingen	18	12/31/93
Hobson	Rio Grande Resources Corporation	L04722	Hobson	1	01/06/94
Houston	Commercial Metals Company	L03101	Houston	7	01/06/94
Houston	Water Quality Services	L03743	Houston	3	01/06/94
Houston	City of Houston	L02175	Houston	7	12/30/93
Kilgore	Tracer Service, Inc.	L03526	Kilgore	22	12/31/93
Kingsville	Texas A & M University - Kingsville	L01831	Kingsville	18	12/31/93
La Grange	Lower Colorado River Authority	L02738	Austin	12	01/04/94
La Porte	Koch Engineering Company Inc.	L03913	La Porte	38	01/05/94
Laredo	Mercy Regional Medical Center	L01306	Laredo	33	01/07/94

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Laredo	Mercy Regional Medical Center	L01306	Laredo	32	12/29/93
Lufkin	The Heart Institute of East Texas	L04147	Lufkin	2	01/12/94
McAllen	Valley Cardiology, P.A.	L04692	McAllen	1	01/04/94
Midland	Memorial Hospital and Medical Center	L00728	Midland	47	01/12/94
Nacogdoches	Lyle Thorstenson, M.D.	L03420	Nacogdoches	5	12/20/93
Orange	Chevron Chemical Company	L00031	Orange	33	01/07/94
Pampa	Coronado Hospital	L03123	Pampa	12	12/22/93
Paris	Radiology, Inc. and/or Radiology Center of Paris	L00459	Paris	25	01/12/94
San Angelo	Shannon West Texas Memorial Hospital	L02174	San Angelo	26	12/31/93
San Antonio	St. Luke's Lutheran Hospital	L03309	San Antonio	25	12/31/93
San Benito	Dolly Vinsant Memorial Hospital	L04567	San Benito	1	01/06/94
Texas City	Sterling Chemicals, Inc.	L03952	Texas City	7	01/04/94
Throughout Texas	Nordion International, Inc.	L00721	Kanata, Ontario, CA	36	01/03/94
Throughout Texas	H & G Inspection Company Inc.	L02181	Houston	81	01/06/94
Throughout Texas	Wilson Inspection X-Ray Services, Inc.	L04469	Corpus Christi	17	01/06/94
Throughout Texas	Texas Department of Transportation	L00197	Austin	67	01/03/94
Throughout Texas	Suntrac Services, Inc.	L03062	League City	15	01/05/94
Throughout Texas	Associated Testing Laboratories, Inc.	L01553	Houston	17	01/07/94
Throughout Texas	Itext Enterprises, Inc.	L04414	Dallas	4	01/13/94
Throughout Texas	Independent Management Corp.	L02513	Wichita Falls	9	12/29/93
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	88	01/11/94
Throughout Texas	Houston Lighting and Power	L02063	Houston	52	12/31/93
Throughout Texas	Davis Great Guns Logging, Inc.	L04604	Corpus Christi	3	12/31/93
Throughout Texas	Texas Wireline Company	L02828	Mineral Wells	7	12/31/93
Throughout Texas	Southwestern Laboratories	L01934	Dallas	36	12/15/93
Throughout Texas	Duininck Brothers and Gilchrist	L03957	Grapevine	4	12/28/93
Throughout Texas	Dowell Schlumberger Incorporated	L00764	Houston	66	12/29/93
Throughout Texas	Mobile-Lab, Inc.	L04650	Houston	7	12/22/93
Throughout Texas	Texas Perforators	L03544	Seguin	7	01/05/94
Throughout Texas	MLA Labs Inc.	L01820	Austin	23	01/06/94

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Amarillo	High Plains Baptist Hospital	L01259	Amarillo	43	01/04/94
Austin	Texas Department of Public Safety	L00902	Austin	11	01/06/94
Clifton	Goodall-Witcher Hospital	L03427	Clifton	3	01/12/94
Dallas	Baylor College of Dentistry	L00323	Dallas	24	01/07/94
El Paso	Drs. Hallum and Gulbas, P.A.	L01954	El Paso	7	12/31/93
Granbury	Hood General Hospital	L02903	Granbury	11	01/04/94
Houston	Mosby Clinic	L03486	Houston	5	01/13/94
Houston	Rice University	L00631	Houston	17	01/11/94
New Braunfels	Indutronics, Incorporated	L03454	New Braunfels	4	12/14/93
Orange	Baptist Hospital, Orange	L01597	Orange	18	01/10/94
Sweetwater	Southern Cotton Oil Company	L01994	Sweetwater	5	01/03/94
Throughout Texas	Digital Surveys, Inc.	L01611	Alvin	23	01/10/94

**TERMINATIONS OF LICENSES ISSUED:**

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Fort Worth	Miller Brewing Company	L03403	Fort Worth	6	12/31/93
Houston	Thermal Fabricating Company	L02196	Houston	8	01/06/94
Throughout Texas	Howe-Baker Engineers, Inc.	L02918	Tyler	7	12/31/93

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment, and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Acting Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on January 25, 1994.

TRD-9435276 Susan K Steeg  
General Counsel  
Texas Department of Health

Filed: January 27, 1994

**Notice of Intent to Revoke Certificates of Registration**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Healthco International, Richardson, R06724; Hillcrest Clinic, Vernon, R05412; Oran L. Troegle, D.D.S., Mesquite, R06474; Herbert R. Melch, M.D., Fort Worth, R11836; Backpain of Houston, Houston, R16902, R16903, 16905, and R16908; Lasermatic Incorporated, Dallas, Z00498.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment, and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Acting Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on January 31, 1994.

TRD-9435402 Susan K Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: January 31, 1994

**Notice of Intent to Revoke Radioactive Material Licenses**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed com-



plaints against the following licensees: Texas Clinical Laboratories, Houston, G01466; Allen Engineering and Testing, Inc., Friendswood, L02863; Petrofac Incorporated, Tyler, L02363; S. H. Tolliver Company, San Antonio, L02394; Scientific Tubular Inspection, Friendswood, L04631.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Acting Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on January 31, 1994

TRD-9435401 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed January 31, 1994

### Texas HIV/STD Medication Program Funding for Mail-Order Pharmacy Services Request for Proposals

The Texas HIV/STD Medication Program announces a Request for Proposal (RFP) for funding a pilot program to provide mail-order pharmacy services for HIV-infected persons. The contract period will be April 1, 1994-March 31, 1995. The funds targeted for this pilot program are \$25,000.

The RFP is available to all pharmacies licensed by the Texas State Board of Pharmacy and approved to provide mail-order prescription medications throughout the State of Texas upon request from the Texas HIV/STD Medication Program, 1100 West 49th Street, Warehouse Building, Room 233, Austin, Texas 78756, or by calling (512) 458-7357. To be considered for funding, all applications must be received by the HIV/STD Medication Program no later than 5:00 p.m. on February 15, 1994. Questions should be directed to Sheral T. Skinner at the HIV/STD Medication Program at (512) 458-7357.

Issued in Austin, Texas, on January 31, 1994.

TRD-9435403 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed January 31, 1994

### Texas Health and Human Services Commission

#### Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 93-92, Amendment Number 417.

The amendment permits military hospitals to enroll in the Texas Medicaid program as emergency hospitals. The amendment is effective October 1, 1993.

If additional information is needed, please contact Genie DeKneef at (512) 338-6509.

Issued in Austin, Texas on January 26, 1994.

TRD-9435340 Bryan P. Sperry  
Deputy Commissioner  
Texas Health and Human Services  
Commission

Filed January 28, 1994

### Texas Department of Housing and Community Affairs

#### Request for Proposal

The Texas Department of Housing and Community Affairs (TDHCA) is seeking proposals for technical advisors to assist the Department in the implementation of a Quality Control Plan for the selling and servicing of mortgages or participating interests for TDHCA's Single Family Bond Programs. In order for the Department to become an approved Fannie Mae lender, a Quality Control Plan must be devised to assure the Department's compliance with Fannie Mae's standards regarding the selling and servicing of these mortgages or participating interests.

The person or organization chosen must have knowledge of Fannie Mae's guidelines and standards in order to structure an acceptance plan.

Proposals must be received by TDHCA no later than 5:00 p.m. February 14, 1994.

Furthermore, the TDHCA reserves the right to accept or reject any or all proposals submitted. TDHCA is under no obligation to execute a contract on the basis of this RFP. TDHCA intends to use responses as a basis for further negotiation of specific details with potential contractors.

To obtain additional information regarding this notice, please contact: Wiley Hopkins, Bond Programs Manager, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-2116.

Issued in Austin, Texas on January 27, 1994.

TRD-9435285 Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed January 28, 1994

## Texas Department of Human Services Request For Proposals-Texas Child Care Magazine Development Contract

The Texas Department of Human Services (TDHS) announces a request for proposals (RFP) for services relating to *Texas Child Care* (TCC) magazine. Required services include development of editorial and photographic content, subscription management, sale of back issues, and magazine promotion.

**Description of Required Services:** the successful contractor must carry out activities necessary to complete the content of four issues of the magazines a year, including scheduling, attending, and managing four annual planning meetings, organizing, scheduling, and monitoring the necessary steps from conception to completion of each magazine, managing the overlap of as many as three issues in different stages of development at any given time, Developing the editorial copy for all information in TCC magazine, selecting topics which maintain a balance of information related to infants and toddlers, preschool and school-age children, center and day-home-based care, daily indoor and outdoor activities, nutrition, and health/safety, submitting art ideas, assisting in the development of photographs for TCC, keeping a back-up file of articles to use in an emergency, coordinating with other TDHS staff as necessary to accommodate the needs of other states to whom TDHS sells the generic portion of TCC, and maintaining, under supervision from TDHS, an Editorial Review Committee to evaluate manuscripts and books submitted to TCC by outside sources.

The successful contractor must manage and work to increase a TCC paid subscription list currently at 700 names. Management includes new subscriptions, subscription renewals, promoting subscriptions, and generating computerized labels for each issue of TCC.

The successful contractor must manage available back issues of TCC magazines and fill back-issue requests as they are received.

This contract requires a minimum of two people: the Editor must have expertise in early childhood development and writing, and the Copy Editor must have expertise in editing. Additional staff may include administrative and clerical staff support, but TDHS Media Services provides courtesy editing, graphic design, photography, and layout.

The successful Contractor's editor, copy editor, and persons in charge of subscription management and sale of back issues must be available to confer with TDHS personnel at the John H. Winters Building, 701 West 51st Street, Austin, Texas at any time. Frequent meetings and on-site work sessions may be necessary on short notice, deliverables must be submitted to TDHS at this address.

The successful Contractor must provide TDHS with final editorial copy on a computer disk compatible with the TDHS computer system (either IBM or Macintosh format).

The successful contractor must have previous experience, especially in the area of magazine content development.

**Closing Date:** Proposals will only be considered for award if they are received by the TDHS contact person before 5 p.m. on Friday, February 25, 1994.

**Amount:** The total amount of this contract is not to exceed \$80,000.

**Offeror's Conference:** TDHS will hold an offeror's conference regarding this RFP from 1:00 to 5:00 p.m. on February 15, 1994 in Room 103-W (West Tower) at the John H. Winters Building, 701 West 51st Street, Austin, Texas. Telephone Taylor Skaar at (512) 450-4562 for more information. At the conference, TDHS will give potential offerors in-depth information on the requirements of the RFP package.

**Procurement Process:** TDHS will select a contractor based on competitive negotiation. To be considered for this contract, interested parties must submit a proposal and may only submit one proposal. The proposal must be submitted on an RFP package provided by TDHS.

**Evaluation and Selection:** Evaluation criteria: Cost 35%, Quality of Personnel 25%, Quality of Sample Work 25%, Understanding of TCC Magazine 15%.

**Contact Person:** To obtain an RFP package contact person Taylor Skaar, TCC Managing Editor, Mail Code E-311, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030 (512) 450-4562 or FAX (512) 450-3864.

Interested parties may request information about this RFP and a copy of the RFP package itself until the closing date of 5:00 p.m. Tuesday, February 22, 1994. However, TDHS advises interested parties to request information as soon as possible to leave sufficient time to prepare a response.

Issued in Austin, Texas, on January 28, 1994

TRD-9435418 Nancy Murphy  
Section Manager, Policy and Document  
Support  
Texas Department of Human Services

Filed January 31, 1994

## Texas Department of Insurance Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for Incorporation in Texas for Community First Health Plans, Inc., a domestic health maintenance organization. The home office is in San Antonio, Texas.
2. Application for Incorporation in Texas for Community Health Plan, a domestic health maintenance organization. The home office is in Dallas, Texas.
3. Application for admission in Texas for Financial Pacific Insurance Company, a foreign fire and casualty company. The home office is in Sacramento, California.
4. Application for name change in Texas for Colonial Penn Annuity and Life Insurance Company, a foreign life, accident, and health company. The proposed new name is John Hancock Life Insurance Company of America. The home office is in Wilmington, Delaware.
5. Application for name change in Texas for The Millers Casualty Insurance Company of Texas, a domestic fire and casualty company. The proposed new name is Millers Casualty Insurance Company. The home office is in Fort Worth, Texas.

Application for Incorporation in Texas for The Reliable Life Insurance Company of Texas, a domestic life, acci-

dent, and health company. The home office is in Houston, Texas

Issued in Austin, Texas, on January 28, 1994

TRD-9435387 Linda K von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed January 31, 1994

◆ ◆ ◆  
**Texas Natural Resource Conservation  
Commission**  
**Bankruptcy Notice**

Notice of an Application by Roman Forest Public Utility District Number 4 for Authorization to Proceed in Federal Bankruptcy.

The Texas Natural Resource Conservation Commission has received an application by Roman Forest Public Utility District Number 4 (the District), in care of J Ron Young, Young & Brooks, 1415 Louisiana, Fifth Floor, Houston, Texas 77002-7349 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 plan proposes to secure the bonds and make debt service payments from funds derived by the District from any net proceeds derived by the District from the sale of property foreclosed on for delinquent taxes and standby fees, after establishing a sufficient operating reserve, and the levy of an ad valorem tax at a constant annual rate of \$1.25 per \$100 assessed value of taxable property in the District while the bonds are outstanding, with the right reserved to the District to reduce the rate to \$1.00, if necessary to enhance the marketability and sales price for property within the District.

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** Section 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 persons'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 meet its debt and other obligations, or than 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 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 January 24, 1994

TRD-9435246 Gloria A Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed January 26, 1994

◆ ◆ ◆  
**Enforcement Orders**

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted:

An agreed enforcement order was entered regarding the George King (Unauthorized MSW Number 32208) on January 14, 1994, assessing \$64,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting E J Bernacki, Staff Attorney, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding the Plantation Foods, Inc. (Sulak Farm) (No Permit) on January 14, 1994, assessing \$8,300 in administrative penalties. Stipulated penalties was also imposed.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding Billy Pearson J (License Number 625W) on January 14, 1994, assessing \$1,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P O Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding the Meklo, Inc. doing business as Eltex Chemical and Supply Company (SWR 30271) on January 14, 1994, assessing \$77,600 in administrative penalties with \$19,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Bill Ballard, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding the Francisco Huerta (License Number 1433W) on January 14, 1994, assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

An agreed enforcement order was entered regarding the Tommy Arnold (License Number 2096WPK) on January 14, 1994, assessing \$500 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

Issued in Austin, Texas, on January 24, 1994

TRD-9435274 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed January 27, 1994

◆ ◆ ◆  
**Extension of Deadline for Written  
Comments**

In the December 24, 1993, issue of the *Texas Register* (18 TexReg 9958), the Texas Natural Resource Conservation Commission (TNRCC) published a notice of public hearings on proposed rule amendments to be held January 24, 26, and 27, 1994. The purpose of the hearings was to receive testimony on proposed revisions to TNRCC Chapter 115. The deadline of February 11, 1994, for receipt of written comments has been extended to February 25, 1994. All comments at the hearings, as well as written comments received by 4:00 p.m. on February 25, 1994, at the TNRCC central office in Austin, will be considered by the commission prior to any final decision on the proposal.

Copies of the proposal are available from the TNRCC Air Quality Planning Division, P.O. Box 13087, Austin, Texas 78711-3087, and at all regional offices of the agency. For further information, call Amba Mann at (512) 239-1930.

Issued in Austin, Texas, on January 28, 1994

TRD-9435390 Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed January 31, 1994

## Notice of Opportunity to Comment on Administrative Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Clean Air Act, §382.096, Health and Safety Code, Chapter 382. The Act, §382.096, requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is March 5, 1994. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12124 Park 35 Circle, Austin, Texas 78753, (512) 239-0600 and at the following applicable Regional Office. Written comments about these AOs should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on March 5, 1994. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-0606. The TNRCC Staff Attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers, however, §382.096 provides that comments on the AOs should be submitted to the TNRCC in writing.

Company Abate and Tusa Gin (Modification to Agreed Board Order Number 91-08(a)), Location Bremond, Robertson County, Type of Facility cotton gin, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level emissions. Modifications of this order is proposed because of improvements in emission control resulting from requirements of Agreed Board Order Number 91-08(a). New operating practices are being allowed. Penalty \$0.00 (no additional penalty). Staff Attorney Walter Ehresman, (512) 239-0573, Regional Office, 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

Company American Spincast, Location Belton, Bell County, Type of Facility centrifugal casting facility, Rule Violated TNRCC Rule 30 TAC §116.110(a), constructed and operated a furnace, a sandblasting/gritblasting operation, and a mold lining operation without first obtaining a permit or qualifying for a standard exemption. Penalty \$0.00, Staff Attorney Peter T. Gregg, (512) 239-0450, Regional Office, 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

Company Belvan Corporation, Midway Lane Gas Plant, Location Ozona, Crockett County, Type of Facility gas sweetening plant, Rule Violated TNRCC Rule 30 TAC §101.20(1), failure to comply with applicable new source performance standards for equipment leaks of volatile organic compounds from onshore natural gas processing plants, failure to comply with the recordkeeping requirements, and failure to comply with initial and semi-annual

reporting requirements; TNRCC Rule 30 TAC §116.115, failure to comply with monitoring and testing requirements and failure to comply with Special Provision 5 of TNRCC Permit R-9824. Penalty: \$2,000, Staff Attorney: Peter T. Gregg, (512) 239-0450, Regional Office: 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903, (915) 655-9479.

Company: Buck's Barbecue, Location: Sweetwater, Nolan County, Type of Facility: barbecue restaurant, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level smoke and odor emissions. Penalty: \$1,500, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 209 South Danville, Suite B-200, Abilene, Texas 79605, (915) 698-9674 or 1700 South Lamar Boulevard, Building 1, Number 101, Austin, Texas 78704-3360, (512) 463-7803.

Company: City of Austin, Location: Austin, Travis County, Type of Facility: water and waste water maintenance center, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level dust emissions. Penalty: \$0.00, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

Company: City of San Angelo, Location: San Angelo, Tom Green County, Type of Facility: waste water treatment plant, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level odors. Penalty: \$0.00, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903, (915) 655-9479.

Company: Dobbs Auto Sales, Location: Bacliff, Galveston County, Type of Facility: motor vehicle sales operation, Rule Violated: TNRCC Rule 30 TAC §114.1(c), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the motor vehicles were originally equipped. Penalty: \$500, Staff Attorney Katharine Marvin, (512) 239-0452, Regional Office: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

Company: Occidental Chemical Corporation, Location: Deer Park, Harris County, Type of Facility: organic chemical manufacturing plant, Rule Violated: TNRCC Rule 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (NESHAPS) Subpart F, which are the standards for vinyl chloride, these violations also violated TNRCC Rule 30 TAC §116.115 by violating special provision Number 10 of TNRCC Permit Number R-4943, and violated the Texas Clean Air Act, §382.085(b), by violating Agreed Board Order Numbers 88-08(s), 89-06(p), 90-01(s), 90-05(k), 90-07(k), 91-01(m), and 92-03(g) Penalty: \$16,500, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 5555 West Loop, Suite 1, Bellaire, Texas 76710, (713) 666-4064.

Company: Petrofac, Incorporated, Location: Gresham, Smith County, Type of Facility: metal fabrication plant, Rule Violated: TNRCC Rule 30 TAC §116.110, unauthorized construction and operation of a surface coating operation. Penalty: \$5,025, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 1304 South Vine Avenue, Tyler, Texas 75701, (903) 595-2639

Company: Pride Refining, Inc., Location: Abilene, Jones County, Type of Facility: a refinery, Rule Violated: TNRCC Rule 30 TAC §101.20(1), which requires compliance with federal new source performance standards (NSPS). Penalty: \$10,000, Staff Attorney: Katharine

Marvin, (512) 239-0452, Regional Office: 209 South Danville, Suite B-200, Abilene, Texas 79605, (915) 698-9674.

Company: Pro's Truck & Auto Body, Location: Odessa, Ector County, Type of Facility: paint shop facility, Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level odor emissions. Penalty: \$1,000, Staff Attorney: Peter T. Gregg, (512) 239-0450, Regional Office: 1901 East 37th Street, Suite 101, Odessa, Texas 79762, (915) 367-3871 or 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903, (915) 655-9479.

Company: San Angelo By-Products (a Division of Darling Delaware Company, Inc.), Location: San Angelo, Tom Green County, Type of Facility: rendering plant, Rule Violated: TNRCC Rule 30 TAC §116.115 and §116.116, by failing to install scrubber as required and represented, as well as failing to conduct deodorizing chemical treatment and install odor detection equipment, while also failing to properly maintain the condenser manifold and failing to burn noncondensable vapors in the boilers; TNRCC Rule 30 TAC §101.6, failing to report an upset condition; TNRCC Rule 30 TAC §101.4, nuisance level emissions. Penalty: \$14,800, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 1901 East 37th Street, Suite 101, Odessa, Texas 79762, (915) 367-3871 or 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903, (915) 655-9479.

Company: Star Enterprise, Location: Port Neches, Jefferson County, Type of Facility: petroleum refining and storage plant at time of the violations (as of April 28, 1993, became only a marine terminal and storage plant), Rule Violated: TNRCC Rule 30 TAC §101.4, nuisance level emissions; TNRCC Rule 30 TAC §101.6, failing to report an upset condition in a timely manner. Penalty: \$9,000, Staff Attorney: Walter Ehresman, (512) 239-0573, Regional Office: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838.

Issued in Austin, Texas, on January 31, 1994.

TRD-9435412

Mary Ruth Holder  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed: January 31, 1994

### Notice of Opportunity to Comment on Permitting Actions

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the

applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Application Numbers 30249-S and 30250-S by WRE Utilities, Inc to transfer Water CCN Number 12256 and Sewer CCN Number 20715 from DBC Utilities, Inc. in Montgomery County, Texas

Issued in Austin, Texas, on January 28, 1994

TRD-9435376 Gloria A Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed January 28, 1994

◆ ◆ ◆  
**Texas Low-Level Radioactive Waste  
Disposal Authority**

**Notice of License Application  
Information Meeting**

In accordance with the Health and Safety Code, §402.152, the Authority has submitted a license application to the Texas Natural Resource Conservation Commission for the operation of a low-level radioactive waste disposal facility in Hudspeth County.

Copies of the license application are available for viewing at Austin office of the Texas Low-level Radioactive Waste Disposal Authority, 7701 North Lamar, Suite 300, Austin, Texas (512) 451-5292, and the Sierra Blanca office at 203 FM 1111 South, Sierra Blanca, Texas (915) 369-3391.

Authority staff will be available to answer questions concerning this license application on Tuesday, February 8, 1994, from 8:00 a.m. to Noon in their offices at 7701 North Lamar Boulevard, Suite 300, Austin, Texas (512) 451-5292.

For more information, please contact Adriana Riojas, Public Information Office at (512) 451-5292.

Issued in Austin, Texas, on January 27, 1994

TRD-9435253 Lee H Mathews  
Deputy General Manager and Legal  
Counsel  
Texas Low-Level Radioactive Waste  
Disposal Authority

Filed January 27, 1994



**Texas Office of State-Federal Relations  
Request for Applications-State Match  
Pool**

The Office of State-Federal Relations announces a pilot program to provide State agencies with a source of State funds to meet the matching monies requirements of federal discretionary grant programs. Often, State agencies are eligible to apply for federal funds, but lack the necessary match amount within their own budget. The goal of the State Match Pool pilot program is to increase opportunities for state agencies to engage in enterprising, innovative projects that benefit the Texas economy by increasing their opportunities to obtain state funds to match federal discretionary grant funds for these projects. An appropriation of \$10 million is available to be awarded to state agencies during the 1994-1995 biennium.

State Match Pool funds will only be awarded to state agencies to meet the matching monies requirements of federal discretionary grant programs under which funds currently are available to be awarded. The applicant to the State Match Pool must be a state agency, but grant activities proposed by a state agency under a partnership with other state and non-state entities are encouraged.

The pilot program gives preference to applications that include realistic projections of economic growth in the state as a direct outcome to be expected from completion of the proposed grant activities. Projects that shall not be considered for State Match Pool funding include projects proposed solely for the purposes of research, planning, curricular education, public transportation, public works, or continuation grants for any project.

No minimum or maximum award amount has been set. However, the maximum award amount is clearly limited by the amount of the \$10 million appropriation. It is recommended that requests for State Match Pool funding to a single project not exceed \$2 million. In no case shall the amount of State Match Pool funds awarded to a single project exceed 40% of the total projected costs for that project. Commitment of State Match Pool funding to any project is subject to availability of funds. The Office of State-Federal Relations does not expect that every proposal to which State Match Pool funds have been committed will be accepted for federal funding. Therefore, the Office of State-Federal Relations may over-commit funds.

Several solicitations requesting applications to the State Match Pool may be issued throughout the 1994-1995 biennium, depending on availability of funds.

The present request for applications targets federal grant proposals that have already been submitted to a federal grant program. State agency applicants must already have been notified of an award by the federal program during the state's 1994 fiscal year and be in the process of actively negotiating a state match amount with the federal award program. Such negotiations must be threatened by insufficient state match funds within the agency's own budget.

Standardized application forms must be completed and submitted as part of the application. Applications will be accepted anytime prior to 4:00 p.m. on February 25, 1994. Application forms, instructions, and other application information may be requested from Dr. Mary E. Lee, State

Match Pool Administrator, Texas Office of State-Federal Relations at P.O. Box 13005, Austin, Texas 78711, (512) 463-1803.

Issued in Austin, Texas, on January 31, 1994.

TRD-9435384

Mary E Lee  
State Match Pool Administrator  
Texas Office of State-Federal Relations

Filed January 31, 1994

◆ ◆ ◆  
**Texas Department of Transportation**  
**Request for Applications**

Pursuant to Texas Civil Statutes, Article 4413(56), Oil Overcharge Restitutionary Act, the Texas Department of Transportation issues the following notice for solicitation of applications from local city governments to utilize certain funds available under a program to be administered by the department for the Office of the Governor.

**Notice of Invitation** The Texas Department of Transportation (TxDOT), in conjunction with the State Energy Conservation Office (SECO), is issuing this request for applications. The applications shall be in the form of a completed Grant Application which is available from local TxDOT district offices. The United States Department of Energy recently approved a statewide Traffic Light Synchronization (TLS) program submitted by the SECO. This program will provide to local city governments across the state approximately \$1 million for the optimization of traffic signal timing plans and the replacement of outdated equipment and/or installation of equipment necessary for the implementation of signal systems. These funds will help traffic engineers reduce unnecessary vehicle stops and delays through improved traffic signal timing. Significant fuel savings and a reduction in vehicle emissions should also be realized.

The TLS funds will be expended through TxDOT on projects proposed by local city governments. Cities of all sizes will be eligible for program dollars and projects will be selected on a competitive basis.

Up to 75% of project costs are eligible for reimbursement. However, not more than 70% of reimbursable costs can be earmarked for equipment. If a project is funded, the local government or TxDOT must pay a minimum 25% of the total direct costs of the project in matching funds and/or in-kind services. TxDOT will provide a local match when a project contains traffic signals that are maintained and operated by TxDOT, unless the local government and TxDOT agree otherwise. Before a grant application that contains TxDOT maintained and operated signals is prepared, the city must obtain approval of the proposed project from the local TxDOT district office. TxDOT local match will be proportional to project costs attributable to TxDOT traffic signals.

Costs eligible for reimbursement under the program include: training local staff and/or consultants in the use of computer technology for the retiming of traffic signals; data collection, development and implementation of timing plans; replacement of outdated equipment and/or installation of equipment necessary for the implementation of signal systems (modernization of signal poles and mast arms are not eligible), and preparation of "before" and "after" studies.

TLS program funds shall not be used to supplant or replace existing funds earmarked for specific signal projects. That is, if existing funds are authorized for signal expenditures, those funds may not be released and then replaced by TLS funds.

The TLS program will target traffic control systems currently coordinated and controlled in a manner that permits implementation of multiple timing plans, i.e. timing plans that match traffic needs at different times of day. By focusing on traffic signal systems that currently have coordination capabilities, maximum energy savings can be realized with the available funds. However, isolated signals are also eligible under this program. Projects which propose the installation of signals where none presently exist will not be eligible.

Additional information concerning the TLS program is included in the Grant Application Manual which is available from local district offices.

**Agency Contact.** Additional information concerning the request for applications may be obtained by writing your local TxDOT district office or by contacting the Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701, (512) 416-3122.

**Response Date.** The completed Grant Application must be received by local TxDOT district offices on or before April 6, 1994. Applicants will be notified of selection or non-selection by May 31, 1994.

**Selection Criteria.** Projects will be ranked and recommended for funding using the following criteria:

1. **Operational Characteristics of the Traffic Signal System.** Operational characteristics such as delay, average travel speed, average daily traffic, etc., will be considered to determine the amount of benefit improved signal timing can produce.
2. **New Project Location.** Projects proposing work on signals that have not been a part of previous programs will be considered first. The proposed traffic signal project area should not be scheduled to undergo major changes during the grant period that would change the physical layout of the streets, disrupt the data collection effort, or significantly alter traffic patterns and volumes.
3. **City Past Performance with TLS Grants.** Because of the short time frame of this program, cities who submitted "before" and "after" studies, quarterly progress reports, and requests for reimbursements in a timely manner during previous programs will be given additional consideration.
4. **Other Considerations.** Other criteria such as recent growth in the project area, date of last retiming effort, level of expansion over current effort, and certification that TLS funds will supplement and not supplant existing funds. These criteria will aid in determining where the need for TLS funds is greatest and where maximum benefit can be achieved.

Issued in Austin, Texas, on January 28, 1994.

TRD-9435371

Diane L. Northam  
Legal Administrative Assistant  
Texas Department of Transportation

Filed January 28, 1994

## The University of Texas at Austin Request for Proposals: Texas Assistive Technology Partnership

Dr. Brian R. Bryant, Project Director for the Texas Assistive Technology Partnership (TATP), has announced the availability of funds to establish Regional Demonstration Site Projects in Texas. The funded projects will exemplify innovative approaches to assistive technology service delivery, particularly for groups of individuals that are traditionally underserved.

**Objectives** A principal goal of the 1988 Technology-Related Assistance to Individuals with Disabilities Act (better known as the Tech Act) is to increase the probability that individuals of all ages and disabilities will be able to secure and maintain possession of assistive technology devices. The TATP seeks to enhance current service delivery efforts by supporting the development of a regional system of services through grants to public agencies and/or private organizations.

Selected projects will be responsible for addressing the purposes of the Tech Act. Project funds will be used to supplement existing technology programs of the applying organizations. If no local program exists, applicants will be required to demonstrate a linkage with the closest service (e.g., Education Service Center, Texas Rehabilitation Commission). Selection criteria are weighted to give preference to organizations with a documented history of assistive technology service provision and/or employment of individuals with disabilities, that will link with a local college or university to develop or expand preservice training programs or specialize in assistive technology, that recruit volunteers to serve as equipment "troubleshooters" to decrease assistive technology device "downtime" (i.e., the length of time that devices are out of service due to malfunctions); that will establish collaborative efforts among public agencies and other service providers to address the assistive technology needs of persons with disabilities, that meet the needs of people who are traditionally underserved, that employ paraprofessionals and professionals to collaboratively develop and deliver assistive technology services, and that use service coordination as a primary mode of assistive technology service improvement.

Three projects will be granted up to \$50,000 each during first year funding. Up to \$30,000 is available for second year funding of each project.

**Who is eligible to apply.** Eligible organizations are agencies, college, universities, and/or organizations (e.g., school systems, rehabilitation agencies) that currently provide assistive technology devices and/or services or that seek to do so. It is expected that persons with disabilities and their family members will serve as advisors in the grant writing and implementation phases.

**Application procedures.** To be considered for funding, applications must be received by the TATP no later than March 1, 1994. Grant award notices will be made on or about March 15, 1994, with project implementation expected by April 1, 1994. An original and two copies of each application should be sent to: Dr. Brian R. Bryant, Project Director; Texas Assistive Technology Partnership; The University of Texas at Austin; Department of Special Education; EDB 306/35300; Austin, Texas 78712-1290. Applications will consist of a cover sheet, several narrative sections, budget form, and budget summary. The application should not exceed 15 pages, excluding required forms and appendices.

Applications must be submitted on or before March 1, 1994.

**Inquiries.** To receive a copy of the Request for proposals, contact the TATP via mail and the address above or call Dr. Bryant at (512) 471-7621.

**Method of payment.** Payments for expenditures by the funded project will be made upon the submission of a voucher for services performed. The voucher is to be deemed acceptable by the TATP and is to be submitted in accordance with The University of Texas at Austin procedures.

**Review criteria.** Applications will be reviewed and rated by an interagency team representing the TATP and other organizations that have not submitted proposals. Points will be awarded according to categories specified in the RFP as follows: Program Plan Narrative and Methodology (40 points); Organizational Capability/Staffing Plan (30 points); Appropriateness of Budget (20 points); Underserved Populations (10 points).

Issued in Austin, Texas, on January 28, 1994.

TRD-9435389 Arthur H. Dilly  
Executive Secretary to the Board of  
Regents  
The University of Texas System

Filed: January 31, 1994

◆ ◆ ◆



# TAC Titles Affected

The following is a list of the administrative rules that were published in the January 4 thru January 28, 1994 issues.

## TITLE 1. ADMINISTRATION

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

1 TAC §§80.1-80.4 . . . . . 589

### Part X. Department of Information Resources

1 TAC §201.1, §201.5 . . . . . 315, 317

### Part XIII. Texas Incentive and Productivity Commission

1 TAC §271.5 . . . . . 13

1 TAC §§273.1, 273.7, 273.27 . . . . . 65

1 TAC §273.9 . . . . . 13, 63

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

4 TAC §§171.1-177 . . . . . 345

4 TAC §181 . . . . . 495

4 TAC §§26.1-26.3, 26.5, 26.6, 26.8, 26.10, 26.12  
66

4 TAC §§28.1-28.3, 28.6-28.11, 28.13, 28.14 . . . . . 66

4 TAC §28.8 . . . . . 247

4 TAC §§29.2, 29.6, 29.7, 29.9, 29.12, 29.13 . . . . . 67

4 TAC §29.3 . . . . . 389

## TITLE 7. BANKING AND SECURITIES

### Part I. State Finance Commission

7 TAC §1303 . . . . . 67

7 TAC §1305 . . . . . 565, 587

7 TAC §391 . . . . . 495

7 TAC §§10.1-10.3, 10.6 . . . . . 389

7 TAC §10.10, §10.11 . . . . . 499

7 TAC §1370 . . . . . 499

### Part II. Texas Department of Banking

7 TAC §31.5-31.6 . . . . . 109

### Part III. State Banking Board

7 TAC §31.5 . . . . . 199

### Part IV. Texas Savings and Loan Department

7 TAC §63.5 . . . . . 390

7 TAC §67.5 . . . . . 390

7 TAC §§69.1, 69.2, 69.7-69.9, 69.11 . . . . . 390

7 TAC §73.6 . . . . . 392

7 TAC §77.105 . . . . . 392

7 TAC §79.12 . . . . . 393

7 TAC §79.95 . . . . . 393

7 TAC §79.105 . . . . . 393

### Part VII. State Securities Board

7 TAC §127.3 . . . . . 128

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

10 TAC §§7.1-7.8 . . . . . 394

10 TAC §9.3 . . . . . 67

10 TAC §9.7 . . . . . 68

### Part V. Texas Department of Commerce

10 TAC §§172.1-172.3, 172.6 . . . . . 247

10 TAC §§176.1-176.12 . . . . . 68

10 TAC §§176.5-176.10 . . . . . 71

10 TAC §§182.51-182.60 . . . . . 345

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

16 TAC §3.31 . . . . . 71

16 TAC §3.44 . . . . . 14

16 TAC §§3.46, 3.95-3.97 . . . . . 187

16 TAC §§5.303, 5.308, 5.312 . . . . . 75

16 TAC §5.333, §5.346 . . . . . 75

16 TAC §5.334, 5.335, 5.337, 5.344, 5.347 . . . . . 76

16 TAC §5.371-5.381 . . . . . 76

16 TAC §7.42 . . . . . 317

16 TAC §9.464 . . . . . 187

### Part II. Public Utility Commission of Texas

16 TAC §23.55 . . . . . 77

16 TAC §23.61 . . . . . 500

### Part IV. Texas Department of Licensing and Regulation

16 TAC §§68.1, 68.10, 68.62, 68.80, 68.101-68.103,  
68.105-68.112 . . . . . 250

16 TAC §§68.1, 68.10, 68.20, 68.21, 68.30-68.33,  
68.60-68.66, 68.70-68.72, 68.80, 68.90-68.93 . . . . . 251

16 TAC §68.100 . . . . . 167

16 TAC §69.123 . . . . . 256

16 TAC §§69.202, 69.204, 69.207 . . . . . 256

16 TAC §74.65 . . . . . 508

<b>Part IX. Texas Lottery Commission</b>	
16 TAC §401.101 .....	79
16 TAC §401.151-401.159 .....	79
16 TAC §§401.158, 401.159, 401.205, 401.206 .....143	
16 TAC §401.201-401.227 .....	79
16 TAC §401.301-401.307 .....	79
16 TAC §401.351-401.366 .....	79
16 TAC §§401.401-401.408 .....	318

## TITLE 19. EDUCATION

<b>Part II. Texas Education Agency</b>	
19 TAC §61.49 .....	320
19 TAC §§61.101-61.104 .....	265
19 TAC §89.6 .....	321
19 TAC §89.203 .....	322
19 TAC §§89.211, 89.213-89.229, 89.233, 89.235, 89.236, 89.238, 89.239, 89.242, 89.244 .....	322
19 TAC §89.219 .....	332
19 TAC §§89.250, 89.252-89.254 .....	333
19 TAC §§97.1-97.9 .....	334
19 TAC §§97.4-97.6 .....	337
19 TAC §§101.1-101.6 .....	267
19 TAC §137.414 .....	269
19 TAC §175.127 .....	270

## TITLE 22. EXAMINING BOARDS

<b>Part I. Texas Board of Architectural Examiners</b>	
22 TAC §3.21, §3.25 .....	109
22 TAC §5.31 .....	109
<b>Part X. Texas Funeral Service Commission</b>	
22 TAC §203.4 .....	346
22 TAC §203.13 .....	337
<b>Part XI. Board of Nurse Examiners</b>	
22 TAC §§211.1-211.10 .....	395
22 TAC §§211.1-211.12 .....	395
22 TAC §213.32 .....	508
<b>Part XV. Texas State Board of Pharmacy</b>	
22 TAC §281.48 .....	125
22 TAC §§283.7, 283.8, 283.11 .....	14
22 TAC §291.21 .....	16
22 TAC §295.11 .....	17
<b>Part XVIII. Texas State Board of Podiatry Examiners</b>	
22 TAC §371.1, §371.2 .....	399
22 TAC §371.15 .....	399
22 TAC §373.4 .....	399
22 TAC §375.4, §375.6 .....	400

22 TAC §375.11 .....	400
22 TAC §376.1-376.7 .....	566
22 TAC §§376.1-376.11 .....	566
22 TAC §377.43 .....	401
22 TAC §378.1 .....	401
22 TAC §378.8 .....	402
22 TAC §379.1, §379.2 .....	402
22 TAC §381.1 .....	403
22 TAC §§381.1-381.8 .....	403

### **Part XX. Texas Board of Private Investigators and Private Security Agencies**

22 TAC §421.1 .....	257
22 TAC §429.2 .....	258
22 TAC §§436.1-436.6 .....	258

### **Part XXIII. Texas Real Estate Commission**

22 TAC §543.4 .....	589
---------------------	-----

### **Part XXIV. Texas Board of Veterinary Medical Examiners**

22 TAC §573.12 .....	18
22 TAC §573.13 .....	19
22 TAC §573.64 .....	80
22 TAC §573.65 .....	80
22 TAC §573.66 .....	80
22 TAC §573.67 .....	80

### **Part XXXV. Texas State Board of Examiners of Marriage and Family Therapists**

22 TAC §§801.1-801.2 .....	183
----------------------------	-----

## TITLE 25. HEALTH SERVICES

### **Part I. Texas Department of Health**

25 TAC §§1.1-1.8 .....	81
25 TAC §§1.1-1.11 .....	81
25 TAC §§28.101, 28.111, 28.121, 28.131 .....	82
25 TAC §§41.101-41.113 .....	590
25 TAC §§43.22-43.25 .....	590
25 TAC §§141.1-141.6, 141.8, 141.10-141.13, 141.15, 141.20, 141.23 .....	113

### **Part II. Texas Department of Mental Health and Mental Retardation**

25 TAC §§401.1-401.22, 401.40 .....	141, 590
25 TAC §401.23 .....	587
25 TAC §401.23, §401.24 .....	563, 571
25 TAC §401.53 .....	144
25 TAC §401.57 .....	144
25 TAC §401.464 .....	591
25 TAC §§401.501-401.511 .....	593
25 TAC §§401.581-401.593 .....	593

25 TAC §§401.581-401.583, 401.587-401.590, 401.592, 401.593.....	141, 593
25 TAC §§402.1-402.5, 402.7-402.30.....	600
25 TAC §§402.1-402.44.....	600
25 TAC §§402.51-402.61.....	608
25 TAC §§402.51-402.67.....	608
25 TAC §§402.214-402.216.....	617
25 TAC §§402.241-402.249.....	617
25 TAC §§402.311-402.323.....	617
25 TAC §§403.201-403.213.....	627
25 TAC §407.21.....	627
25 TAC §§409.156, 409.166-409.173.....	387, 627

**TITLE 28. INSURANCE**

*Part I. Texas Department of Insurance*

28 TAC §1.414.....	346
28 TAC §1.415.....	347
28 TAC §7.1012.....	346
28 TAC §25.718.....	348

*Part II. Texas Workers' Compensation Commission*

28 TAC §110.4.....	271
28 TAC §§110.102, 110.103, 110.105, 110.106.....	271
28 TAC §160.1.....	271

**TITLE 30. ENVIRONMENTAL QUALITY**

*Part I. Texas Natural Resource Conservation Commission*

30 TAC §§115.121, 115.122, 115.126, 115.127, 115.129.....	19
30 TAC §§115.140, 115.142-115.149.....	21
30 TAC §§115.252, 115.253, 115.255-115.257, 115.259.....	26
30 TAC §§115.421, 115.422, 115.429.....	28
30 TAC §§115.442, 115.443, 115.445, 115.446, 115.449.....	29
30 TAC §§115.600, 115.610, 115.612-115.615, 115.617, 115.619.....	150
30 TAC §§115.612-115.615, 115.617, 115.619.....	162
30 TAC §§117.103, 117.105, 117.107, 117.109, 117.111, 117.113, 117.115, 117.117, 117.119, 117.121.....	33, 538
30 TAC §§117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, 117.223.....	38
30 TAC §§117.311, 117.313, 117.319, 117.321.....	52
30 TAC §§117.411, 117.413, 117.419, 117.421.....	53
30 TAC §§117.510, 117.520, 117.530, 117.540, 117.560.....	54
30 TAC §117.580.....	56
30 TAC §§281.1, 281.2, 281.22, 281.30-281.32.....	184

30 TAC §§285.11-285.17.....	404
30 TAC §§285.101-285.109.....	405
30 TAC §§290.101-290.106, 290.108-290.119.....	469
30 TAC §291.76.....	572
30 TAC §293.180.....	83
30 TAC §§305.601-305.604.....	56
30 TAC §§325.2, 325.3, 325.5, 325.6, 325.11, 325.15.....	162
30 TAC §334.2.....	491
30 TAC §§334.530-334.538.....	492
30 TAC §§335.9, 335.13, 335.15.....	509
30 TAC §335.71.....	510
30 TAC §§336.1-336.6.....	121

**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

*Part V. School Land Board*

31 TAC §9.7.....	573
31 TAC §10.8.....	573

*Part X. Texas Water Development Board*

31 TAC §353.14.....	627
31 TAC §355.71, §355.73.....	259
31 TAC §§379.1-379.7.....	627

*Part XIX. Texas Alternative Fuels Council*

31 TAC §§655.1, 655.5, 655.10, 655.15, 655.20, 655.25, 655.30, 655.35, 655.40, 655.45, 655.50, 655.55, 655.60, 655.65, 655.70, 655.75, 655.80, 655.85, 655.90, 655.95, 655.100, 655.105, 655.110.....	628
---	-----

**TITLE 34. PUBLIC FINANCE**

*Part I. Comptroller of Public Accounts*

34 TAC §3.94.....	574
34 TAC §3.292.....	632
34 TAC §3.310.....	633
34 TAC §3.329.....	633
34 TAC §3.333.....	84
34 TAC §3.558.....	633
34 TAC §3.562.....	633
34 TAC §3.573.....	633
34 TAC §3.701.....	633
34 TAC §5.200.....	574
34 TAC §7.101.....	79
34 TAC §§7.151-7.159.....	79
34 TAC §§7.201-7.227.....	79
34 TAC §§7.301-7.307.....	79
34 TAC §§7.351-7.366.....	79
34 TAC §9.4026.....	510
34 TAC §9.4031.....	199

**Part III. Teacher Retirement System of Texas**

34 TAC §25.67 ..... 86

34 TAC §25.113 ..... 86

34 TAC §41.11 ..... 86

34 TAC §41.12 ..... 86

34 TAC §51.1 ..... 87

**Part IX. Texas Bond Review Board**

34 TAC §190.3, §190.8 ..... 634

**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**Part III. Texas Youth Commission**

37 TAC §85.21, §85.25 ..... 593

37 TAC §85.23, §85.29 ..... 634

37 TAC §85.40 ..... 337

37 TAC §89.1 ..... 338

37 TAC §91.3 ..... 87

37 TAC §91.10 ..... 87

37 TAC §§91.51, 91.59, 91.63 ..... 582

37 TAC §91.67 ..... 584

37 TAC §91.69 ..... 338

37 TAC §91.75 ..... 339

37 TAC §93.21 ..... 339

37 TAC §93.75 ..... 563

**Part V. Board of Pardons and Paroles**

37 TAC §§141.21-141.26, 141.29 ..... 57

37 TAC §145.1 ..... 58

37 TAC §145.2 ..... 58

37 TAC §145.3 ..... 59

37 TAC §§145.1-145.3 ..... 57

37 TAC §§145.81-145.100 ..... 60

37 TAC §§150.1-150.9 ..... 60

37 TAC §150.53, §150.57 ..... 61

37 TAC §159.1 ..... 634

**Part VI. Texas Department of Criminal Justice**

37 TAC §152.12 ..... 585

**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

40 TAC §4.1006 ..... 88

40 TAC §§10.3416, 10.3424, 10.3427, 10.3438, 10.3446, 10.3462-10.3465 ..... 511

40 TAC §12.6, §12.23 ..... 494

40 TAC §12.103 ..... 348

40 TAC §19.1701, §19.1702 ..... 271

40 TAC §19.1807 ..... 272, 340

40 TAC §27.413 ..... 341

40 TAC §27.719 ..... 88

40 TAC §§41.101-41.113 ..... 590

40 TAC §§43.22-43.25 ..... 590

40 TAC §47.2914 ..... 272

40 TAC §48.2707 ..... 61

40 TAC §48.2804, §48.2811 ..... 512

40 TAC §48.3903 ..... 272

40 TAC §53.404 ..... 273

40 TAC §72.205 ..... 513

40 TAC §90.41 ..... 88

40 TAC §90.42 ..... 585

40 TAC §90.235 ..... 213

40 TAC §101.10 ..... 88

40 TAC §§147.1, 147.2, 147.4 ..... 349

40 TAC §147.33 ..... 349

40 TAC §154.2 ..... 342

40 TAC §154.28 ..... 343

40 TAC §708.1-708.4 ..... 117

40 TAC §700.316 ..... 343

**Part III. Texas Commission on Alcohol and Drug Abuse**

40 TAC §§150.1-150.3, 150.9, 150.10, 150.13, 150.16 ..... 533

**Part XVI. Interagency Council On Sex Offender Treatment**

40 TAC §§510.1-510.9 ..... 260

40 TAC §§510.2, 510.3, 510.6-510.9 ..... 263

**TITLE 43. TRANSPORTATION**

**Part I. Texas Department of Transportation**

43 TAC §§1.80-1.82, 1.84 ..... 89

43 TAC §1.83 ..... 89

43 TAC §1.83, §1.85 ..... 89

43 TAC §25.1 ..... 263

43 TAC §31.3 ..... 90

43 TAC §31.11 ..... 90

43 TAC §31.36 ..... 90

## 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
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

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. Each copy is \$7 including postage. You may use your Mastercard or Visa. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824 or for more information, call (512) 463-5561.

**Change of Address**

**Back Issue**

\_\_\_\_ Quantity  
Volume \_\_, Issue # \_\_\_\_

**New Subscription**

- 1 year - Printed - \$95.
- 6 month - Printed - \$75.
- 1 year - Electronic - \$90.
- 6 month - Electronic - \$70.
- 3-1/2" or  5-1/4" diskette

**NAME** \_\_\_\_\_

**ORGANIZATION** \_\_\_\_\_

**ADDRESS** \_\_\_\_\_

**CITY, ST, ZIP** \_\_\_\_\_

Customer ID Number/Subscription Number \_\_\_\_\_  
(If Applicable)

**Bill me**

**Payment Enclosed**

MasterCard/Visa Number \_\_\_\_\_

Expiration Date \_\_\_\_\_ Signature \_\_\_\_\_

Please make checks payable to the Secretary of State. Subscription fees are not refundable.  
Do not use this form to renew subscriptions.

\_\_\_\_\_  
\_\_\_\_\_  
Second Class Postage

PAID

Austin, Texas  
and additional entry offices  
\_\_\_\_\_  
\_\_\_\_\_