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# TEXAS REGISTER



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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

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

Texas Administrative Code

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

The TAC volumes are arranged into Titles (using

Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

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

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

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

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

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

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). 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
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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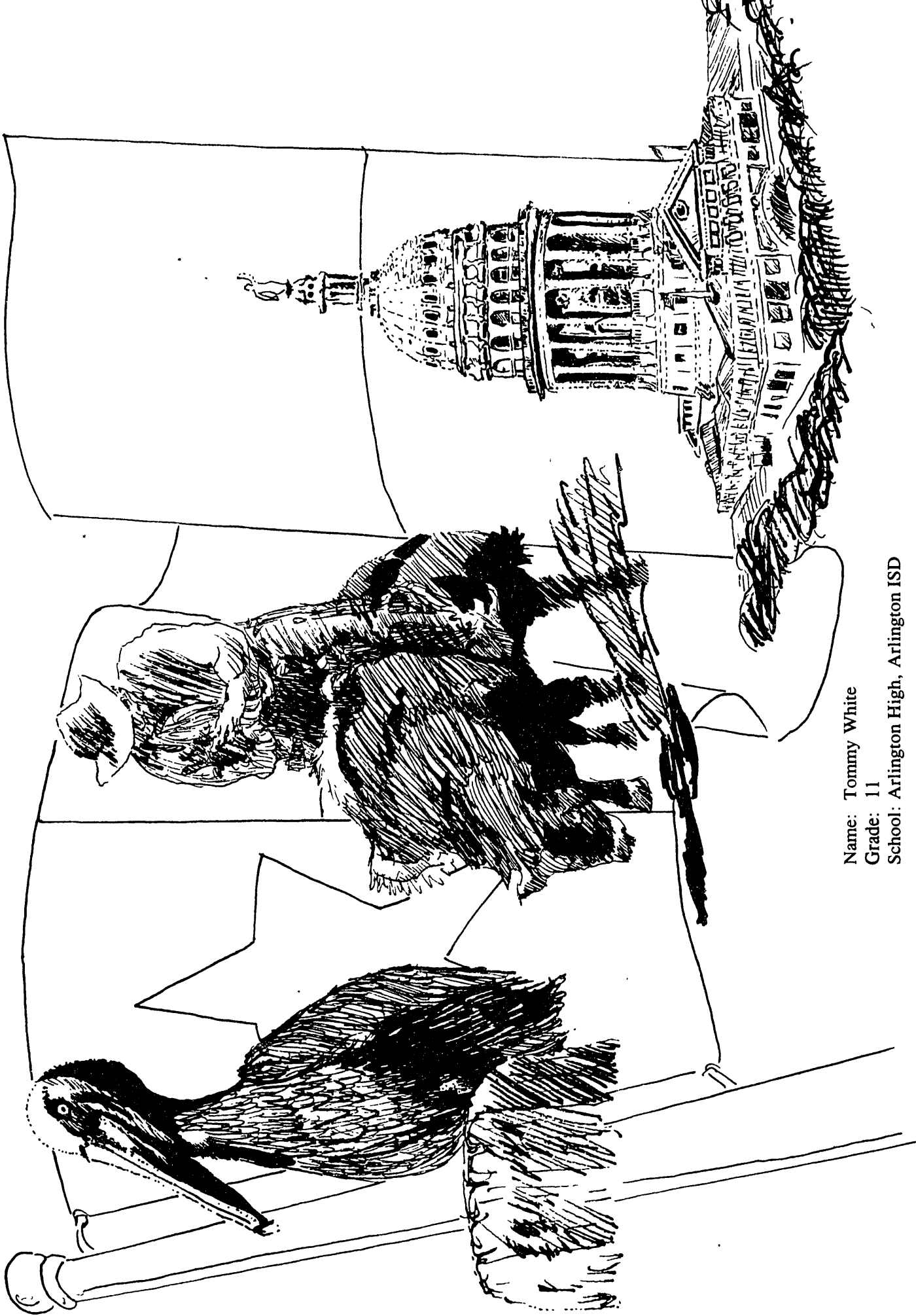
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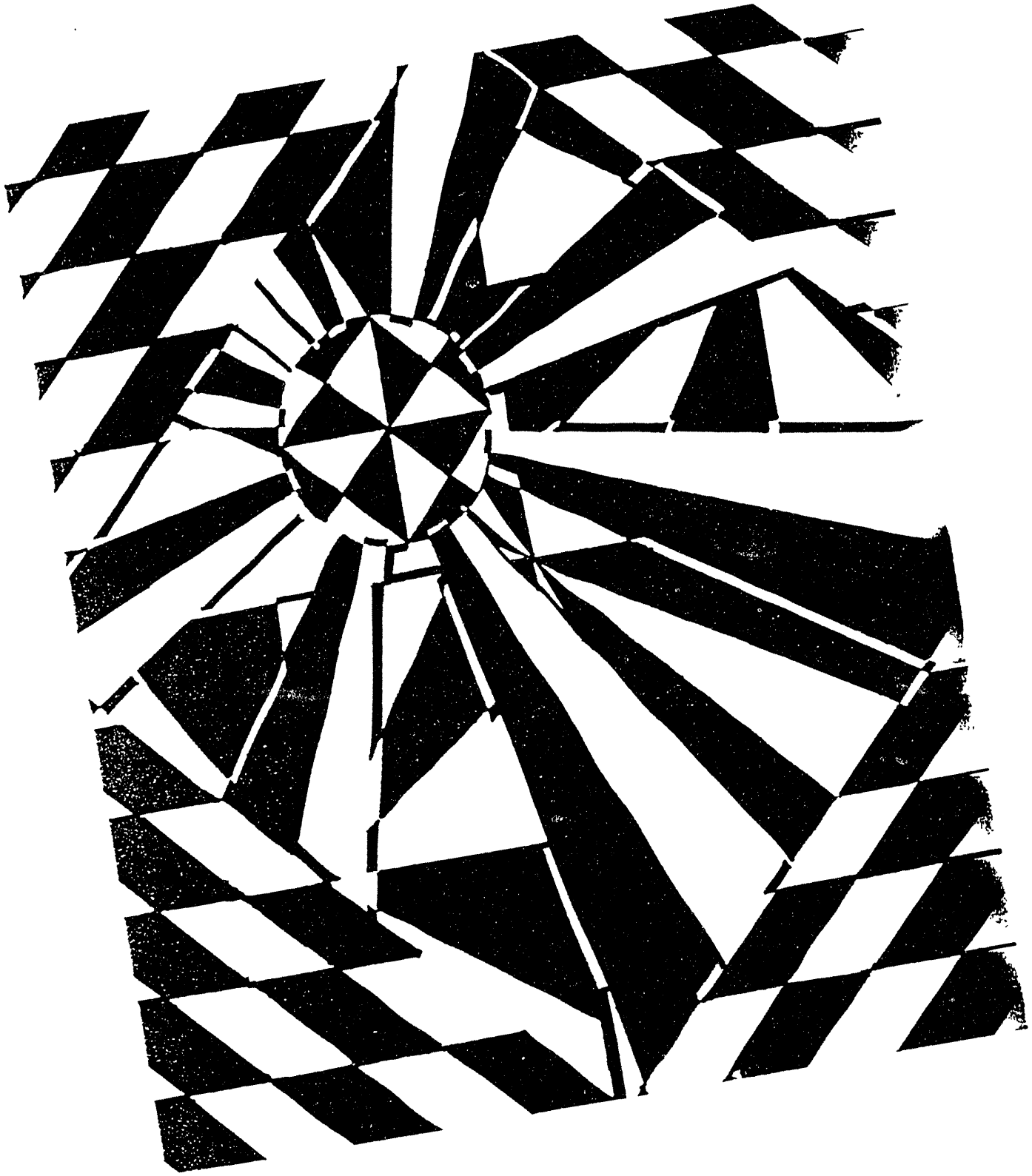
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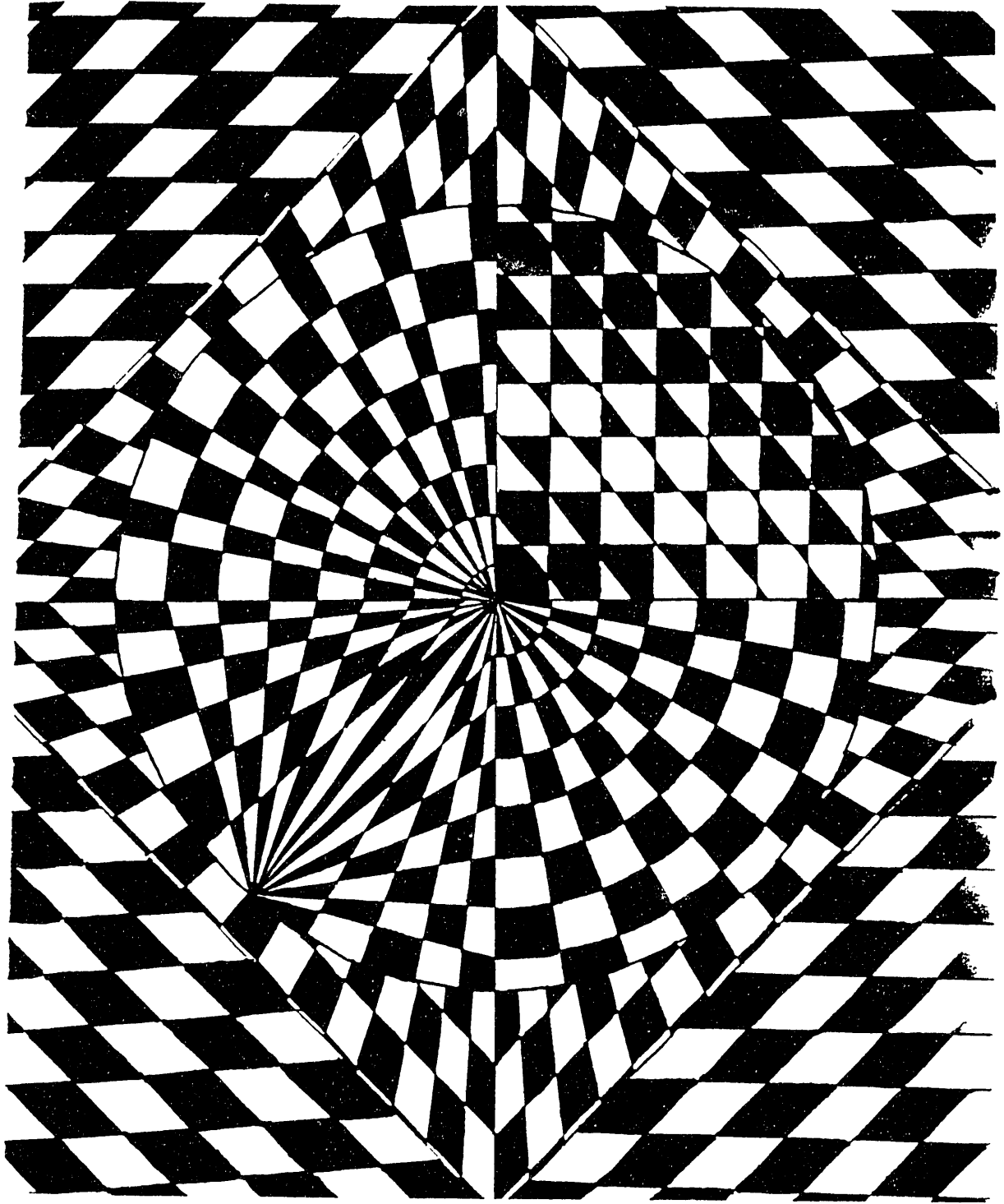
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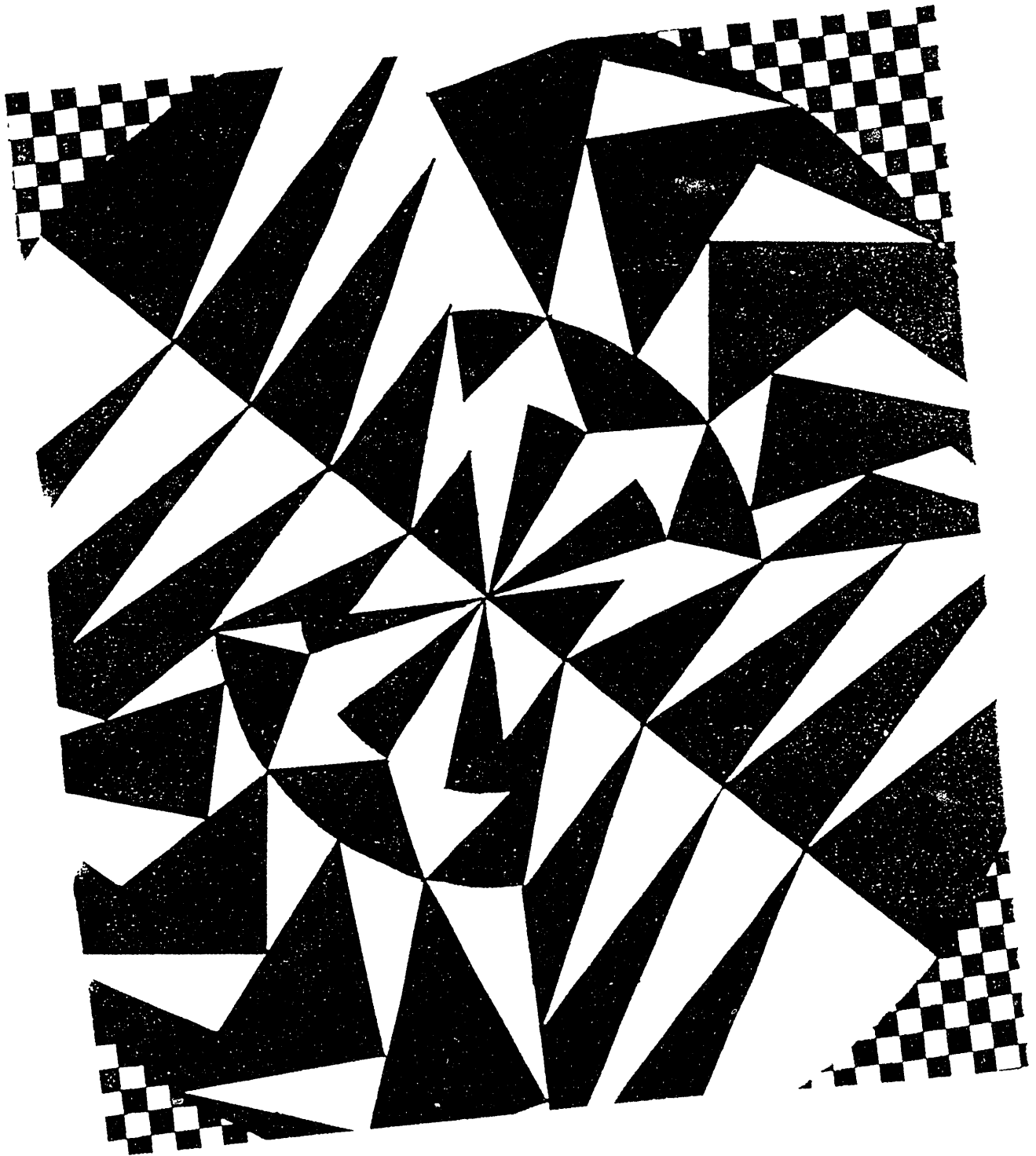
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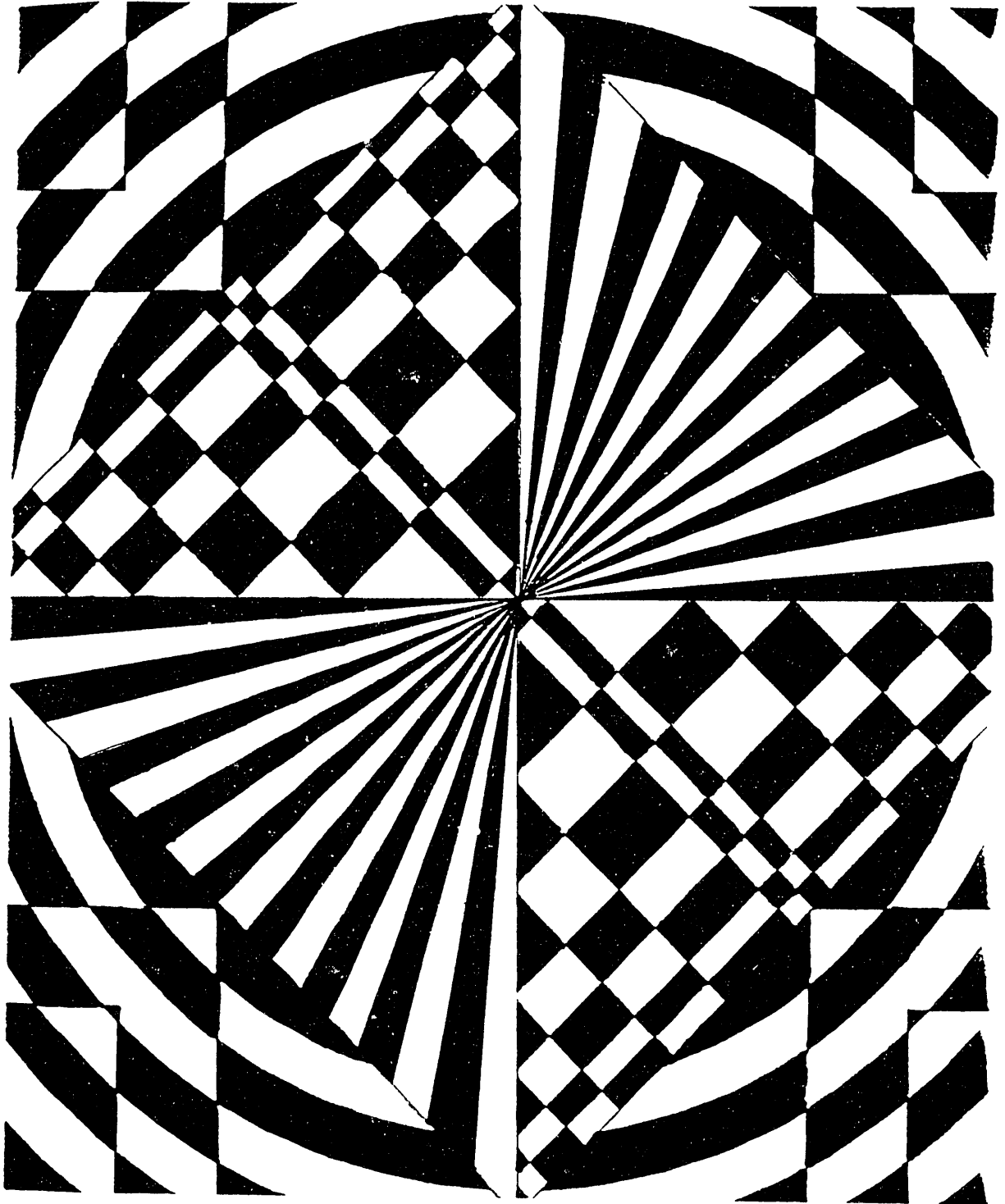


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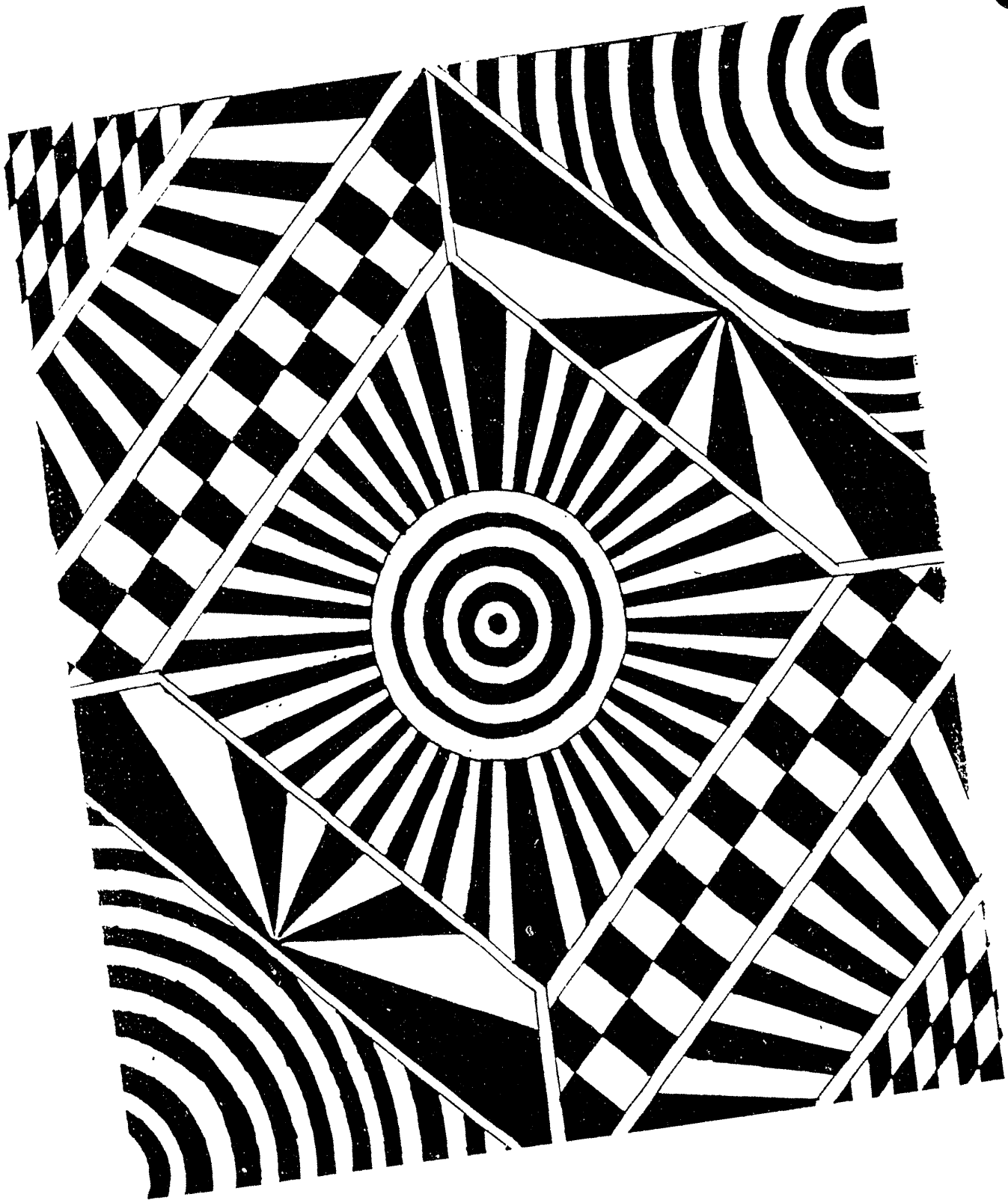


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# ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

## Letter Opinions

**LO-94-036 (ID#-24667).** Request from Honorable Ann W Richards, Governor, State of Texas, Austin, concerning whether a corporation that contracts with the state to provide child care services to state employees may enroll children of non-state employees

**Summary of Opinion.** Permitting some children of non-state employees to be enrolled in a day care center for children of state employees does not constitute a per se violation of Article III, §51, of the Texas Constitution

TRD-9441324

**LO-94-037 (ID#-23491).** Request from Honorable Bob Hunter, Chair, Committee on International and Cultural Relations, Texas House of Representatives, Austin, concerning use of sales and use tax proceeds by a development corporation for "promotional purposes" under the Development Corporation Act, Texas Civil Statutes, Article 5190 6, §4A

**Summary of Opinion.** The Development Corporation of Abilene, which operates under §4A of the Development Corporation Act, Texas Civil Statutes, Article 5190 6, may spend proceeds of the sales and use tax imposed under §4A for "promotional purposes," subject to the proviso of subsection (b)(1) that no more than ten percent of corporation revenue may be spent for such purposes, and so long as the expenditures are otherwise consistent with the provisions of the act and state law generally

TRD-9441325

**LO-94-038 (RQ-636).** Request from Honorable Tim Curry, Criminal District Attorney, Tarrant County, Justice Center, Fort Worth, concerning whether Tarrant County criminal district court bailiffs must be licensed by the Texas Commission on Law Enforcement Officer Standards and Education, whether the bailiffs may carry firearms, and related questions

**Summary of Opinion.** A sheriff's or judge's bailiff may carry a firearm in a court or the offices utilized by a court "pursuant to written regulations or written authorization of the court," under §46 04(a)(3) of the Penal Code, even if he or she is not a peace officer This provision does not authorize a bailiff to carry a firearm in any other location Section 46 03(a)(6) of the Penal Code, which provides an exemption to the general prohibition against carrying handguns in §46 02, does not apply to a bailiff who is not a peace officer

Sheriff's bailiffs are not peace officers and are not required to be licensed by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) unless they are officers as defined by Chapter 415 of the Government Code by virtue of some other law. A deputized judge's bailiff is a peace officer under §415.001(5) of the Government Code, and must be licensed by TCLEOSE An undeputized judge's bailiff is not a peace officer and is not authorized to carry a handgun outside of the courtroom and court's offices In order to carry a handgun elsewhere, a judge's bailiff would need to be deputized pursuant to §53.007 of the Government Code or some other law Once deputized, a judge's bailiff would be an officer subject to the TCLEOSE licensing requirements

The assignment of a reserve deputy sheriff as a bailiff to a criminal district court may constitute "active duty" under §84.005 of the Local Government Code if it is so designated by the sheriff Under subsection (d) of this provision, a reserve deputy sheriff who is on active duty has the same authority as a regular peace officer.

A judge's bailiff who has been deputized or a sheriff's bailiff who is a deputy sheriff (or a reserve deputy sheriff on active duty) has the powers of arrest set forth in Articles 14 01, 14 02, and 14.03 of the Code of Criminal Procedure for peace officers. A bailiff who is not a peace officer has the

powers of arrest of any other citizen, i.e., the power to arrest an offender without a warrant when the offense is committed in his or her presence or view, if the offense is classed as a felony or is an offense against the public. Code of Criminal Procedure, Article 14.01(a).

A sheriff's or judge's bailiff who has been a peace officer serving under permanent appointment since before September 1, 1970, is not required to be licensed by TCLEOSE. Government Code, §415.051(c).

TRD-9441326

**LO-94-039 (ID#-25242).** Request from Honorable Judith Zaffirni, Chair, Committee on Health and Human Services, Texas State Senate, Austin, concerning whether the term "child" in the Government Code, §573 024, which defines relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent

**Summary of Opinion.** The term "child" in the Government Code, §573.024(b), which defines relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent. The relationship by affinity created by marriage survives divorce or the death of a spouse for the lifetime of any children of the marriage. Therefore, Chapter 573 of the Government Code prohibits the board of trustees of an independent school district from voting to hire the ex-wife of a trustee regardless of the age and status of the surviving child of the marriage

TRD-9441327

**LO-94-040 (ID#-22527).** Request from Honorable John Vance, Dallas County District Attorney, Dallas, concerning whether the County Purchasing Act applies to purchases by a district attorney or criminal district attorney out of felony forfeiture funds pursuant to Chapter 59 of the Code of Criminal Procedure, clarification of Attorney General Opinion DM-246

**Summary of Opinion.** The County Purchasing Act applies to purchases by a district attorney or criminal district attorney out of felony forfeiture funds pursuant to Chapter 59 of the Code of Criminal Procedure.

TRD-9441328.

**LO-94-041 (RQ-534).** Request from Honorable Mike Driscoll, County Attorney, Harris County, Houston, concerning whether Chapter 54 of Title 7 of the United States Code requires county-owned pounds and animal shelters to hold all dogs and cats for five days, and related questions.

**Summary of Opinion.** Section 2158 of Chapter 54 of Title 7 of the United States Code, as construed by regulations promulgated by the United States Department of Agriculture, requires a county-owned pound or animal shelter to hold for five days only those cats and dogs that are sold to dealers. See 9 Code of Federal Regulations, §2.133(a). These regulations require entities to hold cats and dogs sold to dealers "for a period of not less than five full days after acquiring the animal, not including the date of acquisition and excluding time in transit. This holding period shall include at least one Saturday." *Id.* Nothing in Chapter 54 precludes a city or county from requiring pounds and animal shelters within its jurisdiction to hold all cats and dogs for five days.

According to the United States Department of Agriculture, a publish research facility is not a "dealer" within the meaning of §2158, nor is a public or private research facility which uses animals for its own purposes rather than for resale or to provide to another research facility.

TRD-9441329

**LO-94-042 (ID#-23372).** Request from Honorable Jose R. Rodriguez, El Paso County Attorney, County Courthouse, El Paso, concerning whether the Local Government Code, §291.007, authorizes El Paso County to collect as a court cost a security fee for cases filed in the county probate court and related questions.

**Summary of Opinion.** The Local Government Code, §291.007(a), authorizes a clerk to collect a security fee for civil cases filed in probate court if the commissioners court has set such a fee. Section 152.004(a) of the Civil Practice and Remedies Code authorizes a clerk to collect a charge for the alternative dispute system fund in civil cases filed in probate court if the commissioners court has set such a charge. The Local Government Code, §323.023(a), authorizes a clerk to collect a charge for the law library fund in civil cases filed in probate court if the commissioners court has set such a charge.

TRD-9441330

**LO-94-043 (ID#-24034).** Request from Honorable Ciro D. Rodriguez, Chair, Committee on Local and Consent Calendars, Texas House of Representatives, Austin, concerning whether the San Antonio Housing Authority may reimburse commissioners on a per diem basis.

**Summary of Opinion.** The Local Government Code, §392.035, prohibits a commissioner of a housing authority from receiving compensation in any form. However, a commissioner may receive reimbursement for necessary expenses incurred while travelling in his official capacity as long as such expenses are supported by adequate evidence of actual money expended.

TRD-9441331

**LO-94-044 (RQ-586).** Request from Honorable Frank H. Bass, Jr., Montgomery County Attorney, Conroe, concerning extent to which a county that has accepted a municipal utility district's dedication of a road may be responsible for maintenance of a storm sewer system that lies within the right of way of the road and that was constructed by the district, or purchased by the district from the developer, before the district's dedication of the road.

**Summary of Opinion.** Montgomery County has the duty to drain a road once the county has accepted a municipal utility district's dedication of the road to public use. The county has the right to use and maintain an underground storm water sewer located within the roadway easement to the extent necessary to accomplish its drainage duty.

A municipal utility district that has undertaken to construct or purchase sewer facilities that provide drainage to private lands is responsible for the continuance of such drainage, even though the facilities are located within the areal confines of a public roadway, as long as the district owns the drainage facilities. The district may perform its drainage duty either by maintenance of the sewer or by other means.

The doctrine of dedication by implication is a rule of estoppel and does not impose an obligation on the public authority unless the dedication has been accepted. Therefore, if the district has impliedly dedicated an underground storm water sewer located within the roadway easement, the district will be estopped from asserting rights inconsistent with the dedication; but the county's maintenance obligations are not affected by the dedication unless it has accepted the dedication.

TRD-9441332

**LO-94-045 (ID#-26083).** Request from Honorable Senfronia Thompson, Chair, Committee on Judicial Affairs, Texas House of Representatives, Austin, concern-

ing whether an investigator for the Harris County district attorney is eligible to serve as a trustee of the North Forest Independent School District.

**Summary of Opinion.** An investigator for the Harris County district attorney is eligible to serve as a trustee of the North Forest Independent School District provided that he or she receives no compensation for doing so.

TRD-9441333

## Open Records Decision

**ORD-623 (RQ-386).** Request from Rachael Martin, Executive Director, Board of Law Examiners, Austin, concerning whether information concerning an applicant's moral character and fitness is subject to the Open Records Act, Government Code, Chapter 552, when the applicant requests information relating to his or her own moral character and fitness. (RQ-386)

**Summary of Opinion.** Information that is available to an applicant pursuant to §82.003(c) of the Government Code is not subject to any of the exceptions listed in the Open Records Act, Government Code, Chapter 552. The Board of Law Examiners may withhold from an applicant information available to him or her pursuant to §82.003 only if the person who supplied the information requested that the board not disclose it.

TRD-9441318

## Opinions

**DM-288 (RQ-664).** Request from Robert W. Gee, Chair, Public Utility Commission of Texas, Austin, concerning authority of the Public Utility Commission of Texas to apply for, receive, and expend federal funds, and related questions. (RQ-664)

**Summary of Opinion.** The Public Utility Commission has authority under Texas Civil Statutes, Article 1446c, to apply for federal grants necessary and convenient to the exercise of its general power to regulate public utilities. Federal grant funds are placed in the state treasury, and Chapter V, §22 of the current general appropriations act appropriates them to the agencies for the purposes for which the federal grant was made, subject to stated conditions. Among other conditions, §22 provides that federal funds granted to an agency, other than an agency or institution of higher education, may only be deposited to and spent from one of the specific programs listed in the agency's appropriation. If an item of appropriation in the commission's appropriation could be spent for the purposes for which the federal grant was received, the federal

grant funds may be deposited to and spent from that item

TRD-9441319

**DM-289 (RQ-630).** Request from the Honorable O. H. "Ike" Harris, Chair, Committee on State Affairs, Texas State Senate, Austin, concerning whether a City of Dallas ordinance regulating establishments that sell alcoholic beverages falls within the Alcoholic Beverage Code, §109.57(d)(2) (RQ-630)

**Summary of Opinion.** The term "on-premise sale" in §109.57(d)(2) of the Alcoholic Beverage Code means the sale of alcoholic beverages for on-premise consumption, rather than the sale of alcoholic beverages on the premises. Therefore, §109.57(d)(2) does not exempt the City of Dallas ordinance from the general preemptive effect of §109.57, except to the extent the ordinance regulates the location of establishments that derive 75% or more of their gross revenue from the sale of alcoholic beverages for on-premise consumption.

TRD-9441320

**DM-290 (RQ-645).** Request from Honorable Bill Ratliff, Chair, Education Committee, Texas State Senate, Austin, concerning whether the Code of Ethics and Standard Practices for Texas Educators continues to exist following the abolition of the Teachers' Professional Practices Commission, and related questions (RQ-645)

**Summary of Opinion.** The Code of Ethics and Standard Practices for Texas Educators continues to exist following the abolition of the Teachers' Professional Practices Commission by the 73rd Legislature. See Acts 1993, 73rd Legislature, Chapter 771, §19(29) at 3025. The code of ethics may be revised or amended by the Texas Education Agency pursuant to its rulemaking procedures. The authority to hear complaints regarding violations of the ethics code is now vested with the commissioner of education. Any complaints that were pending before the commission at the time of its abolition are now pending before the commissioner. If the commission were re-established, its authority and jurisdiction would depend upon the rules adopted by the commissioner pursuant to newly enacted §11.954 of the Education Code.

TRD-9441321

**DM-291 (RQ-626).** Request from Honorable Roy C. Turcotte, Kenedy County Attorney, Sarita, concerning whether a Kleberg County grand jury is authorized to return an indictment for an offense that was committed in Kenedy County. (RQ-626)

**Summary of Opinion.** A Kleberg County grand jury may return an indictment for an offense committed in Kenedy County for which venue in Kleberg County is proper

The determination whether it is appropriate for a grand jury to return an indictment for a particular offense committed in another county must be made on a case by case basis.

TRD-9441322

**DM-292 (RQ-611).** Request from David R. Smith, M.D., Commissioner of Health, Texas Department of Health, Austin, concerning whether the Texas Board of Health is authorized under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, to promulgate rules discontinuing general certification of medical radiologic technologists, and implementing a system of specialty certification in diagnostic radiography, nuclear medicine, and radiation therapy. (RQ-611)

**Summary of Opinion.** The Texas Board of Health is authorized under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, to promulgate rules implementing a system of specialty certification in diagnostic radiography, nuclear medicine, and radiation therapy.

TRD-9441323

### ◆ ◆ ◆ Request for Opinions

**(RQ-679).** Request from Honorable William R. Ratliff, Chair, Committee on Education, Texas State Senate, Austin, Texas, concerning whether and how a once private road may become a part of the public domain after long and continuous use by the public.

**(RQ-680).** Request from Honorable Senfronia Thompson, Chair, Judicial Affairs Committee, Texas House of Representatives, Austin, Texas, concerning whether a county school administration may retain a lobbyist whose compensation is paid solely from local funds, and related questions. Clarification of Attorney General Opinion DM-278

**(RQ-681).** Request from Honorable Tim O'Connell, Criminal District Attorney, Collin County Courthouse, McKinney, Texas, concerning whether a commissioner's court may contract with a private entity for collection of bond forfeiture judgments.

**(RQ-682).** Request from Carol S. Vance, Chair, Texas Board of Criminal Justice, Austin, Texas, Attention: Carl Reynolds, Board General Counsel, concerning whether the Board of Criminal Justice may delegate to its executive director the authority to initiate rulemaking, and related questions.

**(RQ-683).** Request from Michael Miller, General Counsel, State of Texas Board of Pardons and Paroles, Austin, Texas, concerning a judge's entry of a defendant's plea of guilty or nolo contendere constitutes

a "conviction" so that the governor may grant clemency to the defendant pursuant to Texas Constitution, Article 4, §11, when the judge deferred an "adjudication of guilt" pursuant to §5 of Article 42.12 of the Code of Criminal Procedure and, on expiration of the defendant's period of community supervision, dismissed the proceedings and discharged the defendant without an "adjudication of guilt".

**(RQ-684).** Request from Catherine A. Ghiglieri, Commissioner, Texas Department of Banking, Austin, Texas, concerning authority of a state university of higher education to implement a "debit card" program for funds voluntarily deposited by students under the Education Code, §51.002.

**(RQ-685).** Request from Honorable Cindy Maria Garner, District Attorney, 349th Judicial District, Crockett, Texas, concerning liability of a county of payment of medical expenses incurred by a non-indigent inmate of a county jail.

**(RQ-686).** Request from Rebecca E. Forkner, Acting Executive Director, Texas State Board of Examiners of Psychologists, Austin, Texas, concerning whether the practice of hypnosis, hypnotherapy, psychotherapy, and biofeedback may be regulated by the State Board of Examiners of Psychologists.

**(RQ-687).** Request from Priscilla A. Lozano, The University of Texas System, Office of General Counsel, Austin, Texas, concerning whether records of investigation into allegations of sexual harassment are accepted from public disclosure by common-law privacy under the Government Code, §552.101.

**(RQ-688).** Request from Tracy R. Briggs, Assistant City Attorney, City of Houston, Legal Department, Houston, Texas, concerning whether the Local Government Code, §143.1214, requires the Houston Police Department to withhold all documents relating to a criminal investigation of a Houston police officer or firefighter when the employing department does not sustain the allegations or take any disciplinary action.

**(RQ-689).** Request from Honorable Fred Hill, Chair, Committee on Urban Affairs, Texas House of Representatives, Austin, Texas, concerning whether members of the City of Dallas Planning Commission are "local public officials" under Chapter 171 of the Local Government Code, whether "business entity" under that chapter includes a business entity paid to represent an entity whose request is the subject matter of a vote or decision, and related questions.

**(RQ-690).** Request from Lionel R. Meno, Commissioner of Education, Texas Education Agency, Austin, Texas, concerning whether the offices of county commissioner and public school trustee are incompatible

(RQ-691). Request from James R. Raup, McGinnis, Lochridge & Kilgore, L.L.P., Austin, Texas, concerning whether a parent has a special right of access to information about his or her child that is protected from disclosure by the child's common-law privacy interests, and related questions.

(RQ-692). Request from Merrill E. Nunn, City Attorney, City of Amarillo, Amarillo, Texas, concerning whether the identities of juvenile victims of crimes or accidents are protected from required public disclosure under §552.101 of the Texas Open Records Act, Chapter 552 of the Government Code

(RQ-693). Request from Honorable Bill Ratliff, Chair, Committee on Education, Texas State Senate, Austin, Texas, concerning whether a taxing unit must call an election pursuant to the Tax Code, §11.13(n),

on the petition of at least 20% of the qualified voters of the taxing unit

(RQ-694). Request from Catherine A. Ghiglieri, Commissioner, Texas Department of Banking, Austin, Texas, concerning whether a company that provides certain financial services to interstate truckers is required to obtain a license under Texas Civil Statutes, Article 489d, the "Sale of Checks" Act, and related questions.

(RQ-695). Request from Honorable Merrill L. Hartman, Chair, Court Reporters Certification Board, Austin, Texas, concerning whether Texas Rule of Civil Procedure 166c and §52.021(f) of the Government Code conflict.

(RQ-696). Request from Honorable David H. Cain, Chair, Committee on Transportation, Texas House of Representatives, Austin, Texas, concerning whether a statutorily mandated sign furnished by a training company to a parking facility con-

stitutes "anything of value" in contravention of Texas Civil Statutes, Article 6701g-2, and related questions.

(RQ-697). Request from Richard C. Ladd, Commissioner, Texas Health and Human Services Commission, Austin, Texas, concerning whether the Texas Health and Human Services Commission may, in the absence of state law, pursue "Medicaid estate recoveries" under the relevant provisions of the federal Social Security Act, 42 United States Code, §1917(b)(1).

(RQ-698). Request from Honorable Martha Whitehead, Treasurer, Texas State Treasury, Austin, Texas, concerning whether certain non-profit foundations and other entities are eligible to participate in a public funds investment pool.

TRD-9441334

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# 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 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 61. Boxing

- 16 TAC §§61.10, 61.26, 61.62, 61.63, 61.70, 61.78, 61.100, 61.101, 61.104, 61.106, 61.107, 61.115

The Texas Department of Licensing and Regulation proposes new §§61.63 and 61.115 and amendments to §§61.10, 61.26, 61.62, 61.70, 61.78, 61.100, 61.101, 61.104, 61.106, and 61.107 concerning boxing. The new sections and amendments clarify existing rules and make clear the responsibility of the Department to assign the referee and judges for all events and requires that in all events at least the referee and one judge be residents of and licensed in Texas. It also adds rules for the technical requirements of kickboxing.

James D. Brush II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brush 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 increased public welfare and protection. 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 James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

The amendments and new rules affect Texas Civil Statutes, Article 8501-1.

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

**Boxer**—A boxer or kickboxer, unless otherwise specified, is a person who competes in a boxing contest, exhibition, or match held within the state of Texas that is not exempt from Texas Civil Statutes, Article 8501-1, §7.

#### **§61.26 Licensing—Second.**

(a) Before an individual performs as a second, he shall be licensed by the Commissioner. A licensed second shall keep the license in his possession. A licensed manager may act as a second without a second's license.

(b) Each second applicant shall submit:

(1) a completed application form;

[(2) a current C.P.R. card;]

(2)[(3)] two recent passport-sized photographs; and

(3)[(4)] a license fee.

#### **§61.62. General Prohibitions**

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

(c) "Toughman Contests" or other types of serial fights whereby the winner of one fight progresses to fight another person are prohibited.

(d) Unsportsmanlike behavior including, but not limited to, arguing with an official or refusing to obey the orders of an official is prohibited. The referee can take appropriate action under §61.106 of this title (relating to Technical Requirements—Judge Scoring) at the time and/or disciplinary action can be taken by the department under §61.90 of this title (relating to Sanctions—Administrative Penalties).

**§61.63. Responsibilities of the Department for Officials.** In all events, including championship contests, the referee and judges will be assigned by the Commissioner of the department from the department's list of licensed officials. For every event, including championship contests, the referee and at least one judge shall be residents of Texas.

#### **§61.70. Responsibilities of Promoter.**

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

(d) Requests for boxing card approval shall be received in writing from the promoter by the Department at least 10 working days before the event date. The request shall contain the full legal name and address, date of birth, social security number, ring name, Texas boxer license number, weight, previous record, name of the manager or the manager agent of each contestant, and number of rounds to be fought for each contestant[, also the name of the manager or agent of each contestant]. In addition, the Department may require submission of a certified birth certificate. If the boxer does not have a current Texas boxer's license, the request for card approval must have attached a fully completed application and fee for the license. In the event that the department staff believes there is a matching of fighters on the card which raises a concern as to safety because of unreasonable differences in experience, the promoter will be contacted by staff. If the promoter and staff cannot agree on a particular matching of fighters, the department's decision as to whether to allow a particular match to proceed will prevail.

(e)-(o) (No change.)

#### **§61.78. Responsibilities—Boxers.**

(a) (No change.)

(b) Boxers shall box in proper ring attire including protection cup, which shall be firmly adjusted before entering the ring.

The trunks' waistband shall extend above the waistline and the hem may not extend below the knee. Mouthpieces shall be worn at the beginning of each round. If a mouthpiece is knocked out, the referee shall call time, the Boxer's second will clean and reinsert the mouthpiece. If the mouthpiece is spit out the same procedure will be followed and the referee can charge the Boxer with a foul. Shoes shall be of soft material and shall not be fitted with spikes, cleats, or hard heels. Kickboxers shall not wear shoes of any type, except for protective padded foot gear.

(c) (No change.)

*§61.100. Technical Requirements-Conduct of Promotion.*

(a) Licensed promoters shall schedule no less than 25 rounds of boxing for each event. All [professional] boxing contests shall have no more than three-minute rounds with one-minute rest periods between rounds. No boxing or sparring event shall exceed 10 rounds, except a championship contest, which shall not exceed 12 rounds.

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

*§61.101. Technical Requirements-Ring and Equipment.*

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

(c) The promoter shall ensure the presence of a Department-approved bell[. It shall be large enough to make a sound the contestants and the referee can hear.] which makes a sound loud enough to be heard by the contestants, referee, and other officials.

(d) (No change.)

(e) The promoter shall furnish physicians's scales to be used for weighing in Boxers. The Department may require that the scales be certified. Bathroom type scales are not permitted and will not be approved.

(f)-(m) (No change.)

*§61.104. Technical Requirements-Medical Matters.*

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

[(i) Medical disqualification of a boxer is for his safety and may be made at the discretion of the Department or the ring-side physician.]

(i)[(j)] The department shall recognize and honor other states' medical suspensions. Any Texas boxer who boxes outside the State of Texas and receives a medical suspension shall report the fight results and medical suspension to the department within 72 hours after the event.

(j)[(k)] The administration or use of any drugs or alcohol either before to or during a contest is prohibited except medication administered by a physician. The Department may order a drug screen at any time for good cause. If a drug screen is performed, the Boxer or his manager must pay for it.

(k) Medical disqualification of a boxer is for his own safety and may be made at the discretion of the examining physician or the department after a hearing. Grounds for medical disqualification include, but are not limited to, the following conditions:

(1) General.

(A) any boxer who has lost six consecutive bouts;

(B) any boxer who has sustained three consecutive knock-outs;

(C) body deformity (arms, legs, obesity, etc.) that would tend to promote injury; or

(D) prior injury or presence of foreign object in the body which condition might be aggravated by boxing.

(2) Neurological.

(A) a boxer who has sustained a knock-out within the past 60 days;

(B) a boxer who has sustained a TKO within the past 30 days;

(C) any boxer who has comparative change in a CAT scan or EEG;

(D) epilepsy or convulsive disorder;

(E) previous cervical disc or brain surgery;

(F) ataxia, spastic, or cerebellar gaits;

(G) history of cerebral hemorrhage, repeated concussions, or serious head injury;

(H) intracerebral aneurysms;

(I) labyrinthine disturbances; or

(K) vascular malformations.

(3) Eye.

(A) visual acuity of less than 20/100;

(B) retinal detachment (repaired or unrepaired);

(C) the presence of only one eye or useful vision in only one eye;

(D) congenital glaucoma;

(E) recent periorbital lacerations; or

(F) severe myopia.

(4) Respiratory.

(A) active tuberculosis;

(B) chronic obstructive lung disease (active);

(C) asthma precipitated by exertion; or

(D) absence of one lung.

(5) Abdomen.

(A) any hernia;

(B) enlarged liver;

(C) enlarged spleen; or

(D) undescended testes.

(6) Cardiovascular.

(A) heart disease:

(i) absolute disqualifications;

(I) aortic stenosis or regurgitation;

(II) mitral stenosis or significant regurgitation;

(III) cyanotic congenital heart disease;

(IV) aortic coarctation, unoperated;



ally; (V) epstein's anom-

alous obstruction; (VI) pulmonary ve-

nous obstruction; (VII) cardiomyopat-

hy or active myocarditis; (VIII) prosthetic

heart valves; (IX) congenital com-

plete heart block; (ii) allowed with cardiol-

ogist report: (I) paroxysmal atrial

tachycardia; (II) premature ven-

tricular contraction; (III) post repair of

aortic coarctation; (IV) mild mitral re-

gurgitation; or (V) mild pulmonary

stenosis; (B) hypertension (150/90 on

three or more occasions). A boxer is al-

lowed to participate with diagnosis of es-

sential hypertension if: (i) controlled with diet

and salt; or (ii) controlled with thia-

zide drugs. (7) Genitourinary.

(A) absence of one kidney;

(B) acute or chronic kid-

ney disease; (C) active venereal disease;

or (D) one testicle (relative

contraindication). (8) Musculoskeletal.

(A) absolute contraindica-

tions: (i) mavicular fractures;

(ii) apondylolisthesis and spondylolysis (only if there is back pain);

(iii) hip disease (leg perthes, slipped epiphysis, septic arthritis of spine; or

(iv) active epiphysitis of spine; or

(v) spina bifida occulta;

(B) relative contraindica-

tions: (i) joint instability;

(ii) recurrent disloca-

tion of shoulder; (iii) tendency to develop

myositis ossificans; (iv) metabolic bone dis-

ease; or (v) "long" neck;

(C) other: (i) diabetes if under

poor control; (ii) bleeding dyscrasias;

(iii) active staph skin in-

fection; (iv) alcohol addiction;

(v) drug addiction;

(vi) poorly conditioned;

(vii) mononucleo-

sis-contraindicated until spleen returns

to normal size and liver enzymes normal; or

(viii) hepatitis-contraindicated until liver enzymes

return to normal.

§61.106. *Technical Requirements-Judge*

*Scoring.* (a)-(g) (No change.)

(h) Scoring shall be recorded only

on the department-approved and

department-provided form. Once the

form is completed, checked and signed by

the official it must be given directly to the

department supervisor for the event. Scoring forms are the property of the

department and will be maintained in the

official records of the event.

§61.107. *Technical Requirements-Time-*

*keeper.* (a) All professional boxing events

shall have no more than three-minute

rounds with one-minute rest periods be-

tween rounds. The timekeeper shall blow

his whistle 10 seconds before the end of each one-minute rest period. The time-keeper shall sound the bell only at the beginning and end of each round.

(b)-(d) (No change.)

§61.115. *Technical Requirements-Kickboxers.*

(a) Kickboxing matches shall not

exceed nine two-minute rounds with a one-

minute rest period between rounds. The De-

partment may, however, permit an addi-

tional two rounds for championship events.

(b) Male contestants must wear a

foul-proof groin protector. A plastic cup

with an athletic supporter is adequate, but

an abdominal guard is preferable. Female

contestants must wear foul-proof breast

protectors. Plastic breast covers are adequate.

Female contestants must also wear a pelvic

guard to protect their hips. Foot and shin

pads are required.

(c) Each kickboxing contestant

must execute a minimum of six kicks dur-

ing each round. If either fighter does not

do so, he will automatically lose the round.

If both contestants fail to execute the mini-

imum number of kicks by the end of a

round, the round is declared a draw. In any

match of nine or more rounds, if either

fighter fails to execute the minimum num-

ber of kicks in any three rounds, he au-

tomatically loses the fight. In a nontitle

fight, if either fighter fails to execute the

minimum number of kicks in any two rounds, he

loses the fight.

(d) The following tactics are fouls

and are forbidden. Using these tactics may

result in a warning, loss of points as de-

termined by the referee, disqualification, for-

feiture and/or fine.

(1) headbutts, elbow strikes or

clubbing, kicks, punches or any other

strikes at the groin;

(2) attacking with the knees;

(3) open-hand attacks to the

eyes or throat;

(4) striking at that part of the

body over the kidneys or spine;

(5) spitting, slapping or biting;

(6) palm-heel strikes (using the

heel of the palm of the hand to deliver a

blow to the face);

(7) arm bars (grabbing one arm

with the other and pressing the grabbed arm

against the opponent's throat);

(8) grabbing or holding onto an

opponent's leg or foot and grabbing or

holding onto any other part of the body

except for the purpose of attempting to

throw the opponent to the floor;

(9) leg-checking (extending the leg to check an opponent's leg or prevent him or her from kicking);

(10) purposely going down without being hit;

(11) any unsportsmanlike trick or action causing any injury to an opponent;

(12) attacking on the break;

(13) attacking after the bell or gong has sounded ending the round or when the opponent is out of the ring; and

(14) intentionally pushing, shoving or wrestling an opponent out of the ring with any part of the body.

(e) A contestant intentionally avoiding any physical contact with his or her opponent will receive a warning. If a contestant continues avoiding contact, he or she will be declared the loser of that round. If a contestant avoids contact after losing a round for that reason, he or she may be subject to the same penalties and procedures as a contestant guilty of foul tactics.

(f) In any case where the referee decides that the contestants are not honestly competing, that the knockout is a "dive," or the foul is a prearranged termination of the bout, he or she will not finish the knockout count, disqualify the contestant for fouling, or render a decision, but shall stop the bout and declare it ended not later than before the end of the last round. He shall also order purses of both fighters held pending investigation and disposition of the funds by the Department.

(g) No contestant shall leave the ring during the one-minute rest period between rounds. If any contestant fails or refuses to resume fighting when the bell sounds for starting the next round, the referee will award a knockout victory to his or her opponent as of the round which has just been finished. If the circumstances indicate to the referee the need for an investigation or disciplinary action, the referee will not make a decision and will order the purse or purses of either or both contestants withheld.

(h) Before a fallen contestant resumes fighting after having been knocked to, slipped to, or fallen to the floor, the referee shall wipe the contestant's gloves free of any foreign substance.

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

Issued in Austin, Texas, on May 23, 1994.

TRD-9441278

Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: July 1, 1994

For further information, please call: (512) 463-7357

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 1. General Administration

#### Subchapter A. Rules of Practice and Procedure

#### Rulemaking Procedures

##### • 28 TAC §§1.201-1.208

The Texas Department of Insurance proposes new §§1.201-1.208, concerning rulemaking procedures. The new sections are necessary and essential for an orderly and efficient process by which the department will consider the adoption of rules under the Government Code, Chapter 2001, Subchapter B, and under the Insurance Code, Articles 5.96 and 5.97. Proposed new §1.201 provides for pre-publication procedures for staff proposals for rulemaking. Proposed new §1.202 provides for pre-publication procedures for public petitions for rulemaking. Proposed new §1.203 addresses publication and comments on proposals. Proposed new §1.204 addresses final action by the agency in instances where no hearing is requested or required concerning a published proposal. Proposed new §1.205 addresses final action by the agency in instances where a hearing is held concerning a published proposal. Proposed new §1.206 addresses post adoption procedures by the Office of the Chief Clerk. Proposed new §1.207 addresses maintenance of a list of pending rules by the department. Proposed new §1.208 addresses regular commissioner public meetings.

D. J. Powers, legal counsel to the commissioner of insurance, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. Mr. Powers also has determined that there will be no effect on local employment or the local economy.

Mr. Powers 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 administration and enforcement of the sections will be the more efficient administration of the Department's rulemaking duties and the effective utilization of public resources through the use of a uniform and more efficient rulemaking process. The proposed new sections provide a publicly-known and easy-to-understand set of procedures for persons interested in participating in the rule making process of the department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Comments on the proposal must be submitted in writing within 30 days after publication

of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed pursuant to the Insurance Code, Article 1.03A and Article 1.04C. Article 1.03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions of the department. Article 1.04C requires the commissioner to develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the commissioner.

The proposed new sections affect Government Code, Chapter 2001; and Insurance Code, Articles 5.96 and 5.97.

*§1.201. Staff Proposals or Petitions for Rulemaking.* All department staff proposals and petitions for rulemaking shall be considered and processed in accordance with departmental procedures established and revised as necessary by the commissioner. The commissioner may approve the publication of a staff proposal or petition for rulemaking without a hearing.

*§1.202. Public Proposals or Petitions for Rulemaking.*

(a) Scope of section. The procedures for public petitions for rule-making under Government Code §2001.021 and the Insurance Code, Articles 5.96(b) and 5.97(b) shall be governed by the provisions of this section to the extent not governed by statute.

(b) Filing of petition and duties of Chief Clerk. Petitions for rule making from interested persons shall be submitted to the Office of the Chief Clerk. Once the petition has been submitted, the Office of the Chief Clerk will take the actions described in paragraphs (1)-(3) of this subsection, as follows:

(1) assign a reference number to the petition and add it to the list of rule proposals pending before the department;

(2) provide a conforming copy to the appropriate department staff for review and response; and

(3) notify the petitioner of the name and telephone number of the staff person reviewing the proposal and designated as contact person for inquiries.

(c) Staff response. The Department staff shall provide its analysis and recommendation on the proposal, through the appropriate associate commissioner, to the commissioner in Texas Register form.

(d) Action by Office of the Chief Clerk. Unless staff's recommendation is substantively identical to the petitioner's recommendation or the petitioner has agreed to staff's changes, the Chief Clerk's Office shall complete items in paragraphs (1) and (2) of this subsection, as follows:

(1) provide a copy of the recommended proposal in Texas Register form to the petitioner, and provide the petitioner 10 business days to file a written response to the recommended proposal; and

(2) after the petitioner files a response or the time for filing has expired, provide the commissioner with the original petition, the department staff's proposal in Texas Register form, the petitioner's response (if any), and any additional written comments from the public addressing the proposal.

(e) Commissioner action. Action on the petition is in the sole discretion of the commissioner; staff's recommendations are not binding on the commissioner. The Commissioner may act on the petition without a hearing. In all cases, the Office of the Chief Clerk shall provide to the petitioner a copy of the commissioner's order or rule proposal filed with the *Texas Register*. After review and consideration the commissioner shall take one of the actions set out in paragraphs (1)-(3) of this subsection.

(1) instruct the Office of the Chief Clerk to submit the proposed rule as recommended by the Petitioner to the Texas Register for publication.

(2) instruct the Office of the Chief Clerk to submit the Commissioner's proposed rule to the Texas Register for publication and issue an order stating the reasons the petition was denied in part if the published version of the rule is substantially different than the Petitioner's recommendation; and

(3) issue an order disapproving the petition and stating the reasons for denial. The Office of the Chief Clerk shall inform the petitioner of the right to request that the commissioner reconsider the decision and that the petitioner's request may either be in writing or at the open forum portion of a regularly scheduled commissioner meeting.

#### *§1.203. Publication and Comments on Proposals for Rulemaking.*

(a) Submission. Publication of proposed rules shall request that written comments be filed with the Office of the Chief Clerk, including proposed rules under the Insurance Code, Articles 5.96 and 5.97.

(b) Incorporation Of forms by reference. Notice of a proposed amendment to an existing rule under Government Code,

Chapter 2001, which includes a change to a form incorporated by reference in the existing rule shall either include the text of the proposed change to the form or state that the proposal includes a change to the form.

(c) Public comment. Comments on each published proposal shall be filed with the Office of the Chief Clerk, with an additional copy to the division contact person in the department for the proposal if identified in the Texas Register notice.

(d) Request for hearing Any person may request a hearing on a published rule proposal. Unless the request is withdrawn, the Commissioner shall grant the request and hold a hearing

*§1.204. Final Action for Rule Proposals Where No Hearing is Requested or Required.* When there is no request for a hearing and no hearing is required by statute, the commissioner may take final action on a proposed rule by signing an order of adoption without a hearing. Action on the proposed rule is solely within the discretion of the commissioner.

*§1.205. Final Action for Rule Proposals Where a Hearing or Meeting is Requested or Required.* When a hearing or meeting is required by statute or these rules, the commissioner may take final action on a proposed rule only after a hearing which meets the requirements of paragraphs (1)-(3) of this subchapter.

(1) The commissioner shall conduct the hearing. All interested persons shall be permitted to make oral comments to the commissioner.

(2) As soon as practicable after the comment period has expired and the hearing has been docketed and scheduled, the staff will prepare a summary of comments and responses with any recommendations, as well as an attachment highlighting any recommended changes to inform the commissioner about issues, concerns, and questions raised during the period for comment.

(3) Action on the proposed rule is solely within the discretion of the commissioner. The commissioner may take the matter under advisement at the conclusion of the hearing only for rules adopted under the Government Code, Chapter 2001.

*§1.206. Post-Adoption Procedures by the Office of the Chief Clerk.* The Office of the Chief Clerk shall provide by first-class mail to the petitioning party a copy of the written order on any rule resulting from a petition to initiate rulemaking proceedings. A copy of such order shall also be provided to any party who requested a hearing on the rule.

*§1.207. List of Pending Rule Proposals.* The Office of the Chief Clerk shall maintain a list of public petitions to initiate rulemaking before the department which have not yet been published for public comment or denied by commissioner's order. The list will be posted in the lobby of the offices of the Texas Department of Insurance in a place accessible to the public. The list of pending rule proposals shall be updated weekly.

#### *§1.208. Regular Commissioner Meetings.*

(a) Standard meetings. The commissioner shall hold a public meeting at 9:00 a.m. on the first and third Mondays of every month. If the Monday falls on a state holiday, the hearing shall be held at 9:00 a.m. on the next business day.

(b) Public forum. The first item on the agenda of each meeting shall be an open forum in which any member of the public may appear before the commissioner and speak on any issue under the jurisdiction of the commissioner, except contested cases pending before the commissioner.

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

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

TRD-9441335

D J Powers  
Legal Counsel to the  
Commissioner  
Texas Department of  
Insurance

Earliest possible date of adoption: July 1, 1994

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

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**TITLE 37. PUBLIC  
SAFETY AND CORREC  
TIONS**  
**Part VI. Texas Department  
of Criminal Justice**  
**Chapter 157. State Jail Felony  
Facilities**

• 37 TAC §§157.1, 157.3,  
157.11-157.13

*(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 Department of Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Criminal Justice (TDCJ) proposes repeal §§157.1, 157.3, 157.11-157.13, concerning admissions into, and allocation of, state jail felony facility beds.

The repeals are permitted by Government Code, Chapter 507, §492.013(a).

The effect of the proposed repeals is to make way for clarification of policies on state jail felony facilities under a separate proposal.

David P. McNutt, assistant director for budget and management services of the Department of Criminal Justice, has determined that the repeals will have no effect on state government for the first five-year period of the operations

Mr McNutt also has determined that the benefit to the general public for the last four years of the next five-year period, when the facilities are operational, will be the public safety benefit of confinement of felony offenders in facilities funded by the state, and the repeal of these sections will allow for orderly adoption of other language governing the use of the facilities. These repeals will have no effect on small businesses, as they will not have to comply with the rules

Comments should be directed to Carl V. Reynolds, General Counsel, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposed amendment.

The repeals are proposed under Government Code, Chapter 507, §492.013(a), which respectively, give the Board of Criminal Justice authority to adopt rules and govern the implementation of state jail felony facilities

#### §157.1 Definitions

#### §157.3. Regions.

#### §157.11. Allocation Policies.

#### §157.12. Regional Allocation Policy.

#### §157.13 Intra-Regional Allocation Policy.

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

Issued in Austin, Texas, on May 16, 1994.

TRD-9441355 Carl Reynolds  
Board of General Counsel  
Texas Department of  
Criminal Justice

Earliest possible date of adoption. July 1, 1994

For further information, please call (512) 463-9693

◆ ◆ ◆  
• 37 TAC §§157.1, 157.3-157.5,  
157.7, 157.29, 157.31, 157.53

The Texas Department of Criminal Justice proposes new §§157.1, 157.3, 157.5, and 157.7, and an amendment to §157.4; these sections concern admissions into, and allocation of, state jail felony facility beds. The

Board also proposes amendments to §§157.29, 157.31, and 157.53, concerning the uses of, and the procedures for release from, such facilities. The amendments are permitted by Government Code, Chapter 507, §492.013(a).

The effect of the proposed amendments is to clarify policies on state jail felony facilities for orderly admissions, with a preference for admission into the facility designated to serve the county of residence of the offender, priority of use of such facilities for state jail felons as opposed to transfer inmates, and procedures for notice to judges of progress by offenders sentenced to the facilities. The amendments also update the regional allocation with new data

David P. McNutt, assistant director for budget and management services of the Department of Criminal Justice, has determined that the effect on state government for the first five-year period of operations cannot be ascertained

Mr McNutt also has further determined that the effect on local government for the next five-year period cannot be determined with certainty. Coordinating admissions to, and releases from, state jail felony facilities, will require improvements in state-local information systems and may require increased staffing from community supervision and corrections departments, but these effects are untested at this time. Savings to the state, in payments to counties or otherwise, cannot be accurately ascertained either

Mr McNutt has determined that benefit to the general public for the last four years of the next five-year period, when the facilities are operational, will be the public safety benefit of confinement of felony offenders in facilities funded by the state. These amendments will have no effect on small businesses, as they will not have to comply with the rules. This amendment will not impose any economic costs on individuals, as no individuals have a duty to comply

Comments should be directed to Carl V. Reynolds, General Counsel, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposed amendment

The new sections and amendments are proposed by Government Code, Chapter 507, §492.013(a), which, respectively give the Board of Criminal Justice authority to adopt rules and govern the implementation of state jail felony facilities.

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

Board and TBCJ—Used interchangeably to mean the Texas Board of Criminal Justice

CJAD—The Community Justice Assistance Division of the Texas Department of Criminal Justice

Inmate and offender—Used interchangeably to mean a person who is con-

victed of a state jail felony offense whose suspended sentence is revoked or who is required to submit to a term of confinement in a state jail as an initial condition of community supervision

Mode One state jail—A state jail constructed and operated by the institutional division under contract with the state jail division

Mode Two state jail—A state jail constructed and operated by either a county, a community supervision and corrections department, or a private vendor, through a contract between the community justice assistance division and the community supervision and corrections department. The term also includes a facility constructed and operated for the confinement of felons under a contract described by Code of Criminal Procedure, Article 42.12, §24

State jail—A state jail felony facility as authorized in Texas Government Code, Chapter 507

TDCJ—The Texas Department of Criminal Justice.

#### §157.3 Admissions to State Jails

(a) After the entry of an order by a judge for admission of an offender to a state jail, the placement determination shall be made by the TDCJ Office of Admissions. Mode One and Mode Two state jails shall be treated as interchangeable for purposes of making placement determinations. Placement shall be made in the state jail designated as serving the county in which the offender resides unless:

(1) the offender has no residence or was a resident of another state at the time of committing an offense;

(2) alternative placement would protect the life or safety of any person,

(3) alternative placement would increase the likelihood of the offender's successful completion of confinement or supervision, or

(4) alternative placement is necessary to efficiently utilize available state jail capacity, including alternative placement due to gender

(b) If the offender is described by subsection (a)(1) of this section, placement shall be made in the state jail designated as serving the county in which the offense was committed, unless a circumstance in subsection (a)(2)-(4) of this section applies.

(c) The TDCJ Admissions Office shall attempt to have placement determinations made at a regional level that may include one or more regions as designated in §157.4 of this title (relating to Designation of Regions)

§157.4. Designation of Regions.

(a) By law the board may not designate a region that [which] subdivides a geographical area served by a community supervision and corrections department. The board may designate a region that contains only one judicial district if that district serves a municipality with a population of 400,000 or more. The board considers the following factors to be of significance in ensuring that community supervision and corrections departments are served as efficiently as possible.

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

(3) the need for state jail felony facility capacity as determined by the anticipated number of defendants who will be [convicted of offenses punishable as state jail felonies and] required by a judge to serve a term of confinement in a state jail [felony facility following conviction].

(b) (No change.)

§157.5. Regional Allocation Policy.

(a) After consideration of the factors used to determine the regions, the board allocates state jail 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 (relating to Allocation Formula) for the counties located in that region, multiplied by the total number of state jail 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. The percentage of allocation to each region will be as follows:

REGIONAL ALLOCATION STATE JAILS  
REGION-PERCENTAGE:  
1 NORTHEAST-0.0753513916;  
1a DALLAS-0.1600503452;  
2 EAST-0.0809506858;  
2a HARRIS-0.2041193897;  
3 SOUTH CENTRAL-0.0469701322;  
3a TRAVIS-0.0420579471;  
4 VALLEY-0.0843142816;  
4a BEXAR-0.0666090824;  
5 WEST-0.0278104172;  
6 PANHANDLE-0.0379949349;  
7 NORTH CENTRAL-0.0637910542;  
7a TARRANT-0.0740646479;  
8 EL PASO-0 0359156904.

(b) The board will designate state jails to serve each region.

(c) A state jail may be designated to serve multiple regions at the same time. Conversely, a state jail does not have to be located within a region to be designated to serve that region.

§157.7. Intra-Regional Allocation Policy.

(a) After consideration of the factors used to determine the regions, and any other factors deemed relevant by the board, the board allocates state jail capacity to a community supervision and corrections department within a region based on their proportionate share of the beds allocated to the region in §157.5 of this title (relating to Regional Allocation Policy) using the fixed percentage established by the allocation formula for admissions to the institutional division as adopted by the board in §152.3(f) of this title (relating to Allocation Formula) for the county or counties served by the community supervision and corrections department, multiplied by the available capacity for the region as established in §157.5 of this title.

(b) 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 allocation of beds in the region. The board must receive written notice on or before July 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.

(c) The TDCJ Admissions Coordinator shall, to the extent practicable, provide for admissions into a state jail serving a region in a fashion that reinforces the intra-regional allocation policy including notification to sentencing judges when their intra-regional allocation has been consumed. Judges shall be specifically encouraged to exercise their discretion to control releases from state jails in order to provide capacity for new admissions.

§157.29. Eligibility for Placement. Except as provided in §157.31 of this title (relating to Use of Facility for Transfer Inmates), only [Only] a person convicted of a state jail felony offense whose suspended [probated] sentence is revoked or who is required to submit to a term of confinement [placed in a facility] as an initial condition of community supervision may be confined in a state jail [felony].

§157.31. Use of Facility for Transfer Inmates

(a) The SJD, with the approval of the Texas Board of Criminal Justice (TBCJ), may designate one or more state jails [jail felony facilities] or semiautonomous management units within state jails as transfer facilities to house inmates who

are eligible for confinement under §499.152, Government Code. To the fullest extent practicable, persons eligible under §157.29 of this title (relating to Eligibility for Placement) and transfer facility inmates shall be kept physically segregated.

(b) The TBCJ [board] may only approve the designation of a state jail [felony facility] or semiautonomous management unit within a state jail as a transfer facility if the [said] designation does not deny placement of a person eligible under §157.29 of this title [defendant convicted of a state jail felony offense] in a state jail [felony facility]. To the extent practicable and cost-effective, the TBCJ will not designate a Mode Two state jail or a semiautonomous management unit of a Mode Two state jail as a transfer facility unless all Mode One state jails have been designated for use, and are being used, as transfer facilities.

§157.53. Inmate Programs. Programs designed to address specific offender risk and needs offer the greatest opportunity to have a positive impact in changing criminal behavior.

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

(8) Reintegration model.

(A) Inmates will be released from confinement after either submitting to a term of confinement as a condition of community supervision, after serving a portion of a sentence to confinement when the judge suspends further execution of sentence, or after serving an entire sentence to confinement and discharging. Written policy, procedure and practice shall provide for transitional planning that is specific to the type of release from confinement.

(B) CJAD shall promulgate a uniform, one-page form notice to the sentencing judge for reporting every 90 days on an offender who is serving a sentence to confinement and who has been confined less than 365 days. The form shall allow facility directors to indicate, in an abbreviated format, the offender's programmatic progress, conduct, and conformity to the rules of the facility, including the offender's compliance with the requirement to develop a transition plan. The form shall also provide the opportunity for the judge to request further information.

(C) CJAD shall promulgate a uniform format for providing additional information to a requesting judge, to include a proposed plan of supervision for the offender if he were to be released

after serving a portion of the sentence to confinement, as provided by the facility case manager.

(D) To optimize reintegration of offenders, written policy, procedure and practice shall provide that each offender develop a transition plan for release back into the community. Such plan will be developed with oversight and assistance from the case manager prior to the release. The plan will be transferred with the inmate offender to any aftercare and/or community supervision agencies upon discharge from the facility

(9) Basic program design All programs shall be designed to be presented in specific "sections" so that offenders may complete those sections within a 90-day cycle, except that sections with shorter cycles may be designed for offenders confined for up to 60 days as a condition of community supervision [Such design is meant to address differing periods of time of confinement for offenders ]

(10)-(18) (No change )

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

Issued in Austin, Texas, on May 16, 1994  
TRD-9441354 Carl Reynolds  
Board General Counsel  
Texas Department of  
Criminal Justice

Earliest possible date of adoption: July 1, 1994

For further information, please call. (512) 463-9693



### Chapter 163. Community Justice Standards

#### • 37 TAC §163.45

The Texas Department of Criminal Justice (TDCJ) proposes an amendment to §163.45, concerning the allocation of community corrections program funding Under Code of Criminal Procedure, Article 42.13, §10(A)(3), formula funding for community corrections programs is to be distributed by an allocation formula with the same factors as for the prison admissions allocation formula (Government Code, §499.071), but different weights may be applied to those factors

The proposed formula is calculated with updated data, and the amendment requires the Community Justice Assistance Division to provide the results of the calculation to local departments. The total figure for community corrections funding in Fiscal Year 1995 will be \$45,036,201.20

David P. McNutt, assistant director for budget and management services of the Department of Criminal Justice, has determined that there will be no effect on state government for the first five-year period of the operations of the three allocation formulae

The adoption of the proposed amendments will mean that units of local government (community supervision and corrections department) will receive their allocated shares of state aid under the community corrections program

Mr. McNutt also has determined that the public benefit derived from enforcing these sections will be the promotion of community corrections programs through state funding. There will be no effect on small businesses. No individuals are required to comply with the formulae, therefore, no economic cost to any individual is anticipated

Comments on the proposal may be submitted to Carl Reynolds, General Counsel, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposed amendment

The amendment is proposed under Government Code, §492.013, which provides the Texas Board of Criminal Justice with general authority to adopt rules, and more specifically by Article 42.13, §10(a)(3), Code of Criminal Procedure, and Government Code, §499.071

#### §163.45 Allocation Formula for Community Corrections Program

(a)-(e) (No change )

(f) CJAD shall convey the results of the calculation in subsection (e) of this section to all CSCDs during the period for comment and again prior to actual distribution of funding.

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

Issued in Austin, Texas, on May 20, 1994

TRD-9441356 Carl Reynolds  
Board of General Counsel  
Texas Department of  
Criminal Justice

Earliest possible date of adoption July 1, 1994

For further information, please call. (512) 463-9693



# ADOPTED RULES

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

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

## TITLE 1. ADMINISTRATION

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

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

##### Private Use of the State Seal of Texas

###### • 1 TAC §71.50

The Office of the Secretary of State adopts an amendment to §71.50, concerning the standard design for the reverse of the state seal of Texas, without changes to the proposed text as published in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2343)

Adoption of the amendment will implement that portion of subsection (d) of new Article 6139f of the Texas Civil Statutes, enacted by the 73rd Legislative Session (1993), which pertains to the reverse of the state seal.

One commenter suggested that the clarity of the depiction of the reverse of the state seal would have been improved if the "printer's slick" of the reverse had been used for the publication in the above referenced issue of the *Texas Register*. The commenter suggested that the depiction be republished using the printer's slick. However, such slick was used for the April 5th publication. The *Texas Register* is a newsprint periodical and clarity may vary from copy to copy. Regardless, the official design is that which is on file with the *Texas Register*. A copy of the printer's slick is on file. Consequently, the agency does not agree that republication is necessary.

The amendment is adopted under the Texas Government Code, §2001.004(1), and the Texas Business and Commerce Code, §17.08(d), which provide the secretary of state with the authority to prescribe and adopt rules. The amendment affects §17.08 of the Business and Commerce Code.

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

Issued in Austin, Texas, on May 23, 1994

TRD-9441279

Machree Garrett Gibson  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Effective date: June 13, 1994

Proposal publication date: April 5, 1994

For further information, please call: (512) 463-5558

#### Chapter 78. Athlete Agents

##### Administrative Penalties

###### • 1 TAC §78.53

The Office of the Secretary of State adopts new §78.53, concerning athlete agent administrative penalties, without changes to the proposed text as published in the March 25, 1994, issue of the *Texas Register* (19 TexReg 2117).

Adoption of the new rule will provide individuals and companies with a clarification of the procedure that is used to assess an administrative penalty when a contract is deemed filed late.

No comment were received regarding adoption of the rule

The new section is adopted under the Texas Government Code, §2001.004(1), and the Athlete Agents Act, Texas Civil Statutes, Article 8871, which provide the secretary of state with the authority to prescribe and adopt 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 May 23, 1994.

TRD-9441280

Machree Garrett Gibson  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Effective date: June 13, 1994

Proposal publication date: March 25, 1994

For further information, please call (512) 463-5558

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 5. Property and Casualty

##### Subchapter O. Flexible Rating Program for Certain Insurance Lines

###### • 28 TAC §5.11000

The Texas Department of Insurance adopts new §5.11000, concerning the definition of the term "small and medium-sized insurers" as that terminology is used in the Insurance Code, Article 5.101, §3(c), with changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8763).

Section 3(c) of Article 5.101 was amended by House Bill 1461, as enacted by the 73rd Texas Legislature, to provide that a trade association that does not collect historical data and that does not provide statistical plans, prospective loss costs, or supplementary rating information to its members may, on behalf of its members that are small and medium-sized insurers, as defined by the Commissioner of Insurance, present rate-making data and make recommendations at benchmark rate hearings. The new section is necessary to comply with the requirement that the Commissioner define the term "small and medium-sized insurers." The definition is needed for the purposes of determining which insurers may be represented at benchmark rate hearings by a trade association as specified in §3(c) of Article 5.73 and to ensure that presentation of rate-making data and recommendations at benchmark rate hearings by trade associations on behalf of small and medium-sized insurers will be allowed only for those insurers that cannot otherwise participate in the hearings because of lack of in-house actuarial and legal capabilities or lack of financial resources to hire the necessary actuarial and legal capabilities. As a result of comments objecting to the proposed definition as being too restrictive, the rule as published is changed in subsection (b) to

increase from \$50 million to \$150 million the total annual direct written premiums for all states for all-lines of property and casualty insurance required to be a small or medium insurer. This change will result in an increased number of insurers qualifying for representation by trade associations at benchmark rate hearings (based on company and groups with more than \$1,000,000 of total U.S. property and casualty 1993 written premiums, this is an increase from 161 unaffiliated companies and insurer groups under the published definition to 251 unaffiliated companies and insurer groups under the adopted definition) The published rule is also changed in subsections (a) and (b) for economy and clarity of language Subsection (b) as proposed is amended to provide that the term "small and medium-sized insurers" includes a company in a group of affiliated insurers as defined by Insurance Code, Article 21.49-1, §2, if the combined annual direct written premiums of all companies in the group for all states for all-lines of property and casualty insurance do not exceed \$150 million This amendment is needed to ensure that representation at benchmark rate hearings by trade associations on behalf of small and medium-sized insurers will be permitted only for those insurers that cannot otherwise participate in the rate hearings because of the costs associated with benchmark rate hearing presentations

The proposed new section in subsection (a) outlines the purpose of the section, subsection (b) defines what constitutes small and medium-sized insurers based on the total annual direct written premiums for all states for all-lines of property and casualty insurance; and subsection (c) defines "lines of property and casualty" insurance for purposes of determining the total annual direct written premiums. Pursuant to the section, companies that meet either of the following two requirements may be represented at benchmark rate hearings by a trade association that does not collect historical data and that does not provide statistical plans, prospective loss costs, or supplementary rating information to its members: an unaffiliated insurer with total annual direct written premiums for all states for all-lines of property and casualty insurance which do not exceed \$150 million, or an affiliated insurer, as defined by Insurance Code, Article 21.49-1, §2, if the combined annual direct written premiums of all companies within the group of affiliated insurers for all states for all-lines of property and casualty insurance do not exceed \$150 million.

No comments were received in support of adoption of the rule. At a hearing held on May 16, 1994, on consideration of the adoption of the proposed rule, the Office of Public Insurance Counsel spoke in support of adoption of the rule. The Department received written comments opposing adoption of the rule from the Texas Automobile Insurance Service Office, Texas Association of Insurance Agents, Federated Insurance, American Fidelity Insurance Companies, Commercial Union Insurance Companies, USF&G Insurance, and one state legislator. At the May 16, 1994 hearing, comments in opposition to adoption of the rule were presented by the Texas Automobile Insurance Service Office, Union Stan-

dard Insurance Company, Texas Insurance Advisory Association, and the Association of Fire and Casualty Companies in Texas

Several commenters objected to the definition of small and medium-sized insurers being based on total annual direct written premiums for all states for all property and casualty lines of insurance and supported basing the definition on the Texas all-lines market-only or on Texas writings of the line of business subject to the benchmark rate hearing. According to one commenter the term "small and medium-sized insurers" must be viewed on a relative basis and a more reasonable approach would be to segment the market on a countrywide all-lines basis, or a Texas-only all-lines basis, or a Texas-only auto insurance-only basis, and to define the terms small and medium with respect to the entire market. This commenter indicated that this seems to be more meaningful than an arbitrary dollar limitation as in the proposed rule. The commenter argued that the insurance business is transacted on very small expense margins, and the real test for the management of any insurance company is how well it allocates the available resources to the known and foreseeable cost elements. According to the commenter, management has to use available resources to the best advantage, and it is that consideration which justifies a definition keyed to market share. This same commenter argued that basing the definition on the Texas all-lines market-only is more in keeping with the legislative intent. According to this commenter, the legislature in enacting the amendment was not evaluating whether or not a company had the resources to participate directly in a rate hearing, but whether such participation would represent a more efficient allocation of resources. The commenter stated that adoption of the rule as proposed would exclude virtually all of the trade association's members from representation by the trade association at benchmark rate hearings. The commenter proposed an alternative rule, which was supported by six other commenters, that would define "small and medium-sized insurers" as a company or group of affiliated companies with total annual written premium in Texas for all regulated lines of insurance which does not exceed 1.0% of the total annual written premium in Texas for all insurers. According to the commenter, under the alternative proposal, only 13 of the commenter's 118 member groups would be excluded from representation by the trade association, by contrast, the proposed rule using countrywide all-lines data would exclude virtually all of the commenter's members from representation by the trade association. Another commenter proposed amending the published rule to define small and medium-sized insurers as those companies maintaining less than a 5.0% market share in the line which is the subject of the rate. Two other commenters argued that the published definition is too tight or too narrow and indicated they believe there should be as wide and diverse a range of views as possible. They urged the Commissioner to "just run the numbers" in a way that allows a broad range of companies that do business in the state to participate realistically and to give you a feel of the marketplace."

The Department disagrees with basing the definition of small and medium-sized insurers on any basis other than nationwide property and casualty premium volume. For the same reasons, the Department disagrees with the commenters' proposed one-percent definition. The Department believes that in the context of Article 5.101, §3(c), the term "small and medium-sized insurer" must be related to the resources of an insurer to represent itself at a benchmark rate hearing and also related to the characteristics of a particular class of insurers. The resources may be either in-house actuarial and legal capabilities or the financial resources to hire the necessary actuarial and legal capabilities. The characteristics of the class of small and medium-sized insurers should be those which differentiate them from large insurers. As such, total countrywide property and casualty premiums seem to be a far better measure of such resources than Texas-only writing. Under the proposed 1.0% definition, an analysis of companies and groups with greater than \$100,000 of total 1993 Texas property and casualty written premiums shows that there are 264 small and medium-sized insurers and only 23 insurers that are not small and medium-sized. The Department does not believe that the intent of Article 5.101, §3(c), is for trade associations to represent as many insurers as possible, but rather to represent those insurers whose operations can be collectively described as small and medium-sized. The Department believes that this is supported by the fact that §3(c) of Article 5.101 also provides that the definition of small and medium-sized "shall be a limitation upon the scope of the presentation to be made by a trade association, but may not limit the participation of a trade association because its membership includes other sized insurers." Thus, the Department believes that the statute is clear that the definition of small and medium-sized insurers should not be associated with the number of insurers represented by the trade association, but with the characteristics of those insurers defined as small and medium-sized. The Department believes that the commenter's proposed definition could not fulfill the statutory requirement of Article 5.101, §3(c), because the proposed definition cannot provide any necessary limitation on the scope of the trade association's presentation if the definition includes 264 insurers and excludes only 23. (According to the Department's analysis, under the published definition, 161 insurers would qualify as small and medium-sized and 201 would not so qualify.) The Department also disagrees with the proposed alternative 5.0% definition. This definition would define all but four or five companies writing auto or homeowners' insurance as small or medium-sized. Since this definition is even more inclusive of companies than the 1.0% definition, the Department believes such a definition is also inconsistent with either of the essential criteria-limited resources or similar characteristics of the group of insurers defined as small or medium-sized. Even so, the Commissioner has determined that based on an evaluation of actuarial capabilities of property and casualty insurers the public interest is best served by amending the proposed definition to increase from \$50 million to \$150 million the



total annual direct written premiums for all states for all-lines of property and casualty insurance in order for an insurer or group of insurers to qualify for representation by a trade association at benchmark rate hearings. Under this definition, 251 insurers qualify for representation by a trade association at benchmark rate hearings, and 111 do not so qualify.

Several commenters emphasized the need to consider an individual insurer's expense to represent itself at a rate hearing. According to one commenter, participating in a benchmark rate hearing is not inexpensive—typically costing from \$100,000 to \$150,000 in fees and expenses. The commenter points out that even though a company could reduce these costs by utilizing its staff actuary and company attorneys, there would still be substantial cost imposed on participation. Representation by a trade association, according to this commenter, allows the costs of participation to be spread across the membership base. Another commenter pointed out that ultimately the consumer will have to pay for the expense of an individual insurer to participate in benchmark rate hearings. Two other commenters pointed out that for many companies it is too expensive to participate in the rate hearings, it is more efficient for them to be represented by a trade association. Another commenter indicated that while agency companies want to provide input into the benchmark rate setting process, none have the resources or desire to spend the amount of money required to be an individual party to the rate hearings. According to this commenter, these companies need the help and input of their trade associations. Another commenter stated that as a small insurer they are struggling to cut operating costs and that to allow representation by a trade association helps control costs and ultimately helps keep rates lower.

The Department agrees that the definition of small and medium-sized insurer must be related to the financial resources or in-house actuarial and legal resources of an insurer to represent itself at a benchmark rate hearing. Accordingly, the Commissioner has amended the published rule to permit insurers with total annual direct written premiums for all states for all property and casualty lines of insurance which do not exceed \$150 million, alone or combined with other affiliated insurers, to be represented by a trade association at benchmark rate hearings.

The new section is adopted pursuant to the Insurance Code, Articles 5.101, 5.98, and 1.03A; and the Government Code, §2001.004 et seq., Article 5.101, §3(c) authorizes the Commissioner of Insurance to define small and medium-sized insurers on whose behalf a trade association that does not collect historical data and that does not provide statistical plans, prospective loss costs, or supplementary rating information to its members may present rate making data and make recommendations at a benchmark rate hearing. Article 5.98 authorizes the Commissioner of Insurance to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5 of the Insurance Code (Rating and Policy Forms). Article 5.98 by its terms authorizes the State Board of Insurance to

adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5 of the Insurance Code (Rating and Policy Forms), however, this authority is interpreted to be delegated to the Commissioner of Insurance under Article 1.02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461, which provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02 Article 1.03A, as enacted in House Bill 1461, provides that the Commissioner of Insurance may adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code, §2001.004 et seq. (Administrative Procedure Act), authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption for rules by a state agency.

*§5.1100 Definition of Small and Medium-Sized Insurers as Referenced in Article 5.101 of the Insurance Code*

(a) Purpose. The purpose of this section is to define the term "small and medium-sized insurers" as directed by the Insurance Code, Article 5.101, §3(c), relating to the Flexible Rating Program for Certain Insurance Lines.

(b) What constitutes a Small and Medium-Sized Insurer. The term "small and medium-sized insurer" means an insurer that is either:

(1) an unaffiliated insurer with total annual direct written premiums for all states for all-lines of property and casualty insurance which do not exceed \$150 million; or

(2) an affiliated insurer, as defined by Insurance Code, Article 21.49-1, §2, if the combined annual direct written premiums of all companies within the group of affiliated insurers for all states for all-lines of property and casualty insurance do not exceed \$150 million.

(c) Definition of Lines of Property and Casualty Insurance. "Lines of property and casualty insurance" means those lines of business for which financial data for direct business was reported by the insurer, including any line written in by the insurer, in the Fire and Casualty Annual Statement Form 2, Part 2B—Premiums Written, page 8, Underwriting and Investment Exhibit, or any duly promulgated equivalent page, most recently filed with the Texas Department of Insurance.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

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

TRD-9441336

D. J. Powers  
Legal Counsel to the  
Commissioner  
Texas Department of  
Insurance

Effective date: June 14, 1994

Proposal publication date: November 26, 1993

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

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**Title 34. PUBLIC FINANCE**  
**Part I. Comptroller of Public Accounts**  
**Chapter 5. Funds Management (Fiscal Affairs)**

**Claims Processing—Payroll**

• **34 TAC §5.48**

The Comptroller of Public Accounts adopts new §5.48, concerning deductions for contributions to charitable organizations, with changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2885).

The new section is necessary to implement and administer the payroll deduction for state employees to make voluntary contributions to charitable organizations.

The following is a summary of the changes made to the proposed text.

The definition of "campaign year" in subsection (a)(2) was changed because the proposed rule did not consider the fact that some state employees are paid twice each month and other employees are paid every other week.

Subsection (b)(7)(A)-(C) was changed so that a state employee who transfers from one state agency to a second state agency is required to submit an additional authorization form to the second agency only if that agency requires it.

Subsection (r)(2)(H) was changed because the definition of "campaign year" in subsection (a)(2) was changed. Subparagraph (H) would have required a local campaign manager to distribute accrued interest at the end of a "campaign year." But "campaign year" will be a variable concept in the adopted rule, depending on how often employees are paid. The comptroller believes that subparagraph (H)'s deadline for accrued interest to be paid should not vary from employee to employee. Therefore, subparagraph (H) has been changed to provide a more definite deadline.

Comments from three sources were received about the proposed text.

Texas Tech University said that the proposed definition of "campaign year" in subsection

(a)(2) does not consider the fact that some state employees are paid every other week. Therefore, the definition is incorrect to the extent it always equates payroll periods occurring from December 1st through November 30th with the paydays occurring on the first workday of each month from January through December. Texas Tech also asked whether bi-weekly payrolls paid in December will be included in the following campaign year. The comptroller believes that the last bi-weekly payroll paid in December should be included in the following campaign year. The comptroller agrees with Texas Tech's other comments about the definition and has changed subsection (a)(2) accordingly.

The Texas A&M University System (the "A&M System") recommended a change to proposed subsection (b)(7). The subsection relates to the interagency transfer of a state employee who authorized a charitable payroll deduction before the transfer occurred. As proposed, the subsection would have allowed the deduction to continue at the new state agency only if the employee submitted an additional authorization form to the agency. The A&M System said that the transferring state employee should be required to submit an additional form only if the new state agency requires it. The comptroller agrees with the A&M System's recommendation and has changed subsection (b)(7) accordingly.

The University of Houston System (the "UH System") provided several questions, comments, and recommendations.

The UH System has asked several questions relating to the use of the percentage method. Various provisions in the proposed rule require statewide federations or funds and local campaign managers to use the percentage method when distributing employee contributions to charitable organizations. The purpose is to make the charitable payroll deduction easier to administer and to fairly distribute pledge losses among charitable organizations. The method does not involve an employee-by-employee matching of the amount distributed to a charitable organization with the amount contributed to the organization. Therefore, the method usually will result in a charitable organization not receiving exactly the amount that state employees have contributed to the organization. Some organizations will receive more and some less.

The UH System has asked whether the charitable payroll deduction program is viable considering the federal government's tightening of charitable contribution reporting requirements. The UH System has asked how the Internal Revenue Service (IRS) regulation about receipts for contributions under \$250 will be handled in the program. The UH System says the percentage method will make it impossible for a charitable organization to know exactly who has contributed to the organization. Finally, the UH System has asked whether all or a portion of an employee's contributions to a charitable organization will retain their tax deductibility if the organization loses its tax exempt status in the middle of a campaign year. The comptroller does not have the authority or the expertise to interpret federal income tax laws and regulations. The comptroller recommends that the UH System

contact the IRS or appropriate legal counsel for more information.

The UH System has asked what will happen if a controversy or bad publicity during the middle of a campaign year motivates state employees to cancel their deduction to a charitable organization. The UH System points out that the percentage method will result in other charitable organizations, not just the organization in question, receiving less money. The UH System is correct because the proposed rule allows a charitable organization's contribution percentage to be calculated only once per year. The contribution percentage is an integral part of the percentage method.

The UH System has asked what potential legal problems state agencies will face from the use of the percentage method. The comptroller is not aware of any particular legal problems state agencies will face.

The UH System has asked what controls the proposed rule will impose so that misapplication of state employee contributions is avoided. The UH System has also asked how errors and refunds will be handled. The comptroller has not been given statutory authority to require statewide federations or funds or local campaign managers to follow any particular accounting procedures or controls. If a refund is due from a particular organization, state law authorizes the attorney general to bring an action in a court of competent jurisdiction to recover the money. In the absence of a court order dictating how the refunds will be made, state law requires the state policy committee to instruct the comptroller about making the refunds.

In addition to asking various questions about the percentage method, the UH System has also suggested several changes to the proposed rule.

The UH System suggests that the percentage method not be used. Instead, distributions to a charitable organization should be matched on an employee-by-employee basis with contributions to the organization. The comptroller has examined all options in this area. The comptroller believes that the percentage method is the best option because it fairly distributes pledge losses to charitable organizations and is more administrable.

The UH System also suggests that the number of statewide federations or funds should be limited to five and the number of local campaign areas should be limited to three. The comptroller is unable to adopt this suggestion because state law does not authorize the comptroller to impose those limits.

Finally, the UH System suggests that the comptroller's electronic funds transfer system should be used to send contributions and donor information directly to charitable organizations instead of sending them through statewide federations or funds and local campaign managers. The comptroller is unable to adopt this suggestion for the following administrative reasons. The suggestion would require one of two major changes. The first change would require the comptroller to change the Automated Clearing House format currently used when electronic funds

transfers are made. That format does not include the addenda records necessary to send the donor information. Changing the format is not feasible at this time. The second change relates to how a state employee's contribution would be paid to a charitable organization. The contribution would be paid through an electronic funds transfer that would relate solely to that contribution. For example, if 10,000 state employees contributed to an average of two charitable organizations each, then 20,000 different electronic funds transfers per month would have to be initiated. Those transfers would be much more expensive to the state than the procedure established in the proposed rule. In addition, the transfers would require state agencies to establish a large number of new mail codes on the comptroller's computer system, which could cause processing and performance problems for that system.

The new section is adopted under the Texas Civil Statutes, Article 6813h, which requires the comptroller to adopt necessary rules for the administration of the payroll deduction for state employees to make voluntary contributions to charitable organizations. The new section implements Texas Civil Statutes, Article 6813h.

#### *§5.48. Deductions for Contributions to Charitable Organizations.*

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

(1) Campaign material—A logo identifying the state employee charitable campaign, a campaign slogan, a campaign film, a campaign donor brochure, a donor authorization form, and other materials as approved by the state policy committee.

(2) Campaign year—For salary or wages paid once each month, the payroll periods from December 1st through November 30th. For salary or wages paid twice each month, the payroll periods from December 16th through December 15th. For salary or wages paid every other week, the 26 consecutive payroll periods beginning with the period that corresponds to the payment of salary or wages occurring on or closest to, but not after, December 31st.

(3) Charitable organization—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(4) Comptroller—The comptroller of public accounts for the State of Texas.

(5) Comptroller's electronic funds transfer system—The system authorized by the Government Code, §403.016, that the comptroller uses to initiate payments instead of issuing warrants.

(6) Deduction—The amount subtracted from a state employee's salary or wages to make a contribution to a local

campaign manager or a statewide federation or fund that has been assigned a payee identification number by the comptroller.

(7) Designated representative—A state employee volunteer or other individual named by a local campaign manager or a statewide federation or fund as its representative.

(8) Direct services—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(9) Eligible charitable organization—A charitable organization that is determined to be eligible to participate in the state employee charitable campaign as provided by this section and Texas Civil Statutes, Article 6813h.

(10) Eligible local charitable organization—A local charitable organization that has been approved for local participation in the state employee charitable campaign.

(11) Employer—A state agency that employs at least one state employee.

(12) Federated community campaign organization—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(13) Federation or fund—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(14) Generic campaign materials—Campaign materials that have not been modified to reflect a particular local campaign area's participants or a local employee committee.

(15) Health and human services—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(16) Holiday—A state or national holiday as specified by the General Appropriations Act or the Government Code, §§662.001-662.010.

(17) Include—A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(18) Indirect services—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(19) Institution of higher education—Has the meaning assigned by the Education Code, §61.003.

(20) Local campaign area—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(21) Local campaign manager—A federated community campaign organization that is selected by a local employee committee as provided by this section and Texas Civil Statutes, Article 6813h.

(22) Local campaign materials—Campaign materials that have been modified to reflect a particular local campaign area's participants and the local employee committee for the area if the state policy committee has approved the modifications, and additional materials that the state policy committee has approved because they are based on and consistent with the campaign materials approved by the committee.

(23) Local charitable organization—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(24) Local employee committee—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(25) May not—A prohibition. The term does not mean "might not" or its equivalents.

(26) Payee identification number—The 14-digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller for the State of Texas.

(27) Salary or wages—Base salary or wages, longevity pay, or hazardous duty pay.

(28) State advisory committee—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(29) State agency—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(30) State campaign manager—A federated community campaign organization that is selected by the state policy committee to coordinate state employee charitable campaign operations with local campaign managers.

(31) State employee—An employee of a state agency.

(32) State employee charitable campaign—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(33) State policy committee—Has the meaning assigned by Texas Civil Statutes, Article 6813h.

(34) Statewide federation or fund—A federation or fund that has been approved for statewide participation in the state employee charitable campaign.

(35) Uniform statewide payroll/personnel system—A system in which uniform statewide payroll procedures are followed.

(36) Workday—A calendar day other than Saturday, Sunday, or a holiday.

(b) Deductions.

(1) Authorization of deductions

(A) A state employee may authorize not more than three monthly deductions from the employee's salary or wages. A state employee may authorize only one deduction to any particular statewide federation or fund or local campaign manager.

(B) A state employee may authorize a deduction only if the employee:

(i) properly completes an authorization form, and

(ii) submits the form to a designated representative of the statewide federation or fund or the local campaign manager to which the deduction will be paid

(C) Except as provided in this subparagraph, a state employee may authorize a deduction only during a state employee charitable campaign.

(i) State law says that a state agency, other than an institution of higher education, is not required to permit its state employees to authorize a deduction until the first full payroll period after the agency is converted to the uniform statewide payroll/personnel system. A state agency covered by that law shall permit its state employees to authorize deductions so that they are effective not later than the first full payroll period after conversion of the agency. Those authorizations may be made even if a state employee charitable campaign is not occurring when the authorizations are made.

(ii) A state employee who begins employment with the state may authorize a deduction if the employee's employer receives the employee's properly completed authorization form not later than the 30th day after the employee's first day of employment with the agency. A new state employee may authorize a deduction even if a state employee charitable campaign is not occurring when the employment begins or the form is provided. This clause does not apply to a state employee who transfers from one state agency to a second state agency.

(D) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee authorizing an incorrect amount of a deduction.

(2) Minimum amount of deductions. If a state employee authorizes a deduction, the minimum amount of the deduction is two dollars per month. This minimum applies to each deduction authorized by the employee. For example, if the

employee authorizes two deductions, then the amount of each of those deductions must be at least two dollars per month

(3) Changes in the amount of deductions.

(A) At any time during a campaign year, a state employee may authorize a change in the amount to be deducted from the employee's salary or wages during that year

(B) A state employee may authorize a change only if the employee

(i) properly completes an authorization form; and

(ii) submits the form to the employee's employer

(C) A state employee may not change the statewide federation or fund or the local campaign manager that receives deducted amounts if the change would be provided outside the time a state employee charitable campaign is being conducted.

(D) A state employee may not change the eligible charitable organizations designated to receive deducted amounts paid to a statewide federation or fund if the change would be provided outside the time a state employee charitable campaign is being conducted

(E) A state employee may not change the eligible local charitable organizations designated to receive deducted amounts paid to a local campaign manager if the change would be provided outside the time a state employee charitable campaign is being conducted.

(4) Sufficiency of salary or wages to support a deduction.

(A) A state employee is solely responsible for ensuring that the employee's salary or wages are sufficient to support a deduction.

(B) If a state employee's salary or wages are sufficient to support only part of a deduction, then no part of the deduction may be made.

(C) If a state employee has multiple deductions and the employee's salary or wages are insufficient to support all the deductions, then none of the deductions may be made.

(D) The amount that may not be deducted from a state employee's

salary or wages because they are insufficient to support the deduction may not be made up by deducting the amount from subsequent payments of salary or wages

(5) Timing of deductions.

(A) Except as provided in subparagraph (B) of this paragraph, a deduction may be made only from the salary or wages that are paid on the first workday of a month

(B) If a state employee is not entitled to receive a payment of salary or wages on the first workday of a month, then the employee's employer may designate the payment of salary or wages during the month from which a deduction will be made. A deduction may be made only once each month.

(6) Cancellation of deductions. A state employee may cancel a deduction at any time. A cancellation is effective only if the employee properly completes an authorization form and submits the form to the employee's employer

(7) Interagency transfers of state employees

(A) A deduction that started while a state employee was employed by a state agency may resume after the employee transfers to a second state agency only if:

(i) the employee requests a copy of the employee's authorization form from the first state agency and submits the copy to the second state agency;

(ii) the employee properly completes and submits an additional authorization form to the second state agency, if the agency requires submission of the form, and

(iii) the second state agency receives the copy of the employee's authorization form and the additional authorization form, if required, not later than the 30th day after the employee's first day of employment by the second state agency.

(B) A deduction that may resume under subparagraph (A) of this paragraph shall become effective at the second state agency not later than with the salary and wages paid on the first workday of the second month following the later of:

(i) the month in which the agency receives the copy of the authorization form to which subparagraph (A)(i) of this paragraph refers, or

(ii) the month in which the agency receives the additional authorization form, if the agency requires submission of the form

(C) This subparagraph applies only if a state agency requires an additional authorization form to be submitted under subparagraph (A)(ii) of this paragraph. The statewide federation or fund or the local campaign manager named on the form must be the same as that named on the original authorization form. The additional authorization form may not make any changes other than those that a state employee who has not changed employers may make after a state employee charitable campaign has ended.

(c) Designation of charitable organizations to receive deducted amounts.

(1) Receiving deducted amounts through local campaign managers.

(A) A state employee's authorization of a deduction to a local campaign manager may designate not more than three eligible local charitable organizations to receive the deducted amounts through the manager.

(i) If a state employee's authorization designates only one eligible local charitable organization, then the organization's designated initial distribution amount with respect to the employee is equal to the employee's entire deduction to the local campaign manager.

(ii) If an authorization designates more than one eligible local charitable organization, then the designation is valid only if it specifies the designated initial distribution amount for each organization.

(B) If an eligible local charitable organization that a state employee designates under subparagraph (A) of this paragraph is a federation or fund, then the federation or fund shall distribute the deducted amounts it receives to its affiliated eligible charitable organizations according to its policy.

(C) This subparagraph applies if a state employee's authorization of a deduction to a local campaign manager does not contain a valid designation. The undesignated initial distribution amounts with respect to the employee for eligible local charitable organizations and statewide federations or funds shall be determined according to this subparagraph.

(i) Only an eligible local charitable organization that has been approved to participate in the local campaign area may have an undesignated initial distribution amount. Only a statewide federation or fund to which state employees in the local campaign area have authorized deduc-

tions may have an undesignated initial distribution amount.

(ii) The undesignated initial distribution amount for an eligible local charitable organization is equal to the distribution percentage for the organization multiplied by the amount of the employee's deduction authorization to the local campaign manager. The distribution percentage is equal to the organization's total designated initial distribution amount as determined or specified under subparagraph (A) of this paragraph for all state employees in the local campaign area divided by the sum of:

(I) the total designated initial distribution amount for all eligible local charitable organizations in the local campaign area as determined or specified under subparagraph (A) of this paragraph; and

(II) the total amount of deductions authorized to statewide federations or funds by state employees in the local campaign area.

(iii) The undesignated initial distribution amount for a statewide federation or fund is equal to the distribution percentage for the federation or fund multiplied by the amount of the employee's deduction authorization to the local campaign manager. The distribution percentage is equal to the total amount of deductions authorized to the federation or fund by state employees in the local campaign area divided by the sum of:

(I) the total designated initial distribution amount for all eligible local charitable organizations in the local campaign area as determined or specified under subparagraph (A) of this paragraph; and

(II) the total amount of deductions authorized to statewide federations or funds by state employees in the local campaign area.

(D) The following example illustrates the calculation of undesignated initial distribution amounts according to subparagraph (C) of this paragraph.

(i) The following assumptions apply in this example.

(I) State employees in the Austin local campaign area have authorized \$15,000 in deductions to the Austin local campaign manager. Of that amount, state employees have designated \$10,000 for distribution to the following eligible lo-

cal charitable organizations. Organization 1 has been designated to receive \$5,000. Organization 2 has been designated to receive \$3,000. And Organization 3 has been designated to receive \$2,000.

(II) Of the \$15,000 in authorized deductions to the Austin local campaign manager, \$5,000 is undesignated.

(III) State employees in the Austin local campaign area have authorized total deductions of \$10,000 to the following statewide federations or funds. Organizations 4 and 5 have each been authorized to receive \$5,000.

(ii) The calculation of undesignated initial distribution amounts in this subparagraph relates only to the \$5,000 in undesignated deductions to the Austin local campaign manager. This is because an eligible local charitable organization or a statewide federation or fund has an undesignated initial distribution amount only with respect to undesignated deductions.

(iii) The first step is to determine the designated initial distribution amount for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. That amount for each organization is the total amount of deductions that state employees have designated to the organization. Therefore, the designated initial distribution amount for Organization 1 is \$5,000, Organization 2 is \$3,000, and Organization 3 is \$2,000.

(iv) The second step is to determine the distribution percentage for each eligible local charitable organization listed in clause (i) (I) of this subparagraph. The distribution percentage must be determined according to subparagraph (C)(ii) of this paragraph. The distribution percentage for each organization is as follows:

(I) Organization  
1-25%;

(II) Organization  
2-15%;

(III) Organization  
3-10%.

(v) The third step is to determine the distribution percentage for each statewide federation or fund listed in clause (i)(III) of this subparagraph. The distribution percentage must be determined according to subparagraph (C)(iii) of this paragraph. The distribution percentage for each federation or fund is as follows:

4-25%; (I) Organization

5-25%. (II) Organization

(vi) The fourth step is to determine the undesignated initial distribution amount for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. The amount must be determined by multiplying the organization's distribution percentage by the amount of undesignated deductions to the Austin local campaign manager. The amount for each organization is as follows:

1-\$1,250; (I) Organization

2-\$750; (II) Organization

3-\$500. (III) Organization

(vii) The fifth and final step is to determine the undesignated initial distribution amount for each statewide federation or fund listed in clause (i) (III) of this subparagraph. The amount must be determined by multiplying the federation or fund's distribution percentage by the amount of undesignated deductions to the Austin local campaign manager. The amount for each organization is as follows:

4-\$1,250; (I) Organization

5-\$1,250. (II) Organization

(E) Notwithstanding anything in this paragraph, a local campaign manager shall distribute deducted amounts to an eligible local charitable organization or a statewide federation or fund according to the percentage method required by subsection (j) of this section. A designated or undesignated initial distribution amount specified or determined under this paragraph is only the starting point for calculating the amount to be distributed.

(2) Receiving deducted amounts through statewide federations or funds.

(A) A state employee's authorization of a deduction to a statewide federation or fund may designate not more than three eligible charitable organizations to receive the deducted amounts through the federation or fund.

(i) If a state employee's authorization designates only one eligible

charitable organization, then the organization's designated initial distribution amount with respect to the employee is equal to the employee's entire deduction to the statewide federation or fund

(ii) If a state employee's authorization designates more than one eligible charitable organization, then the designation is valid only if it specifies the designated initial distribution amount for each organization

(B) This subparagraph applies if a state employee's authorization of a deduction to a statewide federation or fund does not contain a valid designation. The statewide federation or fund shall determine the undesignated initial distribution amount with respect to the employee for each eligible charitable organization affiliated with the federation or fund. The determination must be accomplished according to the federation or fund's policy

(C) Notwithstanding anything in this paragraph, a statewide federation or fund shall distribute deducted amounts to an eligible charitable organization according to the percentage method required by subsection (k) of this section. A designated or undesignated initial distribution amount specified or determined under this paragraph is only the starting point for calculating the amount to be distributed

(d) State employee charitable campaign

(1) Time of the state employee charitable campaign. The state employee charitable campaign shall be conducted annually during the period after August 31st and before November 1st

(2) Reimbursement of expenses incurred by state employees while representing charitable organizations. A state agency may not reimburse a state employee for expenses incurred while acting as a representative of a charitable organization

(3) Participation by state employees. Participation by a state employee in the state employee charitable campaign is voluntary

(e) Effective dates of authorization forms

(1) Effective date of authorization forms provided during a state employee charitable campaign. A state employee's authorization form that is provided during a state employee charitable campaign is effective for the following campaign year if the employee's employer receives the form not later than November 15th before the start of that year. The deductions may not start before the beginning of that year

(2) Effective date of authorization forms provided immediately after a state agency is converted to the uniform statewide payroll/personnel system. State law says that a state agency, other than an institution of higher education, is not required to permit its state employees to authorize a deduction until the first full payroll period after the agency is converted to the uniform statewide payroll/personnel system. A state agency covered by that law shall permit its employees to authorize deductions so that they are effective not later than the first full payroll period after conversion of the agency. To be effective by that date, a properly completed authorization form must be received by the agency not later than the tenth workday before the first day of the agency's first full monthly payroll period after conversion.

(3) Effective date of authorization forms provided by new state employees

(A) Paragraph (1) of this subsection applies to a new state employee's authorization form if it:

(i) is received by the employee's employer during a state employee charitable campaign; and

(ii) authorizes a deduction to begin during the campaign year following the campaign year in which the form is received

(B) This subparagraph applies to a new state employee's authorization form only if the form authorizes a deduction to begin during the same campaign year as the campaign year in which the employee's employer receives the form. The employer may decide when the deduction will take effect, subject to the following limitations

(i) Except as provided in clause (ii) of this subparagraph, the deduction must begin not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.

(ii) If the employer receives the form during October or November, then the employer may decide whether and when to give effect to the form.

(4) Effective date of authorization forms that request changes in deductions.

(A) This paragraph applies only to a state employee's authorization form that requests a change to a deduction.

(B) The employer of the employee may decide when the change will take effect, subject to the following limitations.

(i) Except as provided in clause (ii) of this subparagraph, the change must take effect not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.

(ii) If the employer receives the form during October or November of a campaign year and the form requests a change in a deduction for the year, then the employer may decide whether and when to give effect to the form.

(C) The following example illustrates the requirements of this paragraph. Assume that a state agency receives an authorization form on July 2, 1994, and that the form requests a decrease in the amount of a deduction. The agency may make the decrease effective with the deduction that occurs on the August 1, 1994, salary payment. If the agency does not, then the agency must make the decrease effective with the deduction that occurs on the September 1, 1994, salary payment.

(5) Effective date of authorization forms that request cancellations of deductions.

(A) This paragraph applies only to a state employee's authorization form that requests the cancellation of a deduction.

(B) The employer of the employee may decide when the cancellation will take effect. However, the cancellation must take effect not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form.

(C) The following example illustrates the requirements of this paragraph. Assume that a state agency receives an authorization form on July 2, 1994, and that the form requests the cancellation of a deduction. The agency may make the cancellation effective with the August 1, 1994, salary payment. If the agency does not, then the agency must make the cancellation effective with the September 1, 1994, salary payment.

(f) Requirements for the content and format of authorization forms.

(1) Prohibition against distributing or providing authorization forms. A local campaign manager or a statewide fed-

eration or fund may distribute or provide an authorization form to a state employee only if both the comptroller and the state policy committee have approved the form.

(2) Requirement to produce authorization forms. A local campaign manager or a statewide federation or fund must produce an authorization form that complies with the comptroller's requirements and this section.

(3) Restrictions on approval of authorization forms. Neither the comptroller nor the state policy committee may approve the authorization form of a local campaign manager or a statewide federation or fund unless the form:

(A) is at least 8 1/2 inches wide and 11 inches long;

(B) states that statewide federations or funds and local campaign managers are required to use the percentage method to distribute a state employee's deducted amounts to eligible charitable organizations designated by the employee instead of matching deducted amounts received to actual designations;

(C) accurately describes the percentage method; and

(D) complies with the comptroller's requirements for format and substance.

(g) Procedure for federations or funds to apply for statewide participation.

(1) Request for statewide participation. A federation or fund may not be a statewide federation or fund unless the federation or fund applies to the state policy committee for that status in accordance with this section, Texas Civil Statutes, Article 6813h, and the committee's procedures.

(2) Requirements for the application. The application of a federation or fund to be a statewide federation or fund must include:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of Texas Civil Statutes, Article 6813h;

(B) a copy of a letter from each affiliate of the federation or fund certifying that the federation or fund serves as the affiliate's representative and fiscal agent in the state employee charitable campaign;

(C) a copy of the conflict of interest policy approved by the federation or

fund's board of directors, which prohibits its board members, executive director, and staff from engaging in business transactions in which they have material conflicting interests;

(D) if the executive director of the federation or fund receives material compensation for services rendered to any organization other than the federation or fund, a full disclosure of:

(i) the name of the organization;

(ii) the nature and amount of the compensation; and

(iii) the relationship of the organization to the federation or fund;

(E) a copy of the federation or fund's current operating budget, signed by the presiding officer of the federation or fund's board of directors; and

(F) an acknowledgment that the federation or fund is responsible for filing any appeals from its affiliated agencies that have not secured approval for statewide or local participation in the state employee charitable campaign.

(3) Notification of the comptroller. Upon approval of a federation or fund for statewide participation in the state employee charitable campaign, the state policy committee shall submit to the comptroller:

(A) the complete name of the federation or fund;

(B) the mailing address of the federation or fund;

(C) the full name, title, telephone number, and mailing address of the federation or fund's primary contact;

(D) the payee identification number of the federation or fund, when available; and

(E) the other information deemed necessary by the comptroller.

(4) Payee identification numbers. A federation or fund that has been approved for statewide participation and that does not have a payee identification number shall submit a request for one to the comptroller.

(5) Electronic funds transfers. A federation or fund that has been approved for statewide participation in the state employee charitable campaign shall submit a

request to be paid through electronic funds transfers under rules adopted by the comptroller.

(6) Beginning of deductions. The first payment of deducted amounts to a statewide federation or fund shall occur the first month of the first campaign year that begins after the federation or fund is approved for statewide participation in the state employee charitable campaign.

(h) Procedure for charitable organizations to apply for local participation.

(1) Request for local participation.

(A) A charitable organization may not be an eligible local charitable organization unless it applies to the appropriate local employee committee for that status in accordance with this section, Texas Civil Statutes, Article 6813h, and the committee's procedures.

(B) A federation or fund that wants to be an eligible local charitable organization may apply on behalf of its affiliated agencies.

(2) Requirements for applications from federations or funds. If a charitable organization applying to be an eligible local charitable organization is a federation or fund, then the organization must provide to the appropriate local employee committee:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of Texas Civil Statutes, Article 6813h;

(B) a copy of a letter from each affiliate of the federation or fund certifying that the federation or fund serves as the affiliate's representative and fiscal agent in the state employee charitable campaign;

(C) a copy of the conflict of interest policy approved by the federation or fund's board of directors, which prohibits its board members, executive director, and staff from engaging in business transactions in which they have material conflicting interests;

(D) if the executive director of the federation or fund receives material compensation for services rendered to any organization other than the federation or fund, a full disclosure of:

(i) the name of the organization;

(ii) the nature and amount of the compensation; and

(iii) the relationship of the organization to the federation or fund;

(E) a copy of the federation or fund's current operating budget, signed by the presiding officer of the federation or fund's board of directors; and

(F) an acknowledgment that the federation or fund is responsible for filing any appeals from its affiliated agencies that have not secured approval for statewide or local participation in the state employee charitable campaign.

(3) Beginning of deductions. The first deduction to pay an eligible local charitable organization shall occur the first month of the first campaign year that begins after the charitable organization is approved for local participation in the state employee charitable campaign.

(i) Payments of deductions.

(1) Prohibited payments to eligible local charitable organizations.

(A) Neither the comptroller nor an institution of higher education may pay deducted amounts directly to an eligible local charitable organization.

(B) Except as otherwise provided in this subparagraph, deducted amounts shall be paid directly to the appropriate local campaign manager. If the eligible local charitable organization involved is an affiliate of a statewide federation or fund, then the deducted amounts shall be paid directly to the federation or fund.

(2) Payments by the comptroller through electronic funds transfers. If feasible, the comptroller shall pay deducted amounts to a local campaign manager or a statewide federation or fund by electronic funds transfer.

(3) Payments through warrants issued by the comptroller.

(A) This paragraph applies only if it is infeasible for the comptroller to pay deducted amounts by electronic funds transfer.

(B) The comptroller shall pay deducted amounts by warrant and make the warrant available for pick up by the state agency whose employees' deductions are being paid by the warrant.

(C) A state agency shall mail or hand deliver a warrant picked up under

subparagraph (B) of this paragraph to the payee of the warrant.

(D) Except as provided in subparagraph (E) of this paragraph, the deadline for mailing or hand delivering a warrant is the tenth workday of the month following the month when the salary or wages from which the deductions are made were earned.

(E) This subparagraph applies only to a deduction that occurs after the tenth workday of the month following the month when the salary or wages from which the deduction is made were earned. The deadline for a state agency to mail or hand deliver a warrant to pay the deduction is the second workday after the agency receives the warrant.

(4) Payments by institutions of higher education.

(A) This paragraph applies to deducted amounts from the salary or wages of a state employee of an institution of higher education only if the comptroller does not pay those amounts directly to a local campaign manager or a statewide federation or fund.

(B) If feasible, an institution of higher education shall pay deducted amounts to a local campaign manager or a statewide federation or fund by electronic funds transfer.

(C) If it is infeasible for an institution of higher education to pay deducted amounts by electronic funds transfer, then the institution shall make the payment by check.

(D) This subparagraph applies only if an institution of higher education pays deducted amounts by check.

(i) This clause applies only to deductions from salary or wages that are paid on the first workday of a month. An institution of higher education shall mail or hand deliver its check to the payee of the check not later than the 10th workday of the month.

(ii) This clause applies only to deductions from salary or wages that are paid on a day other than the first workday of a month. An institution of higher education shall mail or hand deliver its check to the payee of the check not later than the 10th workday of the month following the month in which the salary or wages were earned.

(j) Distributions of deductions by local campaign managers.

(1) Requirement to use the percentage method. A local campaign manager shall use the percentage method to distribute deducted amounts to eligible local charitable organizations and statewide federations or funds.

(2) Description of the percentage method.

(A) Immediately after the end of a state employee charitable campaign, a local campaign manager shall calculate the contribution percentage for:

(i) each eligible local charitable organization that has been approved to participate in the local campaign area under the manager's responsibility; and

(ii) each statewide federation or fund to which state employees in the local campaign area have authorized deductions.

(B) The contribution percentage for an eligible local charitable organization is the ratio of:

(i) the sum of:

(I) the organization's designated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(A) of this section; and

(II) the organization's undesignated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c) (1)(C)(ii) of this section; to

(ii) the total amount of deductions authorized to the local campaign manager on authorization forms completed during the campaign.

(C) The contribution percentage for a statewide federation or fund is the ratio of:

(i) the federation or fund's undesignated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(C) (iii) of this section; to

(ii) the total amount of deductions authorized to the local campaign manager on authorization forms completed during the campaign.

(D) The contribution percentage for an eligible local charitable organization or a statewide federation or fund may not be recalculated before the conclusion of the next state employee charitable campaign.



(E) The amount of deductions that a local campaign manager distributes to an eligible local charitable organization or a statewide federation or fund is equal to the product of:

(i) the contribution percentage of the organization or federation or fund; and

(ii) the total amount of deductions the manager is distributing.

(3) Example of the percentage method. This paragraph illustrates the percentage method described in paragraph (2) of this subsection.

(A) The following assumptions apply in this example.

(i) Organization 1, an eligible local charitable organization, has a designated initial distribution amount of \$5,000 and an undesignated initial distribution amount of \$1,250.

(ii) Organization 2, an eligible local charitable organization, has a designated initial distribution amount of \$3,000 and an undesignated initial distribution amount of \$750.

(iii) Organization 3, an eligible local charitable organization, has a designated initial distribution amount of \$2,000 and an undesignated initial distribution amount of \$500.

(iv) Organization 4, a statewide federation or fund, has an undesignated initial distribution amount of \$1,250.

(v) Organization 5, a statewide federation or fund, has an undesignated initial distribution amount of \$1,250.

(vi) The total amount of deductions authorized to the local campaign manager is \$15,000.

(vii) The local campaign manager has actually received \$10,000 in deducted amounts.

(B) The first step is to calculate the contribution percentage for each organization according to paragraph (2)(B)-(C) of this subsection. The contribution percentage for each organization is as follows:

- 1-41.67%;
- (i) Organization
- (ii) Organization 2-25%;
- (iii) Organization
- 3-16.67%;
- (iv) Organization
- 4-8.33%;

(v) Organization  
5-8.33%.

(C) The second and final step is to calculate the amount that the local campaign manager distributes to each organization according to paragraph (2)(E) of this subsection. The amount for each organization is as follows:

- (i) Organization  
1-\$4,167;
- (ii) Organization  
2-\$2,500;
- (iii) Organization  
3-\$1,667;
- (iv) Organization  
4-\$833;
- (v) Organization 5-\$833.

(4) Prohibition of distributions until payment reports reconciled. A local campaign manager may not make a distribution before the manager reconciles the payment reports received from the controller or an institution of higher education with the payments received by electronic funds transfer or by warrant or check.

(5) Frequency of distributions. A local campaign manager shall make distributions quarterly or more frequently than quarterly.

(k) Distributions of deductions by statewide federations or funds.

(1) Requirement to use the percentage method. A statewide federation or fund shall use the percentage method to distribute deducted amounts to eligible charitable organizations.

(2) Description of the percentage method.

(A) Immediately after the end of a state employee charitable campaign, a statewide federation or fund shall calculate the contribution percentage for each eligible charitable organization that is an affiliate of the federation or fund.

(B) The contribution percentage for an eligible charitable organization is the ratio of:

(i) the sum of:

(I) the organization's designated initial distribution amount with respect to all state employees who have authorized deductions to the statewide federation or fund as determined under subsection (c)(2)(A) of this section; and

(II) the organization's undesignated initial distribution amount

with respect to all state employees who have authorized deductions to the statewide federation or fund as determined under subsection (c)(2)(B) of this section; to

(ii) the total amount of deductions authorized to the statewide federation or fund on authorization forms completed during the campaign.

(C) The contribution percentage for an eligible charitable organization may not be recalculated before the conclusion of the next state employee charitable campaign.

(D) The amount of deductions that a statewide federation or fund distributes to an eligible charitable organization is equal to the product of:

(i) the contribution percentage of the organization; and

(ii) the total amount of deductions the federation or fund is distributing.

(3) Example of the percentage method. This paragraph illustrates the percentage method described in paragraph (2) of this subsection.

(A) The following assumptions apply in this example.

(i) Eligible charitable organization 1 has a designated initial distribution amount of \$5,000 and an undesignated initial distribution amount of \$1,250.

(ii) Eligible charitable organization 2 has a designated initial distribution amount of \$3,000 and an undesignated initial distribution amount of \$750.

(iii) Eligible charitable organization 3 has a designated initial distribution amount of \$2,000 and an undesignated initial distribution amount of \$500.

(iv) The total amount of deductions authorized to the statewide federation or fund is \$12,500.

(v) The statewide federation or fund has actually received \$10,000 in deducted amounts.

(B) The first step is to calculate the contribution percentage for each eligible charitable organization according to paragraph (2)(B) of this subsection. The contribution percentage for each organization is as follows:

- (i) Organization 1-50%;
- (ii) Organization 2-30%;

3-20%. (iii) Organization

(C) The second and final step is to calculate the amount that the statewide federation or fund distributes to each organization according to paragraph (2)(D) of this subsection. The amount for each organization is as follows:

- (i) Organization  
1-\$5,000;
- (ii) Organization  
2-\$3,000;
- (iii) Organization  
3-\$2,000.

(4) Prohibition of distributions until payment reports reconciled. A statewide federation or fund may not make a distribution before the federation or fund reconciles the payment reports received from the comptroller or an institution of higher education with the payments received by electronic funds transfer or by warrant or check.

(5) Frequency of distributions. A statewide federation or fund shall make distributions quarterly or more frequently than quarterly.

(l) Charging administrative fees to cover costs incurred to make deductions. The comptroller intends to adopt at a later date provisions about charging administrative fees to cover costs incurred by the comptroller and employers in the implementation and administration of Texas Civil Statutes, Article 6813h.

(m) Refunding excessive payments of deductions.

(1) Authorization of refunds. If the amount of deductions paid to a local campaign manager or a statewide federation or fund exceeds the amount that should have been paid, then the excess may be refunded to the state agency on whose behalf the payment was made.

(2) Methods for accomplishing refunds. If a refund is authorized by paragraph (1) of this subsection, then the refund shall be accomplished by:

(A) the state agency on whose behalf the payment was made subtracting the amount of the refund from a subsequent payment of deductions to the local campaign manager or statewide federation or fund; or

(B) the local campaign manager or the statewide federation or fund issuing a check in the amount of the refund to the state agency on whose behalf the payment was made, if authorized by paragraph (3) of this subsection.

(3) Paying refunds by check. A local campaign manager or a statewide federation or fund may issue a refund check only if the payee of the check first submits a written request for the refund to be made by check.

(4) Deadline for paying refunds by check. This paragraph applies only if a local campaign manager or a statewide federation or fund is authorized by paragraph (3) of this subsection to make a refund by check. The local campaign manager or the statewide federation or fund shall ensure that the refund check is received by the payee not later than the 30th day after the date on which the written request for the refund to be made by check is received.

(n) Responsibilities of the state policy committee.

(1) Statutory responsibilities. The state policy committee shall fulfill its statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(2) Additional responsibilities. In addition to its statutory responsibilities, the state policy committee:

(A) shall establish an annual application, eligibility determination, and appeals period for statewide or local participation in the state employee charitable campaign;

(B) shall determine the eligibility of a federation or fund and its affiliated agencies for statewide participation in the state employee charitable campaign;

(C) shall review and resolve the appeals of entities not accepted for statewide or local participation in the state employee charitable campaign under procedures that comply with paragraph (3) of this subsection;

(D) shall disqualify a federation or fund from statewide participation in the state employee charitable campaign if the committee determines that the federation or fund intentionally filed an application that contains false or misleading information;

(E) shall establish penalties for non-compliance with this section by a statewide federation or fund, an eligible local charitable organization, the state campaign manager, or a local campaign manager;

(F) shall establish procedures for the selection and oversight of the state campaign manager and local campaign managers;

(G) shall select a federated community campaign organization to act as the state campaign manager in accordance with the criteria contained in paragraph (4) of this subsection;

(H) shall contract with the federated community campaign organization selected as the state campaign manager;

(I) may establish policies and procedures for the operation and administration of the state employee charitable campaign, including policies and procedures about the hearing of any grievance concerning the operation and administration of the campaign;

(J) shall consult with the state campaign manager and the state advisory committee before approving the campaign plan, budget, and materials;

(K) may not approve campaign materials if:

(i) they do not state that statewide federations or funds may or may not provide services in all local campaign areas;

(ii) they list a charitable organization as both a statewide federation or fund and an eligible local charitable organization;

(iii) they list a charitable organization as an affiliate of two or more statewide federations or funds unless the organization serves separate and distinct populations as part of each statewide federation or fund;

(iv) they list similarly named eligible local charitable organizations in the same local campaign area unless the appropriate local employee committee has determined that each organization delivers services in different geographical areas within the local campaign area;

(v) they list a charitable organization as an affiliate of more than one federation or fund certified as an eligible local charitable organization unless the appropriate local employee committee has determined that the charitable organization delivers services to separate and distinct populations in the local campaign area as part of its membership in the federations of funds;

(vi) they do not state that a local campaign manager or a statewide federation or fund may distribute quarterly a state employee's deductions;

(vii) they do not state that a local campaign manager or a statewide

federation or fund is required to distribute a state employee's deductions based on the percentage method instead of matching deducted amounts received by the local campaign manager or statewide federation or fund to the employee's designations; or

(viii) they do not accurately describe the percentage method;

(L) shall review and approve or disapprove the generic materials used by the state campaign manager and local campaign managers;

(M) shall ensure that local campaign areas do not overlap;

(N) shall ensure that only one local campaign manager is responsible for solicitation of all state employees in the local campaign area for which the manager has responsibility;

(O) shall submit to the comptroller the name and boundaries of each local campaign area not later than the 30th day after the end of the annual application period;

(P) shall compile and submit to the comptroller not later than the 30th day after the end of the annual application period a list of the local campaign managers and the name, address, and telephone number of each manager's primary contact;

(Q) shall notify the comptroller immediately after a change occurs to the name or mailing address of a statewide federation or fund or local campaign manager;

(R) shall notify the comptroller immediately after a change occurs to the name, title, telephone number, or mailing address of the primary contact of a local campaign manager or a statewide federation or fund; and

(S) shall represent all statewide federations or funds and local campaign managers for the purposes of:

(i) communicating with the comptroller, including receiving and responding to correspondence from the comptroller; and

(ii) disseminating information, including information about the requirements of this section, to representatives of federations or funds, local employee committees, and local campaign managers.

(3) Appeals procedures. The procedures that the state policy committee

adopts to review and resolve the appeal of an entity that was not accepted for statewide or local participation in the state employee charitable campaign must:

(A) prohibit the consideration of information that the committee has considered previously;

(B) provide sufficient time for a federation or fund to reapply for participation in that campaign; and

(C) permit a federation or fund that was not accepted for statewide participation to apply for participation in a local campaign area during the campaign.

(4) Criteria for selection of a state campaign manager. The state policy committee shall consider the following criteria when evaluating the application of a federated community campaign organization to act as the state campaign manager:

(A) the number and diversity of voluntary health and human services agencies or affiliates that rely on the organization for financial support;

(B) the capability of the organization to conduct employee campaigns, as demonstrated by records of the amount of funds raised during the organization's last completed annual public solicitation of funds;

(C) the percent of solicited funds received by the organization during its last completed annual public solicitation of funds that were distributed to voluntary health and human services agencies;

(D) the geographic area served by the organization; and

(E) the organization's capability and expertise to provide effective campaign counsel and management as demonstrated by staff and equipment resources and examples of past campaign management.

(5) Comptroller's reliance on decisions made by the state policy committee. The comptroller is entitled to rely on the state policy committee's:

(A) determination about the eligibility of a federation or fund and its affiliated agencies for statewide participation in the state employee charitable campaign;

(B) disqualification of a federation or fund from statewide participation

in the state employee charitable campaign; and

(C) other decision unless the committee has no legal authority over the subject covered by the decision.

(o) Responsibilities of the state advisory committee. The state advisory committee shall fulfill its statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(p) Responsibilities of local employee committees.

(1) Statutory responsibilities. A local employee committee shall fulfill its statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(2) Additional responsibilities. In addition to its statutory responsibilities, a local employee committee:

(A) shall determine the eligibility of a local charitable organization for local participation in the state employee charitable campaign;

(B) may call upon and use outside expertise and resources available to the committee to assess the eligibility of a local charitable organization;

(C) shall disqualify a local charitable organization from local participation in the state employee charitable campaign if the committee determines that the organization intentionally filed an application that contains false or misleading information;

(D) shall select a federated community campaign organization to act as the local campaign manager according to criteria contained in paragraph (3) of this subsection;

(E) shall contract with the federated community campaign organization selected as the local campaign manager;

(F) shall consult with the local campaign manager before approving the local campaign plan, budget, and materials; and

(G) shall submit to the state policy committee upon contracting with a federated community campaign organization:

(i) the name of the local campaign area;

(ii) the name of the federated community campaign organization with which the local employee committee has contracted; and

(iii) the name, address, and telephone number of the primary contact of the local campaign manager.

(3) Criteria for selection of a local campaign manager. A local employee committee shall consider the following criteria when evaluating the application of a federated community campaign organization to act as the local campaign manager

(A) the number and diversity of voluntary health and human services agencies or affiliates that rely on the organization for financial support;

(B) the capability of the organization to conduct employee campaigns, as demonstrated by records of the amount of funds raised during the organization's last completed annual public solicitation of funds;

(C) the percent of solicited funds received by the organization during its last completed annual public solicitation of funds that were distributed to voluntary health and human services agencies,

(D) the geographic area serviced by the organization; and

(E) the organization's capability and expertise to provide effective campaign counsel and management as demonstrated by staff and equipment resources and examples of past campaign management.

(4) Comptroller's reliance on decisions made by a local employee committee. The comptroller is entitled to rely on a local employee committee's

(A) determination about the eligibility of a local charitable organization for local participation in the state employee charitable campaign;

(B) disqualification of a local charitable organization from local participation in the state employee charitable campaign; and

(C) other decision unless the committee has no legal authority over the subject covered by the decision.

(q) Responsibilities of the state campaign manager.

(1) Statutory responsibilities. The state campaign manager shall fulfill the

manager's statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(2) Additional responsibilities. In addition to the state campaign manager's statutory responsibilities, the manager shall:

(A) develop the state employee charitable campaign plan in consultation with the state advisory committee;

(B) serve as liaison to the state policy committee, the state advisory committee, the local campaign managers, and the local employee committees on behalf of statewide federations or funds and eligible local charitable organizations,

(C) structure the state employee charitable campaign fairly and equitably according to the policies and procedures established by the state policy committee,

(D) provide for involvement of all statewide federations or funds, including the use of their resources, at all levels of the state employee charitable campaign,

(E) conduct the manager's responsibilities on behalf of the state employee participants in the state employee charitable campaign separately from the manager's internal operations,

(F) prepare and submit for review by the state advisory committee a single statewide campaign budget that has been prepared in cooperation with local campaign managers and that includes campaign materials, staff time, and other expenses incurred for the state employee charitable campaign;

(G) establish, after consulting with the state advisory committee, the state policy committee, and the local campaign managers, a uniform campaign reporting form to allow reporting of designated deductions, undesignated deductions, campaign expenses, and other information deemed necessary by the state campaign manager; and

(H) submit a statewide campaign report that complies with paragraph (3) of this subsection

(3) Statewide campaign reports. A statewide campaign report shall represent a compilation of the local campaign managers' campaign reports. The state campaign manager shall submit the statewide campaign report to the state policy committee, the state advisory committee, and the comp-

troller not later than the 60th day after the day on which the campaign ended.

(r) Responsibilities of local campaign managers.

(1) Statutory responsibilities. A local campaign manager shall fulfill the manager's statutory responsibilities as set forth in Texas Civil Statutes, Article 6813h.

(2) Additional responsibilities. In addition to a local campaign manager's statutory responsibilities, the manager shall:

(A) recruit, train, and supervise state employee volunteers;

(B) involve participating eligible local charitable organizations and statewide federations or funds in the training of state employee volunteers;

(C) consult with eligible local charitable organizations and statewide federations or funds about the operation of the state employee charitable campaign and the preparation of local campaign materials;

(D) provide eligible local charitable organizations and statewide federations or funds with the opportunity to participate in local state employee charitable campaign events and access to all records for the local campaign area;

(E) maintain campaign records for the local campaign area, including total pledges, total pledges by eligible local charitable organization and statewide federation or fund, state agencies contacted, and other records deemed necessary by the state policy committee for organization, control, and progress reporting;

(F) submit to the state campaign manager a final campaign report of designated deductions, undesignated deductions, campaign expenses, and other information deemed necessary by the state campaign manager not later than the 40th day following the close of the state employee charitable campaign;

(G) establish an account at a financial institution for the purpose of receiving payments from the comptroller and institutions of higher education by electronic funds transfer, warrant, or check;

(H) distribute interest accrued during a campaign year as soon as possible after December 31st to each eligible local charitable organization and statewide federation or fund in the same manner that undesignated deductions are distrib-

uted, subject to the limitation in paragraph (3) of this subsection;

(I) submit a request to the comptroller to be paid through electronic funds transfers under rules adopted by the comptroller;

(J) reconcile the payment report provided by the comptroller or an institution of higher education with the amount of deductions paid to the manager;

(K) report to the comptroller or an institution of higher education, as appropriate, each discrepancy between a payment report provided by the comptroller or an institution and the actual amount of deductions received not later than the 30th day after the day on which the comptroller or the institution mailed or delivered the report;

(L) report to each eligible local charitable organization and statewide federation or fund the amount of its undesignated and designated initial distribution amounts as determined under subsection (c)(1) of this section; and

(M) report to each eligible local charitable organization and statewide federation or fund its contribution percentage as determined under subsection (j)(2) of this section.

(3) Limitation on distributions of accrued interest. A local campaign manager may not distribute accrued interest to:

(A) an eligible local charitable organization that did not receive deducted amounts through the manager during the campaign year; or

(B) a statewide federation or fund that did not receive deducted amounts through the manager during the campaign year, unless the only reason for not receiving the deducted amounts through the manager is the direct payment requirement of the second sentence of subsection (i)(1)(B) of this section.

(4) Prohibition against solicitation. A local campaign manager may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(s) Responsibilities of statewide federations or funds.

(1) Reconciliation of payment reports. A statewide federation or fund shall reconcile the payment report provided by

the comptroller or an institution of higher education with the amount of deductions paid to the federation or fund.

(2) Reports of discrepancies.

(A) A statewide federation or fund shall report to the comptroller or an institution of higher education, as appropriate, each discrepancy between a payment report provided by the comptroller or an institution and the actual amount of deductions received.

(B) A report of discrepancies is due not later than the 30th day after the day on which the comptroller or the institution of higher education mailed or delivered the report.

(3) Prohibition against solicitation. A statewide federation or fund may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(t) Prohibition against certain solicitation by eligible local charitable organizations. An eligible local charitable organization may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(u) Acceptance of authorization forms by state agencies.

(1) Prohibition against accepting certain authorization forms. A state agency may accept an authorization form only if it complies with the comptroller's requirements.

(2) Acceptance of altered authorization forms. A state agency is not required to accept an authorization form that contains an obvious alteration without the appropriate state employee's written consent to the alteration.

(v) Payment reports.

(1) Monthly submission of payment reports.

(A) An institution of higher education shall submit a payment report each month to each local campaign manager or statewide federation or fund that has received during the month deducted amounts from the institution's state employees.

(B) The comptroller shall submit a payment report each month to each local campaign manager or statewide federation or fund that has received during the month deducted amounts through the comptroller's electronic funds transfer system.

(2) Information included in payment reports.

(A) An institution of higher education's payment report must include the amount and date of each check written to or electronic funds transfer made to a local campaign manager or a statewide federation or fund by the institution.

(B) The comptroller's payment report must include the amount and date of each electronic funds transfer made to a local campaign manager or statewide federation or fund by the comptroller.

(3) Format of payment reports. An institution of higher education's payment report must be in the format prescribed by the comptroller.

(4) Deadline for submission of payment reports.

(A) Except as otherwise provided in this subparagraph, an institution of higher education shall mail or deliver a payment report not later than the tenth workday of the month in which the institution paid the deducted amounts covered by the report. For deductions from salary or wages paid by an institution of higher education after the tenth workday of a month, the institution may include the deductions in the institution's payment report for the following month.

(B) Except as otherwise provided in this subparagraph, the comptroller shall mail or deliver a payment report not later than the fifth workday of the month in which the comptroller paid the deducted amounts covered by the report. For deductions from salary or wages paid by the comptroller after the first workday of a month, the comptroller may include the deductions in the comptroller's payment report for the following month.

(w) Complaints by state employees about coercive activity.

(1) Definition.

(A) In this section, "coercive activity" includes:

(i) a state agency or its representative pressuring a state employee to participate in a state employee charitable campaign;

(ii) a state agency or its representative inquiring about:

(I) whether a state employee has chosen to participate in a state employee charitable campaign; or

(II) the amount of a state employee's deduction except as necessary to administer the deduction;

(iii) a state agency or its representative establishing a goal for 100% of the agency's state employees to authorize a deduction;

(iv) a state agency or its representative establishing a dollar contribution goal or quota for a state employee;

(v) a state agency, a statewide federation or fund, a local campaign manager, or a representative of the preceding developing or using a list of state employees who did not complete an authorization form during a state employee charitable campaign;

(vi) a state agency, a statewide federation or fund, a local campaign manager, or a representative of the preceding using or providing to others a list of state employees who completed authorizations forms during a state employee charitable campaign, unless the purpose of the list is to make a deduction or transmit deducted amounts to a local campaign manager or a statewide federation or fund; and

(vii) a state agency or its representative using as a factor in a performance appraisal the results of a state employee charitable campaign in a particular section, division, or other level of the agency.

(B) Notwithstanding subparagraph (A) of this paragraph, "coercive activity" does not include:

(i) the head of a state agency's participation in the customary activities associated with a state employee charitable campaign; or

(ii) the head of a state agency's demonstration of support for the campaign in newsletters or other routine communications with state employees.

(2) Submission of complaints to the comptroller. A state employee may submit a written complaint to the comptroller when the employee believes that coercive activity has occurred in a state employee charitable campaign.

(3) Investigation by the comptroller of complaints.

(A) The comptroller shall investigate a state employee's written complaint about coercive activity. The comptroller shall mail or deliver a description of the comptroller's findings about the complaint to the employee not later than the 30th day after the comptroller receives the complaint.

(B) If the comptroller finds that coercive activity has occurred, then the comptroller shall mail or deliver notice of the finding to the state policy committee not later than the 30th day after the comptroller makes the finding.

(4) Action by the state policy committee.

(A) If the state policy committee receives written notification that the comptroller has found that coercive activity has occurred, then the committee shall take appropriate action. Actions that the state policy committee may take include suspension of the person or entity that engaged in the coercive activity from participation in the state employee charitable campaign for one campaign year.

(B) A person or entity that has been suspended from the state employee charitable campaign for a campaign year may apply to the state policy committee for participation in the campaign for the next campaign year.

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

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

TRD-9441350  
Martin E Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: June 15, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512) 463-4028

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 15. Medicaid Eligibility

##### Subchapter C. Basic Program Requirements

###### • 40 TAC §15.315

The Texas Department of Human Services (DHS) adopts an amendment to §15.315, concerning Preadmission Screening and Annual Resident Review (PASARR), in its Medicaid Eligibility rule chapter. The amendment is adopted without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 285-3).

The justification for the amendment is to ensure that all clients seeking long-term care services participate in the assessment/screening process. The assessment/screening process has been made the first step in receiving services in pilot sites selected by the Board of Human Services.

The amendment will function by ensuring that clients in pilot sites will be screened for an assessment of their care needs and offered a choice of appropriate services.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

Issued in Austin, Texas, on May 25, 1994.

TRD-9441371  
Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: July 1, 1994

Proposal publication date: April 19, 1994

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

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 2. Environmental Affairs

##### Subchapter B. Memorandum of Understanding with Natural Resource Agencies

###### • 43 TAC §2.25

The Texas Department of Transportation adopts new §2.25, concerning a Memorandum of Understanding with Texas Natural Resource Conservation Commission (TNRCC), without changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 985). Section 2.25 adopts a memorandum of understanding, previously published as Exhibit A of 30 TAC §114.25 in the December 24, 1993, issue of the *Texas Register* (18 TexReg 9893), between the department and TNRCC.

Texas Civil Statutes, Article 6673g, requires the department to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the

natural environment or for the preservation of historical or archaeological resources. Article 6673g also requires the department and each of the resource agencies to adopt the memoranda and all revisions by rule. In order to comply with Article 6673g and to ensure the natural resources are given full consideration in accomplishing the department's activities, this new section is permanently adopted.

New §2.25 is necessary to provide for the review of department projects that have the potential to affect air quality and concerns the development of a system by which information developed by the department and TNRCC may be exchanged to their mutual benefit.

On March 28, 1994, the department conducted a public hearing on the proposed section. No written or oral comments were received concerning the proposed rule.

The new section is adopted under Texas Civil Statutes, Articles 6666 and 6673g, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically for the adoption by rule of memoranda of understanding with natural resource agencies.

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

Issued in Austin, Texas, on May 23, 1994.

TRD-9441260 Diane L Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Effective date: June 13, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 463-8630

## Chapter 17. Vehicle Titles and Registration

### Motor Vehicle Registration

#### • 43 TAC §§17.20-17.23, 17.26

The repeals are adopted under the Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of

the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6675a-1, et seq, which authorizes the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of vehicle registration.

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

Issued in Austin, Texas, on May 23, 1994.

TRD-9441306 Diane L Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Effective date: June 13, 1994

Proposal publication date: February 18, 1994

For further information, please call: (512) 463-8630

The Texas Department of Transportation adopts the repeal of §§17.20-17.23 and 17.26, new §§17.20-17.23 and 17.26, under the existing undesignated head of Motor Vehicle Registration, and new §§17.56-17.58, under the new undesignated head of Miscellaneous Registration Provisions, without changes to the proposed text as published in the February 18, 1994, issue of the *Texas Register* (19 TexReg 1205).

Sections 17.20-17.23 are being repealed and contemporaneously re-enacted by being re-numbered and adopted in their existing form as new §§17.26, 17.57, 17.23, and 17.58 respectively. Section 17.26 is repealed by being renumbered and adopted in its existing form as new §17.56. New §17.20 and §17.21 describe the Purpose and Scope, and the Definitions of the undesignated head New §17.22 describes how a motor vehicle is registered by an owner, the information required on an application form and accompanying documentation, vehicle registration insignia and placement, and renewal information.

In order for the department to efficiently and effectively register motor vehicles, maintain records, and collect the applicable fees, the department finds it necessary to repeal certain existing sections and adopt new sections by reorganizing the structure and content of its existing registration rules and procedures.

A public hearing was held on March 3, 1994, and no oral or written comments were received.

The new sections are adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6675a-1, et seq, which authorizes the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of vehicle registration.

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

Issued in Austin, Texas, on May 23, 1994

TRD-9441286 Diane L Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Effective date: June 13, 1994

Proposal publication date: February 18, 1994

For further information, please call (512) 463-8630

### Miscellaneous Registration Provisions

#### • 43 TAC §§17.56-17.58

The new sections are adopted under the Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 6675a-1, et seq, which authorizes the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of vehicle registration

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

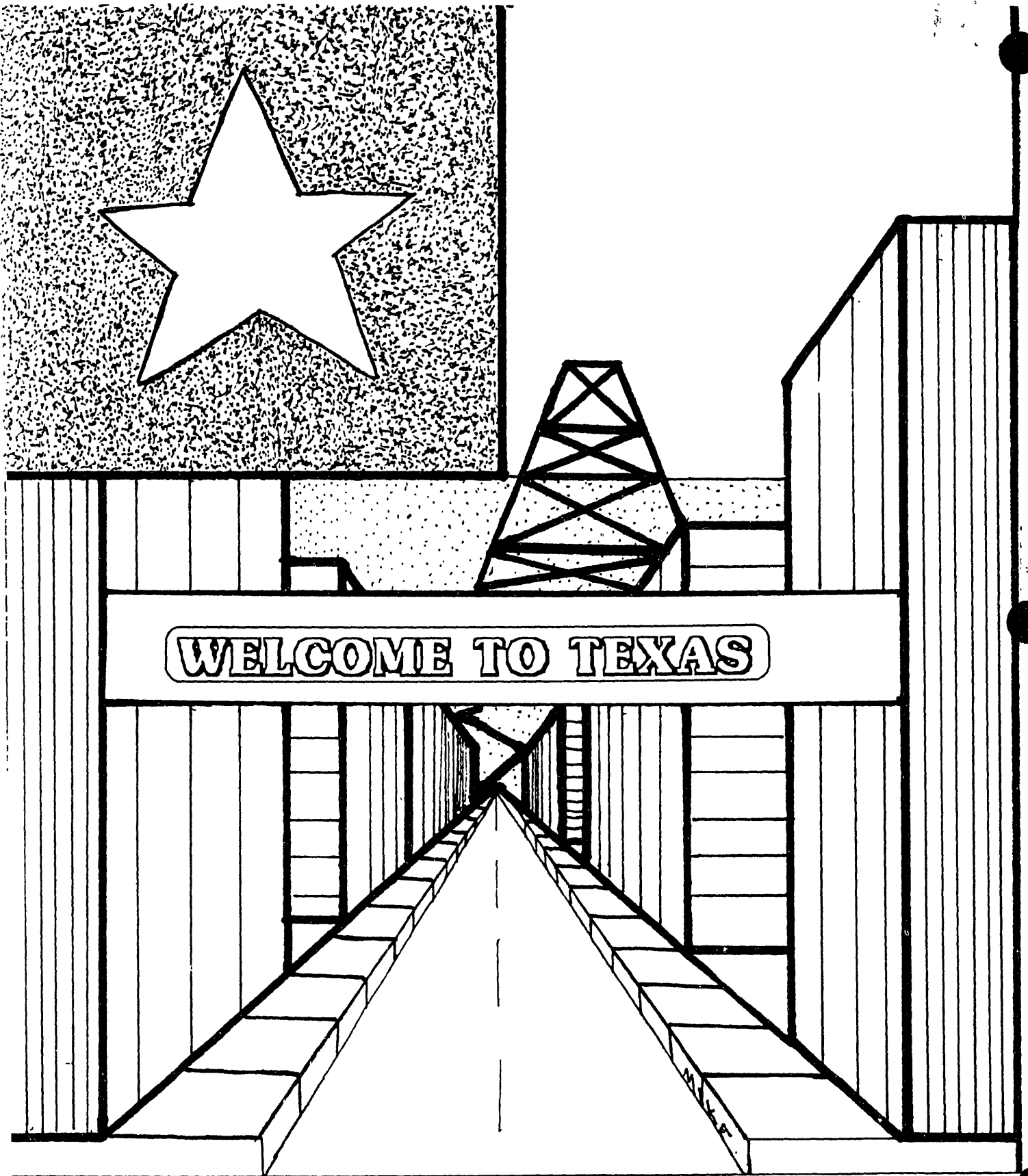
Issued in Austin, Texas, on May 23, 1994

TRD-9441305 Diane L Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Effective date: June 13, 1994

Proposal publication date: February 18, 1994

For further information, please call (512) 463-8630



Name: Michael Scott  
Grade: 12  
School: Arlington High, Arlington 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 Commission on Children and Youth

Friday, June 3, 1994, 7:30 a.m.

1300 Lamar Street, Four Seasons Dining Room

Houston

According to the complete agenda, the Texas Commission on Children and Youth will hold a work session.

Contact: Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: May 26, 1994, 9:58 a.m.

TRD-9441416

## Credit Union Department

Friday, June 3, 1994, 10:00 a.m.

Credit Union Department Building, 914 East Anderson Lane

Austin

According to the agenda summary, the Credit Union Commission will invite public input for future consideration. To receive: minutes of February 14, 1994 and April 14, 1994 meetings; communications; and committee reports from the Commissioner Evaluation Committee and Texas Share Guaranty Credit Union Oversight Committee. To consider: final repeal of ten rules in Chapter 91 (Chartering, Operations, Mergers, Liquidations), 42 rules in Chapter 93 (Administrative Proceedings), all rules in Chapter 95

(Texas Share Guaranty Credit Union) and three rules in Chapter 97 (Commission Policies and Administrative Rules); final adoption of new or amended 23 rules in Chapter 91, 15 rules in Chapter 93, and two rules in Chapter 97; propose one new rule in Chapter 97 (Commission Policies and Administrative Rules); conservator qualifications and remuneration; and department strategic plan. To conduct: an executive session to discuss credit unions and problem cases; to consult with legal counsel regarding contemplated legal action, existing litigation, and administrative actions; and, discuss the commissioner's performance.

Contact: Penny A. Black, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: May 24, 1994, 4:55 p.m.

TRD-9441344

Friday, June 3, 1994, following 10:00 a.m. Commission meeting.

Credit Union Department Building, 914 East Anderson Lane

Austin

According to the complete agenda, the Credit Union Commission, Commissioner Evaluation Committee will determine the presence of a quorum and call the meeting to order. To conduct: an executive session. To consider: action on evaluation or determine the need and date of next committee meeting, if any.

Contact: Penny A. Black, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: May 24, 1994, 4:56 p.m.

TRD-9441345

## Texas State Board of Dental Examiners

Friday, June 3, 1994, 1:00 p.m.

TSBDE-William P. Hobby Building, 333 Guadalupe, Tower Three, Suite 800

Austin

According to the agenda summary, the Credentials Review Committee will call to order; roll call; approval of past committee minutes; review of and recommendations regarding applications for licensure by credentials; discussion of determination of pending licensure by credentials applications; announcements; and adjournment.

Contact: C. Thomas Camp, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: May 25, 1994, 9:50 a.m.

TRD-9441367

## Advisory Commission on State Emergency Communications

Wednesday, June 1-2, 1994, 10:00 a.m.

1101 Capital of Texas Highway South, Suite B-100

Austin

According to the agenda summary, the Commission and Planning and Implementation and Addressing Committees will call the meeting to order and recognize guests; hear public comment; discuss and consider strategic plan review and approval process and related funding procedures; discuss and take action on strategic plan implementation issues for councils of government; emergency communication district requests; (meeting will recess and reconvene at 8:30 a.m., June 2) and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: May 24, 1994, 4:39 p.m.

TRD-9441343

**Thursday, June 2, 1994, 1:30 p.m.**

1101 Capital of Texas Highway South, Suite B-100

Austin

According to the agenda summary, the Administration Committee will call the meeting to order and recognize guests; hear public comment; review and consider for adoption proposed ACSEC budget for fiscal year 1995; review and consider for adoption proposed 9-1-1 administrative budgets for Councils of Governments; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: May 24, 1994, 4:18 p.m.

TRD-9441338

**Friday, June 3, 1994, 1:00 p.m.**

1101 Capital of Texas Highway South, Suite B-100

Austin

According to the agenda summary, the Advisory Commission on State Emergency Communications will call the meeting to order and recognize guests; hear public comment; discuss and take action on strategic plan review and approval process and related funding procedures; review and consider for adoption proposed ACSEC budget for fiscal year 1995; hear report and discuss and take action on Councils of Governments' 9-1-1 administrative budgets, strategic plan implementation, and strategic plan implementation issues for Emergency Communication district requests; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: May 24, 1994, 4:18 p.m.

TRD-9441337

## Texas Commission on Fire Protection

**Monday, June 6, 1994, 9:00 a.m.**

12675 North Research

Austin

According to the complete agenda, the Fire Protection (Sprinkler) Advisory Council will discuss and possible action regarding proposed rule amendments, new sections, or repeals to 37 TAC Chapter 541 concerning fire sprinkler systems; discuss and possible action regarding application of Article 5.43-3, Texas Insurance Code, to unlicensed sprinkler contractors; discuss and possible action regarding interpretations of sprinkler statute and rules; and discuss and possible action on future meeting dates.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: May 24, 1994, 5:32 p.m.

TRD-9441347

**Wednesday-Thursday, June 8-9, 1994, 1:00 p.m. and 10:00 a.m. respectively.**

105 West 15th Street, Room 103

Austin

According to the complete agenda, the Commission will meet in executive session under §551.071, Texas Government Code, to discuss pending litigation with attorney (at 1:00 p.m., June 8, 1994); *Borland vs Lee et al* in the 53rd Judicial District Court of Travis County, Texas, Helen Campbell vs The Texas Commission on Fire Protection in the 98th Judicial District Court of Travis County, Texas; and discussion and possible action regarding the authority, structure, and enforcement policies of the Commission on Fire Protection (at 10:00 a.m., June 9, 1994)

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: May 24, 1994, 5:32 p.m.

TRD-9441346

**Wednesday-Friday, June 22-24, 1994; 9:00 a.m.**

12675 North Research Boulevard

Austin

According to the agenda summary, the Fire Protection Personnel Advisory Committee will recognize new committee members, approval of previous minutes; election of officers, overview of agenda, new matters from the public and committee members, testing committee report, discussion and possible action on; possible rule changes to 37 TAC Chapter 421; 37 TAC Chapter 423, subchapter A; 37 TAC 423, subchapter C; 37 TAC 425; 37 TAC Chapter 429; 37 TAC Chapter 431; 37 TAC 441; streamlining curricula revision procedures; 37 TAC Chapter 447; 37 TAC Chapter 449; rules pending before the Commission on Fire Protection, and future meeting dates, agenda items, and locations.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 916-7100.

Filed: May 24, 1994, 5:33 p.m.

TRD-9441348

## Office of the Governor

**Friday, June 3, 1994, 9:00 a.m.**

John H. Reagan Building, Room 109, 105 West 15th Street

Austin

According to the agenda summary, the Automobile Theft Prevention Authority will call to order, introductions, and approval of minutes of last meeting; report on statewide HEAT program, presented by Brenda Ivy, Department of Public Safety; committee reports; director's report; discussion/approval of ATPA rules on accepting gifts and grants, presented by ATPA counsel; discussion/approval of ATPA board resolution; discussion/approval of schedule of grant review for the September 1, 1994 grant cycle; discussion/approval of recommended forms for grantee matching funds; and adjournment.

Contact: Linda Young, 4000 Jackson Avenue, Austin, Texas 78731, (512) 467-3999.

Filed: May 26, 1994, 9:17 p.m.

TRD-9441414

## Texas Department of Human Services

**Thursday, June 2, 1994, 10:00 a.m.**

701 West 51st, Fifth Floor, West Tower, Conference Room 560W

Austin

According to the complete agenda, the Services to Persons with Disabilities Subcommittee will welcome everyone and make introductions and will consider: approval of

minutes; public comment; comments by chair, comments by director; discuss explanation of meeting format; open discussion; expectations of subcommittee members; goals and objectives of subcommittee; meeting summary; announce next meeting date; announcements from subcommittee members; and adjournment.

**Contact:** D. J. Johnson, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3533.

**Filed:** May 25, 1994, 1:50 p.m.

TRD-9441394

**Friday, June 10, 1994, 9:00 a.m.**

701 West 51st Street, West Tower, Room 651W

Austin

According to the complete agenda, the Family Violence Advisory Committee will be called to order, have introductions; consider the April meeting minutes, make announcements on explanations of absences and scheduling of agenda items; discuss objectives and work plan; discuss old business; hear reports from DHS staff; receive an update on the family violence contract unit; hear a report on DHS board responses to advisory committee recommendations, hear a report on the Texas Council on Family Violence; and adjourn

**Contact:** Connie Berry, P.O. Box 149030, Austin, Texas 78714-9030.

**Filed:** May 25, 1994, 8:46 a.m.

TRD-9441349

## Texas Juvenile Probation Commission

**Thursday, June 2, 1994, 5:30 p.m.**

4140 Governor's Row, Wyndham Southpark

Austin

According to the complete agenda, the Long Range Planning Committee will call to order, excuse absences, approval of the final draft of TJPC's strategic plan, and discussion of surveys used in preparing TJPC strategic plan.

**Contact:** Bernard Licarione, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

**Filed:** May 24, 1994, 4:18 p.m.

TRD-9441339

**Thursday, June 2, 1994, 6:30 p.m.**

Wyndham Southpark Hotel, Board Room, 4140 Governor's Row

Austin

According to the complete agenda, the Internal Audit Committee will call to order;

excused absences, review RFP for internal auditor's services for fiscal year 1995; approval fiscal year 1995 Internal Audit Program; review and approve State Aid Audit Report; board travel reimbursement; review of request for waivers of standards; addendum to fiscal year 1994 internal audit contract; internal audit update report by internal auditor; discussion of public hearings on probation standards and general juvenile justice issues; public comments; and adjourn.

**Contact:** Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001

**Filed:** May 24, 1994, 4:18 p.m.

TRD-9441340

**Friday, June 3, 1994, 9:00 a.m.**

2015 South IH-35

Austin

According to the complete agenda, the Board will call to order, introductions, excused absences; approval of minutes-joint TJPC/SBOE board meeting, TJPC April 7, 1994 board meeting, budget report-fiscal year 1995 administrative budget, basic probation fiscal year 1995-state aid, border projects, challenge grants, community corrections, innovative project, diversionary placement, discuss fiscal year 1996-1997 LAR options; Long Range Plan Committee report-approve the final draft of TJPC's strategic plan, discussion of surveys used in preparing TJPC's strategic plan, Internal Audit Committee's report review fiscal year 1995 request for proposal of internal auditor's services, approve fiscal year 1995 Internal Audit Program, review and approve state aid audit, board travel reimbursement, review request for waiver of standards, addendum of fiscal year 1994 internal audit contract, internal auditor's update report, discussion of public hearings for probation standards and general juvenile justice issues, adopt MOU on certain abused and neglected children; update on management study of the Harris County Juvenile Probation Department; TJPC/TEA Joint Task Force Committee report; TJPC/TYC Subcommittee report; conference and trainings, report on Interim Committee on the Family Code, director's report, public comments, schedule next meeting; revocation of certification-executive closed session; and adjourn

**Contact:** Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

**Filed:** May 24, 4:18 p.m.

TRD-9441341

## Board of Law Examiners

**Thursday, June 9, 1994, 1:30 p.m.**

Tom C. Clark Building, Suite 500, 205 West 14th Street

Austin

According to the complete agenda, the Hearings Panel will hold public hearings and conduct deliberations on character and fitness of applicants and/or declarants. (Character and fitness deliberations may be conducted in executive session, pursuant to §82.003(c), Texas Government Code.)

**Contact:** Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

**Filed:** May 25, 1994, 11:12 a.m.

TRD-9441375

## Texas Department of Licensing and Regulation

**Friday, June 17, 1994, 9:00 a.m.**

920 Colorado, E O Thompson Building, Room 1012

Austin

According to the complete agenda, the Personnel Employment Service Inspections and Investigations Committee will hold an administrative hearing to consider to possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Bill Daniel doing business as Daniel and Associates for violation of the Texas Revised Civil Statutes, Annotated Article 5221a-7, §3(a)(1) and §7(c), Article 9100 16 TAC §63. 20 and §63.40(a) and the Texas Government Code, Chapter 2001.

**Contact:** Paula Hamje, 920 Colorado, E O Thompson Building, Austin, Texas 78701, (512) 463-3192

**Filed:** May 25, 1994, 4:17 p.m.

TRD-9441407

## Texas State of Medical Examiners

**Thursday, May 26, 1994, 5:30 p.m.**

1812 Centre Creek Drive, Suite 300

Austin

Emergency Meeting

According to the agenda summary, the Disciplinary Panel will consider a temporary suspension of the licenses of the following physicians B. R. Ringer, D.O., Houston, Texas, License #G-0011; John Erich Lehmler, M.D., Galveston, Texas, License, #J-3340, and Bryan M. Wayne, M.D., Houston, Texas License #G-8492

Reason for Emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Contact: May 25, 1994, 3:26 p.m.

TRD-TRD-9441400

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**Texas Natural Resource Conservation Commission**

Wednesday, June 8, and Wednesday, June 15, 1994, 8:00 a.m.

12015 Park 35 Circle, Room 201S, Building E

Austin

According to the agenda summary, the Compost Regulations Development Ad Hoc Group will review and discuss the draft compost facility regulations. Open files consisting of meeting notes and any additional associated material will be maintained at the Colonnade Building, 12015 Park 35 Circle, Room 1151, Austin, Texas 78753. These files will be listed as "Compost Regulations Development Group."

Contact: Mary Ruth Holder, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6750.

Filed: May 25, 1994, 4:13 p.m.

TRD-9441406

Wednesday, June 29, 1994, 8:00 a.m.

1700 North Congress Avenue, Room 118, Stephen F. Austin Building

Austin

According to the complete agenda, the Compost Regulations Development Ad Hoc Group will review and discuss the draft compost quality standards. Open files consisting of meeting notes and any additional associated material will be maintained at the Colonnade Building, 12015 Park 35 Circle, Room 1151, Austin, Texas 78753. These files will be listed as "Compost Regulations Development Group."

Contact: Mary Ruth Holder, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6750.

Filed: May 25, 1994, 4:13 p.m.

TRD-9441405

Thursday, June 30, 1994, 8:00 a.m.

12015 Park 35 Circle, Room 201S, Building E

Austin

According to the complete agenda, the Compost Regulations Development Ad Hoc Group will review and discuss the draft compost quality standards. Open files consisting of meeting notes and any additional associated material will be maintained at the Colonnade Building, 12015 Park 35 Circle,

Room 1151, Austin, Texas 78753. These files will be listed as "Compost Regulations Development Group."

Contact: Mary Ruth Holder, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6750.

Filed: May 25, 1994, 4:13 p.m.

TRD-9441404

◆ ◆ ◆  
**Public Utility Commission of Texas**

Thursday, June 9, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference on Docket Number 13015: application of Southwestern Electric Power Company for authority to maintain records outside the state of Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 26, 1994, 9:07 a.m.

TRD-9441411

Thursday, June 9, 1994, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference on Docket Number 13016: joint application of Central Power and Light Company, Southwestern Electric Power Company, and West Texas Utilities Company for Authority to maintain records out of the state of Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 26, 1994, 9:07 a.m.

TRD-9441412

Friday, June 10, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Public Utility Commission of Texas will hold an open meeting at which the Southwest Power Pool Regional Transmission Group Task Force will be making a presentation regarding their plans to form a regional transmission group. The commission will hear public comment, discuss, and take possible action on this matter.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 25, 1994, 11:11 a.m.

TRD-9441374

Tuesday, June 14, 1994, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 13006-Fort Bend Telephone Company's recovery of costs and lost revenue pursuant to Public Utility Commission Substantive Rule 23.49(c)(12).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1994, 11:38 a.m.

TRD-9441313

Tuesday, June 14, 1994, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 13017: application of Gulf States Utilities Company for authority to maintain records outside the state of Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 26, 1994, 9:07 a.m.

TRD-9441413

Wednesday, July 27, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Rescheduled from Thursday, July 21, 1994, 9:00 a.m.

According to the complete agenda, the Hearings Division will hold a rescheduled hearing in Docket Number 12957-application of Houston Lighting and Power Company for approval of experimental tariff for special contract pricing, rate schedule SCP.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1994, 11:39 a.m.

TRD-9441314

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**Texas Senate**

Friday, June 3, 1994, 9:00 a.m.

1500 Marilla, Dallas City Council Chamber

Dallas

According to the agenda summary, the Joint Select Committee on Historically Underutilized Businesses will discuss greetings and

remarks; remarks; overview; briefing; discussion; overview; public testimony; and adjourn.

Contact: Anthony Haley, P.O. Box 12068, Austin, Texas 78711, (512) 463-0113.

Filed: May 26, 1994, 9:58 a.m.

TRD-9441417

### Texas Workers' Compensation Research Center

Wednesday, June 1, 1994, 10:00 a.m.

300 West 15th Street, Committee Room One, William P Clements, Jr. Building  
Austin

According to the complete agenda, the Board of Directors will discuss and act on the following items: call to order; approval of minutes of meeting of May 4, 1994, public participation; announcements; future Research Center capabilities, recommendation from subcommittee on workplace health and safety to amend research agenda; research progress report, acceptance of report on 1992 insurance deductibles; fiscal year 1994 budget, issues relating to Texas Workers' Compensation Commission and Texas Association of Compensation Consumers v. Hector Garcia, Jr. et al; confirmation of July 6, 1994 meeting, and adjournment

Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 469-7811 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Lavon Guerrero, 105 West Riverside Drive, Suite 100, Austin, Texas 78704, (512) 469-7811.

Filed: May 24, 1994, 11:38 a.m.

TRD-9441312

### Texas Council on Workforce and Economic Competitiveness

Friday, June 3, 1994, 9:00 a.m.

Texas Department of Health Commissioner's Board Room, Seventh Floor, Moreton Building, 1100 West 49th Street  
Austin

According to the complete agenda, the Consolidation Task Force will call to order, opening remarks; the mediation process; break; defining the process for this mediation-designation of parties, adoption of groundrules, setting a calendar of meetings, selection of mediator, designation of responsibilities of staff work group; lunch; public comment; defining the issues; and adjourn (Note: There is no food or drink allowed in this room.)

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kevin Faulkner, P.O. Box 2241, Austin, Texas 78769, (512) 305-7000.

Filed: May 25, 1994, 4:04 p.m.

TRD-9441402

### Regional Meetings

#### Meetings Filed May 24, 1994

The Deep East Texas Private Industry Council Inc. (Revised Agenda.) met at the Pitzer Garrison Civic Center, Lufkin, May 26, 1994, at 10:00 a.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9441317.

The Region XVIII Education Service Center Board of Directors will meet at 2811 LaForce Boulevard, Midland, June 2, 1994, at 6:00 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9441316.

The Gray County Appraisal District Appraisal Review Board met at 815 North Sumner, Pampa, May 27, 1994, 5:00 p.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 685-0791. TRD-9441342.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, June 14, 1994, at 9:00 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9441311.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, June 17, 1994, at 9:00 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9441310.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, June 2, 1994, at 5:00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9441309.

#### Meetings Filed May 25, 1994

The Atascosa County Appraisal District Appraisal Review Board will meet at Fourth

and Avenue J, Poteet, May 31, 1994, at 9:00 a.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9441409.

The Austin-Travis County MHMR Center Public Relations Committee will meet in the Board Room, 1430 Collier Street, Austin, June 1, 1994, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 787004, (512) 447-4141. TRD-9441408.

The Hays County Appraisal District Appraisal Review Board will meet at 21001 North IH-35, Kyle, May 31, 1994, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9441393.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, June 21, 1994, at 9:00 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9441352.

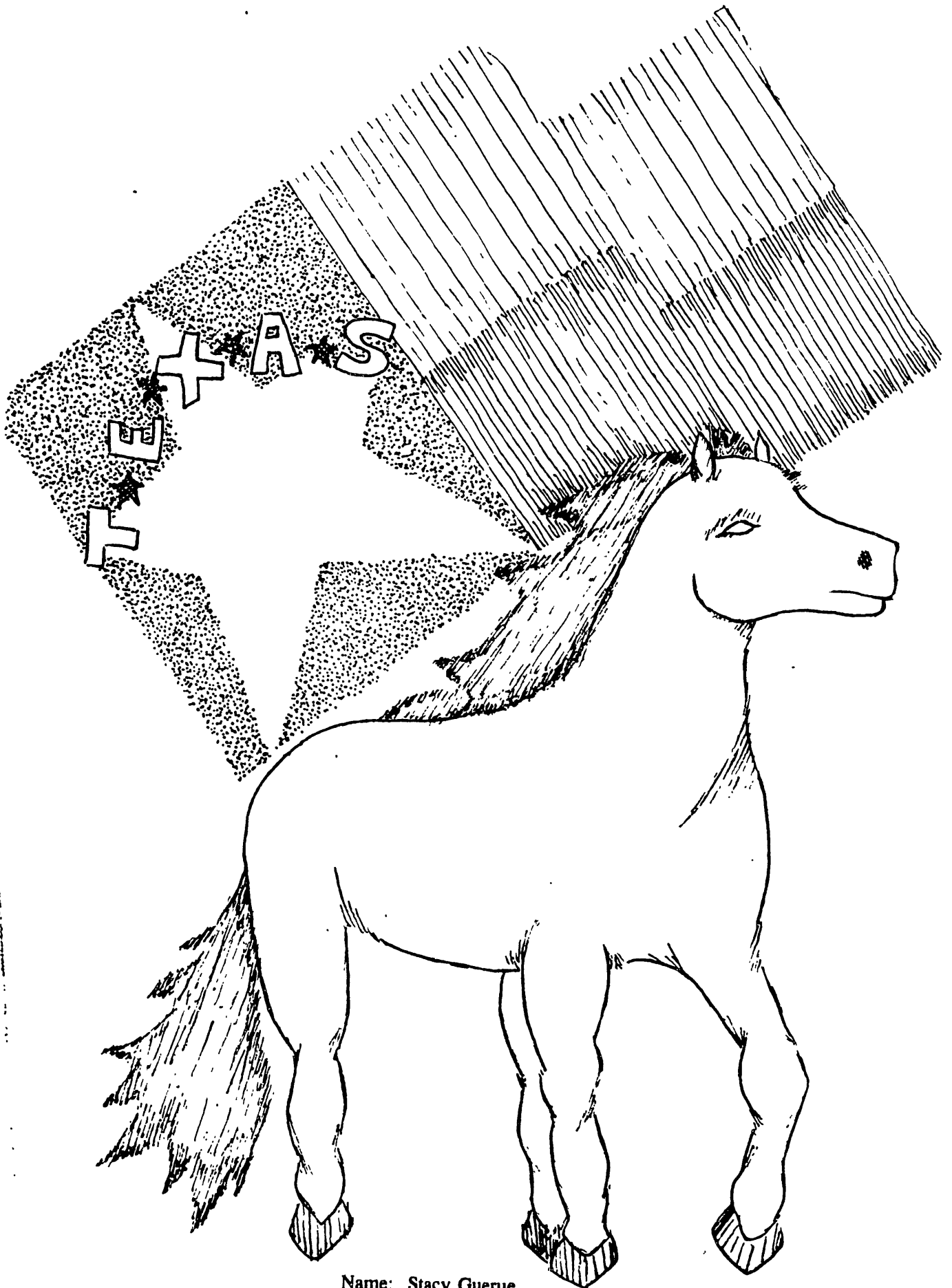
The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, June 23, 1994, at 9:00 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9441351.

The Middle Rio Grande Service Delivery Area MRG-Private Industry Council will meet at the MRGDC Main Office, Carrizo Springs, June 1, 1994, at 11:00 a.m. Information may be obtained from Paul Edwards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9441365.

The Region VII Education Service Center Board of Directors will meet at Region VII ESC, 818 East Main, Kilgore, June 2, 1994, at 10:00 a.m. Information may be obtained from Eddie J. Little, 818 East Main, Kilgore, Texas 75662, (903) 984-3071. TRD-9441403.

#### Meetings Filed May 26, 1994

The Dallas Central Appraisal District Board of Director Regular Meeting will meet at 2949 North Stemmons Freeway, Second Floor, Dallas, June 1, 1994, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons, Dallas, Texas 75247, (214) 631-0520. TRD-9441410.



Name: Stacy Guerue  
Grade: 11  
School: Arlington High, Arlington ISD

# 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 Commission on Alcohol and Drug Abuse

### Consultant Services Contract Award

The following consultant contract (#517-4-2415) award is filed under the provisions of Government Code, Chapter 2254, Subchapter B.

The consultant request was published in the March 4, 1994, issue of the *Texas Register* (19 TexReg 1555).

The contractor will train staff of programs funded by the Texas Commission on Alcohol and Drug Abuse in the use of the Addiction Severity Index.

This contract is: Abt Associates, Inc., 4800 Montgomery Lane, Suite 600, Bethesda, Maryland 20814-5341.

The total value of the contract is \$39,999. The contract starts May 11, 1994, and ends January 1, 1995.

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

TRD-9441299

J Ben Bynum  
Executive Director  
Texas Commission on Alcohol and Drug  
Abuse

Filed: May 24, 1994

## Texas Bond Review Board

### Bi-Weekly Report on the 1994 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of May 7-20, 1994.

Total amount of state ceiling remaining unreserved for the \$252,434,000 subceiling for qualified mortgage bonds under the Act as of May 20, 1994: \$85,431,600.

Total amount of state ceiling remaining unreserved for the \$157,771,250 subceiling for state-voted issues under the Act as of May 20, 1994: \$47,770,363.96.

Total amount of state ceiling remaining unreserved for the \$67,616,250 subceiling for qualified small issues under the Act as of May 20, 1994: \$52,316,250.

Total amount of state ceiling remaining unreserved for the \$45,077,500 subceiling for residential rental project issues under the Act as of May 20, 1994: \$3,517,500.

Total amount of state ceiling remaining unreserved for the \$378,651,000 subceiling for all other bonds requiring an allocation under the Act as of May 20, 1994: \$23,651,000.

Total amount of the \$901,550,000 state ceiling remaining unreserved as of May 20, 1994: \$212,686,713.96.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from May 7-20, 1994: Brazos Higher Education Authority, Eligible Borrowers, Student Loan Bonds, \$50,000,000; McKinney EDC, Leon's Texas Cuisine, Qualified Small Issue, \$4,900,000.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from May 7-20, 1994: Tarrant County HFC, Eligible Borrowers, MRBs, \$18,810,000; Bexar County HFC, Eligible Borrowers, MRBs, \$18,000,000; Bexar County HFC, Eligible Borrowers, MCCs, \$12,000,000; Fort Worth County HFC, Eligible Borrowers, MRBs, \$22,380,000; Harlingen HFC, Eligible Borrowers, MCCs, \$10,000,000; Grand Prairie IDC, NTA Leasing, IRB, \$2,400,000; Veterans Land Board, Eligible Veterans, Land Bonds, \$35,000,886.04; Gulf Coast WDA, CITGO Petroleum, Solid Waste, \$50,000,000; Brazos River Authority, TUEC, Pollution Control, \$50,000,000.

Following is a comprehensive listing of applications which were either withdrawn or cancelled pursuant to the Act from May 7-20, 1994: Gulf Coast Waste Disposal Authority, Houston Chemical, Solid Waste, \$50,000,000.

Following is a comprehensive listing of applications which released a portion of their reserved amount pursuant to the Act from May 7-20, 1994: San Antonio HFC, Residential Rental Atrium One Apartments, \$750,000; San Antonio HFC, Residential Rental Brittany Apartments, \$2,000,000; Southeast Texas HFC, Residential Rental Vista Accommodated Living, \$300,000; Tarrant County HFC, Mortgage Revenue Bonds, \$2,350.

Issued in Austin, Texas, on May 23, 1994

TRD-9441295

Albert L Bacarisse  
Executive Director  
Texas Bond Review Board

Filed: May 23, 1994

## Comptroller of Public Accounts

### Notice of Amendment and Extension of Statewide Disparity/Capacity Study Contract

Notice of Amendment and Extension of Statewide Disparity/Capacity Study Contract Between the Texas Comptroller of Public Accounts and National Economic Research Associates, Inc.

The Comptroller of Public Accounts (Comptroller) announces its intention to amend and extend its contract with National Economic Research Associates, Inc. (NERA) to assist the Comptroller in conducting a statewide Disparity/Capacity study, unless a better offer is received from another private consultant. The Comptroller's contract with NERA was executed on November 4, 1993. Based on the work done to date, the Comptroller has determined that additional work will be necessary to insure that the State receives a comprehensive and reliable study. Such additional work will be conducted during the period June 1, 1994, through December 2, 1994, with an anticipated budget not to exceed \$50,000. The work to be performed is described in the Request For Proposals issued by the Comptroller in the original procurement of the disparity/capacity study contract, and will be of the same nature as NERA has already completed under the project conducting additional surveys, obtaining additional data from state agencies, and creating the necessary databases. To secure these services, the Comptroller intends to amend and extend its contract with NERA unless a better offer is received from another private consultant.

The Comptroller invites private consultant to submit proposals. Questions should be directed to Walter Muse, Legal Counsel, (512) 475-0498. Proposals must be received by the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th Street, Room G-24, Austin, Texas 78774 no later than 4:00 p.m. (CZT) on

June 15, 1994. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation by a committee based on criteria established by the Comptroller in the Request for Proposals.

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. This notice does not commit the Comptroller to pay for any costs incurred prior to the execution of a contract.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441372 Arthur F. Lorton  
Senior Legal Counsel  
Comptroller of Public Accounts

Filed: May 25, 1994

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**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 (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	05/30/94-06/05/94	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on May 23, 1994.

TRD-9441353 Al Endsley  
Consumer Credit Commissioner

Filed: May 25, 1994

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**Texas Education Agency  
Request for Applications**

Request for Applications: Campus Deregulation and Restructuring to Improve Student Achievement RFA #701-94-025. This request for applications is filed in accordance with Texas Education Code, §11.2092, Investment Capital Fund.

Eligible Applicants: The Texas Education Agency (TEA) is requesting applications (RFA #701-94-025) from public school districts on behalf of and specific to an individual school campus that has demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions in partnership with: school staff; parents of students; community and business leaders; school district officers; a nonprofit, community-based or-

ganization; and TEA. A separate application must be submitted by the district on behalf of each campus which is applying for funding.

Description: The purpose of this initiative is to help individual public school campuses implement practices and procedures consistent with deregulation and school restructuring to improve student achievement and increase parental and community involvement in the schools. Grants must be used for the training and development of school staff, parents, and community and business leaders so they understand the academic standards and practices necessary for high academic achievement and appropriate strategies to deregulate and restructure the school to improve student achievement. Grantees must demonstrate the responsible use of funds to achieve: campus deregulation and restructuring to improve academic performance; implementation of a comprehensive plan to ensure the continuous development and training of teachers, parents, and community leaders to understand academic standards, develop effective strategies to improve academic performance, and organize a large constituency of parents and community leaders to hold the school and district accountable for achieving high academic standards; and ongoing progress in achieving higher academic performance.



Dates of Project: This Request for Applications is for projects to be carried out during the 1994-1995 school year. Projects may begin on either August 15, 1994 or on September 1, 1994. The Agency will determine the starting date of each project. Project shall end no later than August 31, 1995.

Project Amount: Each funded campus will receive funding for the 1994-1995 school year at a level not to exceed \$15,000. It is anticipated that approximately 13 new project grants will be awarded in 1994-1995.

Selection Criteria: The TEA reserves the right to select from the highest ranking applications campuses whose total percent of identified students from low-income families exceeds the state percent of students from low-income families by at least 15 percentage points or campuses whose total percent of students passing all tests taken on the most recent administration of the TAAS was at least 15 percentage points below the state average and that demonstrate a commitment to campus deregulation and to restructuring educational practices and conditions made in partnership with stakeholder groups previously identified.

Requesting the Application: A copy of the complete request for applications (RFA #701-94-025) may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA # in your request.

Further Information: For clarifying information about this request, contact James A. Johnson, Jr., Planner IV, Office of Education for Special Populations and Adults, Texas Education Agency, (512) 463-3198.

Deadline for Receipt of Applications: The application must be received in the Document Control Center of the Texas Education Agency no later than 5:00 p. m., Wednesday, July 13, 1994.

Issued in Austin, Texas, on May 25, 1994.

TRD-9441366      Lionel R. Meno  
Commissioner of Education  
Texas Education Agency

Filed: May 25, 1994

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## Executive Council of Physical Therapy and Occupational Therapy Examiners

### Correction of Errors

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposed an amendment to §342.1, concerning Open Records. The rule appeared in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3540).

Due to a publishing error §342.1(b) was incorrectly printed. The section should read "(b) Charges for copies of Public Records. The charge to any person requesting reproductions of any readily available record of the Texas State Board of Physical Therapy Examiners will be the charges established by the General Services Commission."

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## Texas Department of Health

### Designation of Sites Serving Medically Underserved Populations

The Department of Health (department) is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as sites serving medically underserved populations: S. M. Flores Medical Clinic, Inc., located at 1711 North Trinity, San Antonio (Bexar County), Texas; the Southeast Dallas Health Center, located at 9202 Elam Road, Dallas (Dallas County), Texas; and the Pediatric Hematology-Oncology Clinic of Texas Children's Hospital, located at 6621 Fannin Street, Houston (Harris County), Texas. Designations are based on proven eligibility as sites serving disproportionate numbers of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on the designations may be directed to Dora McDonald, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756 (512) 458-7261. Comments will be accepted for 30 days from the date of this notice.

Issued in Austin, Texas, on May 25, 1994.

TRD-9441358      Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: May 25, 1994

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## 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
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Hobson	Everest Exploration, Inc.	L04760	Corpus Christi	0	05/10/94
Houston	Gulf Coast Regional Blood Center	L04755	Houston	0	05/02/94
Throughout Texas	Rice University	L04739	Houston	0	05/05/94
Throughout Texas	Ramex Construction Company	L04774	Laredo	0	05/12/94
Throughout Texas	URI, Inc.	L04733	San Diego	0	04/29/94
Throughout Texas	H.B.C. Engineering Inc.	L04776	Houston	0	04/29/94

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Austin	South Austin Medical Center	L03273	Austin	24	04/20/94
Austin	Austin Radiological Association	L00545	Austin	68	05/09/94
Borger	Cominco Fertilizers (U.S.) Inc.	L02772	Borger	11	05/02/94
Corpus Christi	Memorial Medical Center	L00265	Corpus Christi	53	04/15/94
DFW Airport	Delta Airlines	L03967	DFW Airport	7	05/04/94
Dallas	Doctors Hospital	L01366	Dallas	32	04/29/94
Dallas	Syncor International Corporation	L02048	Dallas	76	05/03/94
Dallas	Kaiser Foundation Health Plan of Texas	L03755	Dallas	17	05/04/94
Dallas	St. Paul Medical Center	L01065	Dallas	35	05/09/94
Denison	Texoma Medical Center	L01624	Denison	37	05/04/94
Denton	University of North Texas	L00101	Denton	44	05/03/94
Fort Worth	University of North Texas Health Science Center	L02518	Fort Worth	18	05/06/94
Houston	University of Houston	L01886	Houston	38	04/25/94
Houston	Rice University	L04639	Houston	1	05/02/94
Houston	Sharpstown General Hospital	L01737	Houston	24	05/04/94
Houston	Mallinckrodt Medical, Inc.	L03008	Houston	34	05/03/94
Houston	Baylor College of Medicine	L00680	Houston	50	05/12/94
Houston	The U.T. Health Science Center at Houston	L03685	Houston	14	04/26/94
Longview	Good Shepherd Medical Center	L02411	Longview	42	04/25/94
Mesquite	Medical Center of Mesquite	L02428	Mesquite	19	05/04/94
Monahans	Craft Wireline Services, Inc.	L04356	Monahans	1	05/05/94
Palestine	Memorial Hospital Foundation Palestine, Inc.	L02728	Palestine	19	05/03/94

Paris	St. Joseph's Hospital and Health Center	L03199	Paris	9	05/04/94
Port Arthur	St. Mary Hospital	L04054	Port Arthur	6	05/13/94
San Angelo	Ethicon, Inc.	L00720	San Angelo	39	05/10/94
San Antonio	Northwest Imaging Center	L03518	San Antonio	6	04/12/94
San Antonio	Trinity University	L01668	San Antonio	20	05/10/94
San Antonio	San Antonio Regional Hospital	L02266	San Antonio	46	05/11/94
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	8	05/10/94
The Woodlands	LifeCell Corporation	L04232	The Woodlands	6	05/03/94
Throughout Texas	B&H Inspection Services, Inc.	L04684	Robstown	1	04/28/94
Throughout Texas	Halliburton Logging Services, Inc.	L02113	Houston	77	04/11/94
Throughout Texas	Guardian NDT Services, Inc.	L04099	Corpus Christi	25	04/28/94
Throughout Texas	Conam Inspection, Inc.	L00478	Houston	65	05/02/94
Throughout Texas	Longview Inspection, Inc.	L03720	Longview	50	05/02/94
Throughout Texas	T. L. James & Company, Inc.	L04162	Houston	6	05/02/94
Throughout Texas	Global X-Ray & Testing Corp.	L03663	Aransas Pass	36	05/04/94
Throughout Texas	Brazos Valley Inspection Services, Inc.	L02859	Bryan	35	05/04/94
Throughout Texas	Ebasco Services Inc.	L02662	Houston	41	05/04/94
Throughout Texas	Industrial NDT Company, Inc.	L04570	Deer Park	10	05/06/94
Throughout Texas	Southwestern Laboratories	L01934	Fort Worth	42	05/09/94
Throughout Texas	BioTrax International	L03574	San Antonio	22	05/09/94
Throughout Texas	Applied Standards Inspection, Inc.	L03072	Beaumont	41	05/05/94
Throughout Texas	Testmaster, Inc.	L03651	Houston	8	05/05/94
Throughout Texas	Guardian NDT Services, Inc.	L04099	Corpus Christi	26	05/04/94
Throughout Texas	Via NDT Engineering and Testing	L04322	Channelview	20	05/04/94
Throughout Texas	Longview Inspection	L01774	Houston	81	05/04/94
Throughout Texas	Kooney X-Ray Inc.	L01074	Barker	69	05/04/94
Throughout Texas	Professional Service Industries, Inc.	L00203	Longview	69	05/04/94
Throughout Texas	Southwestern Laboratories Inc.	L00299	Houston	85	05/06/94
Throughout Texas	Greenspan Incorporation	L04628	Houston	2	05/05/94
Throughout Texas	H & G Inspection Company Inc.	L02181	Houston	83	05/09/94
Throughout Texas	Texas Department of Transportation	L00197	Austin	68	05/05/94
Throughout Texas	ICO, Inc.	L01884	Houston	18	05/06/94
Throughout Texas	Petroleum Industry Inspectors	L04081	Houston	33	05/02/94
Throughout Texas	Petroleum Industry Inspectors	L04081	Houston	34	05/04/94
Throughout Texas	Triple G X-Ray & Testing Labs, Inc.	L03136	Humble	17	05/10/94
Throughout Texas	Southwest Research Institute	L00775	San Antonio	49	05/12/94
Webster	Diagnostic Systems Laboratories, Inc.	L03084	Webster	20	04/29/94

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Aransas Pass	Coastal Bend Hospital	L03446	Aransas Pass	11	05/03/94
El Paso	Sierra Medical Center	L02365	El Paso	24	05/05/94
Houston	Syncor International Corporation	L01911	Houston	86	04/14/94
Houston	Park Plaza Hospital	L03612	Houston	4	05/04/94
Houston	Pan American Industries, Inc.	L03669	Houston	7	05/06/94
Throughout Texas	Ashok H. Gajria & Associates	L04295	Dallas	2	05/05/94
Throughout Texas	Aluminum Company of America	L04316	Rockdale	7	05/11/94
Tyler	NuTech Inc.	L04274	Tyler	12	04/15/94

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Corpus Christi	Syncor International Corporation	L04061	Corpus Christi	2	05/02/94
Dallas	Lake Cliff Hospital	L03274	Dallas	3	05/04/94
Lubbock	Methodist Hospital	L01822	Lubbock	11	04/29/94
San Antonio	Sergeant's Termite and Pest Control, Inc.	L04649	San Antonio	1	05/06/94
Waxahachie	AEP Industries, Inc.	L03826	Waxahachie	3	04/29/94

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amend- ment #	Date of Action
Amarillo	Panhandle Cardiovascular Clinics, P.A.	L04697	Amarillo	0	05/12/94
Austin	St. David's Community Hospital	L00740	Austin	0	05/03/94
Denton	HCA Denton Community Hospital	L04003	Denton	0	05/02/94
Freeport	The Dow Chemical Company	L00451	Freeport	0	05/05/94
Houston	Lyndon B. Johnson General Hospital	L04412	Houston	0	05/02/94
Houston	General Inspection Services	L02319	Houston	0	05/05/94
Lubbock	Cardiology Associates of Lubbock, P.A.	L04468	Lubbock	0	05/02/94
San Antonio	San Antonio Cardiology Clinic, P.A.	L04489	San Antonio	0	04/29/94
Throughout Texas	Berthold Systems, Inc.	L04597	Aliquippa, PA	0	04/29/94

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., 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, 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 May 20, 1994.

TRD-9441303 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: May 24, 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: Fred L. Perez, Jr., M.D., Corpus Christi, R13637; Center for Family Medicine, Houston, R14538; B. A. Pontani, M.D., Montgomery, R14539; E. V. Dimazana, M.D., Corpus Christi, R15539; Bruce Scudday, D.P.M., Rowlett, R18473; Irving Medical Association, P.A., Irving, R19124; Chaparral Imaging Corporation, Midland, R17819; LaserTech Productions, Mundelein, Illinois, Z00803; Tri-City Hospital-Surgery, Dallas, Z00780; Gary C. Payne, D.P.M., Austin, Z00396.

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., 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, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 25, 1994.

TRD-9441364 Susan K Steeg  
General Counsel  
Texas Department of Health

Filed: May 25, 1994

### Notice of Intent to Revoke a Radioactive Material License

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Ranger Scientific, Inc., Burleson, L02235.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has 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 the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license 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., 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 license 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, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 25, 1994

TRD-9441363 Susan K Steeg  
General Counsel  
Texas Department of Health

Filed: May 25, 1994

### Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Houston Medical X-Ray Company (registrant-R11728) of Houston for violations of the Texas Regulations for Control of Radiation. A total penalty of \$10,000 is proposed to be assessed to the registrant for deliberately exposing two individuals to radiation without authorization from a licensed practitioner and for non-healing arts purposes. The registrant is further required to provide written evidence satisfactory to the bureau regarding the corrective actions taken and the date or dates of implementation.

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, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 25, 1994

TRD-9441359 Susan K Steeg  
General Counsel  
Texas Department of Health

Filed: May 25, 1994

### Notices of Revocation of Certificate of Registration

The Texas Department of Health, having duly filed a complaint pursuant to Texas Regulations for Control of Radiation, Part 13 (25 TAC §289.112), has revoked the following certificate of registration. Alfred Marquez, Jr., D.D.S., El Paso, R11442, March 22, 1994.

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, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 25, 1994

TRD-9441360 Susan K Steeg  
General Counsel  
Texas Department of Health

Filed May 25, 1994

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 TAC §289.112), has revoked the following certificates of registration. Oran L. Troegle, D.D.S., Mesquite, R06474, May 13, 1994, Healthco International, Richardson, R06724, May 13, 1994, Herbert R. Melch, M.D., Fort Worth, R11836, May 13, 1994, Backpain of Houston, Houston, R16902, May 13, 1994, Backpain of Houston, Houston, R16903, May 13, 1994, Backpain of Houston, Houston, R16905, May 13, 1994,

Backpain of Houston, Houston, R16908, May 13, 1994;  
Lasermatic Incorporated, Dallas, Z00498, May 13, 1994

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 00 a.m. to 5:00 p.m. (except holidays)

Issued in Austin, Texas, on May 25, 1994

TRD-9441362 Susan K Steeg  
General Counsel  
Texas Department of Health

Filed: May 25, 1994

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**Notice of Revocation of Radioactive  
Material Licenses**

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 TAC §289.112), has revoked the following radioactive material licenses. Texas Clinical Laboratories, Houston, G01466, May 13, 1994, Petrofac Incorporated, Tyler, L02363, May 13, 1994, S H Tolliver Company, San Antonio, L02394, May 13, 1994, Allen Engineering and Testing, Inc, Friendswood, L02863, May 13, 1994; Scientific Tubular Inspection, Laredo, L04631, May 13, 1994.

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 00 a.m. to 5:00 p.m. (except holidays)

Issued in Austin, Texas, on May 25, 1994

TRD-9441361 Susan K Steeg  
General Counsel  
Texas Department of Health

Filed. May 25, 1994

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**Texas Department of Human Services  
Correction of Error**

Texas Department of Human Services submitted a proposed amendment to §90 92, concerning introduction,

County Number	County Name	Number of Months Over	Number of Months					
			OCT	NOV	DEC	JAN	FEB	MAR
053	Crockett	6	91.1	90.9	91.8	92.4	91.3	93.3
076	Fisher	6	93.8	94.9	94.2	94.6	94.0	91.3

Issued, Austin, Texas, on May 25, 1994

TRD-9441370 Nancy Murphy  
Section Manager, Policy and Document  
Support  
Texas Department of Human Services

application, and general requirements in its Nursing Facilities and Related Institutions rule chapter. The rule appeared in the May 17, 1994, issue of the *Texas Register* (19 TexReg 3822).

The undesignated head of the rule should read "Construction Standards for Facilities Serving Persons with Mental Retardation or Related Conditions".

Section 90 92 should read "*§90.92. Introduction, Application, and General Requirements for Facilities Serving Persons with Mental Retardation or Related Conditions.*"

In §90.92(b)(2), line 13 should read "...or fewer must meet the evacuation requirement..."

◆ ◆ ◆  
**Open Solicitation**

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for Crockett County #053 and Fisher County #076, identified as follows, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous, October 1993-March 1994, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must submit a written reply (as described in 40 TAC §19 2004) to TDHS, Gary L. Allen, Certification, Provider Enrollment, and Billing Services, Long Term Care-Regulatory, Mail Code Y-976, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5:00 p.m., July 1, 1994, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order that the beds which were being proposed for Medicaid certification were initially licensed. The primary selection process will be completed on July 11, 1994. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, TDHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for those individuals wishing to construct a facility.

Filed. May 25, 1994

◆ ◆ ◆  
**Notice of Public Hearing**

The Texas Department of Human Services (TDHS) will conduct a public hearing to accept comments regarding its proposal to amend the reimbursement methodology for Intermediate Care Facilities for the Mentally Retarded

Level V children's facilities. The public hearing will be held at 9:00 a.m., Wednesday, June 15, 1994, in the public hearing room of the John H. Winters Building (first floor, East tower) 701 West 51st Street, Austin, Texas. The proposal was published in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3239).

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sherri Williams (512) 450-4817 by June 10, 1994, so that appropriate arrangements can be made.

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

TRD-9441307 Nancy Murphy  
Section Manager, Policy and Document  
Support  
Texas Department of Human Services

Filed: May 24, 1994

◆ ◆ ◆  
**Public Notice**

The Texas Department of Human Services (TDHS) plans to convert from its current paper-based benefits issuance and delivery system to an Electronic Benefit Transfer (EBT) process utilizing Electronic Funds Transfer (EFT) and point-of-sale (POS) technologies in the Aid to Families with Dependent Children (AFDC) and Food Stamps programs.

Retailers participating in the Texas EBT program may use a third party processor provided that the third party processor meets state approved third party interface specifications and certification standards. In accordance with 7 Code of Federal Regulations, §274.12 (h)(5)(i), TDHS announces the availability of the third party processor specifications.

Persons interested in obtaining copies of the document, entitled Acquirer Interface Specifications, may write or call Karl Schuberth, Transactive Corporation, 801 Congress Avenue, Suite 200, Second Floor, Austin Texas 78701, (512) 478-7600.

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

TRD-9441308 Nancy Murphy  
Section Manager, Policy and Document  
Support  
Texas Department of Human Services

Filed: May 24, 1994

◆ ◆ ◆  
**Texas Natural Resource Conservation  
Commission**

**Correction of Errors**

The Texas Natural Resource Conservation Commission adopted amendments to §115.10. The rule appeared in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3703).

Due to a submission error in the common preamble to the Chapter 115 adoption §115.145 and §115.146 were listed as being adopted without changes and were not reprinted. Actually, changes were made to those two sections, as discussed on 19 TexReg 3711 and the reference to adoption with changes was an inadvertent omission

The following are the two sections in their entirety.

**§115.145. Approved Test Methods** For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with this undesignated head shall be determined by applying the following test methods, as appropriate:

(1) for determination of gas flow rate—Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A);

(2) for determination of gaseous organic compound emissions by gas chromatography—Test Method 18 (40 CFR Part 60, Appendix A);

(3) for determination of volatile organic compound (VOC) leaks and for monitoring a carbon canister in accordance with §115.144(3)(D) (relating to Inspection and Monitoring Requirements)—Test Method 21 (40 CFR Part 60, Appendix A);

(4) for determination of total gaseous nonmethane organic emissions as carbon—Test Method 25 (40 CFR Part 60, Appendix A);

(5) for determination of total gaseous organic concentration using a flame ionization or a non dispersive infrared analyzer—Test Methods 25A or 25B (40 CFR Part 60, Appendix A);

(6) for determination of VOC concentration of wastewater samples—Test Method 5030 (purge and trap) followed by Test Method 8015 with a DB-5 boiling point (or equivalent column), and flame ionization detector, with the detector calibrated with benzene (SW-846 and 40 CFR Part 261), Test Methods 3810, 5030 (followed by 8020), 8240, 8260, and 9060 (SW-846 and 40 CFR Part 261); Test Methods 602 and 624 (40 CFR Part 136); Test Method 5310(B) (Standard Methods 17th Edition); or Test Method 25D (40 CFR Part 60, Appendix A);

(7) for determination of true vapor pressure—American Society for Testing and Materials Test methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989, and

(8) minor modifications to these test methods approved by the Executive Director

**§115.146. Recordkeeping Requirements.** For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any person who is the owner or operator of an affected source category within a plant shall comply with the following recordkeeping requirements.

(1) Complete and up-to-date records shall be maintained as needed to demonstrate compliance with §115.142 of this title (relating to Control Requirements) which are sufficient to demonstrate the characteristics of wastewater streams and the qualifications for any exemptions claimed under §115.147 of this title (relating to Exemptions).

(2) Records shall be maintained of the results of any inspection or monitoring conducted in accordance with the provisions specified in §115.144 of this title (relating to Inspection and Monitoring Requirements).

(3) Records shall be maintained of the results of any testing conducting in accordance with the provisions specified in §115.145 of this title (relating to Approved Test Methods).

(4) Records shall be maintained of the dates and reasons for any maintenance and repair of the required control

devices and the estimated quantity and duration of VOC emissions during such activities

(5) All records shall be maintained at the plant for at least 2 years and be made available upon request to representatives of the Texas Natural Resource Conservation Commission, U.S. Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area.

On page 3704, first column, first paragraph, should read: "The revisions to §§115.152, 115.153, 115.155-115.157, and 115.159, concerning Municipal Solid Waste Landfills, establish requirements for the control of VOC emissions resulting from the decay of material in sanitary landfills in El Paso. These requirements are based upon draft EPA New Source Performance Standards (NSPS) rules for landfills. Municipal Solid Waste Landfills in the H/GA area have been included as a contingency measure."

On page 3704, second column, fifth paragraph, should read: "The new §§115.552, 115.553, 115.555-115.557, and 115.559, concerning Petroleum Dry Cleaning Systems, establish control requirements that petroleum-based dry cleaning facilities must use to reduce VOC emissions. This rule is a contingency measure for H/GA, DFW, and El Paso."

◆ ◆ ◆

The Texas Natural Resource Conservation Commission adopted amendments to §§115.121, 115.122, 115.126, 115.127, and 115.129. The rules appeared in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3734).

In §115.129(7) should read: "...but no later than one year, after the Texas Natural Resource Conservation Commission..."

◆ ◆ ◆

The Texas Natural Resource Conservation Commission adopted amendments to §§115.211-115.217, and 115.219. The rules appeared in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3741).

In §115.212(11)(B) should read: ". at a loading rack when the vapor recovery system(s)..."

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### Notice of Opportunity to Comment on Administrative Actions

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions.

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AO's) pursuant to §382.096 of the Texas Clean Air Act, Health and Safety Code, Chapter 382. Section 382.096 of the Act requires that the TNRCC may not approve these AO's 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 June 29, 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 AO's is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-0600 and at the applicable Regional Office listed below. Written comments about these AO's 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 June 29, 1994. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-0606 or (512) 239-0626. The TNRCC Staff Attorneys are available to discuss the AO's and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AO's should be submitted to the TNRCC in writing.

(1) COMPANY: Abell Corporation/Texas Liquid Fertilizer (a Division of Abell Corporation) and a voluntary order concerning Phoenix Distribution Services, Inc.

LOCATION: Houston, Harris County.

TYPE OF FACILITY: caustic storage and blending facility.

RULE VIOLATED: 30 TAC §101.4, by emitting nuisance level emissions.

PENALTY: \$6,000.

STAFF ATTORNEY: Ronnie Jones, (512) 239-0584.

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(2) COMPANY: Brown and Root, Inc.

LOCATION: Fort Worth, Tarrant County.

TYPE OF FACILITY: hot mix asphalt plant.

RULE VIOLATED: 30 TAC §101.4, discharging nuisance level emissions.

PENALTY: \$5,000

STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466.

REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(3) COMPANY: Cactus Investment Company.

LOCATION: Houston, Harris County.

TYPE OF FACILITY: demolition project.

RULE VIOLATED: 30 TAC §101.20(2), failure to perform the required asbestos survey prior to demolition; and failure to provide required notification of the demolition.

PENALTY: \$0.

STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450.

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(4) COMPANY: Carriage House Motors.

LOCATION: Houston, Harris County.

TYPE OF FACILITY: used motor vehicle sales operation.



RULE VIOLATED: 30 TAC §114.1(c)(1), offering for sale a motor vehicle which was not equipped with the emission control systems or devices with which the motor vehicle was originally equipped.

PENALTY: \$500.

STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466.

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(5) COMPANY: City Auto Sales.

LOCATION: Texas City, Galveston County.

TYPE OF FACILITY: Used motor vehicle sales operation.

RULE VIOLATED: 30 TAC §114.1(c)(1), missing or inoperable emission control systems or devices with which the motor vehicles were originally equipped.

PENALTY: \$500.

STAFF ATTORNEY: Randall Terrell, (512) 239-0577.

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(6) COMPANY: C and L Motors.

LOCATION: Houston, Harris County.

TYPE OF FACILITY: Used car lot.

RULE VIOLATED: 30 TAC §114.1(c)(1), missing or inoperable emission control systems or devices with which the motor vehicles were originally equipped.

PENALTY: \$0.

STAFF ATTORNEY: Randall Terrell, (512) 239-0577.

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900

(7) COMPANY: Cobrans Corporation.

LOCATION: Houston, Harris County.

TYPE OF FACILITY: abrasive cleaning and painting facility.

RULE VIOLATED: 30 TAC §116.110(a), unauthorized construction and operation of an abrasive cleaning and painting facility

PENALTY: \$0.

STAFF ATTORNEY: Terry G. Salem, (512) 239-0469.

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(8) COMPANY: Ekco/Glaco, Ltd.

LOCATION: Dallas, Dallas County

TYPE OF FACILITY: industrial baking pan recoating plant.

RULE VIOLATED: 30 TAC §115.421(a)(9)(A)(iii), exceeding the VOC emission rate for coating applications

PENALTY: \$5,250.

STAFF ATTORNEY: Randall Terrell, (512) 239-0577.

REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(9) COMPANY: Environmental Transport Corporation.

LOCATION: Fort Worth, Tarrant County

TYPE OF FACILITY: used oil filter cleaning plant.

RULE VIOLATED: 30 TAC §116.110, unauthorized construction and operation of a heat cleaning oven.

PENALTY: \$0.

STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466.

REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(10) COMPANY: Fleet Design of Texas, Inc.

LOCATION: Gainesville, Cooke County.

TYPE OF FACILITY: automotive accessory manufacturing plant

RULE VIOLATED: 30 TAC §116.110(a), unauthorized construction and operation of a chrome plating facility

PENALTY: \$550.

STAFF ATTORNEY: Terry G. Salem, (512) 239-0469.

REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Arlington, Texas 76116, (817) 732-5531

(11) COMPANY: Gifford-Hill Pipe Company, a wholly-owned subsidiary of Beazer West, Inc.

LOCATION: Grand Prairie, Dallas County.

TYPE OF FACILITY: concrete pipe manufacturing plant

RULE VIOLATED: 30 TAC §116.110, operating a concrete pipe manufacturing plant without required authorization (company failed to submit a renewal application for TNRCC Permit Number R-767 and the permit expired on March 26, 1991, pursuant to 30 TAC §116.311(c)).

PENALTY: \$500.

STAFF ATTORNEY: Walter Ehresman, (512) 239-0573.

REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(12) COMPANY: John Parker Auto Sales, Inc.

LOCATION: Houston, Harris County.

TYPE OF FACILITY: used car sales business.

RULE VIOLATED: 30 TAC §114.1(c)(1) and §114.1(c)(2), missing or inoperable emission control systems or devices.

PENALTY: \$0.

STAFF ATTORNEY: Terry G. Salem, (512) 239-0469

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(13) COMPANY: Marrshare Leasing, Inc.

LOCATION: Houston, Harris County.

TYPE OF FACILITY: Apartment Units.

RULE VIOLATED: 30 TAC §101.20(2), failure to comply with notification requirements of the Federal National Emission Standards for Hazardous Air Pollutants (asbestos).

PENALTY: \$1,000

STAFF ATTORNEY: Ronnie Jones, (512) 239-0584

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(14) COMPANY Mestek, Inc.

LOCATION: Dallas, Dallas County.

TYPE OF FACILITY: air-conditioning equipment manufacturing plant.

RULE VIOLATED: 30 TAC §116.110(a), by modifying a paint spray booth without first obtaining a permit or qualifying for a standard exemption

PENALTY: \$1,000.

STAFF ATTORNEY Walter Ehresman, (512) 239-0573.

REGIONAL OFFICE 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(15) COMPANY Mobil Chemical Company.

LOCATION: Beaumont, Jefferson County.

TYPE OF FACILITY petrochemicals manufacturing plant.

RULE VIOLATED 30 TAC §101.20(2), failing to conduct annual inspections and submit associated reports for benzene internal floating roof Tank Number 25 by inspecting the primary seal (from 1989 to 1992), failing to tag and monitor, for two months following detection and repair, all leaking components in volatile hazardous air pollutant (VHAP) service-tags were missing from Valve Numbers 0001, 0003, 336, 386, and 4674 in the UDEX area; and failing to record required information concerning leaking VHAP components-in UDEX area, no reason given for delay of repair or date of successful repair for Flange Number 974 (leak detected October 3, 1991); 30 TAC §116.115, failing to comply with TNRCC Permit Number R-18838 General Provision 6(d) and Special Provision 7 as to annual tank inspections required to be coordinated with TNRCC staff, using procedures acceptable to that staff; 30 TAC §101.6, by failing to report upsets (smoking flares) 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.

(16) COMPANY Oiltanking Houston, Incorporated

LOCATION. Houston, Harris County

TYPE OF FACILITY marine loading facility

RULE VIOLATED 30 TAC §116.4, by exceeding the maximum permitted hourly MTBE barge loading rate and by exceeding the permitted VOC annual emission limits for six bulk liquid storage tanks

PENALTY \$9,180

STAFF ATTORNEY: Randall Terrell, (512) 239-0577.

REGIONAL OFFICE 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900

(17) COMPANY Phillips Pipe Line Company.

LOCATION. Rosharon, Brazoria County

TYPE OF FACILITY a 12-inch products pipeline

RULE VIOLATED 30 TAC §101.4, discharging nuisance level emissions

PENALTY \$18,000

STAFF ATTORNEY Walter Ehresman, (512) 239-0573

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(18) COMPANY: Phillips 66 Company.

LOCATION: Pasadena, Harris County.

TYPE OF FACILITY: chemical plant.

RULE VIOLATED: 30 TAC §101.20(1), violation of applicable New Source Performance Standards (NSPS): failure to test using EPA Method 2 as required; failure to determine compliance with net heating value provisions in manner required; failure to determine compliance with exit velocity provisions in manner required under the regulation; failure to combust flare emissions as required under the regulation.

PENALTY: \$3,000.

STAFF ATTORNEY: Walter Ehresman, (512) 239-0573.

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(19) COMPANY: PRD, Inc.

LOCATION: Houston, Harris County.

TYPE OF FACILITY: demolition project

RULE VIOLATED: 30 TAC §101.20(2), which requires compliance with Federal National Emissions Standards for Hazardous Air Pollutants (asbestos). Failure to provide written notice of intention to demolish.

PENALTY: \$0.

STAFF ATTORNEY: Terry G. Salem, (512) 239-0469.

REGIONAL OFFICE: 4150 Westheimer at Mid Lane, Houston, Texas 77027-4417, (713) 625-7900.

(20) COMPANY: Priefert Manufacturing Company, Inc.

LOCATION. Mount Pleasant, Titus County.

TYPE OF FACILITY: cattle, hay and horse equipment facility

RULE VIOLATED. 30 TAC §116.110(a), constructing and operating a paint spray booth without first obtaining a permit or qualifying for a standard exemption.

PENALTY: \$500.

STAFF ATTORNEY. Peter T. Gregg, (512) 239-0450.

REGIONAL OFFICE: 1304 South Vine Avenue, Tyler, Texas 75701, (903) 595-2639.

(21) COMPANY: Texas Hill Country Meat Snacks.

LOCATION. Kerrville, Kerr County.

TYPE OF FACILITY: meat smokehouse.

RULE VIOLATED: 30 TAC §116.110(a), constructing and operating a meat smokehouse without first obtaining a permit or qualifying for a standard exemption.

PENALTY. \$0.

STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450.

REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(22) COMPANY: Vulean Materials Company.

LOCATION: Clyde, Callahan County.

TYPE OF FACILITY: portable asphalt concrete plant

RULE VIOLATED: 30 TAC §101.20(1), exceeded the

New Source Performance Standards (NSPS) opacity limit for hot mix asphalt; 30 TAC §116.115, failure to comply with Special Provision Number 1 of TNRCC Permit Number 18795B by exceeding the NSPS opacity limit, and failure to comply with Special Provision Number 6 of TNRCC Permit Number 18795B by exceeding required opacity limit for the drum/dryer stack

PENALTY: \$1,000

STAFF ATTORNEY. Peter T. Gregg, (512) 239-0450.

REGIONAL OFFICE 209 South Danville, Suite B-200, Abilene, Texas 79605, (915) 698-9674.

Issued in Austin, Texas, on May 25, 1994

TRD-9441357 Mary Ruth Holder  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed, May 25, 1994

## Request for Proposal

The Texas Natural Resource Conservation Commission (TNRCC) requests proposals for conducting a demonstration project and study to help Texas local governments of various populations and the private sector convert to accounting systems and set rates that reflect the full costs of providing waste management services and are also proportionate to the amount of waste generated.

Contractors responding to this request shall provide three copies of their proposal to Robert K. Schultz, P.E., Municipal Solid Waste Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Park 35, Building F., Room 1917, Austin, Texas 78711-3087.

Proposals must be received no later than 4:00 p.m., Thursday, June 30, 1994, (closing date).

Contractors who intend to submit a proposal should contact Robert K. Schultz for additional information.

In accordance with the Texas Professional Services Procurement Act, the TNRCC expects to select a contractor based upon demonstrated competence and qualifications. The value of the proposed contract is expected to exceed \$10,000 but will be less than \$100,000. Government entities, state agencies, professional and government service firms, consulting firms, and private consultants are invited to submit proposals.

Contractors are expected to develop their own proposed "scope of service" to best achieve the requirements stated in this request for proposal (RFP).

Proposals are expected to be between five and 20 pages in length and should contain a statement of qualifications and a proposed scope of services. Proposals will be screened by the TNRCC staff based upon a point scoring system.

The TNRCC staff will select the most highly qualified provider on the basis of demonstrated competence and qualifications, and then will attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated, then the TNRCC staff will end negotiations with that provider and will attempt to negotiate a contract with the next most highly qualified provider. The TNRCC will continue the process until a contract is entered into or all RFP's are rejected.

Issued in Austin, Texas, on May 25, 1994.

TRD-9441368 Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed May 25, 1994

## University of Houston System

### Request for Proposal for Providing Project Management Services for the University of Houston-Downtown Academic/Student Service Building and Student Life Building

#### I. BASIC INFORMATION.

1. Name of Firm: University of Houston System.
2. Address of Headquarters Office and All Branch Offices. 1600 Smith Street, Suite 3400, Houston, Texas 77002.
3. Name, Address and Telephone Numbers of Principal(s) to Contact for Additional Owner Inquires: James R. Berry, AIA, Associate Vice Chancellor, University of Houston System, Office of Facilities Planning and Construction, 4211 Elgin, Suite 200, Houston, Texas 77204-1852, Telephone: (713) 743-8025.

II. PURPOSE OF REQUEST. The University of Houston System (The Client) wishes to engage the services of a professional project management firm to assist The University in the timely completion of two critically important projects for the University of Houston Downtown. The project involves construction of two buildings: (The Work)

(1) Academic/Student Service Building of approximately 147,000 gross square feet of space containing classrooms, offices, student services facilities, an auditorium and a large indoor program space. Beneath the building will be 100,800 square feet of space for parking on three levels. Construction is scheduled for completion in March, 1997. The project budget is \$22.4 million.

(2) Student Life Building of approximately 33,557 square feet of space containing a gymnasium for basketball, volleyball, aerobics and exercise areas. Also included are racquetball courts and locker rooms. Construction is scheduled for completion in September 1995. The project budget is \$3.2 million.

The project managers will be responsible for coordinating of the Project Team namely, the staff of the University of Houston System Office of Facilities Planning and Construction, UH Downtown planning committee staff, and all consultants retained for the projects.

Work will begin with organization of the project, preparation of an overall schedule and a critical review of the program, site, and budget.

Architects and engineers have been selected by the university and will be under contract at the time the project management services begin. The consultants selected are as follows:

- (1) Academic/Student Service Building:  
Architect-Pierce Goodwin Alexander & Lunville;  
Engineers-Structural-CBM Engineers;

Engineers-MEP-Burns, DeLatta McCoy.

(2) Student Life Building

Architect-RWS Architects, Inc ,

Engineers-Structural-D Y. Davis;

Engineers-MEP-Burns, DeLatta McCoy

(3) Rey de la Reza, AIA, Architects, as design consultant for both projects.

(4) TSC Engineers for Civil Engineers

To be selected are Landscape Architects and Geotechnical Consultants

Work has been completed in the areas of site survey, environmental investigation, underground construction investigation archeological review, and flood control modeling

Documentation of this site-related work, and the Project Program Guide and Budget approved by the Board of Regents, will be made available to the project manager and serve as the basis of work to be accomplished

The project manager selected will need to provide the following services in support of the Office of Facilities Planning and Construction and The University of Houston

Downtown for the development of both projects

III SCOPE OF WORK. For each of the following phases of The Scope of Work, the firm responding to this RFP must provide a brief summary of how the firm proposes to accomplish the tasks and the time to complete the tasks.

#### A. PRECONSTRUCTION PHASE.

##### 1. Organization.

Define the decision-making and communication process.

Determine the types of additional consultants required to complete the Project and the nature of each consultant's participation.

Assist the University in conducting interviews and making selections of the additional consultants where required.

Assist the University in negotiating and completing agreements with the selected consultants not already selected.

Define the decision-making and reporting procedures for the Project.

Establish working relationships and communication procedures among the Project Team members

##### 2. Definition and Translation.

Confirm the project budget and schedule based upon goals and priorities, images and environment, physical elements, and time requirements established by the University.

##### 3 Design

Manage and coordinate the activities of the Project Team

Provide construction cost analyses and value analyses

Consult with the Project Team on construction matters

Evaluate design presentations and alternatives

Provide periodic estimates to verify adherence to budget

Provide and update project development schedules throughout design process up to and including bid process

#### 4 Construction Documents, Bidding and Contracting

Manage and coordinate the activities of the Project Team

Review working drawings, specifications and other Project Team work products for completeness and accuracy

Coordinate the preparation of working drawing and specifications with the Universities facilities management system.

Provide a pre-bid estimate to verify adherence to budget

Receive and analyze bids for the Work described in the Construction documents

Assist the University's in contracting with successful bidders

#### B CONSTRUCTION PHASE.

##### 1 Construction Services

Conduct periodic construction project meetings with the Project Team and provide notes of those meetings to the participants

Coordinate the Project Team to expedite solutions to field problems and to minimize delays and cost increases

Prepare and update cash flow schedules for the Treasurer's Office of the University of Houston System along with monthly budget compliance reports

Monitor the progress of the Work, including construction productivity and schedule performance. Prepare monthly project progress reports for the University.

Develop and implement a process for the preparation, review and processing of change orders.

Develop and implement a process for the review and approval of shop drawings, samples and other submittals

Monitor quality compliance.

Coordinate the Project Team to expedite project close-out.

#### C. POST-CONSTRUCTION PHASE.

Assist the University in coordinating and scheduling move-in and start-up of operations.

Assemble warranties, guarantees, instructions and record drawings and deliver such documents to the University.

Prepare post-construction reports for Project Team

#### D. GENERAL SERVICES THROUGHOUT.

Serve as the University's representative to the Project Team.

Coordinate the preparation of agendas and documentation of Project Team meetings.

Manage and coordinate the University's review and approval process.

Prepare for the University a comprehensive control budget based on the approved budget for all categories of Project expenditures and periodically update the budget

Develop and implement a system for the review and processing of monthly payment requests

During Design, Construction Documents Bidding and Contracting, prepare an overall schedule for the Project and separate schedules for each phase of the Project Periodically update the overall and separate schedules

Monitor the work of the Project Team for adherence to the Program, budget and the schedule.

#### IV PROPOSED PERSONNEL AND PROJECT ORGANIZATIONAL CHART

1 Provide a project organizational chart for the UH-Downtown Projects. In addition to your staff, include consultants and contractors.

2 Provide information in resume format about any member of your organization you anticipate assigning to this Project.

#### V SUMMARY OF RELATED EXPERIENCE

1 Provide a brief summary of no more than one page of projects of similar character and size accomplished by your firm within the last five years. Indicate the role played, the cost of the project, the time to complete the project. Also indicate the name, address, and telephone number of a reference for the project whom the university may contact to discuss your role in that project.

2 Submissions received without references of equivalent projects will not be considered.

#### VI METHOD OF SELECTION

1 Submittals will be reviewed by the Office of Facilities Planning and Construction and the Project Planning Committee and reduced to a list of no more than eight. A report will be provided to the Facilities Planning and Building Committee of the Board of Regents summarizing the expertise of the selected short list.

2 The Board of Regents will conduct interviews of those firms on the short list. Each firm will be given 30 minutes to make a verbal and slide presentation. Following the presentations, the Board will deliberate and select first, second, and third choices for the Project. Facilities Plan-

ning and Construction will then be authorized to enter into negotiations with the first firm. If unsuccessful with the first firm, negotiations will then proceed with the second and subsequently the third, if necessary.

3 Agreements similar to the one attached as Exhibit 1, form the basis of the agreement between the Project Manager and the University.

#### VII SUBMITTAL INFORMATION

1 Response to this request of proposal should be submitted in triplicate in bound notebook form with pages no larger than 8-1/2 by 11.

2 Responses should be in the Office of Facilities Planning and Construction, 4211 Elgin, Suite 200, Houston, Texas 77204-1852, no later than 5:00 p.m., June 24, 1994.

3 Questions regarding the proposal should be addressed to James R. Berry, AIA, Associate Vice Chancellor, (713) 743-8025.

4 The University of Houston System assumes no responsibility for the cost of preparation of this Request for Proposal. There is no expressed or implied use of these documents for any other purpose than soliciting information from interested firms. All rights to the use of the documents for this Project are retained by the University of Houston System. Proposals will not be returned to the respondent.

Issued in Houston, Texas, on May 18, 1994

TRD-9441261

James R. Berry  
Associate Vice Chancellor  
University of Houston System

Filed May 23, 1994



