

TEXAS REGISTER

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How to Use the Texas Register

Information Available: The 11 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

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, publishes on an annual basis.

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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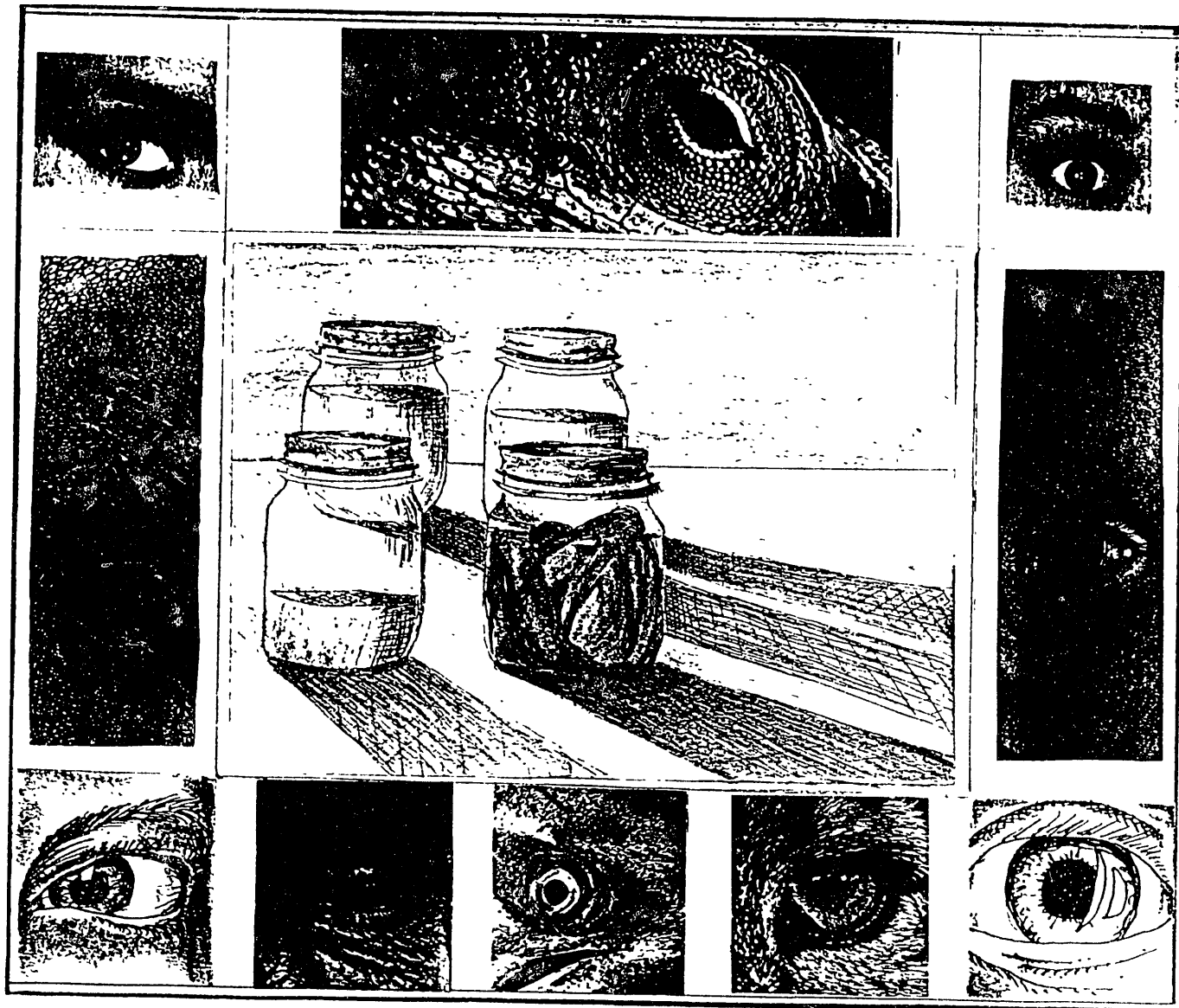
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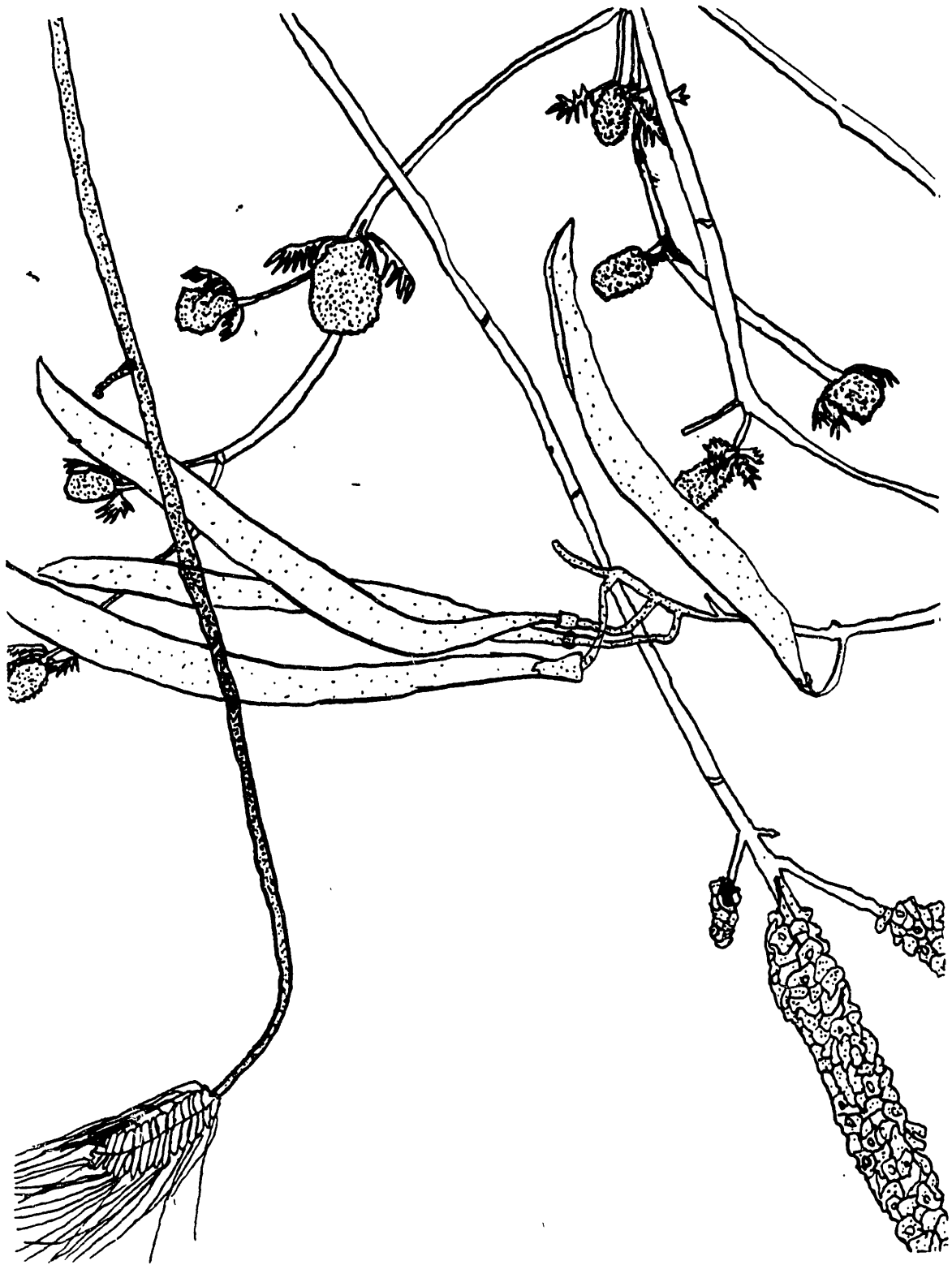
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THE GOVERNOR

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

Appointments Made July 5, 1994

To serve as chair of the Governor's Committee on People with Disabilities for a term at the pleasure of the Governor. Mr. Jarke will be replacing Ralph Dean Rouse, Jr., of Dallas, who is no longer a member of the committee.

To be a member of the Advisory Commission on State Emergency Commissions for a term to expire September 1, 1999: The Honorable Ron Harris, Collin County Judge, 210 South McDonald Street, McKinney, Texas 75069. Judge Harris is being appointed.

To be a member of the State Board of Barber Examiners for a term to expire January 31, 1999: Hoye D. Tibbets, Route 4 Box 50A1, Grandview, Texas 76050. Mr. Tibbets will be replacing David B. McCall of Austin, whose term expired.

To be a member of the Central Texas Regional Review Committee for a term to expire January 1, 1995: The Honorable Robert Lee Powell, Gatesville City Council, 112 North 31st, Gatesville, Texas 76528. Councilmember Powell will be replacing Jean Durham of Copperas Cove, whose term expired.

To be a member of the Rio Grande Regional Review Committee for a term to expire January 1, 1996: The Honorable Okey D. Lucas, Mayor, City of Van Horn, P.O. Box 1042, Van Horn, Texas 79855. Mayor Lucas will be replacing John Ferguson of Presidio, whose term expired.

To be a member of the Texoma Regional Review Committee for a term to expire January 1, 1995: The Honorable Maquestia J. Johnson, Mayor, City of Honey Grove, 610 West Main Street, Honey Grove, Texas 75466. Mayor Johnson will be replacing Billy Joe Roberts of Windom, whose term expired.

To be a member of the Concho Valley Regional Review Committee for a term to expire January 1, 1996: Gary Acevedo, 115 South Irvins, San Angelo, Texas 76903.

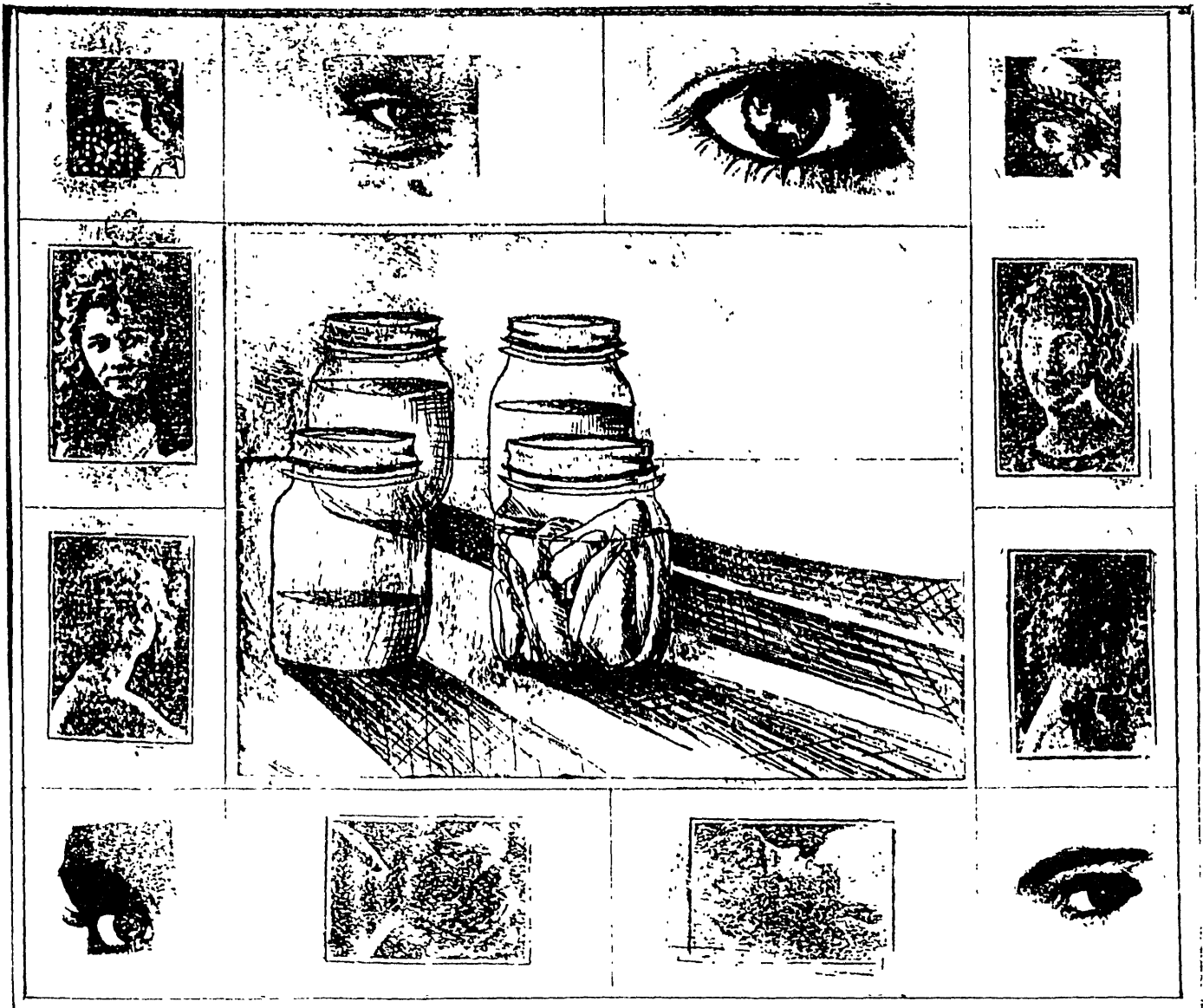
To be a member of the State Independent Living Council for a term to expire October 29, 1995: Charles G. Burtis, 4824 Travis Cook Road, Austin, Texas 78735. Mr. Burtis is being appointed as an ex officio member of the council pursuant to the Rehabilitation Act of 1973 as amended, Public Law 102-569.

To be a member of the State Seed and Plant Board for a term to expire October 6, 1995: Dick L. Auld, Ph.D, Texas Tech University, P.O. Box 42122, Lubbock, Texas 79409-2122. Dr. Auld is being reappointed. Issued in Austin, Texas, on July 13, 1994.

TRD-9443830

Ann W. Richards
Governor of Texas





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 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 1. Administration

Subchapter C. Administrative Hearings

• 10 TAC §§1.51-1.56

The Texas Department of Housing and Community Affairs proposes new §§1.51-1.56 describing the charges that the agency will make for copies of public records. These rules are proposed to comply with Chapter 428, Acts of the 73rd Legislature, which requires state agencies to adopt rules setting forth the charges the agency will make for copies of public records. The Texas Department of Housing and Community Affairs follows the guidelines adopted by the Texas General Services Commission.

Johanna McCully-Bonner, general counsel, has determined that for the first five-year period the rules are in effect, there may be fiscal implications for state government as a result of enforcing or administering the rules. The agency is unable to determine the costs involved because such costs will depend on the unknown type and number of open records request made by individuals. There will be no effect on local government as a result of enforcing the proposed rules.

Ms. McCully-Bonner also has determined that for each year of the first five years that the rules are in effect the benefit to the public will be clarification and accessibility of the cost of copies of public records. There will be a cost to persons required to comply with the rules as proposed. The agency is unable to determine the costs involved because such costs will depend on the unknown type and number of open records request made by small or large business and/or individuals. The cost will be incurred only by small or large business and/or individuals that request copies of public records from the Texas Department of Housing and Community Affairs.

Written comments on the proposed rules may be submitted to Johanna McCully-Bonner, General Counsel, Texas Department of

Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78701.

The new sections are proposed under the authority of the Texas Government Code, Chapter 2306; Acts of the 73rd Legislature, Chapter 141 (SB 45), effective May 16, 1993; and Acts of the 73rd Legislature, Chapter 725 (SB 1356), effective September 1, 1993, which provide the Texas Department of Housing and Community Affairs the authority to adopt rules governing the administration of the agency and its programs and Chapter 428, Acts of the 73rd Legislature, which requires the adoption of rules on open records charges.

§1.51. General Provisions.

(a) Introduction. Chapter 428, Acts, 73rd Legislature, requires state agencies to adopt rules that specify the charges the agency will make for copies of public records. The Texas Department of Housing and Community Affairs promulgates the following sections regarding the charges that will be made for copies of public records. Chapter 428, Acts, 73rd Legislature, provides that the General Services Commission by rule shall specify the methods and procedures that a state agency may use in determining the amounts the state agency should charge to recover the full cost of providing copies of public records.

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

(1) Department—Texas Department of Housing and Community Affairs.

(2) Full Cost—The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost shall be determined in accordance with generally accepted methodologies. The department may utilize the cost methodology adopted by the Council on Competitive Government to determine full cost.

(3) Nonstandard-size copy—A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Micro-

fiche, microfilm, diskettes, magnetic tapes, CD-ROM, slides and nonstandard-size paper copies are examples of nonstandard-size copies.

(4) Readily available information—Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche, microfilm or slide. Information that requires a substantial amount of time to locate or prepare for release is not readily available information. The department will compile and maintain information, especially information that is likely to be the subject of repeated requests for access or copies, in a manner that maximizes the ready availability of the information. In determining whether to charge for providing copies of public records, the department will take into account not only whether the information is in fact readily available, but also whether, in the exercise of efficient recordkeeping, it could and should have been readily available.

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

§1.52. Charges for Providing Copies of Public Information.

(a) Copy charge.

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

(2) Nonstandard-size copy. The charges for nonstandard size copies are:

(A) Diskette—\$.00;

(B) Computer magnetic tape—\$.10;

(C) VHS video cassette—\$2.50;

(D) Audio cassette—\$1.00;

(E) Paper copy—\$.50;

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

(b) Personnel charge.

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

(2) A personnel charge will not be charged in connection with complying with requests that are for 50 or fewer pages of readily available information in standard-size form.

(3) Personnel time will not be recovered for time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) to determine whether the department will raise any exceptions to disclosure of the requested information under the Texas Open Records Act, Subchapter C; or

(B) to research or prepare a request for a ruling by the Office of the Attorney General pursuant to the Texas Open Records Act, Subchapter G.

(c) Overhead charge.

(1) In response to a request either for information that is not readily available or for information in excess of 50 pages of readily available information, the department may include in the charges direct and indirect costs, in addition to the personnel charge. This overhead charge will cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. The overhead charge will be computed at 20% of any charge made to cover personnel costs associated with a particular request. For example, if one hour of personnel time is expended to respond to a particular request, the personnel charge would be \$15 and the overhead charge would be \$3.00.

(2) The department will not charge overhead costs for requests for copies of 50 pages or less of readily available information in standard-size form.

(d) Microfiche and microfilm charge.

(1) If the department has information on microfilm and has microfilm copies available, the charge for such copies will be the total cost of making the copy of the film or fiche. If the requestor prefers to have a copy of the film or fiche, rather than a paper copy, and the entirety of the film or fiche can be released by the department, the cost of providing such film or fiche will be the cost of having the copy made.

(2) If the department maintains a master copy of information in microfilm, the charge is \$.10 per page for standard-size paper plus a charge to cover any personnel time spent in making paper copies.

(e) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) The computer resource charge for requested information which is taken from the department's Client/Server system is \$1.00 per minute. The computer resource charge for requested information which is taken from the department's PC or LAN system is \$.50 per minute.

(3) The computer resource charge is assessed for the actual time the computer takes to execute a particular program times the applicable rate. The computer resource charge does not apply to programming or printing time; rather, it is solely to recover costs associated with the actual time required by the computer to execute the program. This timeframe most frequently will be a matter of seconds. If programming is required to comply with a particular request, the charge for programming is set forth in subsection (f) of this section. The department will not charge for computer print-out time. For example, the computer resource charge for a request that takes 20 seconds to execute on a Client/Server systems would be \$.34.

(f) Programming time. If a request requires a programmer to enter data in order to execute an existing program or to create a new program so that requested information may be accessed, the department will charge \$26 per hour for the programmer's time. Programming charges will be prorated to the nearest quarter hour.

(g) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes and other supplies used to produce the requested information may be

added to the total charge for public information.

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

(i) Fax charge. The department will charge \$.10 per page for a fax that is transmitted locally. The department will charge \$.50 per page for a fax that is sent within the department's 512 area code. The department will charge \$1.00 per page for a fax transmitted to an area code other than the 512 area code.

(j) Sales tax. Sales tax will not be added to the cost of providing the requested information.

(k) Annual re-evaluation of charges. The charges set forth in this section may change annually in accordance with the General Services Commission's annual re-evaluation and update of charges for public records.

§1.53. Access to Information Where Copies are not Requested.

(a) Access to information in standard-size form. The department will not charge for making available for inspection information maintained in standard-size form so long as the information does not exceed 50 pages. If the information which is to be inspected exceed 50 pages, the department may assess a personnel charge in accordance with §1.52(b) of this title (relating to Charges for Providing Copies of Public Information).

(b) Access to information in other than standard-size form. In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard-size form, the department may charge a personnel charge in accordance with §1.52(b) of this title to cover the cost of preparing and making available such information, unless the information is readily available. Preparation includes retrieval of information from a database and the deletion of confidential information from the requested information prior to making it available for inspection.

§1.54. Format for Copies of Public Information. To the extent possible, the department will attempt to accommodate a requesting party by providing information in the requested format. If a requesting party asks that information be provided on a diskette, and the requested information is electronically stored, the department will provide the information on diskette. The extent to which a requestor can be accommodated depends on the department's technological capability. The department is not required to acquire software or programming capabilities that it does not already

possess to accommodate a particular kind of request. The department will take into account in its data processing planning the public's interest in obtaining access to information and the ways in which such access can be facilitated through acquisition of improved technology.

§1.55. Estimates of Public Information Charges.

(a) A party requesting copies of public information will not always be aware of the amount of time and cost that may be involved in complying with a particular request. In instances where the department believes that the fulfillment of a particular request will involve considerable time and resources to process, the department will advise the requesting party of what may be involved and to provide an estimate of date of completion and the charges that may result from fulfilling the information request. The department will make all efforts to process requests as efficiently as possible so that requested information is provided at the lowest possible charge. Full disclosure of how the charges for providing the information were calculated will be made by the department.

(b) The department may require a deposit in the amount of the estimated charges from the requesting party if such charges exceed \$50.

§1.56. Charge Schedule. The following is a summary of the charges for public information that have been adopted by the department: Service Rendered; and the Charges are the following;

- (1) standard-size paper copy—\$.10 per page;
- (2) nonstandard-size copy;
 - (A) diskette—\$1.00 each;
 - (B) magnetic tape—\$10 each;
 - (C) VHS video cassette—\$2.50 each;
 - (D) audio cassette—\$1.00 each;
 - (E) paper copy—\$.50 each;
 - (F) other—actual cost;
- (3) personnel charge—\$15 per hour;
- (4) overhead charge—20% of personnel charge;
- (5) microfiche or microfilm charge;

- (A) paper copy—\$.10 per page;
- (B) fiche or film copy—actual cost;
- (6) remote document retrieval charge—actual cost;
- (7) computer resource charge;
 - (A) midsize—\$3.00 per minute;
 - (B) client/server—\$1.00 per minute;
 - (C) PC or LANs—\$.50 per minute;
- (8) programming time charge—\$26 per hour;
- (9) miscellaneous supplies—actual cost;
- (10) postage and shipping charge—actual cost;
- (11) fax charge;
 - (A) local—\$.10 per page;
 - (B) long distance, same area code—\$.50 per page;
 - (C) long distance, other area code—\$1.00 per page;
- (12) other costs—actual cost.

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

Issued in Austin, Texas, on July 11, 1994.

TRD-9443958

Henry Flores
Executive Director
Texas Department of
Housing and
Community Affairs

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 475-3902

◆ ◆ ◆
TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 7. Local Records

• **13 TAC §7.123**

The Texas State Library and Archives Commission proposes an amendment to §7.123, concerning records retention schedules. The proposed amendment removes references to the county records manual, whose retention

periods were validated and continued in effect by the Government Code, §441.159, until amended. The commission's proposed concurrent amendment to §7.125 and repeal of §§7.126-7.127 serve to amend and replace the county records manual in its entirety by the adoption of new records retention schedules for the records of county clerks, district clerks, and public safety agencies. The proposed amendments also remove provisions concerning federal and state laws and regulations that are inconsistent with state law.

William L. Dyess, director, state and local records management division has determined that for each year of the first five years the section is in effect there will be no fiscal implications for state and local government as a result of administering or enforcing the section.

Mr. Dyess also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that county offices will be able to meet the requirements of the Local Government Code, §203.041 and §203.042, which require that records control schedules be prepared and submitted to the director and librarian of the Texas State Library that conform to records retention schedules issued by the commission. The repeal of this section will ensure that county officials will use appropriate records retention schedules rather than the county records manual, which no longer has effect, to determine the minimum retention periods for their records. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael Heskett, Policy and Program Development Manager, State and Local Records Management Division, Texas State Library, Box 12927, Austin, Texas 78711-2927.

The amendment is proposed under the Government Code, §441.160, which allows the commission to amend the Texas County Records Manual, whose retention periods were validated and continued in effect until amended by the Government Code, §441.159.

The proposed amendment affects the Government Code, §441.159 and §441.160.

§7.123. General.

- (a) (No change.)
 - (1)-(2) (No change.)
- (b) The records retention schedules adopted in §7.125 of this title (relating to Adoption of Records Retention Schedules by Reference) [and the county records manual adopted in §7.126 of this title (relating to Adoption of County Records Manual by Reference)] shall be considered minimum requirements and shall in no way affect the authority of the governing bodies of local governments or of elected county officials to establish longer periods of time for which records of their government or office are to be retained.

(c) Local governments and elected county officers may destroy the following records without first filing records destruction requests with the director and librarian:

(1) any record whose retention period in a records retention schedule [or the county records manual] is AV (as long as administratively valuable);

(2) any record whose retention period in a records retention schedule [or the county records manual] is one year or less;

(3) any record whose retention period in a records retention schedule [or the county records manual] is US (until superseded), unless an additional period exceeding one year is prescribed beyond supersession;

(4) (No change.)

(5) any record listed as exempt from the destruction request requirement in a records retention schedule [or the county records manual].

[(e) Where different retention periods are prescribed for a record in a records retention schedule, the county records manual, or an amendment to a schedule or the manual, and for the same record in a state law, state rule of court, or state regulation, the retention period having the later effective date shall prevail.]

[(f) A retention period for a local government record prescribed in a federal law, federal rule of court, or federal regulation shall prevail over a retention period for the same record prescribed in a records retention schedule, the county records manual, or an amendment to a schedule or the manual only if it is longer than that prescribed in the schedule or the manual, unless the law, rule of court or regulation directs that a local government record shall be destroyed at the expiration of a shorter retention period.]

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443963

William D. Gooch
Director and Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 463-5460

Records Retention Schedules

• 13 TAC §7.125

The Texas State Library and Archives Commission proposes an amendment to §7.125, adopting records retention schedules for records of public safety agencies, public health agencies, county clerks, district clerks, and utility services pursuant to the Government

Code, §441.158(a). The schedules establish mandatory minimum periods of time the records listed must be retained by local governments and elected county officers before disposal. The adoption of these schedules also renders without effect all editions of the county records manual, whose retention periods were validated and continued in effect by the Government Code, §441.159, until amended.

William L. Dyess, director, State and Local Records Management Division, has determined that for each year of the first five years the section is in effect there will be fiscal implications for state or local government as a result of administering or enforcing the section. There is no effect on state government. Use of the schedules can result in a cost reduction for local government but the amount per government cannot be accurately determined as it will depend on whether a government chooses to dispose of its records in accordance with the minimum retention periods established in the schedules or chooses to keep its records for longer periods. Mr. Dyess estimates that the cost reduction for local governments that choose to retain records at or slightly above the minimum retention periods will range from less than \$100 per year in small governments to several thousand dollars per year in larger governments.

Mr. Dyess also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be that local governments will be able to meet the requirements of the Local Government Code, §203.041 and §203.042, which require that records control schedules be prepared and submitted to the director and librarian of the Texas State Library that conform to records retention schedules issued by the commission. The information included in scheduled records documents the actions of local governments. If such records are destroyed while they still have fiscal, legal, administrative, and historical value, then the public's rights to access public information contained in them are effectively denied. Use of the proposed records retention schedules will ensure that public records maintained in local government offices are preserved for as long as the public has need of them. Application of schedules will further benefit the public through avoidance of storage and personnel costs associated with maintaining records after they have ceased to have value. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael Heskett, Policy and Program Development Manager, State and Local Records Management Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927.

The amendment is proposed under the Government Code, §§441.158(a), 441.159, and 441.160. The Government Code, §441.158(a), requires the commission to prepare and distribute records retention schedules for local government records and to

adopt the schedules by rule. The Government Code, §441.160, permits the commission to amend the county records manual, which was validated and continued in effect by the Government Code, §441.159.

The proposed amendment affects the Government Code, §§441.158(a), 441.159, and 441.160.

§7.125. [Adoption of] Records Retention Schedules [by Reference].

(a) The following records retention schedules, required to be adopted by rule under the [Local] Government Code, §441.158(a), are adopted by reference. Copies of the schedules are available from the State and Local Records Management Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927; (512) 452-9242 [463-5478].

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

(6) Local Schedule JC: Records of Public Junior Colleges ;[.]

(7) Local Schedule HR: Records of Public Health Agencies;

(8) Local Schedule PS: Records of Public Safety Agencies;

(9) Local Schedule CC: Records of County Clerks;

(10) Local Schedule DC: Records of District Clerks;

(11) Local Schedule UT: Records of Utility Services.

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by the Government Code, §441.159, until amended, are now without effect.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443957

William D. Gooch
Director and Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 463-5460

• 13 TAC §7.126

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

The Texas State Library and Archives Commission proposes the repeal of §7.126, concerning the adoption of the County Records Manual by reference. The Government Code, §441.159, validated and continued in effect the retention periods contained in the county records manual, until amended. The repeal will allow the commission to amend and replace the county records manual in its entirety by the adoption of new records retention schedules for the records of county clerks, district clerks, and public safety agencies.

William L. Dyess, director, State and Local Records Management Division, has determined that for each year of the first five years the repeal is in effect there will be no fiscal implications for state and local government as a result of administering or enforcing the repeal.

Mr. Dyess also has determined that for each year of the first five years the repeal as proposed is in effect the public benefits anticipated as a result of enforcing the repeal as proposed will be that county offices will be able to meet the requirements of the Local Government Code, §203.041 and §203.042, which require that records control schedules be prepared and submitted to the director and librarian of the Texas State Library that conform to records retention schedules issued by the commission. The repeal of this section will ensure that county officials will use appropriate records retention schedules rather than the Texas County Records Manual, which no longer has effect, to determine the minimum retention periods for their records. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Michael Heskett, Policy and Program Development Manager, State and Local Records Management Division, Texas State Library, Box 12927, Austin, Texas 78711-2927.

The repeal is proposed under the Government Code, §441.160, which allows the commission to amend the county records manual, whose retention periods were validated and continued in effect until amended by the Government Code, §441.159.

The proposed repeal affects the Government Code, §441.159 and §441.160.

§7.126. Adoption of Records Retention Schedules by Reference.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443961

William D. Gooch
Director and Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 463-5460

• 13 TAC §7.127

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

The Texas State Library and Archives Commission proposes the repeal of §7.127 of 13 TAC concerning amendments to records retention schedules and the county records manual. The Government Code, §441.159, validated and continued in effect the retention periods contained in the county records manual, until amended. The repeal of this section, which previously amended the county records manual, will enable the commission to further amend and replace the county records manual in its entirety by the adoption of new records retention schedules for the records of county clerks, district clerks, and public safety agencies.

William L. Dyess, director, State and Local Records Management Division has determined that for each year of the first five years the section is in effect there will be no fiscal implications for state and local government as a result of administering or enforcing the repeal.

Mr. Dyess also has determined that for each year of the first five years the repeal as proposed is in effect the public benefits anticipated as a result of enforcing the repeal as proposed will be that county offices will be able to meet the requirements of the Local Government Code, §203.041 and §203.042, which require that records control schedules be prepared and submitted to the director and librarian of the Texas State Library that conform to records retention schedules issued by the commission. The repeal of this section will ensure that county officials will use appropriate records retention schedules rather than the county records manual, which no longer has effect, to determine the minimum retention periods for their records. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael Heskett, Policy and Program Development Manager, State and Local Records Management Division, Texas State Library, Box 12927, Austin, Texas 78711-2927.

The repeal is proposed under the Government Code, §441.160, which allows the commission to amend the Texas County Records Manual, whose retention periods were validated and continued in effect until amended by the Government Code, §441.159

The proposed repeal affects the Government Code, §441.159 and §441.160.

§7.127. Amendments to Records Retention Schedules and the County Records Manual.

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

Issued in Austin, Texas, on July 12, 1994

TRD-9443962

Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: August 19, 1994

For further information, please call (512) 463-5460

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 67. Auctioneers

• 16 TAC 67.60, 67.70, 67.80-67.83, 67.100

The Texas Department of Licensing and Regulation proposes new § 67.60 and amendments to §§67.70, 67.80, 67.81, 67.82, 67.83, and 67.100, concerning Auctioneers. The new section lists the responsibilities of the department to initiate administrative action against an auctioneer to suspend, revoke, or deny a license based on action in another state. Section 67.70 is changed by adding subparagraphs requiring auctioneers to notify the department within 30 days after conviction of a felony or misdemeanor or after suspension, revocation, or denial by another state. Sections 67.80, 67.81, 67.82, and 67.83 are changed by deleting the statement that fees are not refundable. Section 67.100 is changed by adding subparagraphs clarifying the disclosure to the consumer required in advertising and in announcements to attendees at auctions.

James D. Brush II, director, Policies and Standards Division of the Texas Department of Licensing and Regulation, 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 the sections.

Mr. Brush also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more protection for the consumer by receiving information earlier about auctioneers who have been convicted or subjected to administrative penalties and from stricter requirements for disclosure to the consumer of the terms and conditions of an auction. There will be no effect on small businesses. There is no 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, Austin, Texas 78711

The new section and the amendments are proposed under Texas Civil Statutes, Article 8700, which authorizes the department to li-

cense and regulate auctioneers. The amendments and new rule affect Texas Civil Statutes, Article 8700, §§3, 7, and 10

§67.60. Responsibilities of the Department.

(a) The department may initiate administrative action against a licensed auctioneer or associate auctioneer to suspend or revoke his license based upon proof of cause of action and final order issued by another state, whether or not the department has a reciprocal agreement with the other state. The action taken by the other state may pertain to felony or misdemeanor convictions or to any offense against the other state's law or administrative rules.

(b) The department may initiate administrative action to deny a license based upon proof of cause of action and final order issued by another state if the offense against the other state's law or administrative rules is also an offense against the Act or these rules.

§67.70. Requirements of the License Holder.

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

(d) An auctioneer or an associate auctioneer who is licensed in Texas, or who is licensed in another state as well as in Texas, who has been convicted of a felony or a misdemeanor either in Texas or in another state, must notify the department no later than thirty days after being convicted.

(e) An auctioneer or an associate auctioneer who is in another state as well as in Texas, who has had his auctioneer license in another state suspended, revoked, or renewal denied as a result of an administrative hearing, must notify the department of the administrative action no later than thirty days after receipt of the final order advising of that action.

§67.80. Fees-Original License.

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

[(c) These fees are not refundable.]

§67.81. Fees-Renewal.

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

[(d) These fees are not refundable.]

§67.82. Fees-Duplicate License.

[(a)] A \$25 fee will be charged for issuing a duplicate license.

[(b) This fee is not refundable.]

§67.83. Fees-Examination.

[(a)] A \$50 fee will be charged for each examination.

[(b) This fee is not refundable.]

§67.100. Technical Requirements-General.

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

(d) If an auctioneer advertises an auction without reserve and intends to offer any lots with a minimum opening bid, he must disclose this intention in all advertising before the sale. He must also state this intention when announcing the terms and conditions of the sale, and he must announce the minimum before putting up any lot on which a minimum applies.

(e) An auctioneer shall not advertise an auction without reserve and disclose that some lots will have minimum opening bids applied if more than ten percent of all lots to be sold in that auction will be offered with a minimum. Auctions which will include more than ten percent of lots with minimum opening bids or which will include any other kind of reserve must be advertised as with reserve, or with no statement as to terms and conditions.

(f) An auctioneer shall not change the terms and conditions of a sale after advance advertisement unless changed terms and conditions can also be advertised in advance.

(g)[d] All auctioneers and auction companies shall notify consumers and service recipients of the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. The licensee may use a sticker or rubber stamp to convey the required information. The notification shall be included on any seller or consignor contract and on at least one of the following:

- (1) a sign prominently displayed at the place of the auction;
- (2) any bill of sale or receipt to be given to the buyer; or
- (3) on bidder cards.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443598

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

Earliest possible date of adoption: August 19, 1994

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



Chapter 78. Talent Agencies

• 16 TAC §§78.10, 78.70, 78.71, 78.75

The Texas Department of Licensing and Regulation proposes new §78.75 and amendments to §§78.10, 78.70 and 78.71 concerning talent agencies. The new definitions clarify terms used in the profession, the amendments to §78.70 define the way in which a talent agency may act in concert with an out-of-state agency, the amendments to §78.71 clarify requirements for schedule of fees or commissions and adds a requirement to give a signed copy of the contract to the artist, and the new §78.75 simplifies and clarifies acts prohibited to the registrant. The justification for the new section and amendments is that the profession and the public need clarification of requirements and acts that are prohibited.

James D. Brush, II, Director, Policies and Standards Division of the Texas Department of Licensing and Regulation, 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 the sections.

Mr. Brush also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better protection for the consumer. There will be no effect on small businesses. There is no 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, Austin, Texas 78711.

The new section and amendments are proposed under Texas Civil Statutes, Article 5221a-9, which authorizes the department to license and regulate talent agencies.

The following is the Article that is affected by these rules: Rule 78.10 Article 5221a-9, Section 3 Rule 78.70 Article 5221a-9, Section 3 Rule 78.71 Article 5221a-9, Section 3 Rule 78.75 Article 5221a-9, Section 3

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

Mother agency—a talent agency that enters into an agreement with an artist to try to find employment or representation in markets other than the state of Texas, and also enters into an agreement with an out-of-state agency to find artists for it. The mother agency collects a fee from the artist only when the artist performs work booked by the mother agency. The out-of-state agency pays the mother agency a share of the commission withheld from the artist's fees for all work performed through the out-of-state agency.

Open model call—a model call that is advertised to the public, inviting both

models and anyone desiring to become a model, and that is not limited to the models currently under contract to a talent agency.

§78.70. Responsibilities of the Registrant-General.

(a) All talent agency publications or advertisements, including but not limited to, circulars, newspapers, periodicals, yellow page ads, brochures, business cards, and receipts shall contain the registered name, address and registration number of the talent agency.

(b) Any talent agency acting as host for an open model call for an out-of-state agency in expectation of signing either regular or "mother" agency contracts with artists, may only do so for a single out of state agency at a time. The talent agency registered in Texas shall be responsible for:

(1) publishing both the Texas registration number and the out-of-state registration number, if applicable, in all advertisements;

(2) providing a commission or fee schedule of the out-of-state agency to the department at least five days before the open model call is held; and

(3) adherence to all provisions of the Act and rules by the out-of-state agency for the open model call.

§78.71 Responsibilities of the Registrant-Schedules of Commissions and Fees.

(a) Each [Every] talent agency shall file with the Department a schedule of all commissions and/or fees they charge and collect from artists [and/or] clients employing those artists. This schedule shall include, but is not limited to, the lowest and highest amount of commissions or fees the agency has charged, or intends, to charge any artist.

(b) Fees include anything of value, including money or other valuable consideration or services, or the promise of any of the foregoing, received by a talent agency from or on behalf of any person seeking employment or employees, in payment for any service rendered, either directly or indirectly.

(c)[(b)] If any information on the schedule changes, the talent agency must forward a new schedule to the Department within five working days of the change. A [In no event may a] change in fees or commissions shall not be effective until it has been forwarded as required.

(d)[(c)] Each [Every] talent agency shall keep a current copy of its fee and commission schedule available in its place of business. The talent agency shall provide [allow] an artist who uses the services of the talent agency, or is considering using

the services of the talent agency, a copy of [to inspect] the fee and commission schedule [on request. The talent agency shall also make the schedule available to the Department on request from the Department].

(e) A talent agency must provide a copy of the signed contract to the artist.

(f)[(d)] In addition to subsection (c) of this section, a) A talent agency must disclose in writing to the artist the existence and terms of all other agreements, if any, between the agency and any other [the] client involved [and] which relate to the services to be provided by the artist. Such disclosure shall take place within 48 hours of the talent agency entering into such agreement. It is the intent of this subsection to require disclosure of agents' fees received in connection with the employment of an artist.

§78.75. Responsibilities of the Registrant-Prohibited Acts.

(a) Regardless of its refund policy, a talent agency may not charge an artist any fee or charge, other than reimbursement of amounts actually paid by the talent agency on behalf of the artist, before the artist has accepted an offer of employment obtained through a referral made by the talent agency.

(b) A talent agency may not split or share fees with any person who is required to be but is not registered under the Act as a talent agency.

(c) A talent agency may require an artist to reimburse it for legitimate expenses owed to third parties if:

(1) the expenses were incurred as a result of efforts made on the behalf of the artist by the talent agency; and

(2) the talent agency has obtained, in advance, in writing the express permission of the artist to incur such expenses.

(d) When the talent agency bills the artist it must provide the artist an itemized statement of the nature of the charges and a copy of the invoice or receipt.

(e) Expenses such as utility costs, local telephone service, and other similar indirect costs shall not be recovered from the artist.

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

Issued in Austin, Texas, on July 13, 1994.

TRD-9445053

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

Earliest possible date of adoption: August 19, 1994

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

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**TITLE 22. EXAMINING
BOARDS**
**Part IV. Texas State
Board of Social Worker
Examiners**
**Chapter 781. Social Worker
Licensure**

The Texas State Board of Social Worker Examiners (board) proposes the repeal of existing §§781.101-781.106, 781.201-781.208, 781.301-781.305, and 781.401-781.410; and new §§781.101, 781.102, 781.201-781.217, 781.301-781.315, 781.401, 781.402, 781.501-781.514, 781.601-781.608, and 781.701-781.707, concerning the licensing and regulation of social workers.

The repealed sections specifically cover the certification required; definitions; code of ethics; categories of certification; provisional certification; certificates of recognition; fees; application requirements; qualifications for certification or recognition; supervision for private and specialty practice recognition; felony conviction statement; examination requirement; exemption from examination; certification by endorsement; expiration and renewal; continuing education requirements; inactive status; emeritus certification; variances; issuance of certificates; application denial; use of a title without certification; complaint procedures; disciplinary action; notification of intent to discipline; revocation; procedures for establishing proof of rehabilitation; administrative review; and appeals.

Specifically, the new sections cover the purpose and scope; definitions; responsibilities; meetings; board training; transaction of official business; agendas; minutes; elections; officers; committees; executive director; reimbursement for expenses; official records of the board; impartiality and non-discrimination; applicants with disabilities; license; roster; fees; qualifications; supervision for specialty recognition; application; required documentation of qualifications for licensure; fitness of applicants for licensure; materials considered in determination of fitness of applicants; finding of non-fitness for licensure; provisional licenses; temporary license; examination requirements; application denial; required reports to the board; code of ethics; standards of practice; general; staggered renewals; license renewal; late renewal; inactive status; emeritus status; active military duty; purpose; hour requirements for continuing education; types of acceptable continuing education; activities unacceptable as continuing education; approval of continuing education providers; acceptance of continuing education approved by another licensing board; credit hours granted; continuing education documentation; purpose; disciplinary action; notices; complaint procedures; licensing of persons with

criminal backgrounds; suspensions, revocation, or nonrenewal; informal disposition; default orders; monitoring of licensees; purpose; general; notice; subpoenas; pre-hearing conferences; hearing procedures; and action after the hearing.

The existing sections are proposed for repeal to allow for the adoption of new sections concerning the regulation and licensing of professional social workers in the State of Texas. The new sections will implement the provisions of the Texas Professional Social Work Act, Human Resources Code, Chapter 50 as amended by Senate Bill 1426, 73rd Legislative Session, 1993; update and clarify existing rules; and better assist licensees in understanding and following the rules.

Michael Doughty, executive director, has determined that for the first five-year period the sections as proposed are in effect there will be fiscal implications as a result of enforcing or administering the rules. The effect on state government will be an estimated increase in revenue of \$35,000 for each year of fiscal years 1995-1999. There will be no fiscal implications for local government as a result of enforcing or administering the sections and there will be no effect on local employment.

Mr. Doughty also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the proposed sections, will be to assure the regulation of social work services continues to identify competent practitioners by updating and clarifying the rules. There will be a \$50 annual fee to small businesses in order to comply with the new sections on becoming a sponsor or provider for continuing education. The anticipated cost to persons required to comply with the sections will be the costs involved in applying for and obtaining a license of approximately \$5.00.

Comments on the proposal may be submitted in writing to Michael Doughty, Executive Director, Texas State Board of Social Worker Examiners, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 719-3521 or 1-800-232-3162. Comments will be accepted for 45 days after publication in the *Texas Register*.

Public hearings on the proposed rules will be held on Monday, July 25, 1994, at Rio Grande Council of Governments, Main Conference Room, 1100 North Stanton Street in El Paso, Texas at 6:30 p.m.; Tuesday, July 26, 1994, at Texas Tech University, Holden Hall Room #75 in Lubbock, Texas at 6:30 p.m.; Wednesday, July 27, 1994, at University of Texas at Arlington, School of Social Work, Auditorium in Arlington, Texas at 6:30 p.m.; Monday, August 1, 1994, at University of Texas Pan American, Auditorium Theater, Liberal Arts Building, Room LA-101 in Edinburg, Texas at 6:30 p.m.; Tuesday, August 2, 1994, at the University of Houston, Social Work Building, Room #345, (Use Cullen Street entrance, parking lot 14A) in Houston, Texas at 6:30 p.m.; Wednesday, August 3, 1994, at Stephen F. Austin University, Liberal Arts North, Room #421 in Nacogdoches, Texas at 6:30 p.m.; and Thursday, August 4, 1994, at St. Edwards University, Third Floor, Main Building, Maloney Room, in Austin, Texas at 6:30 p.m. For ADA assistance contact Michael Doughty one week in advance for special arrangements.

Certification Requirements

• 22 TAC §§781.101-781.106

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

The repeals are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.101. Certification Required.

§781.102. Definitions.

§781.103. Code of Ethics.

§781.104. Categories of Certification.

§781.105. Provisional Certification.

§781.106. Certificates of Recognition.

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

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Subchapter A: General Provisions

• 22 TAC §§781.101, §781.102

The new sections are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.101. Purpose and Scope.

(a) The purpose of this chapter is to implement the provisions in the Texas Professional Social Work Act (Act), Human Resources Code, Chapter 50.

(b) The Act restricts the use of the titles "licensed master social worker", "licensed social worker" or "social work associate" or any other title that implies

licensure or certification in professional social work services.

(c) A person not represented to the public as a social worker is exempt from this chapter.

(d) This chapter covers the organization, administration, and other general procedures and policies of the Texas State Board of Social Worker Examiners.

(e) The Act and this chapter apply to every licensee even if the licensee is involved in activities or services exempt under the Act, §50.002.

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

Act—The Texas Professional Social Work Act, Human Resources Code, Chapter 50.

Accredited colleges or universities—Colleges or universities as reported by the American Association of Collegiate Registrars and Admission Officers.

Administrative Law Judge (ALJ)—A person within the State Office of Administrative Hearings who conducts hearings under this chapter on behalf of the board.

Agency—A public or private employer or business entity providing social work services.

APA—The Administrative Procedure Act, Government Code, Chapter 2001.

Board—Texas State Board of Social Worker Examiners.

Client—A person who seeks or receives social work services. A person remains a client until the termination of services.

Clinical social work—The practice of providing evaluation, diagnosis, and treatment to individuals, families, or groups with mental or emotional conditions or disorders or who are adversely affected by social or psychosocial stress or health impairment.

Confidential information—Information obtained from a client or records relating to a client, including the client's identity, that are not discloseable under applicable law.

Council on Social Work Education (CSWE)—The national organization which accredits social work education schools and programs.

Department—Texas Department of Health.

Detrimental to the client—An act or omission of a professional responsibility that is damaging to the physical, mental, or financial status of the client.

Full-time experience—Social work services totalling 30 or more hours per week.

Health care professional—A licensee or any other person licensed, certified, or

registered by the State of Texas in a health-related profession.

License-A regular, provisional, or temporary license or recognition issued by the board unless the content of the rule indicates otherwise.

LMSW-Licensed master social worker.

LMSW-ACP-Licensed master social worker-advanced clinical practitioner.

LMSW-AP-Licensed master social worker-advanced practitioner.

LSW-Licensed social worker.

Licensee-A person licensed or recognized by the board to perform professional social work practice.

Nonclinical social work-The areas of social work practice that include community organization, planning, administration, teaching, research, administrative supervision, nonclinical consultation and other related social work activities.

Part-time-Social work services totaling less than 30 hours per week.

Professional social work practice-Services and actions performed for compensation to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of professional social work is guided by special knowledge, acquired through formal professional social work education, of social welfare policies and services, social welfare systems and resources, human development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Professional social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, counseling, assessment, and evaluation. Professional social work practice may also be referred to as social work services.

Recognition-Authorization from the board to engage in the private, independent or specialty practice of social work services.

Social worker-A person licensed under the Act as a SWA, LSW, LMSW, LMSW-AP or LMSW-ACP.

SWA-A person licensed as a social worker associate.

Supervision-The professional relationship between a supervisor and a social worker which provides evaluation and direction over the services provided by the social worker and promotes professional development of knowledge, skills, and abilities to provide social work services. It may include, without being limited to, direct observation or the review of case presentations, audiotapes, or videotapes.

Termination-The end of professional services, meetings, and billing for services.

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Application Process

• 22 TAC §§781.201-781.208

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

The repeals are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.201. Fees.

§781.202. Application Requirements.

§781.203. Qualifications for Certification or Recognition.

§781.204. Supervision for Private and Specialty Practice Recognition.

§781.205. Felony Conviction Statement.

§781.206. Examination Requirement.

§781.207. Exemption from Examination.

§781.208. Certification by Endorsement.

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Subchapter B. The Board

• 22 TAC §§781.201-781.217

The new sections are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.201. Board Rules.

(a) The purpose of this section is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and phone number; and shall contain the following:

(A) a brief explanation of an justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition shall be filed with the board office.

(4) The board office may determine the petition does not contain the information described in paragraph (2) of this subsection and shall return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director shall submit a completed petition to the board for consideration.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rule making procedures in accordance with the Administrative Procedure Act, the Government Code, Chapter 2001. The board may deny parts of the petition or institute rule-making procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The board may refuse to consider a subsequent petition for the adoption of the same or similar rules submitted within six months after the date of an initial position.

§781.202. Board Meetings.

(a) The board shall hold at least one meeting each year and additional meetings as necessary.

(b) A meeting may be called by the chairperson after consultation with board members or by a majority of members so voting at a meeting.

(c) Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(d) The chairperson will invite comments or statements from nonboard members on all agenda items, but may limit the time allotted to each individual. The board may not act on comments or statements related to issues not on the agenda.

(e) Interpreters and other reasonable accommodations necessary to facilitate public participation will be made available as needed. Notice that reasonable accommodations will be needed must be received by the executive director at least one week in advance of the board or committee meeting.

§781.203. Board Training. The board adopts the Health Professions Council's approved board member training as the official training required of all new board members.

§781.204 Transaction of Official Board Business.

(a) The board may transact official business only when in a legally constituted meeting with a quorum present. A quorum of the board necessary to conduct official business is five members.

(b) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board.

(c) Robert's Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided in this chapter

§781.205. Board Agendas.

(a) The executive director shall be responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chairperson

(b) The official agenda of a meeting shall be filed with the Texas Secretary of State as required by law.

§781.206. Board Minutes.

(a) The minutes of a board meeting are official only when affixed with the original signatures of the chairperson and the executive director.

(b) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments or corrections prior to approval by the board.

(c) The official minutes of the board meetings shall be kept in the office of the executive director and shall be available to any person desiring to examine them.

§781.207. Elections

(a) At the first meeting following the last day of January of each year, the board shall elect a vice-chairperson.

(b) A vacancy which occurs in the office of vice-chairperson may be filled at any meeting

§781.208. Officers of the Board.

(a) Chairperson

(1) The chairperson shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter

(2) The chairperson is authorized by the board to make day-to-day decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board

(b) Vice-chairperson

(1) The vice-chairperson shall perform the duties of the chairperson in case of the absence or disability of the chairperson

(2) In case the office of the chairperson becomes vacant, the vice-chairperson shall serve until a successor is appointed

§781.209. Committees of the Board.

(a) The board or the chairperson may establish committees deemed necessary to carry out board responsibilities.

(b) The chairperson shall appoint members of the board to serve on committees and shall appoint the committee chairpersons.

(c) The chairperson may appoint nonboard members to serve as committee members on a consultant or voluntary basis subject to board approval.

(d) Committee chairpersons shall make regular reports to the board in interim written reports or at regular meetings.

(e) Committees may direct all reports or other materials to the executive director for distribution.

(f) Committees shall meet when called by the committee chairperson or when so directed by the board or the board chairperson.

(g) Each committee shall consist of at least one public member and one professional member, unless the board authorizes otherwise.

§781.210. Executive Director.

(a) The executive director of the board shall be an employee of the department appointed by the Commissioner of Health, as the administrator of board activities.

(b) The executive director shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board unless another custodian is designated by the board.

(c) The executive director shall exercise general supervision over persons employed in the administration of the Act. The executive director may delegate responsibilities to other staff members when appropriate.

(d) The executive director shall be responsible for the investigation and presentation of complaints.

(e) The executive director shall be responsible for all correspondence for the board and obtain, assemble, or prepare reports and information that the board may direct, or as authorized or required by the department or other agency with appropriate statutory authority.

(f) The executive director shall have the responsibility of assembling and evaluating materials submitted by applicants for licensure and renewal. Determinations made by the executive director that propose denial of licensure are subject to the ap-

proval of the appropriate committee of the board or the board which shall make the final decision on the eligibility of the applicants.

§781.211. Reimbursement for Expenses.

(a) A board member is entitled to per diem in the same amount set for state employees by the General Appropriations Act and travel expenses to and from meetings.

(b) Payment to members of per diem and transportation expenses shall be on official department vouchers.

§781.212. Official Records of the Board.

(a) Records which are public may be reviewed by inspection or duplication, or both. Confidential records will not be made available.

(b) When any person's request would be unreasonably disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the requester will be provided the option of receiving duplicate copies at the requester's cost.

(c) Applicable costs of duplication shall be paid by the requester at the time of or before the duplicated records are sent or given to the requester. The charge for copies shall be the same as set by the department for copies.

(d) The rules of procedure for inspection and duplication of public records contained in the Texas Open Records Act shall apply to requests received by the board.

§781.213. Impartiality and Non-discrimination.

(a) The board shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, sex, disability, or national origin.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

§781.214. Applicants with Disabilities.

(a) The board shall comply with applicable provisions of the Americans with Disabilities Act.

(b) Applicants with disabilities shall inform the board in advance of any reasonable accommodations needed.

§781.215. The License.

(a) The board shall prepare and provide to each licensee a license which contains the licensee's name and license number.

(b) Regular licenses shall be signed by the board chairperson and executive director and be affixed with the seal of the board.

(c) Temporary and provisional licenses shall be signed by the board chairperson and the executive director.

(d) All licenses issued by the board remain the property of the board and must be surrendered to the board on demand.

§781.216. Roster of Licensees.

(a) Each year the board shall publish a roster of licensees.

(b) The roster of licensees shall include, but not be limited to, the name, address, and telephone numbers of current licensees.

(c) The board shall make a copy of the roster available to each licensee, and upon request, copies to other state agencies and the general public.

§781.217. Fees.

(a) The following are the board's fees:

(1) application fee for all licenses or specialty recognition-\$20;

(2) license fee for SWA, LSW, or LMSW-\$30;

(3) renewal fee for SWA, LSW or LMSW-\$30;

(4) license specialty recognition (AP or ACP)-\$10;

(5) renewal fee for specialty recognition-\$10;

(6) additional or replacement license fee-\$10;

(7) additional penalty fee for late renewal:

(A) 1-90 days-\$45; and

(B) 91 days but less than one year-\$90;

(8) inactive status fee-\$15;

(9) reactivation fee-\$15 plus the renewal fee for specialty recognition, if applicable;

(10) returned check fee-\$25; and

(11) continuing education sponsor application fee-\$50.

(b) Fees paid to the board by applicants are not refundable except in accordance with §781.303 of this title (relating to Application).

(c) Remittances submitted to the board in payment of fees may be in the form of a personal check, cashier's check, or money order; however, a returned check fee must be in the form of a cashier's check or money order.

(d) A license which is issued by the board, but for which a check is returned (e.g. insufficient funds, account closed, or payment stopped) is invalid.

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

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Certificate Expiration and Renewal

* 22 TAC §§781.301-781.305

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The repeals are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.301. Expiration and Renewal.

§781.302. Continuing Education Requirements.

§781.303. Inactive Status.

§781.304. Emeritus Certification.

§781.305. Variances.

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

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Subchapter C. Licenses and
Licensing Process

• 22 TAC §§781.301-781.315

The new sections are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.301. Qualifications for Licensure.

(a) The following education and experience is required for the specified licenses and specialty recognitions:

(1) LMSW—a doctoral or master's degree in social work from a CSWE accredited college or university;

(2) LSW—a baccalaureate degree in social work from a CSWE accredited college or university;

(3) SWA—

(A) a baccalaureate degree from an accredited college or university and one year of full-time social work experience as defined in §781.304(c) of this title (relating to Required Documentation of Qualifications for Licensure) under the supervision of a SWA, LSW or LMSW; or

(B) an associate of arts degree in a behavioral science from an accredited college or university and three years of full-time social work experience as defined in §781.304(c) of this title under the supervision of a SWA, LSW or LMSW;

(4) LMSW-ACP—

(A) licensure as a LMSW;

(B) three years of full-time experience in a clinical social work position while licensed as a LMSW;

(C) two years of supervision (as part of the three years of experience) under a LMSW-ACP supervisor as specified in §781.302(b) of this title (relating to Supervision for Specialty Recognition); and

(D) identification with and continued participation in the social work profession as evidenced by licensure as an LMSW, active membership and participation in social work organizations and experience in social work positions; and

(5) LMSW-AP—

(A) licensure as a LMSW;

(B) three years of full-time experience in a non-clinical social work position while licensed as a LMSW;

(C) two years of supervision (as part of the three years of experience) under a LMSW-ACP or LMSW-AP supervisor as specified in §781.302(b) of this title; and

(D) identification with and continued participation in the social work profession as evidenced by licensure as a LMSW, active membership and participation in social work organizations and experience in social work positions.

(b) Only a person who is licensed and recognized by the board as a LMSW-ACP or LMSW-AP is qualified for the private, independent practice of social work. No further recognition is necessary.

(1) As a private practitioner, a LMSW-ACP may provide any clinical or nonclinical social work services.

(2) A LMSW-AP must restrict his or her private, independent practice to the provision of nonclinical social work services.

(3) A licensee must not engage in any private, independent practice that is within the scope of the definition of professional social work practice without being licensed and recognized by the board as a LMSW-ACP or LMSW-AP.

(4) A person with a private, independent practice who is not an LMSW-ACP or LMSW-AP but is licensed in another profession and acting within the scope of that other license, may not use the titles "licensed master social worker", "licensed social worker", or "social work associate" or any other title that implies licensure or certification in professional social work services.

(c) An applicant for AP and ACP recognition is not eligible for a temporary or provisional license.

§781.302. Supervision for Specialty Recognition.

(a) A LMSW who plans to apply for specialty practice recognition must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director at the beginning of supervision or within six months of the effective date of these rules;

(2) submit a notice to the board within 30 days of the end of each supervisory plan with each supervisor and a termination evaluation completed by the supervisor; and

(3) submit a new supervisory plan within 90 days of changing supervisors.

(b) A person who wishes to be an approved supervisor must file a request with the board. A supervisor must:

(1) be a LMSW-ACP or LMSW-AP or hold the equivalent social work license or certification in another state;

(2) take professional responsibility for the social work services provided within the supervisory plan;

(3) be the agency designated supervisor, have completed one graduate course in supervision from an accredited college or university, have completed two years of experience as a clinical social work supervisor, or have completed a supervisor's training course acceptable to the board; and

(4) currently be engaged in the practice of social work and self-identified as a social worker.

(c) On receipt of the request and verification of qualifications, the board will issue a letter of approval to a qualified supervisor.

(d) A supervisor must maintain the qualifications described in subsection (b) of this section while he or she is providing supervision.

(e) Supervisory sessions may be in one-on-one sessions or in a combination of individual and group sessions.

(1) There can be no more than six individuals in a supervision group.

(2) Supervision shall consist of no less than 100 hours.

(3) Supervision shall be spread out over the experience of the supervisee.

(4) Supervision shall be accomplished in one or two hour blocks not exceeding 10 hours per month.

(f) Supervision must be face-to-face meetings between the supervisor and supervisee unless the executive director or a committee of the board has granted an exception allowing an alternate form of supervision due to geographical difficulties or

physical disabilities. If an alternate form of supervision is approved, limits may be set on the amount of alternate supervision to assure sufficient interaction between the supervisor and supervisee.

(g) Supervision completed before the effective date of this chapter will be evaluated on the basis of the rules in effect at the time of the supervision.

§781.303. Application.

(a) An application for licensure must be on the official form designated by the board. Application packets which include the application form are available on request.

(b) The application process begins when the completed application form and fee are received in the board office.

(c) Receipt of an application form will be acknowledged by a letter from the executive director within 15 working days of receipt. The letter will include:

- (1) the licensing or recognition category requested;
- (2) deficiencies in documented qualifications, if any; and
- (3) additional documentation necessary for examination approval. This could include transcripts, supervisory references and other documents which verify qualifications.

(d) A letter approving the applicant to sit for the examination will be mailed within 15 working days of the receipt of all required documentation.

(e) If an applicant fails to fully document his or her qualifications or fails to successfully complete the examination within 12 months of approval of the application, the application will be voided and reapplication is required.

(f) If the applicant passes the examination, the executive director shall mail a notice of approval stating the fee for initial licensure.

(g) On receipt of the license fee in the board office, licensure for LMSW, LSW, or SWA will be immediately granted and the license will be mailed to the licensee within 10 working days. No additional fee is required before recognition as an ACP or AP is granted.

(h) In the event an application is not processed in the time periods stated in this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive director. If the executive director does not agree that the time period has been violated or finds that good cause existed for

exceeding the time period, the request will be denied. The executive director will respond to the request for refund within 30 days from the date it is received. Good cause for exceeding the time period is considered to exist if the number of applications for license or license renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(i) If a request for reimbursement under this section is denied by the executive director, the applicant may appeal to the chairperson of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairperson at the address of the board that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The chairperson shall provide written notice of the chairperson's decision to the applicant and the executive director. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(j) The time periods for contested cases related to the denial of a license or a license renewal are not included within the time periods in this section. The time period for conducting a contested case hearing runs from the date the board office mails notice of the proposed denial and ends when the decision of the board is final and appealable. A hearing may be completed within six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§781.304. Required Documentation of Qualifications for Licensure.

(a) Application form. An applicant for licensure must submit a completed official application form made under oath and all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts. Educational requirements must be met by completion of educational programs at accredited colleges or universities.

(2) Degrees for licensure as a LSW or LMSW must be from programs

accredited or in candidacy for accreditation by CSWE. (Current written verification of a program's CSWE candidacy status must be on file with the board.) College or university degrees from outside of the United States and its territories must be from programs judged by the CSWE to be equivalent to a CSWE accredited program in the United States.

(c) Experience verification.

(1) Experience required for licensure as a SWA or for recognition as an ACP or AP must meet the requirements of §781.301 of this title (relating to qualifications for licensure). Private, independent practice within the scope of the definition of professional social work practice will not be counted as experience in this subsection. Required documentation includes:

(A) names and addresses of supervisors;

(B) beginning and ending dates of supervision;

(C) job description;

(D) average number of hours of social work activity per week; and

(E) evaluations from each supervisor.

(2) Documentation of experience must include verification of the following:

(A) administrative authority over the applicant's provision of social work services;

(B) the applicant's compensation for services, if any; and

(C) the employment status as reflected in all advertising, informational material, and written policy.

(3) The board shall credit part-time experience on a prorated basis.

(4) Experience must have been in a position with primary responsibility for providing social work services, under the supervision of a qualified supervisor, and satisfactorily performed.

(5) The social work experience required by this chapter for SWA, ACP, or AP may be for compensation or as a volunteer.

(6) The applicant must maintain and upon request, provide to the board documentation of employment status, pay vouchers, or supervisory evaluations.

(d) **References.** An applicant must list on the official application the names and addresses of three individuals familiar with the applicant's professional qualifications. The board may contact the references for verification of the applicant's qualifications and fitness.

§781.305. Fitness of Applicants for Licensure. In determining the fitness of an applicant, the board shall consider the following:

(1) the skills and abilities of an applicant to provide adequate social work services to clients;

(2) the ethical behavior of an applicant in relationships with other professionals and clients; and

(3) the applicant's worthiness of public trust and confidence. The board may consider a person, who has committed any act that would have been a violation of the Act or this chapter had the person been licensed at the time the act was committed, as unworthy of public trust and confidence.

§781.306. Materials Considered in Determination of Fitness of Applicants. In determining the fitness of applicants, the board shall consider the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) allegations of clients;

(5) transcripts or findings from official court, hearing, or investigative proceedings; and

(6) any other information which the board considers pertinent to determining the fitness of an applicant.

§781.307. Finding of Non-Fitness. The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license or recognition:

(1) lack of the necessary skills and abilities to provide adequate social work services;

(2) any misrepresentation in the application or other materials submitted to the board;

(3) the violation of any provision of the Act in effect at the time of application which is applicable to an unlicensed person; or

(4) the violation of any provision of the code of ethics or standards of practice which would have applied if the applicant had been a licensee at the time of the violation.

§781.308. Provisional Licenses.

(a) The board may grant a provisional license as a LMSW, LSW, or SWA to a person who holds, at the time of application, a license or certificate as a social worker or social work associate issued by another state, the District of Columbia, or a territory of the United States that is acceptable to the board. An applicant for a provisional license must:

(1) submit a written request for a provisional license along with a completed application;

(2) be licensed in good standing as a social worker or social work associate in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Act;

(3) have passed an examination accepted by another state, District of Columbia, or territory for licensure or certification as a social worker; and

(4) be sponsored by a person who holds a license issued by the board with whom the provisional licensee may practice.

(b) An applicant for a provisional license may be excused from the requirement of subsection (a)(4) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) The provisional licensee shall use the appropriate licensing title or initials followed by the word "provisional."

(d) The provisional license shall be issued for the same category or level of license or certificate as the applicant held in the other state, District of Columbia, or territory of the United States.

(e) The board must complete the processing of a provisional licensee's application for a regular license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later. The person holding a provisional license must file all evidence of his or her academic and experience requirements within this time period. The board office shall evaluate the information received and may issue a deficiency letter during this period. If the documentation received during this period does not show that the person meets the education and experience requirements set out in

this chapter, the application shall be proposed for denial.

(f) A provisional license is valid until the date the board issues a license or denies the provisional licensee's application for a license.

(g) The board shall issue a regular license to the holder of a provisional license if:

(1) the provisional licensee passes the examination required by §50.014 of the Act; and

(2) the board verifies that the provisional licensee has the education and experience requirements for a regular license.

(h) The board shall consider only states, the District of Columbia, and territories of the United States as acceptable for the purposes of licensure by endorsement.

(i) The provisional license automatically expires at the end of six months or on official receipt of the applicant's score on the designated examination, whichever is later.

(j) The board may waive any licensure requirement for an applicant with a valid certificate or license from another state with which the board has a reciprocity agreement.

§781.309. Temporary License.

(a) Prior to examination, an applicant for licensure may obtain a temporary license as a LMSW, LSW, or SWA as long as the applicant meets all the requirements, with the exception of the examination, for the level of license sought.

(1) A person holding a temporary license must take the designated examination within six months of issuance of the license.

(2) The temporary license is valid until the results of the first qualifying examination are made available (i.e. the first examination taken by the temporary licensee or the end of the six months from issuance of the license if the examination is not taken, whichever is earlier).

(b) A person may receive a maximum of two temporary licenses at a certain level of license.

(c) A person who failed the examination and is without a valid temporary license may still retake the examination under §781.310(b) (relating to Examination Requirement).

§781.310. Examination Requirement.

(a) An applicant for licensure or recognition must pass an examination designated by the board.

(b) If an applicant fails the examination, he or she may retake the examination no more than twice in a 12-month period. Such an applicant must petition the board to retake the examination. The board may order the applicant to complete one or more social work educational courses as a prerequisite to retaking the examination. If a petition is granted, the application does not expire under §781.303(e) of this title (relating to Application) until the applicant retakes the examination as stated in the granted petition.

§781.311. Alternate Method of Examining Competency.

(a) An applicant who has failed the examination on two or more occasions by less than 10 points may submit a written petition to the board for a probated license as a SWA, LSW, or LMSW. The petition must include but is not limited to the following:

(1) evidence of the applicant's professional competency including but not limited to:

(A) college transcripts;

(B) work history; and

(C) statements of professional colleagues;

(2) a statement of the practice setting in which the applicant proposes to work; and

(3) a statement from a licensed social worker which documents his or her qualifications as a supervisor and indicates his or her willingness to take professional responsibility for the applicant during the probationary period.

(b) The board will consider the interest of the public in its review of the petition and will issue its decision in writing.

(c) The written decision will include the following:

(1) a statement of the reason(s) the petition for a probated license is denied; or

(2) the terms of probation under which the license is granted.

(d) The board may grant a regular license to an applicant who successfully completes the terms of probation to the satisfaction of the board.

§781.312. Issuance of Licenses.

(a) The board issues licenses indicating the professional social work title, whether SWA, LSW, LMSW, LMSW-AP or LMSW-ACP, granted to applicants who

have met all of the qualifications established by the board.

(b) The license title or its initials must be included in all professional uses of the licensee's name as required by the Act, §50.011.

(c) A licensee shall display the license issued by the board in a prominent place in all locations of practice.

(d) A copy of the code of ethics listed in §781.401 of this title (relating to Code of Ethics) is issued with the license. The copy of the code of ethics also includes information regarding the client complaint process. The copy of the code of ethics must be displayed in all locations of practice.

(e) The board will send copies of its client information brochure to each LMSW-ACP or LMSW-AP. These brochures must be made available to all clients by the licensee.

§781.313. Application Denial.

(a) The board shall deny an application if all of the requirements for licensure or recognition are not met. An applicant shall be notified when the license or recognition is proposed for denial.

(b) A person whose application for licensure or recognition is denied is entitled to a formal hearing as set out in Subchapter (G) of this chapter (relating to Formal Hearings).

§781.314. Required Reports to the Board.

(a) A licensee shall make written reports to the board office within 30 days of the following:

(1) a change of mailing address, place of employment or business or home phone number;

(2) the filing of a criminal case against the licensee;

(3) a criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee;

(4) the filing of a civil lawsuit against the licensee and relating to the licensee's professional social work practice;

(5) the settlement of or judgment rendered in a civil lawsuit filed against the licensee and relating to the licensee's professional social work practice; or

(6) complaints against, investigations involving or actions against the licensee done by a licensing or certification body related to health or mental health services when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the board to determine whether a licensee remains fit to hold a license.

(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the board.

§781.315. Surrender of License.

(a) Surrender by licensee.

(1) A licensee may at anytime voluntarily offer to surrender his or her license for any reason, without compulsion.

(2) The licensee may be delivered to the board office by hand or certified mail.

(3) If there is no complaint pending, the board office may accept the surrender and void the license.

(b) Formal disciplinary action.

(1) When a licensee has offered the surrender of his or her license after a complaint has been filed, the board shall consider whether to accept the surrender of the license.

(2) When the board has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a board order shall be prepared accepting the surrender.

(3) In order to accept a surrender, the board may require the licensee to agree to certain findings of fact and conclusions of law, including the making of an admission of a violation of the Act or this chapter.

(4) Surrender of a license without acceptance thereof by the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Act or any other statute.

(c) Reinstatement. A license which has been surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

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

Issued in Austin, Texas, on July 11, 1994.

TRD-8443885

Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Proposed date of adoption: September 2, 1994

For further information, please call: (512) 719-3521

Administrative Actions
• 22 TAC §§781.401-781.410

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

The repeals are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.401. *Issuance of Certificates.*

§781.402. *Application Denial.*

§781.403. *Use of a Title Without Certification.*

§781.404. *Complaint Procedures.*

§781.405. *Disciplinary Action.*

§781.406. *Notification of Intent to Discipline.*

§781.407. *Probation.*

§781.408. *Procedures for Establishing Proof of Rehabilitation.*

§781.409. *Administrative Review.*

§781.410. *Appeals.*

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

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**Subchapter D. Code of Ethics
and Professional Standards
of Practice**

• 22 TAC §§781.401, §781.402

The new sections are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social

Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.401. *Code of Ethics.*

(a) A social worker must observe and comply with the code of ethics and standards of practice set forth in this subchapter. Any violation of the code of ethics or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

(1) A social worker shall not refuse to do or refuse to perform any act or service for which the person is licensed solely on the basis of a client's age, sex, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(2) A social worker shall truthfully report or present her or his services, professional credentials and qualifications to clients or potential clients.

(3) A social worker shall only offer those services that are within his or her professional competency.

(4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.

(5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.

(6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.

(7) A social worker shall safeguard the client's rights to confidentiality within the limits of the law.

(8) A social worker shall avoid a relationship with other persons that are detrimental to a client or former client.

(9) A social worker shall not engage in any exploitive or sexual act with a client or former client.

(10) A social worker shall refrain from providing service while impaired due to the social worker's physical or mental health or the use of medication, drugs or alcohol.

(11) A social worker shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(12) A social worker shall refer a client for those services that the social worker is unable to meet and terminate service to a client when continued service is no longer in the client's best interest.

(b) The grounds for disciplinary action of a social worker shall be based on the code of ethics or standards of practice in effect at the time of the violation.

§781.402. *Standards of Practice.*

(a) A licensee shall not knowingly make any misleading, deceptive, fraudulent or exaggerated claim or statement about any aspect of the licensee's services or qualifications or continue to permit such claims on the licensee's behalf.

(b) If the licensee learns that inappropriate claims regarding the licensee's services have been made, the licensee will immediately notify the board and take all available steps to correct the inappropriate claims and to prevent their reoccurrence.

(c) A licensee shall inform an individual before or at the time of the individual's initial session with the licensee of the following:

(1) fees and arrangements for payment;

(2) purposes, goals, and techniques;

(3) any restrictions placed on the licensee by the board;

(4) the limits on confidentiality; and

(5) any intent of the licensee to use another individual to provide social work services to the client.

(d) A licensee shall inform the client of any changes to the items in subsection (c) of this section prior to or promptly after initiating the change.

(e) The provisions of the Health and Safety Code, §161.091, et seq relating to the prohibition of illegal remuneration for the securing or soliciting of clients apply to licensees.

(f) A licensee shall not promote the licensee's personal or business activities to a client unless the licensee informs the client of the licensee's personal or business interest in the activity.

(g) A licensee shall make every effort to avoid client relationships which could impair the licensee's professional judgement or otherwise increase the risk of client exploitation. A licensee shall not provide professional services to a member of the licensee's own family, an intimate friend, a close associate, or others whose welfare might be jeopardized by such a dual relationship.

(h) In individual and group therapy settings, the licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within a group or from individual therapy.

(i) For each client, a licensee shall keep records of the dates of social work services, types of social work services, and billing information. Records held by a licensee shall be kept for five years for adult clients and two years beyond the age of 18 for minor clients. Records held or owned by governmental agencies or educational institutions are not subject to this requirement.

(j) A licensee shall bill or permit clients or third parties to be billed on his or her behalf only for those services actually rendered or as legally agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(1) If a licensee uses another person to provide services to a client, that use shall be reflected on billing documents.

(2) On the written request of a client, a client's guardian, or a client's parent or managing or possessory conservator if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for social work services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(3) A licensee may not persistently or flagrantly overcharge a client.

(4) A licensee may not submit to a client or a third party a bill for social work services when the licensee knows that the services were not provided or were improper, unreasonable, or medically or clinically unnecessary.

(k) A licensee shall terminate social work services when in the licensee's professional opinion the client is not benefiting from those services. When services to the client are still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source.

(l) A licensee shall not state a professional judgment of any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the statement that the licensee has not personally interviewed the individual.

(m) A licensee may not persistently or flagrantly overtreat a client.

(n) A licensee shall not aid and abet a person's violation of the Act, §50.010.

(o) A licensee shall not commit an act in violation of the Texas Penal Act, §21.14 or for which liability exists under the Texas Civil Practice and Remedies Code, Chapter 81, both relating to sexual exploitation by a mental health services provider. The elements of the criminal offense or the elements giving rise to civil liability

must be proven in order to take disciplinary action under this subsection. The licensee need not actually have been convicted of the criminal offense or had a judgement rendered against the licensee. The board's burden of proof does not change under this subsection.

(p) If a licensee has reasonable cause to suspect that a client has been sexually exploited by a mental health services provider during the course of treatment, or if a client alleges sexual exploitation by a mental health services provider during a course of treatment, the licensee must make a report as provided in the Texas Civil Practice and Remedies Code, §81.006. A report under this subsection need contain only the information needed to:

(1) identify the reporter;

(2) identify the alleged victim, unless the alleged victim has requested anonymity;

(3) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(4) provide the name of the alleged perpetrator.

(q) A licensee shall not:

(1) use alcohol or drugs in a manner which impairs the licensee's ability to provide social work services;

(2) use illegal drugs of any kind; or

(3) promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

(r) A licensee shall not disclose any confidential information except as provided in the Health and Safety Code, Chapter 611 or other applicable state or federal statutes or rules. A licensee may take reasonable action to inform medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(s) A licensee shall comply with the Texas Health and Safety Code, Chapter 611, concerning access to records.

(t) A licensee shall have the responsibility of reporting alleged violations of the Act or this chapter to the board.

(u) A licensee shall keep his or her board file updated by notifying the board in writing of changes of name, home and business address, home and business telephone number, and employment.

(v) A licensee shall cooperate with the board by furnishing required documents or information and by responding to a re-

quest for information from or a subpoena issued by the board or its authorized representative.

(w) A licensee shall comply with any order issued by the board relating to the licensee.

(x) A licensee shall not interfere with a board investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(y) A licensee shall not file a complaint with the board in bad faith.

(z) A licensee shall not display a license issued by the board which has been reproduced or is expired, suspended, or revoked.

(aa) A licensee shall not make any alteration on a license issued by the board.

(bb) A licensee shall include in any advertisement only information which is true, accurate, illuminating, complete, in context, straight forward and readily verifiable. Advertisement includes, but is not limited to, any announcement of social work services, letterhead, business cards, commercial products, and billing statements.

(cc) In any public representation or advertising of a licensee's professional social work credentials, a licensee shall use only those degrees which were received from an accredited college or university. A degree received at a foreign university may be used if the degree could be accepted as a transfer degree by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(dd) In research with a human subject, a licensee shall take reasonable precautions to ensure that the subject does not suffer emotional or physical harm.

(ee) A licensee shall confine the use of data obtained from social work services for the purposes of education or research to content that can be disguised to ensure full protection of the identity of the subject client.

(ff) A licensee shall report if required by any of the following laws:

(1) Family Code, Chapter 34, concerning abuse or neglect of children;

(2) Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Health and Safety Code, Chapter 161, Subchapter K, §161.131 et seq, concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and

(4) Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

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

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Subchapter E. License Renewal and Continuing Education

• 22 TAC §§781.501-781.514

The new sections are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.501. General.

(a) A regular license must be renewed annually.

(b) A person who holds a regular license must have fulfilled any continuing education requirements prescribed by this chapter in order to renew a license.

(c) Each person who holds a regular license is responsible for renewing the license and shall not be excused from paying penalty fees for late renewal. Failure to receive notice from the board does not waive payment of penalty fees.

(d) The board may deny the renewal of the license of a licensee who is in violation of the Act or this chapter at the time of application for renewal.

(e) A person whose license has expired shall not use the terms or titles described in the Act, §50.010(a). The person shall return his or her license to the board.

(f) The deadlines established for renewals, late renewals, and penalty fees are based on the postmarked date of the documentation submitted by the licensee.

(g) The board shall deny renewal if required by the Education Code, §57.491 (relating to Defaults on Guaranteed Student Loans).

§781.502. Staggered Renewals. The board shall use a staggered system for license renewals.

(1) The renewal date of a license shall be the last day of the licensee's birth month.

(2) License fees will be prorated if the licensee's initial renewal date as determined by the board occurs less than 12 months after the original date of licensure.

(3) Prorated fees shall be rounded off to the nearest dollar.

§781.503. License Renewal.

(a) At least 30 days prior to the expiration of a regular license, the board will send notice to a licensee that includes the expiration date of the license, a schedule of the renewal and penalty fees, and the number of credit hours of continuing education needed to complete the renewal requirements.

(b) A license renewal form shall be furnished to licensees eligible for renewal. The form shall require the licensee to provide current addresses; telephone numbers; a listing of the continuing education completed; a signed statement regarding any civil lawsuits, criminal cases and convictions or any complaints against, investigations involving, or actions against the licensee by any licensing or certification body related to health or mental health care services; and a statement of continuing compliance with the Act and this chapter.

(c) The executive director will respond in writing to the application for renewal within 15 working days of initial receipt and of receipt of a completed application (if the initial application is deficient) notifying the applicant that his or her license is renewed, that the application is deficient, or that renewal is proposed for denial. Failure to process a renewal application in the time periods stated shall be governed by §781.303(h)-(j) of this title (relating to Application).

(d) The board shall not renew a license until it receives the completed license renewal form and the renewal fee and the licensee has complied with applicable continuing education requirements.

(e) The board shall mail a new license to a licensee who has met all requirements for renewal.

(f) If a licensee has made timely and sufficient application for renewal, the license does not expire until the board has acted on the renewal.

(g) The board shall deny the renewal of a license if the licensee is a party to a formal disciplinary action. A formal action commences when the notice described in §781.602(c) of this title (relating to Disciplinary Action; Notices) is mailed by the board.

(1) A license that is not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(2) In the case of delay in the license renewal process because of formal disciplinary action, penalty fees shall not apply.

§781.504. Late Renewal.

(a) A person who fails to meet all the requirements to renew his or her license by the renewal date ceases to be licensed and may not violate the Act, §50.010.

(b) A person who renews a license after the expiration date but on or before 90 days after the expiration date shall pay the renewal fee and appropriate penalty fees.

(c) If a person has not renewed a license for more than 30 days after the date of expiration, the board shall inform the person of the expiration date of the license and the amount of the fee required for renewal.

(d) The board shall notify a person whose license is expired that the person may not violate the Act, §50.010.

(e) A person whose license was not renewed on or before 90 days from the expiration date may renew within one year of the expiration date by paying the appropriate renewal and penalty fees.

(f) If a person did not have the required continuing education at the time of expiration of the license, the person shall file evidence of completion of the required continuing education before the license can be renewed.

(1) The continuing education may have been earned during the continuing education period or within the one-year period following expiration.

(2) The evidence of continuing education shall be the completed continuing education form and other documentation required by the board.

(g) On or after one year from the expiration date, a person may no longer renew the license and must reapply by submitting a new application, paying the required fees, and meeting the current requirements for the license including passing the licensure examination.

§781.505. Inactive Status.

(a) A licensee with a current license and who is in good standing, but who is not employed to provide social work services in Texas, is eligible for inactive status. The request for inactive status must be submitted in writing to the board prior to the expiration of the license.

(b) No continuing education is required of a licensee while on inactive status.

(c) The inactive status fee must be paid on or before the expiration date of the license, instead of the renewal fee.

(d) A person must notify the board in writing to reactivate their status. Reactivation status shall begin on the first day of the month following payment of the reactivation status fee. The license fee shall be prorated to the next renewal date in accordance with §781.502 of this title (relating to Staggered Renewals).

§781.506. Emeritus Status.

(a) A licensee who is at least 55 years of age or disabled and who is not engaged in professional social work practice is eligible for an emeritus license. The request for emeritus status must be submitted in writing to the board.

(b) On receipt of the request the board will issue an emeritus license that will remain valid for the lifetime of the licensee. No renewal fee or continuing education will be required.

(c) The emeritus licensee may only use his or her emeritus title in the provision of social work services as a volunteer. The emeritus social worker may not receive any compensation for social work services.

(d) An emeritus license can be reinstated as a regular license within one year of the date the emeritus license was issued by following the same procedures for late renewal of a license. To be eligible for a new license after one year, the person would be required to apply for another license by meeting requirements in effect at the time of the application, including passing the examination.

§781.507. Active Military Duty.

(a) A licensee who is on active duty with the armed forces of the United States serving outside of the State of Texas at the time of renewal is exempt from the renewal requirement and may, within one year of his or her return to Texas or release from active duty, whichever occurs first, request reinstatement of his or her license.

(b) The board will issue a license on receipt of the request for reinstatement, documentation of his or her active duty status at the time the license expired, and the fee for the current license. No continuing education will be required prior to reinstatement and no penalty fees will be charged.

§781.508. Hour Requirements for Continuing Education. A licensee must complete 15 credit hours (1.5 continuing education

units (CEU)) of continuing education acceptable to the board in the year preceding his or her license renewal date. In this subchapter "credit hours" will mean continuing education acceptable to the board.

§781.509. Types of Acceptable Continuing Education. Continuing education undertaken by a licensee shall be acceptable to the board as credit hours if the education falls in one or more of the following categories:

(1) participating in institutes, seminars, workshops, conferences, independent study programs, post graduate training programs, college academic or continuing education courses which are related to or enhance the practice of social work and are offered, sponsored or approved by an approved provider. Approved providers are:

(A) accredited colleges and universities;

(B) a national or statewide association or organization representing members of the social work profession;

(C) a person, agency or entity who is approved as a provider in accordance with §781.511 of this title (relating to Approval of Continuing Education Sponsor);

(D) a person, agency or entity who is approved by a state professional licensing or certification board as a continuing education sponsor or provider as stated in §781.512 of this title (relating to Acceptance of Continuing Education Approved by Another Licensing Board).

(E) nationally accredited health or mental health facilities;

(2) teaching or presenting the activities described in paragraph (1) of this section;

(3) writing a published work or making a presentation directed toward or applicable to the profession of social work; or

(4) providing professional guidance as a field instructor for social work interns in connection with a college or university accredited by or in candidacy status with CSWE.

§781.510. Activities Unacceptable as Continuing Education. The board will not give credit hours for:

(1) education incidental to the regular professional activities of a social worker such as learning occurring from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional organization;

(3) meetings and activities such as in service programs which are required as a part of one's job unless the in service training is a type of acceptable continuing education under §781.509 of this title (relating to Types of Acceptable Continuing Education);

(4) college academic courses which are audited or not taken for credit; or

(5) any experience which does not fit the types of acceptable continuing education in §781.509 of this title.

§781.511. Approval of Continuing Education Sponsor.

(a) A sponsor is an individual or any type of legal entity which has been approved under this section to offer or sponsor continuing education programs.

(b) A person seeking approval as a continuing education sponsor shall file an application on board forms and include the continuing education sponsor application fee. Governmental agencies shall be exempt from paying this fee.

(c) The applicant shall certify on the application that:

(1) all programs offered by the sponsor for credit hours from the board will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (j) of this section.

(d) A program offered by a sponsor for credit hours (CEU) from the board shall:

(1) contribute to the advancement, extension and enhancement of the professional skills and knowledge of the licensee in the practice of social work;

(2) be developed and presented by persons with education and/or experience in the subject matter of the program;

(3) specify the course objectives, course content and teaching methods to be used; and

(4) specify the number of credit hours.

(e) The sponsor must document each program's compliance with §781.511(d) of this title (relating to Approval of Continuing Education Sponsor) and maintain that documentation for a period of two years.

(f) The executive director will review the continuing education sponsor application and notify the applicant of any deficiencies or grant approval and indicate the continuing education sponsor approval number to be noted on all certificates of attendance.

(g) Each continuing education program shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program presentation or an evaluation questionnaire may be distributed to participants to be completed and returned to the sponsor by mail. The sponsor and the instructor, together, shall review the evaluation outcomes and revise subsequent programs accordingly. The sponsor shall keep all evaluations for two years and allow the board to review the evaluations on request.

(h) An approved sponsor may subcontract with individuals or organizations to provide continuing education programs. The sponsor must insure that the subcontractor meets all requirements of this section.

(i) To maintain approval as a sponsor, each sponsor shall submit to the board annually an application and a continuing education approval application fee.

(j) It shall be the responsibility of a sponsor to provide each participant in a program with a certificate of attendance. The certificate of attendance shall contain:

- (1) the name of the sponsor and approval number;
- (2) the name of the participant;
- (3) the title of the program;
- (4) the number of credit hours given;
- (5) the date and place of the program; and
- (6) the signature of the sponsor or its representative.

(k) The sponsor shall maintain attendance records for not less than three years.

(l) The sponsor shall be responsible for assuring that no licensee receives continuing education credit for time not actually spent attending the program.

(m) Upon the failure of a sponsor to comply with any of the requirements of this section, the board, after notice to the sponsor and a due process hearing, may revoke the sponsor's approval status.

(n) The board may evaluate any approved sponsor or applicant at any time to ensure compliance with requirements of this section.

(o) Complaints regarding continuing education programs offered by approved providers may be submitted in writing to the executive director.

§781.512. Acceptance of Continuing Education Approved by Another Licensing Board.

(a) A person, agency or entity approved by another state professional licensing or certification board may request authorization to advertise its program(s) as

accepted for credit hours by the board. The person, agency or entity shall submit documentation of that board's approval, a statement of the relevance of the program(s) to social work practice and the continuing education sponsor application fee.

(b) The executive director will review the documentation and notify the approved provider in writing whether the program(s) are acceptable as credit hours and of the approved provider number, if acceptable.

§781.513. Credit Hours Granted. The board will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour (0.1 CEU) will be given for each hour of participation in a continuing education program by an approved provider.

(2) Credit may be earned through successful completion of postgraduate training programs (e.g., intern, residency, or fellowship programs) or successful completion of social work related courses which are part of the curriculum of a college, university or graduate school of social work at a rate of 5 credit hours (0.5 CEU) per each semester hour or its equivalent.

(3) Credit may be earned for verified teaching in a college, university or graduate school of social work or as an instructor of a continuing education program given by an approved provider. Credit will be applied at the rate of 5 credit hours (0.5 CEU) for every course taught, not to exceed 10 hours (1.0 CEU) per renewal period.

(4) A field instructor for a social work intern will be granted 5 credit hours (0.5 CEU) for each college semester completed, not to exceed 10 credit hours (1.0 CEU) per renewal period.

(5) A presenter or author of a published work which imparts social work knowledge and skills may be granted 5 credit hours (0.5 CEU) for each original or substantially revised presentation or publication, not to exceed 10 credit hours (1.0 CEU) per renewal period.

(6) Credit hours may be earned by successful completion of an independent study program directly related to social work offered or approved by an approved provider. No more than 10 credit hours (1.0 CEU) for independent study programs will be accepted per renewal period.

(7) A licensee may carry over to the next renewal period up to 5 credit hours (0.5 CEU) earned in excess of the continuing education renewal requirements.

§781.514. Continuing Education Documentation.

(a) Credit hours must be listed on the license renewal form supplied by the board. Failure to submit the form or failure to complete the required continuing education is grounds for denial of the application for license renewal.

(b) A random sample of renewal applications will be selected for review.

(1) A licensee who is selected for review will be notified by mail and required to submit acceptable documentation of the continuing education listed on the continuing education report form. Acceptable documentation includes the following:

(A) copies of continuing education certificates of attendance or other form of verification from the provider of the continuing education program;

(B) grade reports or transcripts verifying the completion of a college course;

(C) letters from the dean or department head or his or her authorized representative verifying the teaching or field instructor assignment;

(D) letters from the program sponsor verifying participation as a presenter in a continuing education program or a copy of the program; or

(E) copies of continuing education programs and other documentation as necessary to establish the relevance of its content to social work practice for any continuing education program which does not have an approved provider number.

(2) All forms of verification must include the subject, date(s), credit hours given and if applicable, name of the sponsor and sponsor approval number.

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

Issued in Austin, Texas, on July 11, 1994.

TRD-9443888 Catherine Clancy
Chairperson
Texas State Board of
Social Worker
Examiners

Proposed date of adoption: September 2, 1994

For further information, please call: (512) 719-3521

Subchapter F. Complaints and Violations

• 22 TAC §§781.601-781.608

The new sections are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.601. Purpose. The purpose of this subchapter is to set out grounds for denial of an application or discipline of a licensee and the procedures for reporting alleged violations of the Act or this chapter.

§781.602. Disciplinary Action; Notices.

(a) The board shall revoke, suspend, or deny a license or order of recognition, place on probation a person whose license or order of recognition has been suspended, or reprimand a person with a license or order of recognition for any of the following reasons:

(1) violation of any provision of the Act;

(2) violation of any rule adopted by the board;

(3) failure to cooperate in the investigation of a complaint filed under the provisions of this chapter;

(4) physically or mentally incompetent to perform social work services as determined by the board;

(5) provision of false or misleading information to the board regarding his or her qualifications for licensure or renewal or to an inquiry by the board; or

(6) any of the grounds described in the Act, §50.021(a).

(b) Prior to institution of formal proceedings to revoke or suspend a license or recognition, the board shall give written notice to the licensee by personal service or certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension; and the licensee shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If denial, revocation, probation or suspension of a license or recognition is proposed, the board shall give written notice by certified mail, return receipt requested; regular mail; or personal delivery of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the license or recognition shall be denied, revoked, suspended, or probated.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt or other official receipt.

(e) No notice or hearing is required for the board to issue a reprimand other than notice to the licensee of the board meeting where the reprimand will be considered.

§781.603. Complaint Procedures.

(a) A person wishing to report an alleged violation of the Act or this chapter by a licensee or other person shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(b) The executive director will be responsible for the receipt and processing of complaints. The executive director will maintain a log of the receipt, investigation and disposition of all complaints. The board chairperson will appoint a complaints committee to work with the executive director.

(c) On receipt of a complaint, the executive director shall send an acknowledgement letter to the complainant, a copy of applicable rules, and an official form which the complainant must complete and return to the board before further action can be taken. The form must be signed under oath. The executive director may accept an anonymous complaint if there is sufficient information for the investigation; however, the executive director shall then complete a complaint form under oath.

(d) Within 15 days of the receipt of the official forms, the executive director shall review the complaint to assure that there is sufficient information to initiate an investigation and that the allegations contained in the complaint fall within the board's jurisdiction.

(1) If the allegations do not fall within the board's jurisdiction, the executive director shall refer the complaint to the complaints committee. Based on its review of the complaint, the complaint committee may instruct the executive director to:

(A) close the complaint with a letter to the complainant explaining why the complaint is not within the board's jurisdiction; or

(B) advise the complainant of the additional information necessary to initiate an investigation.

(2) If the allegations in the complaint are within the board's jurisdiction and sufficient for investigation, the executive director shall:

(A) evaluate the threat to public health and safety documented by the complaint;

(B) establish an appropriate plan and schedule for its investigation to be noted in the complaint log;

(C) apprise all parties to the complaint of the schedule for the investigation and notify parties within seven days of changes in the schedule; and

(D) report the status of all continuing investigations to the complainant and the licensee or applicant every 90 days.

(e) The executive director will inform the board if the services of a private investigator are needed for the timely completion of a complaint investigation or for any other reason.

(f) The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or the investigator assigned to the case and will be required to provide a sworn response to the allegations within two weeks of that notice. Failure to respond to the allegations within the two week period is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(g) The complaints committee will review the complaint log to ensure that:

(1) complaint investigations are being handled in a timely manner;

(2) complaints are not dismissed without appropriate consideration;

(3) a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) any issues related to complaints which arise under the Act or this chapter are resolved.

(h) The complaints committee shall determine whether a violation exists and whether to dismiss the complaint as unsubstantiated or to consider appropriate disciplinary action.

(i) If a violation is found but it does not seriously affect the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation.

(j) If the complaint is not resolved by the committee, the committee may recommend that disciplinary action be taken or that other appropriate action as authorized by law be taken, including injunctive relief

or civil penalties. Action may be taken based on the allegations in the complaint or any violations found during investigation.

§781.604. Licensing of Persons With Criminal Backgrounds.

(a) The board may take action against a licensee or deny a license pursuant to Texas Civil Statutes, Articles 6252-13c and 6252-13d relating to felony or misdemeanor convictions or the Act, §50.021(a)(11) relating to felony convictions.

(b) The following felonies and misdemeanors relate to licensure as a social worker because these criminal offenses indicate an inability or a tendency to be unable to perform as a social worker:

- (1) a violation of the Act;
- (2) an offense involving moral turpitude;
- (3) failure to report child abuse or neglect;
- (4) a misdemeanor involving deceptive business practices;
- (5) the offense of assault or sexual assault;
- (6) the felony offense of insurance claim fraud; or
- (7) any other misdemeanor or felony which would indicate an inability or a tendency to be unable to perform as a social worker.

§781.605. Suspension, Revocation, or Nonrenewal.

(a) If the board suspends a license or recognition, the suspension shall remain in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(b) If a suspension overlaps a license renewal date, the suspended licensee shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to subsection (a) of this section.

(c) Upon revocation, suspension or nonrenewal of a license, a licensee shall return his or her license to the board.

§781.606. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the executive director or the complaints committee determines that the

public interest might be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this section shall apply to any settlement conferences. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive director or the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive director shall decide upon the time, date and place of the settlement conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than 10 days prior to the date of the conference. The licensee or applicant may waive the 10-day notice requirement.

(1) The notice shall inform the licensee or applicant:

(A) of the nature of the alleged violation;

(B) that he or she may be represented by legal counsel;

(C) that he or she may offer the testimony of witnesses and present other evidence as may be appropriate;

(D) that complaint committee members may be present;

(E) that the board's legal counsel or a representative of the Office of the Attorney General will be present;

(F) that attendance and participation in the conference is voluntary;

(G) that the complainant and any client involved in the alleged violations may be present; and

(H) that the settlement conference shall be cancelled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend.

(2) The notice of the settlement conference shall also contain a copy of the board's rules concerning informal disposition.

(e) A notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant and shall in-

form the complainant that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is canceled.

(f) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(g) The licensee, the licensee's attorney, committee members, and the board may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(h) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference.

(i) Access to the board's investigative file may be prohibited or limited in accordance with the Open Records Act, Government Code, Chapter 552 and the Administration Procedure Act (APA).

(j) At the discretion of the executive director or the committee members, a tape recording may be made of none or all of the settlement conference.

(k) The committee members or the executive director shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee, the licensee's attorney, board staff, and the board's attorney.

(l) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(m) At the conclusion of the settlement conference, the committee members or executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. The committee members may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(n) The licensee or applicant may either accept or reject at the conference the settlement recommendations.

(1) If the recommendations are accepted, an agreed settlement order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law.

(2) The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order.

(3) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(4) If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(5) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(o) The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(p) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(q) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(r) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA.

(s) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c).

§781.607. *Default Orders.*

(a) If a right to a hearing is waived under §781.602(c) of this title (relating to Disciplinary Action; Notices) or §781.703(b) of this title (relating to Notice), the board shall consider an order taking disciplinary action as described in the written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) The board's legal counsel or an attorney from the Office of Attorney General shall attend the board meeting.

(d) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

§781.608. *Monitoring of Licensees.*

(a) The executive director shall maintain a disciplinary action tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license or recognition shall be required to submit regularly scheduled reports at intervals appropriate to each individual situation.

(c) The executive director shall review the reports and notify the complaints committee if the requirements of the disciplinary action are not met.

(d) The complaints committee may consider more severe disciplinary proceedings if noncompliance occurs.

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

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Catherine Glancy
Chairperson
Texas State Board of
Social Worker
Examiners

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For further information, please call: (512) 719-3521



Subchapter G. Formal Hearings

• 22 TAC §§781.701-781.707

The new sections are proposed under the Human Resources Code, Chapter 50, which provides the Texas State Board of Social Worker Examiners with the authority to adopt rules that are necessary to administer the Texas Professional Social Work Act.

§781.701. Purpose. This subchapter covers the formal hearing procedures and practices that will be used by the board in handling denials, suspensions, probations, and revocations of a license and implements the contested case provisions of the Administrative Procedure Act (APA).

§781.702. *General.*

(a) The board or complaints committee on its own motion or on request from a licensee or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provisions of the Administrative Procedure Act (APA), applicable state and federal statutes, and this chapter.

(b) The formal hearing shall be held before an administrative law judge (ALJ).

(c) A formal hearing shall be held in Travis County, Texas, unless otherwise determined by the ALJ or upon agreement of the parties.

(d) The parties to a hearing shall be the applicant or licensee and the complaints committee of the board.

(e) A copy of all pleadings, motions, or any other documents filed with the ALJ shall be provided to all other parties by first class United States mail or personal delivery and certified, in writing, with the names, addresses, date and manner of service of the parties to whom a copy was furnished.

§781.703. *Notice.*

(a) The ALJ shall ensure that notice of the formal hearing is given in accordance with the notice requirements of the Administrative Procedure Act (APA).

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice:

(1) the ALJ may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances; and

(2) the applicant or licensee is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. Appropriate disciplinary action may be taken by the board.

§781.704. *Subpoenas.*

(a) On the written request of any party to the hearing, the executive director shall issue a subpoena to require the attendance of witnesses or the production of documents. The ALJ may also issue any necessary subpoenas. A subpoena may be served by any person authorized to serve subpoenas under the Texas Civil Practice and Remedies Code.

(b) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(c) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled shall be paid for mileage at 28 cents a mile, transportation, meals, and lodging expenses and a fee of \$10 per day in accordance with the APA.

§781.705. *Prehearing Conferences.*

(a) The ALJ, on his or her own motion or the motion of a party, may direct

the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) the formulation and simplification of issues;
- (2) the necessity or desirability of amending the pleadings;
- (3) the possibility of making admissions or stipulations;
- (4) the procedure at the hearing;
- (5) specifying the number of witnesses;
- (6) the mutual exchange of prepared testimony and exhibits;
- (7) designation of parties; and
- (8) other matters which may expedite the hearing.

(b) The ALJ shall issue whatever orders are necessary to cover the matters or issues.

(c) Any action taken at the prehearing conference shall be reduced to writing, signed by the ALJ and the parties, and made a part of the record.

§781.706. Hearing Procedure.

(a) The ALJ's duties. The ALJ shall preside over and conduct the hearing. On the day and time designated for the hearing, the ALJ shall:

- (1) convene and call the hearing to order;
- (2) state the purpose of and the legal authority for the hearing;
- (3) announce that a record of the hearing will be made;
- (4) outline the procedure and order of presentation that will be followed;
- (5) administer oaths to those who intend to testify; and
- (6) take any and all other actions as authorized by applicable law and this subchapter to provide for a fair, just, and proper hearing.

(b) Presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the ALJ will begin receiving testimony and evidence from the witnesses.

(2) The order of proceeding may be altered or modified by the ALJ either upon agreement of the parties or upon his or her own motion when such action will expedite the hearing without prejudice to any party.

(3) The ALJ may limit the number of witnesses whose testimony will be repetitious. The ALJ may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(4) The ALJ, at his or her discretion, may allow final arguments and shall note the time and close the hearing. The ALJ may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(c) Consolidation. The ALJ, upon his or her own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings shall not be consolidated unless the ALJ finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(d) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the ALJ and all other persons participating in or observing the hearing. The ALJ is authorized to take whatever action he or she deems necessary and appropriate to maintain the proper level of decorum and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the ALJ deems fair and just.

(e) Recording the hearing. The ALJ will keep either a stenographic or other taped record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the APA. In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(f) Rules of evidence. The ALJ will apply the Texas Rules of Civil Evidence and also the following rules.

(1) Consolidation. The ALJ may consolidate the testimony of parties or per-

sons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the ALJ should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) Exhibits.

(A) Form. The parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

(B) Tender and service. The original of each exhibit offered shall be tendered to the ALJ or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(D) After the hearing. Unless specifically directed by the ALJ, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or a rehearing.

(3) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part.

(4) Offer of proof. When testimony is excluded by the ALJ, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The ALJ may ask such questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as

represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

§781.707. Action After the Hearing.

(a) Proposal for decision.

(1) The ALJ shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs shall file them with the ALJ within the time designated by the ALJ.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the ALJ.

(b) Pleading after close. At any time after the record has been closed in a contested case, and prior to the board's decision becoming final in such case, all briefs, exceptions, written objections, motions, replies to the foregoing, and all other written documents shall be filed with the ALJ.

(c) Final orders or decisions.

(1) The final order or decision will be rendered by the board. The board may deny, suspend, probate, or revoke a license as it deems appropriate and lawful. A decision of the board may include any requirement to be imposed upon the licensee or applicant which is related to the individual's practice as a licensee and is deemed by the board to be appropriate and lawful.

(2) All final orders shall be signed by the chairperson of the board; however, interim orders may be issued by the ALJ.

(d) Motion for rehearing. A motion for rehearing shall be addressed to the board and filed with the executive director.

(e) Appeals. All communications regarding any appeal shall be to the executive director.

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

Issued in Austin, Texas, on July 11, 1994.

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Catherine Clancy
Chairperson
Texas State Board of
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Examiners

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For further information, please call: (512) 719-3521

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter O. Administrative Hearings of the Department in Contested Cases

• 25 TAC §§403.451-403.463

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§403.451-403.463, concerning administrative hearings of the department in contested cases. The proposal would affect the Administrative Procedure Act, Government Code, Chapter 2001.

New sections were originally proposed in the April 5, 1994, issue of the *Texas Register* and received two public comments. One commenter was dissatisfied with the excessive legal language and terminology and requested that the rule be rewritten. In response to that comment the proposal has been withdrawn in this issue of the *Texas Register* and new §§403.451-403.463 proposed. The proposed new sections would reflect amendments to the Administrative Procedure Act, Government Code, Chapter 2001; reorganize the text and sections; and provide additional clarifying language.

Leilani Rose, director, Financial Services, has determined that for the first five-year period the rules are in effect there will be no additional fiscal cost to state or local government as a result of administering the proposed sections. There will be no significant local economic impact.

Cathy Campbell, director, Legal Services, has determined that the public benefit is compliance with state law. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposed new sections may be submitted to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The proposed new sections are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§403.451. Purpose. The purpose of this subchapter governing administrative hearings of the department in contested cases is:

(1) to provide a simple, efficient, and uniform set of procedures for all departmental administrative hearings involving contested cases, which will adequately

protect the rights of all parties involved and will be consistent with due process requirements of the Texas and federal constitutions;

(2) to provide and to ensure uniform standards, practices, and procedures with respect to hearings held in connection with such administrative procedures; and

(3) to provide a procedure which will result in fair and expeditious determination of causes governed by this subchapter and adequately protect the procedural rights of all parties.

§403.452. Applicability and Scope of Rules.

(a) The provisions of this subchapter shall apply in all contested cases.

(b) The provisions of this subchapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the department or the substantive rights of any person.

(c) The provisions of this subchapter shall be given a liberal interpretation in order that a just, fair, equitable, and impartial judgement of the rights of the parties under the established principles of substantive law, as determined by appropriate statutes or department rules, may be attained in a timely manner and at the least expense to the department and all parties.

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

Administrative hearing or adjudicated hearing—An oral proceeding before the department in which the rights and duties of particular persons are judged after notice and opportunity to be heard.

Administrative law judge or ALJ—The attorney designated or appointed by the commissioner to conduct and preside over the hearing.

Commissioner—The commissioner of the Texas Department of Mental Health and Mental Retardation or designee.

Contested case—A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the department after an opportunity for an adjudicated hearing, except in departmental personnel matters.

Days—Calendar days, unless otherwise specified.

Decision—A decision made by the administrative law judge regarding the administrative hearing over which the ALJ is presiding.

Department—The Texas Department of Mental Health and Mental Retardation (TXMHMR) or its designee.

Exception—A party's objection to an order or ruling.

Findings of fact—Determinations from the evidence submitted in the case concerning facts asserted by one party and denied by another.

Hearings Office—The Legal Services Division of the department's central office.

Interrogatories—A discovery device consisting of written questions about the proceeding submitted by one party to another party or witness.

Motion—A request made to the administrative law judge for the purpose of obtaining a ruling or order directing some act to be done in favor of the movant.

Movant—The party making a motion.

Order—A command for action by the administrative law judge as a result of a ruling or decision.

Party—Each person or agency named or admitted as a party, pursuant to department rules and statutes under which such hearings are requested or held.

Person—An individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character other than the department.

Person receiving services or person served by the department—A person who is receiving mental health or mental retardation services funded by or through the department.

Pleadings—Written statements filed by parties concerning their respective positions, claims, and rights in administrative hearings. (e. g., applications, protests, petitions, complaints, answers, replies, motions, etc.).

Preponderance of the evidence—Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

Proceeding—The regular and orderly progress in form of law, including all possible steps in an action from its beginning to the final decision. A proceeding includes, but is not limited to, the initiating document, certificates of service, pleadings, motions, orders, prehearing conference, hearing, the record, rulings, decisions, evidence, testimony, and exhibits.

Proposed findings of fact—Findings of fact as proposed by a party.

Rules of Civil Procedure—Those rules adopted by the Texas Supreme Court which govern procedure in state courts involving all civil suits.

Rules of Evidence—Rules of court which govern the admissibility of evidence at trials and hearings.

Rules of privilege or privileged communications (i.e., statements made by person with a protected relationship such as husband/wife, attorney/client, doctor/patient, priest/penitent, etc.) which the law protects from forced disclosure on the witness stand

at the option of the spouse, client, patient, penitent, etc. who is a witness.

Ruling—A judicial determination by the administrative law judge of the admissibility of evidence, allowance of a motion, etc.

Serve, serve (up)on, service notice, service—To mail or deliver a copy of a designated document.

Statute—State or federal law.

Trial de novo—A new trial held as if no previous legal action had been taken.

With prejudice—Refusal of the ALJ to accept the refiling of a pleading or request for an administrative hearing.

§403.454. Administrative Law Judge. An administrative law judge is an attorney appointed by the commissioner or designee who hears the case, makes appropriate findings of fact and conclusions of law, and makes the final decision in each case. An attorney who has directly or indirectly participated in, or given advice on issues that are the basis for, a particular hearing may not be the administrative law judge in that hearing.

§403.455. Hearing Guidelines.

(a) Requesting an administrative hearing. A written request for an administrative hearing must be filed with the Hearings Office of the department addressed to: Hearings Office, TXMHMR, P.O. Box 12668, Austin, Texas 78711-2668. Upon the receipt of the written request for an administrative hearing before the department under applicable department rules and statutes of the State of Texas or the United States, which complies with this subchapter as to form and content, the Hearings Office shall docket the document as a pending proceeding and assign an administrative law judge (ALJ) to the case.

(b) Hearing date. If the ALJ determines that the written request was filed in a timely manner, the ALJ shall select a hearing date.

(1) The hearing date shall be no sooner than 20 days nor later than 45 days after the written request is received by the Hearings Office, unless otherwise provided in department rules or state statutes.

(2) After the hearing date has been set, the ALJ may subsequently postpone or continue the hearing date until a later date if, in the ALJ's own sound judgment and discretion, good cause requires a later date. Good cause includes, but is not limited to, the consideration that a later date will result in a fairer and more just determination of the issues and that the welfare of any person served by the department will not be substantially endangered by reason of the postponement. The ALJ is not precluded from ordering a postponement or

continuance of the hearing upon the showing of good cause.

(c) Department representative. The commissioner shall appoint an attorney and/or appropriate program staff to represent the department in contested cases.

(d) Notice of hearing. In a contested case all parties shall be afforded an opportunity for hearing after reasonable notice. At least 20 days before the hearing date, the ALJ must serve written notification to the department and the party who requested the hearing. The department may mail notice by certified or registered mail to the last known place of address of the person entitled to receive such notice or may hand-deliver such notice. Notice shall be delivered in the manner most likely to assure prompt receipt. Notice shall include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) reference to the particular sections of these statutes and rules involved; and

(4) a short and plain statement of the matters asserted by the department.

(e) Statement of issues. After a timely written motion from the department's representative, the ALJ may require the party requesting the administrative hearing to deliver to the department representative a concise written statement of the issues, statutes, and rules asserted by that party. This statement must be delivered at least 10 days before the hearing date.

(f) Nature of the hearing. All hearings conducted in any proceedings shall be opened to the public, but may be ordered to be closed upon a finding of the ALJ of possible breach of the privacy of persons receiving services, employees, or their records. The ALJ shall make the final decision based on all facts and evidence presented at the hearing. The ALJ has no authority to overrule state or federal statutes, regulations, or policies, or the terms of the contract in controversy. Issues must be proven by a preponderance of the evidence.

(g) Location of the hearing. All hearings shall be held in Austin, Texas, in the case of proceedings arising out of actions, events, or omissions alleged to have occurred in the central office of TXMHMR, and at the location of each facility of the department, in the case of all other hearings at which the action, event, or omission complained of occurred, unless for good and sufficient cause, in which case the ALJ, in the ALJ's own sound judgment and discretion, shall designate another place to hold the hearing which would be in the interest of the public.

(h) Representation for parties. Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of the State of Texas or by a lay representative of the party's choosing. Such lay representative shall not be an employee who has provided direct service to a person receiving services who is also a party in the contested case. A sole proprietor, corporation, partnership, or association may appear and be represented by any bona fide officer, employee, or partner of such person or entity. Persons may appear on their own behalf.

(i) Filing of Documents. All documents relating to any proceeding which is pending must be submitted to the ALJ with a copy served upon each party under a certificate of service as described in subsection (l) of this section. The documents shall be considered filed only when actually received by the ALJ accompanied by the filing fee, if any, required by statute or department rules.

(j) Agreements between parties. No stipulation or agreement between the parties, their attorneys/representatives, with regard to any matter involved in any proceeding, shall be in force unless:

(1) it is in writing and signed by the parties involved or their attorneys/representatives; or

(2) it has been dictated into the record by the parties involved during the course of a hearing; or incorporated in an order with their written approval. This subsection does not limit a party's ability to waive, modify, or stipulate any right or privilege provided by this subchapter.

(k) Pleadings. Pleadings submitted to the ALJ shall be protests, petitions, complaints, answers, replies, motions for rehearing, and all other motions. Regardless of any error in the identification of a pleading, its true status shall be recognized.

(1) Pleadings shall be typewritten or printed with exhibits, if any, attached. Copies of pleadings are acceptable, provided all copies are clear and permanently legible. The original of every pleading shall:

(A) be signed in ink by the party filing the pleading or by the party's attorney/representative;

(B) contain the address of the party filing it; and

(C) contain the name, telephone number, and business address of the party's attorney/representative, if any.

(2) Pleadings shall include:

(A) the name of the party initiating the hearing;

(B) the names of any other known parties;

(C) a statement of the pleading's objective which contains a concise statement of facts in support of the objective;

(D) the relief, action, or order sought by the pleader;

(E) any matter required by other rules of the department with respect to the hearing; and

(F) the certificate of service as described in subsection (l) of this section.

(3) Upon submission of any pleading to the ALJ, it shall be examined by the ALJ to determine its sufficiency under this subchapter. While a liberal interpretation shall be to be given to all pleadings, if the pleading does not comply with this subchapter, it shall be returned to the person filing it along with the statement by the ALJ of the reason for rejecting it. A corrected pleading may then be filed if it will not unduly delay the hearing.

(4) A party may make a motion to amend its pleading at any time, provided the amendment does not broaden the scope of the original pleading.

(5) Any party who submits a pleading to the ALJ after a hearing date has been set must serve a copy of the pleading upon all other parties under a certificate of service not less than five days prior to the hearing date. If any other party is represented by an attorney or other representative, then the attorney or other representative must also be served. The willful failure of any party to make such service shall be sufficient grounds for the ALJ to enter an order striking the pleading from the record.

(l) Certificate of service. A certificate by the party or the party's attorney/representative who submits a pleading stating that it has been served upon the other parties will be sufficient proof of such service. The following form of certificate is sufficient: I hereby certify that I have, on this day of , 19 , served copies of the attached document upon all other parties to this proceeding by (state here the type of delivery/service). (signature)

(m) Computing timeframes. The following procedure is to be used to compute any period of time governing hearings

procedures and which is allowed or prescribed by this subchapter or by order of the ALJ: the period shall begin on the day after the act, event, default, or controversy and conclude on the last day of such computed period, unless that day is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.

(n) Extension of timeframes. The time for the doing of any act may be extended by order of the ALJ, upon written motion submitted to the ALJ prior to the expiration of the period of time for the doing of act, showing that there is good cause for such extension of time and that the need is not caused by neglect, indifference, or lack of diligence of the movant. A copy of the written motion shall be served upon all other parties to the proceeding at the same time that it is submitted to the ALJ.

§403.456. Conduct of Hearings—General Requirements.

(a) The ALJ shall be in charge of proceedings. The ALJ has the authority to:

- (1) administer oaths;
- (2) examine witnesses;
- (3) issue subpoenas and commissions;
- (4) rule on admissibility of evidence and amendments to pleadings;
- (5) establish reasonable time limits for conducting individual hearings;
- (6) request additional information;
- (7) issue intermediate orders; and
- (8) issue any orders necessary to enforce the ALJ's rulings, which include, but not limited to:

(A) exclusion of evidence or witnesses;

(B) exclusion of oral argument;

(C) summary orders or default judgement on any issues; and

(D) postponement or dismissal of the hearing with or without prejudice.

(b) Subject to the ALJ's rulings and orders, opportunity shall be given to all parties to respond to and present evidence and argument on all issues involved.

(c) Subject to limits set by the ALJ, the party requesting the hearing and the department shall have an opportunity to call any witnesses desired.

(d) If a party or the party's attorney/representative is notified of the hearing and neither is present at the hearing, all matters stated in evidence introduced at the hearing may be considered as undisputed by the party failing to appear.

(e) Motions for postponement, continuance, withdrawal or dismissal of protest, or other matters which have been set for hearing shall be in writing and submitted to the ALJ. The party making the motion must do so under oath or affirmation and must include the specific grounds for the action and refer to all prior motions of the same nature filed in the same proceeding. Once a proceeding has actually gone to a hearing according to the notice served, no postponement or continuance shall be granted by the ALJ without the consent of all parties involved, except upon good cause.

(f) The ALJ may entertain motions for the dismissal of a contested case without a hearing for any of the following reasons:

(1) failure of the party who requested the administrative hearing to go forward with the proceeding within a reasonable period of time;

(2) unnecessary duplication of proceedings;

(3) withdrawal from the proceeding by the party who requested the administrative hearing;

(4) moot questions or protests that have remained unraised; or

(5) lack of department jurisdiction.

(g) A record shall be made of the proceedings and include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) objections and the rulings on them;

(5) proposed finding of fact and exceptions;

(6) any decision, order, opinion, or report made by the ALJ; and

(7) all staff memoranda or data submitted to or considered by the ALJ in making the final decision.

(h) Exhibits.

(1) The original of each exhibit offered shall be submitted to the ALJ for

identification and a copy to each party or that party's attorney/representative.

(2) In the event an exhibit has been identified, objected to, and excluded, the ALJ shall return the exhibit to the offering party.

(3) No exhibit will be permitted to be submitted after the conclusion of the hearing, unless specifically directed by the ALJ. In the event the ALJ allows the exhibit to be submitted after the completion of the hearing, copies of the late-filed exhibit shall be served upon all parties.

(i) Any pleading may adopt and incorporate by specific references any part of any document or entry in the official files and records of the department. This shall not relieve any party of the necessity of alleging in detail, if required, facts necessary to sustain the burden of proof imposed by law.

(j) The ALJ shall decide whether a stenographic record or an electronic recording will be made of each hearing and shall make the necessary recording arrangements accordingly. If requested by the ALJ, the hearing must be transcribed with a transcript given to the ALJ. The costs associated with recording and preparing the transcript may be assessed to one or more parties. If a party wants a transcript of the hearing, that party must pay all costs associated with providing the transcript. If a party fails to appear at a hearing and a default decision is entered against that party, the ALJ may assess court reporter costs, if any, against the defaulting party.

(k) Parties to the hearing may conduct cross-examinations required for a full and true disclosure of the facts.

(l) Before or during the hearing, the ALJ may call or request any party to call a witness or witnesses the ALJ believes necessary to make the final decision.

(m) The ALJ may not communicate directly or indirectly in connection with any issue of fact or law with any party or the party's attorney/representative, except after serving notice which provides an opportunity for all parties to participate. The ALJ may communicate with other members of the department who have not participated in the proceeding of the contested case for the purpose of utilizing the special skills or knowledge of the department's staff in evaluating the evidence in accordance with the Texas Government Code, §2001.061 and §403.458(a)(4) of this title (relating to Evidence and Depositions).

(n) A motion relating to a pending proceeding that is not made during a hearing must describe the relief sought and provide the specific reasons and grounds for such relief. It must also be supported by an affidavit if based upon matters which do not appear on the record.

(o) In all procedural matters not specifically governed by these sections, the Texas Rules of Civil Procedure shall apply unless the ALJ determines there is good cause for waiving any and all such rules.

(p) Records of the hearing shall be kept in department files for four years after a final decision is made or until any subsequent litigation arising from the hearing has been resolved.

(q) In any hearing or other proceedings conducted by the department, the identity of an individual with mental illness or mental retardation shall be not be revealed or made a matter of public record in any way unless:

(1) the party or person desiring or attempting to reveal the identity of such individual:

(A) has secured from the individual with mental illness or mental retardation or the person legally authorized to give consent for such individual written consent to reveal for the purposes of the hearing the identity of such individual, and the specific information to be revealed is set forth in such written consent, and such written consent has been filed with the ALJ; and

(B) has established to the satisfaction of the ALJ that the identity of the individual with mental illness or mental retardation is relevant and material to an issue in the hearing; or

(2) the party who has the right of confidentiality waives that right in open hearing.

(r) Any attempt by a party to circumvent the requirements of subsection

(q) of this section shall be sufficient grounds for the ALJ to dismiss the party and any protest or pleading of the party from the hearing or to dismiss hearing with prejudice.

(s) At all hearings, each party, witness, attorney/representative, or other person must show proper dignity, courtesy, and respect for the ALJ and others participating in or observing the hearing. The ALJ is authorized to act as the ALJ considers necessary and appropriate to maintain proper decorum and conduct. Actions may include, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney/representative, or other person for a period and under the conditions that the ALJ considers fair and just. The ALJ, attorneys/representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

§403.457. Prehearing Procedure.

(a) Prehearing conference.

(1) In any proceeding governed by this subchapter, the ALJ, on the ALJ's own motion or on the motion of any party, may direct the parties or their attorneys/representatives to appear before the ALJ at a specified time and place for a conference prior to the hearing date for the purpose of formulating issues, taking depositions, and considering:

(A) the possibility of making admissions of certain averments of facts or stipulations to avoid the unnecessary introduction of proof;

(B) the simplification of issues;

(C) the procedure at the hearing;

(D) the limitation, when possible, of the number of witnesses; and

(E) such other matters as may aid in the simplification of the proceedings and the disposition of the matters in controversy, including settlement of such issues as are in dispute.

(2) The ALJ may direct that one or more of the following be transmitted by each party to all other parties or their attorneys/representatives, and to the ALJ, by the date established by the ALJ:

(A) a list of witnesses the party desires to testify and a brief narrative summary of their expected testimony;

(B) a written statement of the disputed issues for consideration at the hearing;

(C) a copy of any written statements to be offered at the hearing; or

(D) a copy of other written testimony or documentary evidence the party intends to use at the hearing.

(3) Actions taken at the conference shall be recorded in an order by the ALJ unless the parties enter into a written agreement signed by the parties involved or their attorney/representative.

(b) Joint hearing. A motion for the consolidation of two or more protests or other proceedings shall be in writing, signed by the party making the motion or that party's attorney/representative, and submit-

ted to the ALJ at least five days prior to the hearing date. Two or more protests or other proceedings may not be consolidated or heard jointly without the agreement of all parties to such proceedings, unless the department finds that:

(1) the two or more proceedings involve common questions of law and fact; and

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

(c) Discovery and production of documents and things for inspection, copying, or photographing. In all discovery matters not specifically governed by these sections, the Texas Rules of Civil Procedure shall be followed.

(1) Upon the timely motion of any party showing good cause, with notice served upon all other parties, and subject to any limitation provided for discovery under the Texas Rules of Civil Procedure, the ALJ may order any party to:

(A) produce and permit the inspection and copying or photographing by or on behalf of the movant any of the following items that are in the party's possession, custody, or control and not considered privileged, as defined in §403.253 of this title (relating to Definitions), which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action:

(i) any identified documents;

(ii) papers;

(iii) books;

(iv) accounts;

(v) letters;

(vi) photographs;

(vii) objects, and

(viii) tangible things;

(B) permit entry upon designated land or other property in the party's possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any specific object or operation which may be relevant to any matter involved in the action.

(2) The ALJ shall limit the order described in paragraph (1) of this subsection, as justice may require, to protect any party or witness from undue annoyance, embarrassment, oppression, or expense. The order must specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and

photographs and may prescribe such terms and conditions as are just.

(3) The identity and location of any potential party or witness may be obtained from any communication or other paper in a party's possession, custody, or control. Any party may be required to produce and permit the inspection and copying of reports, including factual observations and opinions of an expert called as a witness. The rights granted in this paragraph may not extend to other written statements of witnesses or other written communication passing between agents, representatives, or the employees of any party to the proceeding or to other communications between any party and the party's agents, representatives, or other employees, that were made subsequent to the occurrence or transaction upon which the proceeding is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which the claim arose.

(d) Statement previously made. Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement that person has previously made concerning the occurrence or transaction upon which the proceeding is based which is in the possession, custody, or control of any party. If the request is refused, the person may make a motion for a departmental order to obtain a copy of the statement. For the purposes of this subsection, a statement previously made is:

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

(2) a stenographic, mechanical, electrical, or other recording or a transcription of the same statement, which is a substantially verbatim recital of an oral statement by the person making it and which is recorded at the same time.

(e) Admission of facts and of genuineness of documents. After a hearing date has been set any party may deliver or have delivered to any other party a written request for admission of facts and genuineness of documents. The provisions of Rule 169 of the Texas Rules of Civil Procedure govern, except that filing and enforcing shall be controlled by the ALJ and the time limit to respond is 25 (not 30) days.

(f) Interrogatories to parties. After a hearing date has been set any party may serve interrogatories upon any other party. The provisions of Rule 168 of the Texas Rules of Civil Procedure govern, except that filing and enforcing shall be controlled by the ALJ and the number of questions is limited so that no more than 25 answers are given.

§403.458. Evidence and Depositions.

(a) Rules of Evidence.

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The Rules of Evidence as applied in nonjury civil cases in the district courts of the state shall be followed. When necessary to determine facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The rules of privilege recognized by law shall be in effect. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, any part of the evidence may be received in written form if a hearing will be expedited and if the parties' interest will not be substantially prejudiced.

(2) The prepared testimony of a witness upon direct examination, either in narrative or question-and-answer form, may be incorporated in the record as if read or received as an exhibit after the witness has been sworn and has identified that the prepared testimony is as true and accurate as his oral testimony would be. The witness is subject to clarifying questions and to cross-examination. The prepared testimony may not be stricken from the record in whole or in part.

(3) Documentary or written evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original.

(4) Official notice may be taken of all facts judicially known. In addition, notice may be taken of generally recognized facts within the area of the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data. Parties shall be given an opportunity to contest the material so noticed. The special skills or knowledge of the department and its staff may be used in evaluating the evidence.

(5) All testimony in a hearing by a witness shall be taken under oath or affirmation as prescribed by law.

(6) The department or any other party may apply for permission to obtain the testimony of a witness by telephone when it is impossible or impractical to obtain the physical presence of a witness in the hearing room due to the witness's age, illness, custodial restrictions, or residence more than 100 miles from the site of the hearing.

(A) Application for permission to secure testimony by telephone shall be submitted to the ALJ with a copy sent to other parties at least 10 days prior to the hearing date. The application must state the reasons for the request. If the ALJ finds that good cause exists to permit testimony to be obtained by telephone, the ALJ must grant the application and immediately advise the parties. The ALJ must rule on the application at least five days prior to the hearing date.

(B) If testimony by telephone is allowed, the hearing room must be equipped with a speakerphone or other telephone equipment which will allow everyone present to hear the testimony of the witness simultaneously and will also allow the witness to hear all parties and the ALJ. The testimony by telephone provided by a witness shall be taken under oath or affirmation as if the witness were physically present at the hearing.

(7) If a party or witness is deaf, the department shall provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that party or witness. In this paragraph, "person who is deaf" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(8) If a party or witness speaks a language other than English, the department shall provide an interpreter of the language spoken by the party or witness.

(b) Subpoenas. The department shall have the powers of subpoena granted under the Government Code, §2001.089. The department shall, on its own motion or on the written motion of any party, on a showing of good cause, and on the monetary deposit of sums which will reasonably ensure payment of the amounts estimated to accrue, issue a subpoena in accordance with law to require the attendance of witnesses and the production of documents as may be necessary and proper for the purposes of the proceedings before it.

(c) Commissions/depositions. The issuance of commissions and the taking of depositions shall be in accordance with the provisions of the Texas Government Code, §§2001.094-2001.103.

(d) Requests for commissions or subpoenas. Requests for commissions or subpoenas shall be submitted to the ALJ.

§403.459. Deliberation. After all evidence has been heard, the ALJ shall adjourn the

hearing. Within 60 days from the date of adjournment, the ALJ shall make a final decision in the contested case. The ALJ may prescribe a longer period of time within which the final decision or order shall be issued, but such extension, if so prescribed, shall be announced at the completion of the hearing.

§403.460. Decisions.

(a) The final decision of the ALJ shall be based solely upon the record of the contested case. The final decision shall be in writing and include the findings of fact and conclusions of law separately stated.

(b) Findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) Findings of fact must be based exclusively on the evidence and on matters officially noticed. If a party submits a proposed finding of fact, the decision must include a ruling on each proposed finding.

(d) The ALJ shall enter into the record orders that are necessary to implement the final decision. The ALJ may also make other recommendations as the ALJ considers appropriate.

(e) The ALJ shall send the final decision by first class certified mail, return receipt requested, to the attorneys/representatives, or, if a party is not represented by an attorney/representative, to that party. The ALJ shall keep an appropriate record of that mailing. A party or attorney/representative notified by mail of a final decision is presumed to have been notified on the date such notice is mailed.

(f) Any party may file a written motion for rehearing. The motion must be addressed to the ALJ and must be filed so that it is received by the ALJ within 20 days after the date the final decision was mailed to the party or the party's attorney/representative. Replies to a motion for rehearing from other parties involved must be filed so as to be received by the ALJ within 30 days after the date of mailing of the final decision. The ALJ shall either grant or deny the motion for rehearing within 45 days after the date the final decision was mailed. If the ALJ does not rule on the motion for rehearing, the motion is overruled by operation of law 45 days after the date the final decision or order was mailed.

(g) In the absence of a timely motion for rehearing, the final decision is appealable through a judicial review on the date of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law. If the ALJ finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding

shall be recited or recorded into the record as well as the fact that the decision or order is final and effective on the date recited or recorded into the record. In this event, the decision or order is final and appealable on the date recited or recorded into the record and no motion for rehearing is required as prerequisite for an appeal. In cases involving the formality of decisions and actions to be taken pursuant to the provisions of the Persons with Mental Retardation Act, Texas Health and Safety Code, Subtitle D, those statutory provisions shall take precedence.

(h) The period of time for the filing of motions for rehearing and replies may be extended by written order of the ALJ but such extension may not extend the period for action beyond 90 days after the date the final decision or order was mailed. In the event of extension, the motion for rehearing is overruled by operation of law on the effective date of the decision or order, or in the absence of an effective date, 90 days after the date the final decision or order was mailed.

§403.461. Judicial Review.

(a) Unless otherwise specifically provided by statute, a party who has exhausted all administrative remedies available within department rules and who is dissatisfied with a final decision in a contested case is entitled to a judicial review.

(b) Proceedings for a judicial review are initiated by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute, the petition must be filed in a district court of Travis County, Texas. A copy of the petition must be served upon the department and all parties involved in the administrative hearing. The filing of the petition prevents enforcement of a final decision or order for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of a final decision or order for which another manner of review is authorized. If the manner of review authorized by law is by trial de novo, then the reviewing court shall try all issues of fact and law in a manner applicable to other civil suits in the state.

(c) If the manner of review authorized by law is other than by trial de novo and, in the absence of other specific statutory provisions, the provisions of the Texas Government Code, §2001.175 shall be applicable.

§403.462. Distribution. This subchapter governing administrative hearings of the department in contested cases shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) the commissioner and deputy commissioners;

(3) associate and assistant deputy commissioners;

(4) management and program staff of the central office;

(5) superintendents/directors of all department facilities;

(6) persons designated as administrative law judges; and

(7) upon request, any party to an administrative hearing conducted under this subchapter.

§403.463. References. Reference is made to the following statutes:

(1) Texas Government Code, §§2001.061, 2001.089, 2001.094-2001.103, and 2001.175;

(2) Texas Rules of Civil Procedure;

(3) Rules of Evidence; and

(4) Persons with Mental Retardation Act, the Texas Health and Safety Code, Subtitle D.

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

Issued in Austin, Texas, on July 11, 1994.

TRD-9443813

Ann Utley
Chair
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 206-4670

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 114. Control of Air Pollution From Motor Vehicles

• **30 TAC §114.27**

The Texas Natural Resource Conservation Commission (TNRCC) proposes a new §114.27, concerning criteria and procedures for determining Transportation Conformity with the State Implementation Plan (SIP). The new section is proposed as a revision to the SIP for the control of those transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The pollutants include ozone,

carbon monoxide (CO), nitrogen dioxide, particles with an aerodynamic diameter of less than or equal to ten micrometers, and the precursors of those pollutants. Affected nonattainment areas include El Paso, Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and Victoria.

These revisions are necessary under the Federal Clean Air Act (CAA) Amendments of 1990 and the subsequent November 24, 1993, transportation conformity rulemaking by the United States Environmental Protection Agency (EPA). The EPA requires that an enforceable rule be established concerning transportation conformity, inclusive of an interagency consultative process between the TNRCC and the transportation planning and development organizations that relate to nonattainment and maintenance areas. The EPA requires that transportation plans, programs, and projects in nonattainment and maintenance areas comply with the SIP's purpose of eliminating or reducing the severity of violations of national ambient air quality standards.

This new rule is necessary to implement procedures for determining the conformity of transportation plans, programs, and projects, and is necessary to allow EPA to make a finding that the SIP meets the requirements of the CAA Amendments of 1990 and the final EPA rule on transportation conformity, 40 Code of Federal Regulations, Part 51. The new rule incorporates by reference the relevant sections of the final EPA rule on transportation conformity with the exception of the Consultative Procedures, which were developed by the TNRCC in cooperation with the affected parties to this rule. The rule must be submitted to EPA by November 24, 1994.

Metropolitan Planning Organizations (MPOs) will be required to improve the flow of information and allow the TNRCC to consult directly with them on draft and final transportation plans, programs, and projects. The rule will outline procedures for ensuring that the Metropolitan Transportation Plan (MTP) and the Transportation Improvement Program (TIP), as well as transportation and transit projects, conform to the SIP.

The rule applies to all of the federal, state, and local agencies involved in the review and interchange of information on transportation projects in nonattainment and maintenance areas. The MPOs in Dallas/Fort Worth, Houston/Galveston, El Paso, Beaumont/Port Arthur, and Victoria are affected by this rule.

The final EPA rule on transportation conformity, in §51.436 and §51.438, requires the regional analysis of MTPs and TIPs in ozone and CO areas to include a "build/no build" test that demonstrates nitrogen oxide (NO_x) emissions reductions from the 1990 limits. The TNRCC is discussing a suspension of the NO_x demonstration requirement with EPA because the most recent air quality modeling indicates that NO_x reductions may not contribute toward achievement of the ozone standard. In the event that the NO_x demonstration is suspended or eliminated for a nonattainment area, the "build/no build" test for NO_x will be waived during the interim and transition periods.

Stephen Minick, Budget and Planning Division, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule. There are no revenues associated with this new rule.

Mr. Minick also has determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be prevention of the imposition of sanctions by EPA, which could be imposed if this Transportation Conformity rule is not prepared and implemented. Imposition of sanctions could hurt the economy and delay highway and other transportation projects. Further, this rule will promote cooperation and coordination between agencies and, thereby, permit the timely processing of conformity determinations for MTPs and TIP in nonattainment and maintenance areas. The rule should result in improvement of air quality by ensuring the implementation of effective Transportation Control Measures in a timely fashion, thereby reducing mobile source emissions, vehicle miles traveled, and traffic congestion in the nonattainment and maintenance areas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Public hearings on the proposed new rule are scheduled for the following dates and places: August 15, 1994, 7:00 p.m., John Gray Institute, 855 Florida Avenue, Beaumont; August 16, 1994, 11:00 a.m., Houston-Galveston Area Council, Second Floor, Conference Room B, 3555 Timmons Lane, Houston; August 17, 1994, 6:00 p.m., City of El Paso Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso; August 18, 1994, 2:00 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; and August 19, 1994, 11:00 a.m., Victoria Community Center Annex, 2905 East North Street, Victoria.

Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearings must be submitted to the TNRCC central office in Austin no later than August 26, 1994. Material received by the Regulation Development Section by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed new rule. Copies of the proposal are available at the Mobile Source Division of the TNRCC located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC regional offices, or by mail at P.O. Box 13087, Austin, Texas 78711-3087. For further information, contact Al Giles at (512) 239-1943.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512)

239-1457. Requests should be made as far in advance as possible.

The new rule is proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The new rule affects the Health and Safety Code, §382.017.

§114.27. Transportation Conformity.

(a) Purpose. The purpose of this section is to implement the requirements set forth in 40 Code of Federal Regulations (CFR), Part 51, Subpart T (relating to Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code or the Federal Transit Act). It includes policy, criteria, and procedures for demonstrating and assuring conformity of transportation planning activities with the State Implementation Plan (SIP).

(b) Applicability. This section applies to transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The pollutants include ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter of less than or equal to ten micrometers (PM_{10}), and the precursors of those pollutants. Affected nonattainment areas include El Paso, Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and Victoria.

(c) CFR incorporation. The provisions promulgated in the following listed sections of 40 CFR, Part 51 are hereby incorporated by reference: §§51.392, 51.394, 51.398, 51.400, 51.404, 51.406, 51.408, 51.410, 51.412, 51.414, 41.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.452, 51.454, 51.456, 51.458, 51.460, 51.462, and 51.464.

(d) Consultation. Pursuant to 40 CFR, §51.402 regarding consultation, the following procedures shall be undertaken in nonattainment and maintenance areas before making conformity determinations and before adopting applicable SIP revisions.

(1) General factors.

(A) For the purposes of this subsection, relating to consultation, the affected agencies shall include:

(i) United States Environmental Protection Agency (EPA);

(ii) Federal Highway Administration (FHWA);

(iii) Federal Transit Administration (FTA);

(iv) Texas Department of Transportation (TxDOT);

(v) metropolitan planning organizations (MPO) in nonattainment or maintenance areas;

(vi) local publicly-owned transit services in nonattainment or maintenance areas (recipients of FTA §9 funds);

(vii) Texas Natural Resource Conservation Commission (TNRCC);

(viii) local air quality agencies in nonattainment or maintenance areas (recipients of Clean Air Act, §105 funds);

(B) All correspondence with the affected agencies in subparagraph (A) of this paragraph shall be addressed to the following designated point of contact:

(i) MPO: Executive Director or designee;

(ii) TNRCC: Executive Director or designee;

(iii) TxDOT: Director of Transportation Planning and Programming or designee;

(iv) TxDOT: Director of Environmental Affairs Division or designee;

(v) FHWA: Administrator of Texas Division or designee;

(vi) FTA: Director of Office of Program Development-FTA Region 6, or designee;

(vii) EPA: Regional Administrator-EPA Region 6, or designee;

(viii) TxDOT District: District Engineer or designee;

(ix) local publicly-owned transit services (recipients of FTA §9 funds): General Manager or designee;

(x) local air quality agencies (recipients of Clean Air Act, §105 funds): Director or designee; and

(xi) TNRCC Regions in nonattainment or maintenance areas: Regional Director or designee.

(2) Roles and responsibilities of affected agencies.

(A) The MPO shall consult with the agencies in paragraph (1) (B) of this subsection in the development of Metropolitan Transportation Plans (MTP), Transportation Improvement Programs (TIP), projects, technical analyses, travel demand or other modeling, and data collection. Specifically, the MPOs shall:

(i) allow the TNRCC Mobile Source Division Director, or a designated representative, to participate in meetings of technical committees on surface transportation and air quality in each nonattainment and maintenance area in order to consult directly with the particular committee during the development of the transportation plans, programs, and projects;

(ii) send information on time and location, an agenda, and supporting materials (including preliminary versions of MTPs and TIPs) for all regularly scheduled meetings on surface transportation or air quality to each of the agencies specified in paragraph (1)(B) of this subsection. Such information shall be provided in accordance with the locally adopted public involvement process as required by 23 CFR, Part 450, §450.316(b)(1);

(iii) after preparation of final draft versions of MTPs and TIPs, ensure that the agencies specified in paragraph (1)(B) of this subsection are included in the local area's public participation process as required by the Metropolitan Planning Rule, 23 CFR, §450.316(b)(1);

(iv) for the purposes of regional emissions analysis, initiate a consultation process with the affected agencies specified in paragraph (1)(B) of this subsection during the development stage of new or revised MTPs and TIPs to determine which transportation projects should be considered regionally significant and which projects should be considered to have a significant change in design concept and scope from the effective MTP and TIP. Regionally significant projects will include, at a minimum, all facilities classified as principal arterial or higher, or fixed-guideway systems or extensions that offer an alternative to regional highway travel. Also, these include minor arterials included in the travel demand modeling process which serve significant interregional and intraregional travel, and connect rural population centers not already served by a principal arterial, or connect with intermodal transportation terminals not already served by a principal arterial. A significant change in design concept and scope is defined as a revision of a project in the MTP or TIP that would significantly affect model speeds, vehicle miles travelled, or network connections. In addition to new facilities, examples may include changes in the number of through lanes or length of project (more than one mile), access control, addition of major intermodal terminal facilities (such as new international bridges, park-and-ride lots, and transfer terminals), addition/deletion of interchanges, or changing between free and toll facilities. When a significant change in the design and scope of a project is proposed, the MPO shall document the rationale for the change

and give the affected agencies specified in paragraph (1)(B) of this subsection a 30-day opportunity to comment on their rationale. The MPO shall consider the views of each agency that comments, and respond in writing prior to any final action on these issues. If the MPO receives no comments within 30 days, the MPO may assume concurrence by the agencies specified in paragraph (1)(B) of this subsection;

(v) include in the TIP a list of projects exempted from the requirements of a conformity determination pursuant to 40 CFR, Part 51, §51.460 and §51.462. The MPO shall consult with the affected agencies specified in paragraph (1)(B) of this subsection in determining if a project on the list has potentially adverse emissions for any reason, including whether or not the exempt project will interfere with implementation of an adopted transportation control measure (TCM). The MPO shall respond in writing to all comments within 30 days on final MTP and TIP documents. If no comments are received as part of the public involvement process for the TIP, the MPO may proceed with implementation of the exempt project;

(vi) notify the affected agencies specified in paragraph (1)(B) of this subsection in writing of any MTP or TIP revisions or amendments which add or delete the exempt projects identified in 40 CFR, §51.460;

(vii) as required by 40 CFR, §51.424 and §51.454 of the final EPA transportation conformity rule, make a preliminary identification of those projects located at sites in PM₁₀ nonattainment and maintenance areas that require quantitative PM₁₀ Hot Spot analyses. After these projects have been identified, the MPO shall submit a list of these projects and sufficient data to the agencies specified in paragraph (1)(B) of this subsection for review and comment;

(viii) before adoption of any new or substantially different methods or assumptions used in the Hot Spot or Regional Emissions Analysis, provide an opportunity for the agencies specified in paragraph (1)(B) of this subsection to review and comment;

(ix) in coordination with TxDOT and the local transit agencies, make assumptions about the location, design concept, and scope for regionally significant non-FHWA/FTA funded projects that are disclosed to the MPO, but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analyses according to the requirements of 40 CFR, §51.452;

(x) pursuant to §114.23 of this title (relating to Transportation Control Measures), report to the TNRCC annually

on the status of adopted TCMs. If alternative TCMs or other reduction measures are deemed necessary, and these are not already included in the SIP, the MPO shall develop new TCMs with equal or greater emissions reductions consistent with the MTP, TIP, SIP, and conformity requirements, pursuant to §114.23(e) of this title. Any changes in TCMs will be coordinated with the affected agencies specified in paragraph (1)(B) of this subsection;

(xi) share cooperatively the responsibility for conducting conformity determinations on transportation activities which cross the borders of MPOs or nonattainment and maintenance areas. The affected MPOs will enter into a Memorandum of Agreement (MOA) which will define the effective boundary and the respective responsibilities of each MPO for regional emissions analysis. The MPOs will be responsible within their respective metropolitan area boundaries and, at their option, beyond to the boundaries of the nonattainment/maintenance areas, for regional emissions analysis. Adjacent MPOs or nonattainment/maintenance areas or basins will share information concerning air quality modeling assumptions and emission rates that affect both areas; and

(xii) for the purpose of determining the conformity of all projects outside the metropolitan planning area, but within the nonattainment or maintenance area, enter into an MOA involving the MPO and TxDOT for cooperative planning and analysis of projects.

(B) The TNRCC, as the lead air quality planning agency, shall work in consultation with the agencies specified in paragraph (1)(B) of this subsection in developing applicable transportation related SIP revisions, air quality modeling, general emissions analysis, emissions inventory, and all related activities. Specifically, the TNRCC shall:

(i) set agendas and schedule meetings to seek advice and comments from all agencies specified in paragraph (1)(B) of this subsection during preparation of applicable transportation related SIP revisions;

(ii) schedule public hearings in order to gather public input on the applicable transportation related SIP revisions and notify the agencies specified in paragraph (1)(B) of this subsection of the hearings according to 40 CFR, §51.102;

(iii) provide copies of final documents, including applicable adopted or approved transportation related SIP revisions and supporting information, to all agencies specified in paragraph (1)(B) of this subsection; and

(iv) after consultation with the MPO regarding TCMs pursuant to §114.23(b) of this title, distribute to all agencies specified in paragraph (1)(B) of this subsection and other interested persons the list of TCMs proposed for inclusion in the SIP. In consultation with the agencies specified in paragraph (1)(B) of this subsection, the TNRCC shall determine whether past obstacles to implementation of TCMs have been identified and are being overcome, and determine whether the MPOs and the implementing agencies are giving maximum priority to approval or funding for TCMs. Also, the TNRCC shall consider, in consultation with the affected agencies, whether delays in TCM implementation necessitate a SIP revision to remove TCMs or substitute TCMs or other emission reduction measures.

(3) General procedures.

(A) The MPO or the TNRCC, as applicable, shall respond to comments of involved agencies on MTPs, TIPs, projects, or SIP revisions in accordance with the public involvement procedures that govern the involved action. The MPO or the TNRCC, as applicable, shall include all comments and the replies to those comments with final documents when they are submitted for adoption by the agency's governing board.

(B) Because the validity of the regional emissions analysis depends on transportation modeling assumptions which need periodic updates, the MPO, with the assistance of TxDOT and local publicly owned transit agencies, will conduct meetings with the agencies specified in paragraph (1)(B) of this subsection to cooperatively establish research and data collection efforts and regional model development (e.g., household/transportation surveys).

(C) For the purposes of evaluating and choosing a model (or models) and associated methods and assumptions to be used in Hot-Spot and Regional Emissions Analyses, the TNRCC shall establish a working group identified as the Transportation and Air Quality Technical (TAQT) Working Group. The TAQT Working Group shall include the agencies specified in paragraph (1)(B) of this subsection. The frequency of meetings and agendas for them will be determined by the TNRCC in cooperation with the agencies specified in paragraph (1)(B) of this subsection. This function may be delegated to an existing group with similar composition and purpose.

(D) The TNRCC and affected MPOs shall cooperatively evaluate

events which will trigger the need for new conformity determinations. New conformity determinations may be triggered by events established in 40 CFR, §51.400 as well as other events, including emergency relief projects that require substantial functional, locational, and capacity changes, or in the event of any other unforeseeable circumstances.

(4) Conflict resolution.

(A) The TNRCC and the MPO (or TxDOT where appropriate) shall make a good-faith effort to address the major concerns of the other party in the event they are unable to reach agreement on the conformity determination of a proposed MTP or TIP. The efforts shall include meetings of the agency executive directors if necessary.

(B) In the event that the MPO or TxDOT determines that every effort has been made to address the TNRCC concerns, and that no further progress is possible, the MPO or TxDOT shall notify the TNRCC executive director in writing to this effect. This subparagraph shall be cited by the MPO or TxDOT in any notification of a conflict which may require action by the Governor.

(C) The TNRCC has 14 calendar days from date of receipt of notification as required in subparagraph (B) of this paragraph to appeal to the Governor. If the TNRCC appeals to the Governor, the final conformity determination must then have the concurrence of the Governor. The Governor may delegate his or her role in this process, but not to the Commission or staff of the TNRCC, a local air quality agency, the Texas Transportation Commission or staff of TxDOT, or a MPO. This subparagraph shall be cited by the TNRCC in any notification of a conflict which may require action by the Governor or his or her delegate. If the TNRCC does not appeal to the Governor within 14 calendar days from receipt of written notification, the MPO or the TxDOT may proceed with the final conformity determination.

(5) Public comment on conformity determinations. Consistent with the requirements of 23 CFR, Part 450, relating to public involvement, the agencies specified in paragraph (1)(B) of this subsection shall establish a public involvement process which provides opportunity for public review and comment prior to taking formal action on conformity determinations for all MTPs and TIPs. In addition, these agencies shall address in writing any public comment claiming that a non-FHWA/FTA funded, regionally significant project has not been properly represented in the conformity determination for a MTP or TIP. Also, these

agencies shall provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(6) Enforceability. The TNRCC shall seek a financial penalty for violation of the provisions of this subsection, relating to consultation, only if such violation is egregious or knowing.

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

Issued in Austin, Texas, on July 11, 1994.

TRD-9443918

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

Proposed date of adoption: October 28, 1994

For further information, please call: (512) 239-0615

◆ ◆ ◆
Chapter 277. Use
Determination for Tax
Exemptions for Pollution
Control Property

- 30 TAC §§277.1, 277.2, 277.4, 277.6, 277.10, 277.12, 277.20

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§277.1, 277.2, 277.4, 277.6, 277.10, 277.12, and 277.20. The new sections will comprise a new Chapter 277, concerning Use Determinations for Tax Exemptions for Pollution Control Property.

The proposed new chapter will implement legislation enacted by the 73rd Legislature, House Bill 1920 and House Joint Resolution 86. Proposition 2, which was required by the legislation, was approved by Texas voters in November 1993. The purpose of the legislation is to provide relief through tax exemptions to individuals and companies required, by the government, to make investments for the prevention, monitoring, control, or reduction of air, water, or land pollution. In addition, taxroll back relief is provided for political subdivisions.

The legislation and proposition provide for an exemption from property taxes for pollution control property purchased, acquired, installed, constructed, replaced, or reconstructed after January 1, 1994, to meet or exceed federal, state, or local environmental laws, rules, or regulations. The term "exceed" is interpreted to include voluntary projects which go beyond the minimum requirements of environmental laws, rules, or regulations, provided that the projects are initiated pursuant to or in compliance with an adopted or enacted law, rule, or regulation.

The TNRCC is delegated statutory responsibility for determining whether a property is considered pollution control property. The proposed new chapter specifies the proce-

dures to be followed in obtaining a use determination (tax exemption certification) from the TNRCC. The TNRCC's positive use determination is submitted by the applicant to the taxing authority to request a tax exemption for the pollution control property. Section 277.1, concerning Scope and Purpose, states the purpose of the proposed new chapter. Section 277.2, concerning Definitions, defines specific terms that are used within the chapter. Section 277.4, concerning Applicability, specifies the requirements for eligibility for a use determination. Section 277.6, concerning Exceptions, lists types of pollution control property specifically exempted from eligibility for a use determination. Section 277.10, concerning Application for Use Determination, describes the minimum information that must be provided to the TNRCC to obtain a use determination. Rather than list separate requirements for political subdivisions, as was done in the statute, these requirements have been combined with the general requirements in §277.10. Section 277.12, concerning Application Review Schedule, describes the responsibilities and time frames for the TNRCC to complete the review of a use determination application. Section 277.20, concerning Application Fees, specifies the fees payable to the TNRCC for review of the application for use determination.

No later than June 30, 1995, the TNRCC will conduct a review of §§277.10, 277.12, and 277.20, to determine whether any changes are required.

The staff has prepared a draft Technical Guidelines Manual to assist applicants applying for a use determination. The manual provides information on eligibility requirements, including specific examples of pollution control property that will or will not be eligible. The staff solicits comments from the public on the content and format of the manual and support documents. A copy of the manual, a draft application form, pollution control equipment list, and examples of use determinations are available upon request from the TNRCC office of Air Quality, Regulation Development Section. The physical location and telephone contact for requesting this information are stated at the end of this preamble.

Stephen Minick, Division of Budget and Planning, has determined that for the first five-year period the sections are in effect, there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The costs to state government will be approximately \$875,000 in each year of the five-year period. These costs are associated with the increased staff workload in reviewing use-determination applications. There may be a reduction in revenues to the local taxing authority as a result of the tax savings from the pollution control property that qualifies for a tax exemption. There may be added costs to local governments, specifically the county tax appraisers, for processing the tax exemption requests.

Mr. Minick 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 improvements in pollution control due to the tax incentives for installation of pollution control equipment and compliance with governmen-

tal requirements. The costs to small businesses affected by the proposed new rules will consist of the cost to prepare a use determination application. These costs will be offset by the savings from a tax exemption that would be granted for using pollution control property. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

A public hearing on this proposal will be held on August 8, 1994 at 10:00 a. m. in Building B (Room 201A) of the TNRCC central office located 12124 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC, Air Quality Planning Division, P.O. Box 13087, Austin, Texas 78711 through August 12, 1994. Material received by the Air Quality Planning Division/Regulation Development Section by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed sections. Copies of the proposal are available at the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC regional offices. For further information, contact Gary McArthur at (512) 239-1917.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

The new rules are proposed under the Texas Health and Safety Code (THSC), §382.017 and §361.061, the Texas Clean Air Act (TCAA), the Texas Water Code, §5.102, and the Texas Solid Waste Disposal Act, §261.014, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA and the THSC.

The new sections implement House Bill 1920 and House Joint Resolution 86, 73rd Legislature, 1993.

§277.1. Scope and Purpose. The purpose of this chapter is to establish the procedure and mechanism for an owner, including political subdivisions, of pollution control property, to apply to the Texas Natural Resource Conservation Commission for a determination of pollution control use (use determination).

§277.2. Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA), The Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code

(TWC), and the Texas Health and Safety Code (THSC), or in the rules of the Commission, the terms used by the Commission have the meanings commonly ascribed to them in the field of pollution control. In addition to the terms which are defined by the TCAA, the TSWDA, TWC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Installation—The act of establishing, in a designated place, something that is put into place for use or service.

Pollution control property—A facility, device, or method for control of air, water, or land pollution as defined by the Property Tax Code, §11.31(b).

Pre-Determination—Under Tier I, an applicant requesting a use determination for property that has already been determined eligible by the TNRCC as pollution control property; under Tier II, a manufacturer/retailer who is seeking a use determination for property to be produced or sold.

Use determination—A finding, either positive or negative, by the TNRCC that the property is used wholly or partly for pollution control purposes.

§277.4. Applicability.

(a) To obtain a positive use determination, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution. In addition, pollution control property must meet the following conditions:

(1) property must have been constructed, acquired, or installed after January 1, 1994;

(2) land must include only the portion of the land acquired after January 1, 1994 that actually contains pollution control property; and

(3) equipment, structures, buildings, or devices must not have been taxable by any taxing unit in Texas on or before January 1, 1994, with the following exceptions:

(A) if construction of pollution control property is in progress on January 1, 1994, that portion of the property constructed, acquired, or installed after January 1, 1994, is eligible for a positive use determination; or

(B) property purchased from another owner who previously used the property as pollution control property is

eligible for a positive use determination if it is acquired, constructed, or installed after January 1, 1994, and is not taxable by any taxing unit in which the property is located on or before that date.

(b) The Executive Director shall determine the portion of the pollution control property eligible for a positive use determination.

§277.6. Exceptions. The following are not entitled to a positive use determination under this chapter:

(1) solely on the basis that the property is used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution;

(2) property that is used for residential purposes, or for recreational, park, or scenic uses as defined by the Texas Health and Safety Code, §23.81;

(3) motor vehicles; and

(4) property that was subject to a tax abatement agreement executed before January 1, 1994. However, property acquired, constructed, or installed after expiration of a tax abatement agreement could be eligible for a positive use determination.

§277.10. Application for Use Determination. In applying for a use determination under this chapter, a person or political subdivision shall present an official Texas Natural Resource Conservation Commission (TNRCC) application form, accompanied by the appropriate fee, pursuant to §277.20 of this title (relating to Application Fees) to the Executive Director of the TNRCC. An application must be submitted for each unit of pollution control property or for each facility consisting of a group of integrated units which have been installed for a common purpose. Delivery of the application by the United States Postal Service, Certified Mail Receipt, is acceptable. If the applicant, other than a political subdivision, desires to apply for a use determination for a specific tax year, the application must be post-marked no later than December 31 of the preceding year. Political subdivisions must submit an application by May 1 of the year that the use determination is being applied for. The application form, which is to be approved by the Executive Director, shall contain at least the following:

(1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;

(2) the estimated cost of the pollution control facility, device, or method;

(3) the purpose of the installation of such facility, device, or method, and

the proportion of the installation that is pollution control property;

(4) the specific law, rules, or regulations that are being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, sufficient cost or other information, presented by the person seeking the use determination, that demonstrates to the satisfaction of the Executive Director the proportion of the installation that is pollution control property;

(6) any information that the Executive Director deems reasonably necessary to determine the eligibility of the application;

(7) if the property for which a determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the applicant that demonstrates, to the satisfaction of the Executive Director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability; and

(8) the name and address of the chief appraiser of the appraisal district for the County in which the property is located.

§277.12. Application Review Schedule. Following submission of the information required by §277.10 of this title (relating to Application for Use Determination), the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) shall determine whether the pollution control property is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. If the determination is that the property is used partly for pollution control then the Executive Director shall determine the proportion of the property used for pollution control.

(1) As soon as practicable, the Executive Director shall send notice by regular mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a use determination under this chapter

(2) If the application is determined to be incomplete, the Executive Director shall send a notice of deficiency to the applicant Within 30 calendar days of receipt of a notice of deficiency, the applicant shall submit to TNRCC the information necessary to complete the application. If the response to the notice of deficiency does not result in a complete application,

the application will be returned without prejudice.

(3) The executive director shall determine whether the property is used wholly or partly to control pollution.

(A) If a positive determination is made, the Executive Director shall issue a use determination letter to the applicant stating that determination and the proportion of the property that is pollution control property.

(B) If a negative determination is made, the Executive Director shall issue a denial letter explaining the reason for the denial.

§277.20. Application Fees.

(a) Fees shall be remitted with each application for use determination in an amount based on the following.

(1) The fee for pollution control property that has been specifically designated by the Executive Director as eligible for predetermination shall be \$100.

(2) The fee for pollution control property used wholly (100%) for the control of air, water, and/or land pollution, but not designated as eligible for predetermination, shall be \$500.

(3) The fee for pollution control property used partially (100%) for control of air, water, and/or land pollution shall be \$1,000.

(b) Fees shall be forfeited for applications for use determination which are denied or returned without prejudice. An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §277.12(2) of this title (relating to Application Review Schedule). The fee deficiency must be remitted with the response to the deficiency notice before the application will be deemed complete.

(c) All fees shall be remitted in the form of a check or money order made payable to the TNRCC "Use Determination" and delivered with the application to the TNRCC-Use Determination, P.O. Box 13087, Austin, Texas 78711-3087.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443919

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

Proposed date of adoption: September 1, 1994

For further information, please call: (512) 239-0615

Chapter 330. Municipal Solid Waste

Subchapter Q. Memoranda of Agreement and Joint Rules with Other Agencies

• 30 TAC §330.733

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §330.733, concerning the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 Code of Federal Regulations (CFR) Part 61, Subpart M, §61.154, for the Texas Department of Health (TDH).

The Texas Air Control Board formerly regulated air emissions of asbestos from demolition and renovation activities. By amending Article 4477-3a of Vernon's Texas Civil Statutes, subsections (k)-(n), House Bill (HB) 1680 of the 73rd Legislature transferred this regulatory responsibility to the TDH. As a result, the TDH will be implementing the U.S. Environmental Protection Agency's (EPA's) 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos, as it pertains to demolitions and renovations involving potential asbestos emissions, beginning September 1, 1994. HB 1680 also requires the TDH and the TNRCC to develop a Memorandum of Understanding (MOU) on inspection of asbestos disposal sites under the TNRCC jurisdiction and to adopt the MOU by rule. Section 330.733 is proposed to be added to Chapter 330, Subchapter Q, to adopt the TNRCC/TDH MOU on inspection of asbestos disposal sites by rule and to state where a copy of the MOU can be obtained. The MOU is published as a Figure 1: 30 TAC §330.773(a) in the Tables and Graphics Section of this issue of the *Texas Register*.

Stephen Minick, Division of Budget and Planning, has determined that, for the first five-year period this section as proposed is in effect, there are no significant fiscal implications anticipated for state or local government or small businesses as a result of enforcement or administration of the section.

Mr. Minick also has determined that for the first five years this section as proposed is in effect, the public benefit anticipated as a result of administration of and compliance with the section will be more effective management of the state's efforts to regulate disposal of asbestos wastes and improved protection of the public health from improper control of asbestos. There are no known costs anticipated to any individual required to comply with this section as proposed.

Comments on this proposal may be submitted to Dr. Hygie H. Reynolds, Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The deadline for the submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*.

The new section is proposed under the Texas Water Code, §§5.103, 5.105, and 28.011, which provide the TNRCC the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The new section is also proposed under the Health and Safety Code, §361.011 and §361.024, which provide the TNRCC the authority to adopt rules necessary to manage municipal solid waste.

§330.733. Adoption of Memorandum of Understanding by Figure.

(a) The Texas Natural Resource Conservation Commission adopts a memorandum of understanding (MOU) between the Texas Department of Health (TDH) and the Texas Natural Resource Conservation Commission (TNRCC) (Figure 1: 30 TAC §330.773(a)). The memorandum contains the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 CFR Part 61, Subpart M, §61.154 and provide copies of inspection and enforcement documentation to the TDH. This effort will support the TDH in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR Part 61, Subpart M.

(b) Copies of the MOU are available upon request from the Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087.

(c) The effective date of the MOU is the same as the effective date of the rule amendment adding this section.

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

Issued in Austin, Texas, on July 13, 1994.

TRD-9443058

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

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 239-6087

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Shell Dredging on the Texas Gulf Coast

• 31 TAC §57.42, §57.45

The Texas Parks and Wildlife Commission proposes amendments to §§57.42, 57.45, 57.62, 57.73 and §57.101, concerning regula-

tion and price-setting for sand, gravel and marl. Amendments to §§57.42 and 57.45 change references to provide consistency with the proposed amendment to §57.101. The amendment to §57.62 deletes the definition of "fill materials" and the amendment to §57.73 deletes references to "fill material." The amendment to §57.101(a) establishes a price for sand, gravel and marl.

Paul M. Shinkawa, acting general counsel, has determined that for the first five year period the rules will be in effect there will be some fiscal implications for state government as a result of administering the rules.

There are expected increases in revenue to state government as a result of administering these rules. Such additional revenue is due to collection of the royalty and is expected to be slight. The actual amount will be dependent on the number of permittees and the amount of materials dredged. There are no impacts expected on local governments because they are exempt from price increases.

Mr. Shinkawa also has determined that the public benefit anticipated as a result of implementing this section will be additional revenue to the department that is expected to offset part of the costs associated with the sand, gravel, and marl permit program. Increased protection of natural resources may also result as revenues formerly associated with operation and maintenance of this program become available for other department activities. Public benefit is anticipated through the increase in dedicated revenues for fish hatchery activities. In general, fiscal implications to persons and small businesses are associated with payment of the royalty amount. The actual amount will be dependent on the number of permittees and the amount of materials dredged.

The Department has not filed a local employment impact statement with the Texas Employment Commission as required by the Administrative Procedure Act §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed amendments may be submitted to Catherine Livingston, Resource Protection, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, 1-800-792-1112, extension 4471 or 512-444-0160.

The amendments are proposed under the authority of Parks and Wildlife Code, §86.001, et seq, which sets out the authority of the commission to manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the state-owned waterways.

§57.42. *Consents.* The following provisions shall apply to all shell dredging in state-owned submerged tidelands of this state:

(1) The director of the department is expressly authorized to issue shell dredging permits in all the coastal waters of Texas except that the director may at his discretion request that the commission consider the issuance of a permit and except

that in no event will shell dredging operations be conducted in those areas described as follows:

(A)-(C) (No change.)

(D) Those sections relating to siltation and to minor violations for siltation of exposed reefs are suspended for operations which occur in state Tracts 74, 101, 102, and 106 in San Antonio Bay when no live oysters are present on an exposed reef at any time during the dredging operation. Permittee will remove all silt from an exposed reef or at the department's option will resurface the entire area of the exposed reef with clean, coarse shell to the satisfaction of the department. If live oysters are present on any exposed reef and siltation occurs to the reef as a result of the dredging operation or related dredging activities of permittee, those sections relating to siltation and minor violations will remain in full force and effect. For purposes of this subparagraph, live oysters are considered to be present on an exposed reef within a state tract when department samples yield three, one bushel or more, samples produce an average of one or more market oyster (three inches or larger) per bushel or 10 or more seed oysters (3/4-inch to three inches), and spat (below 3/4-inch) combined per bushel sample. The director will designate the period of time when the shell will be furnished to the department. The quantity of shell referred to in this subparagraph is in addition to the shell permittee is required to furnish for reef enhancement by §57.10(c) [(b)] of this title (relating to Prices).

(E)-(G) (No change.)

(2)-(4) (No change.)

§57.45. Permit Applications.

(a) (No change.)

(b) In addition to the requirements specified under subsection (a) of this section, the following will be required for the issuance of special permits:

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

(3) The artificial replacement reef required by paragraph (2) of this subsection will be at least one foot thick. The location designated by the director will be of sufficient water depth to allow permittee to deliver and spread the replacement shell. The director will designate the period of time when the shell will be furnished to the department. Permittee will not be required to pay for the shell used for construction of an artificial replacement reef. The quantity of shell referred to in this paragraph is in addition to the shell permittee is required to furnish for reef enhancement by §57.101(c)

[(b)] of this title (relating to Prices).

(4) (No change.)

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

Issued in Austin, Texas, on July 13, 1994.

TRD-9443944

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 389-4418

Issuance of Marl, Sand and Gravel Permits

• 31 TAC §57.62, §57.63

The amendments are proposed under the authority of Parks and Wildlife Code, §86.001, et seq, which sets out the authority of the commission to manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the state-owned waterways.

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

[Fill materials—A conglomerate mixture of sand, shell, gravel, and marl of such consistency and quality as to make it impractical to separate into any one or more of the above named materials, and which has a primary use and value as a fill material to increase the level of land area.]

§57.73. [Fill Material:] *Claims of Private Ownership.* Claims of private ownership. An applicant for a permit to dredge [fill material] from [and/or to fill] an area which is or may be subject to tidal inundation claimed as the private property of the applicant must provide the department with sufficient proof of such ownership; and this proof shall be accompanied by a recent survey plat indicating the exact location of such area, or the department will presume the ownership of such area is vested in the state. In all such instances, the applicant has the burden to satisfy the department concerning the question of ownership, and the department reserves the right to demand adequate proof of ownership prior to granting a permit for such area. The attorney general shall be requested to examine the title to all claims of private ownership, and his findings shall be taken as final on questions of title.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443945

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 389-4418

Price of Fill Material

• 31 TAC §57.91

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

The Texas Parks and Wildlife Department proposes the repeal of §57.91, concerning the price per cubic yard of marl. This section is proposed for repeal because the price of marl is proposed for regulation under proposed amendments to §57.101. Amendment to §57.101 is being proposed under Chapter 86 of the Parks and Wildlife Code.

Paul M. Shinkawa, acting legal counsel, has determined that for the first five year period the repeal will be in effect there will be no fiscal implications to state or local government as a result of administering the repeal of this section; however, there will be an additional cost and increased revenue statement in the preamble for the proposed amended §57.101.

Mr. Shinkawa also has determined that the public benefit anticipated as a result of repeal of this section and passage of proposed amended §57.101 will be additional revenue to the department that is expected to offset part of the costs associated with the sand, gravel, and marl permit program. Increased protection of natural resources may also result as revenues formerly associated with operation and maintenance of this program become available for other department activities. Public benefit is anticipated through the increase in dedicated revenues for fish hatchery activities. In general, fiscal implications to small businesses are associated with payment of the royalty amount. The actual amount will be dependent of the number of permittees and the amount of materials dredged.

The Department has not filed a local employment impact statement with the Texas Employment Commission as required by the Administrative Procedure Act §2001.022, as this agency has determined that the proposed repeal will not impact local economies.

Comments on the proposal may be submitted to Catherine Livingston, Legal Services Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, 1-800-792-1112, extension 4471 or (512) 444-0160.

The repeal is proposed under the the Texas Parks and Wildlife Code, §86. 012, which authorizes the commission, with the approval

of the governor, to sell sand, gravel, and marl for not less than four cents a ton.

§57.91. Marl Price.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443841

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: 1-800-792-1112, extension 4433 or (512) 389-4433

Price of Sand, Shell, Gravel and Marl

• 31 TAC §57.101

The amendment is proposed under the authority of the Parks and Wildlife Code, §86.012, which authorizes the commission, with the approval of the governor, to sell sand, gravel, and marl for not less than four cents a ton.

§57.101. Prices.

(a) The commission, with the approval of the governor, establishes a price of \$.63 per cubic yard for sand, gravel, and marl. The price of sand, gravel, and marl will hereafter be adjusted annually, starting September 1, 1995, to reflect any increase or decrease (percent of change) in the Producer Price Index for Industry 1442, Construction Sand and Gravel, as prepared by the Bureau of Labor Statistics, U.S. Department of Labor (using the National Producer Price Index, 1982 equals 100). The price of sand, gravel, and marl per cubic yard will be rounded off to the nearest whole cent and will not be adjusted to less than the base price of \$.63 per cubic yard as established in this section.

(b)[a] The commission, with approval of the governor, establishes a price of [\$.20 per cubic yard on sand and gravel and] \$1.25 per cubic yard on all grades of shell removed from state-owned submerged tidelands. The price of shell will hereafter be adjusted semiannually, starting October 1, 1981, to reflect any increase or decrease (percent of change) in the Consumer Price Index of retail sales as prepared by the Bureau of Labor Statistics, U.S. Department of Labor (using the National Consumer Price Index, all urban consumers, 1967 equals 100) except that any adjustment for the six-month period starting October 1, 1981, will be based upon the Consumer Price Index statistics compiled for the six

months ending June 30, 1981, and each succeeding six-month period will be adjusted in the same manner in order to provide permittees advanced notice of price adjustments, and except that the price of shell per cubic yard will be rounded off to the nearest whole cent and will not be adjusted in any six-month period to less than the base price of \$1.25 per cubic yard as established in this section.

(c)[(b)] In addition, 5.0% of all shell dredged from state-owned submerged tidelands will be delivered to points designated by the department in Texas bays and spread at permittee's expense for reef enhancement. Except that when permittee is required to deliver and spread shell at a point greater than 50 statute miles (computed using the nearest water route through public navigational channels) from the dredge site, the director is authorized to adjust the amount of shell permittee is required to deliver and spread to a quantity less than 5.0% in order to offset permittee's increased delivery cost for the distance over 50 miles. Permittee will not be required to pay for the shell used for reef enhancement.

(d)[(c)] The department's actual cost of monitoring the dredging operations from state-owned submerged tidelands, not to exceed \$50,000, will be assessed against each permittee in proportion to the quantity (percentage of the total) shell removed by each permittee; provided however the maximum monitoring cost of \$50,000 will be adjusted each fiscal year using the Consumer Price Index (CPI-U) for the preceding 12-month period except that in no event will the maximum monitoring cost be adjusted below \$50,000. The director is authorized to determine the methods and terms for payment of the monitoring cost.

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

Issued in Austin, Texas, on July 13, 1994.

TRD-9443850

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 389-4818

Mitigation of Fish and Wildlife Resources as a Result of Damages Incurred from Water Development and Other Const.

• 31 TAC §57.141

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the

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

The Texas Parks and Wildlife Commission proposes to repeal 31 TAC §57.141, which references mitigation policy of the Texas Parks and Wildlife Commission. This policy has been revised and a new policy will be submitted for Commission approval pending repeal of this section.

Robin Riechers, staff economist, has determined that for the first five-year period the rules will be in effect, there will be minor fiscal implications for state or local government or for small businesses as a result of enforcing or administering the rules.

Robin Riechers, staff economist, has determined that for the first five years the repeal as proposed is in effect there will be minimal change in public benefits anticipated as a result of this repeal because the intent of the regulation will be covered by a commission policy.

There will be no economic cost to individuals as a result of the repeal.

The Department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local employment.

Comments on the proposal may be submitted to Roy Frye, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4579, or 1-800-792-1112, extension 4579.

The repeal is proposed to allow establishment of a revised mitigation policy by the Commission in pursuit of Department responsibilities established by the Texas Parks and Wildlife Code, §12.001 and §12.024.

§57.141. 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.

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TRD-9443852

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: 1-800-792-1112, extension 4433 or (512) 389-4433

Chapter 59. Parks

Administration of the State Park System

• 31 TAC §§59.61-59.64

(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 Parks and Wildlife Department or in the

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

The Texas Parks and Wildlife Department proposes the repeal of §§59.61-59.64, concerning the Administration of the Texas State Park System. Passage of Senate Bill 179, in the 73rd Texas Legislature directed the Parks and Wildlife Commission to establish classification system for state parks and wildlife management areas and to adopt rules governing the administration of the classification system. Implementation of new rules, therefore, requires that current 31 TAC §§59.61-59.64 be repealed.

Paul M. Shinkawa, acting legal counsel, has determined that for the first five-year period the repeals will be in effect there will be no fiscal implications to state or local government as a result of administering the repeal of this section; however, there will be an additional cost and increased revenue statement in the preamble for the proposed new section.

There will be minimal change in public benefits anticipated as a result of the repeals because the intent of the regulation will be covered by a commission policy.

There will be no economic cost to individuals as a result of the repeals.

The Department has not filed a local employment impact statement with the Texas Employment Commission in compliance with Texas Government Code, §2001.022 as this agency has determined that the rules as proposed will not impact local employment.

Comments on the proposal may be submitted to Mike Herring, Public Lands Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, 1-800-792-1112, extension 4520 or 512-389-4520.

The repeals are proposed under the Texas Parks and Wildlife Code, §13.001, which authorizes the commission to adopt rules regarding public lands classification.

§59.61. General Objectives.

§59.62. Functions.

§59.63. Classification and Guidelines.

§59.64. Other Programs.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443940 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: 1-800-792-1112, extension 4433 or (512) 389-4433



The Parks and Wildlife Commission proposes new §§59.61-59.64, concerning a classification system for state parks and wildlife management areas. Senate Bill 179, passed in the 73rd session of the Texas Legislature directed the Parks and Wildlife Commission to establish a classification system for state parks and wildlife management areas that categorizes wildlife management areas, parks, or a portion of parks as game management areas, recreational areas, natural areas or historical areas. Senate Bill 179 further provided that, upon establishment of this classification system, the Commission may prescribe an open season for hunting on wildlife management areas as sound biological management permits and may prescribe an open season for recreational hunting, as sound biological practices warrant, in state parks, forts, or sites where size, location, physical conditions, safety, and other uses permit hunting. Senate Bill 179 states that the Commission shall have the exclusive authority to determine sound biological management practices for all lands under its control.

Robin Riechers, staff economist, has determined that for the first five-year period the rules will be in effect, there will be no fiscal implications for state or local government or for small businesses as a result of enforcing or administering the rules.

Ms. Riechers, staff economist, also has determined that for the first five years the repeal as proposed is in effect there will be minimal change in public benefits anticipated as a result of the proposed new rules. There will be no economic cost to persons as a result of the repeal. The Department has not filed a local employment impact statement with the Texas Employment Commission in compliance with Texas Government Code, §2001.022 as this agency has determined that the rules as proposed will not impact local employment.

Comments on the proposal may be submitted to Mike Herring, Public Lands Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4520, or 1 (800) 792-1112, extension 4520.

The new rules are proposed under authority of Parks and Wildlife Code Chapter 13, §13.001 which directs the Commission to establish a classification system for state parks and wildlife management areas and to adopt rules governing these lands.

§59.61. General Objectives. In guiding the purpose and scope of the Texas Parks and Wildlife Department public lands, the objectives of the Texas Parks and Wildlife Commission are:

- (1) to seek out and protect the finest of what remains unprotected of the State's natural and cultural heritage, and sensitive habitats or resources;
- (2) to provide opportunities for resource based outdoor recreation;
- (3) to impart to the people of Texas an understanding and appreciation of

the State's cultural, historical and natural heritage;

(4) to promote environmental education, research, and demonstration of the stewardship of the State's diverse natural and cultural resources;

(5) to join with all the citizenry of this and other states and nations in promoting the conservation of natural, historical and recreational resources.

§59.62. Public Lands Classification. It shall be the policy of the Parks and Wildlife Commission that:

(1) the executive director is authorized to implement the following guidelines for the classification, selection, development, operation, use and management of existing and future lands owned or leased by Texas Parks and Wildlife Department, except coastal preserves, scientific areas, fish hatcheries, boat ramps and administrative properties. Initial classification and subsequent classification changes shall be subject to Texas Parks and Wildlife Commission review and approval;

(2) any change in use as a result of this classification system will be consistent with restrictions imposed by the source of funding and contractual limitations;

(3) classification of departmental lands under this system will not affect existing site names, naming policy, on-site signage or literature unless a new category so changes uses that it is misleading;

(4) actions taken in accordance with this policy shall be in compliance with Federal and State endangered species and antiquities laws, Texas Parks and Wildlife Commission Environmental Policy, Texas Parks and Wildlife Code and other rules or ordinances as may apply;

(5) the use and management of public lands will be addressed on a site specific basis, in accordance with the classification system, as management plans are developed and refined;

(6) prior to classification or formal approval of individuals site management plans for specific public lands, provision for public use shall be made in accordance with sound biological management.

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

Ecoregion—One of the ecological regions or subregions of Texas, based on the primary vegetational types, as broadly defined by:

(A) Schuster J.L. and S.L. Hatch. 1990. Texas Plants-An Ecological Summary in: Checklist of the Vascular Plants of Texas. S.L. Hatch, K. N. Gandhi, and L.E. Brown. MP-1655. TAES, TAMU, College Station, Texas; or

(B) LBJ School of Public Affairs. 1978 Preserving Texas' Natural Heritage. LBJ School of Public Affairs, University of Texas, Austin, Texas Game Management Areas--Areas dedicated to wildlife management/research/demonstration and public use consistent with their primary purposes.

Historical areas--Areas established for the preservation, interpretation and public use of pre-historic and historic resources of statewide or national significance.

Low Impact Public Use--Use or development of a specific site to minimize long term irreversible impact.

Natural communities--An assemblage of organisms indigenous to an area which is characterized by a distinct combination of species occupying common ecological zones and interacting with one another. An array of plants and animals expected for any given ecological site type.

Natural Areas--Areas retaining their unique or natural character established or managed primarily for the protection and stewardship of outstanding ecological, biological, geological, sensitive or scenic features of statewide significance, which may be used in a sustainable manner for scientific research, education, aesthetic enjoyment, and low impact public use.

Natural biodiversity--The complement of plants and animals that is expected to occur on an ecological site type, in natural communities or over a landscape.

Public Use--Resource oriented recreation or other uses, including, but not limited to, hunting, fishing, field trials, primitive camping, hiking, swimming, wildlife viewing, photography, nature study, driving and walking nature trails, horseback riding, bicycle riding, rock climbing, canoeing, boating, or other compatible activities.

Recreational Areas--Areas of natural or scenic character, often containing historical, archeological, ecological or geologic values, selectively developed to provide compatible types of resource-oriented recreational opportunities, serving regional or statewide needs.

Resource Oriented Recreation--Recreational activities including, but not limited to, camping, boating, hiking, fishing, hunting, the enjoyment of which is dependent upon or enhanced by a natural resource.

Sound Biological Management--The use of the best available information in setting living resources management goals and determining the techniques to be used in achieving those goals.

Wilderness Type Experience--Recreational activities that afford the user the wilderness associated benefits of open space, solitude, few man-made intrusions, in a natural setting.

§59.64. Classification and Guidelines.

(a) Classification. Game management areas.

(1) Selection. Game Management areas shall be:

(A) areas acquired primarily for the wildlife and natural resources thereon, and to demonstrate the interrelationship of various components of the ecosystem and/or integrated agricultural practices that benefit wildlife and the environment;

(B) of sufficient size to insure that management/research of the wildlife and natural resources can be conducted. New acquisitions should generally include a minimum of 5,000 acres, or build towards that acreage, or feature a key wildlife species or natural resource feature that can be effectively managed at a smaller size or allow scientific research and/or demonstration benefits of proper wildlife and habitat management practices; and

(C) located to be representative of an ecoregion, or to meet priority habitat needs for designated species of wildlife or to provide education, hunting and other compatible outdoor recreational opportunities for the public.

(2) Development criteria.

(A) Facilities and supporting developments on Game Management Areas shall be located to minimize disturbance to natural and cultural resources and designed and constructed to emphasize durability, low maintenance and economy.

(B) Long-term major facility development will be restricted to selected Game Management Areas identified for their research, educational demonstration and public use values.

(C) Development of recreational facilities on Game Management Areas will only be provided when there is a demonstrated demand for these facilities, and where such facilities and activities are compatible with the primary goals of the area.

(D) Game Management Areas shall be developed to enhance habitats

and conditions for wildlife populations, to demonstrate integrated agricultural practices beneficial to wildlife and their habitats, and to provide access for compatible public use.

(3) Operation. Game management areas:

(A) shall provide sites where wildlife research may be conducted under controlled conditions;

(B) shall provide areas where wildlife management practices can be demonstrated and used to enhance wildlife habitat and wildlife populations;

(C) shall be managed to address habitat needs of indigenous flora and fauna including species and communities listed as threatened or endangered or considered as unique;

(D) may provide outdoor classrooms for training of students, and a controlled environment for research;

(E) may provide a potential source of wildlife broodstock; and

(F) shall provide opportunities for public hunting and other outdoor recreation when such use is compatible with the primary goals of the area.

(4) Use and Management. Game management areas shall:

(A) be managed to maintain or enhance wildlife habitat and populations;

(B) provide public hunting opportunity and other outdoor recreation activities, when such uses are compatible with the primary goals and management of the area.

(C) be managed to provide opportunities for the research, education and demonstration of effective wildlife habitat management practices.

(b) Classification: Recreational Areas.

(1) Selection. Recreational areas:

(A) shall be spacious areas possessing natural or scenic values, that are adaptable to recreational development and use;

(B) shall be located to help meet the priority recreational needs of Tex-

ans, or where outstanding natural values of statewide significance create a substantial recreation demand; and

(C) may provide recreational opportunities capable of attracting significant visitation on a regional or Statewide basis;

(D) new acquisitions shall normally include a minimum of 500 acres of land within its boundaries, but may include less in the case of an extraordinary recreational resource of statewide significance.

(2) Development.

(A) Recreational Areas may be developed to optimize recreational opportunities afforded by the site and to provide for a variety of facilities and activities while retaining the character of the natural setting.

(B) Intensity of development of a Recreational Area shall provide for the sustainability of the resource and shall generally not exceed a ratio of one developed acre to four undeveloped acres.

(C) Recreation facilities and supporting developments shall be located to minimize disturbance to natural and cultural resources. Facility design and construction materials shall emphasize durability, low maintenance, and economy.

(3) Operation.

(A) Visitor information and interpretive programs shall be emphasized to provide the visitor with a more complete and meaningful recreational experience.

(B) Recreational Areas should be operated and maintained to provide visitor services for the promotion of health, safety, welfare, use and enjoyment of park resources and facilities.

(4) Use and Management.

(A) Resources within Recreational Areas shall be managed to insure the perpetuation of the natural, cultural and scenic features of the park while providing the opportunity for a quality recreational experience.

(B) Recreational Areas shall provide for a variety of outdoor recreational uses compatible with the long term stewardship and conservation of the natural and cultural resources.

(C) Habitat management shall emphasize maintenance and restoration of natural communities, and natural biodiversity, consistent with the primary goals of the area.

(c) Classification: Natural Areas.

(1) Selection. Natural areas:

(A) shall encompass examples of natural scenic beauty, natural communities, biological features, sensitive areas, or geological formations of statewide significance, or possess exceptional educational or scientific values;

(B) shall be large enough to protect the integrity of the features being protected, with adequate buffers to provide for public access and resource protection, and where feasible, include sufficient area to provide for a wilderness-type experience;

(C) acquisition shall be selected on a priority basis determined by statewide significance, natural condition, and the degree to which the resource is threatened;

(D) which duplicate the primary significance of a site presently preserved in public ownership will receive a lower priority for acquisition than those types of areas currently unrepresented in the public domain.

(2) Development.

(A) Development in Natural Areas shall be low-density in nature and limited to that necessary for adequate control and sustainability of the resource, and for visitor access, basic sanitation, safety, and interpretation.

(B) Recreational development will be provided only where it facilitates additional appreciation of the unique resource, is compatible with the natural environment, and will not encroach upon, damage or impair the scenic or natural features concerned.

(3) Operation.

(A) Natural Areas shall be operated and maintained to provide those public services necessary for visitor health, safety, and enjoyment of the natural resources.

(B) Visitor information and interpretation shall be emphasized in Natural Areas to increase the visitor's understanding and appreciation of the resource being preserved.

(4) Use and Management.

(A) Natural Areas shall be managed to insure the protection and perpetuation of the scenic or outstanding natural features for this and future generations.

(B) Natural Areas shall accommodate only those uses not incompatible with the continued preservation and stewardship of the natural and cultural features for which the area is preserved.

(C) Habitat management shall emphasize maintenance or restoration of natural communities and natural biodiversity, consistent with the primary goals of the area.

(d) Classification: Historical Areas.

(1) Selection.

(A) Historical Areas must evidence a significant association with the broad history of the State as defined in the Texas Historic Sites and Structures Act, Texas Civil Statutes, Article 6081s.

(B) The detailed selection criteria set out in the *Historic Sites and Restoration Program Policy Statement, Section III, Acquisition Guidelines*, as adopted by the Commission, will serve as the guiding policy for selection of Historical Areas.

(2) Development.

(A) Development of recreational features will only be provided when there is a demonstrated demand for these facilities and/or when they facilitate additional appreciation of the historic resource, and where such facilities and activities are compatible with the overall historical program of the area, and the natural environment.

(B) The intensity of recreational development shall be within the carrying capability of the resource, and facility design and construction materials shall be consistent with the character of the historical feature.

(3) Operation.

(A) Authentic representation in all aspects of the operation of an Historical Area shall be the primary objective to insure continued value in interpreting the Texas heritage. All preservation, restoration, and/or reconstruction activities shall be in accord with documented historical, archeological and architectural information.

(B) The historical integrity of an Historical Area should be preserved, and encroachments from conflicting uses or facilities shall be avoided. Original material and design intent should not be obscured or destroyed to facilitate interpretation, or promote visitor convenience.

(C) Interpretation of Historical Areas shall reflect the overall statewide historical significance of the area.

(4) Use and Management.

(A) Historical Areas shall be managed to insure the continued conservation of significant cultural features.

(B) Historical Areas shall provide for the recreational uses that are compatible with and complementary to the long term stewardship of the cultural and natural resources.

(C) When natural resources may be a significant component of an Historical Area, habitat management shall emphasize maintenance and restoration of natural communities, and natural biodiversity, consistent with the primary goals of the area.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443943 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433



Chapter 61. Design and Construction

Texas Recreation and Parks Account Program

• 31 TAC §61.132, §61.137

The Texas Parks and Wildlife Department proposes new §§61.132-61.137, concerning the Texas Recreation and Parks Account (TRPA). The TRPA was established by an act of the 73rd Texas Legislature in 1993, through House Bill 706 (Parks and Wildlife Code—Chapter 24).

TRPA provides 50% matching grant assistance to eligible local governments throughout Texas for the acquisition and development of public recreation areas and facilities.

Section 24.005(b) of the Code authorizes the Parks and Wildlife Department to adopt rules and regulations for TRPA grant assistance. The rules as proposed would provide a clear scoring system through which TRPA grant applications could be scored and evaluated. This scoring system would then serve as a means of ranking those grant applications which would be eligible for assistance.

The TRPA Grants Manual establishes procedures and rules for program administration. The TRPA Project Priority Scoring System will be used to prioritize (score) TRPA proposals to be presented to the Parks and Wildlife Commission for award consideration.

Jim Dickinson, deputy executive director, has determined the effect on state government for the first five-year period the rules are in effect will be a net cost of \$13.5 million in 1995; \$15.5 million in 1996; \$15.5 million in 1997; \$15.5 million in 1998; and \$15.5 million in 1999. The effect on local government for the first five-year period the rules are in effect is estimated to be a net gain in Local Park Grant Revenue of \$13.5 million in 1995, \$15.5 million in 1996, \$15.5 million in 1997, \$15.5 million in 1998, and \$15.5 million in 1999.

It has been determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated will be the efficient and equitable evaluation and administration of grant projects for local parks grants under the Texas Recreation and Parks Account. The public is additionally expected to benefit from increased access to recreational opportunities administered under the TRPA.

There is no anticipated effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

The department has not filed a local employment impact statement with the Texas Employment Commission, in compliance the APTRA §4(a), as this agency has determined that the rules as proposed will not impact local economics.

Public comment concerning the TRPA Grants Manual or the TRPA Project Priority Scoring System may be addressed to Stephen Bosak, Grants-In-Aid Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or (512) 389-4947.

The new rules are proposed under authority of Parks and Wildlife Code, §24.005, which grants the Parks and Wildlife Commission authority to make rules and regulations for grant assistance in establishing the program for grants under that section.

§61.132. Texas Recreation and Parks Account Grants Manual.

(a) The Texas Recreation and Parks Account (TRPA) Grants Manual shall contain the standards and requirements for the application, evaluation and award of all grants made under this title.

(b) The Texas Recreation and Parks Account (TRPA) Grants Manual is incorporated into this title by reference and copies

of the current edition may be obtained at the Texas Parks and Wildlife Department offices at 4200 Smith School Road, Austin, Texas 78744, at a cost not to exceed the cost of publication and mailing.

§61.133. Purpose. The "TRPA Project Priority Scoring System" identifies criteria used by the Texas Parks and Wildlife Department to evaluate and prioritize grant applications requesting Texas Recreation and Parks Account Program Funds. The Texas Recreation and Parks Account provides 50% matching grant assistance to local governments for the acquisition and development of public recreation areas and facilities.

§61.134. Program Priorities.

(a) All TRPA grant applications submitted to the Department are evaluated for program eligibility and prioritized using the following "TRPA Project Priority Scoring System". Groups of applications are prioritized, or scored, and presented to the Parks and Wildlife Commission for approval.

(b) Priorities for projects are:

(1) sponsor performance on active grant projects and compliance at previously assisted grant sites;

(2) to recognize and reward local planning;

(3) to promote the conservation of natural resources and open space through land acquisition, preservation, and environmentally sensitive planning and development;

(4) to provide a more balanced mix and wider variety of recreation opportunities;

(5) to provide a better geographic distribution of recreation opportunities;

(6) to provide water-related recreational opportunities where feasible;

(7) to maximize the use of funds for basic recreational opportunities;

(8) to provide improved recreational opportunities for low income, minority, elderly and/or youth-at-risk citizens;

(9) to improve cooperative efforts between recreational providers and other governmental and/or educational entities, and the private sector;

(10) to provide for the renovation of existing, obsolete public recreation areas and facilities;

(11) to provide greenbelt, linear linkages to other parks, neighborhoods or public facilities; and

(12) to encourage the appreciation and preservation of cultural resources.

§61.135. Local Master Plan Standard Requirements.

(a) Minimum master plan standards must be met to qualify for priority points identified in Criteria Two of the "TRPA Project Priority Scoring System." Local sponsors may submit applications for TRPA assistance without having a Department approved master plans, however, only sponsors proposing to meet priority needs identified in approved plans will receive the project priority points.

(b) Minimum TRPA master plan standards which must be included in an acceptable plan are:

(1) Proof of adoption. The plan must be formally endorsement by the applicable governing body of the sponsor, and the endorsement must be included within the document.

(2) Jurisdiction-wide plan.

(A) Plans must assess the entire jurisdiction area of the project sponsor.

(B) County plans must cover the entire county, and city or district plans must cover the entire city or district.

(C) For large urban areas, the plan should cover the entire jurisdiction area, and then break the areas down into regions, sectors, precincts, districts, or other definable areas as appropriate.

(3) Time period for implementation.

(A) Plans must specifically identify the time period within which the goals and objectives of the plan are to be carried out.

(B) Plans should cover a minimum five year period. If a plan is more than two years old, a brief summary of plan accomplishments to-date should be provided.

(4) Plan content. The following information, or groupings of information, shall be included in the document:

(A) introduction;

(B) stated goals and objectives;

(C) the plan development process (i.e.: when the process began and

plan phases, public input received, survey/studies conducted, committees and/or personnel involved);

(D) area/facility concepts and standards (i.e.: population/area service goals, "typical" park/facility standards, applicable local codes/ordinances/requirements for community/neighborhood development, utilities, services);

(E) inventory of areas/facilities;

(F) needs assessment and identification (must be area/facility specific, and may include basic support facilities/infrastructure which are critical to the recreational experience);

(G) plan implementation recommendations (must identify and prioritize which needs are to be met, where and when); and

(H) all appropriate illustrations, maps, charts, or other materials which will aid in identifying project characteristics.

§61.136. Project Priority Scoring System Policy. Projects presented to the Parks and Wildlife Commission for consideration under the Texas Recreation and Parks Account Program Fund will be scored with the criteria, rating factors and points listed in this title. The priority rank of a project will depend on its accumulative score in relation to the scores of other projects under consideration. Funding of projects will depend on the availability of TRPA funds. Projects which have not been approved after two considerations by the Parks and Wildlife Commission without significant alterations of the project to raise a project score shall be returned to the sponsor and not reaccepted. Projects which do not meet the objectives of any particular scoring criterion will receive no points for that particular criterion.

§61.137. Project Priority Scoring System Criteria.

(a) Priority 1-Sponsor is in full compliance at previously-assisted grant project sites, and is progressing on schedule with all active grant projects in accordance with the "Summary of Guidelines for Administration of Local Park Grant Assistance Programs."

(1) Applications received from sponsors in full compliance at previously-assisted grant project sites will be scored and presented for award.

(2) Applications received from sponsors not in full compliance at previously-assisted grant project sites will not be scored or considered further.

(b) Priority 2-The project will provide priority needs, as identified in a department approved, sponsor endorsed jurisdiction-wide parks, recreation and open space master plan. Consideration of "need" for this criterion is broadened to include basic support facilities/infrastructure which are critical to the recreational experience. Support facilities/infrastructure eligible for consideration as "need" for this criteria are limited to restrooms, roads and parking, area lighting (to ensure public safety), utilities (which are essential to these eligible support facilities), and land acquisition. Total range of points for this criteria shall be 1-20 points. Points for this criteria will be assessed if project provides for:

(1) number one and number two local priority needs (15-20 points); or

(2) number one local priority need (10-14 points); or

(3) number two local priority need (5-9 points), or

(4) lower than the number two local priority need (1-4 points).

(c) Priority 3-The project will provide a more balanced mix and wider variety of recreation opportunities/ facilities within the sponsor's jurisdiction, or intended project service area. Priority points will be awarded based on the number of recreational opportunities/facilities provided (1 point will be awarded for each facility, up to 10 points). Total point range for this criterion shall be 1-10 points.

(d) Priority 4-The project will provide improved water-based recreational opportunities. Total point range for this criterion shall be 1-10 points:

(1) opportunities along quality water bodies or streams, as follows:

(A) Gulf Coast, lake, or reservoir (5 points);

(B) bay or estuary (4 points);

(C) river (3 points);

(D) stream-continuous flow (2 points);

(E) pond (1 point).

(2) Project proposes the acquisition of land which would provide needed public access to recreational water:

- (A) Gulf Coast, lake, or reservoir (5 points);
- (B) bay or estuary (4 points);
- (C) river (3 points);
- (D) stream-continuous flow (2 points);
- (E) pond (1 point).

(e) Priority 5-The project will improve the geographic distribution of recreational lands and facilities in the project's intended service area or within the sponsor's jurisdiction. Total point range for this criterion shall be 15-25 points:

(1) project provides the first recreational opportunity in the sponsor's jurisdiction or intended service area (25 points); or

(2) project provides new and different recreational opportunity in the sponsor's jurisdiction or intended service area (15-20 points).

(f) Priority 6-The project maximizes the use of development funds for basic recreational opportunities. For the purposes of this subsection, "Total Facilities Costs" shall include recreational and support/infrastructure facilities, contingency, and all sign costs in excess of \$1,000. Total point range for this criterion shall be 1-25 points. Points assessed for this criterion shall be determined by the formula: Basic Recreational Facilities Costs X (25) = Total Facilities Cost.

(g) Priority 7-The project improves recreational opportunities for low-income, minority, elderly or youth-at-risk citizens. Total point range for this criterion shall be 1-16 points;

(1) project improves opportunities for low-income citizens in areas where such action is needed (1-4 points);

(2) project improves opportunities for minority citizens in areas where such action is needed (1-4 points);

(3) project improves opportunities for elderly citizens in areas where such action is needed (1-4 points);

(4) project provides recreational opportunities for youth-at-risk citizens where such action is needed (areas and facilities specifically designed or programmed for youth) (1-4 points).

(h) Priority 8-The project involves cooperation between the sponsor and other governmental or educational institutions to provide recreational opportunities at the project site(s). Priority points shall be awarded on a percentage (%) basis, depend-

ent on the amount of matching funds provided by the other governmental/educational institution. Total point range for this criterion shall be 1-25 points:

(1) project involves the contribution of resources from other governmental or educational institutions which serve as all or part of the sponsors matching share of funds (1-15 points);

(2) project area is owned by another governmental or educational institution and will be permanently dedicated to the sponsor for public park and recreation use through a land donation, permanent non-revocable lease, or permanent park and recreation easement (5 points);

(3) project involves cooperation between the project sponsor and other governmental or educational institutions whereas resources are contributed to the overall project for non-grant assisted facilities (i.e.: The county constructs roads/parking facilities for the city, but no grant funds are requested for roads/parking) (1-5 points).

(i) Priority 9-The project involves donations of land, cash, labor, equipment and/or materials from the private sector as part or all of the sponsor's matching share of the project. Priority points shall be awarded on a percentage basis, dependent on the amount of matching share funds to be received through the donation(s). Total range of points for this criterion shall be 1-15 points:

(1) project provides private land and/or cash donations from the private sector as part or all of the sponsor's matching share of the project (1-15 points);

(2) project provides donated labor, equipment and/or materials from the private sector as part or all of the sponsor's matching share of the project (1-10 points);

(j) Priority 10-Project provides for the acquisition and preservation/conservation of lands which consist of unique or significant natural resources, provide needed open space, or provide needed parkland for future development. Total point range for this criterion shall be 10-40 points:

(1) project provides for the acquisition and preservation/conservation of a federal, state, regional, or local government identified natural area which is recognized in an acceptable, published planning document for having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife (40 points); or

(2) project provides for the acquisition and preservation/conservation of a significant wetland area, recognized by the

Texas Parks and Wildlife Department Resource Protection Division, which is usable for recreation, and meets at least one "threshold criteria" as defined in the National Wetlands Priority Conservation Plan (35-40 points); or

(3) project provides for the acquisition and preservation/conservation of open space land or water for human use and enjoyment that is relatively free of man-made structures, whose physical characteristics will support only minimal development, one acre or larger in size, which is identified in an acceptable, published and adopted local jurisdiction-wide open space plan (20-25 points); or

(4) project provides for the acquisition of needed recreational land proposed for future development, or land which is located in a densely developed area within the sponsor's jurisdiction (10 points).

(k) Priority 11-Project provides for the renovation of an existing obsolete park, or facilities. Range of points for this criterion shall be 1-5.

(l) Priority 12-Project promotes the conservation of natural resources. Projects proposing the use of xeriscape/native plant materials for landscaping, drip or treated effluent irrigation systems, renovation of obsolete lighting systems with a more energy efficient systems, using recycled materials for facility construction, environmental education and interpretation, significant tree plantings where no trees exist. Range of points for this criterion shall be 1-5.

(m) Priority 13-Project provides a greenway linkage to other parks, neighborhoods, or public facilities (through means other than streets and sidewalks). Range of points for this criterion shall be 1-3.

(n) Priority 14-Project provides recreational opportunities which enhance and encourage an appreciation and preservation of cultural (historical and archaeological) resources. Range of points for this criterion shall be 1-3.

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

Issued in Austin, Texas, on July 12, 1994

TRD-9443942

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: (512) 389-4418

Chapter 65. Wildlife

Subchapter O. Late Season Migratory Bird Proclamation

• 31 TAC §§65.331-65.336

The Texas Parks and Wildlife Commission proposes amendments to §§65.331-65.336, concerning the Late Season Migratory Bird Proclamation.

The amendment to §65.331 includes a new definition of lawful archery equipment to provide consistency with other statewide hunting and fishing proclamations and changes the term legal to lawful in reference to shotguns.

The amendment to §65.332(a)(1), concerning Means, Methods and Special Requirements changes reference the longbow and arrows reference in this subsection to lawful archery equipment. This proposed change provides consistency with other related statewide proclamations.

The proposed amendment to §65.333(c)(1) and (3)-(5), concerning Open Seasons, sets the dates for taking of ducks, coots, mergansers, sandhill cranes, common snipe and woodcock to reflect season changes related to changes in the 1994-1995 calendar. The proposed amendment to §65.333(c)(1)(C) removes the restriction on hunting canvasback ducks.

The amendment to §65.333(c)(2)(A)-(B) defines western and eastern zones for taking of geese during open season.

The proposed amendment to §65.334(c)(1)(A), concerning Bag and Possession Limits, sets the limit for Mexican ducks at two with no more than one female, and allows the daily take of one canvasback duck, while the amendment to §65.334(c)(1)(B) allows daily take of up to three Mexican ducks with no more than one female in the High Plains Mallard Management Unit.

The amendment to §65.334(c)(2) sets the daily bag limit of five light geese and three dark geese in the western zone and the amendment to §65.334(c)(3) sets that period in which the daily bag limit in the eastern zone is two Canada geese.

The proposed amendment to §65.335 sets the dates for the extended falconry season and changes references to longbow and arrow for consistency among other related statewide proclamations.

The amendment to §65.336 provides correct reference to the Parks and Wildlife Code.

Robin Riechers, staff economist, has determined that for the first five-years that the rules are in effect there will be minimal fiscal implications to state and local governments as a result of enforcing or administering the new rules.

Mr. Riechers, also has determined that for each of the first five-years the rules are proposed are in effect the public benefits anticipated as a result of enforcing the new rules as proposed will permit increased recreational taking of migratory game species consistent with their populations.

There will be minimal effect on small businesses. It is anticipated there will be no fiscal implications to persons who are required to comply with the new rules as proposed.

The Department has not filed a local employment impact statement with the Texas Employment Commission as it has been determined there are only minimal fiscal implications to small business.

Comments on rules as proposed may be submitted to Brian Sullivan, Wildlife Branch, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-8012 or 1-800-792-1112, extension 8012.

The amendments are proposed under authority of Parks and Wildlife Code, Chapter 64, Subchapter C, which provides the Parks and Wildlife Commission with authority to regulate seasons, means, methods, and devices for taking and possessing migratory game bird wildlife resources.

§65.331. Definitions.

Lawful archery equipment—Longbows and arrows, and includes compound bows and recurve bows.

Lawful [Legal] Shotgun—A shotgun not larger than 10 gauge, fired from the shoulder, and incapable of holding more than three shells (guns capable of holding more than three shells must be plugged with a one-piece filler which is incapable of removal without disassembling the gun, so the gun's total capacity does not exceed three shells).

§65.332. Means, Methods and Special Requirements.

(a) The following means and methods are lawful, subject to control of subsection (b) of this section, in the taking of migratory game birds:

(1) dogs, artificial decoys, manual or mouth-operated birdcalls, lawful archery equipment [longbow and arrows], legal shotguns as defined in §65.331 of this subchapter (relating to definitions) and by means of falconry;

(2)-(6) (No change.)

(b)-(g) (No change.)

§65.333. Open Seasons.

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

(c) Statewide hunting hours, including falconry, for all migratory game birds listed herein are one-half hour before sunrise to sunset.

(1) Ducks, coots, and mergansers.

(A) High Plains Mallard Management Unit: November 20,

1993-January 9, 1994 in] (that portion of Texas lying west of a line from the international toll bridge at Del Rio, thence northward following U.S. Highway 277 through San Angelo to Abilene, thence along State Highway 351 from Abilene to Albany and U.S. Highway 283 from Albany to Vernon, thence easterly along U.S. Highway 183 to the point of intersection with the Texas-Oklahoma state line in Wilbarger County): [.] November 19, 1994-January 8, 1995.

(B) Remainder of the state: November 19 [20]-November 27, 1994 [28, 1993] and December 17, 1994 [18, 1993]-January 15, 1995 [16, 1994].

[(C) Special provision: The season is closed on canvasbacks.]

(2) Geese.

(A) Western Zone (that portion of the state lying west of a line from the international toll bridge at Laredo, thence northward following IH 35 and 35W to Fort Worth, thence northwest along U.S. Highways 81 and 287 to Bowie, thence northward along U.S. Highway 81 to the Texas-Oklahoma state-line) [West of U.S. Highway 81]: Light goose species (snow, blue and Ross'), November 12, 1994-February 26, 1995. Dark goose species (Canada, brant and white-fronted), October 15, 1994 [16, 1993]-January 29, 1995 [30, 1994].

(B) Eastern Zone (remainder of the state) [East of U.S. Highway 81]: Light goose species (snow, blue, and Ross'), November 5, 1994 [October 30, 1993]-February 19, 1995 [13, 1994]. Dark goose species (Canada, [black] brant, and white-fronted) November 5, 1994 [6, 1993]-January 15, 1995 [16, 1994]. Canada Geese only, January 16-22, 1995 [17-23, 1994].

(C) (No change.)

(3) Sandhill cranes.

(A) Zone A: November 12, 1994 [13, 1993]-February 12, 1995 [13, 1994] in that portion of Texas lying west of a line beginning at the international toll bridge at Laredo, thence northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, thence north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 at Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line.

(B) Zone B: December 3, 1994 [4, 1993]-February 12, 1995 [13, 1994] in that portion of Texas lying within boundaries beginning at the junction of Interstate Highway 35 and the Texas-Oklahoma state line, thence south along Interstate Highway 35 (following Interstate Highway 35 West through Fort Worth) to its junction with Interstate Highway 10 in San Antonio thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line, thence eastward along the Texas-Oklahoma state line to Interstate Highway 35.

(C) Zone C: January 7, 1995 [8, 1994]-February 12, 1995 [13, 1994] in that portion of Texas lying within boundaries beginning at the international toll bridge at Brownsville, thence north and east along U. S. Highway 77 to its junction with U.S. Highway 87 at Victoria, thence eastward along U.S. Highway 87 to its junction with Farm Road 616 at Placedo, thence north and east along Farm Road 616 to its junction with State Highway 35, thence north and east along State Highway 35 to its junction with State Highway 6 at Alvin, thence west and north along State Highway 6 to its junction with U.S. Highway 290, thence westward along U.S. Highway 290 to its junction with Interstate Highway 35 at Austin, thence south along Interstate Highway 35 to its junction with U.S. Highway 81 in Laredo, thence southwest along U.S. Highway 81 to the international toll bridge in Laredo, thence south and east along the U.S.-Mexico international boundary to its junction with the U.S. Highway 77 international toll bridge at Brownsville.

(D) (No change.)

(4) Common snipe (Wilson's snipe or jacksnipe). October 22, 1994 [23, 1993]-February 5, 1995 [6, 1994]. (5) Woodcock. November 28, 1994 [27, 1993]-January 31, 1995 [30, 1994].

§65.334. Bag and Possession Limits.

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

(c) The daily bag limits, except falconry, are as follows:

(1) Ducks, coots, and mergansers.

(A) Ducks:

(i) Except as specifically provided for Mallards in the High Plains Mallard Management Unit, the daily bag

limit is the aggregate of three ducks which may include no more than two mallards (including Mexican mallards or Mexican ducks), [(no more than one of which may be a female [mallard]), one mottled duck, one pintail, one redhead, one canvasback, and two wood ducks.

(ii) In the High Plains Mallard Management Unit, the daily bag limit is the aggregate of three ducks as provided in this section, except that it may include three mallards (including Mexican mallards or Mexican ducks), not to include more than one female [mallard].

(B)-(C) (No change.)

(2) Geese.

(A) Western Zone [West of U.S. Highway 81]: the daily bag limit [is eight, not to include more than five] for light geese (snow, blue, and Ross') is five, and the daily bag limit for [and three] dark geese (Canada, [black] brant, and white-fronted) is three.

(B) Eastern Zone [East of U.S. Highway 81]: the daily bag limit for light geese (snow, blue, and Ross') is ten, and the daily bag limit for dark geese is one Canada goose or [black] brant, and one white-fronted goose. During the period January 16-22, 1995 [17-23, 1994], the daily bag limit for Canada geese is two.

(3)-(5) (No change.)

(d)-(g) (No change.)

§65.335. Extended Falconry Season.

(a) (No change.)

(b) It is lawful to take migratory game birds by means of falconry during the open seasons prescribed in §65.333 of this title (relating to Open Seasons) and during the following Extended Falconry Seasons:

(1) Ducks, coots, and mergansers.

(A) High Plains Mallard Management Unit. (See §65.333(c)(1)(A) of this title (relating to Open Seasons)). January 9, 1995 [10, 1994] -February 24, 1995 [25, 1994].

(B) Remainder of the state. November 28, 1994 [29, 1993] -December 16, 1994 [17, 1993] and January 16, 1995 [17, 1994]-February 24, 1995 [25, 1994].

(2) Woodcock. February 1, 1995 [January 31, 1994]-February 26, 1995 [25, 1994].

(c) (No change.)

(d) No person may possess a firearm or archery equipment [longbow and arrow] or be accompanied by a person possessing a firearm or archery equipment [longbow and arrow] while hunting by means of falconry.

§65.336. Penalties. Penalties for violating these sections are provided in [Texas] Parks and Wildlife Code, §64.026.

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

Issued in Austin, Texas, on July 13, 1994.

TRD-9443851

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: August 19, 1994

For further information, please call: 1-800-792-1112, extension 4433 or (512) 389-4433

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 1. Central Administration

Subchapter B. Public Information

• 34 TAC §1.200

The Comptroller of Public Accounts proposes a new §1.200, concerning charges for public information. The new rule specifies the charges the agency will make for copies of and access to public information. These rules are proposed to comply with Chapter 428, Acts, 73rd Legislature, 1993, which requires agencies to adopt rules setting forth the charges they will make for copies of public information. As allowed by Chapter 428 and in accordance with 1 TAC §111.61(b) of the rules of the General Services Commission, except as otherwise set forth in these proposed rules, the Comptroller of Public Accounts proposes to adopt the charges and definitions set out in 1 TAC §§111.62-111.70 of the General Services Commission rules, concerning charges for public records.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in allowing the comptroller to provide open records in a manner consistent with total public access and convenience while reducing government expenses. This rule will have no significant fis-

cal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on this new section may be submitted to Sandra C. Joseph, Open Records Counsel, Open Records Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Government Code, §403.011(2), which requires agencies to adopt rules setting forth the charges they will make for copies of public information.

The new section implements Chapter 428, Acts, 73rd Legislature, 1993.

§1.200. Charges for Public Information.

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

(1) Agency—The Office of Texas Comptroller of Public Accounts.

(2) Compiled list—A list generated from information stored electronically in large databases. Compiled lists are not readily available information because they require programming and computer time to compile the requested data. Such lists are typically generated in response to requests for information on multiple taxpayers who are engaged in similar activities, hold particular licenses, are located in a given geographic location, or are designated by the same standard industrial code. Compiled lists may be provided in either written or electronic format.

(3) Compiled total—A report on the total number of taxpayers in one or more business, tax, or geographic categories. Totals are provided instead of lists when the requestor wants only aggregate information. Like compiled lists, compiled totals are not readily available information because they require programming and computer time to compile the requested data.

(4) Extract—A list of information pertaining to the oil and gas industry, including the identity and location of producers, production volume, and value. Extracts are not readily available information because they require programming and computer time to compile the requested data. Extracts may be provided in either written or electronic format.

(5) Full cost—The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost will be determined in accordance with generally accepted methodologies recommended by the General Services Commission.

(6) Nonstandard-size copy—A copy of public information that is made available to a requestor in any format other

than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies.

(7) Readily available information—Information that already exists in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information. The agency shall compile and maintain information, especially information that is likely to be the subject of repeated requests for access or copies, in a manner that maximizes its ready availability. In determining whether to charge for providing copies of public records, the agency may take into account not only whether the information is in fact readily available, but also whether in the exercise of efficient recordkeeping it could and should have been readily available.

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

(b) Charges for copies.

(1) For records other than compiled lists, extracts, and compiled totals, charges for providing copies of public information will be the charges suggested by the General Services Commission in 1 TAC §111.63, concerning Suggested Charges for Providing Copies of Public Information, except that there will be no charge for requests involving 50 or fewer pages of readily available information.

(2) The agency may charge a flat fee for copies of compiled lists, extracts, or compiled totals generated in response to particular requests.

(A) The flat fee will be based on the average cost to the agency of producing similar information in the requested format

(B) The agency will use a representative sample of actual requests received over several months to calculate the average cost of mainframe time, PC time, programming time, and printing services for various request formats. Only the cost of these computer, programming, and printing services will be included as elements of the flat fee.

(C) In addition to the flat fee which covers the compiling of information,

the agency may charge the actual cost of mailing labels, diskettes, magnetic tapes, and cartridges used to produce information in the format desired by the requestor.

(D) If the actual cost to the agency of a particular request is more than double the flat fee, the flat fee may not apply and the requestor may be charged the full cost of responding to the particular request, calculated using the charges suggested by the General Services Commission in 1 TAC §111.63, concerning Suggested Charges for Providing Copies of Public Information.

(c) Format for copies of public information. To the extent possible, the agency shall attempt to accommodate a requesting party by providing information in the format requested. The extent to which a requestor can be accommodated will depend largely on the technological capability of the agency. Pursuant to the General Services Commission's recommendations in 1 TAC §111.66, concerning Format for Copies of Public Information, the agency is not required to acquire software or programming capabilities that it does already possess to accommodate a particular kind of request. However, the agency shall take into account in its planning the public's interest in obtaining access to information and the ways in which such access can be facilitated through acquisition of improved technology.

(d) Access to public information where copies are not requested.

(1) The agency shall not charge for making available for inspection readily available information maintained in standard-size form.

(2) In response to requests for access, for purposes of inspection only, to information that is maintained in other than standard-size form, the agency may charge the requesting party the cost of preparing and making available such information, unless the information is readily available. Preparation might involve retrieval of information from a database and deletion of confidential information. In such a case, the agency may recover the cost of personnel time, as recommended by the General Services Commission.

(e) Estimates and waivers of charges.

(1) Where a particular request will involve considerable time and resources, the agency will advise the requesting party of what may be involved and will provide an estimate of the date of completion and the charges that may result. All efforts will be made to process requests as efficiently as possible so that the requested information will be provided at the lowest

possible charge. The agency will disclose to a requesting party how any charges were calculated.

(2) The agency may furnish public records without charge or at reduced charge if the agency determines that waiver or reduction of the fees is in the public interest. No fee will be charged for brochures, rules, publications, or edited administrative hearings decisions to be used for taxpayer education. Generally, no fee will be charged for requests made by the following:

(A) taxpayers or their authorized representatives for information on their own accounts;

(B) Texas state agencies and local governments;

(C) legislative officials conducting official business;

(D) educational institutions in Texas;

(E) members of the news media; and

(F) non-profit public interest groups.

(3) A deposit may be required if the estimated charges exceed \$100.

(f) Billing forms and cost information.

(1) The agency will use billing forms to itemize the charges made for public information. The forms used shall itemize each component cost of the total charge.

(2) Information on the component costs utilized to derive flat fees will be provided upon request.

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

Issued in Austin, Texas, on July 13, 1994.

TRD-8443031

Martin Cherry
Chief, General Law
Comptroller of Public
Accounts

Earliest possible date of adoption: August 19, 1994

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

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 31. Public Transportation

Federal Proposed

• 43 TAC §31.31

The Texas Department of Transportation proposes amendments to §31.31, concerning the §16 grant program. These actions are necessary to formally adopt policies that will then be incorporated in the state management plans for this program as required by the Federal Transit Administration.

Proposed rules were published in the April 12, 1994 issue of the *Texas Register* (19 TexReg 2706) and two public hearings were held. Numerous comments were received that indicated significant changes were needed in the proposed rules. The original proposal is, therefore, being withdrawn and new text is being offered for public comment which incorporates many of the suggestions from the earlier rulemaking.

In §31.31, new subsections (b) and (c) describe goals and objectives for the §16 program and the department's role in administering the program. Subsection (d) on eligible recipients, which was formerly (b), would be revised to clarify the responsibility for selecting public bodies to receive program funds. New subsections (e) and (f) prescribe eligible assistance categories and local share requirements, respectively.

The distribution of §16 funds is discussed in new subsection (g). Under the proposed formula, 25% of program dollars would be allocated equally to department district offices and the remaining 75% would be allocated to district offices based on elderly and disabled population. Application requirements are outlined in new subsection (h) and project selection procedures are included in new subsection (i). With respect to the latter subsection, metropolitan planning organizations would select projects in urbanized areas of 200,000 population or greater. Department district offices would have that responsibility in all other areas.

The annual program of projects, which is the basis for the department's application to the Federal Transit Administration, is discussed in new subsection (j). Vehicle leasing restrictions and meal delivery parameters are included in new subsections (k) and (l), respectively.

Richard G. Christie, director of public transportation, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the section.

Mr. Christie has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed section.

Mr. Christie also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be more consistent application in the administration of public transportation grant programs. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be negligible.

Pursuant to the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 9:00 a.m. on July 29, 1994, in Room 101 at the Texas Department of Transportation, 200 E. Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m.. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearings may contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588.

Written comments on the proposed amendments may be submitted to Richard G. Christie, Director of Public Transportation, Attention: Margot Massey, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5 p.m. on August 20, 1994.

The amendments are proposed under Texas Civil Statutes, Articles 6666, 6663b, and 6663c which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and specifically to administer the state public transportation fund and state and federal public transportation programs.

The amendments implement the provisions of Texas Civil Statutes, Articles 6663b and 6663c.

§31.31. Section 16[(b)(2)] Grant Program.

(a) Purpose. The Federal Transit Act, §16[(b)(2)], as amended (49 United States Code §1612), authorizes the Secretary of the United States Department of Transportation to make capital grants or loans for the provision of transportation services meeting the special needs of elderly and disabled persons. The department has been designated by the governor to administer the §16[(b)(2)] program.

(b) Goal and objectives. The department's goal in administering the §16 program is to promote the availability of professional, cost-effective, efficient, and coordinated passenger transportation services to elderly and disabled persons using the most efficient combination of financial and other resources. To achieve this goal, the objectives of the department are to:

(1) promote the development and maintenance of a network of transportation services for elderly and disabled persons throughout the state, in partnership with local officials;

(2) fully integrate the §16 program with other federal, state, and local resources that are designed to serve similar populations;

(3) improve the efficiency, effectiveness, and safety of §16 transit systems through the provision of technical assistance and the establishment of performance goals and management objectives; and

(4) include private sector operators in the overall plan to provide transportation services for elderly and disabled persons.

(c) Department role. The department acts as the designated recipient for all §16 funds appropriated to the state. As the administering agency, the department will:

(1) develop application materials and disseminate information to prospective applicants and other interested parties;

(2) develop evaluation criteria and select projects for funding, in concert with other entities that have prescribed roles in this process as outlined in subsection (i) of this section;

(3) prepare the state's annual program of projects and funding application and submit that material to the Federal Transit Administration for approval;

(4) negotiate and execute contracts with local §16 recipients that include performance goals and

management objectives for those recipients;

(5) prepare requests for federal reimbursement, and process payment requests from §16 recipients;

(6) monitor and evaluate the progress of ongoing transportation operations, including compliance with federal regulations and coordination of services; and

(7) provide technical assistance to §16 recipients to aid them in improving and coordinating transit services.

(d)[(b)] Eligible recipients. Private, nonprofit organizations or associations are eligible to receive §16[(b)(2)] funds through the department. Public bodies, as selected in subsection (i) of this section [coordinate services for the elderly and disabled], or any public body that certifies to the selecting entity [department] that nonprofit organizations in the area are not readily available to carry out the services, may also receive §16[(b)(2)] funds through the department.

(e) Eligible assistance categories. The following categories of expenses are eligible for federal reimbursement under the §16 program.

(1) State administrative expenses. The department will use up to 10% of the annual federal program apportionment to defray its expenses incurred for the administration of the §16 program. The department must provide a 20% match for any federal administrative monies.

(2) Capital expenses.

(A) Eligible recipients, as defined in subsection (d) of this section, may use program funds for the purchase of capital items. Eligible items include, but are not limited to:

- (i) buses;
- (ii) vans or other paratransit vehicles;
- (iii) radios and communication equipment;
- (iv) vehicle shelters;
- (v) wheelchair lifts and restraints;
- (vi) vehicle rehabilitation;
- (vii) microcomputer hardware and software;
- (viii) other durable goods such as spare parts with a unit cost over \$300 and a useful life of more than one year;

(ix) initial equipment installation costs;

(x) vehicle procurement, testing, inspection, and acceptance costs;

(xi) the lease of equipment, provided the local recipient, with the concurrence of the department, determines a lease is more cost effective than the purchase of equipment after considering management efficiency, availability of equipment, staffing capabilities and guidelines on capital leases as contained in 49 CFR Part 639; and

(xii) the acquisition of transportation services under a contract, lease, or other arrangement.

(B) Based on funding availability, federal funds may be used to defray up to 80% of the cost of eligible capital expenditures. The federal share may increase to up to 90% for incremental costs related to compliance with the Clean Air Act or the Americans with Disabilities Act of 1990. Eligibility standards for the higher federal share are defined in FTA Circular 9070.1C. The local recipient must provide a 20% or 10% cash match at the time the equipment is delivered or the services are received.

(f) Local share requirements. The local share required under subsection (e)(2) of this section must be provided from sources other than federal funds except when authorized by federal law.

(g) Funding distribution.

(1) Formula basis. The balance of the annual §16 federal apportionment, after the state administrative expenses described in paragraph (e)(1) of this section are set aside, will be allocated to department districts on a formula basis as follows. For urbanized areas of 200,000 population or greater, suballocations will be made from the appropriate district allocations provided under subparagraph (B) to the designated metropolitan planning organization.

(A) 25% of the total available funds will be distributed equally among the department districts.

(B) 75% of the total available funds will be allocated as follows.

(i) The elderly and disabled population of each department district will be calculated by using the latest census figures for counties available from the state data center.

(ii) Each department district's subtotal of elderly and disabled population will then be divided by the state total of such population to determine the district's formula allocation.

(2) Allocation.

(A) Preliminary formula allocations for the next fiscal year will be announced by the department no later than January 1.

(B) Final allocations will be announced within thirty days of the federal apportionment to the state.

(C) Upon completion of the project selection procedures described in subsection (i) of this section, if a department district or designated metropolitan planning organization does not need the entire allocation, the balance will be re-distributed among the other department districts using the formula outlined in subparagraph (1)(B) of this subsection.

(h) Application requirements. A prospective applicant must submit an application for §16 grant funds to the appropriate department district office, on the forms and at the time specified by the department. The application shall document the need and demand for passenger transportation services for elderly and disabled persons.

(i) Project selection. In urbanized areas of 200,000 population or greater, applications from individual local agencies, as described in subsection (h) of this section, will be provided by the department to the designated metropolitan planning organization for project selection as described in paragraph (2) of this subsection. In all other areas, the department district office will review the applications and consult with all local parties, including any existing metropolitan planning organizations. Up to 10% of a district annual allocation or suballocation may be reserved for contingencies or unidentified projects in keeping with the Category C allowances in the program of projects which is described in subsection (j) of this section. Project selection will be as follows.

(1) In nonurbanized areas and in urbanized areas under 200,000 population, the department district office will select projects in priority order, including up to five reserve projects should additional funding be made available, based on the following criteria:

(A) the demonstrated need for capital equipment, examples of which include, but are not limited to, a needs assessment which documents the demand for new services, a vehicle inventory which establishes the need for replacement of older equipment, dispatcher logs which document requests for service that cannot be met with existing equipment, and purchase of service contracts which substantiate the need for additional vehicles;

(B) the applicant's financial and managerial capability to maintain and operate the equipment, examples of which include, but are not limited to, audited financial statements and review letters from grantor agencies;

(C) the applicant's efforts to coordinate services and related activities with other local entities, examples of which include, but are not limited to, contracts that outline purchase of service agreements, shared maintenance or dispatching functions, and joint training initiatives; and

(D) evidence of local support for the proposal, examples of which include, but are not limited to, resolutions by local governing bodies and endorsement letters from other organizations or individuals.

(2) In urbanized areas of 200,000 population or greater, the designated metropolitan planning organization will make the final project selection, including up to five reserve projects should additional funding be made available, based on criteria adopted by that metropolitan planning organization. The metropolitan planning organization will then notify the department of the projects selected for funding in priority order and return the applications to the appropriate department district office. The metropolitan planning organization may choose to adopt local procedures. In those instances, it shall be the responsibility of the metropolitan planning organization to advise prospective applicants of the procedures necessary to be considered for project funding in that urbanized area.

(3) Upon receipt of the applications selected for funding from the department district offices, the division director, or his or her designee, will review all funding requests for completeness and compliance with all statutory

and program administrative requirements. The department will negotiate a contract with the selected local entities and organizations to implement the projects selected for funding.

(j) Program of projects. Upon completion of the evaluation and selection of projects, the department will prepare a program of projects as described in FTA Circular 9070.1C. Projects listed in category A of the program of projects are those which have met all statutory and administrative requirements for project approval and for which contracts will be issued upon receipt of federal grant approval. A selected project that is not yet complete will be listed in category B and a contract will not be issued until all requirements are met. Up to 10% of the annual federal apportionment may be listed as a program reserve in category C. Projects advance to the next category in the program until all listings are in category A.

(1) Vehicle leasing. Vehicles acquired under the §16 program may be leased to other entities such as local public bodies or agencies, other private non-profit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the §16 recipient and provide the transportation services as described in the original grant application.

(m) Meal delivery. Section 16 program contractors may coordinate and assist in providing meal delivery services for homebound persons on a regular basis if such delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. Section 16 funds may not be used to purchase special vehicles to be used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

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

Issued in Austin, Texas, on July 13, 1994.

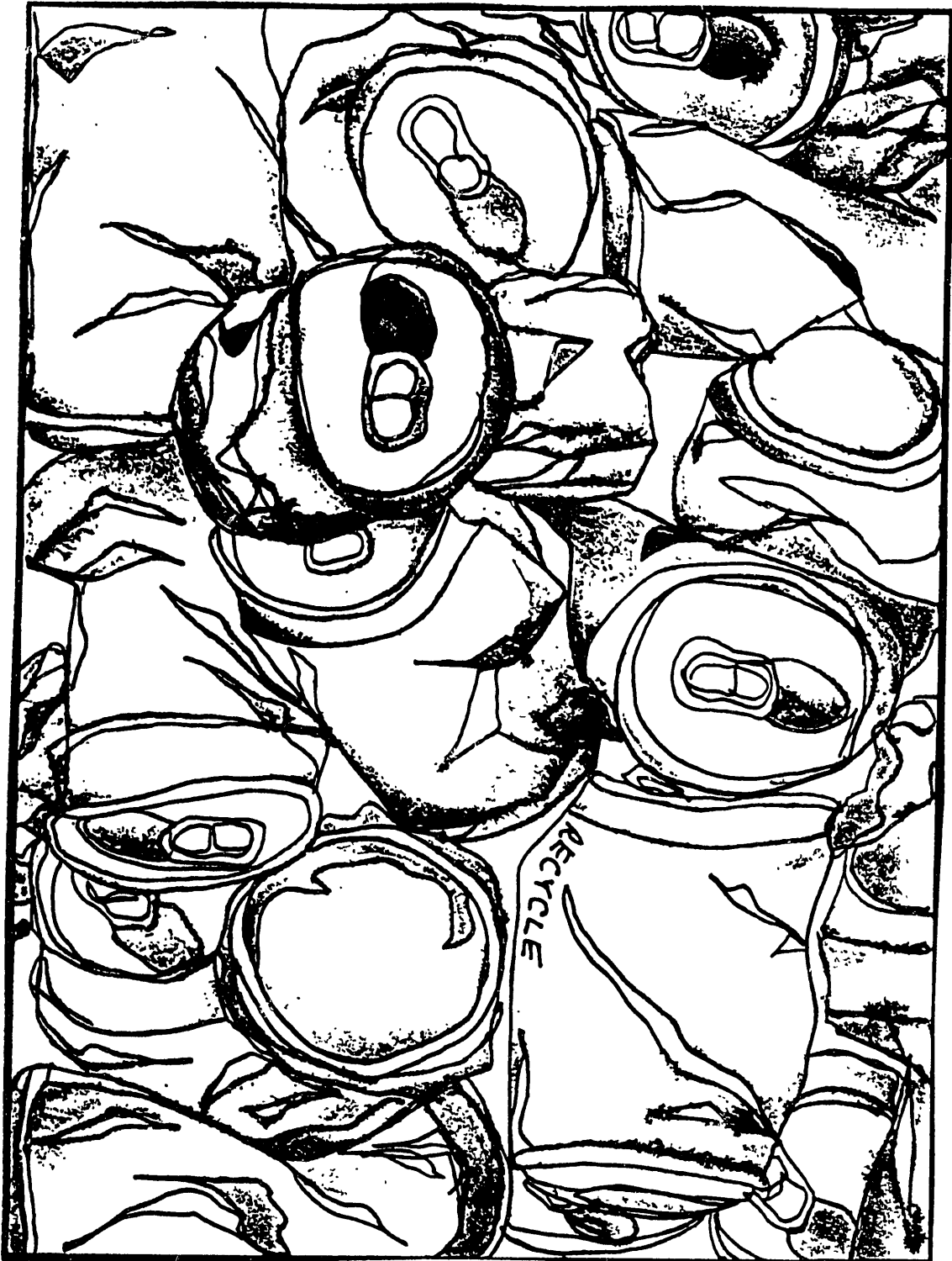
TRD-9443938

Diane L. Northam
Legal Executive Assistant
Texas Department of
Transportation

Earliest possible date of adoption: August 19, 1994

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





WITHDRAWN RULES

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

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter O. Administrative Hearings of the Department in Contested Cases

- 25 TAC §§403.451-403.486

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration for permanent adoption proposed new §§403.451-403.486, which appeared in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2384). The effective date of this withdrawal is July 11, 1994.

Issued in Austin, Texas, on July 11, 1994.

TRD-9443815

Ann Utley
Chairman, Texas Mental Health and Mental Retardation Board
Texas Department of Mental Health and Mental Retardation

Effective date: July 11, 1994

For further information, please call: (512) 206-4516

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 31. Public Transportation

Federal Programs

- 43 TAC §31.31

The Texas Department of Transportation has withdrawn from consideration for permanent adoption a proposed amendment to §31.31, which appeared in the April 12, 1994, issue of the *Texas Register* (19 TexReg 2706). The effective date of this withdrawal is July 13, 1994.

Issued in Austin, Texas, on July 13, 1994

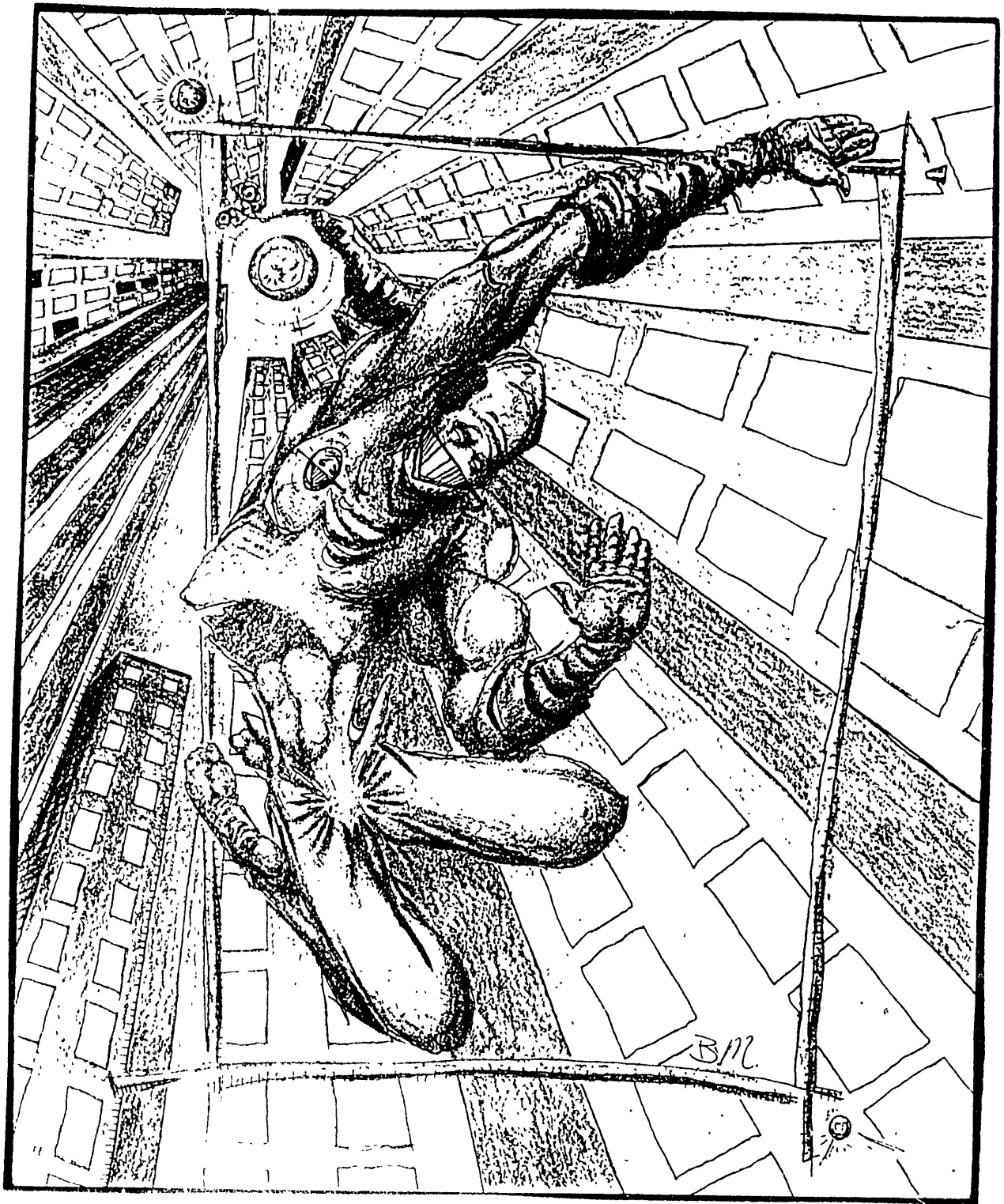
TRD-9443939

Diane L. Northam
Legal Executive Assistant
Texas Department of Transportation

Effective date: July 13, 1994

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

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ADOPTED RULES

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

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

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter U. General and Special Rules of Practice and Procedure

• 16 TAC §5.460

The Railroad Commission of Texas adopts §5.460, concerning certification of minority-owned applicants for motor carrier and motor bus authority, with changes to the proposed text published in the May 24, 1994, issue of the *Texas Register* (19 TexReg 4002).

The rule establishes commission policies and procedures for minority business enterprise applicants for motor carrier and motor bus authority. The changes are to subsections (b) and (g). The purpose of the change to subsection (b) is to clarify that a bona fide MBE transportation contractor is an owner-operator and/or a multi-truck lessor who is a United States citizen and who is a woman or who is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is leased to a for-hire motor carrier or motor bus company. The purpose of the change to subsection (g) is to clarify that a successful MBE applicant must continue to meet the definition of a bona fide MBE certificate holder and that any failure to do so may result in revocation of the authority granted.

Public comments regarding this rule supported and opposed, in equal measure, its adoption. Two comments opposed the rule on the grounds that no one should receive special consideration due to gender or national origin in an application for a certificate of public convenience and necessity.

Two other comments were in favor of the rule, but suggested that certain changes be made prior to adoption. One commenter suggested that language be added to the rule to allow consideration of private business MBE goals in determining public necessity for a proposed certificated trucking service. The comment stated that private business MBE goals should be considered if a genuine policy of utilizing bona fide MBE certificate hold-

ers and a clear intent to implement such a policy can be established. The comment suggested that this could be established through evidence of solicitation or advertisements seeking MBE certificate holders, past use of MBE contractors, whether certificate holders or not, and internal instructions to staff to utilize MBE certificate holders or other MBE contractors. This commenter also suggested eliminating MBE transportation contractors because such contractors subvert the purpose of the rule by allowing non-MBE protestants to overcome an applicant's position with evidence of the protestants' use of minority owner-operators.

Another commenter suggested clarifying the definition of bona fide MBE transportation contractor. The commenter stated that a bona fide MBE transportation contractor is any owner-operator and/or multi-truck lessor who is leased to a for-hire motor carrier who is a bona fide MBE, without regard to the owner-operator's or multi-truck lessor's status as a bona fide MBE. This commenter also suggested that all of the minority definitions be grouped together and that the first two sentences of subsection (g) be eliminated because they are repetitive of the third sentence in subsection (g).

The commission agrees with the comments supporting adoption of the rule and agrees that the definition of a bona fide MBE transportation contractor should be clarified. However, the Commission does not agree that the proposed rule would provide special consideration due to gender or national origin for an applicant. The proposed rule recognizes that an MBE applicant must meet the burden of proof required of all other applicants. In addition, the proposed rule recognizes that certain contractors may have a need for the services of an MBE carrier based upon existing governmental requirements. The commission does not agree that a bona fide MBE transportation contractor is a non-MBE owner-operator and/or multi-truck lessor leased to an MBE for-hire motor carrier or motor bus carrier. The commission's intention is that a bona fide MBE transportation contractor is an owner-operator and/or a multi-truck lessor who is a United States citizen and who is a woman or who is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is leased to a for-hire motor carrier or motor bus company. No other definition supports the term as used in subsections (d) and (e) of the proposed rule.

The commission disagrees that private business MBE goals should be considered in determining the issue of public necessity. The commission has limited the factor of unavailability of bona fide MBE certificate holders to those instances where a contractor needs the services of an MBE carrier due to existing governmental MBE programs. Those programs have a presumption of validity under the law which private programs cannot claim. In addition, private programs could require extensive time and expense to determine whether they were legally valid.

The commission also disagrees that the minority definitions should all be grouped together because the Texas Register requires that definitions be alphabetized.

The commission agrees that the first two sentences of subsection (g) could be considered repetitive and has included revised language to eliminate surplus language. References to partnerships in the definition of bona fide MBE certificate holder in subsection (b) have been added to clarify the requirements specified in subsection (g).

No groups or associations commented in favor of or against the proposed rule.

The section is adopted pursuant to Texas Civil Statutes Article 911a, §4(a)(1), which vests the commission with power and authority to prescribe all rules and regulations necessary for the regulation of motor bus companies, and pursuant to Texas Civil Statutes Article 911b, §4(a)(1), which vests the commission with power and authority to prescribe all rules and regulations necessary for the regulation of motor carriers.

§5.460. Certification of Minority-Owned Applicants.

(a) It shall be the policy of the Railroad Commission of Texas to encourage, within the limits of its discretion and statutory authority, more equitable participation in the for-hire motor carrier and motor bus industries by minority-owned businesses.

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

American Indian and Alaskan Native—A person having origins in any of the original peoples of North America.

Asian American—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Black—A person having origins in any of the black racial groups of Africa.

Bona fide MBE applicant—Any individual applicant for new or amended motor carrier or motor bus authority that is a woman, or is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States. In the case of a corporate applicant for new or amended motor carrier or motor bus authority, it shall mean any corporation, the controlling interest of which is held by a woman or an individual that is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States. In the case of an applicant company that is owned by a partnership, the controlling interest in the partnership must be specifically affirmed in writing as being held by a woman, Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States.

Bona fide MBE certificate holder—Any individual who holds motor carrier or motor bus authority issued by the commission, who is a woman, Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States. In the case of a certificate holder by a corporation or partnership, it shall mean any corporation or partnership, the controlling interest in which is held by a woman, or an individual that is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is also a citizen of the United States.

Bona fide MBE transportation contractor—Any owner-operator and/or a multi-truck lessor who is a United States citizen and who is a woman or who is Black, Hispanic, Asian American, American Indian, or Alaska Native, and who is leased to a for-hire motor carrier or motor bus company.

Hispanic—A person of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race.

(c) The director of the transportation division shall designate a bona fide MBE applicant liaison officer within the transportation division who shall have the responsibility of advising bona fide MBE applicants as to the manner of initiating the certificate, permit, and rate processes and as to the manner of the compliance by successful bona fide MBE applicants with transportation division rules, regulations, and procedures. The field auditors of the transportation division, operating under the supervision of the assistant director-enforcement of the transportation division, shall have the responsibility of advising

prospective bona fide MBE applicants of the assistance available for the transportation division bona fide MBE applicant liaison officer.

(d) In order to obtain a for-hire motor carrier or motor bus certificate or permit, a bona fide MBE applicant shall be required to meet the burden of proof imposed by law on regular applicants. In multiple applicant proceedings where the demonstrated public need will support a grant of some, but not all, of the applicants, and the evidence establishes a need for the availability of bona fide MBE applicant transportation not being met by existing bona fide MBE certificate holders and/or by other existing carriers through the use of bona fide MBE transportation contractors, the commission may consider an applicant's status as a bona fide MBE applicant as a factor, along with all other relevant factors, in determining which of the applications should be approved.

(e) The unavailability of existing bona fide MBE certificate holders may be considered as a factor in determining adequacy of existing carrier service:

(1) where a bona fide MBE applicant demonstrates, through public witness evidence, a public necessity for use of the services of a bona fide MBE certificate holder as a primary means of meeting requirements of state or federal law, and local ordinances for use of contractors qualifying as a bona fide MBE certificate holder and/or bona fide MBE transportation contractor under the regulations; and

(2) where existing carriers opposing the applicant fail to establish that they are capable of adequately meeting the demonstrated need for the availability of bona fide MBE certificate holders and/or bona fide MBE transportation contractors.

(f) An applicant under this section shall have the burden of proving that it is a bona fide MBE applicant. In determining the entitlement of an applicant to the benefit of this section, the commission may consider the de facto management control of the applicant as well as incidents of ownership. Evidence that any applicant or any of its owners, officers, employees, agents, or representatives has employed any device whatsoever as a sham or subterfuge for the purpose of attempting to gain the benefit of this section shall be considered as evidence of the lack of an applicant's fitness to receive a grant of a certificate or permit.

(g) MBE certificate holders must continue to meet the definition of a bona fide MBE certificate holder in subsection (b) of this section and the commission may revoke the certificate granted to a bona fide MBE certificate holder if such holder fails to meet that definition.

(h) All certificates or permits granted under this section may not be sold, transferred, or leased unless the purchaser, transferee, or lessee is a bona fide MBE.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443926

Mary Rose McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Effective date:

Proposal publication date: May 24, 1994

For further information, please call: (512) 463-7094

Subchapter CC. Tow Trucks

• 16 TAC §5.809

The Railroad Commission of Texas adopts an amendment to §5.809, concerning denial, revocation, or suspension of a tow truck certificate of registration for a criminal conviction, with changes to the proposed text as published in the May 24, 1994, issue of the *Texas Register* (19 TexReg 4003).

The amendment is proposed in order to clarify the information that the commission will consider in determining whether to deny, revoke, or suspend a tow truck certificate of registration when the certificate holder has been convicted of a crime. Changes to the rule, as published, are in subsection (d) and eliminate all uses of the term "et seq" where used to refer to Texas Penal Code sections, in order to clarify for the general public what crimes the commission considers directly related to the performance of a tow truck owner. The term "et seq" has been replaced with specific references to appropriate Texas Penal Code provisions.

One public comment was received regarding this rule. The comment was in opposition to the adoption of the proposed rule, because the commenter is of the opinion that there is already too much policing of the tow truck industry.

The commission disagrees that the proposed rule is a repetitive, burdensome rule for tow truck owners, because the rule serves only to clarify the information that the commission will consider in determining whether to deny, revoke, or suspend a tow truck certificate of registration when the certificate holder has been convicted of a crime. The commission is required to promulgate a rule that specifically addresses the considerations that will be made by the commission when seeking to deny, revoke, or suspend a tow truck owner's license for a criminal conviction pursuant to Texas Civil Statutes, Article 6252-13c, §4 and Article 6252-13d, §4.

No groups or associations commented in favor of or against the proposed rule.

The amendment is adopted pursuant to Texas Civil Statutes, Article 6252-13c, §4 and Article 6252-13d, §4, which require licensing authorities to examine an applicant's criminal conviction as it affects the duties and responsibilities of the licensed occupation, and Article 6687-9b §7(b), which requires the commission to adopt rules establishing procedures for denial, suspension, revocation, or reinstatement of a certificate of registration.

§5.809. Denial, Revocation, or Suspension for a Criminal Conviction.

(a) This rule is promulgated pursuant to Texas Civil Statutes, Article 6252-13c, §4 and Article 6252-13d, §4, which require licensing authorities to examine an applicant's criminal conviction as it affects the duties and responsibilities of the licensed occupation, and Article 6687-9b §7(b), which requires the commission to adopt rules establishing procedures for denial, suspension, revocation, or reinstatement of a certificate of registration.

(b) An owner who has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the operation of a tow truck, or which directly affects such person's present fitness to perform as a tow truck owner including any conviction for a crime involving moral turpitude, may be denied certificates of registration or have a certificate of registration suspended or revoked by the commission. An owner includes any partner in a partnership and any corporation where one of its officers or directors has a felony or misdemeanor conviction of the types described above.

(c) In determining whether an owner's criminal conviction directly relates to the performance of a tow truck owner, the commission shall consider the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a certificate of registration;
- (3) the extent to which a certificate of registration might offer an opportunity for the owner to engage in further criminal activity of the same type as that in which the owner previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a tow truck owner.

(d) Those crimes which the commission considers as directly related to the performance of a tow truck owner include, but are not limited to, the following statutes and codes, as they may be amended from time to time:

(1) any criminal violation of statutes regulating the registration and operation of tow trucks, as set out in Texas Civil Statutes, Article 911b, §16 and Article 6687b-9;

(2) any crime involving homicide, as set out in Texas Penal Code, Chapter 19;

(3) any crime involving sexual assault, as set out in Texas Penal Code §22.011 and §22.021;

(4) any crime involving assault, as set out in Texas Penal Code, Chapter 22;

(5) any crime involving robbery, as set out in Texas Penal Code, Chapter 29;

(6) any crime involving burglary, as set out in Texas Penal Code, Chapter 30;

(7) any crime involving theft, as set out in Texas Penal Code, Chapter 31;

(8) any crime involving fraud, as set out in Texas Penal Code, Chapter 32;

(9) any crime involving the unlawful possession or use of weapons, as set out in Texas Penal Code, Chapter 46;

(10) any crime involving intoxication, alcoholic beverages, or controlled substances in conjunction with the operation of a motor vehicle, as set out in Texas Penal Code §19.05 and §38.04; and

(11) any crime involving reckless conduct in conjunction with the operation of a motor vehicle, as set out in Texas Penal Code §§22.05, 38.04, and 38.15.

(e) In determining whether a criminal conviction directly affects a person's present activity and fitness as a tow truck owner, the commission shall consider the following:

- (1) the extent and nature of the owner's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff and chief of police in the community where the person resides; and

(C) and any other person in contact with the convicted person.

(f) It shall be the responsibility of the owner with a criminal conviction to secure and provide to the commission, to the extent possible, the recommendations of the prosecution, law enforcement, and correctional authorities regarding all such convictions. Upon request and prior to a contested case hearing, an owner shall secure and provide to the commission a certified copy of the owner's conviction order and any indictment or information issued prior to such order.

(g) The owner with a criminal conviction shall also furnish proof in such form as may be required by the commission that owner has:

- (1) maintained a record of steady employment;
- (2) supported his or her dependents;
- (3) otherwise maintained a record of good conduct; and
- (4) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which owner has been convicted.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-8443929

Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP Gas
Railroad Commission of
Texas

Effective date: August 2, 1994

Proposal publication date: May 24, 1994

For further information, please call: (512) 463-7094

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Subchapter DD. Vehicle Storage Facilities

• 16 TAC §5.902

The Railroad Commission of Texas adopts an amendment to §5.902, concerning definitions as they pertain to vehicle storage facilities, with changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3326).

The amendment clarifies what is necessary to preserve, protect, or service a stored vehicle, for which a vehicle storage facility operator

would be entitled to charge a one-time \$10 preservation fee. Changes made to the text of the rule include requiring a written inventory to be made only of unsecured personal property contained in the vehicle. The term "unsecured," as used in the rule, refers to personal property that is not affixed to the vehicle and that is visible from outside of the vehicle; excluded from this term is any personal property that is contained in a locked trunk, glove compartment, or console, or is otherwise secured in the vehicle but not visible from outside of the vehicle. Other changes made to the text of the rule reflect that removal and storage of any personal property contained in a stored vehicle are required only when such action is necessary for the safekeeping of such property. The changes allow a vehicle storage facility operator to exercise discretion in determining when additional measures should be taken to ensure the safekeeping of personal property, while still requiring the operator to conduct a written inventory of any personal property contained in the vehicle and to specify any removal and storage of the property on the written inventory.

Comments filed by vehicle storage facility operators and member associations asserted that vehicle storage facility operators would have both practical and financial difficulties complying with subparagraph (A) of the proposed rule, which requires that they remove and store for safekeeping all personal property contained in a stored vehicle. On the practical side, the commenters stated that not all such personal property requires removal and storage, and that members of the public would not want their personal property to be handled in such a manner by a vehicle storage facility operator. The commenters believe that the rule should allow some flexibility to vehicle storage facility operators to exercise their own discretion in determining what property, if any, does require removal and storage for safekeeping. Other practical concerns raised were that vehicle storage facility operators would be required to maintain a separate building or facility and employ additional personnel in order to comply with the proposed rule, and that there would have to be a separate tracking system of all the stored property in order to ensure that it is properly returned to its owner. One commenter observed that its employees may be subject to disease or injury from blood or drug paraphernalia such as hypodermic needles found in a stored vehicle. Another commenter stated that the risk of damage to personal property through handling is greater than the risk of loss due to any theft that may occur on a facility's premises. It was also observed that false claims might be directed against vehicle storage facility operators for property not actually contained in a vehicle during its period of storage at the facility. Several commenters stated that vehicle storage facility operators are already responsible for the security of personal property contained in the vehicles they store, and that adequate protection of such property can be provided without removing the property from the vehicles. Finally, on the financial side, the commenters asserted that they would incur additional expenses as a result of having to maintain additional space for storage and having to employ additional personnel to conduct the responsibilities as-

sociated with compliance with the rule as proposed.

Another commenter pointed out that the proposed amendment contains no provision for the disposition of any personal property removed and stored for safekeeping should a vehicle be unclaimed and, therefore, subject to police auction. The commenter recommended that it be mandatory for a vehicle storage facility operator to provide a vehicle owner with a copy of the itemized inventory at the time a vehicle is released to the owner. Finally, the commenter observed that obtaining motor vehicle registration information for a stored vehicle from the Texas Department of Transportation is a routine part of the notification process, and asserted that the Commission should not consider such conduct to constitute preservation of the stored vehicle.

The following associations filed comments against the proposed amendment: Houston Automobile Wrecker Association Texas Towing and Storage Association

No groups or associations filed comments in favor of the proposed amendment.

The commission generally agrees with the comments received from the regulated industry concerning the suggested change to the proposed rule, because additional clarification in the rule would contribute to the more efficient safekeeping of personal property contained in vehicles stored at a vehicle storage facility.

With respect to the comment concerning the lack of any provision in the rule for the disposition of personal property in connection with an unclaimed vehicle, the commission is of the opinion that such a provision is beyond the scope of defining the term "preservation," which is the purpose of this rulemaking proceeding. Likewise, the recommendation that a vehicle storage facility operator be required to provide a vehicle owner with a copy of the written inventory upon release of the vehicle to the owner would be more appropriately addressed in a separate rulemaking involving an amendment of §5.908 of this title (relating to responsibilities of the licensee—documentation). Finally, the commission disagrees with the assertion that obtaining motor vehicle registration information from the Texas Department of Transportation does not constitute preservation of a stored vehicle, because such information is necessary in order to ascertain the owner of the vehicle for the inventory procedures required by the rule.

The amendment is adopted under Texas Civil Statutes, Article 6687-9a, §4(b), which requires the commission to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles.

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

Preservation—An action taken by or at the direction of the owner or operator of a vehicle storage facility that is necessary to

preserve, protect, or service a vehicle stored or parked at the facility. Reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, or convertible tops, are included in the fee for storage of a vehicle, as set forth in §5.919(f) of this title (relating to Technical Requirements—Storage Fees/Charges), and do not constitute "preservation."

A vehicle storage facility operator will be entitled to charge a fee for preservation if, in addition to the requirements set forth in §5.907(d) of this title (relating to Responsibilities of the Licensee—Storage Requirements), the vehicle storage facility operator performs, at a minimum, the following duties:

(A) conducts a written inventory of any unsecured personal property contained in the vehicle;

(B) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; and

(C) obtains motor vehicle registration information for the vehicle from the Texas Department of Transportation. For further information, call (512) 463-7095.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443927

Mary Ross McDonald
Assistant Director
Legal Division, Gas
Utilities/LP Gas

Effective date: August 2, 1994

Proposal publication date: May 3, 1994

For further information, please call: (512) 463-7094

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**Part III. Texas Alcoholic
Beverage Commission**
Chapter 31. Administration
**Administrative Functions of
the Commission**

• 16 TAC §31.5

The Texas Alcoholic Beverage Commission adopts a new §31.5, which sets copying costs for information requested by the public, details the billing methodology and identifies its general counsel as the open records coordinator, without changes to the proposed text as published in the May 24, 1994, issue of the *Texas Register* (19 TexReg 4004).

The justification for this section is to identify

copying costs for information requested by the public.

This section itemizes the copy charges for all documents which may be requested by the public which the agency produces.

No comments were received.

This section is adopted under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 authority.

Issued in Austin, Texas, on July 7, 1994.

TRD-9443670 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: July 28, 1994

Proposal publication date: May 24, 1994

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

Chapter 33. Licensing Licensees and Permits Surcharges

• 16 TAC §33.23

The Texas Alcoholic Beverage Commission adopts an amendment to §33.23, concerning the annual surcharges for all holders of permits and licenses issued by the Commission as required by the Texas Alcoholic Beverage Code, §5.50(b), effective September 1, 1993, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3872).

The justification for this section is it implements §5.50, Alcoholic Beverage Code, requiring license and permit surcharges to cover the amount of the Commission's annual appropriation.

This section sets the surcharge fee schedule for the 1995 fiscal year for holders of licenses and permits.

The Texas Restaurant Association commented in favor of this proposed surcharge methodology.

The section is adopted under Alcoholic Beverage Code, §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 7, 1994.

TRD-9443671 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: September 1, 1994

Proposal publication date: May 20, 1994

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

Chapter 35. Enforcement

Definitions

• 16 TAC §35.41

The Texas Alcoholic Beverage Commission adopts new §35.41, defining terms used in the Texas Alcoholic Beverage Code, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3873).

This section defines lewd and vulgar entertainment or acts and controlled substances and how these terms are used in the Texas Alcoholic Beverage Code.

This section ties the definition of certain terms to the same definition in the Texas Penal Code.

No comments were received.

The new section is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the Commission with the authority to promulgate rules necessary to carry out provisions of the Texas Alcoholic Beverage 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 July 8, 1994.

TRD-9443742 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: July 29, 1994

Proposal publication date: May 20, 1994

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

Chapter 41. Auditing

Records and Reports by Licensees and Permittees

• 16 TAC §41.20

The Texas Alcoholic Beverage Commission adopts a new §41.20 concerning the timely filing of excise tax reports without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3874).

This section establishes compliance requirements for taxpayers filing excise tax reports.

This section will allow acceptance of late reports if the taxpayer exercised reasonable diligence to file their report in a timely fashion.

No comments were received.

The new section is adopted under the Texas Alcoholic Beverage Code, §5.31, which pro-

vides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443812 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

Chapter 45. Marketing Practices

Subchapter A. Standards of Identity for Distilled Spirits

• 16 TAC §45.4

The Texas Alcoholic Beverage Commission adopts the repeal of §45.4, concerning the standards of identity for distilled spirits to include certain lower alcohol distilled beverages, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3874).

Due to errors in the official version of this rule on file with the Secretary of State's Office, this rule is repealed and republished in its corrected form.

No comments were received.

The repeal is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443811 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

The Texas Alcoholic Beverage Commission adopts new §45.4, concerning the standards of identity of distilled spirits, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3874). This section replaces the previous §45.4, which was repealed due to errors in the version on file with the Secretary of

State's Office. This section will also authorize low alcohol vodkas.

This section will authorize the approval of distilled spirits including low alcohol vodkas for sale within the state.

Comments were received from the Schefflin-Somersel Company requesting authorization of a lower alcohol (70 proof) vodka.

The new section is adopted under the Texas Alcoholic Beverage Code §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443810 Doyno Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

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• 16 TAC §45.21

The Texas Alcoholic Beverage Commission adopts an amendment to §45.21, concerning the legal standards of fill for containers of distilled spirits, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 5878).

This section amends §45.21 to include language on the same subject matter now stated in §45.141 which is being repealed.

This section will allow interested persons to go to one section to determine all legal container sizes authorized for distilled spirits.

No comments were received.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the Commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443809 Doyno Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

Subchapter B. Standards of Identify for Wine

• 16 TAC §45.49

The Texas Alcoholic Beverage Commission adopts an amendment to §45.49, concerning the legal standards of fill for containers of wine, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3878).

This section amends §45.49 to include language on the same subject matter which now appears in §45.141 which is being repealed.

This section will allow interested parties to go to one section to determine all legal container sizes authorized for wine.

No comments were received.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443808 Doyno Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
Subchapter C. Standards of Identify for Malt Beverages

• 16 TAC §45.73

The Texas Alcoholic Beverage Commission adopts an amendment to §45.73, concerning applications for label approvals, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3879).

This section prohibits private labels of malt beverages for only certain retail license or permit holders as a private brand as a violation of the statutory three-tier system of regulation.

Brewers may not under this section produce and have approved labels for specific retail accounts using their logos or brand names to the exclusion of all other retail accounts.

Comments were received from the Wholesale Beer Distributors of Texas in favor of this proposal.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the Commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443807 Doyno Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.79

The Texas Alcoholic Beverage Commission adopts an amendment to §45.79, concerning alcohol content on labels of malt beverages, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3879).

This section is amended to conform to changes made by the 73rd Legislature.

This section sets out the form, style and tolerance for printing the alcoholic content on labels of malt beverages.

No comments were received.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the Commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443806 Doyno Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.80

The Texas Alcoholic Beverage Commission adopts an amendment to §45.80, concerning the legal sizes of containers of malt beverages, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3880). The justification for this section is to update this section to reflect legislative changes.

This section provides a listing of the legal container sizes for malt beverages.

Miller Brewing Company requested additional sizes of 22 fluid ounces and 40 fluid ounces. These sizes are specifically not authorized under the Texas Alcoholic Beverage Code and cannot be added by rule.

The amendment is adopted under the Texas

Alcoholic beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443805 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.82

The Texas Alcoholic Beverage Commission adopts an amendment to §45.82, concerning the prohibition of private labels of malt beverages for retail accounts, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3880).

This section is adopted to strengthen the three-tier system of regulation of the malt beverage industry.

This section will prohibit a manufacturer or wholesaler to produce private labels of malt beverages for any single or chain retail account including any name, trademark or tradename of any retail account.

The Wholesale Beer Distributors of Texas commented in favor of this section.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443804 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.90

The Texas Alcoholic Beverage Commission adopts an amendment to §45.90, concerning the printing of alcoholic content on labels of malt beverages, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3881).

This amendment conforms this section to changes made during the 73rd Legislature.

This amendment removes the prohibition of placing alcoholic content on the labels of malt beverages.

No comments were received.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443805 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
Subchapter D. Advertising and
Promotion—All Beverages

• 16 TAC §45.101

The Texas Alcoholic Beverage Commission adopts an amendment to §45.101, concerning coupons for cents off or rebates on the purchase of alcoholic beverages, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3881).

This amendment implements legislation passed during the 73rd Legislature, specifically prohibiting manufacturers and wholesalers from using coupons or rebates to promote alcoholic beverages.

This section prohibits any cents off coupons or rebates on the sale of alcoholic beverages.

Comments were received from the Texas Restaurant Association requesting that retailers be allowed to publish coupons.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 8, 1994.

TRD-9443802 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.107

The Texas Alcoholic Beverage Commission adopts a new §45.107, concerning private club advertising, without changes to the proposed text as published in the May 20, 1994 issue of the *Texas Register* (19 TexReg 3883).

The justification for this section is to clarify advertising requirements for holders of private club permits.

This section requires private clubs to include in any advertisement that alcoholic beverage service is for members of the club only.

No comments were received.

The new section is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994.

TRD-9443801 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.108

The Texas Alcoholic Beverage Commission adopts new §45.108, concerning the authorization for manufacturers, distributors, distillers and wineries to sponsor groups or participants in activities and to regulate insignia of brand names worn by employees, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3883).

This section implements changes to §108.03 of Alcoholic Beverage Code from the 73rd Legislature.

This section will regulate the use of logos or insignia of brands worn by employees of manufacturers, distillers, distributors, and wineries or persons they might sponsor in any event such as athletic contests or revues.

No comments were received.

The new section is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994.

TRD-9443819 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.111

The Texas Alcoholic Beverage Commission adopts the repeal of §45.111, concerning games of chance, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3885).

This section is repealed to conform with changes made by the 73rd Legislature authorizing sweepstakes.

No comments were received.

The repeal is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic beverage 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 July 11, 1994.

TRD-9443820 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
Subchapter E. Advertising and
Promotion—Malt Beverages

• 16 TAC §45.112

The Texas Alcoholic Beverage Commission adopts an amendment to §45.112, concerning use of insignia by manufacturers and distributors, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3885).

This section is amended to delete redundant language which now appears in §45.108.

No comments were received.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994.

TRD-9443821 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.113

The Texas Alcoholic Beverage Commission adopts an amendment to §45.113, concerning relaxation of certain restrictions on advertisement and promotion of malt beverages, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3886.)

This section is amended to reflect changes made by the 73rd Legislature making advertising and promotion of all types of alcoholic beverages similar.

This section allows the promotion of malt liquor in the same manner as beer.

One comment was received from Anheuser-Busch Company regarding concern that malt liquor could be promoted through bar spending like beer. The agency found that this comment was based mainly on a current competitive advantage that one manufacturer and their distributors enjoy in the market and this section would make promotions equal for all companies.

The amendment is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994.

TRD-9443822 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
Subchapter F. Advertising and
Promotion—Liquor (Distilled
Spirits and Wine)

• 16 TAC §45.117

The Texas Alcoholic Beverage Commission adopts a new §45.117, concerning prizes, premiums and gifts to consumers by distillers, wineries and wholesalers, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3886).

This section implements changes in the law made by the 73rd Legislature.

This section authorizes persons involved in the manufacture or wholesaling of distilled spirits and wine to make promotional advertising gifts of nominal value which carry brand advertising to the ultimate consumer.

No comments were received.

The new section is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994.

TRD-9443823 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §45.118

The Texas Alcoholic Beverage Commission adopts a new §45.118, concerning advertising specialties which may be furnished to retailers by manufacturers or wholesalers of liquor, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3887).

This section implements changes made by the 73rd Legislature authorizing advertising specialties which may be given to retailers.

This section sets limits on the types and costs of promotional advertising specialties which may be given to retail permittees.

No comments were received.

The new rule is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994.

TRD-9443824 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

• 16 TAC §45.119

The Texas Alcoholic Beverage Commission adopts a new §45.119, concerning charitable contributions by the liquor and wine industry, without changes to the proposed text as published in the May 20, 1994 issue of the *Texas Register* (19 TexReg 3887).

This section authorizes charitable contributions as authorized by the 73rd Legislature.

This section sets out the parameters in which the distilled spirits and wine industry may make gifts to charitable and/or religious organizations.

No comments were received.

The new section is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994.

TRD-9443825 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

• 16 TAC §45.120

The Texas Alcoholic Beverage Commission adopts a new §45.120, concerning co-packaging of liquor, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3888).

The justification for this section is to implement changes made by the 73rd Legislature authorizing co-packaging of products with liquor.

This section requires that if packages of liquor are combined with other promotional items they must be sold as a unit and not be separated by the retailer.

No comments were received.

The new rule is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994.

TRD-9443826 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

Miscellaneous Metric System

• 16 TAC §45.141

The Texas Alcoholic Beverage Commission adopts the repeal of §45.141, concerning metric sizes for containers of distilled spirits and wine, without changes as published in the May 20, 1994 issue of the *Texas Register* (19 TexReg 3888).

This section is repealed since the language has now been reprinted in §45.49.

This will allow persons to go to one section to find the legal sizes of containers of alcoholic beverages in a separate section.

No comments were received.

The repeal is adopted under the Texas Alcoholic Beverage Code, §5.31, which provides the commission with the authority to promulgate rules necessary to carry out provisions of the Alcoholic Beverage 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 July 11, 1994

TRD-9443827 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 1, 1994

Proposal publication date: May 20, 1994

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

Chapter 50. Alcohol Awareness and Education

• 16 TAC §§50.2-50.21

The Texas Alcoholic Beverage Commission adopts the repeal of §§50.2-50.21, concerning the minimum substantive and procedural requirements for the approval of conducting and certification of seller-server training programs, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3888).

The justification for this section is that it will allow new rules which are more specific to be put in place, thus providing for better programs and better trained instructors, resulting in better educated students.

The repealed sections will be replaced by new sections which will delineate the requirements for seller-server training schools, their program content and student certification.

One comment was received from Texas Seller Training, Inc. suggesting that §50.21, concerning trainee certification revocation, not be repealed but strengthened on the basis that this put "teeth" into the certification

program. The Texas Alcoholic Beverage Commission disagrees in that not one known certification has ever become eligible for revocation since the program's inception.

The repeals are adopted under Alcoholic Beverage Code, §106.18 and §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller-server training programs

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 authority.

Issued in Austin, Texas, on July 13, 1994.

TRD-9443669 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: July 28, 1994

Proposal publication date: May 20, 1994

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

• 16 TAC §50.2

The Texas Alcoholic Beverage Commission adopts new §50.2, which defines the terms used in the ensuing rules concerning requirements for seller-server training and certification, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3889).

This rule is justified in that it clarifies all of the rules relating to seller-server training and certification.

This rule defines, "Customer," "Intoxication," "Program-Seller Training Program," "Seller or Server" and "Student or Trainee," and sets forth the rules of construction for terms not defined

No comments were received regarding the adoption of this rule

The new rule is adopted under the Alcoholic Beverage Code, §106.14 and §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller-server training programs

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

Issued in Austin, Texas, on July 8, 1994

TRD-9443743 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: July 29, 1994

Proposal publication date: May 20, 1994

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

• 16 TAC §50.3

The Texas Alcoholic Beverage Commission adopts new §50.3, which sets forth the procedures and requirements to become an approved seller-server training program and the program content requirements, with a change to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3889).

The change to §50.3(i)(5)(A) adds "drink counting" as a method of monitoring intoxication. This addition was made in response to a citizen comment.

This rule is justified in that it will provide for better training programs and in turn better trained seller-servers.

This rule sets forth all the conditions that must be met to become an approved program, clearly delineates the course content and testing requirements.

A summary of comments received and the department's responses are as follows: TABSS-Metroplex objected in §50.3(e) to trade associations being allowed to train members and non-members of the general public.

The commission disagrees as the exception was made to allow trade associations to offer training classes as a community service. Training the general public is part of the community service.

Select Concepts and Alcoholic Beverage Training commented on §50.3(h). They were in favor of the proposed rule. One commenter asked for clarification. One commenter affirmed that an integral part of the program is the individual who teaches the program. Another commenter was pleased to have training for the trainer. One commenter wanted to know if the trainer development program can be submitted at the time of renewal or be covered by a grandfather clause and what constitutes a trainer development program.

The commission agrees that a trainer development program will enhance the programs. Currently approved programs may wait to submit a trainer development program at the time of renewal.

Maurice Dennis, PhD, Texas A & M commented concerning §50.3(i)(5)(A), and suggested that this subsection should also address the need to monitor intoxication by the number of drinks consumed.

The commission agrees that emphasis in addition to the Know Your Limits Chart should be given to drink counting.

Maurice Dennis, PhD, Texas A & M commented on §50.3(i)(7)(B) and suggested that the discussion of alcoholism as a disease and the addictive property of alcohol be deleted from the program content because it cannot be discussed in full and may only confuse trainees.

The commission disagrees that the subsection should be deleted because the seller training programs do not go into the nature of the disease, but rather emphasize the need for a seller-server to intervene if a seller-server has reason to believe that an individ-

ual is an alcoholic because an alcoholic cannot monitor his/her drinking.

Maurice Dennis, PhD, Texas A & M commented concerning §50.3(i)(7)(C), suggesting that the TCADA drink/drive calculator be used in place of the Know Your Limits Chart.

No action can be taken by the commission at this time because it has not yet received a drink/drive calculator from TCADA which has been requested. Under the new rule it will be usable as a "similar chart".

Alcoholic Beverage Training commented on §50.3(i)(12)(A), suggesting that the subsection be deleted because the administrator should not supersede the Administrative Procedure and Texas Register Act.

The commission disagrees with the comment. The administrator needs the authority to require that programs be updated as laws change so that misinformation is not offered through the programs and newly developed information can be disseminated as quickly as possible. This section will not significantly impact the operation of seller training schools.

The new rule is adopted under Alcoholic Beverage Code, §5.31 and §106.04, which provide the Texas Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out provisions of this code.

§50.3. Application for Program Approval.

(a) Application for program approval shall be made by the person, corporation or other entity who will administer and supervise the actual teaching of the program to Texas sellers and servers. The commission specifically finds that the training entity or school is an inseparable part of the seller training program. The integrity and ability of the people directly engaged in the administration, supervision and training of the curriculum to seller trainees are an integral part of the program contemplated by the Texas Alcoholic Beverage Code, §106.14. Therefore, a curriculum, alone, is not eligible for approval.

(b) Application for approval shall be made on forms provided by the commission.

(c) No licensee or permittee, or his spouse, agent, servant, or employee, or any subsidiary or affiliate, may directly or indirectly conduct, sponsor, or support a seller training program approved under this chapter except as provided in the Texas Alcoholic Beverage Code, §106.14(c) and (d).

(d) A licensee or permittee may be a member of an Advisory Board, but not the Governing Board of a non-profit agency which sponsors a seller training program.

(e) A bona fide state trade association qualified under this section may train personnel of its own regular membership and non-members of the same level of the

alcoholic beverage industry. For the purposes of this subsection, package stores which hold local distributor's permits, and private clubs, shall be considered to be retailers. State retail trade associations may also train individual members of the general public. To qualify under this subsection a trade association must:

(1) be a statewide organization with members in at least 10 Texas counties;

(2) have been in existence as a statewide organization for at least 20 years;

(3) not be an organization primarily composed of members of a particular retail chain.

(f) Persons engaged in the manufacturing or wholesaling of alcoholic beverages for national distribution may contribute to the development of a curriculum of seller training being developed for national use; provided, that any such contribution or involvement shall not be directly or indirectly tied to the actual offering of training to employees of any retailer, group of retailers, or the general public. Such involvement by an alcoholic beverage manufacturer shall be in a primarily noncommercial manner consistent with the spirit and intent of the provisions of the Texas Alcoholic Beverage Code and the rules of the commission prohibiting the tied-house and prohibiting the furnishing of things of value to a retailer of alcoholic beverages.

(g) No licensee, permittee, or other person engaged in the manufacturing or wholesaling level of the alcoholic beverage industry, or any agent, servant, or employee of any of those, may directly or indirectly conduct or sponsor a seller training program for retail level employees or members of the general public.

(h) Each application shall be accompanied by a full and complete copy of the curriculum, including a copy of all materials to be used therewith, including workbooks, videos, and examinations. The curriculum and other materials shall be indexed and labeled in detail to indicate the location of all of the requirements for program approval specified in this chapter. The amount of time allocated to cover each segment of the curriculum shall be specified with a minimum of 200 minutes of instruction required. Programs utilizing a different format from lecturing will be evaluated case by case. Each application shall also be accompanied by a trainer development program which includes a minimum of eight hours of study time, eight hours of observation and eight hours of practice teaching in front of an audience. The initial trainer for a school-program may substitute the eight hours of observation for an additional eight hours of practice teaching (with or without a live audience).

(i) The program shall include:

(1) §50.2(a)(2) of this title (relating to the Definition of Intoxication);

(2) the Law Pertaining to Intoxicated Persons. Each approved seller training program shall review and explain all provisions of the Texas Alcoholic Beverage Code pertaining to intoxicated persons and provisions of the Texas Penal Code pertaining to public intoxication and shall include a discussion of any significant court decisions or opinions of the attorney general of Texas which the administrator may from time to time determine to be appropriate;

(3) the Law Pertaining to Minors. Each approved seller training program shall review and explain all provisions of the Texas Alcoholic Beverage Code relating to the sale or service of alcoholic beverages to minors, the provisions of the code relating to purchase, possession or consumption of alcoholic beverages by minors and the provisions of the code relating to a person making alcoholic beverages available to a minor or permitting a minor to possess or consume alcoholic beverages and shall include a discussion of any significant court decisions or opinions of the attorney general of Texas which the administrator may from time to time determine to be appropriate;

(4) the Law Pertaining to Proper Identification. Each approved seller training program shall review and explain the Texas laws pertaining to false, counterfeit, or deceptively similar identification documents including, specifically, the Texas Traffic Laws, Driver's License, Texas Civil Statutes, Article 6687b, Article II, §11(a) and §14A(a); Article IV, §32(a), §32A(a) and (b), and 33(a); and Article VI, §44A(a), and shall include a discussion of any significant court decisions or opinions of the attorney general of Texas which the administrator may from time to time determine to be appropriate;

(5) detection of Intoxication.

(A) Each approved seller training program shall explain how to detect possible intoxication. It shall describe the common indicators including, but not limited to, slurred speech, mental confusion, impaired balance, impaired motor ability, bloodshot eyes, the smell of alcoholic beverages on the breath, dishevelment, nausea and signs of lost control of bladder or bowels. The program shall note that an intoxicated person may sometimes display none of the common indicators. It shall describe ways to detect an atypical intoxicated person through methods such as drink counting, conversations calculated to reveal emotional stability or common indicators which might not otherwise be manifest.

(B) Students shall be made aware that serious illness can masquerade as intoxication. All students shall be instructed to recognize bracelet and necklace emblems of the Medic Alert Foundation and the significance of such identification.

(6) monitoring Customer Behavior.

(A) Each approved seller training program shall describe techniques for monitoring customer behavior for the purpose of implementing timely intervention pursuant to paragraphs (10) and (11) of this subsection (relating to Intervention Pertaining to Minors; and Intervention Pertaining to Intoxication). It shall describe methods to obtain appropriate information in a commercially acceptable manner, including:

(i) observing customer response during any conversations with the seller;

(ii) observing customer interaction with third parties;

(iii) observing the customer's initial mood and general conduct; and

(iv) observing any change in any of the customer behavior previously mentioned.

(B) Each program shall describe and explain typical warnings signs that customer behavior may be degenerating toward illegal behavior. Such warning signs shall include:

(i) the development of any indicator of intoxication other than the smell of alcoholic beverages on the breath;

(ii) any continuing argument or physical confrontation with any person;

(iii) any rapid or pronounced change in mood or emotional state such as excessive euphoria, sadness, confusion, excitability or aggressiveness.

(7) physiology.

(A) Each approved seller training program shall include a basic explanation of how the human body reacts to the ingestion of beverage alcohol. It shall use simple language and concepts. It shall explain the effect of variables including body weight and type, gender, muscle/fat ratios, type and timing of food consumption, fatigue, and common diseases or disorders. It shall explain how alcohol can interact with many types of medicines and other drugs.

(B) Each program shall include a basic discussion of alcoholism as a disease and the addictive property of alcohol.

(C) Each program shall describe the Know Your Limits Chart developed by the Distilled Spirits Council of the United States, Inc., or a similar chart, and provide a copy of the chart.

(8) detection of Minors.

(A) Each approved seller training program shall explain techniques for determining if a customer is a minor. It shall explain the common signs of underage status including lack of physical maturity. It shall stress that most minors are mature in physical appearance before the age of majority, and that signs of physical maturity are not a reliable guide.

(B) Each program shall describe and explain conduct and mannerisms which might raise a suspicion of minority status. It shall include:

(i) a discussion of current fads and fashions in clothing, accessories, and grooming among minors;

(ii) a description, based upon authoritative sources, of behavior patterns characteristic of minors;

(iii) an explanation of how to look for suspicious behavior such as:

(I) a group of young-appearing persons pooling their money and giving it to the oldest-appearing member;

(II) a youthful appearing person waiting in the background away from the point of purchase or service while an adult obtains more than one serving; and

(III) prior observation that a particular adult has purchased for a youthful appearing person.

(9) identification.

(A) Each approved seller training program shall describe valid drivers licenses and identification certificates issued by the Texas Department of Public Safety.

(B) Each approved seller training program shall explain how to detect invalid identification documents presented in an attempt to establish proof of adult status. This shall include counterfeit and altered official documents. It shall also in-

clude unofficial documents which are deceptively similar to official documents. Emphasis shall be placed on drivers licenses and identification cards issued by the state of Texas and other states. Each program shall describe the most common types of counterfeiting and alteration and shall describe warning signs such as creases, cut-and-paste numerals, substandard or inconsistent graphics and substandard lamination.

(10) intervention Pertaining to Minors.

(A) Each approved seller training program shall describe and explain techniques of intervention to prevent or terminate illegal sale, service, possession, or consumption regarding a minor.

(B) Such techniques shall include, when appropriate to the circumstances:

(i) ask for and carefully examine an identification card;

(ii) removal of the alcoholic beverages in a non-aggressive manner from the reach or sight of the offender;

(iii) an explanation that the demeanor of the seller or server should never be such that is likely to provoke violence;

(iv) an explanation of the obligation to notify law enforcement authorities in the event that intervention attempts fail;

(v) specific examples of words and conduct which may be used in an attempt to avoid or terminate illegal activity amicably.

(11) intervention Pertaining to Intoxication.

(A) Each approved seller training program shall explain effective techniques of intervention with persons who are intoxicated or who appear to be becoming intoxicated. This part of the program is of considerable importance to the public peace and safety and shall therefore receive due emphasis. The program may take into account the fact that permittees, licensees, and their employees will generally desire to avoid alienating a customer whenever possible. Therefore, the program shall describe specific language and conduct of the seller or server which is calculated to terminate or avoid illegal behavior of the customer as amicably as possible.

(B) Such techniques shall include, when appropriate to the circumstances:

(i) an explanation that the

demeanor of the seller or server should never be such that is likely to provide violence;

(ii) removal of the alcoholic beverages in a non-aggressive manner from the reach or sight of the offender;

(iii) specific examples of words and conduct which may be used in an attempt to avoid or terminate illegal activity amicably;

(iv) an explanation of how to slow down service of alcoholic beverages;

(v) a suggestion that food, snacks or alternative beverages be served and an explanation of the types of food most likely to slow or reduce intoxication.

(C) The student shall be made aware that coffee and other caffeine-containing products do not reduce intoxication, but may misleadingly appear to do so.

(D) The student shall be made aware of designated driver programs and shall be encouraged to provide such special services and courtesies to a designated driver as may be allowed by the student's employer.

(E) The student shall be made aware of the obligation to notify law enforcement authorities in the event that intervention attempts fail.

(12) additional Program Content.

(A) The administrator is hereby delegated the authority to modify or add requirements for the content of approved seller training programs in addition to the requirements specified in this chapter.

(B) Any approved seller training program may contain any additional material except material which the administrator finds under the circumstances tends to be:

(i) a substantial detraction from the effectiveness of the minimum program requirements; or

(ii) a substantial detriment to the health, safety, or welfare of the general public or any segment thereof.

(C) Approved programs are encouraged to exceed the minimum requirements of program content and to develop new methods and techniques designed to fulfill the intent of the Texas Alcoholic Beverage Code, §106.14.

(13) appropriate testing of train-

ees in a form and manner adequate to demonstrate the effectiveness of the training program shall be required.

(j) Each application for program approval shall be accompanied by a cashier's check, certified check or United States postal money order in the amount of \$250.

(k) Programs found to be acceptable under this chapter shall be approved in writing by the administrator in such form as he may deem to be appropriate.

(l) Approval shall be valid for a period of three years unless earlier revoked.

(m) A person commits an offense under the Texas Alcoholic Beverage Code, §101.61, if he falsely represents to any person that a program has been approved by the commission or administrator, or misleads any person into believing that a program is approved by the commission or administrator when, in fact, it is not.

(n) The developer of a curriculum, or his authorized agent, may for marketing purposes in the normal course of business represent that the basic curriculum is part of an approved program, provided such representation is, in fact, truthful.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443906 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 2, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §50.4

The Texas Alcoholic Beverage Commission adopts new §50.4, concerning the administration of the program with respect to filing reports, class facilities, program presentation, testing and trainee certification, with a change to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3892).

This rule is justified in that it details how the seller-server training program shall function.

This rule describes specific procedures to be followed in administration of a program.

Alcoholic Beverage Training and TABSS-Metroplex suggested as to §50.4(a) that requiring notification of sessions three business days prior to the session is too much in some cases. Alcoholic Beverage Training suggested further that it is unnecessary to inform the Texas Alcoholic Beverage Commission of a class cancellation.

The commission disagrees with the comment. The commission needs to receive notices of scheduled classes in time to set a schedule for the agent monitoring the classes. TEA requires 30 days notice for defensive driving classes. Clients can meet the three-day notice rule if they know it is required. Also, Texas Alcoholic Beverage Commission needs to know ahead of time if an instructor is not planning to hold a scheduled session, so that it does not waste a monitor's time going to that location. However, if the cancellation cannot be anticipated, ie. no or low attendance, a cancellation helps us clear out our records for scheduled classes.

One comment was received from Alcoholic Beverage Training concerning §50.4(b). They concurred with the rule but thought further stipulations should be included.

The commission disagrees that further stipulations should be included in order to keep the stipulations to a minimum, and allow a trainer to ensure that the training environment is conducive to learning.

One comment was received from Alcoholic Beverage Training concerning §50.4(f) which requested clarification on how to handle trainee's questions within the scope of the program.

The commission does not think that it is possible to incorporate into the rules how to handle unknown questions. Common sense will have to be used to determine if the question is something the trainer has the knowledge to answer or if the trainer will need to refer the trainee to another source.

Comments were received from TABSS-Metroplex and Select Concepts in favor of §50.4(f) and supporting the idea of a retest. Also Select Concepts suggested that the trainer should have the option of retesting immediately or at a later date based upon the needs of the particular trainee. Some trainees fail because they cannot assimilate all of the material immediately; they need study time.

The commission agrees with retesting, but disagrees with the option to retest at a later date. In order to be able to monitor sessions, the Texas Alcoholic Beverage Commission requires that the commission receives proper notice for each session. The Texas Alcoholic Beverage Commission does not allow testing any time except immediately following the session the participant attended because we want the ability to monitor the testing and do not want to create an environment where testing could be given in lieu of program attendance. The addition of an immediate retest should enable trainers to identify students who cannot read and give the trainer the opportunity to offer an oral exam for the student.

One comment received from TABSS-Metroplex is in favor of §50.4(k) which enables the offering of a test in a language best understood by the trainee.

The commission agrees with the comment and proposes no changes to the subsection.

One comment was received from Health Communications, Inc. suggesting as to §50.4(m), that the Reports of Seller Training

be filed within 45 days of the date on which the session was held. This would allow programs that utilize standardized grading of tests off site ample time to transmit tests through the mail.

The commission disagrees with this comment because the 30 day requirement is generous and the commission wants to encourage filing reports as quickly as possible so that our records are current and so that the trainee can receive a certification card as timely as possible.

Comments were received from Alcoholic Beverage Training and TABSS Metroplex suggesting as to §50.4(n), that the date of birth of each student is not necessary on the report of seller training.

The commission disagrees with the comment. On a few occasions, the date of birth has had to be used to determine the identity of the trainee. With both the social security number and the date of birth, cross validation can be used when necessary.

One comment was received from Gulf Coast Texas Alcoholic Beverage Seller School concerning §50.4(p) and §50.4(q) and in support of the commission issuing the trainee certificates because it adds credibility to the program.

Alcoholic Beverage Training and TABSS-Metroplex suggested that the schools, rather than the commission issue the trainee certificates.

The commission agrees that it is easiest to pass out certificates while a student is present because mailing addresses do change in a matter of weeks. However, the commission upholds the issuance of the certification cards by the commission because the issuance is a measure of control for the commission both by preventing blank cards from being misplaced or misused and by allowing the commission to have a record of the certification before the certificate is issued.

Section 50.4(p), Program Administration. The Report of Seller Training shall be accompanied by a cashier's check, certified check, or United States Postal money order in the amount of \$2.00 per trainee.

The new rule is adopted under Alcoholic Beverage Code, §108.18 and §5.31. Texas Civil Statutes, which provides the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller-server training programs.

§50.4. Program Administrator.

(a) The Texas Alcoholic Beverage Commission shall receive written notification from each school at least three business days prior to the session date. Said notice shall include the date, time, and location of each class and shall be received in the headquarters of the Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711 or local field office on forms prescribed by the commission. The commission must be notified by phone of session cancellations prior to the actual session date

except when cancellation cannot be anticipated before the session's scheduled start. When cancellation cannot be anticipated, the commission must be notified within a reasonable time.

(b) All training facilities shall meet the requirements of the Americans with Disabilities Act (ADA) and contain:

(1) adequate seating facilities for all students;

(2) appropriate space to ensure that visuals can be seen from all seating positions;

(3) private space to limit distractions; and

(4) access to a restroom.

(c) Sessions may be monitored unannounced to evaluate the trainer presentation and the classroom environment.

(d) Programs approved for licensees/permittees or hotel management companies shall be limited to employees of the said licensee, permittee, or hotel management company.

(e) No class may exceed 50 trainees. Trainees who arrive more than 15 minutes after the start of the program session shall be denied admission to the session.

(f) Discussions must be presented in a manner consistent with the contents of the approved instructor's guide.

(g) Each program session will be presented in a continuous block of instruction. While instruction shall be interrupted for brief breaks, these should be limited in number and duration. The program must be presented in its entirety to each student in a language approved for use by the instructor.

(h) Each trainee is to be tested immediately following the conclusion of instruction at the program session he or she attends. Testing of session participants at any other place or time is prohibited.

(i) Each trainee must correctly answer at least 70% of the questions found on the test administered to him. Schools are encouraged to set higher completion standards. Trainees who receive failing scores may be immediately retested once. Otherwise, trainees must repeat the course in full.

(j) All tests shall be administered on a closed book basis.

(k) At the trainer's discretion the test may be offered in a language best understood by the trainee. Bilingual instructors may, in response to direct inquiries, clarify test questions using another language.

(l) Each test must be maintained by the school for a period of at least four years and be made available to the commission

upon written request.

(m) Reports of Seller Training shall be made by the training entity or school to the commission. Reports must be delivered or postmarked within 30 calendar days of the date on which the session was held upon forms prescribed and approved by the administrator.

(n) Each Report of Seller Training shall contain the name, social security number and date of birth of each student in that class who has completed the training program and has passed the required test.

(o) The certified trainer who actually conducted the program shall in connection with the Report of Seller Training verify in writing under oath that each designated student has successfully completed the program approved by the commission on the date indicated and shall verify such other facts as the administrator may from time to time direct.

(p) The Report of Seller Training shall be accompanied by a cashier's check, certified check, or United States postal money order in the amount of \$2.00 per trainee.

(q) The administrator shall send the certificates to the school which trained the trainees. Upon receipt, the school shall make a good faith effort to promptly transmit each certificate to the appropriate trainee. Failure to comply with this requirement is grounds for revoking or suspending approval of the seller training program administered by that school.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443907 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 2, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §50.5

The Texas Alcoholic Beverage Commission adopts new §50.5, concerning the denial, suspension or revocation of seller-server training program approval, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3893).

This rule is added to describe the specific reasons for which seller-server program approval may be suspended, denied or revoked; giving potential program applicants specific guidelines.

This rule, in addition, describes the procedures to be followed should a program be denied, suspended or revoked.

One comment was received from Alcoholic Beverage Training suggesting as to §50.5(a)(3) and (c)(3) that the classifications be reconsidered for the convictions that prohibit an individual from being certified as a program administrator or instructor because misdemeanor theft convictions do not prohibit a person from becoming a licensed peace officer. A person with multiple misdemeanor DWI convictions should probably not be certified. Consider, instead: no felony convictions within the last two years; no DWI convictions within the last two years; and no class A misdemeanor drug-related offenses in the last two years.

The department disagrees with the comment. No program administrator should have a record of theft, fraud, or misrepresentation in that these offenses relate directly to their duties and functions within the school.

The new rule is adopted under the Alcoholic Beverage Code, §106.14 and §5.31, which provides the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller-server training programs.

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

Issued in Austin, Texas, on July 8, 1994.

TRD-9443744 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: July 29, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §50.6

The Texas Alcoholic Beverage Commission adopts new §50.6, concerning the application for a trainer's certification, without changes to the proposed text as published in the May 20, 1994 issue of the *Texas Register* (19 TexReg 3894).

This rule is added to set forth the requirements and procedures to apply for certification as a trainer.

This rule will enable the prospective trainer to take the required steps to gain certification.

No comments were received regarding the adoption of this rule.

The new rule is adopted under Alcoholic Beverage Code §106.14 and §5.31, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish minimum requirements for seller training programs.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443908 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 2, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆
• 16 TAC §50.7

The Texas Alcoholic Beverage Commission adopts new §50.7, concerning the denial or revocation of trainer approval, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3894).

This rule is added to describe the specific reasons for which trainer approval may be denied or revoked; giving potential trainer applicants specific guidelines.

This rule, in addition, describes the procedures to be followed should a trainer be denied or revoked.

One comment was received from Alcoholic Beverage Training suggesting as to §50.7(a)(3) that the classifications be reconsidered for the convictions that prohibit an individual from being certified as a program administrator or instructor because misdemeanor theft convictions do not prohibit a person from becoming a licensed peace officer. A person with multiple misdemeanor DWI convictions should probably not be certified. Consider, instead: no felony convictions within the last two years; and no class A misdemeanor drug-related offenses in the last two years.

The commission disagrees with the comment. No trainer should have a record of theft, fraud, or misrepresentation in that these offenses relate directly to their duties and functions within the school.

The new rule is adopted under Alcoholic Beverage Code, §106.18 and §5.31, Texas Civil Statutes, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller-server training programs.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443909 Doyme Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 2, 1994

Proposal publication date: May 20, 1994

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

• 16 TAC §50.8

The Texas Alcoholic Beverage Commission adopts new §50.8, concerning the certification of trainees who have successfully completed an approved seller training program, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3895).

This rule is justified in that it details the procedure for the issuance of certificates to persons who successfully complete seller-server training.

This rule is added to describe the method for the issuance of trainee certificates and to establish the commission as the central record keeping source for trainee certification.

The following comments were received regarding this new rule:

Gulf Coast Alcoholic Beverage Seller School §50.8(a), supported the commission in issuing the trainee certificates because they felt it added credibility to the program. Alcoholic Beverage Training and TABSS-Metroplex suggested that the schools, rather than the commission issue the trainee certificates.

The department agrees with Alcoholic Beverage Training and TABSS-Metroplex that it is easiest to pass out certificates while a student is present because mailing addresses often do change in a matter of weeks. However, the department disagreed in that issuance is a measure of control for the commission both by preventing blank cards from being misplaced or misused and by allowing the commission to have a record of the certification before the certificate is issued.

The new rule is adopted under Alcoholic Beverage Code, §106.18 and §5.31, Texas Civil Statutes, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish the minimum requirements for seller-server training programs.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443910 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 2, 1994

Proposal publication date: May 20, 1994

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

• 16 TAC §50.9

The Texas Alcoholic Beverage Commission adopts new §50.9, regarding licensee/permittee exemption from administrative action if they required their employees attend an approved seller-server training program, without changes to the proposed text as published in the May 20, 1994 issue of the *Texas Register*, (19 TexReg 3895).

This rule creates a method by which a licensee/permittee can claim an exemption from administrative action.

This rule sets forth in detail the procedures to be followed to receive an exemption.

No comments were received regarding the adoption of this rule.

The new rule is adopted under Alcoholic Beverage Code §106.14 and §5.31, which provide the Texas Alcoholic Beverage Commission with the authority to pass rules to establish minimum requirements for seller-server training programs.

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

Issued in Austin, Texas, on July 7, 1994.

TRD-9443911 Doyne Bailey
Administrator
Texas Alcoholic Beverage
Commission

Effective date: August 2, 1994

Proposal publication date: May 20, 1994

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

Part IV. Texas Department of Licensing and Regulation

Chapter 75. Air Conditioning and Refrigeration Contractor License Law

• 16 TAC §§75.20, 75.23, 75.30, 75.40, 75.70

The Texas Department of Licensing and Regulation adopts amendments to §§75.20, 75.23, 75.30, 75.40, and 75.70, concerning licensing for air conditioning and refrigeration contractors without changes to the proposed text as published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4373). The amendment to §75.20 reflects a change in the name of the trade school accrediting body; §75.23 clarifies requirements for eligibility for a temporary license; §75.30 extends the maintenance man exemption to apply to an owner of property on his own property; §75.40 allows insurance to be obtained from eligible surplus lines insurance carriers; and §75.70 limits subcontracting of service work to licensed persons, firms, or corporations.

The justification for the amendments is that consumers will have more protection. This is particularly true for §75.70, because when service work is subcontracted to an unlicensed individual, there is no personal supervision by the licensed contractor for any part of the job. This type of operation makes it difficult for the consumer to identify the person responsible for the fairness and integrity of a job, and has been shown to facilitate those few contractors who operate scams or provide poor or incompetent service.

The amendments will function by increasing program integrity.

No comments were received regarding adoption of the rules.

The amendments are adopted under Texas Civil Statutes, Article 8861, which authorize the department to license and regulate air conditioning and refrigeration contractors.

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

Issued in Austin, Texas on July 11, 1994.

TRD-9443829 Jack W Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: August 1, 1994

Proposal publication date: June 7, 1994

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

TITLE 28. INSURANCE
Part II. Texas Workers' Compensation Commission

Chapter 110. Required Notices of Coverage

• 28 TAC §110.110

The Texas Workers' Compensation Commission adopts new §110.110, concerning requirements for governmental entities awarding a contract for a building or construction project, and for persons providing services on a building or construction project for a governmental entity. The new rule is adopted with changes to the proposed text published in the April 26, 1994 issue of the *Texas Register* (19 TexReg 3131). Subsections (a)(7) and (c)(7) were amended by adding language to further clarify who is covered by the rule. Subsections (c)(7)(J) and (e)(3) were added to clarify that a contractor or subcontractor is representing to the governmental entity that workers' compensation coverage is provided. Subsections (d)(8)(C) and (e)(8)(C) were added to require specific language regarding representations of coverage to be added to contracts to provide services on the project. Subsections (c)(7)(F), and (c)(7)(I)(5), (d)(5), (d)(8)(F), (e)(6), and (e)(8)(F) were amended to reduce the retention period for contractors and other persons providing services on the project from three years to one year. Subsection (g) was changed to state that this rule applies to contract advertised for bid after September 1, 1994, rather than awarded after September 1, 1994.

The Texas Labor Code, §406.096, requires workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity. The commission is aware that this statutory requirement is not being met, and this

rule is designed to achieve compliance and to implement a recordkeeping process which will enable oversight of compliance. The rule does this by placing requirements on the governmental entity and on contractors and other persons providing services on a project. These requirements include coverage, certificates of coverage, posted notices of coverage, and notification of changes in coverage status. The rule does not create any duty or burden on anyone which the law does not establish.

The rule defines terms which apply to governmental entity building or construction projects and sets up a clear procedure for governmental entities and contractors that bid for building and construction projects to follow in complying with the requirements of the Texas Labor Code, §406.096. It also defines "persons who provide services on a project" who are subject to the statutory requirement of coverage, and sets forth their requirements to comply with the statute and the rule. It specifically excludes persons such as food/beverage vendors whose deliveries and labor are not permanently incorporated into the project. The rule puts persons on notice that providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other persons providing services on the project to administrative penalties, civil penalties, or other civil actions.

The rule requires a governmental entity to timely obtain certificates of coverage, retain them for the duration of the project plus three years, and provide them to the commission upon request and to others entitled to them by law. It also requires the governmental entity, as a prerequisite to awarding a contract, and as part of the contract, to require that the contractor: provide coverage and certificates of coverage for the contractor's employees; timely obtain and provide the governmental entity all required certificates of coverage for all persons providing services on the project; retain certificates of coverage on file for the duration of the project and for one year thereafter, notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; post notices on each project site; and contractually require persons with whom it contracts to do the same, with the certificates of coverage to be provided to the person for whom they are providing services. The rule also sets out the language to be included in bid specifications and in contracts awarded by a governmental entity and the information required to be in the posted notice to employees. It further establishes a method for obtaining the certificates from persons providing services on the project and providing them to the governmental entity.

It requires a contractor awarded a building or construction contract to: provide workers' compensation coverage to the contractor's employees for the duration of the project; file a certificate of coverage of the contractor's employees with the governmental entity prior

to being awarded a contract; obtain and provide to the governmental entity, certificates of coverage from each other person with whom it has contracted to provide services on the project, prior to that person beginning work on the project; obtain and provide new certificates of coverage shown on the current certificate ends during the duration of the project; retain all certificates of coverage for the duration of the project and for one year thereafter; notify the governmental entity of material changes in coverage; contractually require each other person with whom it contracts to provide a certificate of coverage; and post notices on each project site.

All other persons providing services on a project have the same requirements as a contractor, with the exception of posting notices and with the exception that the certificate of coverage is given to the person for whom they contracted to provide services on the project. The rule uses the term "persons providing services on the project" in lieu of the statutory term "subcontractor" because the term "subcontractor" as used in the statute (§406.096) and in this rule is broader than standard industry usage. The use of the different terminology will prevent confusion.

The rule does not create any duty or burden on anyone which the law does not establish.

Comments on the proposed new rule were received from the Texas Municipal League, Turner-Bass and Associates, Associated General Contractors of Texas (Highway, Heavy, Utilities & Industrial Branch), Brown and Root, Inc., Texas Concrete Company.

Comments supporting the proposed new rule were received from Turner-Bass and Associates and Texas Concrete Company.

Comments opposing the proposed new rule were received from the Texas Municipal League, Brown and Root and the Associated General Contractors of Texas.

Summaries of the comments and commission responses are as follows.

The Texas Municipal League made the following comments:

Comment: The rule imposes onerous posting and recordkeeping requirements on governmental entities when sanctioning governmental entities or contractors who do not comply with the simple language of the statute would better accomplish the stated purpose of the rule. The Commission disagrees with this comment for two reasons. First, the posting requirement is placed on the contractor and not on the governmental entity. Second, the Commission's goal is to achieve compliance with the law, rather than sanction failure to comply.

Comment: The rule is inappropriate because it requires governmental entities to maintain employment records and lists of all persons working on a public building or construction project. The Commission disagrees. The rule requires only that governmental entities obtain certificates of coverage for each person providing services on the project. Multiple persons can be covered by a single certificate. In addition, the Commission believes it is not unduly burdensome for a governmental

entity to maintain a list of all contractors and subcontractors working on its projects. The commenter was also concerned that the rule creates new liabilities for governmental entities which overlook the failure of a subcontractor to maintain workers' compensation insurance coverage. The Commission disagrees. The rule creates no liability on the part of governmental entities which does not already exist.

Brown and Root made the following comments:

Comment: The definition of "persons providing services on the project" is too broad and may include food/beverage vendors. The Commission agrees the original language creates confusion. Subsections (a)(7) and (c)(7) have been amended to reflect the intention that services does not include activities unrelated to the project such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

Comment: The commission should require notice to the governmental entity only of "cancellations and/or renewals" rather than of "changes that materially affect" the provision of coverage. The Commission disagrees because this limitation would make it more difficult for governmental entities to ensure all contractors and subcontractors on a project maintain the required coverage. While the rule as written covers cancellations and renewals, the Commission believes the language as proposed also encompasses other possible scenarios such as dropping coverage for some employees after beginning work on a project.

Comment: It is not always feasible to provide certificates of coverage to a governmental entity prior to a subcontractor beginning work on a project. The Commission disagrees and asserts that contractors can alleviate this problem through advance planning and the use of facsimile machines.

Comment: The contractor might be subject to fines and penalties if a subcontractor fails to keep the contractor informed about the status of their coverage. The rule places an additional recordkeeping burden on contractors. The Commission agrees that the rule appropriately places a burden on the contractor to obtain new certificates of coverage from subcontractors when coverage expires during the contract period. When the contractor fails to provide new certificates as required by the rule, the contract becomes voidable by the governmental entity if the contractor does not timely remedy the problem. However, the rule does give contractors some leeway in timeframes in that it allows a contractor to file certificates of coverage extension for its subcontractors within seven days after the contractor receives the certificate from its subcontractor. (See (d)(4)(B)). The commission has also added text to clarify that each person providing services on a project is responsible for representations as to their coverage only. (See (c)(7)(J), (d) (8)(C), (e)(3), and (e)(8)(C)).

Comment: Contractors would be required to maintain a tickler system on all certificates of coverage and pursue late or missing certificates. The Commission agrees that the rule

imposes these requirements but believes the law already requires this.

The Association of General Contractors of Texas made the following comments:

Comment: The definition of "persons providing services on the project" should merely track the statutory language. The Commission disagrees. Contractors and subcontractors are misinterpreting the statutory language and many persons working on government projects are not covered by workers' compensation insurance even though coverage is required by law. The new definition makes clear that all persons working on a government contract must be covered.

Comment: The expense and burden of using certified mail is excessive. The Commission disagrees. The cost of using certified mail is outweighed by the benefit of having a record that something was mailed. In addition, a contractor also has the option of making a personal delivery in lieu of using certified mail.

Comment: The posting requirements are redundant because the Commission already requires posted notices of coverage. The Commission disagrees. The notice currently required provides only information about coverage, the identity of an employer's workers' compensation carrier, Commission assistance, and the safety hotline. The notice required by this rule informs employees that coverage of them is mandatory.

Brown and Root and the Association of General Contractors both made the following comment:

Comment: Retaining records for three years is too long. The Commission agrees in part. The statute of limitations on fraud is three years and records must be maintained to allow prosecution of this crime. Also, state law requires business records to be kept for three years. Because the access to these records is essential to prosecution of violation of the law and this rule, a three-year period will continue to exist for governmental entities but the period is reduced to one year past the duration of the project for contractors and persons providing services on the contract. This change has been made in subsections (c)(7)(F), (c)(7)(I)(5), (d)(5), (d)(8)(F), (e)(6), and (e)(8)(f).

Texas Concrete Company made the following comment:

Comment: The rule should cover plants producing prestressed-precast concrete products to be used in government projects. The Commission disagrees. The purpose of this rule is to ensure persons working on the jobsite are covered.

The new rule is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and Texas Labor Code, §406.096, which establishes requirements for governmental entities, contractors, and subcontractors ("persons providing services on the project") regarding workers' compensation coverage for workers on public building or construction projects.

§110.110. Reporting Requirements for Building or Construction Projects for Governmental Entities.

(a) The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this rule shall have the meaning defined in the Texas Labor Code, if so defined.

(1) Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.

(2) Building or construction-Has the meaning defined in the Texas Labor Code, §406.096(e)(1).

(3) Contractor-A person bidding for or awarded a building or construction project by a governmental entity.

(4) Coverage-Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(5) Coverage agreement-A written agreement on form TWCC-81, form TWCC-82, form TWCC-83, or form TWCC-84, filed with the Texas Workers' Compensation Commission which establishes a relationship between the parties for purposes of the Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.

(6) Duration of the project-Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the governmental entity.

(7) Persons providing services on the project ("subcontractor" in §406.096 of the Act)-Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation,

or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(8) Project-Includes the provision of all services related to a building or construction contract for a governmental entity.

(b) Providing or causing to be provided a certificate of coverage pursuant to this rule is a representation by the insured that all employees of the insured who are providing services on the project are covered by workers' compensation coverage, that the coverage is based on proper reporting of classification codes and payroll amounts, and that all coverage agreements have been filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(c) A governmental entity that enters into a building or construction contract on a project shall:

(1) include in the bid specifications, all the provisions of subsection (d) of this rule, using the language required by paragraph (7) of this subsection;

(2) as part of the contract, using the language required by paragraph (7) of this subsection, require the contractor to perform as required in subsection (d) of this rule;

(3) obtain from the contractor a certificate of coverage for each person providing services of the project, prior to that person beginning work on the project;

(4) obtain from the contractor a new certificate of coverage showing extension of coverage:

(A) before the end of the current coverage period, if the contractor's current certificate of coverage shows that the coverage period ends during the duration of the project; and

(B) no later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project;

(5) retain certificates of coverage on file for the duration of the project

and for three years thereafter;

(6) provide a copy of the certificates of coverage to the commission upon request and to any person entitled to them by law; and

(7) use the following language for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation: Article _____. Workers' Compensation Insurance Coverage. A. Definitions: Certificate of coverage ("certificate")-

(A) copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project-includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity. Persons providing services on the project ("subcontractor" in §406.096) -includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(B) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

(C) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

(D) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

(E) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

(F) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter

(G) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

(H) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

(I) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, §401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on

the project, for the duration of the project;

(3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the contractor :

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.

(J) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(K) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

(d) A contractor shall:

(1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

(3) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

(4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

(7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the commission on the sample notice, without any additional words or changes: **REQUIRED WORKERS' COMPENSATION COVERAGE** "The law requires that each person working on this site or providing services related to this construction project must be covered by work-

ers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee." "Call the Texas Workers' Compensation Commission at (512) 440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage." and

(8) contractually require each person with whom it contracts to provide services on a project, to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e)(3) of this rule;

(D) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person with whom it contracts, and provide to the contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by paragraphs (A)-(H), with the certificate of coverage to be provided to the person for whom they are providing services.

(e) A person providing services on a project, other than a contractor, shall:

(1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) provide a certificate of coverage as required by its contract to provide services on the project, prior to beginning work on the project;

(3) have the following language in its contract to provide services on the project: "By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions."

(4) provide the person for whom it is providing services on the project, prior to the end of the coverage period shown on its current certificate of coverage, a new certificate showing extension of coverage, if the coverage period shown on the certificate of coverage ends during the duration of the project;

(5) obtain from each person providing services on a project under contract to it, and provide as required by its contract:

(A) a certificate of coverage, prior to the other person beginning work on the project; and

(B) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(6) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(7) notify the governmental entity in writing by certified mail or personal delivery, of any change that materially affects the provision of coverage of any person providing services on the project and send the notice within 10 days after the person knew or should have known of the change; and

(8) contractually require each other person with whom it contracts to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to it prior to that other person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e)(3) of this rule;

(D) provide, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person under contract to it to provide services on the project, and provide as required by its contract:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the contract;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each person with whom it contracts, to perform as required by paragraphs (A)-(H), with the certificate of coverage to be pro-

vided to the person for whom they are providing services.

(f) If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

(g) This rule is applicable for building or construction contracts advertised for bid by a governmental entity on or after September 1, 1994.

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

Issued in Austin, Texas, on July 11, 1994.

TRD-9443879

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Effective date: September 1, 1994

Proposal publication date: April 26, 1994

For further information, please call: (512) 440-3700

TITLE 34. PUBLIC FINANCE

Part VI. Texas Municipal Retirement System

Chapter 129. Domestic Relations Orders

• 34 TAC §129.12

The Texas Municipal Retirement System adopts an amendment to §129.12, concerning payments to alternate payees, without changes to the proposed text as published in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3568). The amendment adds a subsection (d) to authorize a lump-sum payment to an alternate payee at the time when an annuity would otherwise be payable, if the reserves upon which the alternate payee's annuity would be calculated are \$5,000 or less.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §855.102, which provides the board of trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for effective administration of the System.

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

Issued in Austin, Texas, on July 11, 1994.

TRD-9443828

Gary W. Anderson

Executive Director
Texas Municipal
Retirement System

Effective date: August 1, 1994

Proposal publication date: May 10, 1994

For further information, please call: (512) 476-7577

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

General

• 37 TAC §81.11

The Texas Youth Commission (TYC) adopts an amendment to §81.11, concerning state inscription, without changes to the proposed text as published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4411).

The justification for amending the section is to minimize the possibility of personal injury to TYC staff and assist in apprehension of run-aways.

The amendment will add state vehicles used by personnel whose duties require regular and extended travel away from their home base to the list of vehicles currently exempted from the inscription requirement. The inscription currently impedes the possibility of apprehension of runaway youth.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443896

Steve Robinson
Executive Director
Texas Youth Commission

Effective date: August 2, 1994

Proposal publication date: June 7, 1994

For further information, please call: (512) 483-5244

• 37 TAC §81.17

The Texas Youth Commission (TYC) adopts new §81.17, concerning research projects, without changes to the proposed text as published in the June 10, 1994, issue of the *Texas Register* (19 TexReg 4489).

The justification for the new section is to ensure that TYC research projects provide benefits to TYC or the juvenile justice profession and ensure confidentiality of TYC youth.

The new rule will provide guidelines for TYC research projects as required by the Appropriations Act, §66.

No comments were received regarding adoption of the rule.

The new section is adopted under the Human Resources Code, §61.041, which provides the Texas Youth Commission with the authority to conduct continuing inquiry into the effectiveness of the treatment methods it employs in the reformation of children.

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443897 Steve Robinson
 Executive Director
 Texas Youth Commission

Effective date: August 2, 1994

Proposal publication date: June 10, 1994

For further information, please call: (512) 483-5244

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Chapter 93. General Provisions

Records, Reports and Forms

• 37 TAC §93.57

The Texas Youth Commission (TYC) adopts an amendment to §93.57, concerning access to youth records, without changes to the proposed text as published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4411).

The justification for amending the section is to ensure compliance by TYC staff of state and federal laws and regulations limiting access to youth records.

The amendment will require that staff receiving a subpoena for a TYC youth's file consult with the TYC legal department before responding to the subpoena.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.073, which provides the Texas Youth Commission with the authority to keep written records on each child subject to its control. These records are not public and are available only according to the provisions of Family Code, §51.14(B).

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

Issued in Austin, Texas, on July 12, 1994.

TRD-9443898 Steve Robinson
 Executive Director
 Texas Youth Commission

Effective date: August 2, 1994

Proposal publication date: June 7, 1994

For further information, please call: (512) 483-5244

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TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1: 30 TAC §330.733

MEMORANDUM OF UNDERSTANDING
Between
THE TEXAS DEPARTMENT OF HEALTH
and
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Purpose: Section 1 of House Bill 1680, passed by the 73rd Legislature, 1993, transferred responsibility for emissions related to asbestos demolition and renovation activities to the Texas Department of Health (TDH). It also required the TDH and the Texas Natural Resource Conservation Commission (TNRCC) to adopt, by rule, a joint memorandum of understanding concerning the inspection of solid waste facilities that receive asbestos.

Jurisdiction of the Texas Department of Health: The TDH will:

- (1) Maintain overall responsibility for the asbestos demolition and renovation activities related to 40 Code of Federal Regulations (CFR), Part 61, Subpart M, §§61.140, 61.141, 61.143, 61.145, 61.146, 61.148, 61.150, 61.152, and 61.157.
- (2) Negotiate with the U.S. Environmental Protection Agency (EPA) on the work to be performed in agreement with TNRCC.
- (3) Provide funding to pay for initial inspector training in Fiscal Year 1995.
- (4) Report to the EPA on the number of asbestos disposal site inspections performed by TNRCC.

Jurisdiction of the Texas Natural Resource Conservation Commission: The TNRCC will:

- (1) Maintain an up-to-date listing of municipal landfills authorized to accept regulated asbestos and provide an up-to-date copy to the TDH. (Municipal Solid Waste Division, Permits Section)
- (2) Inspect asbestos disposal sites for conformance with 40 CFR Part 61, Subpart M, §61.154. The TDH will be notified within 30 days that an inspection has been performed by TNRCC and will be provided a copy of the inspection results within 60 days. (Field Operations Division)
- (3) Perform the number of inspections negotiated between the TDH and the EPA related to 40 CFR §61.154.

- (4) Pursue all enforcement action related to §61.154 violations and provide notification to the TDH within 30 days of the inspection if a violation will be issued and provide to the TDH a copy of the Notice of Violation within 60 days. (Field Operations Division)
- (5) Provide copies of all applicable documentation related to 40 CFR §61.154 to: Texas Department of Health, Division of Occupational Health, 1100 West 49th, Austin, TX 78756.

FOR THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION:

Anthony C. Grigsby
Executive Director

FOR THE TEXAS DEPARTMENT OF HEALTH:

David R. Smith, M.D.
Commissioner

OPEN MEETINGS

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

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

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Thursday, August 11, 1994, 10:00 a.m.
1700 North Congress Avenue, Room 928B
Austin

According to the agenda summary, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §76.116(a)(1) and 4 Texas Administrative Code, §7.22 by Kenneth Lauderdale.

Contact: Joyce Arnold, P.O. Box 12847,
Austin, Texas 78711, (512) 475-1668.

Filed: July 13, 1994, 5:06 p.m.

TRD-9445030

State Aircraft Pooling Board

Wednesday, July 20, 1994, 1:30 p.m.
4900 Old Manor Road
Austin

According to the complete agenda, the State Aircraft Pooling Board will:

1. Call to order
2. Introductions
3. Approval of minutes of board meeting, May 25, 1994
4. Proposed APB policies
5. Fiscal years 1996-1997 Legislative Appropriations Request

6. Executive director's report
7. Setting of time and place for next meeting

8. Final adjournment

Contact: Gladys Alexander, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

Filed: July 12, 1994, 11:58 a.m.

TRD-9443877

Texas Appraiser Licensing and Certification Board

Wednesday, July 20, 1994, 10:00 a.m.
Conference Room 235, 1101 Camino La Costa
Austin

According to the complete agenda, the Texas Appraiser Licensing and Certification Board will call to order; consideration of the June 23, 1994, TALCB minutes; report from the Budget Committee; discussion and possible action concerning the Requests for Legislative Appropriations for fiscal years 1996 and 1997; other budgetary and fiscal matters; discussion and possible action concerning filed complaints; discussion and possible action concerning reciprocal agreements; comments and presentations from visitors; selection of date of subsequent meetings; executive session concerning the evaluation of the commissioner's job performance and conference with the commissioner pursuant to Texas Government Code, §551.074 and §551.075; discussion and

possible action relating to the commissioner's job performance evaluation; and adjourn.

Contact: Renil C. Liner, P.O. Box 12188,
Austin, Texas 78711-2188, (512) 465-3950.

Filed: July 12, 1994, 3:55 p.m.

TRD-9443912

The State Bar of Texas

Thursday, July 21, 1994, 1:30 p.m.
Del Lago Conference Center
Lake Conroe

According to the agenda summary, the Executive Committee will call to order, roll call, reports of: chair of the board; president; president-elect; Texas Young Lawyers Association president; acting executive director; Office of General Counsel; immediate past president; Supreme Court liaison; and adjournment.

Contact: James McCormack, 1414 Colorado, Texas Law Center, Austin, Texas 78701, (512) 463-1463.

Filed: July 13, 1994, 11:36 a.m.

TRD-9443857

Texas Bond Review Board

Thursday, July 21, 1994, 10:00 a.m.
300 West 15th Street, #409, Clements Building

Austin

According to the agenda summary, the Texas Bond Review Board will:

- I. Call to order
- II. Approval of minutes
- III. Consideration of proposed issues
- IV. Other business
- V. Adjourn

Contact: Albert Bacarisse, 300 West 15th Street, #409, Austin, Texas 78701, (512) 463-1741.

Filed: July 13, 1994, 4:59 p.m.

TRD-9443878

East Texas State University

Friday, July 22, 1994, 9:00 a.m.

2600 Motley Drive

Mesquite

According to the complete agenda, the Board of Regents will approve its agenda; approve the minutes of the May 6, 1994 meeting; hear a presentation by citizens from Texarkana; receive a report of division activities from Student and University Advancement and Academic Affairs; approve professor emeritus designations; receive faculty workload and undersized class reports; approve adjustments in the fiscal year 1994 and fiscal year 1995 budgets for ETSU Commerce and Texarkana; designation of financial depository; approval of Asbestos Abatement contract; approval of demolition work on campus; approval of contract for re-roofing the field house; authorize the Campus Planning, Finance and Auditing Committee to receive bids on other campus re-roofing projects; receive L.A.R. report; award vending contract for ETSU-Texarkana; amend ETSU-Texarkana fiscal year 1995 fee schedule; determine dates and location of fiscal year 1995 board meetings; receive a report on gender equity plan in athletics; waive an option-to-purchase; change the name of a building and go into executive session pursuant to §§551.071, 551.072, and 551.075, Texas Government Code.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75248, (903) 886-5030.

Filed: July 13, 1994, 10:59 a.m.

TRD-9445004

Texas Education Agency

Thursday-Friday, July 30-31, 1994, 9 a.m. The Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Room 1-110,

Austin. According to the agenda, on Thursday the agency will take roll call; discuss approval of minutes of April 30, 1992, meeting; information items, Texas Christian University-request for pilot program for student teaching in Puebla, Mexico; hear reports from the following institutions: East Texas State University, Marshall; Sam Houston State University, Huntsville; Schreiner College, Kerrville; Southern Methodist University, Dallas; Texas A&M University, College Station; Texas Tech University, Lubbock; the University of Texas at Arlington; the University of Texas at Austin; the University of Texas at Dallas; the University of Texas at El Paso; and the University of North Texas, Denton; *presentation of design for staffing the instructional delivery team for the Texas public schools (professional development continuum) by Dr. Nolan Wood; lunch; *progress report from consortium of state organizations for teacher education on outcomes-based standards for teachers; *progress report from Texas Professors of Educational Administration on outcomes-based standards for school administrators. July 31, 1992: discussion of suggestions for rule governing commission on standards for the teaching profession, assignment of commission members, and review of outcomes.

Contact: Edward Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: July 22, 1992, 3:49 p.m.

TRD-9210050

State Employee Charitable Campaign

Wednesday, July 20, 1994, 3:00 p.m.

505 East Huntland Drive, Conference Room, First Floor

Austin

According to the complete agenda, the State Policy Committee will approve cumulative state campaign manager budgets and continue discussion of SECC implementation.

- I. Welcome and introductions
- II. Review/approval of June 18 meeting minutes
- III. Report from SCM/SAC
 - A. Presentation of SCM budget
 - B. Communications
 1. LEC's and LCMs
 2. State agencies
 - C. Status of appeals from local federations, universities, organizations
 - D. Priorities

IV. Discuss/set future meetings

V. Adjourn

Contact: Rebecca Prince, 2000 East MLK Jr. Boulevard, Austin, Texas 78702, (512) 472-6267.

Filed: July 13, 1994, 10:58 a.m.

TRD-9445002

Texas General Land Office

Monday, July 25, 1994, 1:30 p.m.

Port of Houston Authority, 111 East Loop North, Board Room

Houston

According to the complete agenda, the Oil Spill Division (Oil Spill Commission) will:

- 1) Call to order
- 2) Approval of minutes from executive session on May 23, 1994
- 3) The Role Human Factors Play in Contributing to Discharges of Oil—speaker TBA
- 4) Corpus Christi Port Area Problems, Needs, and Solutions—Tony Alejandro
- 5) Port Arthur Area Problems, Needs, and Solutions—Todd Chappell
- 6) Discussion and review of report to commissioner
- 7) Set next meeting date
- 8) Adjournment

Contact: Stephanie Morris, 1700 North Congress Avenue, Room 735, Austin, Texas 78701-1495, (512) 463-6556.

Filed: July 13, 1994, 4:47 p.m.

TRD-9445025

Office of the Governor, Criminal Justice Division

Friday, July 29, 1994, 9:00 a.m.

Brown-Heatly Building, 4900 North Lamar Boulevard, Rooms 1410-1420

Austin

According to the complete agenda, the Juvenile Justice and Delinquency Prevention Advisory Board will: I. Call to order. II. Approval of minutes. III. Legislative Committee update. IV. Three-year plan update, A. Discussion of rules regarding competitive selection process, B. Discussion of rules regarding continuation grants, C. Discussion of rules regarding number of applications that may be submitted by the same applicant, D. Discussion of rules regarding submission of an annual audit with the grant application, E. Discussion of other ques-

tions regarding funding eligibility. V. Board recommendations concerning fiscal year 1995 formula grant application. VI. Adjourn.

Contact: Jim Kester, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

Filed: July 14, 1994, 9:47 a.m.

TRD-9445041

◆ ◆ ◆
Texas House of Representatives

Thursday, July 28, 1994, 9:00 a.m.

J. Erik Jonsson Central Library Auditorium, 1515 Young Street

Dallas

Contact: Lynanne Walker, P.O. Box 2910, Austin, Texas 78768-2910, (512) 463-0718.

Filed: July 12, 1994, 3:18 p.m.

TRD-9443903

◆ ◆ ◆
Texas Department of Human Services

Thursday, July 21, 1994, 11:00 a.m.

701 West 51st, Public Hearing Room
Austin

According to the complete agenda, the Texas Board of Human Services will consider approval of minutes of June 20, 1994, meeting; chair's comments and announcements; rate for ICF-MR Select Level V children's class; addition of family care as optional services for primary home care providers; changes to rules regarding adult day care; amendment to the licensure application rules regarding criteria for denying a license or renewal of a license; electronic benefit transfer in the AFDC and food stamp programs; amendments to policies and procedures; approval of the fiscal year 1995 operating plan and fiscal year 1996-1997 LAR; commissioner's report on status report on affirmative action programs, announcements and comments, and tracking of board action items.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3048.

Filed: July 13, 1994, 10:34 a.m.

TRD-9445018.

◆ ◆ ◆
Commission on Jail Standards

Wednesday, July 27, 1994, 1:30 p.m.

William P. Clements Building, Hearing Room 503, 300 West 15th Street

Austin

According to the complete agenda, the Commission on Jail Standards will discuss the Education Committee. Review staff's training efforts.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: July 13, 1994, 9:08 a.m.

TRD-9445012

Wednesday, July 27, 1994, 1:30 p.m.

William P. Clements Building, Hearing Room 503, 300 West 15th Street

Austin

According to the complete agenda, the Commission Jail Standards will discuss internal audit report. Discussion and recommendation.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: July 13, 1994, 9:08 a.m.

TRD-9445013

Wednesday, July 27, 1994, 2:00 p.m.

William P. Clements Building, Hearing Room 503, 300 West 15th Street

Austin

According to the agenda summary, the Commission on Jail Standards will call to order. Roll call of members. Reading and approval of minutes of last meeting of May 26, 1994. Executive session. Administrative action: old business: status of felony backlog, payment to counties, jail population report, completed jail projects, active remedial orders/cancel/changes, Emergency Housing Program, Education Committee report, Internal Audit Committee report, changes to standards. New business: fees and payment-217. 08.01, tuberculosis update, suicide statistics, directors report, Recess until July 28, 1994, 9:00 a.m., William P. Clements Building, Hearing Room 503.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: July 12, 1994, 9:08 a.m.

TRD-9445011

Thursday, July 28, 1994, 9:00 a.m.

William P. Clements Building, Hearing Room 503, 300 West 15th Street

Austin

According to the agenda summary, the Commission on Jail Standards will call to order. Roll call of members. Compliance and enforcement. Old business: Angelina County, Chambers County, Wharton County. New business: Brewster County, Kaufman County. Application for variances: Collin County, Ector County, Floyd County, Galveston County, Jefferson County, Kleberg County, McLennan

County, Montgomery County, Tarrant County, Travis County. Cancellation of variances: Collin County. Other business. Adjourn.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: July 13, 1994, 9:08 a.m.

TRD-9445021

◆ ◆ ◆
Texas Board of Professional Land Surveying

Friday, August 12, 1994, 9:00 a.m.

7701 North Lamar Boulevard, Suite 400

Austin

According to the complete agenda, the Texas Board of Professional Land Surveying will meet to approve the minutes of the previous meeting; to welcome and install new board members; to discuss and possibly assign committee appointments; to introduce Frank Knapp; to discuss and possibly act on active complaints and show cause actions; to hear presentation of committee reports; to discuss and possibly act on Board Rule 661.121; to discuss and possibly act on correspondence to and from the board; to discuss old business and to consider new business. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are required to correct Sandy Smith at (512) 452-9427 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: July 13, 1994, 10:33 a.m.

TRD-9445016

◆ ◆ ◆
Board of Law Examiners

Saturday-Sunday, July 23-24, 1994, 8:30 a.m.

Suite 500, Tom C. Clark Building, 215 West 14th Street

Austin

According to the agenda summary, the Board of Law Examiners will call to order/determine quorum; consider members' requests for excused absences; consider approval of minutes, financial reports, and investment reports; hold public hearings and deliberations on character and fitness of applicants/declarants (deliberations may be conducted in executive session pursuant to §82.003(c), Texas Government Code); con-

sider special requests; consider adoption of lawful practice policy statement; consider and act on report of executive director concerning various matters noted in agenda; review July 1994 question booklets; consider site report; consider revision of exam subjects; review MEE and consider adoption; meet with legal counsel concerning pending litigation (may be conducted in executive session, pursuant to §2(e), Open Meetings Act); consider report on conversion of temporary/probationary licenses; consider resolution regarding required mediation by groups receiving IOLTA funds; hear communications from the public; and adjourn.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: July 12, 1994, 5:36 p.m.

TRD-9445010

Texas Natural Resource Conservation Commission

Wednesday, July 20, 1994, 9:00 a.m.

Room 118, Stephen F. Austin, 1700 North Congress Avenue

Austin

Emergency Meeting

According to the agenda summary, the Municipal Solid Waste Tire Processors Committee will hold a public meeting to discuss proposed amendments to §§330.803, 330.805-330.809, 330.822, 330.823, 330.832, 330.835, 330.843, 330.857, 330.871, 330.872, 330.876, 330.877, and 330.885 in Subchapter R, and §§330.900-330.904, 330.907, 330.908, 330.920, 330.922, 330.923, and 330.930-330.938 in Subchapter X.

Reason for emergency: On the day of the agenda the commissioners decided that an additional public meeting should be held.

Contact: Jennifer Sidnell, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6679.

Filed: July 13, 1994, 11:58 a.m.

TRD-9443858

Wednesday, July 27, 1994, 9:00 a.m.

Building E, Room 202S, 12118 Interstate Highway 35

Austin

According to the agenda summary, the Office of Hearings Examiners will meet for a hearing before a hearings examiner on an application to amend its Certificate of Convenience and Necessity (CCN) Number 10675 by Bexar Metropolitan Water District to expand the area to which it provides water utility service in Bexar and Atascosa Counties, Texas. The applicant also pro-

poses to decertify the following CCNs: 10641, 12321, 10650, 12266, 12082, and 11869. This application has been designated as Docket Number 30337-C and will be considered in consolidation with Docket Number 9520-Q (in the matter of the petition of Thelma Area Neighborhood Corporation, Inc. for revocation of Windy's Water Works' CCN Number 10641) at the hearing.

Contact: Leslie Limes, P.O. Box 13087, Austin Texas 78711-3087, (512) 239-4100.

Filed: July 12, 1994, 2:53 p.m.

TRD-9443932

Texas Optometry Board

Wednesday, August 3, 1994, 9:00 a.m. (Rescheduled from July 13, 1994.)

9101 Burnet Road, Suite 214

Austin

According to the complete agenda, the Investigation-Enforcement Committee will hold four informal conferences with licensees, respectively, regarding possible violations of the Texas Optometry Act. The Investigation-Enforcement Committee will also review complaint and investigation files with executive director.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: July 12, 1994, 2:08 p.m.

TRD-9445050

Texas Public Finance Authority

Wednesday, July 20, 1994, 10:00 a.m.

300 West 15th Street, Fifth Floor, Committee Room Five

Austin

According to the complete agenda, the Board will:

1. Call to order.
2. Approval of minutes of June 18, 1994 board meeting.
3. Select winning bidder and consider a resolution authorizing the issuance of bonds to finance projects for the Texas Department of Criminal Justice, the execution of documents in connection therewith, and the taking of action to affect the sale and the delivery of the bonds, and resolving related matters.
4. Consider selection of bond counsel to service until the end of the biennium.

5. Consider selection of underwriters for the issuance of approximately \$37 million of revenue bonds for the General Service Commission for various projects.

6. Consider agency policy on underwriter submission of quarterly focus reports.

7. Consider approval of the Legislative Appropriation Request.

8. Consider proposed rules for copies of public records.

9. Other business.

10. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron at (512) 463-5544. Request should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th, Suite 411, Austin, Texas 78701, (512) 463-5544.

Filed: July 12, 1994, 11:13 a.m.

TRD-9443873

Public Utility Commission of Texas

Thursday, July 21, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Public Utility Commission of Texas will consider the following dockets: P11785, 13019, 12964, 12423, 12757, and 12957.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 13, 1994, 4:58 p.m.

TRD-9443876

Thursday, July 21, 1994, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Administrative Committee will discuss reports, discussion and action on response to Special House Select Committee on NAFTA and GATT; contract to review STP; TU Electric private letter ruling; general counsel's regulatory agenda for electric and telephone issues; brief in reply to request for AG Opinion form GSC; interaction with Legislative Committee and/or Sunset Commission; Sherman Capital for a Day; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered to executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 13, 1994, 4:59 p.m.

TRD-9443884

Thursday, July 21, 1994, 9:05 a.m.

7800 Shoal Creek Boulevard
Austin

Revised Agenda

According to the agenda summary, the Administrative Committee, in addition to the previously submitted agenda, the commissioners will discuss 2.1. —consideration and possible action regarding refund procedures for Texas Utilities Electric Company customers.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 13, 1994, 5:01 p.m.

TRD-9443882

Monday, July 25, 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 13172—application of West Texas Utilities Company to reconcile fuel cost and for accounting deferral order.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 13, 1994, 11:23 a.m.

TRD-9445003

Texas Senate

Friday, July 22, 1994, 10:00 a.m.

U.S. Highway 83, Multipurpose Center, Rio Grande City High School Campus
45 miles west of McAllen

According to the agenda summary, the Joint Select Committee on Historically Underutilized Businesses will discuss:

I. Greetings and remarks.

II. Discussion of issues relating to HUB economic development.

III. Discussion on increasing commerce between Texas and the Mexican State of Tamaulipas.

IV. Discussion with the Texas Department of Transportation.

V. Discussion with the Texas Parks and Wildlife Department.

VI. Public testimony.

VII. Adjournment.

Contact: Anthony Haley, P.O. Box 12068, Austin, Texas 78711, (512) 463-6682.

Filed: July 13, 1994, 4:47 p.m.

TRD-9445026

Texas Sustainable Energy Development Council

Friday, July 22, 1994, 7:30 a.m.

1000 Red River, Teacher Retirement System Cafeteria

Austin

According to the complete agenda, the Executive Committee will:

I. Call to order

II. Discuss administrative matters

III. Discuss strategic planning

IV. Adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745.

Filed: July 12, 1994, 5:32 p.m.

TRD-9445008

Friday, July 29, 1994, 8:00 a.m.

3701 Lake Austin Boulevard, Board of Directors Conference Room, Hancock Building

Austin

According to the complete agenda, the Texas Sustainable Energy Council will:

I. Call to order

II. Discuss administrative matters

III. Discuss strategic planning

IV. Adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745.

Filed: July 12, 1994, 5:33 p.m.

TRD-9445009

Texas State Technical College System

Friday, July 22, 1994, 2:15 p.m.

TSTC Amarillo Campus, Conference Room, Activity Center

Amarillo

According to the agenda summary, the Board of Regents will discuss and review of the following TSTC Policy Committee minute orders and reports:

Committee of the Whole—2:15 p.m.

Policy Committee for Instruction and Student Services—3:15 p.m.

Policy Committee for Human Resources and Development—3:15 p.m.

Policy Committee for Fiscal Affairs—4:00 p.m.

Policy Committee for Facilities—4:00 p.m.

Committee of the Whole—5:00 p.m.

Contact: Sandra J. Krumnow, 3810 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: July 12, 1994, 10:15 p.m.

TRD-9443871

Saturday, July 23, 1994, 8:00 a.m.

TSTC Amarillo Campus, Conference Room, Activity Center

Amarillo

According to the agenda summary, the Board of Regents will discuss and act on the following minute orders. Resolution—Deborah Walker, classes with less than ten students, Machining Tech degree, Ranger Jr. College contract, approval of clubs: Alpha Chi Upsilon, AutoTech 2000, Business Professionals of America, Data Processing Management, Mexican-American Students, Student Government Association—Abilene and Sweetwater, Vocational Industrial Clubs of America; budget change requests, lease: Rita Denney, professional food service, Village Park Church, Highland Park Village, Accept Student Recreation Complex and Student Center, Amarillo Air Force Base Memorial, lease—Brownwood, employee contracts, holiday schedule, resolutions: W. Snyder, family of E. Jayroe and R. Lovelace, Georgia Weathers settlement, resolutions: T. Bivins, J. Smithee, D. Swinford, W. Chisum; appropriations requests, presidential search policy, and TSTC Foundation agreement.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: July 12, 1994, 10:14 p.m.

TRD-9443933

Saturday, July 23, 1994, 8:30 a.m.

TSTC Amarillo Campus, Activity Center, Conference Room

Amarillo

According to the agenda summary, the Board of Regents will go into executive session in accordance with Chapter 551 of the Texas Government Code for the specific purpose provided in §551.071 and will discuss the following: litigation Blankenship v. William H. Cox, Don E. Goodwin and TSTI, Blankenship v. TSTC, Georgia Weathers v. TSTC and Ron DeSpain, Jasie, Inc. v. TSTC, et al.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: July 12, 1994, 10:15 a.m.

TRD-9443870

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University of Houston

Tuesday, July 19, 1994, 9:00 a.m.

S&RII Building, Room 75, University of Houston, 4800 Calhoun Boulevard
Houston

According to the agenda summary, the Animal Care Committee will discuss and/or act upon the following:

Approval of June minutes

Renewal protocols

Dog/cat transfer form

Facility inspection report

Snider's letter

Contact: Julie T. Norris, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: July 12, 1994, 10:14 a.m.

TRD-9443868

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University of Texas M. D. Anderson Cancer Center

Tuesday, July 19, 1994, 9:00 a.m.

1515 Holcombe Boulevard, Room AW7.707

Houston

According to the agenda summary, the Institutional Animal Care and Use Committee will discuss review of protocols for animal care and use and modifications thereof.

Contact: Anthony Mastromarino, Ph.D., 1515 Holcombe Boulevard, Box 101, Houston, Texas 77030, (713) 792-3220.

Filed: July 13, 1994, 3:38 p.m.

TRD-9445032

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Texas Water Development Board

Wednesday, July 20, 1994, 2:30 p.m.

Stephen F. Austin Building, Room 513-F, 1700 North Congress Avenue

Austin

According to the complete agenda, the Policy and Finance Committee will:

1. Consider approval of the minutes of the meeting of June 15, 1994.

2. Briefing and discussion on board/authority upcoming bond issues and status of staff

review of potential improvements to all board/authority bond programs.

3. Briefing on present and future EDAP projects.

4. May consider items on the agenda on the July 21, 1994 board or Texas Water Resources Finance Authority meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 12, 1994, 2:09 p.m.

TRD-9443891

Wednesday, July 20, 1994, 3:30 p.m.

Stephen F. Austin Building, Room 513-F, 1700 North Congress Avenue

Austin

According to the complete agenda, the Texas Water Development Board will:

1. Consider Legislative Appropriations Request for fiscal year 1996-1997 for the agency.

2. Briefing and discussion of the history of and basis for board activities in the environmental review of financial assistance applications.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 12, 1994, 2:09 p.m.

TRD-9443892

Thursday, July 21, 1994, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue

Austin

According to the agenda summary, the Texas Water Development Board will consider: minutes; executive, financial and committee reports; extension of loan commitment for City of Brownsville (Hacienda Gardens); financial assistance for City of Kingsville, Live Oak Underground Water Conservation District, Brazos River Authority and Marion County; contracts with Texas Engineering Experiment Station, Fort Worth Water Department, and Bexar-Medina Atascosa Counties WCID #1 and transfer of funds; extension of period to contract with Harris County Flood Control District; amendment to contract with City of Houston; adoption of amendments to 31 TAC §355.71 and §363.17; sale of \$7,000,000 Agricultural Water Conservation Bonds and selection of underwriters; pre-design funding and environmental amendments to Chapter 363; plans to publish requests for proposals for 1996-1997 Research and Planning Fund projects; Legislative Appropriation Request for fiscal year 1996-1997; executive session for the annual performance review of the executive administrator.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 13, 1994, 5:00 p.m.

TRD-9443880

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Texas Water Resources Finance Authority

Thursday, July 21, 1994, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue

Austin

According to the complete agenda, the Texas Water Resources Finance Authority will:

1. Consider approval of the minutes of the meeting of May 19, 1994.

2. Approve the payment of expenses to be incurred for fiscal year 1995.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 13, 1994, 4:59 p.m.

TRD-9443879

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Regional Meetings

Meetings Filed July 12, 1994

The Andrews Center Board of Trustees will meet in the Board Room, Tyler Bank and Trust, Tyler, July 12, 1994, at 4:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9445029.

The Brazos River Authority Board of Directors will meet at 4400 Cobbs Drive, Waco, July 18, 1994, at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9443893.

The Brazos Higher Education Authority, Inc. Executive Committee will meet at the Offices of the Authority, 2600 Washington Avenue, Waco, July 15, 1994, at 3:30 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9443905.

The Central Appraisal District of Nolan County Board of Directors will meet at the Nolan County Courthouse, Third Floor, 100 East Third Street, Sweetwater, July 15, 1994, at 8:00 a.m. Information may be obtained from Ansa Lee Lane, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9443913.

The Central Counties Center for MHMR Services Board of Trustees will meet at 304 South 22nd Street, Temple, July 21, 1994, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9443901.

The East Texas Council of Governments East Texas Regional Review Committee will meet at the ETCOG Office, Kilgore, August 11, 1994, at 10:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9443900.

The Lower Rio Grande Valley Development Council (Workshop/Strategy Session) Board of Directors will meet at the South Padre Island Convention Center, 7355 Padre Boulevard, South Padre Island, July 16, 1994, at 9:30 a.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9443872.

The Wise County Appraisal District Appraisal Review Board will meet at 206 South State Street, Decatur, July 18, 1994, at 8:30 a.m. Information may be obtained from LaReesea North, 206 South State, Decatur, Texas 76234, (817) 627-3081. TRD-9443899.

Meetings Filed July 13, 1994

The Cash Water Supply Corporation Board of Directors will meet at the Corporation Office, FM 1564 and Highway 34 South, Greenville, July 18, 1994, at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9445028

The Cass County Appraisal District Appraisal Review Board will meet at the Cass County Appraisal District Office, 502 North Main Street, Linden, July 18, 1994, at 9:00 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9445001.

The Central Texas Quality Work Force Planning Committee Full Committee will meet at the Belton ISD Educational Development Center, 321 North Penelope, Belton, July 28, 1994, at 11:30 a.m. Information may be obtained from Wanda L. Williams, 2600 South First, Temple, Texas 76504, (817) 773-9961, Ext. 311. TRD-9443864.

The Comal Appraisal District Board of Directors will meet at 178 East Mill Street, New Braunfels, July 18, 1994, at 6:00 p.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9445044.

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street #102, New Braunfels, July 21, 1994, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9445015.

The Dallas Central Appraisal District Review Board will meet at 2949 North Stemmons Freeway, Dallas, July 20, 1994, at 10:00 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons, Dallas, Texas 75247, (214) 631-0520. TRD-9445027.

The Region One Education Service Center Board of Directors will meet at the Region One Education Service Center, 1900 West Schunior, Edinburg, July 19, 1994, at 7:00 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 75339, (210) 383-5611. TRD-9443874.

The Gulf Coast Quality Workforce Planning TechForce 2000, Inc. will meet at the Harris County Private Industry Council, I-10 East at Federal Road, Nations Bank Building, Houston, August 2, 1994, at 10:00 a.m. Information may be obtained from Karen E. Baird, 250 North Sam Houston Parkway East, Houston, Texas 77060, (713) 591-9306. TRD-9445020.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, Wednesday, July 20, 1994, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291. TRD-9445017.

The Houston Galveston Area Council Projects Review Committee will meet in Conference Room A, Second Floor, 3555 Timmons Lane, Houston, July 19, 1994, at 9:00 a.m. Information may be Rowena Ballas, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9445006.

The Houston Galveston Area Council Board of Directors will meet in Conference Room A, Second Floor, 3555 Timmons Lane, Houston, July 19, 1994, at 10:00 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 527-3200. TRD-9445007.

The Limestone County Appraisal District Board of Directors will meet in the Board Room, Ground Floor, Limestone County Courthouse, Groesbeck, July 19, 1994, at 1:00 p.m. Information may be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9445024.

The Lower Neches Valley Authority Board of Directors will meet at the LNVA Office Building, 7850 Eastex Freeway,

Beaumont, July 19, 1994, at 10:30 a.m. Information may be obtained from A. T. Herbert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9445023.

The Texas Municipal Asset Pool Board of Directors will meet at the Riverway Bank, Five Riverway, Board Room, Second Floor, Houston, July 20, 1994, at 8:00 a.m. Information may be obtained from Jamie D. Hall, P.O. Box 56572, Houston, Texas 77256, (713) 552-2618. TRD-9445019.

The North Texas Municipal District Board of Directors will meet at the Administrative Offices, 505 East Brown Street, Wylie, July 28, 1994, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9445031.

The Red River Authority of Texas Board of Directors will meet in the Royal Room, the Wichita Club, Oil and Gas Building, Eighth and Lamar, Wichita Falls, July 20, 1994, at 9:30 a.m. Information may be obtained from Ronald J. Glenn, 900 Eighth Street, Suite 520, Wichita Falls, Texas 76301-6894, (817) 723-8697. TRD-9445005.

Meetings Filed July 14, 1994

The Dewitt County Appraisal District Appraisal Review Board will meet at 103 Bailey Street, Cuero, July 19, 1994, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9445038.

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, July 19, 1994, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 274-5753. TRD-9445037.

The Guadalupe-Blanco River Authority Retirement and Benefit Committee will meet at 933 East Court Street, Seguin, July 19, 1994, at 2:00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9445039.

The Guadalupe-Blanco River Authority Board of Directors will meet at 933 East Court Street, Seguin, July 20, 1994, at 9:30 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9445040.

The San Antonio River Authority Board of Directors will meet in the Boardroom, 100 East Guenther Street, San Antonio, July 20, 1994, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9445036.

The Swisher County Appraisal District Board of Directors will meet at 130 North Armstrong, Tulia, July 21, 1994, at 7:30 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, 1994, at Tulia, Texas 79088, (806) 995-4118. TRD-9445033.



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 Department of Agriculture Extension of Deadline for Comments

The Texas Department of Agriculture is extending the deadline for acceptance of comments on its new §§2.1-2.6, concerning the establishment of a field citation program, as published in the June 21, 1994, issue of the *Texas Register* (19 TexReg 4797). The deadline for receipt of comments by the department is being extended to August 22, 1994. Comments may be submitted to Esther Hajdar, Assistant General Counsel and Chief of Enforcement, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

Issued in Austin, Texas, on July 12, 1994.

TRD-9443914 Dolores Alvarado Hibbe
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: July 12, 1994

Random Weight Administrative Penalty Matrices

The Texas Department of Agriculture (the department) is publishing the following penalty matrices to inform the regulated public. These matrices have been developed for the enforcement of the Texas Agriculture Code (the Code), §13.036, which prohibits the false representation of a commodity's quantity. The department's authority for the enforcement of this chapter is found in §12.020 of the Code, whereby the department can issue administrative penalties to violators of this chapter in an amount not to exceed \$500 per violation. Each day that a violation continues or occurs may be considered a separate violation for purposes of penalty assessments. These penalty matrices are intended to deter future violations of the Code and to penalize violators.

These penalty matrices are based upon current case information. The matrices were developed using data compiled from 50 randomly chosen inspection reports in which stop sale orders were issued. As the enforcement of these types of violations continues and additional data are gathered, the matrices will be reviewed and, if need be, adjusted to reflect any changes in the statistics upon which the current matrices are based.

Pursuant to §15.13, the accuracy of net-weight labeling on random weight packages is determined by two factors. Accordingly, a group of random weight packages may be

found in violation of the Texas Agriculture Code, §13.036, if the "lot" is found to be inaccurate based on either of those two factors. The first and most frequently occurring factor is Average Error. A lot will be in violation if the average net weight of the sample taken from the lot is less than the average labeled weight for that lot, i.e., a negative Average Error for that lot. A separate penalty matrix has been developed for lots that fail because of a negative Average Error.

The second factor, which is seen infrequently, is Excessive Unreasonable Errors. For each package there is a Maximum Allowed Variance (MAV), or tolerance, between the labeled weight and the actual net weight of the package. The MAV is based on the labeled weight. Depending on the size of the lot sampled, each sample is allowed to have a certain number of packages which exceed the MAV. Based on the typical size lot inspected by the department, a sample is allowed to have one package exceed the MAV. If a sample exceeds the allowable number of out-of-tolerance packages, the lot is inaccurate because of Excessive Unreasonable Errors, and there is a separate penalty matrix for this violation.

A base penalty of \$250 was selected by the department as a reasonable minimum fine that addresses the seriousness of a minor violation. The penalty matrices then adjust the fines upward according to the severity of the violation. Efforts to correct the error and compliance history are two other factors that will be considered on a case-by-case basis before penalty amounts are assigned. Penalty Matrices Average Error Penalty (Violation Quotient)

This matrix will be used to determine the administrative penalty for violations which result from a negative Average Error. It is based upon a comparison of a lot's Average Error (Box 22 on the inspection report) to the lot's average, or standardized, labeled weight, which is referred to as "T" (Box 31). If the Average Error is larger than T, a violation has occurred. (For example, a -4.2 Average Error is larger than a T value of +2.5). This penalty matrix looks at what percentage deviation the Average Error is from T to determine the severity of the violation, and the penalties escalate accordingly. The deviation between Average Error and T is called the Violation Quotient. The formula for calculating this penalty is: VQ = box 22-box 31 by 100 box 31.

The penalty matrix for these types of violations, based on a sample distribution of cases, is as follows:

<u>Deviation Ranges</u>	<u>First Violation</u>	<u>Subsequent Violations</u>
1% to 4% deviation	NNC*	NNC*
5% to 100%	\$250	\$350
101% to 200%	\$300	\$425
Above 200%	\$350	\$500

* Further violations by an individual store in the 1 percent to 4 percent range may result in a penalty assessment of up to \$250 determined on a case by case basis.

There was no attempt to do a percentile distribution, as the sample size was too small and the cases clustered rather tightly within the deviation ranges set out above. However, the percentage distribution of cases within the last three ranges (5% to above 200%) was approximately 63%, 25%, and 12%, respectively (our sample did not have cases in the 1% to 4% range). Excessive Unreasonable Errors / Maximum Allowable Variation Penalty (MAV).

The reports reviewed for these recommendations showed that only one out of every five stop sale orders resulted from Excessive Unreasonable Errors. In those cases the average number of packages exceeding the MAV was three, including the one package allowed to exceed the MAV. The penalty matrix for these violations is as follows:

<u># Unreasonable Errors*</u>	<u>First Violation</u>	<u>Subsequent Violations</u>
2 MAV violations	NNC	\$250
3 MAV violations	\$250	\$350
4 MAV violations	\$300	\$425
5 or more MAV violations	\$350	\$500

* For lots of 31 to 800 packages. Under 30 packages, drop the number of MAVs by one for each line. From 801 to 2000 packages, add one to the MAVs for each line. Currently, the department does not inspect random weight lots in excess of 2000 packages.

Notices of Non-Compliance are issued in cases where there is no Average Error violation, but the lot failed because it had two packages in excess of the MAV (one package more than is allowed).

Issued in Austin, Texas, on July 12, 1994.

TRD-9443815 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: July 12, 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)	07/18/94-07/24/94	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 July 11, 1994.

TRD-9443894 Al Endley
Consumer Credit Commissioner

Filed: July 12, 1994

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Texas Credit Union Commission Correction of Error

The Texas Credit Union Commission adopted an amendment to §91.701, concerning loans, personal and real estate. The rule appeared in the June 24, 1994, issue of the *Texas Register* (19 TexReg 4936).

Section 91.701(c)(1)(A)(i) as printed on page 19 TexReg 4937 is in error. It should read: "(i) A loan secured by a lien on improved residential real estate occupied by the owner shall have, at the time the loan is executed, a maximum maturity of 40 years and a loan to value ratio not greater than 95%."

Texas Education Agency Correction of Error

The Texas Education Agency submitted a Request for Proposal which appeared in the "In Addition" section of the June 28, 1994, issue of the *Texas Register* (19 TexReg 5050).

As published, the fifth sentence of the section of the document titled Project Amount, begins "After all grants have been award,..." The word "award" should be "awarded."

In the following sentence, the word "my" in the phrase "...my be 11%..." should be "must."

Texas Department of Human Services Public Notice Regarding a Specification Document for Negotiated Bids

The Texas Department of Human Services (the department) is inviting proposals in response to a specification document for negotiated bids to develop an automation system for the department's Child Care and Development program.

Description of Services: The department is seeking services from an experienced and financially stable systems integrator to develop and implement a comprehensive statewide automated system to support management of the department's Child Care Management Services (CCMS) contractor activities, provide payment to those contractors and interface with other departmental systems. The systems integrator will develop application software capable of running on an environment compatible with the published architectural direction of the department. The new system, which will provide a full range of capabilities, will begin full implementation in September, 1995.

The contracted systems integrator will provide project management for the delivery of software and integration with hardware and existing systems. The integrator is responsible for complete design, construction, testing, documentation and warranty of the application. This includes the planning and management of the conversion and reconciliation of existing data in the current automated system. The integrator also provides training plans and technical assistance to the department.

Terms and Amount of the Contract: The contract period for this project is expected to be September 15-November

30, 1995. The amount of the contract will be negotiated based on proposals submitted.

Proposals must be received by the department's contact person no later than 3:00 p.m. CDT on Monday, August 15, 1994, to be considered.

Procurement Process: The department will negotiate to select the integrator for this project. A potential integrator must submit a proposal to be considered for negotiation.

Evaluation criteria: Each proposal will be evaluated based on criteria currently under development. The department may require oral presentations for the Evaluation Committee members. These presentations will be held in Austin, Texas on or before August 31, 1994.

For More Information: The department's contact person for all communications about this project is Bobbie Ann Fisher, MIS Contracts and Facilities Management Section, Management Information Systems, Texas Department of Human Services B-202, P.O. Box 149060, Austin, Texas 78714-9030. The Specifications Document will be available on July 15, 1994. Copies can be requested through the closing date of August 15, 1994.

Issued in Austin, Texas, on July 12, 1994.

TRD-9443904
Nancy Murphy
Section Manager, Media and Support
Services
Texas Department of Human Services

Filed: July 12, 1994

Texas Lottery Commission Requests for Proposals

The purpose of this Request for Proposal (RFP) is to obtain proposals for the design and production of Texas Lottery premiums related to a new instant Texas Lottery game anticipated to be offered in the Winter of 1994-1995.

The intent of the Texas Lottery is to obtain the services of any entity to design and to produce Lottery premiums related to a new instant lottery game. In an upcoming instant game, along with the regular play style of matching three like dollar amounts to win cash prizes, there will be a bonus spot on the ticket. Should the bonus spot disclose a winning phrase the player will be eligible to receive a video cassette, compact disc or audio cassettes, by sending a required number of tickets displaying the "winning" phrase. The Successful Proposer will be required to supply a wide variety of video and audio titles for selection, complete fulfillment, and substantial marketing and public relations support for the game.

Schedule of Events

The time schedule for awarding a contract under this RFP is shown as follows. The Texas Lottery reserves the right to amend the schedule. If significant changes are made, all potential Proposers will be notified.

July 18, 1994-Issuance of RFP

July 26, 1994-Letter of Intent to Propose Due (4:00 p.m., CDT)

(Late Letters of Intent will not be considered.)

August 1, 1994-Written Questions Due

August 10, 1994-Answers to Written Questions Issued

August 15, 1994--DEADLINE FOR PROPOSALS (2:00 p.m., CDT)

(Late Proposals will not be considered.)

August 29, 1994--Announcement of Apparent Successful Proposer

(or as soon as possible thereafter)

September 6, 1994--Contract Execution

October 17, 1994--Design and production of Texas Lottery premiums commences

This RFP is issued by the Texas Lottery. The Texas Lottery is the sole point of contact with regard to all procurement and contractual matters relating to the services described herein. The Texas Lottery is the only office authorized to clarify, modify, amend, alter or withdraw the specifications, terms and conditions of this RFP and any contract awarded as a result of this RFP.

To obtain a copy of the RFP, please contact: Ridgely C. Bennett, Staff Attorney, Texas Lottery Commission, 6937 North IH-35, Austin, Texas 78752, (512) 371-4989 or by fax (512) 371-4989.

Issued in Austin, Texas, on July 12, 1994.

TRD-9443054 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Filed: July 13, 1994



The Texas Lottery is inviting responses from qualified Proposers to provide Instant Ticket Vending Machines (ITVM) for the Texas Lottery. For the purpose of this RFP, an instant ticket vending machine is described as a ticket dispensing machine that dispenses instant tickets to Texas Lottery players without the assistance of retailers' personnel.

As a part of this RFP, the Texas Lottery will conduct a test of up to 12 weeks to determine the mechanical reliability and player acceptance of ITVMs, under actual operating conditions. The Texas Lottery will evaluate the results of this test and other information to determine if it is in the best interest of the State to issue a contract under this RFP. The Texas Lottery may decide, based on its evaluation, that it is not in the best interest of the state to issue a contract under this RFP.

During the test period the Texas Lottery will evaluate ITVMs in the following areas: Reliability of machines, response from retailers, response from consumers and additional instant game sales

At the end of the test period, the Texas Lottery will evaluate the test results and determine if the machines should be procured for the Texas marketplace. Proposers will be notified within 30 days of the end of the test period of the Texas Lottery's decision.

A more detailed description of the testing process is enclosed in Attachment A of this RFP. Attachment A is an overview of the test period and gives examples of some of the forms that will be used in making a determination pertaining to ITVMs.

This RFP is issued by the Texas Lottery. The Texas Lottery is the sole point of contact with regard to all procurement and contractual matters relating to the services described herein. The Texas Lottery is the only

office authorized to clarify, modify, amend, alter or withdraw the specifications, terms and conditions of this RFP and any contract awarded as a result of this RFP.

Schedule of Events

The time schedule for awarding a contract under this RFP is shown as follows. The Texas Lottery reserves the right to amend the schedule. If significant changes are made, all potential Proposers will be notified.

July 18, 1994--Issuance of RFP

July 27, 1994 (4:00 p.m. CDT)--Letter of intent to propose Due

(Late letters of intent will not be considered.)

August 2, 1994 (4:00 p.m. CDT)--Written Questions Due

August 16, 1994--Answers to Written Questions Issued

August 19, 1994 (4:00 p.m. CDT)--Receipt of Proposals

(Late proposals will not be considered)

August 24 through August 27, 1994--Delivery of machines

August 28, 1994--Machine Testing Begins

November 30, 1994 Notification of determination regarding whether ITVMs will be procured by the Texas Lottery.

December 14, 1994--Announcement of Apparent Successful Proposer

(or as soon as possible thereafter)

To obtain a copy of the RFP, please contact: Ridgely C. Bennett, Staff Attorney, Texas Lottery Commission, 6937 North IH-35, Austin, Texas 78752, (512) 371-4935 or fax (512) 371-4989.

Issued in Austin, Texas, on July 12, 1994.

TRD-9443056 Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Filed: July 13, 1994



The purpose of this Request for Proposals (RFP) is to obtain proposals from qualified vendors to provide the statistical consulting services for evaluating the Texas Lottery's drawing equipment performance data and to provide other statistical services as requested. In addition, the Successful Proposer will provide written monthly reports summarizing the drawing equipment performance and any problems encountered during the month.

The intent of the Texas Lottery is to contract with the Successful Proposer to provide statistical consulting services anticipated to begin by September 1, 1994.

This RFP is issued by the Texas Lottery. The Texas Lottery is the sole point of contact with regard to all procurement and contractual matters relating to the services described herein. The Texas Lottery is the only office authorized to clarify, modify, amend, alter or withdraw the specifications, terms and conditions of this RFP and any contract awarded as a result of this RFP.

Schedule Of Events

The time schedule for awarding a contract under this RFP is shown as follows. The Texas Lottery reserves the right to amend the schedule. If significant changes are made, all potential Proposers will be notified.

RFP Issued—July 18, 1994

Letter Of Intent To Propose Due—July 25, 1994 (5:00 p.m. CT)

(Late letters of Intent will not be considered)

Written Questions Due—August 1, 1994 (4:00 p.m. CT)

Answers To Questions Distributed—August 4, 1994

Proposal Due Date—August 12, 1994 (4:00 p.m. CT)

(Late proposals will not be considered)

Texas Lottery Approval Of Successful Proposer—August 26, 1994

To obtain a copy of the RFP, please contact: Ridgley C. Bennett, Staff Attorney, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, (512) 371-4935 or by Fax (512) 371-4989.

Issued in Austin, Texas, on July 12, 1994.

TRD-9443055

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission

Filed: July 13, 1994

Texas Department of Mental Health and Mental Retardation

Correction of Error

The Texas Department of Mental Health and Mental Retardation submitted an adoption of §401.57 (concerning a memorandum of understanding on inservice training on identifying patient abuse or neglect and illegal, unprofessional or unethical conduct) of Chapter 401, Subchapter B (concerning Interagency Agreements) it was inadvertently published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3932).

Notice of Public Hearing

The Texas Department of Mental Health and Mental Retardation (TXMHMR) will hold a public hearing at 1:30 p.m., Thursday, July 21, 1994 in the Central Office Auditorium located at 909 West 45th Street, Austin, Texas. The purpose of this hearing will be to accept oral and written testimony concerning the Plan on Long-Term Care for Persons with Mental Retardation as required in the Texas Health and Safety Code, §533.062. This is the second hearing on this topic; it has been scheduled to ensure that all persons interested in commenting on the content of the plan have an opportunity to do so. Copies of the draft document are available from TXMHMR's ICF/MR Program Office at 3305 Northland Drive, Suite 400 in Austin or by calling the ICF/MR Program Office at (512) 323-3261. Individuals requiring an interpreter for the hearing impaired should contact Linda Logan, Director, Office of Policy Development, by calling (512) 206-4516 at least 72 hours prior to the hearing. Please direct all other inquiries to the ICF/MR Program Office at (512) 323-3261.

Issued in Austin, Texas, on July 12, 1994.

TRD-9443925

Ann K. Utley
Chair
Texas Department of Mental Health and
Mental Retardation

Filed: July 12, 1994

Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission requested a correction of error which was published in the July 1, 1994, issue of the *Texas Register* (19 TexReg 5125).

Due to a publication error the correction is being republished in its entirety.

The Texas Natural Resource Conservation Commission adopted amendment and new sections to §§117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, and 117.223. The rules appeared in the June 10, 1994, issue of the *Texas Register* (19 TexReg 4541).

In (3)(B)(i) the text reads "...in accordance with paragraph (A) of this paragraph." It should read "...in accordance with subparagraph (A) of this paragraph."

In §117.213(f)(2) should read "...The system shall be accurate to within 5.0%..."

Notice of Public Hearing (Proposition 2)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 and the Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony regarding new Chapter 277, concerning Use Determinations for Tax Exemptions for Pollution Control Property.

Proposition 2, which was required by legislation, was approved by Texas voters in November 1993. The TNRCC is delegated statutory responsibility for determining whether a property is considered pollution control property. The proposed new chapter specifies the procedures to be followed in obtaining a use determination (tax exemption certification) from the TNRCC. The TNRCC's use determination is submitted by the applicant to the taxing authority to request a tax exemption for the pollution control property.

A public hearing on the proposal will be held on August 8, 1994, at 10:00 a. m. at the TNRCC central office, Room 201A, Building B, 12124 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through August 12, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on August 12, 1994, will be considered by the Commission prior to any final action on the proposal. Copies of the proposed new

chapter are available at the central office of the TNRCC, located at 12118 North I-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. Please mail written comments to the Regulation Development Section, Air Quality Planning, P.O. Box 13087, Austin, Texas 78711-3087. For further information, contact Gary McArthur at (512) 239-1917.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 11, 1994.

TRD-9443920 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: July 13, 1994

Notice of Public Hearing (Transportation Conformity)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIPs), the Texas Natural Resource Conservation Commission (TNRCC) will conduct public hearings to receive testimony concerning revisions to Chapter 114 and the SIP. New §114.27, concerning Transportation Conformity, is proposed as a revision to the SIP for the control of those transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan. The pollutants include ozone, carbon monoxide, nitrogen dioxide, particles with an aerodynamic diameter of less than or equal to ten micrometers, and the precursors of those pollutants. Affected nonattainment areas include El Paso, Houston/Galveston, Dallas/Fort Worth, Beaumont/Port Arthur, and Victoria. Public hearings on the proposal will be held on the following dates: August 15, 1994, 7:00 p.m., John Gray Institute, 855 Florida Avenue, Beaumont; August 16, 1994, 11:00 a.m., Houston-Galveston Area Council, Second Floor, Conference Room B, 3555 Timmons Lane, Houston; August 17, 1994, 6:00 p.m., City of El Paso Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso; August 18, 1994, 2:00 p.m., City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; and August 19, 1994, 11:00 a.m., Victoria Community Center Annex, 2905 East North Street, Victoria. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearings and will answer questions before and after the hearings. Written comments not presented at the hearings may be submitted to the TNRCC central office in Austin through August 26, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on August 26, 1994 will be considered by the Commission prior to any final action on the proposal. Copies of the revision are available at the central office of the TNRCC, located at 12118 North I-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. Please mail

written comments to the Regulation Development Section, Air Quality Planning, P.O. Box 13087, Austin, Texas 78711-3087. For further information, contact Al Giles at (512) 239-1943. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-1457. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 11, 1994.

TRD-9443917 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: July 12, 1994

Notice of Public Hearing (Vehicle Miles Traveled)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIPs), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning a revision to the SIP. The 1994 Vehicle Miles Traveled (VMT) SIP revision will include a modified emissions projection with an emissions ceiling level that reflects updated information and methodologies for mobile sources in the Houston/Galveston area. This updated information indicates that the Houston/Galveston nonattainment area achieves the VMT Offset through the year 2010. The remaining portions of the VMT Offset SIP remain unchanged. A public hearing on the proposal will be held August 16, 1994, at 10:00 a.m. at the Houston-Galveston Area Council, Conference Room B, Second Floor, 3555 Timmons Lane, Houston. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing. Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through August 16, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on August 16, 1994, will be considered by the Commission prior to any final action on the proposal. Copies of the revision are available at the central office of the TNRCC, located at 12118 North I-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. Please mail written comments to the Regulation Development Section, Air Quality Planning, P.O. Box 13087, Austin, Texas 78711-3087. For further information, contact Teresa Hardin at (512) 239-0599. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1457. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 11, 1994.

TRD-9443918 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

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Texas Parks and Wildlife Department
Texas Parks and Wildlife Department
Mitigation Policy for Fish and Wildlife
Resources

The Texas Parks and Wildlife Commission has proposed a revised Commission Policy regarding Mitigation for Fish and Wildlife Resources. The Texas Parks and Wildlife Department is actively soliciting public comment regarding the proposed policy prior to its adoption as a Commission Policy. The Mitigation Policy will be considered at the regularly scheduled Commission Meeting to be held August 25, 1994 at the Texas Parks and Wildlife Department Headquarters.

Comments regarding the Mitigation Policy for Fish and Wildlife Resources should be directed to Roy Frye, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, ext. 4579 or (512) 389-4579.

TEXAS PARKS AND WILDLIFE DEPARTMENT MITIGATION POLICY FOR FISH AND WILDLIFE RESOURCES INTENT

It is the intent of this policy to guide TPWD staff in providing recommendations to state and federal agencies that by law approve, permit, or license activities requiring the consideration of mitigation. It is the further intent of this policy to guide staff in providing technical assistance as may be requested by individuals and public and private entities to minimize the potentially adverse impact of their actions on fish and wildlife resources. It is not the intent of this policy to apply to farming, ranching, or silviculture operations that are otherwise exempted from state and federal regulation requiring the consideration of mitigation. Nor is it the intent of this policy to advocate the involuntary taking of private property to meet mitigation requirements.

GOAL

It is the goal of the Texas Parks and Wildlife Department (TPWD) to assure that Texas' fish, wildlife and plant resources, and habitats upon which they depend, are perpetuated. This mitigation policy guides the Department in providing information to project sponsors and in submitting recommendations and comments to regulatory agencies appropriate to the level of impacts created from development projects and actions that may adversely affect fish and wildlife resources. Department response under this policy shall be in accordance with the Texas Parks and Wildlife Code, Chapters 12.0011 and 14.002; the Texas Water Code, §11.147 and §11.152; the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 662(a) and (b)); and the Clean Water Act, §404, United States Code 33, §1344.

Actions or projects which could adversely affect these resources should be fully evaluated, and where possible, less damaging alternatives should be undertaken. The mitigation process should be an integral part of any action or project which adversely affects fish and wildlife and habitats upon which they depend. Reasonably foreseeable secondary and cumulative impacts should be included in mitigation planning for project impacts. Where mitigation is warranted and a consideration, it is appropriate that TPWD, the state agency responsible for protection of

Texas' fish and wildlife resources, has the opportunity to fully participate in the mitigation planning process.

Failure to adequately avoid and/or minimize adverse impacts or to adequately compensate for unavoidable loss is a serious deficiency in any project plan and shall constitute grounds for Department opposition to a specific action or project.

PREDICTABILITY AND CONSISTENCY IN RECOMMENDATIONS

The following measures will be incorporated to maintain predictability and consistency in the development of Department mitigation recommendations:

1. To the fullest extent possible the Department shall encourage early notification and planning for projects of other state or federal agencies that have the potential for adverse impacts on fish, wildlife, and plant resources to the end that information and comments from Department staff can be incorporated into early planning and design stages of each project, thus avoiding wasted time, money, and thereby preventing unnecessary conflicts between agencies.
2. No actions taken on Department managed land under the auspices of this policy shall violate the Environmental Policy. Each Division shall apply this policy as appropriate to its goals and programmatic responsibilities.
3. Mitigation recommendations shall be made giving preference to the most economical measures that achieve the mitigation requirements set out in this policy.
4. Mitigation recommendations may include the development of guidelines or procedures for mitigation done in advance for losses due to possible future development and for which credit may be received when such future development occurs.
5. Where possible mitigation should emphasize conservation of large contiguous tracts that exhibit high quality habitat. Preservation of unique or high quality habitats, like hardwood bottomlands, should be given equal consideration with restoration and similar actions that otherwise increase habitat values.

SEQUENTIAL PROCESS FOR MITIGATION PLANNING

Mitigation is herein defined as the mechanism for addressing adverse impacts on fish, wildlife and plant resources that can result from a specific action or project. Where projects or actions are deemed to potentially affect such resources, the policy of the Department shall be to pursue mitigation in a sequential order as follows:

- A. Avoidance—Avoiding adverse impacts through changes in project location, design, operation, or maintenance procedures, or through selection of other alternatives to the project or action.
- B. Minimization—Minimizing unavoidable impacts and/or reducing the impacts over time by preservation and maintenance operations during the life of the project or action.
- C. Compensation—Compensating for unavoidable impacts may be achieved: 1) by providing substitute resources, or 2) by enhancing available resources, or 3) by a combination of both 1 and 2.

MITIGATION OBJECTIVES

Mitigation is a step-wise process and it is the objective of TPWD to make every reasonable effort to assure that it is

a timely, cost effective and efficient process in meeting the Department's conservation goals. Cooperative actions with other agencies, individuals, and private interests should emphasize first avoidance, then minimization, and finally compensation as the best means of achieving those objectives. In practice compensation, in the form of land acquisition, is a consideration in a relatively small number of projects. It is triggered only in situations where the loss of moderate to high value habitat occurs and when all other avoidance and minimization possibilities are exhausted.

Habitat values are relative and vary from low value to unique and irreplaceable depending on variables like diversity of wildlife, productivity, scarcity and threat of loss. Mitigation objectives established for this range of habitat values are provided in the following: Habitat Value 1. Unique or irreplaceable (examples: estuarine nurseries, springs, etc.) Mitigation Objective No loss of habitat value. 2. High value and/or becoming limited in distribution (examples: hardwood bottomlands, coastal wetlands, etc.) No net loss of habitat value. Unavoidable losses shall be compensated by replacement or enhancement of similar habitats as close to the area of impact as possible. 3. Moderate to high value, but may be plentiful (examples: mixed hardwood-pine forest, live oak-juniper woods, etc.) No net loss of habitat value. Unavoidable losses shall be compensated by replacement or enhancement of similar habitats or by tradeoffs with other habitat types with equal or higher value. 4. Low to moderate value (example: channelized streams or other disturbed habitat) Minimization of loss to habitat value.

The Department will not develop or recommend mitigation measures or approve proposed mitigation settlements that include tradeoffs or exchanges involving creation or enhancement of open water habitat as compensation for terrestrial habitat losses or vice versa; similarly, lake habitats shall not be used to offset losses to stream and river habitats.

DEPARTMENT PARTICIPATION IN THE ACQUISITION AND MANAGEMENT OF MITIGATION TRACTS

Where appropriate, Department mitigation proposals shall include recommendations that responsibility for management of mitigation resources be placed with an appropriate entity with professional expertise and management capability. The Department shall consider acceptance of management responsibility for mitigation lands when they significantly contribute to the long term goals as defined in the Department's Strategic Plan. While acquisition of mitigation resources in the form of fee simple ownership may be necessary to meet mitigation requirements, the use of conservation easements and similar instruments should receive equal consideration in achieving conservation goals. Mitigation recommendations should also encourage decision-making agencies to use willing seller, and other similar options, rather than condemnation in meeting permit and mitigation goals. Land directly purchased by the Department with funds obtained as a result of a mitigation settlement shall not involve any involuntary taking of property.

Mitigation recommendations may include specific provisions regarding operation and management costs to be paid by the developer. Similarly, recommendations should include requirements for the development of detailed management plans for mitigation tracts which provide for the long term functional integrity of the mitigation area.

Issued in Austin, Texas, on July 8, 1994.

TRD-8443953

Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Filed: July 13, 1994

Texas Department of Protective and Regulatory Services

Correction of Error

The Texas Department of Protective and Regulatory Services (TDPRS) proposed the repeal of §§700.106, 700.107, 700.1301-700.1306, 700.1309-700.1313, and 700.1764; new §§700.1301, 700.1302, 700.1310-700.1316, 700.1320-700.1323, 700.1330-700.1334, 700.1340-700.1343, 700.1350, and 700.1351; and an amendment to §700.1502 in its child protective services chapter. The proposal contained errors as published in the June 24, 1994, issue of the *Texas Register* (19 TexReg 4904).

On the Table of Contents and page 4904, the Texas Department of Human Services was listed as the agency proposing the sections. In both places, it should read the Texas Department of Protective and Regulatory Services.

On pages 4905, 4916, and 4917, in the certification, the Texas Department of Human Services is listed as the agency. In all places, it should read the Texas Department of Protective and Regulatory Services.

Public Utility Commission of Texas

Notices of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number: Application of Southwestern Electric Power Company to Amend Certificate of Convenience and Necessity within Houston County, Docket Number 13163 before the Public Utility Commission of Texas.

The Application: In Docket Number 13163, Southwestern Electric Power Company requests approval of its application to revise current certificated service area boundaries within in Houston County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on July 13, 1994.

TRD-8443948

John M. Rentrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 13, 1994

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number: Application of Southwestern Electric Power Company to Amend Certificate of Convenience and Necessity within Houston County, Docket Number 13186 before the Public Utility Commission of Texas.

The Application: In Docket Number 13186, Southwestern Electric Power Company requests approval of its application to revise current certificated service area boundaries with in Houston County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on July 13, 1994.

TRD-8443849 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 13, 1994

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.28 for approval of promotional business and residence rates for new customers of existing services, SignalRing, Call Waiting, Call Forwarding, and/or Three Way Calling.

Tariff Title and Number. Application of United Telephone Company of Notice of Intent to File and Application for Promotional Business and Residence Rates for New Customers of Existing Services, SignalRing, Call Waiting, Call Forwarding, and/or Three Way Calling Service Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 191.

The Application. United Telephone Company Notice of Intent to File an Application for Promotional Business and Residence Rates for New Customers of Existing Services, SignalRing, Call Waiting, Call Forwarding, and/or Three Way Calling. United is proposing to offer the promotional business and residence rates for a period of 45 days

beginning September 1, 1994 and ending October 15, 1994. United's application will be available on statewide basis where technologically feasible: Athens, Brownsboro, Cayuga, Chandler, Commerce, Cooper, Dublin, Eustace, Frankston, Hico, Kaufman, Kemp, Kerens, Koon Kreek, Mabank, Malakoff, Martins Mill, Montalba, Murchison, Neches, Palestine, Payne Springs Stephenville, Tennessee Colony, Tool-Seven Points, Trinidad, Tucker.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 13, 1994.

TRD-8443847 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 13, 1994

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.28 for approval of promotional business and residence rates for new customers of existing services, Call Waiting, Call Forwarding, and/or Three Way Calling.

Tariff Title and Number. Application of Central Telephone Company of Texas Notice of Intent to File an Application for Promotional Business and Residence rates for New Customers of Existing Services, Call Waiting, Call Forwarding, and/or Three Way Calling Service Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 13192.

The Application. Central Telephone Company of Texas Notice of Intent to File an Application for Promotional Business and Residence Rates for New Customers of Existing Services, Call Waiting, Call Forwarding, and/or Three Way Calling. Centel is proposing to offer the promotional business and residence rates for a period of 45 days beginning September 1, 1994, and ending October 15, 1994. United's application will be available on statewide basis where technologically feasible: Atascocita; Copperas Cove; Florence; Fort Hood; Harker Heights; Humble; Kempner; Killeen; King's Crossing; Kingwood; Nolanville; Porter; and Southumble.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 13, 1994.

TRD-8443848 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 13, 1994