

# Texas Register

Volume 18, Number 16, February 26, 1993

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Texas Register



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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposed publication date.

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

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

Texas Administrative Code

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

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

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

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

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

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

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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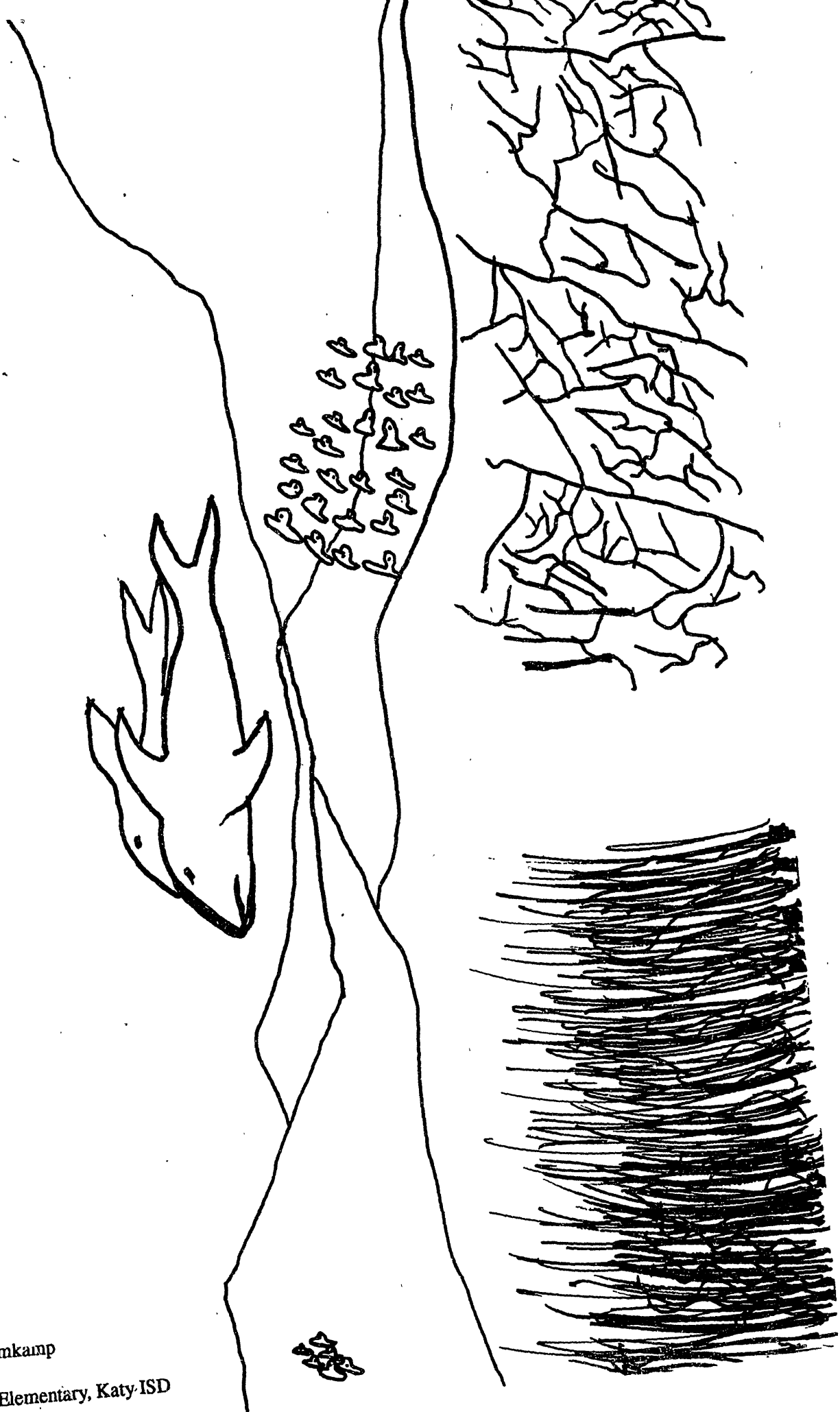
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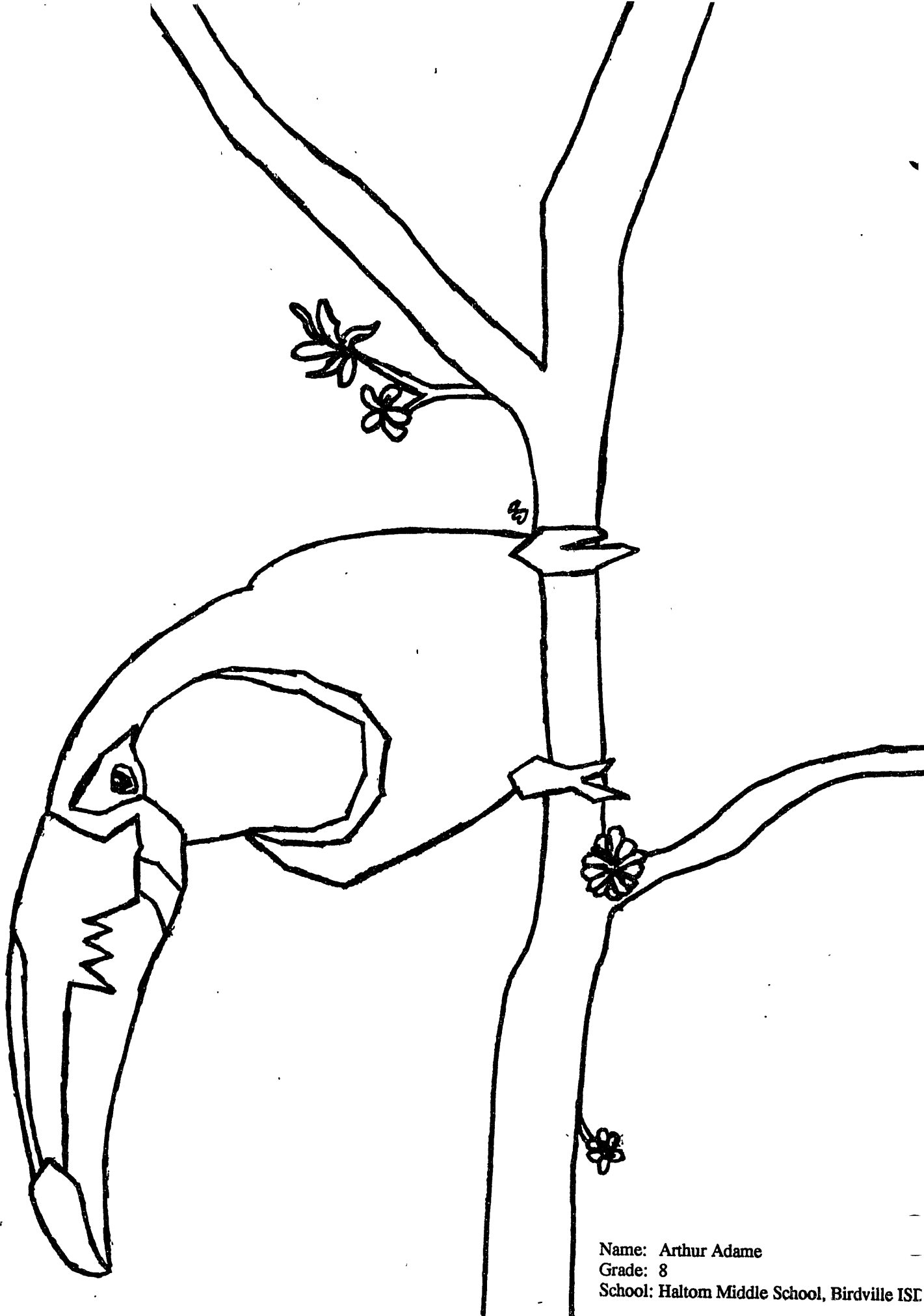
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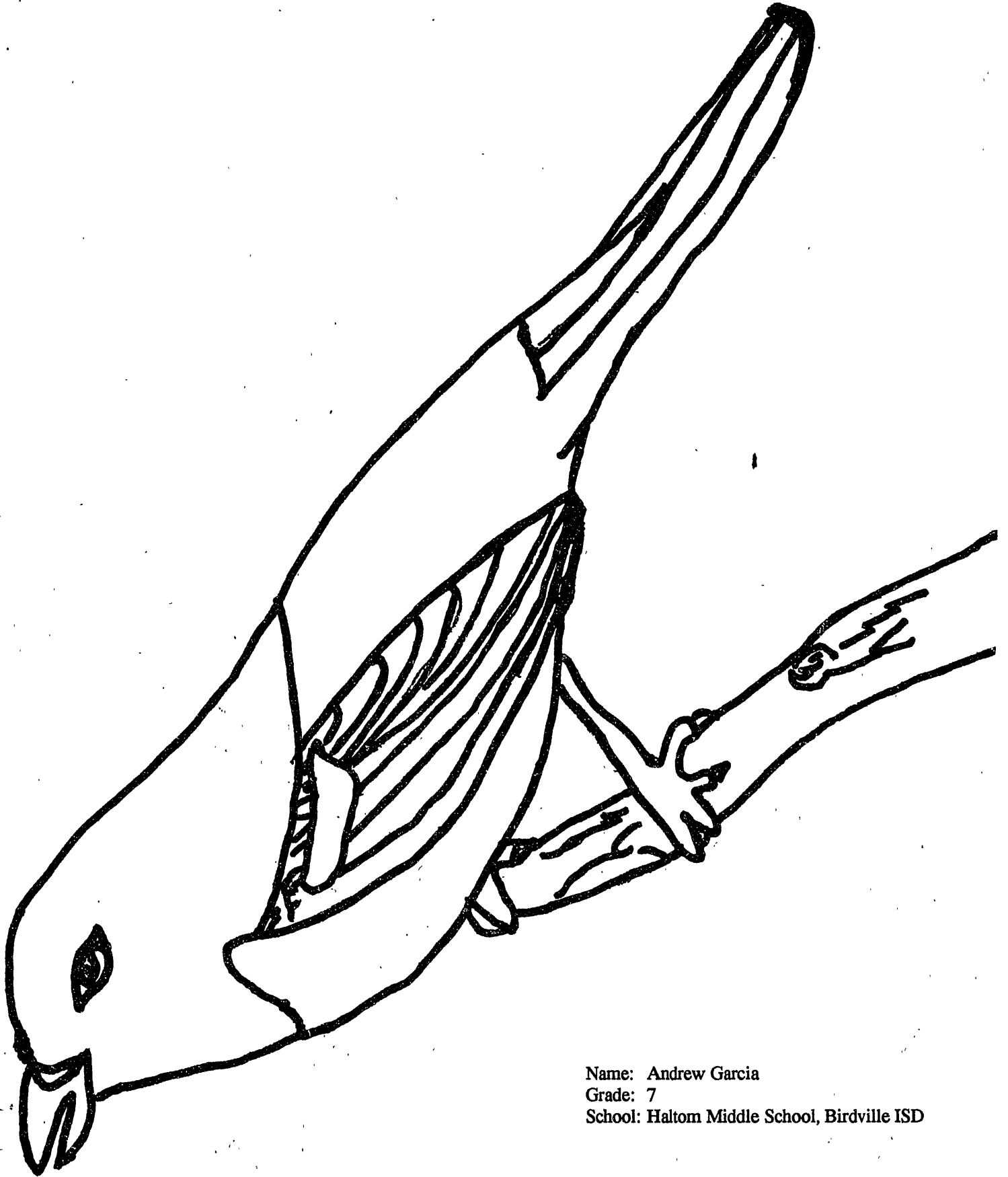
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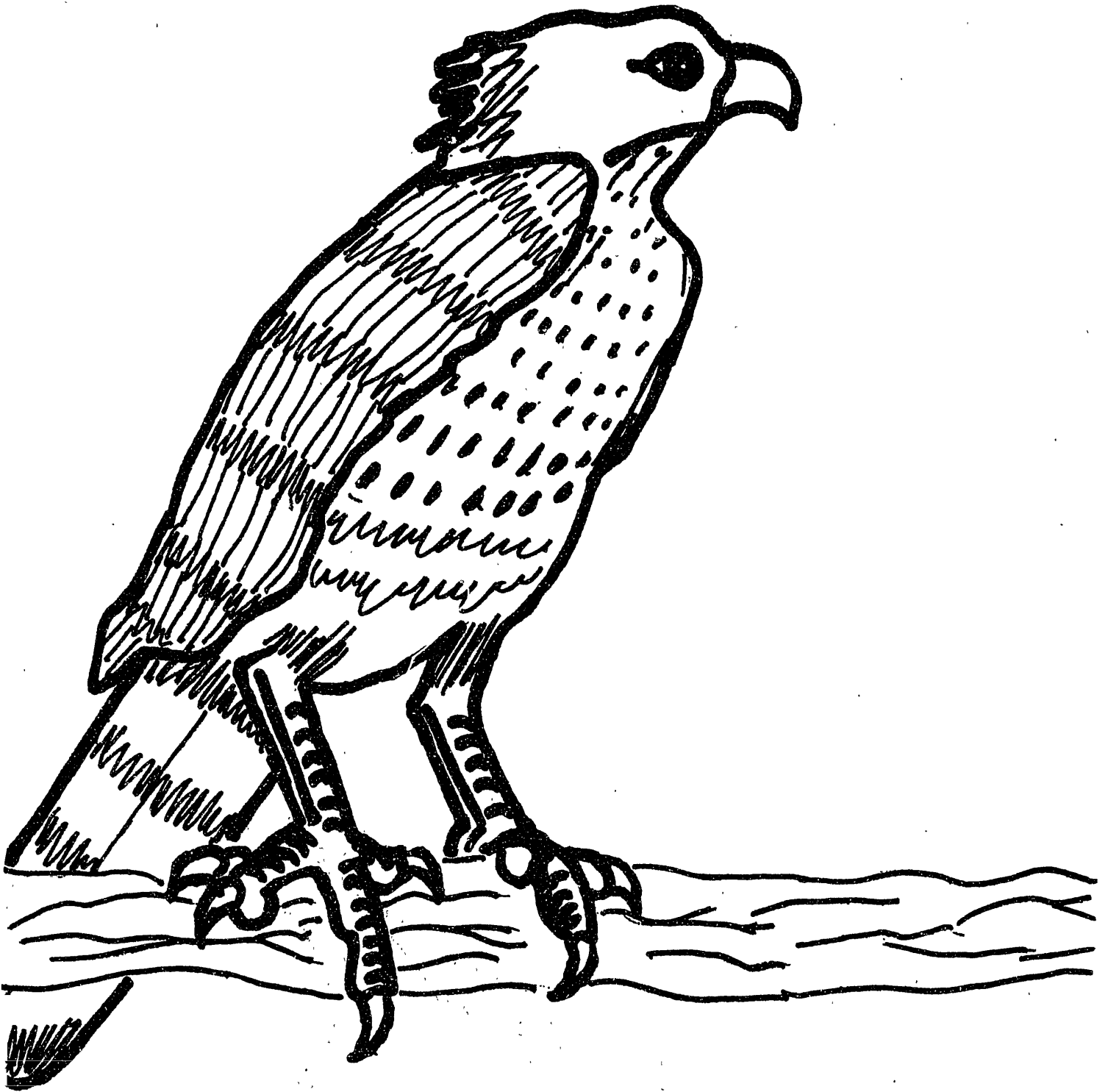
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Grade: 4  
School: Sundown Elementary, Katy ISD



Name: Arthur Adame  
Grade: 8  
School: Haltom Middle School, Birdville ISD

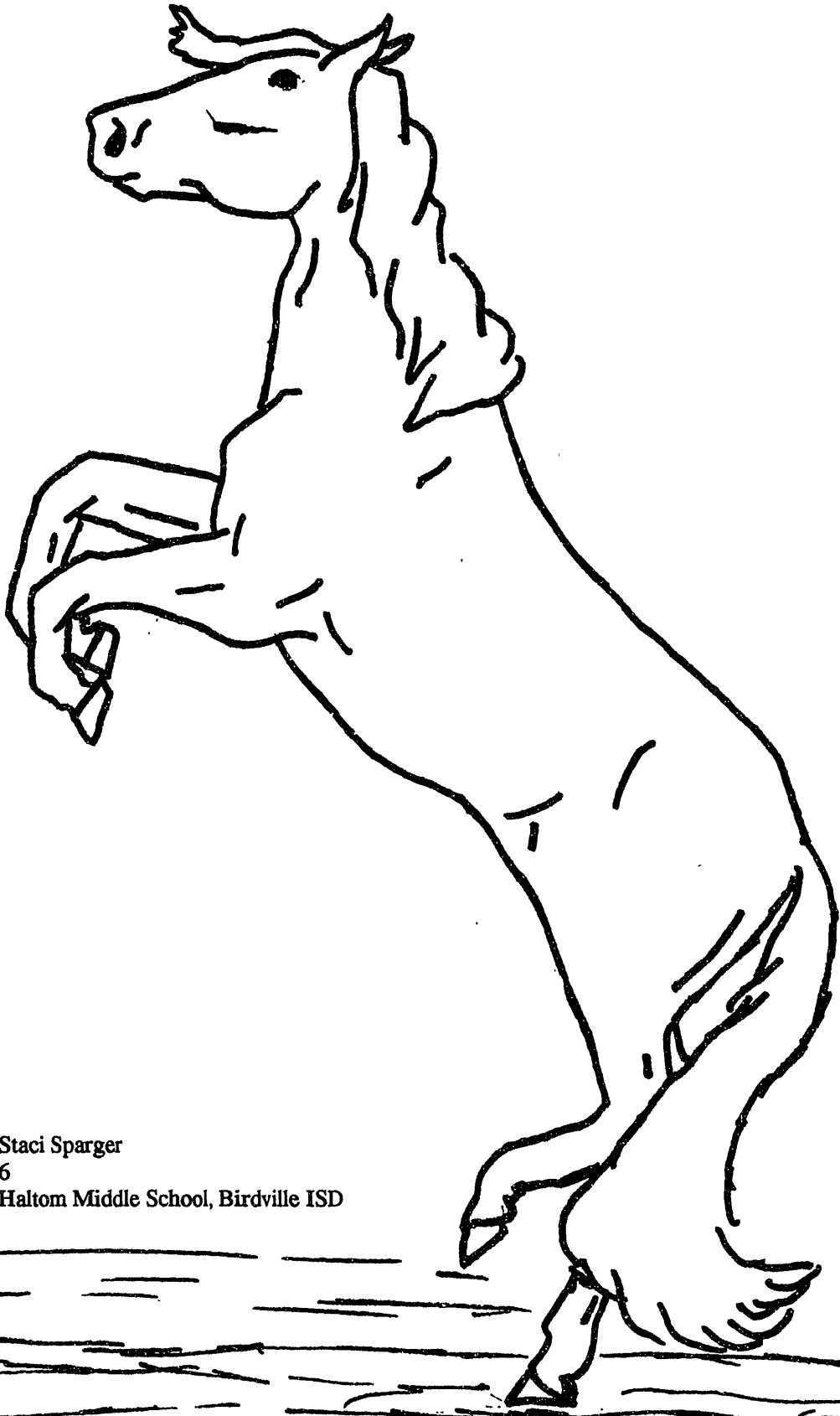


Name: Andrew Garcia  
Grade: 7  
School: Haltom Middle School, Birdville ISD



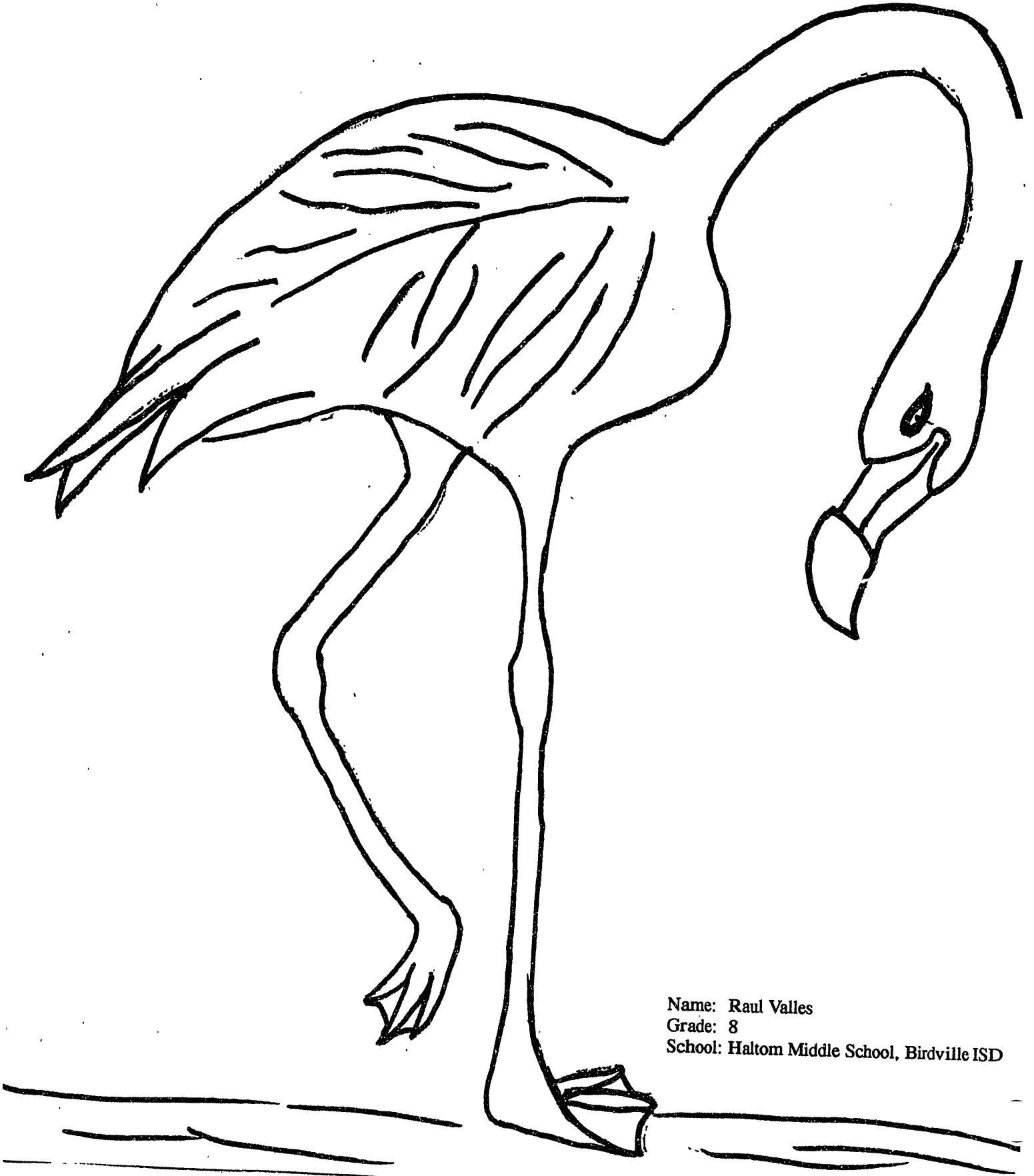
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School: Haltom Middle School, Birdville ISD





Name: Staci Sparger  
Grade: 6  
School: Haltom Middle School, Birdville ISD





Name: Raul Valles  
Grade: 8  
School: Haltom Middle School, Birdville ISD

# Attorney General

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

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## Request for Opinions

(RQ-483). Request from Georgia D. Flint, Commissioner, Texas Department of Insurance, P.O. Box 2800, Austin, concerning whether certain documents prepared by a special deputy receiver under the Insurance Code §21.28, are records of the judiciary; whether receivership is litigation for purposes of the Texas Open Records Act, §3(a)(3).

(RQ-484). Request from Mary Sapp, Executive Director, Texas Department on Aging, P.O. Box 12786, Austin, concerning the Human Resources Code, §101.63, provides immunity to volunteer ombudsmen in the Texas Department on Aging long-term care ombudsmen program.

(RQ-485). Request from Gonzalo Barrientos, Chairman, Committee on Nominations, Texas State Senate, P.O. Box 12068, Austin, concerning validity of a state licensing fee assessed on certified public accountants who are employed by the federal government.

(RQ-486). Request from Charles Karakashian, Jr., Assistant General Counsel, Texas Department of Public Safety, 5808 North Lamar Boulevard, Box 4087, Austin, concerning whether Article 6252-17a, Texas Civil Statutes, §3(a)(11), excepts from public disclosure certain intra-agency policy and legal memoranda concerning the obtaining and use of social security numbers in connection with drivers license applications.

(RQ-487). Request from David Motley, County Attorney, Kerr County Courthouse, 700 East Main Street, Kerrville, concerning use of forfeiture funds acquired pursuant to Chapter 59, Texas Code of Criminal Procedure.

(RQ-488). Request from Clema D. Sanders, Executive Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, concerning whether, and to what extent, a full-time peace officer is exempt from the requirements of Texas Civil Statutes, Article 4413 (29bb), the Texas Board of Private Investigators and Private Securities Agencies Act.

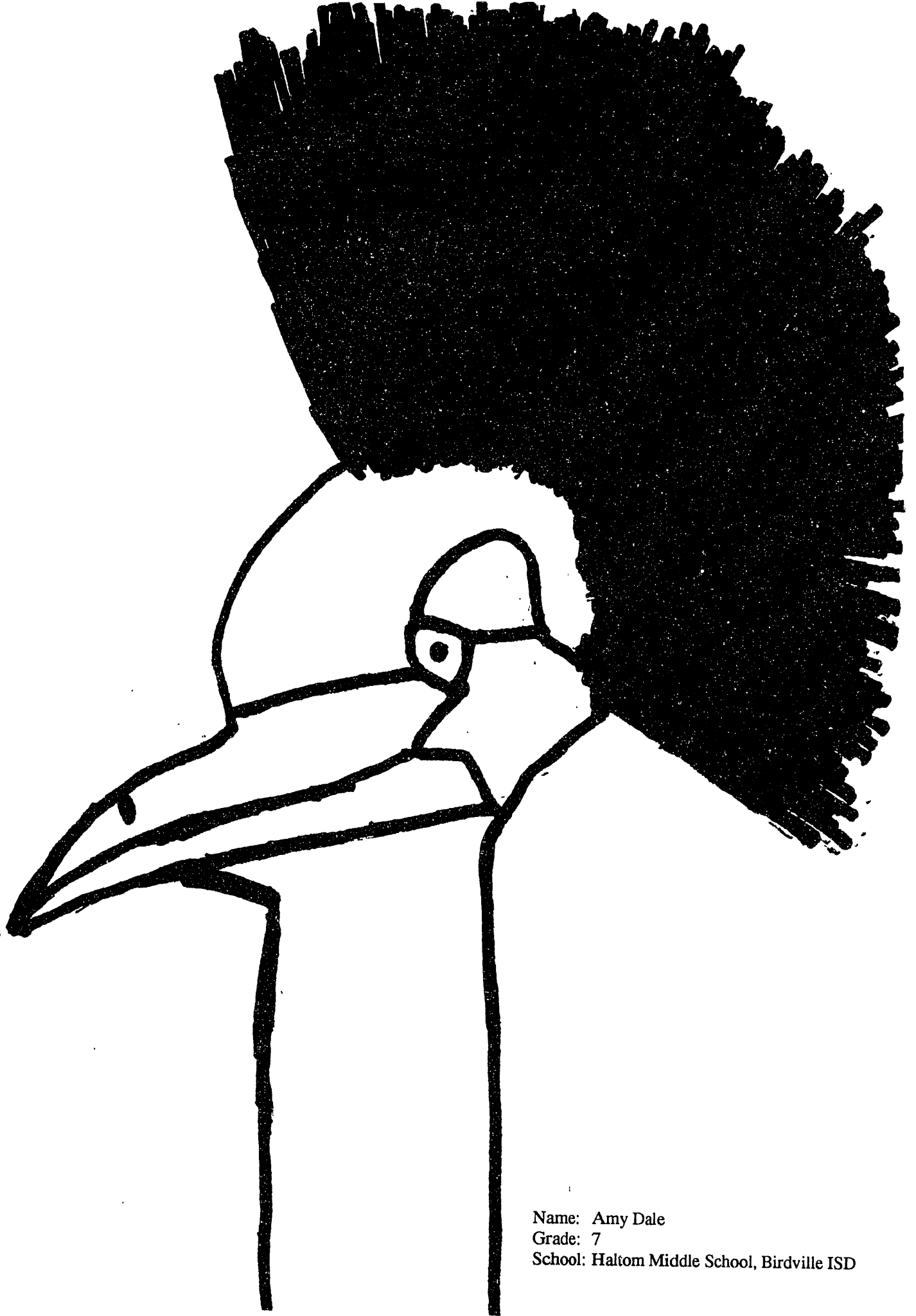
(RQ-489). Request from Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, concerning whether a justice of the peace may contract with his or her employees to assume liability for shortages, and related questions.

(RQ-490). Request from Gonzalo Barrientos, Chairman, Committee on Nominations, Texas State Senate, P.O. Box 12068, Austin, concerning status of "recess gubernatorial appointees who are replaced by other nominees before the senate has had the opportunity to confirm or reject them in a regular or special session". The request was formerly opened as a Letter Opinion file but will be issued as a formal Attorney General Opinion.

(RQ-491). Request from David Smith, M.D., Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, concerning whether the Health and Safety Code, §142.5, applied to nonprofit corporations, and related questions.

TRD-9319289





Name: Amy Dale  
Grade: 7  
School: Haltom Middle School, Birdville ISD

# Proposed Sections

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 any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

## TITLE 1. ADMINISTRATION Part II. Texas Ethics Commission

### Chapter 8. Legislative Per Diem

#### • 1 TAC §8.1

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

The Texas Ethics Commission proposes the repeal of §8.1, concerning legislative per diem for members of the legislature and the lieutenant governor for each legislative day. The section is being repealed so that a new section can be proposed.

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

Mr. Mathieson also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will not be applicable, as the public is relatively unaffected by this particular proposed repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Jim Mathieson, P.O. Box 12070, Austin, Texas 78711-2070. Only written comments will be received.

The repeal is proposed under the Texas Constitution, Article III, §24a, which provides the Texas Ethics Commission with the authority to determine legislative per diem.

#### §8.1. Legislative Per Diem.

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 February 18, 1993.

TRD-9319265 Jim Mathieson  
Assistant General Council  
Texas Ethics Commission

Proposed date of adoption: April 2, 1993

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

◆ ◆ ◆  
The Texas Ethics Commission proposes new §8.1, concerning legislative per diem. This section will set the per diem for members of the legislature and the lieutenant governor for each legislative day.

Jim Mathieson, Assistant General Council, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect will be as follows: \$127,400 for fiscal year (fy) 1993; \$0 for fy 1994; \$127,400 for fy 1995; \$0 for fy 1996; and \$127,400 for fy 1997. In the event a special legislative session is called there will be an additional cost to the state of \$910 per day during the period of the session. There will be no effect on local government.

Mr. Mathieson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in compliance with those provisions of the Texas Constitution, Article III, §24a and 24; and Article IV, §17, approved by the voters on November 5, 1991. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jim Mathieson, P.O. Box 12070, Austin, Texas 78711-2070. Only written comments will be received.

The new section is proposed under the Texas Constitution, Article III, §24a, which provides the Texas Ethics Commission with the authority to set legislative per diem.

#### §81.1. Legislative Per Diem.

(a) The legislative per diem is \$90. The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and any special session in 1993, and this rule shall be applied retroactively to ensure payment of the \$90 per diem for 1993.

(b) The per diem set by the commission under subsection (a) of this section may be revised for a calendar year after 1993.

(c) Any action under subsection (b) of this section to revise the per diem requires the affirmative vote of five commissioner, but does not require an amendment to this rule.

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 February 18, 1993.

TRD-9319266 Jim Mathieson  
Assistant General Council  
Texas Ethics Commission

Proposed date of adoption: April 2, 1993

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

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

### Chapter 75. Curriculum

#### Subchapter G. Other Provisions

#### • 19 TAC §75.166

The Texas Education Agency (TEA) proposes an amendment to §75.166, concerning credit by examination. The amendment to subsection (d) deletes the prohibition against using credit by examination to make up work for excessive absences.

Marvin Veselka, associate commissioner for curriculum and assessment, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Veselka and Criss Cloudt, director of policy planning and evaluation, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that students will be able to receive state graduation credit for courses in which excessive absences were a problem. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests

for a public hearing on the proposed amendment submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §21.101, which authorizes the State Board of Education to adopt rules establishing and implementing a well-balanced curriculum.

#### §75.166. Credit by Examination.

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

(d) Use of credit. Credit by examination shall not be used to gain eligibility for participation in extracurricular activities. [Students who exceed the maximum number of absences allowed by the Texas Education Code, §21.041, may not use credit by examination to receive credit for the particular course.]

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 February 22, 1993.

TRD-9319333      Criss Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Earliest possible date of adoption: March 29, 1993

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

## Subchapter K. Extracurricular Activities

### • 19 TAC §75.411

The Texas Education Agency (TEA) proposes an amendment to §75.411, concerning extracurricular activities. The changes clarify the definition of extracurricular activities; clarify the academic requirements students must meet to participate in extracurricular activities during the first grading period of a year; specify that a student's right to participate in any class cannot be diminished because the student is ineligible for extracurricular activities; delete the words "six weeks" before "grading period," because those words are not in statute; specify that practice for all extracurricular activities during the school day is limited to one class period; prohibit grading of extracurricular activities; prohibit scheduling extracurricular activities during state test dates; and allow for application of the rule in schools which operate year-round education programs.

Marvin Veselka, associate commissioner for curriculum and assessment, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as

a result of enforcing or administering the section.

Mr. Veselka and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that academic achievement will be emphasized over extracurricular participation. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Education Code, §21.920, which authorizes the State Board of Education to adopt rules limiting participation in and practice for extracurricular activities during the school day and the school week.

#### §75.411. [Student Absences for] Extracurricular [or Other] Activities.

(a)[(m)] The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. [Definitions of "curricular," "cocurricular," and "extracurricular" activities shall be as follows.]

(1) Curricular activity—An activity that occurs during [activities occur within] the regular school day and constitutes [constitute] the delivery of instruction as specified in this chapter.

(2) Cocurricular activity—An activity that is [activities are] an extension of classroom instruction in which participation is by the entire class or a significant portion thereof. It [They relate] directly relates to and enhances [enhance] student learning of essential elements through participation, demonstration, illustration, and observation. Cocurricular activities are included in the teacher's instructional plan and are conducted by or supervised by a classroom teacher or other education [educational] professional, such as a librarian, school nurse, counselor, or administrator. Subsection (f) [(e)] of this section shall not prevent students from participating in [after-school] cocurricular activities. An absence [Absences] for participating [participation] in a cocurricular activity [activities] that requires [require] a student to miss a class other than the sponsoring class [or course] shall be counted as an absence under subsection (b) of this section [the 10-day rule].

An activity shall not be classified cocurricular if the answer to any of the questions in paragraph (3) of this subsection is "yes."

(3) Extracurricular activity—A [activities are] school-sponsored activity that is [activities which are] not directly related to instruction of the essential elements, but that [they] may have an indirect relation to some areas of the curriculum. Extracurricular activities [They] offer worthwhile and significant contributions to a student's personal, physical, and social development. Participation in extracurricular activities is a privilege, [and] not a right, and students must meet specific requirements [in order] to participate. Extracurricular activities [Activities] may include, but are not limited to, performances [performance], contests, demonstrations, displays, and club activities. If the answer to any one of the following questions is "yes," the activity must be classified extracurricular.

(A) Is the activity a school-sanctioned competitive activity?

(B) Is the activity, though school-sanctioned, sponsored by an organization that is not completely controlled by a school district?

(C) Is the school-sanctioned activity conducted in conjunction or coincidence with an extracurricular activity?

(D) Is the school-sanctioned activity held off campus? (Exceptions are field trips in which a majority of class members participates, and class performances held off campus due to lack of facilities, e.g., school choral performances held at a local church or community center because the school has no auditorium.)

(E) Are those who attend the activity charged admission?

(b)[(a)] School districts shall not schedule [,] nor permit a student [students] to participate in [,] any school-related or school-sanctioned [school related or sanctioned] activities on or off campus that would require, permit, or allow the [a] student to be absent from class in any course more than 10 times during the [175-day] school year [full-year course]. Noninstructional school activities must be held outside of [minimum 55-minute] scheduled academic class periods [in Grades 9-12, 45-minute scheduled academic class periods in Grades 7-8, and six hours of academic class periods in Grades 4-6.] or be included in one of the six [allowable] shortened schedules allowed by §105.31 [referred to

in §105.71] of this title (relating to Abbreviated Days of Instruction [Days of Operation Required]).

(c)[(b)] A school district shall inform the commissioner of education of specific exceptions to the [10 absences] limitation of 10 absences stated in subsection (b) [(a)] of this section on behalf of [individual] students who are competing in [UIL-sponsored] activities sponsored by the University Interscholastic League (UIL). This exception must be based on unforeseen circumstances that arise because the student earned [which are unforeseen and which result from the students earning] the right to compete at post-UIL-district levels. Exceptions shall not exceed a total of five additional absences per year. Participants in post-district competitions sponsored by other organizations approved by the commissioner of education shall also be eligible for exceptions under [in accordance with] this subsection. Exceptions will not be granted for the sole purpose of allowing [just to allow] students who have not earned the right to compete at the post-district level to participate in more district-level activities than permitted under the [10 absences] limitation of 10 absences.

(d)[(c)] A student [in Grades 7-12] may participate in extracurricular activities on or off campus during the first grading period [at the beginning] of the school year only if the student has met the following academic requirements. [earned the cumulative number of credits in state-approved courses indicated in this subsection:]

(1) A student beginning ninth grade or below must have been promoted from a lower grade prior to the beginning of the current school year.

(2) For purposes of this section, the year in which the student first enrolls in the ninth grade is the student's first year of high school.

(3) A student beginning his or her second year of high school must have earned five credits that count toward state high school graduation requirements.

(4) A student beginning his or her third year of high school either must have earned a total of 10 credits that count toward state high school graduation requirements, or must have earned five credits that count toward state high school graduation requirements during the 12 months preceding the first day of the current school year.

(5) A student beginning his or her fourth year of high school either must have earned a total of 15 credits that count toward state high school graduation requirements, or must have earned five credits that count toward state graduation requirements during the

12 months preceding the first day of the current school year.

[(1)] beginning at the seventh grade year—have been promoted from the sixth grade to the seventh;

[(2)] beginning at the eighth grade year—have been promoted from the seventh grade to the eighth;

[(3)] beginning at the ninth grade year—have been promoted from the eighth grade to the ninth;

[(4)] beginning of the 10th grade year—at least five credits toward graduation;

[(5)] beginning of the 11th grade year—at least nine credits toward graduation for the 1985-1986 school year and 10 credits each year thereafter; and

[(6)] beginning of the 12th grade year—at least 13 credits toward graduation for the 1985-1986 school year, at least 14 credits for the 1986-1987 school year, and 15 credits each year thereafter.]

(e)[(d)] To [In order to] be eligible to participate in an extracurricular activity during [event for] a grading [six-week] period following the initial grading [six weeks] period of a school year, a student must not have earned a [recorded] grade average lower than 70 on a scale of 0-100 [0 to 100] in any course for the [that] preceding grading [six weeks] period.

(f)[(e)] A student who, at the end of a grading period, earns a [whose recorded six weeks] grade average lower than 70 in any course [is lower than 70 at the end of a six-week period] shall be suspended from participating [participation] in any extracurricular activity or out-of-school practice for any extracurricular activity. The student shall remain suspended [event] during succeeding grading [six week] periods until the end of a grading [six-week] period during which the [such] student achieves a course grade average for that grading period [six weeks] of at least 70 in each course. [, except the] The campus principal may remove the [this] suspension if the class is identified as an honors class under the criteria stated in §75.152(d) and (e) of this title (relating to Advanced High School Program), or as one of the following advanced classes [class as follows]:

(1) English language arts: English IV Academic [(composition), English IV Academic (British Literature)], World Literature, Creative/Imaginative Writing, Research/Technical Writing, Debate III, Public Speaking III;

(2) other languages: Other Languages III, Advanced Languages I-IV;

(3) social studies: Advanced Social Science Problems;

(4) fine arts: Art IV, Theatre Arts IV, Band IV Orchestra IV, Choral Music IV, Stage Band IV, and Music Theory I-II;

(5) mathematics: Trigonometry, Elementary Analysis, Analytic Geometry, Precalculus [Pre-Calculus], Linear Algebra, Calculus; and

(6) science: Physics I, Physics II, Chemistry II, Biology II.

(g)[(f)] Suspension from participation in extracurricular activities [For the 1984-1985 school year, suspensions shall begin with the second six weeks period of the spring semester based on a student earning a grade lower than 70 in any course taken during the first six weeks of the spring semester. Such suspension] shall become effective seven calendar days after the last day of the grading [six weeks] period during which the grade lower than 70 was earned.

[(g)] A student who has been suspended from extracurricular activities under activity events pursuant to subsections (e) and (f) of this section shall also be suspended from out-of-school practice in such extracurricular activities until such suspension from participation has been lifted.]

(h) Students who are suspended from participation in extracurricular activities shall not be denied the right to participate fully in all classes in which they are enrolled and in all cocurricular activities related to these classes [At the end of any six weeks period in which a student has attained a course grade average for that six weeks of 70 or more in each course taken, any suspension from participating in extracurricular activities and/or suspension of out-of-school practice of extracurricular activities shall be removed].

(i) All UIL-sponsored activities are sanctioned as school-related activities and therefore are subject to [come under] the provisions of this section. The governing boards at the highest state level of any other organizations requiring student participation that [which] causes a student to miss a class during the school day must request approval [,] in writing [,] from the commissioner of education. If the commissioner of education approves [approval of] the organization [is granted] and the local board of trustees concurs, student participation in the organization's activities will be subject to all provisions of this section. If the organization [approval] is not approved [granted], any absences incurred by the student will be [considered] unexcused.

(j) Each school district [School districts] shall develop a policy that [which] implements this section, including a provision regulating the number of times a student may be absent under [pursuant to]

subsection (b) [(a)] of this section during any one semester [course].

(k) Limitations on practice and performance shall be as follows.

(1) School districts shall adopt policies limiting extracurricular activities during the school week [from the beginning of the school week through the end of the school week] (excluding holidays) by scheduling no more than one contest or performance per activity per student, [and by limiting practice outside the school day to a maximum of eight hours per school week per activity] except as specified in paragraph (2) of this subsection. [For schools with limited facilities, exceptions may be made to the one contest or performance per activity by the commissioner of education. The rule concerning scheduling one contest or performance per activity per student per school week shall be effective September 1, 1985.]

(2) Tournaments and post-season competition, as well as contests postponed by weather or public disaster, may also be scheduled during the school week. The commissioner of education may make exceptions to paragraph (1) of this subsection for schools with limited facilities. [This subsection shall apply only to the University Interscholastic League and other organizations sanctioned by the Central Education Agency in accordance with subsection (i) of this section.]

(3) Schools shall limit students to one period of practice during the regularly scheduled school day for interschool competitive athletics and all other extracurricular activities, including drill team and cheerleaders. The one-period limit shall also apply to state approved courses such as band, choir, drama, and debate if class time from these courses is used to prepare for extracurricular performances. The one-period limit is not intended to prohibit a student from enrolling in any state approved course listed in this chapter.

(4) For schools using an alternative or nontraditional class schedule, the total time allotted over a two-week period for extracurricular practice during the school day shall not exceed the total time allotted over a two-week period for any other academic class during the school day. The limit on practice shall not prohibit a student from enrolling in any state-approved course listed in this chapter.

(5) Schools shall limit students to a maximum of eight hours of practice outside the school day per school week per activity. A school week begins at 12:01 a.m. of the first day of instruction in a week and ends at the close of instruction on the last day of instruction for that week.

(6) This subsection shall apply only to the UIL and other organizations sanctioned by the commissioner of education in accordance with subsection (j) of this section.

(l) At the end of the first three weeks of a grading period, the school district shall send notice of progress to the parent or guardian of a student whose grade average in any class is lower than 70 or whose grade average is deemed borderline by the district. The district shall make the [such] information available to sponsors of extracurricular activities in which the student participates. The notice shall [should] stipulate that the student will have the remainder of the grading [six weeks] period to raise his or her [bring the] grade average [up] to 70 or above and that failure to do so will result in suspension [the student will be suspended] from extracurricular activities [if the grade is not brought up to 70 or above by the end of the six weeks period]. The district may require any student affected by [who falls within] this subsection to attend tutorial sessions. Failure to comply with this reporting requirement shall not restore the eligibility of a student whose grade average is lower than 70 in any course at the end of a grading period.

(m) Whether or not a student participates in an extracurricular activity shall not affect his or her class grades.

(n) No extracurricular activity shall be scheduled to occur on the day or evening immediately preceding the day on which tests mandated by the state (criterion-referenced tests, such as the Texas Assessment of Academic Skills (TAAS) test; or norm-referenced tests) will be administered to students.

(o) A student enrolled in a school district that operates a year-round education program is eligible to participate in extracurricular activities during his or her recess period or, specifically, when the student's calendar track is not in session. However, all limitations on practice and performance stated in subsection (k) of this section shall apply.

[(n) For the fourth six-week period in the 1984-1985 school year only, a student may participate in extracurricular or other activities on or off campus that require absences from one or more classes only if:

[(1) the student has and maintains a 70 average or better in at least four of the courses in which that student is enrolled for the prior and current semester;

[(2) that student does not miss any class in which the student does not have and maintain at least a 70 average; and

[(3) only courses approved for state graduation credit by the State Board of Education may be counted toward the number in which the student must have and maintain a 70 average or better. Courses in physical education or competitive athletics may not be counted.

[(o) For the fourth six-week period in the 1984-1985 school year only, students shall be eligible to participate in University Interscholastic League activities in accordance with current University Interscholastic League rules and this subsection.

[(1) The student is eligible to participate in a league varsity contest as a representative of a participant school if he or she meets current University Interscholastic League requirements and the following:

[(A) the student has attended more than one-half of the preceding semester and passed at least four one-half credit courses, including at least three separate courses, as required by the University Interscholastic League constitution and contest rules, §411, as it was in effect for the fall semester of the 1984-1985 school year.

[(B) the student is passing at least four one-half credit courses or the equivalent, including at least three separate courses, as required by the University Interscholastic League constitution and contest rules, §412, as it was in effect for the fall semester of the 1984-1985 school year.

[(2) To determine if a student is passing at least four one-half credit courses, the student's work from the beginning of the semester to seven days before the contest (or 30 days before a music contest) in which the student intends to participate must be considered.]

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 February 22, 1993.

TRD-9319334      Criss Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Earliest possible date of adoption: March 29, 1993

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

◆      ◆      ◆  
• 19 TAC §75.412

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



The Texas Education Agency (TEA) proposes the repeal of §75.412, concerning competitive athletics during the school day. Currently, §75.412 applies only to athletics; however, the text relates logically to other limits on practice and performance contained in §75.411. Therefore, in a separate submission, the substance of §75.412 is being included in an amendment to §75.411.

Marvin Veselka, associate commissioner for curriculum and assessment, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Veselka and Criss Cloutd, director of policy planning and evaluation, have determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a clearer, more concise statement of the rules relating to extracurricular activities. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The repeal is proposed under the Texas Education Code, §21.920, which authorizes the State Board of Education to adopt rules limiting participation in and practice for extracurricular activities during the school day and the school week.

#### §75.412. Competitive Athletics During the School Day.

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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## Chapter 141. Teacher Certification

### Subchapter U. Alternative Teacher Certification

#### • 19 TAC §141.481, §141.482

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

The Texas Education Agency (TEA) proposes the repeal of §141.481 and §141.482, concerning alternative teacher certification. The sections are being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. After review, the substance of these sections is being relocated to Chapter 137.

Linda Cimusz, administrator for professional development and policy planning, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Cimusz and Criss Cloutd, director of policy planning and evaluation, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clearer, more concise statement of the rules relating to teacher certification. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

#### §141.481. Requirements for the Alternative Certification of Teachers.

#### §141.482. Requirements for the Alternative Certification of Administrators.

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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Criss Cloutd  
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## Chapter 145. Professional Environment

### Subchapter A. Professional Environment in General

The Texas Education Agency (TEA) proposes the repeal of §§145.1, 145.2, 145.21, and 145.41-145.48, concerning professional environment. The chapter is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. A new Chapter 145 is being proposed in a separate submission.

Tom Anderson, executive deputy commissioner for school support services, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Anderson and Criss Cloutd, director of policy planning and evaluation, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clearer, more concise statement of the rules relating to professional environment. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

#### • 19 TAC §145.1, §145.2

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

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

#### §145.1. Policy.

### §145.2. Paperwork Reduction.

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-9319337 Criss Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

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The Texas Education Agency (TEA) proposes new §§145.1, 145.2, and 145.21-145.24, concerning professional environment. The sections establish policies for professional environment in public schools including paperwork reduction, preparation and planning time, developmental and military leave, and duty-free lunch.

Tom Anderson, executive deputy commissioner for school support services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Anderson and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the professional environment in public schools will provide a climate of freedom, with responsibility, for students to learn and teachers to teach. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

### • 19 TAC §145.1, §145.2

The new sections are proposed under the Texas Education Code (TEC), §21.925, which requires the State Board of Education (SBOE) to adopt rules that simplify and reduce the number and length of written reports required of school districts; the TEC, §21.910, which requires the SBOE to establish a procedure whereby applications for developmental leave are received and evaluated by the governing board of a school district and to determine an equitable ratio of classroom teachers to other certified personnel who may

be granted leave over a period of time; and the TEC, §13.909, which requires the SBOE to prescribe guidelines for determining what constitutes a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstance, as these concepts relate to duty-free lunch.

**§145.1. Policy.** The professional environment in the public schools of Texas shall provide a climate of freedom, with responsibility, for students to learn and teachers to teach, and shall ensure responsibility and responsiveness between the employee and the school district. This environment shall be consistent with the basic purpose of education and state and federal laws.

### §145.2. Paperwork Reduction.

(a) The board of trustees of each school district shall adopt policies to limit the number and length of written reports that teachers must prepare. The State Board of Education (SBOE) intends that, by implementing this section, school districts will significantly reduce paperwork for classroom teachers.

(b) Classroom teachers shall not be required to prepare written reports other than those described in the Texas Education Code, §21.925(e).

(c) With respect to the reports described in the Texas Education Code, §21.925(e)(6), districts shall review the paperwork currently required of classroom teachers and transfer reporting tasks that can reasonably be accomplished by existing noninstructional staff. When information needed to comply with federal or state requirements cannot reasonably be collected without the direct involvement of the classroom teacher, teachers may be required to provide this information.

(d) Redundant requests for information shall be avoided.

(e) Nothing in this section shall preclude a school district from collecting other essential information from classroom teachers on a voluntary basis, provided that:

(1) participation shall not be coerced;

(2) the decision not to participate shall not be held against the teacher; and

(3) the commissioner shall promptly investigate any alleged misuse of voluntary information gathering procedures that burden teachers and circumvent compliance with the statutory intent of paperwork reduction.

(f) The commissioner of education shall direct and work with Central Education Agency staff to reduce the amount of paperwork required of local school districts

and, in particular, of teachers. Staff members shall perform at least the following tasks:

(1) conduct a comprehensive review of paperwork currently required by state and federal laws and regulations, and recommend alternatives for simplifying and reducing the requirements to the extent possible;

(2) consider the paperwork implications of new rules and procedures;

(3) provide technical assistance to school districts to help them comply with procedural and reporting requirements in ways that do not require extensive paperwork of teachers; and

(4) develop sample curriculum guides, lesson plans, and related reports.

(g) As part of each regular accreditation monitoring visit, the Central Education Agency shall review school district paperwork reduction efforts.

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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Director of Policy Planning  
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## Subchapter B. Professional Assurances

### • 19 TAC §145.21

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

The repeal is proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

### §145.21. Policy and Procedure.

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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Texas Education Agency

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## Subchapter B. Employment Assurances

### • §§145.21-145.24

The new sections are proposed under the Texas Education Code (TEC), §21.925, which requires the State Board of Education (SBOE) to adopt rules that simplify and reduce the number and length of written reports required of school districts; the TEC, §21.910, which requires the SBOE to establish a procedure whereby applications for developmental leave are received and evaluated by the governing board of a school district and to determine an equitable ratio of classroom teachers to other certified personnel who may be granted leave over a period of time; and the TEC, §13.909, which requires the SBOE to prescribe guidelines for determining what constitutes a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstance, as these concepts relate to duty-free lunch.

#### §145.21. Preparation and Planning Time.

(a) Each teacher who instructs children in the public schools of Texas shall have at least one 45-minute period during the scheduled school day free from supervision of students for conducting parent-teacher conferences, reviewing students' homework, and planning and preparation. During that time, a teacher shall not be required to participate in any other activity. The 45-minute period must be provided:

(1) without regard to any other time free from supervision allotted to the teacher for other reasons; and

(2) within seven hours after classes begin for the school day.

(b) Any teacher who teaches in more than one school must be provided the required 45-minute planning and preparation period within seven hours after classes begin in the school in which the teacher's first teaching assignment of the day is scheduled.

(c) Districts that extend the school day beyond the required seven-hour minimum for instructional purposes may schedule the required 45-minute planning and preparation period during the extended school day. Preparation and planning periods must be scheduled during the time that students are being instructed in regularly scheduled classes. A district may not extend the seven-hour school day solely to provide time for the required 45-minute planning and preparation period. The extension must be used primarily for instructional purposes, not to provide time for extracurricular activities.

#### §145.22. Developmental Leave.

(a) Policy. A school district may provide a developmental leave program for teachers and other certified personnel; however, the program shall comply with applicable law and with administrative procedures established by the commissioner of education and approved by the State Board of Education (SBOE). A developmental leave program shall provide a leave of absence for study, research, travel, or other suitable purposes designed for academic and professional enrichment.

(b) Administrative procedure. The developmental leave program shall be administered by the governing board of each school district according to the following procedures.

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

(A) Other certified personnel—An employee of a school district whose job requires a permanent teaching certificate under the laws of the State of Texas, but who is scheduled to spend less than 50% of his or her time in classroom teaching.

(B) Teacher—An employee of a school district whose job requires a permanent teaching certificate under the laws of the State of Texas, and who is scheduled to spend 50% or more of his or her time in classroom teaching.

(2) Requirements. The governing board of each school district desiring to implement a developmental leave program shall:

(A) design a developmental leave program that includes policies and administrative procedures for implementation by the district;

(B) establish objectives and evaluation procedures for a developmental leave program;

(C) develop an application for staff developmental leave;

(D) establish and implement a process to review, evaluate, and approve applications of professional personnel;

(E) ensure that a person on developmental leave shall continue to be a member of the school district staff for purposes of participating in programs, holding

memberships, and receiving benefits afforded by his or her employment in the school district;

(F) ensure that the provisions of the program are made known to all staff members; and

(G) include provisions in the program to ensure that the ratio of leaves granted to classroom teachers to leaves granted to other certified personnel over a specified period of years shall be as near as possible to the ratio of the number of teachers to the number of other certified personnel on the staff of the district.

#### §145.23. Military Leave of Absence.

(a) Personnel shall be granted military leave in accordance with Texas Civil Statutes, Article 5765, and shall be considered employed while on military leave. Days of service on the service record shall include days for military leave taken under this section.

(b) An employee on military leave of absence shall be reported on the roster of personnel for the number of days on military leave, not exceeding 15 days.

#### §145.24. Duty-Free Lunch.

(a) Districts shall provide teachers with a duty-free lunch period in accordance with the provisions of the Texas Education Code, §13.909.

(b) For the purposes of this section, districts shall use the following guidelines to determine what constitutes a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstance.

(1) A personnel shortage exists when, despite reasonable efforts of the district to use nonteaching personnel or the assistance of community volunteers to supervise students during lunch, there are no other personnel available.

(2) Extreme economic conditions exist when the percentage of a local tax increase, including any amounts necessary to implement this section, would place the district in jeopardy with respect to a potential tax roll-back election as provided in the Texas Property Tax Code, §26.08.

(3) Unavoidable or unforeseen circumstances exist when, due to illness, epidemic, or natural or man-made disaster, the district is unable to find an individual to supervise students during lunch.

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 February 22, 1993.

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Criss Cloudt  
Director of Policy Planning  
And Evaluation  
Texas Education Agency

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

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**Subchapter C. Employment  
Assurances**

• 19 TAC §§145.41-145.48

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

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§145.41. *Employment Consultation.*

§145.42. *Employment Contracts.*

§145.43. *Length of Contracts.*

§145.44. *Preparation and Planning Time.*

§145.45. *Developmental Leave.*

§145.46. *Leave of Absence for Temporary Disability.*

§145.47. *Military Leave of Absence.*

§145.48. *Duty-Free Lunch.*

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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**Chapter 149. Education  
Personnel Development**

**Subchapter A. Educational Personnel Development Program**

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

The Texas Education Agency (TEA) proposes the repeal of §§149.1-149.3, 149.21-149.25, 149.41-149.46, 149.71, 149.81, and 149.91, concerning education personnel development. The chapter is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. A new Chapter 149 is being proposed in a separate submission.

Linda Cimusz, administrator for professional development and policy planning, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Cimusz and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clearer, more concise statement of the rules relating to professional development programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

• 19 TAC §§149.1-149.3

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§149.1. *Purpose of Program.*

§149.2. *Funding.*

§149.3. *Educational Aid for Teachers: Designation of Areas and Fields of Acute Teacher Shortage.*

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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Director of Policy Planning  
and Evaluation  
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The Texas Education Agency (TEA) proposes new §§149.1, 149.2, 149.21, 149.22, 149.24, 149.25, 149.41-149.46, 149.71, and 149.81, concerning educational personnel development. The sections establish a professional development program for educational personnel and guidelines for inservice education, appraisal of certified personnel, and the teacher career ladder.

Linda Cimusz, administrator for professional development and policy planning, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Anderson and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that educational personnel will have an opportunity to develop and maintain their potentials for current educational processes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

• 19 TAC §§149.1, §149.2

The new sections are proposed under the Texas Education Code (TEC), §11.21, which authorizes the State Board of Education (SBOE), as part of the teacher staff development required under the TEC, §16.052, to adopt rules requiring instruction in subject areas the board considers appropriate; and the TEC, §13.032, which requires the SBOE to adopt rules concerning an appraisal process and performance criteria for career ladder level assignment purposes and assessment instruments for the purpose of remediation and improvement.

§149.1. *Purpose of Program.*

(a) Policy.

(1) The Texas Education Agency maintains a regular professional teacher preparation program and shall maintain a complementary statewide educational personnel development program to meet the particular personnel needs of the state. The program shall involve public school districts, colleges and universities, education service centers, and the Texas Education Agency. The program shall focus on the following basic strategies:

(A) direct training and re-training efforts toward pre-elementary, elementary, and secondary education personnel;

(B) encourage variation among training projects across the state;

(C) encourage and develop cooperative action plans among and within the state and local education agencies, colleges, and universities; and

(D) promote imaginative, multiply-funded projects using local, state, and federal resources.

(2) Efforts shall concentrate on providing the opportunity for educational personnel to develop and maintain their potential for current educational processes.

(b) Administrative procedure. The Texas Education Agency administers and directs the statewide program. The Texas state plan for attracting and qualifying teachers to meet critical teacher shortages and Texas statewide design for educational personnel development are maintained by the Texas Education Agency. These two plans describe the regulations and operations of the statewide educational personnel development program.

**§149.2. Educational Aid for Teachers: Designation of Areas and Fields of Acute Teacher Shortage.**

(a) Annually, the State Board of Education shall designate those areas or fields of acute teacher shortage for purposes of the educational aid for teachers programs authorized in the Texas Education Code, Chapter 52, Subchapter C.

(b) These fields and areas shall be designated based upon the most current teacher supply/demand information, including, but not limited to, numbers and types of new certificates issued, shortages reflected in school district permit requests, and changing needs which result from new curriculum or program requirements.

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

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**Subchapter B. Inservice Education**

• 19 TAC §§149.21, 149.22, 149.24, 149.25

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

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

**§149.21. General Requirements for Staff Development.**

**§149.22. Induction Program for Beginning Teachers.**

**§149.24. Standards for Management and Leadership Development for Administrators.**

**§149.25. Master Teacher Program.**

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

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• 19 TAC §§149.21, 149.22, 149.24, 149.25

The new sections are proposed under the Texas Education Code (TEC), §11.21, which authorizes the State Board of Education (SBOE), as part of the teacher staff development required under the TEC, §16.052, to

adopt rules requiring instruction in subject areas the board considers appropriate; and the TEC, §13.032, which requires the SBOE to adopt rules concerning an appraisal process and performance criteria for career ladder level assignment purposes and assessment instruments for the purpose of remediation and improvement.

**§149.21. General Requirements for Staff Development.**

(a) Staff development is defined as a planned program of learning opportunities that affords staff members of school districts opportunities for improving performance in currently held or newly assigned positions and creates an environment that encourages continuing job-related learning throughout the career of educators. Staff development shall include technology training.

(b) The district's staff development program may include topics designated by the State Board of Education for annual district priority consideration such as special education, abuse or neglect in students, dyslexia, discipline management, teacher appraisal orientation, HIV infection, suicide prevention, emotional disturbance, and recognition of signs that a student is using alcohol or other drugs.

(c) Teachers shall not be required to participate in group meetings, training, or other activities outside the classroom on preparation days, except for the three hours specified in statute.

(d) Participants shall include all professional personnel and those paraprofessionals who regularly work with students in an instructional setting. Districts are encouraged to offer staff development opportunities for all personnel.

(e) With advance local district approval, activities planned by or sponsored by school districts, education service centers, colleges/universities, professional associations, or governmental agencies may be counted as part of the required staff development.

**§149.22. Induction Program for Beginning Teachers.**

(a) General provisions. Effective with the 1991-1992 school year, all beginning teachers without any prior teaching experience earned in employment with an entity listed in §121.33 of this title (relating to Entities Recognized for Creditable Service) shall be assigned a mentor teacher.

(b) Induction training for beginning teachers. All beginning teachers shall participate in teacher orientation which may

include specialized induction year program activities that are approved by the district for school year 1991-1992.

**§149.24. Standards for Management and Leadership Development for Administrators.**

(a) General provisions: The training required in accordance with the Texas Education Code, §13.353, concerning management skills and practices, applies to school district administrators in positions listed in the Texas Education Code, §16.056(d), starting with supervisor I through superintendent-district with 50,000 or more average daily attendance (ADA).

(1) Continuing inservice. After fulfilling the initial required training for instructional leadership and the Texas teacher appraisal system, each school administrator shall participate annually in continuing education in management and leadership development as defined in the Texas Education Code, §13.353(c).

(2) Program approval.

(A) Each sponsoring agency shall be approved by the Central Education Agency to deliver continuing education in the areas of administrative leadership and management. Program delivery dates shall be submitted to the Central Education Agency 30 days prior to delivery.

(B) Approved sponsoring agencies shall have an evaluation design that includes the assessment of knowledge and skills of the participants. An expected level of performance will be identified by the school district or sponsoring agency. Approved sponsors will provide verification of completion for those meeting program expectations. Sponsors will be responsible for providing the Central Education Agency, when requested, with documentation from the practitioners that the program content is relevant and related to job-specific skills or the core content.

(C) Approved sponsoring agencies will be reviewed by the Central Education Agency at least every five years with compliance audits scheduled at any time. All sponsoring agencies will maintain approved status unless notified by the agency.

(3) Training institutions and instructors.

(A) Approved programs for district administrators in leadership and management professional development must be sponsored by an education service center, college or university, appropriate pro-

fessional organization, school district, approved private organization, or the Central Education Agency.

(B) Program instructors must have documented training and experience in the subject areas in which they are delivering instruction.

(C) Institutions sponsoring programs will verify and document the qualifications of program instructors.

(D) Each institution providing training in general management, instructional leadership, and teacher evaluation must designate a member of its training staff to attend a Central Education Agency sponsored workshop on content, standards, and techniques.

(4) Verification. The sponsoring agency will provide verification of completion to the individual participant and to the participant's employing school district.

(b) Continuing professional development programs are required in the following areas.

(1) General management training.

(A) General management training will be based on a core curriculum and job-specific content approved by the State Board of Education. The core curriculum shall include the following domains:

- (i) administrator skills;
  - (ii) conceptual skills;
  - (iii) interpersonal skills;
- and
- (iv) resource skills.

(B) The curriculum will be revised and updated periodically.

(C) The general management advisory committee will recommend exemplary assessment instruments. Each school district, with the help of the education service center as needed, will assess its district and individual administrator training needs. The initial implementation plan in general management training will begin with the 1987-1988 school year.

(D) The district's plans for management and leadership development should reflect the State Board of Education's direction for academic improvement.

(E) During the 1987-1988 school year each school district, with the

assistance of the education service center, if needed, will appoint a district advisory committee to initiate the process of developing or selecting an assessment process for evaluating the district's needs based on the core and job-specific content requirements established by the State Board of Education.

(F) During the 1988-1989 school year, the district's advisory committee will review and validate a process for assessing district needs. The Central Education Agency will provide technical assistance to the districts as needed. Each district will interpret assessment results and plan for training accordingly. The assessment results and development plans shall be kept on file for monitoring purposes by the Central Education Agency.

(G) During the 1988-1989 school year each school district, with the assistance of the education service center, if needed, will identify and conduct a pilot program commensurate with individual and district needs and consistent with the district's long-range plan.

(H) Each school district will document the completion and effectiveness of administrator development based on the State Board of Education core and job-specific requirements, as identified through the Central Education Agency's effective school correlates.

(I) Effective with the 1989-1990 school year each school district will implement an approved program of management and leadership development to help ensure effective implementation of the State Board of Education's long-range plan.

(J) Each school district's evaluation process will result in growth plans for each administrator which will serve as the basis for continuing education for the individual.

(2) Instructional leadership development.

(A) Content of programs for instructional leadership training. Development programs for instructional leadership must address the following content areas:

- (i) knowledge and skills related to learners and learning;
- (ii) knowledge and skills related to teaching;
- (iii) knowledge and skills related to managing and supervising teaching and learning;

(iv) knowledge, skills, and attitudes related to climate for instruction; and

(v) knowledge and skills related to diverse presentation models.

(B) Length of training program. The initial professional development program for administrators in instructional leadership shall consist of not less than 36 hours.

(C) Sequence. All school district administrators must have completed initial training in instructional leadership prior to attending programs for teacher appraiser certification.

(D) Primary position with fiscal responsibility. Personnel who hold the primary position charged with fiscal responsibility for a district's instructional resources must complete the initial instructional leadership development requirement. Thereafter, continuing education for these administrators in leadership and management may be job-specific.

(3) Teacher evaluation training.

(A) As an exception to subsection (a) of this section, teacher evaluation training is required of superintendents and of those school district administrators who serve as appraisers of teacher performance. Superintendents who previously have been certified for teacher evaluation and who will not be conducting appraisals during the school year are required to complete only that portion of appraisal training that focuses on changes in the system.

(B) Initial training requirements relating to teacher evaluation will be met through the training and certification program for appraisers of teacher performance as required in accordance with the Texas Education Code, §13.302(c).

(C) Continuing requirements for certification as an appraiser of teacher performance will be satisfied by maintenance of proficiency for appraisers or by completion of appraisal update training.

§149.25. Master Teacher Program.

(a) Definition of master teacher. A master teacher is a professional educator who:

(1) maximizes increased learning and performance outcomes for all students;

(2) consistently demonstrates, at an exemplary level, effective teaching practices;

(3) enhances students' interests and attitudes about life and learning; and

(4) exhibits a superior level of both subject matter and general knowledge while teaching students in the classroom. The master teacher is able to analyze and communicate effectively with students and teaching colleagues how various components of curriculum and instruction are related. A master teacher is able to exhibit leadership at campus or district levels in curriculum, instruction, professional development, and communication as related to increased student learning and performance outcomes. A master teacher operates effectively, relating comfortably to students, with minimal supervision. A master teacher is reflective, self-directed, and is capable of making and explaining professional judgments which affect students.

(b) Master teacher assignment areas. Master teachers will fulfill responsibilities in specified assignment areas that relate directly to their school district's educational mission to students. The assignments will reflect a commitment to established educational goals, objectives, and major district-wide classroom instructional or staff development programs that have been designed collaboratively by administrators and teachers. Master teachers shall not be assigned administrative duties. Seven differentiated master teacher assignment areas include, but are not limited to:

(1) professional development specialist;

(2) academic group leader:

(A) grade level chair (elementary grades) or department chair (secondary grades);

(B) cooperative team leader;

(3) curriculum and instruction specialist;

(4) collegial mentor:

(A) supervisor of student teachers;

(B) mentor teacher;

(5) student growth and development specialist;

(6) communications specialist; and

(7) teacher appraiser specialist.

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. Appraisal of  
Certified Personnel

• 19 TAC §§149.41-149.46

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

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§149.41. General Provisions.

§149.42. Teacher Performance Criteria.

§149.43. Teacher Appraisal Procedures.

§149.44. Teacher Appraisal Instrument, Scoring Procedures, and Forms.

§149.45. Administrator Performance Criteria.

§149.46. Administrator Appraisal Procedures.

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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• 19 TAC §§149.41-149.46

The new sections are proposed under the Texas Education Code (TEC), §11.21, which authorizes the State Board of Education (SBOE), as part of the teacher staff development required under the TEC, §16.052, to adopt rules requiring instruction in subject

areas the board considers appropriate; and the TEC, §13.032; which requires the SBOE to adopt rules concerning an appraisal process and performance criteria for career ladder level assignment purposes and assessment instruments for the purpose of remediation and improvement.

#### §149.41. General Provisions.

(a) Each teacher and administrator shall be appraised annually in the performance of his or her duties. This requirement shall apply to all certified personnel, as classified in the Texas Education Code, §16.056, Texas Public Education Compensation Plan, including the nondegreed teacher and the noncertified administrator.

(b) The results of the appraisal of teachers shall be used for career ladder and staff development purposes and may be used for contract renewal considerations. The results of the appraisal of administrators shall be used for staff development (relating to standards for management and leadership development for administrators) purposes and may be used for contract renewal considerations.

(c) For professional personnel exempted from the career ladder under §149.71(b)(7) of this title (relating to Assignment to the Teacher Career Ladder), at least one evaluation conducted by one appraiser is required, using the evaluation instrument(s) adopted by the local board of trustees. Nondegreed teachers shall be evaluated once each year by two appraisers.

(1) Beginning with school year 1991-1992, all administrators shall be appraised annually by at least one appraiser, the administrator's supervisor(s), using the state criteria and procedures approved by the State Board of Education under §149.45 and §149.46 of this title (relating to Administrator Performance Criteria; Administrator Appraisal Procedures).

(2) Each appraiser shall be trained in the appropriate use of the instrument(s).

(d) Each school district shall appraise teachers using the state appraisal process and performance criteria developed and approved by the State Board of Education.

(e) As an exception to subsection (d) of this section, districts approved by the State Board of Education to conduct research projects for the state may be exempted from certain provisions of the state appraisal system. Approved research projects will address the use of student progress, a different approach to the identification of quality aspects of teacher performance, alternate procedures for scoring at the criterion level, or other issues of merit.

§149.42. *Teacher Performance Criteria.* In the appraisal of teacher performance for career ladder assignments and for staff development, performance shall be appraised with the following performance criteria subsumed under five major areas henceforth called domains.

(1) Domain I-instructional strategies.

(A) Criterion 1-provides opportunities for students to participate actively and successfully.

(B) Criterion 2-evaluates and provides feedback on student progress during instruction.

(2) Domain II-classroom management and organization.

(A) Criterion 3-organizes materials and students.

(B) Criterion 4-maximizes amount of time available for instruction.

(C) Criterion 5-manages student behavior.

(3) Domain III-presentation of subject matter.

(A) Criterion 6-teaches for cognitive, affective, and/or psychomotor learning and transfer.

(B) Criterion 7-uses effective communication skills.

(4) Domain IV-learning environment.

(A) Criterion 8-uses strategies to motivate students for learning.

(B) Criterion 9-maintains supportive environment.

(5) Domain V-professional growth and responsibilities.

(A) Criterion 10-plans for and engages in professional development.

(B) Criterion 11-interacts and communicates effectively with parents.

(C) Criterion 12-complies with policies, operating procedures, and requirements.

(D) Criterion 13-promotes and evaluates student growth.

#### §149.43. *Teacher Appraisal Procedures.*

(a) Appraiser qualifications.

(1) The teacher appraisal process requires at least two appraisers for each appraisal period.

(2) One appraiser must be the teacher's supervisor and, except for those serving as part-time principals or in other extraordinary circumstances approved by the commissioner of education, must hold administrator or supervisor certification.

(3) Appraisers other than the teacher's supervisor, including appraisers serving as a third appraiser, must be approved by the local board of trustees, have a valid teaching certificate, and have at least two years of prekindergarten, kindergarten, elementary, or secondary classroom teaching experience.

(4) Classroom teachers may not appraise teachers on the same campus unless there is only one school campus in the district. Teachers serving as appraisers must have an assignment on the career ladder at least as high as the teacher being appraised.

(5) Before conducting appraisals, each appraiser must receive instructional leadership training, must receive uniform appraiser training, and must reach the required standard of proficiency as established by the State Board of Education. Coursework equivalent to the required instructional leadership training may be substituted if completed within three years prior to receiving appraisal training. Periodic recertification will be required for each appraiser.

(b) Teacher orientation. Each district will provide each teacher with an orientation to the teacher appraisal system prior to the teacher's first appraisal with the system. As early as possible, but not later than the beginning of the orientation, each teacher must receive a copy of the teacher appraisal orientation manual. The State Board of Education will provide materials for additional training of teachers as part of the local district's inservice program.

(c) Appraisals, observations, and conferences.

(1) At least two appraisals are required each year for each probationary teacher and each teacher on career ladder level one who does not meet the state's minimum criteria for advancement to level two. The first appraisal shall be formative. It shall be scored, but not be used for career ladder assignment. Teachers on level one who have met the state's minimum requirements for advancement to level two, but who have not been assigned to level two because of school district stricter performance criteria, and teachers on levels two,



three, and four on the career ladder whose performance was exceeding expectations or clearly outstanding on the most recent overall summative performance score, shall be appraised at least once each year. Teachers on career ladder levels two, three, or four whose performance on the most recent overall summary performance score was less than exceeding expectations shall have at least two appraisals. Each teacher on career ladder level three who has passed the written portion of the master teacher comprehensive examination required for entry to level four and whose most recent overall summary performance score was evaluated as clearly outstanding shall receive one appraisal during the school year every other year. During the school year in which a formal teacher appraisal will not be conducted for the teacher, the district is authorized to substitute a formative appraisal instrument as an alternative.

(2) One appraisal consists of a minimum of two formal 45-minute observations, one by each appraiser.

(3) School districts which use the minimum of two appraisers during any appraisal period shall provide for an observation by a third appraiser if requested by a teacher due to a variance of 15 or more points between the sum of the domain subtotals for Domains I-IV awarded by the teacher's supervisor and the sum of the domain subtotals for Domains I-IV awarded by the other appraiser. Each district shall adopt procedures for uniform implementation of this procedure within the district.

(4) Each local school district shall establish a calendar for appraisal during the required days of instruction for students during one school year. The appraisal calendar:

(A) shall designate the time frame for each of the three required appraisal periods;

(B) may uniformly extend the appraisal period for teachers who are eligible for a single appraisal throughout the days of instruction for students, at the district's discretion;

(C) shall exclude the first two weeks of instruction;

(D) shall prohibit observations on the last instructional day before any official school holiday or on any other day deemed inappropriate by the local board of trustees;

(E) shall provide for scheduling of all requested observations by a third appraiser identified during Appraisal Period I as soon as practical in Appraisal Period II;

(F) shall provide that all formal observations be completed 15 working days prior to the last instructional day for students, with the exception of an observation by a third appraiser or other extenuating circumstances; and

(G) shall be disseminated to all staff prior to the beginning of formal observations.

(5) For formal observations, teachers shall be observed teaching classes in field(s) and teaching assignments for which they are certified whenever possible.

(6) Fifty percent of the formal observations must be scheduled by day and time of day, and 50% of the formal observations must be scheduled within a reasonable period of time designated by the local district and uniformly applied for all teachers. If a formal observation by a third appraiser from another campus is required, that observation must be scheduled by day and time of day.

(7) Before the first observation of the teacher in any appraisal period, the requirement for consecutive minutes for formal observations may be waived by mutual consent at the request of that teacher or the appraiser. Under such waiver, each observation may be comprised of two to three instructional segments of not less than 15 minutes each. Such waiver should be considered only when the nature of the teaching assignment requires shorter instructional segments.

(8) Appraisers may not conduct formal observations simultaneously.

(9) After a formal observation each appraiser must complete a written record. The written record is not to be completed during the observation. A copy of the written record shall be given to the teacher within seven working days of the formal observation. If there are extenuating circumstances, the seven working day requirement may be extended to a maximum of 15 working days.

(10) During an appraisal period, the teacher's supervisor may continually evaluate and document performance specifically related to the performance criteria and the indicators subsumed under the criteria in §149.42 of this title (relating to Teacher Performance Criteria). If such documentation would influence the teacher's appraisal, the documentation must be shared in writing with the teacher within seven working days of the occurrence or, in unusual circumstances, the teacher supervisor's knowledge of the occurrence. This additional documentation shall be combined with, but shall not replace, the formal observation to determine credit for the criteria or indica-

tors. Appraisers other than the teacher's supervisor shall have access to Domain V documentation only in the event that the teacher's total score for the year on Domain V determined by the teacher's supervisor is less than meets expectations as specified in §149.44(b)(2) of this title (relating to Teacher Appraisal Instrument, Scoring Procedures, and Forms).

(11) For level one teachers who receive two appraisals, the supervisor shall conduct a pre-conference with the teacher prior to the supervisor's formal observation. The pre-conference shall be conducted within a reasonable period of time prior to the observation. Following each formal observation, an appraiser must conduct a post-observation conference with the teacher if the teacher's performance is judged less than meets expectations in one or more domains. Regardless of the teacher's performance, each teacher supervisor must conduct a post-observation conference after each formal observation. Appraisers other than the teacher's supervisor are encouraged to conduct post-observation conferences after all formal observations. Required post-observation conferences must be held within 10 working days of the formal observation. If there are extenuating circumstances, the 10 working day requirement may be extended to a maximum of 15 working days. At the conclusion of the first appraisal period, a conference will be held at the request of either the teacher or the appraiser.

(d) Teacher response and appeals.

(1) A teacher may submit a written response regarding the appraiser's written record within 10 working days of receipt of that record. If there are extenuating circumstances, the 10 working day requirement may be extended to a maximum of 15 working days. Such written response shall become part of the appraisal record.

(2) Each local district shall adopt a written policy establishing a procedure for a teacher to present grievances and receive written response regarding the evaluation process. This policy shall be disseminated at the time of employment to each professional staff member and updated annually or as needed. The judgment of the commissioner of education shall not be substituted for that of the local district unless the district's decision was arbitrary and capricious or made in bad faith.

(e) Professional growth plan.

(1) For teachers receiving two appraisals, a professional growth plan must be developed or modified if any domain is judged less than meets expectations at the end of the first appraisal period.

(2) Professional growth activities may be planned and implemented any

time at the request of the teacher or the appraiser(s).

(3) A professional growth plan must be developed or modified for any teacher whose overall summary performance score is less than meets expectations. At the teacher's request, a professional growth plan must be developed or modified for any teacher whose overall summary performance score meets expectations.

(4) The teacher's supervisor, in cooperation with the teacher, will develop the growth plan. Other appraisers, as appropriate, may participate in this process. Options for growth activities shall be provided and at least one option shall place no significant financial burden on either the teacher or the local district. Fulfillment of the provisions of a professional growth plan does not, in and of itself, serve as a guarantee of career ladder advancement.

(f) Summative appraisal.

(1) Each teacher must receive a summative conference at the end of the teacher's last appraisal period. In this conference, the teacher's supervisor will review the teacher's instructional goals and outcomes, inform the teacher of the domain performance scores and the overall summary performance score for the year, review the teacher's status relating to requirements for advancement and/or maintenance on the teacher career ladder, make recommendations regarding domains needing improvement, and address a professional growth plan as appropriate. The teacher's supervisor and the teacher shall also discuss teacher self-assessment aspects such as the goals of the individual teacher, campus planning, instructional strategies, and student outcomes during the summative conference.

(2) The requirements for post-observation conferences set forth in subsection (c)(1) of this section may be met through the summative conference, provided the appropriate appraisers are present and time requirements are met.

(3) Any documentation collected after the summative conference but before the end of the required days of instruction for students during one school year may be considered if it will affect the teacher's domain and overall summary performance scores. Another summative conference shall be held to inform the teacher of the changes.

*§149.44. Teacher Appraisal Instrument, Scoring Procedures, and Forms.*

(a) The State Board of Education shall develop and approve the Texas teacher appraisal instrument, which shall include the domains and criteria listed in §149.42 of this title (relating to Teacher Performance Criteria) and indicators for each criterion.

(b) The State Board of Education shall develop and approve scoring procedures which guarantee that each teacher, at the close of the appraisal process, receives a performance score for each domain and an overall summary performance score.

(1) Each appraiser will score Domains I-IV.

(2) The teacher's supervisor shall score Domain V. In the evaluation of Domain V the teacher is assumed to have credit for all indicators unless the teacher's supervisor has documented otherwise. In the event that the teacher's total score for the year in Domain V is less than meets expectations, the other appraiser shall review Domain V documentation and independently score Domain V for that teacher.

(3) An appraiser must document evidence on the written record when:

(A) absent or below expectation is recorded for any indicator; and

(B) exceptional quality credit is granted for any criterion.

(4) The domain credit totals issued at the close of each appraisal period by the teacher's supervisor reflect the results of the formal observation issued on written records and the additional appraisal documentation gathered during the appraisal period. The domain credits issued by the teacher's supervisor have an assigned weight of 60% of the domain total.

(5) The domain credit totals issued at the close of each appraisal period by appraisers other than the teacher's supervisor reflect the average of domain credits issued on each written record completed by the other appraisers during the appraisal period. The domain credits issued by other appraisers have an assigned weight of 40% of the domain total.

(6) For teachers qualifying for one appraisal each school year, the teacher's supervisor will determine the overall summary performance score at the end of the appraisal period. For teachers receiving two appraisals each school year, the teacher's supervisor will combine the results of the first and second appraisal to determine the overall summary performance score.

(7) Scoring of the teacher's performance is done in accordance with the Texas Education Code, §13.304, and is based on the summary domain credits issued each appraisal period by the teacher's supervisor and the other appraiser(s) unless the difference between the observations is such that the teacher's performance cannot be accurately evaluated in accordance with paragraphs (1)-(6) of this subsection and an observation by a third appraiser from an-

other campus is requested. When a third appraiser observation is made, each of the three appraisers' scores will be averaged together, recorded on the evaluation record, and will constitute the teacher's score for that appraisal period. The State Board of Education shall establish the standards for conversion of summary domain credits to domain performance scores of:

(A) unsatisfactory;

(B) below expectations;

(C) meets expectations;

(D) exceeding expectations;

and

(E) clearly outstanding.

(c) The forms approved by the State Board of Education shall be used by each school district to record observation and documentation results, teacher assessment of instructional goals and outcomes information, professional growth plans, and final performance scores.

*§149.45. Administrator Performance Criteria.*

(a) The criteria used to evaluate each administrator in the district shall include, but will not be limited to, the following:

(1) instructional management;

(2) school/organizational climate;

(3) school/organizational improvement;

(4) personnel management;

(5) administration and fiscal/facilities management;

(6) student management;

(7) school/community relations;

(8) professional growth and development;

(9) academic excellence indicators and campus performance objectives; and

(10) board/superintendent relations (for superintendents only).

(b) The following criteria descriptors for administrator appraisal were piloted in school year 1989-1990 and are available for use by districts at their discretion:

(1) instructional management: promotes the improvement of instruction through activities such as monitoring student achievement and attendance, diagnos-

ing student needs, assisting teachers in designing learning experiences for students, encouraging the development and piloting of innovative instructional programs, and facilitating the planning and application of emerging technologies in the classroom;

(2) school/organizational climate: fosters a positive school/organizational climate through activities such as assessing and planning improvement of school/district/community environment, reinforcing excellence, promoting a positive caring climate of learning, and employing effective communication skills;

(3) school/organizational improvement: promotes leadership in school/organizational improvement efforts through activities such as collaborating in the development and articulation of a common vision of improvement, encouraging appropriate risk-taking, and ensuring continuous renewal of curriculum, policies, and methods;

(4) personnel management: manages personnel effectively through activities such as delegating appropriately, recognizing exemplary performance of teachers and staff, encouraging personal and professional growth and leadership among the staff, complying with applicable personnel policies and rules, securing the necessary personnel resources to meet objectives, and evaluating the job performance of assigned personnel;

(5) administration and fiscal/facilities management: manages administrative, fiscal, and facilities functions responsibly through activities such as obtaining broad-based input for fiscal/financial analysis, compiling reasonable budgets and cost estimates, ensuring that facilities are maintained and upgraded as necessary, and managing a broad range of school operations (e.g., attendance, accounting, payroll, transportation);

(6) student management: promotes positive student conduct through activities such as helping students develop a sense of self-worth, developing and communicating guidelines for student conduct, ensuring rules are observed uniformly, disciplining students for misconduct in an effective and fair measure, supporting collaboration by working with faculty, and encouraging student/parent participation;

(7) school/community relations: promotes a positive tone for school/community relations through activities such as fostering collaborative educational efforts among members of the total school community, articulating the school mission and needs to the community, seeking support for school programs, and involving oneself in community activities that foster rapport between the district and the larger community;

(8) professional growth and development: provides leadership in professional growth and development through activities such as participating actively in professional associations, conducting oneself in an ethical and professional manner, disseminating ideas and information to other professionals, and seeking and using evaluative information for improvement of performance;

(9) board/superintendent relations (for superintendents only): promotes and supports a positive relationship with the board of education through activities such as meeting the board's needs for information, interacting with the board members in an ethical, sensitive, and professional manner, demonstrating competence in written and verbal communications to the board, and recommending policies to the board to enhance teaching and learning.

(c) In developing indicators and/or descriptors for the criteria, the district shall use the local job description as applicable in concert with the state criteria descriptors for administrator appraisal under subsection (b) of this section.

(d) Each district may implement a process for the collection of staff input for the evaluation of administrators and/or for professional growth plans of administrators.

#### *§149.46. Administrator Appraisal Procedures.*

(a) In order to provide local school districts with maximum flexibility, the following procedures for administrator appraisal are established as minimum requirements. Each district shall establish an annual calendar that shall provide for the following activities which shall involve both the administrator and the appraiser:

(1) a goal setting procedure that defines expectations and sets priorities for the administrator being appraised;

(2) formative conference(s);

(3) summative conference(s);  
and

(4) a written individual professional growth plan that shall be based upon:

(A) assessment;

(B) formative input; and

(C) self-assessment.

(b) Each district shall involve appropriate administrators in the development, selection, and/or revision of the instrument(s) and process.

(c) Prior to conducting appraisals, all appraisers shall provide evidence of

training in appropriate personnel evaluation skills related to the locally established criteria and process.

(d) If a district implements a process for the collection of staff input to evaluate administrators, such staff input must not be anonymous.

(e) The individual professional growth plan must be confidential and under the control of the administrator and the supervisor(s).

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 February 22, 1993.

TRD-9319349

Cris Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Earliest possible date of adoption: March 29, 1993

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

### ◆ ◆ ◆ Subchapter D. Teacher Career Ladder

#### ◆ ◆ ◆ • 19 TAC §149.71, §149.81

The repeals are proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

#### *§149.71. Assignment to the Teacher Career Ladder.*

#### *§149.81. Advanced Academic Training.*

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 February 22, 1993.

TRD-9319345

Cris Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Earliest possible date of adoption: March 29, 1993

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

### ◆ ◆ ◆ • 19 TAC §149.71, §149.81

The new sections are proposed under the Texas Education Code (TEC), §11.21, which authorizes the State Board of Education (SBOE), as part of the teacher staff development required under the TEC, §16.052, to

adopt rules requiring instruction in subject areas the board considers appropriate; and the TEC, §13.032, which requires the SBOE to adopt rules concerning an appraisal process and performance criteria for career ladder level assignment purposes and assessment instruments for the purpose of remediation and improvement.

*§149.71. Assignment to the Teacher Career Ladder.*

(a) General provisions. Each teacher shall be assigned to a position on the career ladder unless excluded under other provisions of this section. Assignment shall be based on performance, experience, job-related education, and/or advanced academic training, job assignments, and other requirements as specified in subsection (e) of this section. Each teacher as defined in subsection (b) of this section shall be assigned to an appropriate level, maintained at an assigned level, and provided salary allotments for the teacher career ladder in accordance with the provisions of this section.

(b) Eligibility by job assignment. Eligibility for assignment to the teacher career ladder shall include a certified person who teaches or provides instructionally related services to students for an average of at least four hours each day or not less than 60% of the school year.

(1) Classroom teaching is defined as teaching in the regular classroom, the resource classroom, or other instructional settings (which include, but are not limited to, those for itinerant teachers such as the home-bound, the hospitalized, or in cooperatives) where the teacher is primarily responsible for the planning, delivering, evaluating, and reporting of student learning of the essential elements as required in Chapter 75 of this title (relating to Curriculum).

(2) Classroom teaching shall include teaching in any class for which credit is awarded to students, including physical education scheduled during the regular school day.

(3) Hours are defined for purposes of this subsection as regular class periods meeting the minimum time requirements of Chapter 75 of this title (relating to Curriculum).

(4) At the option of the local school district, the following instructionally related services may be counted as classroom teaching to meet the minimum teaching requirement for career ladder purposes:

(A) up to two hours of on-the-job supervision per day for the degreed vocational cooperative education teacher or the technical education internship teacher/coordinator;

(B) one hour per day of supervising the occupational experience for the vocational agriculture/horticulture teacher or for the extended learning experience program for the consumer and home-making teacher;

(C) one hour per day for purposes of traveling to the various teaching sites for the itinerant teacher;

(D) up to four hours per day or 20 hours per week for the placement of students in occupational settings, on-the-job supervision, and/or travel to occupational teaching sites for the vocational adjustment coordinator who works with a minimum of three students per day or 15 students per week; or

(E) one hour per day for purposes of serving as an instructional department head/chairperson or grade level chairperson/coordinator provided that the teacher teaches a minimum of three hours per day.

(5) At the option of the local school district, a teacher who is employed for only half-time may be considered for the teacher career ladder provided that the teacher teaches a minimum of at least two hours each day.

(6) A person who is employed full-time but who does not teach in the classroom for an average of at least four hours per day or 60% of the regular school year as defined in paragraphs (1) and (4) of this subsection shall not be assigned to the teacher career ladder.

(7) A person shall not be assigned to the teacher career ladder if that person is serving as:

(A) a school nurse;

(B) a vocational teacher, nondegreed;

(C) an ROTC teacher, nondegreed;

(D) a librarian;

(E) a visiting teacher;

(F) a psychological associate;

(G) a physician;

(H) an occupational or physical therapist;

(I) a guidance associate who teaches an average of less than four hours per day or less than 60% of the school year in the classroom as defined in paragraph (1) of this subsection; or

(J) any other special service assignment such as, but not limited to, counselors or educational diagnosticians and administrative/supervisory assignments such as, but not limited to, supervisors, principals, or superintendents.

(c) The selection process.

(1) Interruptions in service will be addressed in the following manner.

(A) A teacher who is not employed as a teacher for a period of up to two school years may be assigned to the same career ladder level to which the person was assigned before the interruption in service.

(B) A teacher who has an interruption in service as a teacher of more than two school years may be assigned to the career ladder level that is one level below the level to which the person was assigned before the interruption in service.

(C) A teacher who is assigned to a career ladder level following an interruption in service as a teacher must meet the same performance requirements for advancement on the career ladder that all other teachers must meet for advancement.

(2) A local district shall use a current school year performance evaluation as a criterion for placing a teacher on an advanced level of the career ladder or maintaining a teacher on an advanced level if one or more of the following conditions exist:

(A) no performance evaluation was completed for the teacher by that district in the immediately preceding school year; or

(B) a performance evaluation for the teacher from the immediately preceding school year was destroyed or otherwise removed from the district by former employees.

(3) A local school district may use current school year performance evaluations as a criterion for placing or maintaining teachers on career ladder levels only under the conditions specified in paragraphs (2) and (4) of this subsection or in accordance with the following.

(A) When extenuating circumstances exist for which an exception is sought, a local district must submit to the commissioner of education a written request in which extenuating circumstances are fully disclosed.

(B) The commissioner of education may allow a local district to use current school year performance evaluations if the circumstances are deemed extenuating.

(4) Current school year performance evaluations shall be used for purposes of placing or maintaining teachers on advanced levels of the teacher career ladder in the following circumstances:

(A) a teacher was not appraised in the prior year because the teacher was on a local district approved temporary disability leave; or

(B) a teacher was not appraised in the prior year because the teacher was on a local district approved professional development leave.

(5) Texas Civil Statutes, Articles 5996a and 5996d, concerning nepotism, do not apply to the selection of level two, three, or four teachers pursuant to the Texas Education Code, Chapter 13, Subchapter E, added by House Bill 72 of the 68th Legislature, Second Called Session.

(d) Higher education course work and advanced academic training.

(1) The local school district shall determine in accordance with the provisions of this subsection whether courses taken for credit at accredited institutions of higher education or work obtained through programs of advanced academic training may be applied toward requirements for level placement and maintenance on the teacher career ladder. Higher education course work or advanced academic training must be related to the job assignment in one of the following ways:

(A) as instruction in the subject taught, a subject for which certification is held that is one of the elementary or secondary curriculum areas identified in Chapter 75 of this title (relating to Curriculum), a subject or area to be taught that has been designated by the State Board of Education or a local school district as an area or field of acute teacher shortage and for which the teacher has on file with the district a college/university plan for certification, or a teaching endorsement or delivery system approved by the State Board of Education in Chapter 137 of this title (relating to Teacher Education) such as kindergarten

or other teaching endorsements and bilingual education or other delivery systems (this category must account for at least 50% of the course work or training unless specified otherwise in paragraph (2) of this subsection);

(B) as instruction for the student taught such as specialized instruction for the gifted and talented student, the handicapped student, the culturally different student, teaching-learning theories and strategies, and the evaluation and reporting of student achievement; or

(C) as instruction in specific classroom management, knowledge, skills, and applications such as discipline, individualized instruction, teacher excellence training, and the utilization of media and high technology in the classroom.

(2) A portion, the amount to be specified by the local district, of the higher education course work and/or advanced academic training must relate directly to the remediation of weaknesses or areas in need of improvement if identified in the teacher's appraisal for the preceding year or years. In the absence of needs identified through appraisal, career goals of the individual teacher and/or staff development goals of the local school district should be addressed with flexibility for emphasizing the need for depth and/or currency of both subject knowledge and teaching methods.

(3) Higher education course work and advanced academic training that is in accordance with this subsection and earned after the bachelor's degree and prior to September 1 of each year shall be creditable toward requirements for level placement on the teacher career ladder for the subsequent year. Decisions made in accordance with 1984-1985 guidelines, concerning credits retained for purposes of career ladder advancement, shall not be invalidated by the implementation of this subsection.

(4) Education earned during a state-required inservice day for which the teacher is salaried may be creditable as higher education course work or advanced academic training for career ladder purposes.

(5) Higher education course work used for level placement on the teacher career ladder must satisfy the requirements stated in paragraphs (1) and (2) of this subsection and may carry lower division, upper division, or graduate level credit. No more than one-third of the course work may be in lower division courses unless the work is being taken in a subject or area that has been designated by the State Board of Education or a local school district as an area or field of acute teacher shortage as specified in paragraph (1)(A) of this subsection.

(6) All higher education course work creditable toward level placement on the teacher career ladder must be awarded by a college or university that is accredited by a recognized regional accrediting organization, or approved by a state department of education or a recognized governmental entity.

(7) Credits for higher education course work or advanced academic training shall be creditable no more than once toward requirements for level advancement or placement on the teacher career ladder. If a master's or doctor's degree is used to qualify an individual for more rapid advancement to level two on the teacher career ladder, applicable credit hours within the degree requirements in excess of nine semester hours may be applied toward meeting the requirements for placement on other levels of the career ladder.

(8) It is the responsibility of each teacher to provide the local school district with official transcripts for higher education course work completed and written documentation acceptable to the local school district for advanced academic training which includes, but is not limited to, the name of the work, the date, and the number of clock hours for the work completed. It is the responsibility of the local school district to maintain documentation in support of career ladder level decisions made by the local school district.

(e) Use of stricter performance criteria. If the funds available for the support of the teacher career ladder are insufficient to fund the supplements as provided in the Texas Education Code, §16.057, a local school district may require stricter performance criteria for placing teachers on career ladder levels and for maintaining teachers on previously assigned levels. Criteria not related to the quality of performance shall not be utilized to restrict eligibility for consideration for career ladder advancement.

(1) Local districts must specify in written policy the requirements for stricter performance. Local district requirements for stricter performance that are consistent with this subsection shall be considered approved.

(2) Criteria for stricter performance may be required in one or more of the following areas.

(A) A higher category of performance may be required for each of the years for placement on or maintenance of a career ladder level; for example, exceeding expectations may be required for maintaining level two rather than meets expectations.

(B) A greater number of years with specified high performance such as exceeding expectations may be required for all of the years required for experience rather than just a portion.

(C) A higher level of performance may be required within a category; for example, performance that excels in a majority of major areas rather than some major areas (domains) could be designated as exceeding expectations.

(f) Criteria for selection. All teachers shall be assigned to the teacher career ladder except for positions listed in subsection (b)(7) of this section. An individual being considered for career ladder level assignment or advancement shall satisfy the following requirements for the respective level.

(1) Level one placement shall require that a teacher:

(A) possess a provisional or professional teaching certificate as defined in §141.2(a) of this title (relating to Classes of Certificates) or a level one certificate or its equivalent as determined by the State Board of Education; and

(B) demonstrate at least meets expectations performance in every appraisal category for the year immediately preceding placement.

(2) Level two placement shall require that a teacher:

(A) possess a provisional or professional teaching certificate as defined in §141.2(a) of this title (relating to Classes of Certificates) or a level two certificate or its equivalent as determined by the State Board of Education;

(B) receive performance evaluations which reflect at least performance exceeding expectations during the year immediately preceding consideration for placement at level two and meets expectations performance during the other year or years, or meet the stricter performance criteria as specified by the local district in accordance with subsection (e) of this section; and

(C) possess one of the following combinations of education and experience:

(i) Option I:

(I) a baccalaureate degree;

(II) three years of classroom teaching experience on level one (need not be consecutive years); and

(III) nine semester hours of higher education course work, or 135 hours of advanced academic training (at least 45 hours of which must emphasize classroom management training if classroom management or discipline is identified as an area that needs improvement on the teacher's performance appraisal for the preceding year), or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training;

(ii) Option II:

(I) a master's degree in:

(-a-) a subject listed in Chapter 75 of this title (relating to Curriculum) as an elementary, secondary, or all-level subject to be taught;

(-b-) education (excluding degrees specifically designed for preparation for special service positions such as administrator, counselor, supervisor, etc.) with a concentration of at least 12 semester hours in a subject or combination of subjects to be taught in the public schools; or

(-c-) an endorsement area or delivery system approved by the State Board of Education in Chapter 137 of this title (relating to Teacher Education) such as kindergarten or other endorsements and bilingual and special education delivery systems; and

(II) two years of classroom teaching experience on level one (need not be consecutive years).

(3) Level three placement shall require that a teacher:

(A) possess an appropriate teaching certificate as defined in §141.2(a) of this title (relating to Classes of Certificates) or a level three certificate or its equivalent as approved by the State Board of Education;

(B) possess a baccalaureate degree and one of the following combinations of education, experience, and evaluation:

(i) Option I:

(I) five years of classroom teaching at level two;

(II) six semester hours of higher education course work, or 90 hours of advanced academic training (a portion of which must emphasize classroom management training only if classroom management or discipline is identified as an area that needs improvement on the teacher's performance appraisal for the preceding year), or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training; and

(III) performance evaluations during three of the four years immediately preceding consideration for placement at level three indicating performance exceeding expectations and at least meets expectations performance during the other year, or performance evaluations as specified by the local district in accordance with subsection (e) of this section; or

(ii) Option II:

(I) three years of classroom teaching at level two (need not be consecutive years);

(II) three semester hours of higher education course work or 45 hours of advanced academic training (a portion of which must emphasize classroom management or discipline is identified as an area that needs improvement on the teacher's performance appraisal for the preceding year), or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training; and

(III) performance evaluations during two of the three years of service immediately preceding consideration for placement at level three indicating clearly outstanding and at least meets expectations performance during the other year, or performance evaluations as specified by the local district in accordance with subsection (e) of this section.

(4) Level four placement shall require that a teacher:

(A) possess a master teacher certificate;

(B) demonstrate satisfactory performance on the master teacher examination; and

(C) possess a baccalaureate degree and one of the following combinations of education, experience, and evaluation:

(i) Option I:

(I) three years of classroom teaching experience at or above level three;

(II) complete six semester hours of higher education course work; or complete 90 hours of advanced academic training (a portion of which must emphasize classroom management training only if classroom management or discipline is identified as an area that needs improvement on the teacher's performance appraisal for the preceding year), or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training; and

(III) receive performance evaluations during two of the three years immediately preceding consideration for placement at level four indicating clearly outstanding performance and at least meets expectations performance during the other year; or performance evaluations as specified by the local district in accordance with subsection (e) of this section; or

(ii) Option II:

(I) two years of classroom teaching at or above level three (need not be consecutive years);

(II) have three semester hours of higher education course work, or 45 hours of advanced academic training (a portion of which must emphasize classroom management training only if classroom management or discipline is identified as an area that needs improvement on the teacher's performance appraisal for the preceding year), or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training; and

(III) receive performance evaluations during the three years immediately preceding consideration for placement at level four indicating clearly outstanding performance, or performance evaluations as specified by the local district in accordance with subsection (e) of this section.

(g) Maintenance or reassignment of career ladder levels.

(1) A teacher shall remain at career ladder level one until full eligibility requirements for a level two, level three, or master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) have been met and the teacher

has been assigned to career ladder level two. A district may not renew the contract of a teacher who fails to achieve at least meets expectations performance during either of the first two years of experience at level one.

(2) A teacher shall remain at career ladder level two until full eligibility requirements for a level three or master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) and level three entry requirements have been met. A teacher shall be reassigned from career ladder level two to career ladder level one if the teacher's performance is below expectations during the preceding year, or fails to achieve the stricter performance criteria as specified by the local district in accordance with subsection (e) of this section.

(3) A teacher shall remain at career ladder level three until full eligibility requirements for a master teacher certificate as described in Chapter 141 of this title (relating to Teacher Certification) and level four entry requirements have been met.

(A) A teacher shall be reassigned from career ladder level three to career ladder level two if the teacher demonstrates less than exceeding expectations performance at level three for two consecutive years, or fails to achieve the stricter performance criteria as specified by the local district in accordance with subsection (e) of this section.

(B) A teacher shall be reassigned from career ladder level three to career ladder level one if the teacher demonstrates performance which is below expectations during the preceding year, or fails to achieve the stricter performance criteria as specified by the local district in accordance with subsection (e) of this section.

(4) A teacher shall remain at career ladder level four unless the requirements stated in this subsection are no longer satisfied. A teacher shall be required:

(A) to demonstrate clearly outstanding performance during two of every three years and at least meets expectations performance during the other year and complete three semester hours of higher education course work or 45 hours of advanced academic training or an equivalent combination so that one semester hour of higher education course work is equivalent to 15 hours of advanced academic training, to demonstrate clearly outstanding performance during each of the three years, or to achieve performance evaluations as specified by the local district in accordance with subsection (e) of this section;

(B) to teach in a classroom for not less than an average of four hours per day or 60% of the school year in accordance with the provisions of subsection (b)(4) of this section; and

(C) to perform at least two master teacher duties every three years.

(5) In the event that a school district determines that reassignment to a lower level resulted from performance appraisals that were influenced by extraordinary personal circumstances and the teacher receives a clearly outstanding performance appraisal in the year following reassignment, the school district may reinstate the teacher to the former level. In any other case, a teacher reassigned under this subsection may reenter higher levels only by requalifying under the performance standards for entry into the higher levels.

(h) Out-of-state teachers entering the career ladder.

(1) A teacher who possesses a valid classroom teaching certificate issued by another state department of education or foreign country may enter the career ladder at any level assigned by the employing school district, at the commensurate salary step, under a probationary contract.

(2) At the end of the first year of teaching in Texas, the teacher must meet the requirements established in subsection (f) of this section with the exception of the requirements for the prior certificate held.

(A) In the event that such performance requirements are not met satisfactorily, the teacher shall be maintained at the career ladder level below assignment with no salary step increase.

(B) Failure to satisfactorily meet such requirements during the second year of teaching shall result in termination of contract.

(3) Upon satisfactory achievement of certification requirements, the district may recommend certification at the appropriate level as established in Chapter 141 of this title (relating to Teacher Certification).

(4) The employing school district shall have the authority to accept or reject the performance appraisal or appraisals based on service completed in other districts.

(i) Transfer between districts.

(1) A teacher is entitled to transfer a career ladder level assignment between districts.

(2) A teacher may waive entitlement to a particular career ladder level assignment when changing employment from one district to another.

(3) The employing district may recognize the performance appraisal of a district previously employing the teacher in determining a career ladder level assignment. Employing districts which choose not to recognize the performance evaluation of another district may establish by local policy a procedure for placing the teacher on the career ladder at a level not to exceed that previously held by the teacher in another district without regard to experience at a particular career ladder level. A district shall not require a teacher to be employed and appraised by that district prior to placement on a particular career ladder level for more years than required by subsection (f) of this section.

(j) Finality of district decision.

(1) A decision of the district concerning a teacher's placement on the career ladder may be appealed only on the following grounds:

(A) that the decision was arbitrary and capricious; or

(B) that the decision was made in bad faith.

(2) Before a career ladder decision may be appealed to the commissioner of education, a hearing concerning the decision must be held by the local board of trustees.

(k) Property right of teacher.

(1) A teacher who has earned a level one, level two, level three, or master teacher certificate in accordance with Chapter 141 of this title (relating to Teacher Certification) has a right to retain that certificate until it has expired or is duly suspended, revoked, or otherwise removed in accordance with law.

(2) Assignment to career ladder level one, level two, level three, or level four is neither a property right nor the equivalent of tenure.

(l) Career ladder salary supplement. The career ladder salary supplement shall be paid during the school year at a time not later than August 31 of the school year in which the teacher entered or was maintained and in a manner to be determined by the local school district in accordance with law and this section.

(1) Each teacher placed on level two, three, or four of a career ladder is entitled to the following annual supplement in addition to the minimum salary set by law:

(A) Level 2-\$2,000;

(B) Level 3-\$4,000; and

(C) Level 4-\$6,000.

(2) If the district pays more than the state minimum salary prescribed by law, the teacher is entitled to the career ladder supplement in addition to the amount otherwise paid by the district for the teacher's step.

(3) If the allotment to the district that is designated for support of the career ladder will not fully fund the supplements for the teachers meeting the minimum state requirements, the district may:

(A) reduce the supplements to not less than the following:

(i) Level 2-\$1,500;

(ii) Level 3-\$3,000;

(iii) Level 4-\$4,500;

(B) provide for stricter performance criteria than that provided in law as a basis for career ladder level assignments in accordance with subsection (e) of this section; or

(C) take action under both subparagraphs (A) and (B) of this paragraph.

(4) Monies received by the district from the state as the allotment for career ladder salary supplements may not be used to supplement the salary of an employee for directing cocurricular or extracurricular activities.

(5) The district must pay each teacher selected for a specific career ladder level the same amount of supplement for a particular career ladder level during that particular school year.

(6) Districts may reduce the amount of the career ladder supplement on a pro rata basis utilizing the number of days of employment, not the date when the award is made, when the teacher is employed for fewer than 183 days.

(7) Teachers employed for no less than half-time as defined in subsection (b)(5) of this section shall be paid no less than one-half of the designated salary supplement awarded by the local school district for that particular level for the specific school year or a proportionate amount consistent with the portion of the school day served.

*§149.81. Advanced Academic Training.*

(a) General provisions. Advanced academic training is staff development based upon diagnosed needs or professional goals. Priority shall be given to strengthening needs identified through the appraisal and accreditation process. The purpose of advanced academic training is to improve classroom instruction for increased student performance. Such training must be highly structured to meet the requirements of the Texas Education Code, §13.315. A teacher must have prior district approval for any training to be considered for advanced academic training.

(b) Program topics. The workshops or classes must address specific objectives and relate to the job assignment in accordance with §149.71(d) of this title (relating to Assignment to the Teacher Career Ladder).

(c) Sponsors and presenters.

(1) Each sponsor shall be approved by the Texas Education Agency based on the written statement of assurances. The statement of assurances shall be in a form prescribed by the commissioner of education. Workshops or classes must be sponsored by a school district, a college or university, an education service center, a professional organization, or a governmental agency. A program by a private firm must be sponsored by one of the entities in this subsection.

(2) It shall be the responsibility of the approved sponsor to assure that each presenter has documented expertise in the topic of the workshop or class. The qualifications of presenters shall be verified by the program sponsor.

(3) If the presenter is a teacher, advanced academic training credit shall be earned by the presenter in the amount of time for the first complete program presentation plus an equal amount of time for preparation.

(d) Minimum length of program. The minimum length of a program for which credit may be given for advanced academic training is six clock hours, excluding lunch, breaks, or travel time. Six clock hours shall earn six hours of advanced academic training credit. The minimum six-hour program and programs of other lengths may be delivered in multiple sessions on different days.

(e) Records. The sponsor of the program must provide participants with an official Texas Education Agency record of completion. This record must be maintained by the district to document clock hour credits of advanced academic training.

(f) Approval of sponsors. Each sponsor shall be approved to provide ad-



vanced academic training based upon statements of assurance provided to the Texas Education Agency. Approved sponsors will receive documentation indicating the approved status.

(g) Review of sponsors. Approved sponsors will be reviewed by the Texas Education Agency at least every five years with the review and audit of approved sponsors scheduled at any time. All sponsoring agencies will maintain approved status unless otherwise notified by the agency.

(h) Follow-up activities. Each approved sponsor shall provide follow-up activities to determine the participants' utilization of the newly acquired knowledge/skills and to provide technical assistance in implementing acquired techniques in the classroom.

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 February 22, 1993.

TRD-9319350      Criss Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Earliest possible date of adoption: March 29, 1993

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

### Subchapter E. Centers for Professional Development and Technology

#### • 19 TAC §149.91

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

The repeal is proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

#### §149.91. The Establishment of Centers for Professional Development and Technology.

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 February 22, 1993.

TRD-9319346      Criss Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Earliest possible date of adoption: March 29, 1993

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

### Chapter 153. Professional Practices

#### • 19 TAC §153.1

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

The Texas Education Agency (TEA) proposes the repeal of §153.1, concerning the Professional Practices Commission. The section is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. After review, the substance of this section is being relocated to Chapter 137.

Linda Cimusz, administrator for professional development and policy planning, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Cimusz and Criss Cloudt, director of policy planning and evaluation, have determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a clearer, more concise statement of the rules relating to professional practices. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

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

The repeal is proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

#### §153.1. Professional Practices Commission.

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 February 22, 1993.

TRD-9319351      Criss Cloudt  
Director of Policy Planning  
and Evaluation  
Texas Education Agency

Earliest possible date of adoption: March 29, 1993

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

### TITLE 25. HEALTH SERVICES

#### Part I. Texas Department of Health

#### Chapter 289. Radiation Control

#### Texas Regulations for Control of Radiation

#### • 25 TAC §289.111

The Texas Department of Health (department) proposes an amendment to §289.111, concerning the control of radiation. Section 289.111 adopts by reference Part 11 of the Texas Regulations for Control of Radiation (TRCR) titled, General Provisions.

The amendment includes the revision and addition of many definitions. The new and revised definitions reflect changes being made to TRCR Parts 21, 32, 40, 41, and 42, which are being proposed concurrently with this amendment. The majority of the definitions apply to the revision in entirety of TRCR Part 21 and are items of compatibility under the agreement between the department and the United States Nuclear Regulatory Commission.

Bryan L. Shirley, Director, Budget Division, has determined that for the first five years the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure compatibility with federal definitions relating to radiation protection standards. There will be no impact on small businesses and persons who are required to comply with the rule. No impact is anticipated on local employment as a result of implementing the section.

Comments on the proposal may be presented in writing to Ruth E. McBurney, C. H.P., Director, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 30 days following publication of this proposed amendment in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Friday, March 19, 1993, in Conference Room S400, Texas Department of Health, Bureau of Radiation Control, located at The Exchange Building, 8407 Wall Street, Austin.

The amendment is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed

by law on the board, the department, and the commissioner of health.

### §289.111. General Provisions.

(a) The Texas Department of Health adopts by reference Part 11, General Provisions of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in July 1993 [November 1990].

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, located in The Exchange Building, 8407 Wall Street [at 1212 East Anderson Lane], Austin, Texas 78754 [78752], and is available for public inspection during regular work hours.

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 February 18, 1993.

TRD-9319202      Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 19, 1993

For further information, please call: (512) 834-6688

### • 25 TAC §289.113

The Texas Department of Health (department) proposes an amendment to §289.113, concerning the control of radiation. Section 289.113 adopts by reference Part 21 of the Texas Regulations for Control of Radiation (TRCR) titled, *Standards for Protection Against Radiation*.

The amendment incorporates revised federal standards for protection against radiation including requirements for radiation protection programs, occupational dose limits, dose limits for members of the public, surveys and monitoring, control of internal and external exposures, respiratory protection, and waste management.

The United States Nuclear Regulatory Commission (NRC) revised its standards for protection against ionizing radiation found in 10 Code of Federal Regulations Part 20. This revision incorporated updated scientific information and reflected changes in the basic philosophy of radiation protection advisory groups for internal doses. The revision to 10 Code of Federal Regulations Part 20 conforms NRC's regulations to the Presidential Radiation Protection Guidance to Federal Agencies for Occupational Exposure and the recommendations of national and international radiation protection advisory groups.

The NRC has designated the revised radiation protection standards as an item of strict compatibility. As an Agreement State, Texas must implement the changes and Texas licensees and registrants must comply with the amended section by January 1, 1994. After

public comment, this section will be presented to the Board of Health for final adoption in June, to be effective July. This will allow ample time for Texas licensees and registrants to become familiar with and to comply with the changes by the mandatory date January 1, 1994.

Bryan L. Shirley, Director, Budget Division, has determined that for the first five years that the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be to ensure compatibility with federal radiation protection standards and to ensure that radiation protection standards in Texas reflect the most updated scientific information. There will be a varying impact on small businesses and persons who are required to comply with the section. The costs of complying with the section will be incurred during the first year of implementation and include revision and expansion of record keeping responsibilities. A registrant with few employees, requiring eight hours to establish revised documents and procedures for recording occupational doses, could incur costs of approximately \$150. A large licensee's facility required to sum and keep records of employees' internal and external doses and exposures, could incur costs of approximately \$2,000. No impact is anticipated on local employment as a result of implementing the section.

Comments on the proposal may be presented in writing to Ruth McBurney, C.H.P., Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78758-3189. Public comments will be accepted for 30 days following publication of this proposed amendment in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Friday, March 19, 1993, in Conference Room S400, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin.

The amendment is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

### §289.113. Standards for Protection Against Radiation.

(a) The Texas Department of Health adopts by reference Part 21, Standards for Protection Against Radiation of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in July 1993 [August 1989].

(b) The document adopted by reference in this section is indexed and filed in

the Bureau of Radiation Control, Texas Department of Health, located in The Exchange Building, 8407 Wall Street, Austin, Texas 78754 [office at 1212 East Anderson Lane, Austin, Texas 78752], and is available for public inspection during regular working hours.

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 February 18, 1993.

TRD-9319237      Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 19, 1993

For further information, please call: (512) 834-6688

### • 25 TAC §289.115

The Texas Department of Health (department) proposes an amendment to §289.115 concerning the control of radiation. Section 289.115 adopts by reference Part 31 of the Texas Regulations for Control of Radiation (TRCR) titled *Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography*. The amendment to Part 31 provides for reformatting to allow easier readability by dividing this part into general requirements for sealed sources and radiation machines, requirements for radiation machines only, and requirements for sealed sources only.

The proposed amendment requires industrial radiographers to complete all training and testing requirements before receiving an I.D. card allowing them to work in Texas. The amendment has expanded the requirements for industrial radiation safety officers by requiring at least 40 hours of active participation in industrial radiographic operations. The policy on reciprocity has been changed to allow recognition of certification of radiographers by other states or jurisdictions. The United States Nuclear Regulatory Commission has added compatibility items requiring the use of alarming ratemeters for each radiographer and equipment standards for radiographic exposure devices and associated equipment manufactured after January 1992 and in use after January 1996.

Bryan L. Shirley, Director, Budget Division, has determined that for the first five years the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration, and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure appropriate use of alarming ratemeters and equipment in industrial radiographic operations which could pose a health risk to workers and the general public. There will be a varying impact on small

businesses and persons who are required to comply with the section. The estimated price range for alarming ratemeters is \$100 to \$400 each, and estimated costs for radiographic exposure devices and accompanying equipment range from \$5,200 to \$8,800 each. No impact is anticipated on local employment as a result of implementing this section.

Comments on the proposal may be presented in writing to Ruth E. McBurney, C. H. P., Director, Division of Licensing, Registration, and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 60 days following publication of this proposed amendment in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Tuesday, April 6, 1993, in Conference Room S400, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin.

The amendment is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

**§289.115. Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography.**

(a) The Texas Department of Health adopts by reference Part 31, "Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography" of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in July, 1993 [May, 1991].

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, located in The Exchange Building, 8407 Wall Street, [1212 East Anderson Lane,] Austin, Texas 78754 [78752], and is available for public inspection during regular working hours.

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 February 18, 1993.

TRD-9319204

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 19, 1993

For further information, please call: (512) 834-6688

◆ ◆ ◆  
**Texas Regulations for Control  
of Radiation**

• 25 TAC §289.116, §289.122

The Texas Department of Health (department) proposes amendments to §289.116 and §289.122 concerning the control of radiation. Section 289.116 adopts by reference Part 32 of the Texas Regulations for Control of Radiation (TRCR) titled "Use of Radiation Machines in the Healing Arts and Veterinary Medicine." The amendment to Part 32 will add mammography regulations with provisions for equipment standards; provisions for quality assurance programs; training requirements for equipment operators and physicians; provisions for utilizing licensed medical physicists for quality assurance testing; and continuing education for equipment operators. Section 289.122 adopts by reference Part 42 of the Texas Regulations for Control of Radiation (TRCR) titled "Registration of Radiation Machine Use and Services." The amendment to Part 42 will expand definitions of the types of radiation services that must be registered; provide for additional registration requirements; and establish minimum requirements for radiation safety officers and equipment service personnel.

Bryan L. Shirley, Director, Budget Division, has determined that for the first five years the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration, and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure appropriate and adequate regulatory control of mammographic operations and registration of radiation machines and services which could pose a health risk to workers and the general public by: requiring those facilities offering mammography to establish quality assurance programs that address equipment and equipment operations, equipment operator training and continuing education, and training for physicians reading mammograms to ensure protection of the general public, particularly women; and by requiring those entities offering radiation services to meet minimum requirements for training personnel. The establishment of minimum requirements for persons serving as radiation safety officers for healing arts, academic and research, and veterinary facilities will require entities utilizing ionizing radiation to conduct operations in such a manner as to protect workers and the general public. There will be a varying impact on small businesses and individuals who are required to comply with the sections. For Part 32, facilities with current American College of Radiology Mammography Accreditation will have no start-up costs. Facilities with dedicated mammographic equipment will have estimated start up costs of \$2,100 to \$2,600 for quality assurance equipment and \$575 to \$675 for equipment operator training and medical physicist support. For facilities intending to begin mammography operations the start-up equipment, operator training, and physicist support costs range from \$73,100 to \$104,000. Costs for facilities offering mammography as a result of implementing regula-

tions are estimated to be \$375 to \$475 for operator continuing education and medical physicist support. Costs for Radiation Safety Officer training or radiation safety courses are estimated to range from \$100 to \$350.

No impact is anticipated on local employment as a result of implementing these sections.

Comments on the proposals may be presented in writing to Ruth McBurney, C.H. P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 60 days following publication of these proposed amendments in the *Texas Register*. In addition, a public hearing will be held at 9:00 a.m., Wednesday, April 7, 1993, in conference room S400, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

The amendments are proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

**§289.116. Use of Radiation Machines in the Healing Arts and Veterinary Medicine.**

(a) The Texas Department of Health adopts by reference Part 32, Use of Radiation Machines in the Healing Arts and Veterinary Medicine of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in July, 1993 [January 1992].

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, located in The Exchange Building, 8407 Wall Street, Austin, Texas 78754 [office at 1212 East Anderson Lane, Austin, Texas 78752], and is available for public inspection during regular working hours.

**§289.122. Registration of Radiation Machine Use and Services.**

(a) The Texas Department of Health adopts by reference Part 42, Registration of Radiation Machine Use and Services of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in July, 1993 [January 1987].

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, located in the Exchange Building, 8407 Wall Street, Austin, Texas 78754 [office at 1212 East Anderson Lane, Austin, Texas 78752], and is available for public inspection during regular working hours.

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 February 22, 1993.

TRD-9319318

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 19, 1993

For further information, please call: (512) 834-6688

◆ ◆ ◆  
• 25 TAC §289.121, §289.128

The Texas Department of Health (department) proposes an amendment to §289.121 and the addition of new §289.128, concerning the control of radiation. Section 289.121 adopts by reference Part 41 of the Texas Regulations for Control of Radiation (TRCR) titled, *Licensing of Radioactive Material*. Section 289.128 will adopt by reference Part 40 of the TRCR titled, *Exemptions, General Licenses, and General License Acknowledgements*.

The amendments to Part 41 will delete sections, add new sections, and clarify existing sections of the part. Sections concerning exemptions and general license requirements were deleted so that the part refers only to requirements for specific licensing of radioactive material. The part was expanded to address the qualifications and specific duties for radiation safety officers for the activities for which the license application is submitted. A requirement to submit radiation safety information for evaluation of sealed sources and devices was added. Requirements for emergency plans, financial assurance and record keeping for decommissioning, and criteria for determining acceptable financial security were also added. These requirements are designated items of compatibility by the United States Nuclear Regulatory Commission (NRC) and, in accordance with the agreement between the department and NRC, the department must adopt a similar rule. An appendix was added to specify the subjects to be included in training courses for the applicant or physician designated in the application as the user of radioactive material for human use.

New Part 40 incorporates the sections deleted from Part 41 and addresses the requirements for the new concept of general license acknowledgements.

Specifically, Parts 40 and 41 include sections which were added, changed, or deleted to clarify the requirements for specific licenses, exemptions, general licenses, and general license acknowledgements.

Bryan L. Shirley, Director, Budget Division, has determined that for the first five years the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bu-

reau of Radiation Control, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that a radiation safety officer, with documented qualifications and specific duties, is designated for every license issued by the department. Also, no sealed source or device containing radioactive material shall be authorized until radiation safety information for that sealed source or device has been evaluated by the department, NRC, another Agreement State, or a Licensing State. The rule requires that, with certain amounts of radioactive material, a decommissioning funding plan and a certification of financial assurance for decommissioning be submitted ranging from \$75,000 to \$750,000 depending upon the quantities of radioactive material possessed. There will be a varying impact on small businesses and individuals who are required to comply with these rules. Depending upon the quantities of radioactive material possessed, the cost of financial assurance for decommissioning will range from \$75,000 to \$750,000. No impact is anticipated on local employment as a result of implementing these sections.

Comments on the proposals may be presented in writing to Ruth E. McBurney, C.H.P., Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 60 days following publication of these proposed amendments in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Thursday, April 8, 1993, in Conference Room S400, Texas Department of Health, Bureau of Radiation Control, located at The Exchange Building, 8407 Wall Street, Austin.

The amendments and new section are proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§289.121. *Licensing of Radioactive Material*.

(a) The Texas Department of Health adopts by reference Part 41, Licensing of Radioactive Material of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in July 1993 [November 1990].

(b) (No change.)

§289.128. *Exemptions, General Licenses, and General License Acknowledgements*.

(a) The Texas Department of Health adopts by reference Part 40, Exemptions, General Licenses, and General License Acknowledgements of the Department's document titled *Texas Regulations for Control of Radiation*, as adopted in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, located in The Exchange Building, 8407 Wall Street, Austin, Texas 78754, and is available for public inspection during regular working hours.

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 February 18, 1993.

TRD-9319205

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 19, 1993

For further information, please call: (512) 834-6688

◆ ◆ ◆  
• 25 TAC §289.126

The Texas Department of Health (department) proposes an amendment to §289.126, concerning the control of radiation. Section 289.126 adopts by reference Part 12 of the Texas Regulations for Control of Radiation (TRCR) titled, *Fees for Certificates of Registration, Radioactive Material(s), Emergency Planning and Implementation, and Other Regulatory Services*.

The amendment reflects increases in fee amounts to more accurately represent the costs of regulating radiation activities in Texas. Considering the current budget status of the state, it is now necessary to recover 100% of the costs of regulating sources of radiation in Texas and equally distribute those costs not previously assessed specific categories of licensees and registrants among those categories.

In addition, the authority to regulate the disposal of radioactive substances was transferred from the department to the Texas Water Commission (TWC) on March 1, 1992. The amendment revision deletes fees for those regulatory activities which are now under the jurisdiction of the TWC.

Bryan L. Shirley, Director, Budget Division, has determined that for each of the first five years the section is in effect, there will be fiscal implications as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue of approximately \$1,372,000 from the amount of fees collected for each year of fiscal years 1993 through 1998.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure adequate regulatory control of the use of sources of radiation by recovering approximately 100% of the cost of regulation. There will be a varying impact on small businesses and individuals who are required

to comply with the rule. Licensees and registrants will incur costs of annual fees ranging from \$115 for a dental facility with one x-ray machine to \$306,780 for a new license application for a conventional uranium recovery facility. No impact is anticipated on local employment as a result of implementing the section as proposed.

Comments on the proposal may be presented in writing to Ruth E. McBurney, C. H.P., Director, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 60 days following publication of this proposed amendment in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Thursday, March 18, 1993, in Conference Room S400, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin.

The amendment is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

*§289.126. Fees for Certificates of Registration, Radioactive Material(s), Emergency Planning and Implementation, and Other Regulatory Services.*

(a) The Texas Department of Health adopts by reference Part 12, Fees for Certificates of Registration, Radioactive Material(s), Emergency Planning and Implementation, and Other Regulatory Service" of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in July 1993 [October 1992].

(b) (No change.)

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

Issued in Austin, Texas, on February 18, 1993.

TRD-9319203 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 19, 1993

For further information, please call: (512) 834-6688

◆ ◆ ◆  
• 25 TAC §289.127

The Texas Department of Health (department) proposes new §289.127, concerning the control of radiation. Section 289.127 will adopt by reference Part 46 of the *Texas Regulations for Control of Radiation (TRCR)* titled, *Licensing of Naturally Occurring Radioactive Material (NORM)*.

NORM which is present in most soils and minerals is not to be regulated. However, there are certain processes that concentrate NORM to levels far above those existing as background radiation and above which similar radioactive material classified as source or byproduct material is regulated. Concentrated NORM can increase risk from direct exposure, increased radon concentration, inhalation, and ingestion.

Part 46 contains sections which address worker protection; exemptions of materials that pose insignificant risk; release criteria for equipment for unrestricted use; activities to be included under a general license and provisions for use of the general license; and activities requiring a specific license and regulations concerning specific licensure.

Rules concerning regulation of NORM were originally published as proposed rules on March 24, 1992 (17 TexReg 2176). The department made changes to the original proposed rule based upon public comments received. However, the Texas Legislature transferred the authority to regulate disposal of radioactive substances to the Texas Water Commission (TWC) as of March 1, 1992. Due to the transfer, the department deleted all authorizations for disposal of NORM from the rule. Concerns were then raised that if the original proposed rule was adopted without disposal authorizations, no options would exist for disposal of NORM wastes. Therefore, the department postponed promulgation of NORM rules until the TWC could concurrently promulgate NORM disposal rules with equivalent exemption criteria. After the TWC formally adopts NORM disposal rules, the department intends to promulgate additional rules stating that land contaminated with concentrations of NORM in excess of the exempt concentrations shall not be released for unrestricted use.

Bryan L. Shirley, Director, Budget Division, has determined that for the first five years the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure appropriate and adequate regulatory control of concentrated NORM which could pose a health risk to workers and the general public. The section will require those entities possessing and handling NORM to conduct operations in such a manner as to protect workers and the general public. There will be a varying impact on small business and persons who are required to comply with the section. To determine exemptions and comply with the requirements of a general license, companies which do not currently possess adequate instrumentation must obtain such instrumentation or a service to perform surveying, at a cost of approximately \$1,000. Companies required to obtain a specific license must pay an annual fee ranging from approximately \$2,000-\$6,500, depend-

ing upon licensed activities. No impact is anticipated on local employment as a result of implementing the section.

Comments on the proposal may be presented in writing to Ruth E. McBurney, C. H.P., Director, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Public comments will be accepted for 30 days following publication of this proposed amendment in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Wednesday, March 17, 1993, in the conference room of the Bureau of Radiation Control, Texas Department of Health, located at the Exchange Building, 8407 Wall Street, Room S400, Austin.

The new section is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which provides the Board of Health with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

*§289.127. Licensing of Naturally Occurring Radioactive Material (NORM).*

(a) The Texas Department of Health adopts by reference Part 46, Licensing of Naturally Occurring Radioactive Material (NORM) of the Department's document titled *Texas Regulations for Control of Radiation*, as adopted in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, located in The Exchange Building, 8407 Wall Street 78754, and is available for public inspection during regular working hours.

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 February 18, 1993.

TRD-9319236 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: April 24, 1993

For further information, please call: (512) 834-6688

◆ ◆ ◆  
**TITLE 28. INSURANCE**  
**Part I. Texas Department**  
**of Insurance**  
**Chapter 5. Property and**  
**Casualty Insurance**  
**Subchapter M. Filing Require-**  
**ments**

• 28 TAC §5.9302

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to 28 TAC §5.9302, concerning the definition of equivalent coverage as provided in the Insurance Code, Article 5.13-2, §8(e), for policy forms filed by individual insurers for commercial property and general liability insurance and as provided in 28 TAC §5.9101(g)(5) for policy forms filed by individual insurers for commercial multi-peril insurance. The amendment to §5.9302(h) is needed to eliminate the specification in the definition of a "large risk" that a "large risk" means an insured that has been provided an engineering and/or inspection service that meets standards approved by the Texas Department of Insurance and to renumber remaining paragraphs (3) and (4) of subsection (h). The determination of whether a risk is a "large risk" should be based only on the limits of liability and/or total premium for the purposes of determining equivalent coverage requirements. The existence of an engineering and/or inspection service does not necessarily indicate that a risk is a "large risk", and this definition of a "large risk" could provide a loophole for small risks to qualify as large risks and thereby lose the protection to be afforded to small businesses under the equivalent coverage requirements of Article 5.13-2, §8(e).

Lyndon Anderson, associate commissioner, property and casualty program, has determined that, for the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section and there will be no effect on local employment or local economy.

Mr. Anderson also has determined that for each year for the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section is the elimination of unnecessary regulation of equivalent coverage filing requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Division, Texas Department of Insurance, P. O. Box 149104, MC #103-1A, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed pursuant to the Insurance Code, Articles 1.04(b), 5.13-2, 5.81, and 5.98 and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 1.04(b) authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state. Article 5.13-2, §8(e), requires that policy forms submitted by insurers for approval in general liability lines and commercial property lines must provide coverage

equivalent to that provided in the policy forms used for those lines on the effective date of Article 5.13-2. Article 5.81 authorizes the State Board of Insurance to approve forms for multi-peril policies of insurance and to adopt rules to carry out the purposes of that article. Article 5.98 authorizes the State Board of Insurance to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5 of the Insurance Code, which regulates rating and policy forms for property and casualty insurance. Texas Civil Statutes, Articles 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

§5.9302. Equivalent Coverage.

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

(h) The term "large risk" means any of the following:

(1) an insured that has total insured property values of \$10,000,000 or more;

(2) an insured that has been provided an engineering and/or inspection service that meets standards approved by the Texas Department of Insurance;

(3) an insured that has total annual gross revenues of \$20,000,000 or more; or

(4) an insured that has a total premium of \$25,000 or more for property insurance or \$50,000 or more for general liability insurance, or \$75,000 or more for multi-peril insurance.

(i) (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 February 19, 1993.

TRD-9319302 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: March 29, 1993

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

◆ ◆ ◆  
**TITLE 34. PUBLIC FI-  
NANCE**  
**Part V. Texas County and  
District Retirement  
System**  
**Chapter 101. Practice and  
Procedure Regarding Claims**  
• 34 TAC §101.1, §101.6

The Texas County and District Retirement System proposes amendments to §101.1 and §101.6, concerning the definition of words used in the rules regarding practice and procedure regarding claims and the time for filing of retirement applications. The amendments would correct the name of the system as used in §101.1 and amend the reference to its governing statutes to reflect that it now is part of the Government Code. The amendments would also reflect that the time for filing may not precede the termination of a member's employment with the participating subdivision.

Terry Horton, Director of the System, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Horton 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 the elimination of confusion as to the references in the rules and the entity by which a member is employed. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Terry Horton, Director, Texas County and District Retirement System, 400 West 14th Street, Austin, Texas 78701-1688.

The amendments are proposed under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

*§101.1. Definitions.* As used in rules and regulations adopted by the Board of Trustees of the Texas County and District [Municipal] Retirement System:

(1) the term "Act" the Texas Government Code, Title 8, Subtitle F, as amended [Texas Civil Statutes, Article 6228g]; and

(2) (No change.)

*§101.6. Time Filing of Retirement Applications.* All applications for retirement, whether for service or for disability, must be filed not less than 30 nor more than 90 days prior to the date specified by the member as the effective date of his or her retirement; the date specified as the effective date for retirement must be the last day of the calendar month, may not be earlier than one year after the effective date of membership, and may not be a date preceding the termination of the member's employment with the participating subdivision [municipality].

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 February 17, 1993.

TRD-9319150

Terry Horton  
Director  
Texas County and District  
Retirement System

Earliest possible date of adoption: March 29, 1993

For further information, please call: (512) 476-6651

## Chapter 103. Calculation or Types of Benefits

### • 34 TAC §103.2

The Texas County and District Retirement System proposes an amendment to §103.2, concerning additional optional benefits. The amendment would set forth the seven optional benefits which a member may elect in lieu of the standard benefit, without the necessity of referring to any other source or document.

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

Mr. Horton also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the elimination of any confusion as to the nature of the optional benefits. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Terry Horton, Director, Texas County and District Retirement System, 400 West 14th Street, Austin, Texas 78701-1688.

The amendment is proposed under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

#### §103.2. Additional Optional Benefits.

(a) A member entitled to [service] retirement may elect to receive, in lieu of a standard service or disability retirement benefit, [one of the optional benefits set forth in Texas Civil Statutes, Title 110B, §54. 104(c), which optional benefits shall be designated as Options 1, 2, 3, and 4A, respectively, or] one of the following optional benefits, each of which is a reduced monthly allowance that is the actuarial equivalent of the standard retirement benefit, payable during the lifetime of the retiree, but with the provision that: [described in subsection (c) of this section.]

(1) Option 1: after the retiree's death, the reduced annuity is

payable throughout the life of a person designated by the retiree;

(2) Option 2: after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) Option 3: if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;

(4) Option 4A: if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estates;

(5) Option 4B: After the retiree's death, one-fourth of the reduced annuity is payable throughout the life of a person designated by the retiree;

(6) Option 4C: after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of a person designated by the retiree;

(7) Option 4D: if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

[(b) A member entitled to disability retirement may elect to receive, in lieu of a standard disability retirement benefit, one of the optional benefits described in Texas Civil Statutes, Title 110B, §54.3041, which optional benefits shall be designated as Options 1, 2, 3, and 4A respectively, or one of the optional benefits described in subsection (c) of this section.

[(c) The optional benefits under this section that are not established by statute shall be designated as follows, and shall be a reduced monthly allowance certified by the actuary as the actuarial equivalent of the standard annuity to which the person is entitled, and shall be:

[(1) Option 4B. Payable to the member during his lifetime, and upon his death, one-fourth of the reduced benefit to be continued during the life of, and paid to, such person as the member shall nominate by written designation filed with the board within 30 days after the date fixed for retirement.

[(2) Option 4C. Payable to the member during his lifetime, and upon his death, three-fourths of the reduced benefit to be continued during the life of, and paid to, such persons as the member shall nominate by written designation filed with the board within 30 days after the date fixed for retirement.

[(3) Option 4D. Payable during the lifetime of the annuitant, but with 180 monthly payments guaranteed to be paid either to the member's estate, or to a designated beneficiary or the estate of such beneficiary.]

(b)[(d)] If monthly payments under an optional retirement annuity described in subsection (a) [(c)] of this section cease before the sum of all the monthly payments equals or exceeds the amount of accumulated contributions in the individual account in the employee saving fund at the time of retirement of the member on whose service the annuity was based, a lump-sum benefit equal to the amount by which the accumulated contributions exceed the sum of all monthly payments made under the annuity is payable:

(1)-(2) (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 February 17, 1993.

TRD-9319149

Terry Horton  
Director  
Texas County and District  
Retirement System

Earliest possible date of adoption: March 29, 1993

For further information, please call: (512) 476-6651

## Chapter 105. Creditable Service

### • 34 TAC §105.1, §105.2

The Texas County and District Retirement System proposes amendments to §105.1 and §105.2, concerning persons employed by multiple subdivisions and probationary employment. The amendments would change the statutory references in §105.1 to correctly reflect the Act governing the System and use gender-neutral language in the provisions of that section and in §105.2, delete the authority for hospitals to provide for periods of probationary employment, during which a person would not be a member of the System, unless such probationary period is otherwise authorized by the Act governing the System, and would make the provision that a person cannot be subjected to such a probationary period after having become a member of the System applicable to all employees rather than just those being transferred to a hospital.

Terry Horton, Director of the System, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Horton 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 the elimination of references that no longer are correct and the elimination of provisions that do not comply with amendments to the Act governing the System. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Terry Horton, Director, Texas County and District Retirement System, 400 West 14th Street, Austin, Texas 78701-1688.

The amendments are proposed under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

#### §105.1. Persons Employed by Multiple Subdivisions.

(a) Any person who is employed by two or more participating subdivisions shall be considered a covered employee of each if that person's [his] combined service with those subdivisions, if performed for a single employing subdivision, would constitute that person [him] an employee as that term is defined in the Texas Government Code, Title 8, Subtitle F [Texas Civil Statutes, Article 6228g].

(b) Each employee-member shall make monthly current-service deposits at the rate specified in the participation order of the particular employing subdivision upon all compensation paid that person [him] by such employer, but excluding any amount paid [him] by such subdivision in excess of the sum which is that proportion of the "maximum earnings" prescribed for such period by the governing body of such subdivision, which the compensation paid such employee by such subdivision bears to the total compensation paid that person [him] by all participating subdivisions for the period involved. Each employing subdivision shall withhold the current service deposits required on account of the compensation paid such employee by such subdivision [; but the employing subdivisions may designate one employing subdivision to withhold and to make the expense fund contributions required on account of such employer's membership].

(c) Credit shall similarly be allowed for prior service performed on a part-time basis for two or more participating subdivisions during the same calendar periods. The maximum prior-service credit allowed to the member on account of such service shall not exceed the maximum which the person [he] would have been granted had the entire service been performed for and the entire compensation paid by one of the participating subdivisions. The maximum prior-service credit so computed shall be apportioned between and charged to the several

employing participating subdivisions in the proportion which the compensation paid to such employee by the subdivision bears to the total compensation paid to the employee [him] by all participating subdivisions for the same period. The maximum prior-service credit so apportioned to a particular subdivision shall be included in the total of maximum prior-service credits granted to all of its employee-members and shall be converted to an "allocated prior-service credit" of such subdivision as provided in the Texas Government Code, Title 8, Subtitle F [Texas Civil Statutes, Article 6228g, supra].

#### §105.2. Probationary Employment [in Hospitals].

(a) No subdivision may exclude new personnel from membership in the System as a result of a policy relating to probationary employment except as provided in the Texas Government Code, §842.107(c). [By action of the governing body, any subdivision may adopt a personnel policy of uniform application which provides that any person engaged by the subdivision to fill any position in a hospital controlled and operated by the subdivision shall be considered to be "probationally engaged" or "temporarily engaged" (as distinguished from "regularly engaged"), until such person has continuously performed the duties of such position for such period of months (not to exceed 24 months) as the governing body by such policy order shall designate.]

[(b) It is ordered and determined by the Board of Trustees of the Texas County and District Retirement System that no person who is so "probationally engaged" or "temporarily engaged" by such subdivision in any such hospital shall be eligible to be certified to the Texas County and District Retirement System as an "employee" during the period of his probational or temporary engagement; and that such person shall not be entitled to receive and shall not be allowed "creditable service" in this System for work performed or compensation paid him during the period of his probationary or temporary engagement in any such hospital position.]

(b)[(c)] No [Any] person who has become a member of the Texas County and District Retirement System and has not terminated that person's membership in the System shall [and who shall thereafter be transferred to duty in or thereafter while such member be engaged to perform the duties of any position in a hospital operated by a participating subdivision shall be considered "regularly engaged" in such position and shall not] be subject to [or required to perform] probationary status in any [the hospital] position with the same or any other subdivision which participates in

the System; and any personnel policy adopted by the governing body shall so provide.

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 February 17, 1993.

TRD-9319152

Terry Horton  
Director  
Texas County and District  
Retirement System

Earliest possible date of adoption: March 29, 1993

For further information, please call: (512) 476-6651

## Chapter 107. Miscellaneous Rules

### • 34 TAC §107.1, §107.3

The Texas County and District Retirement System proposes amendments to §107.1 and §107.3, concerning confidentiality of Board records and trustee-to-trustee transfers. The amendments would conform §107.1 to the provisions of the Texas Government Code, §845.115 and §107.3 would provide that payment will not be made to more than one trustee of an eligible retirement plan upon the withdrawal of contributions by any one member or any one spouse or any one alternative payee in addition to any payment directly to the member, spouse, or alternate payee.

Terry Horton, Director of the System, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Horton 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 the elimination of non-conforming provisions in the existing section and a reduction in the cost to the system of issuing refund checks. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Terry Horton, Director, Texas County and District Retirement System, 400 West 14th Street, Austin, Texas 78701-1688.

The amendments are proposed under the Texas Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for effective administration of the system.

§107.1. Confidentiality of Board Records. The director is the custodian of records of the Texas County and District Retirement System. The confidentiality of



information about members, retirees, annuitants, or beneficiaries of the System is governed by the Texas Government Code, §845.115 [The files of all active members and of all persons receiving an annuity or any type of benefit from the system, including the names and addresses of such persons, are considered to be personnel records under the provisions of the Texas Open Records Act (Texas Civil Statutes, Article 6252-17a)].

**§107.3. Trustee-to-Trustee Transfers.** Payment of a withdrawal of contributions under the Government Code, §842.108, will not be made to more than one trustee of an eligible retirement plan upon the withdrawal of contributions by any one member or any one spouse or any one alternate payee in addition to any payment directly to the member, spouse, or alternate payee.

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 February 17, 1993.

TRD-9319151

Terry Horton  
Director  
Texas County and District  
Retirement System

Earliest possible date of adoption: March 29, 1993

For further information, please call: (512) 476-6651

◆ ◆ ◆  
**TITLE 37. PUBLIC  
SAFETY AND CORREC-  
TIONS**

**Part XI. Texas Juvenile  
Probation Commission**

**Chapter 345. Community  
Corrections Assistance  
Program**

• **37 TAC §345.1, §345.2**

The Texas Juvenile Probation Commission proposes amendments to §345.1 and §345.2, concerning the allocation program description and requirements for its Community Corrections line item.

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

Mr. Rudeseal 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 successful juvenile probation completions, successful intensive supervision juvenile probation completions, successful completions of direct diversion placements, and diversion from the Texas Youth Commission.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Keith Rudeseal, Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711.

The amendments are proposed under the Texas Human Resource Code, §§141.1, 141.41, and 141.42, which provides Texas Juvenile Probation Commission with the authority to improve the effectiveness of juvenile probation services and provide alternatives to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services and to adopt rules for these purposes.

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

**Commitment performance target**—The maximum number of juveniles a juvenile board or boards which operate a department should recommend annually to the juvenile courts for commitment to TYC, excluding juveniles committed for offenses included in Texas Family Code, §53.45 (sentenced offender), for Type A violent offenses, as that term is defined in Chapter 85, §85.23 of this title [§1.112], and for commitments.

**Community Corrections Assistance Funds—Strategy request 01.02-01 in the TJPC Line Item request Appropriation Request to the legislature to fund diversion services** [The Community Corrections line item appropriated to TJPC by the legislature].

**Juvenile age population**—The number of children 10 years of age or older and under 17 years of age who live in the counties served by each juvenile board or boards that operate a department, according to the most current population projections [1990 United States Census].

**§345.2. Purpose.**

(a) (No change.)

(b) The Texas Juvenile Probation Commission (TJPC) provides funding through a weighted population formula using the juvenile age population. From the total appropriation:

(1) (No change.)

(2) TJPC sets aside a portion of the Community Corrections Assistance fund for diversion placements from counties with juvenile age populations of less than 2,000 [TJPC sets aside \$300,000 for diversion placements made by juvenile courts from juvenile boards with juvenile age populations of less than 2,000];

(3) TJPC may reserve a portion of the Community Corrections Assis-

tance Funds to fund innovative and creative programs developed by the juvenile boards, and approved for funding by TJPC; or to provide reward funds for juvenile boards that have commitment rates that are consistently below the statewide commitment rate [TJPC reserves \$1 million to fund innovative and creative programs to be developed by the juvenile boards and approved for funding by TJPC; and to provide reward funds for juvenile boards that have commitment rates that are consistently below the state's commitment rate];

(4) TJPC may reserve a portion of the Community Corrections Assistance Funds for evaluation and research projects to be conducted by TJPC; and TJPC reserves \$100,000 for evaluation and research projects to be conducted by TJPC; and

(5) TJPC pays a proportional share of an amount determined by TJPC to each juvenile board with more than 100,000 persons in its juvenile age population; and TJPC allocates the remainder of the Community Corrections Assistance Fund according to each juvenile boards' percentage of the state's juvenile age population. [TJPC pays its proportional share of \$681,000 to each juvenile board with more than 100,000 persons in its juvenile age population; and TJPC allocates the remainder of the Community Corrections Assistance Fund according to each juvenile boards' percentage of the state's juvenile age population].

(c) Each juvenile board must develop a Community Corrections plan that sets out the residential and non-residential programs and services it will develop with these funds to meet or exceed its performance targets for successful probation and intensive supervision probation completions, successful completions of direct diversion placements, and recommendations for TYC commitments. The plan must include, but is not limited to, a description of:

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

(8) The Community Corrections Plan must be reviewed and updated in writing by the juvenile board prior to the beginning of each fiscal year. The reviews must be submitted for approval by TJPC staff.

(d) TJPC must receive the review of the juvenile board's Community Corrections Plan by a date set by the Executive Director [June 1].

(e) [by July 1 of each year,] TJPC will notify each juvenile board that has submitted a plan of any need for modification. TJPC will notify each juvenile board that has submitted an acceptable plan of the plan's acceptance by August 1 of each year.

(f) (No change.)

(g) TJPC sets performance targets for each juvenile board for successful completions of direct diversion placements, intensive supervision probation, and probation according to the TJPC Strategic Plan and the appropriations act approved by the legislature and the Governor. [TJPC sets the rate of successful completions of direct diversion placements performance target at 60% for each juvenile board. TJPC sets the rate of successful intensive supervision probation completions performance target at 65% for each juvenile board. TJPC sets the rate of successful probation completions performance target at 84% for each juvenile board.]

(h) TJPC determines the commitment performance target for each juvenile board based on the board's average number of commitments to TYC for the years 1988 through 1991. The commitment performance target begins at a 10% reduction of this average, but the reduction may increase, depending on the juvenile board's past performance, measured in three ways:

(1)-(3) (No change.)

(4) TJPC will annually adjust individual juvenile board's performance targets according to fluctuations in the number of delinquent referrals.

(i) (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 February 18, 1993.

TRD-9319260

Bernard Licarone, Ph.D.  
Executive Director  
Texas Juvenile Probation  
Commission

Earliest possible date of adoption: March 29, 1993

For further information, please call: (512) 443-2001

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part 19. Texas Department of Protective and Regulatory Services**

**Chapter 720. Standards for Twenty-Four Hour Care Facilities**

**Subchapter A. Standards for Child-Placing Agencies (24-Hour Care and Adoption)**

• **40 TAC §§720.24-720.67**

The new sections are proposed under Texas Civil Statutes, Article 4413 (503) historical note (Vernon Supplement 1993) (House Bill 7, Article 1, §106, 72nd Legislature), which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services (DHS) to the Texas Department of Protective and Regulatory Services; and under the Human Resources Code, Title 2, Chapter 42, which provides the department with the authority to administer 24-hour care licensing programs.

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

**Adoption placement model**—The approaches to adoption used by a child-placing agency under its policies. The child-placing agency may use models other than the following.

(A) **Open adoption**—Birth parents and adoptive parents meet one another, share full identifying information, and have access to ongoing contact after the adoption is consummated. The form and frequency of the ongoing contact is determined by the participants.

(B) **Identified adoption**—Birth parents and adoptive parents meet, with intent to effect an adoption, and then contact the child-placing agency.

(C) **Designated adoption**—Birth parents select an adoptive family from de-identified description of prospective adoptive families provided by the child-placing agency.

(D) **Closed adoption**—All aspects of the adoption are kept confidential with no contact between birth and adoptive families.

**Available information**—Information that a reasonable and prudent person would consider accessible to and/or obtainable by a child-placing agency that sets itself forth as qualified to provide child-placing services. A child-placing agency is held to a higher standard than a member of the general public in regard to information relevant to child-placing services.

**Behavior endangering self or others**—Behavior capable of causing physical harm to self or others which may include running away. Physical holding (personal restraint) may be used to prevent a child from running away because it is directly linked to protecting him from potential injury. The behavior may include destruction of property, however, physical holding (personal restraint) to prevent destruction of

property is permitted only after less restrictive interventions have been attempted and failed. Attempts to use less restrictive interventions must be documented in the child's record as part of documenting the need for restraint if destruction of property is defined as behavior endangering self or others.

**Counseling (general)**—Professional guidance of the individual using methods and techniques developed and accepted by human services professionals. All counseling must be done by a staff member, consultant, or volunteer who has at least the qualifications listed in §720.37 of this title (relating to Qualifications and Responsibilities of Professional Level Child-Placing Staff). Counseling by the child-placing agency provides an environment that offers birth parents, prospective adoptive parents, foster parents, and children being considered for placement optimal opportunity to understand all of their options for action, the special characteristics and phases of the placement process relevant to the individual's role, and provides an opportunity for problem solving.

**Diligent effort**—The diligence and skill exercised by a qualified professional in his particular specialty which must be commensurate with the duty to be performed and the individual circumstances of the case, not merely the diligence of an ordinary person or non-specialist.

**Family applicants**—All residents, part or full-time, of a household that is being considered for verification as an agency foster family or agency foster group home.

**Human services field**—A field of study in the social sciences that focuses on family and individual function and interaction and which includes a field placement or practicum.

**Mechanical restraint**—Any physical device used to restrict the movement of the whole or a portion of a child's body, except when such restriction is primarily used to prevent self-injury or permit wounds to heal. See "Protective devices."

**On-going contact**—Applies to all situations where time frames and types of contact are not specified in the standards. On-going contact requires at least one contact of some type per month or documentation of why this is not possible.

**Personal restraint**—Any contact with a caregiver's body applied to restrict the movement of the whole or a portion of a child's body.

**Post adoption services**—Services available through the child-placing agency (direct or on referral) to birth and adoptive parents and the adoptive child after the adoption is consummated. Services include, but are not limited to: counseling, maintaining a registry if a central registry is not used, providing pertinent new medical information to birth or adoptive parents, providing the adult adoptee a copy of his or her record upon request.

Protective devices—Devices used to prevent self-injury or self-mutilation.

Reasonable expenditures—Just, proper, ordinary, or usual expenditures. Fit and appropriate expenditures, given the end in view. These are allowable expenditures that may be counted when determining that annual adoption reimbursement income does not exceed annual child-placing agency expenditures.

Record of adopted child after adoption—All information received by the child-placing agency that bears the child's name and pertains to the child.

Re-evaluation—An assessment of all factors required for the initial evaluation only for the purpose of determining if any substantive changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

Seclusion—Confinement, without a caregiver present, in a locked room or in another isolated area from which the child is prevented from exiting.

Serious incidents—Any non-routine occurrence that has an impact on the care, supervision, and/or treatment of a child or children. This includes, but is not limited to, suicide attempts, injuries requiring medical treatment, runaways, commission of a crime, and allegations of abuse and/or neglect or abusive treatment. Social history (the Texas Family Code, §16.037) — "...must include information, to the extent known, about past and existing relationships among the child and the child's siblings, parents by birth, extended family, and other persons who have had physical possession of the child."

Special needs—Needs other than those of the majority of children of the same age and stage of development and other than those routinely met by the specific kind of facility where the child receives care.

Substitute care—Twenty-four hour a day residential care provided to a child by a child care facility, other agencies such as hospitals and nursing homes, or an individual who is not related to the child by blood, marriage, or adoption.

#### §720.25. *Legal Basis for Operation.*

(a) The child-placing agency must be legally established to operate within Texas and comply with all applicable statutes.

(b) The agency must submit documentation of the legal basis for operation to the licensing division of the Texas Department of Protective and Regulatory Services (PRS) with the application for a license.

(c) The agency must notify PRS's licensing division of any change in the agency's legal basis for operation before a change is made.

(d) The agency must observe the conditions of the license.

(e) The agency must report any change impacting the conditions of the license to PRS's licensing division prior to the change taking place.

(f) The child-placing agency must have legal authority to arrange for placement of a child before making the placement.

(g) Agencies must not act as agents for unlicensed agencies, institutions, or individuals. Agencies making adoptive placements where birth parents take an active role in the selection of an adoptive placement must ensure that the placement selected is in the child's best interest.

#### §720.26. *Governing Body.*

(a) Establishment. The child-placing agency must have a governing body that is responsible for and has authority over the agency's policies and activities and must:

(1) submit, in writing, the names, addresses, and titles of the officers and/or executive committee of the governing body with the application for a license.

(2) submit written notice of any change in the composition of the governing body to the Texas Department of Protective and Regulatory Services (PRS's) licensing division within 10 working days of such change.

(3) inform PRS's licensing division of any change in the information about governing body officers and/or executive committee members within 10 working days of learning about such change.

(b) Responsibilities. The child-placing agency's policies must clearly state the responsibilities assigned to the governing body. The governing body must carry out its assigned responsibilities.

#### §720.27. *Fiscal Accountability.*

(a) The agency must be established and maintained on a sound fiscal basis.

(b) The agency must maintain complete financial records.

(c) New agencies must set up a financial record keeping system approved by a certified public accountant, must meet the Texas Department of Protective and Regulatory Services (PRS's) audit and accounting standards, and must be in accordance with generally accepted accounting principles (GAAP).

(d) New agencies must submit a 12-month budget to PRS's licensing division when the signed application is submitted.

(e) New agencies must have reserve funds or documentation of available credit at least equal to operating costs for the first three months of operation.

(f) New agencies must have predictable funds sufficient for the first year of operation.

(g) Agencies must have a fee policy that clearly indicates how fees are structured and what fees are charged. Agencies providing adoption services must make clear whether a portion of the fee reimburses the agency for allowable expenses on behalf of birth parents, as described in §720.65 of this title (relating to Adoption: Allowable Expenditures on Behalf of Birth Parents) and clearly state any other items included in the fee.

(h) Agencies providing adoption services must have an annual audit by an independent certified public accountant. The audit must meet the audit and accounting standards described in §720.64 of this title (relating to Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services) and be performed in accordance with GAAP.

(i) Agencies providing adoption services must submit the following information to PRS's licensing division annually:

(1) audit information pertaining to adoption fees and expenditures must include an opinion letter from the certified public accountant performing the audit verifying that the information submitted accurately reflects adoption-related income and disbursements; and

(2) other financial information, as requested, required for the licensing review to determine that adoption related income and disbursements are reasonable, appropriate, and in compliance with minimum standards.

(j) For agencies providing adoption services, annual income from adoption fees and any reimbursements related to adoption expenses, gifts and donations, grants, or other sources of income related to adoption services must not exceed the agency's annual allowable and reasonable expenditures for providing adoption-related services to children, birth parents, adoptive applicants, and adoptive parents. The agency may carryover a maximum of three months adoption-related operating expenses as a reserve fund from fiscal year to fiscal year. Only allowable and reasonable expenditures may be included in such calculations.

(k) An agency must not make any payments for adoption referrals.

(l) An agency must not influence or attempt to influence birth parents to make a decision to relinquish their child by offering any form of financial or other material incentive.

(m) An agency must not make any retroactive payments to or in behalf of birth parents for needs or services other than for medical and legal expenses. No payments may be made for anticipated needs or services (prior to need and/or delivery of goods or services).

(n) An agency may make allowable and reasonable expenditures on behalf of birth parents only when a demonstrated need for expenditures exists. Unless an agency can demonstrate that the basic health and safety of the birth parent or child is in imminent danger, the child-placing agency may not, by action and/or advice, disrupt an existing arrangement where needs are met and then make expenditures to meet those needs.

(o) When making allowable and reasonable expenditures on behalf of birth parents, children, and adoptive parents, an agency providing adoption services must maintain financial records that clearly state the specifics of each transaction.

(1) An agency must not make lump sum payments to or on behalf of birth parents.

(2) Each transaction must be documented by receipts. Receipts must include date, payee identification, purpose, and clear indication that funds were expended for services rendered and/or goods provided. Canceled checks do not meet the documentation requirement.

(p) An agency providing adoption services may not make direct payments of any kind to a birth parent except in the case of a documented emergency. Any emergency funds must be related to allowable expenses and receipts must be obtained and retained by the agency for documentation.

(q) Agencies providing adoption services must have an adoption fee or adoption fee schedule equally applied to all clients.

(r) Agencies providing adoption services must have a clearly stated birth parent reimbursement policy.

#### §720.28. Policies.

(a) The child-placing agency must have clearly stated, current policies, approved by its governing body, that at least meet minimum standards for child-placing agencies and are fully implemented.

(b) The agency's policies must include a mission statement that clearly describes the agency's services including the population eligible for services and identification of the needs the agency will meet for that population.

(c) The agency must maintain current copies of all policies. Policies must

indicate governing body approval and effective date.

(d) All agency policies must be available for review upon request by the Texas Department of Protective and Regulatory Services (PRS's) licensing division and child-placing agency clients.

(e) The agency must operate according to its written policies.

(f) The agency must report any changes to the written policies to PRS's licensing division prior to implementing the change.

#### §720.29. Client Rights.

(a) Child-placing agencies must ensure that clients have access to information necessary to informed decision making.

(b) Agencies must inform clients that minimum standards, compliance status reports, and the child-placing agency's policies are available for review upon request.

(c) Agencies must have a written appeal process for child-placing agency clients in regard to all actions and decisions taken by the child-placing agency affecting those clients.

(d) Agencies must inform clients of the right to appeal agency actions and decisions that affect them and of the procedures for making an appeal.

(e) Agencies must inform clients of the procedures for making a complaint to the Texas Department of Protective and Regulatory Services (PRS's) licensing division.

#### §720.30. Children's Rights.

(a) The child-placing agency is responsible for protecting children's rights while a child is placed in substitute care and in adoptive placements prior to consummation of the adoption.

(b) Children must not be abused or neglected.

(c) Children must be placed appropriately in a home or child care facility where their needs are met.

(d) Children must have an appropriate education.

(e) Children must have an opportunity to participate in community functions and recreational activities and have their social needs met.

(f) Children must have personal clothing suitable to their age and size. Children must have some choice in selecting their clothing.

(g) Children must be given training in personal care, hygiene, and grooming. Each child must be supplied with equipment for personal care, hygiene, and grooming.

(h) Money a child earns or is given as a gift or allowance must be his personal property.

(i) A child's money must be accounted for separately from the agency's funds or the funds of the facility or family with whom he is placed.

(j) A child must not be required to use his personal money to pay for room and board, unless it is a part of the service plan and approved in writing by the parents or managing conservator and the child-placing agency.

(k) Contacts between children and their parents must be allowed according to the agency's policies unless parental rights have been terminated or relinquished or contacts are not in the child's best interest.

(1) Children must be allowed to send and receive mail and have telephone conversations with family members or managing or possessory conservators unless the child's best interest or a court order necessitates restrictions.

(2) When either the child or his family requests contact, but that contact is not in the child's best interest, professional level child-placing staff must determine the communication restrictions. Reasons for the restrictions must be explained to the child and documented in his record.

(3) If restrictions continue longer than one month and the child or his family continues to request contact, professional level child-placing staff must evaluate these restrictions at least monthly. Reasons for the continued restrictions must be explained to the child and documented in his record.

(4) If communications or visits are limited for practical reasons (such as expense), the limits must be determined with the child and his parents or managing conservator. The limits must be documented in the child's record.

(l) A child must be allowed to bring personal possessions to the facility or home where he is placed and allowed to acquire other personal possessions. Any limits on the kinds of possessions a child may or may not receive must be discussed with the child and his parents or managing conservator.

(m) The written informed consent of a child (if the child is able to give consent) and the child's parents or managing conservator must be obtained before involving the child in any fund raising and/or publicity for the child-placing agency.

#### §720.31. Medical and Dental Care.

(a) The child-placing agency must ensure that each child receives appropriate medical and dental care.

(b) The agency must have written policies and procedures for routine and emergency diagnosis and treatment of medical and dental problems. Copies of the policies and procedures must be given to each agency home and adoptive home. If children are placed in a child care facility, the agency must ensure that medical and dental care provided meets the minimum requirements in the minimum standards for child-placing agencies.

(c) A licensed physician must determine the need and frequency for medical examinations.

(d) A licensed dentist must determine the need and frequency for dental examinations.

(e) The child-placing agency must ensure that medical and dental examinations and treatment are provided as indicated.

(f) The agency must document medical and dental examinations, each visit to a physician or dentist, and treatment recommended and provided in the child's medical records.

(g) Children must be immunized against disease and screened for tuberculosis as recommended by the Texas Department of Health. Current immunization records and records of tuberculosis screening must be kept for each child in substitute care or adoptive placement.

(h) Any known allergies must be documented in the child's medical record.

(i) Any seizures, injuries, and medically pertinent incidents must be recorded in the child's medical record, including the date and time the incident occurred, type of incident, and action taken.

(j) Each child's medical record must include a record of medications received by the child.

#### §720.32. Problem Management.

(a) The child-placing agency must have written policies to guide caregivers in management of problem behavior of children in substitute or adoptive placement prior to consummation of the adoption. The policies must include measures for positive responses to appropriate behavior. The agency must give copies of the policies to staff, foster parents, adoptive parents, and to birth parents or managing conservators.

(b) Disciplinary measures used by caregivers must:

(1) be consistent with the agency's policies;

(2) not be physically or emotionally damaging to the child; and

(3) be individualized to meet each child's needs.

(c) Only adult caregivers may discipline a child.

(d) Children must not be subjected to any harsh, cruel, unusual, or unnecessary punishment.

(e) Children must not be denied food, mail, or visits with their families as punishment.

(f) Children must not be threatened with the loss of placement as a means of controlling behavior.

(g) The reasons for any punishment or restriction must be explained to the child when the measures are imposed.

(h) Physical punishment must not be used for any child with special needs, including, but not limited to, emotional disturbance, mental retardation, or primary medical needs.

(i) Children of any age must never be shaken or slapped.

(j) If the agency's policy permits physical punishment, a complete description of any physical punishment administered must be recorded in the child's record. Documentation must include the name of the caregiver administering any physical punishment.

(k) If a child is restricted to a foster or adoptive home for more than 24 hours, the restrictions must be recorded in the child's record.

(l) If the agency's policy permits spanking children under five years old, spanking may be administered only with an open hand on a child's buttocks or hands.

(m) If the agency's policies permit the use of any form of restraint, this must be limited to emergency use of personal restraint unless the agency home is verified for specialized care or the adoptive home is approved for a specialized placement. Authorization to use any form of restraint must be individualized and based on the needs of the specific child.

(n) Restraining measures must not be used as punishment, as a substitute for effective treatment or program, or for the caregiver's convenience.

(o) If restraining measures are used, only such force as is reasonable and necessary may be used.

(p) If the agency authorizes the use of restraint for a child, caregivers must be trained in the types of restraint authorized before the child is placed.

(q) Personal restraint may be used only when a child's behavior endangers himself or others.

(r) The child must be released from personal restraint as soon as he is no longer a danger to himself or others.

(s) Any use of personal restraint must be documented in the child's record, including:

(1) the date and time the caregiver began using the restraint and the name of the caregiver using it;

(2) a description of the specific behaviors necessitating the use of the restraint;

(3) the type of restraint used and the length of time the child was restrained; and

(4) any injury the child sustained as a result of the incident or the use of restraint.

(t) The use of personal restraint must be evaluated as part of the next service plan review. The agency must consider alternative strategies to handle the behavior that required using personal restraint. This evaluation and instructions to caregivers must be documented in the child's record.

(u) Protective devices, mechanical restraints, and seclusion or placing a child in a locked room must not be used unless the agency home is verified for specialized care or the adoptive home is approved for a specialized placement. Use of these measures must meet minimum standards for specialized care.

#### §720.33. Serious Incident Reports.

(a) The child-placing agency must complete written reports for serious incidents involving staff or children within 24 hours of learning about the occurrence. Each report must include the date and time of the occurrence, the staff or children involved, the nature of the incident, and the surrounding circumstances.

(b) The agency must report the following types of serious incidents to the Texas Department of Protective and Regulatory Services (PRS's) licensing division and the child's parents or managing conservator by the next workday: suicide attempts; abusive treatment and abusive activity among children, including alleged abuse; incidents that critically injure or permanently disable a child; and a child's death.

(c) The agency must have current written policies and procedures to follow when a child is absent without permission. These must include:

(1) time frames for determining when a child is absent without permission;

(2) actions child-placing agency staff must take to locate the child; and

(3) procedures (including time frames) staff must follow to notify the parents or managing conservator and the appropriate law enforcement agency.

(d) If a child is not found, absence without permission must be reported to the child's parents or managing conservator and to the appropriate law enforcement agency.

(e) If a child is absent without permission, circumstances surrounding his absence, efforts to locate the child, and notification of the child's parents or managing conservator and the appropriate law enforcement agency must be documented. If the parent or managing conservator cannot be located, attempts to report the child's absence must be documented.

#### §720.34. Client Records.

(a) The child-placing agency must maintain complete individual client records.

(b) The agency must ensure that client records are kept confidential and inaccessible to unauthorized persons.

(c) Information in client records may only be disclosed for direct and authorized services to the child or family or as part of the professional administration of the child-placing agency.

(d) Adoption records must be kept confidential in accordance with the placement model, such as, open, identified, designated, closed.

(e) Client records must be available to the Texas Department of Protective and Regulatory Services (PRS's) licensing division for review.

(f) For children placed in substitute care, agencies must maintain complete case records for at least 10 years after the child is discharged from care. After 10 years, at least the following must be retained permanently:

(1) Any health records that physicians advise will be of medical importance to the child; and

(2) Information concerning the termination of parental rights or the court order.

(g) For children placed in adoption, agencies must maintain complete client records permanently.

#### §720.35. Personnel Policies.

(a) The child-placing agency must have a current organization chart showing the administrative structure and staffing, including the lines of authority.

(b) The agency must have a written job description for each employee.

(c) If an agency uses volunteers, the agency must have volunteer policies describing the way volunteers will be used by the agency.

(d) If agency volunteers have contact with clients, the agency must have written policies covering volunteer qualifications screening and selection procedures, and orientation and training programs.

#### §720.36. General Personnel Requirements.

(a) The child-placing agency must reassign or remove from direct contact with clients any employee, volunteer, or foster parent against whom is returned:

(1) an indictment alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act;

(2) any information accepted by a district or county attorney alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency;

(3) an official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(b) Such reassignment or removal must remain in effect pending resolution of the charges.

(c) No one may serve as a staff member, volunteer, or foster parent having contact with clients or be approved as an adoptive parent who has been convicted of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, unless the Department of Protective and Regulatory Services (PRS's) Director of Licensing has ruled that proof of rehabilitation has been established.

(d) No one may serve as a staff member, volunteer, or foster parent having contact with clients or be approved as an adoptive parent for whom "reason to believe" (or a comparable determination in another state) has been determined for child abuse and neglect unless PRS's Director of Licensing has ruled that proof of rehabilitation has been established.

(e) The agency must report any occurrences under standards listed in subsection (a) of this section, to PRS's licensing division by the end of the first workday after learning of the occurrence.

(f) Persons whose behavior or health status presents a danger to clients must not be allowed at the child-placing agency or at homes verified by the agency.

(g) Staff and volunteers who have contact with children, foster parents, foster

family household members, and employees in foster family homes must be tested for tuberculosis according to the recommendations of the Texas Department of Health or local health authorities before having contact with children in care.

(h) The child-placing agency must have a personnel file for each employee, volunteer, and foster parent whose work relates to child-placing activities, work with birth parents, and children in care. Each file must contain:

(1) documentation that the person meets the qualifications for the position;

(2) tuberculosis test reports, if required, for persons having contact with children;

(3) criminal background check and child abuse/neglect report information system check reports;

(4) documentation that the person meets training requirements;

(5) date of employment; and

(6) date and reason for separation.

#### §720.37. Qualifications and Responsibilities of Professional Level Child-Placing Staff.

(a) The child-placing agency must have on staff at least one person with a master's degree in a human services field from an accredited college or university and with at least two years of supervised child-placing experience. The staff members must also fulfill the following:

(1) the person must have completed a minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and

(2) the person must have completed at least 350 hours of formal, supervised field placement or practicum with a social service or human services agency.

(b) Persons who hold a master's degree in a human services field that does not include the requirements in subsection (a) (1) and (2) of this section may substitute an additional minimum of three years of supervised child-placing experience for the credit hour and practicum requirements.

(c) The following responsibilities must be carried out by professional level child-placing staff:

(1) approval of admission of a child into the child-placing program;

(2) approval of the intake study;

(3) approval of a facility, adoptive, or foster home for the child's placement and for initial and subsequent placements;

(4) approval of service plans and service plan reviews;

(5) approval of studies on foster families and adoptive homes; and

(6) professional supervision of less qualified and/or experienced staff, if any, including planning for staff development and corrective action in regard to child-placing decisions.

**§720.38. Supervisor Level Child-Placing Staff.** Staff who supervise child-placing staff must be professional level staff as defined in §720.37 of this title (relating to Qualifications and Responsibilities of Professional Level Child-Placing Staff) or meet one of the following qualifications:

(1) a master's degree in a human services field and one year of supervised child-placing experience;

(2) a bachelor's degree in a human services field and two years of supervised child-placing experience; or

(3) a bachelor's degree and three years of supervised child-placing experience.

**§720.39. Other Child-Placing Staff.**

(a) Other staff engaged in child-placing must meet one of the following qualifications:

(1) a master's degree in a human services field from an accredited college or university and one year of supervised child-placing experience;

(A) the person must have completed a minimum of nine credit hours in graduate level courses that focus on family and individual function and interaction; and

(B) the person must have completed at least 350 hours of formal, supervised field placement or practicum with a social service or human services agency;

(2) a master's degree from an accredited college or university and two years of supervised child-placing experience;

(3) a bachelor's degree in a human services field from an accredited college or university and two years of supervised child-placing experience;

(4) a bachelor's degree from an accredited college or university and three years of supervised child-placing experience; or

(5) a bachelor's degree from an accredited college or university and direct

supervision from a person meeting supervisor level qualifications.

(b) Child-placing decisions made by staff who do not meet professional level qualifications must be approved by professional level staff.

**§720.40. Foster Parents and Agency Home Child Care Staff.**

(a) Agency home child care staff refers to agency foster family homes and agency foster group homes that are staffed by agency employees as differentiated from traditional foster homes.

(b) Foster parents and agency home child care staff must have at least a high school diploma or GED credentials. In lieu of meeting this requirement for all foster parents and agency home child care staff, an agency may submit to the Texas Department of Protective and Regulatory Services (PRS's) licensing division a detailed proposal for determining that foster parents and agency home child care staff are able to provide appropriate care and benefit from training. Approved proposals may be implemented in lieu of requiring a high school diploma or GED credentials for all foster parents and agency home child care staff.

**§720.41. Training Requirements.**

(a) All child-placing staff, foster parents, and agency home child care staff must receive an orientation about the child-placing agency's policies and the services provided.

(b) The agency must have an individualized training plan for all child-placing staff, foster parents, and agency home child care staff. The plan must include stated time frames for assessment of each staff's training needs, plan for training content, and number of training hours.

(c) The agency must ensure that all foster parents and agency home child care staff complete eight hours of pre-service training in areas appropriate to the needs of children for whom they will be providing care. Pre-service training must be completed before children are placed for care.

(d) Professional level child-placing staff must obtain at least 20 clock hours of job-related training annually. At least 10 of the clock hours obtained each year must relate directly to child-placing responsibilities.

(e) Other nonsupervisor child-placing staff must obtain at least 50 clock hours of job-related training during the first year of assignment to child-placing responsibilities, 30 clock hours of job-related training during the second year, and at least 20 clock hours annually thereafter. All qualifying clock hours must relate directly to child-placing responsibilities.

(f) Supervisor level child-placing staff must obtain at least 30 clock hours of job-related training during the first year of assignment to supervisory responsibilities and 20 clock hours of job-related training annually thereafter. At least 75% of the clock hours obtained each year must relate directly to child-placing responsibilities.

(g) Foster parents and agency home child care staff must have the following training.

(1) The primary caretaker in a foster family unit and all agency home child care staff must successfully complete training from a certified instructor in infant/child cardiopulmonary resuscitation (CPR) and first aid prior to assignment to child care responsibilities. Infant/child CPR training and first aid training must be updated as required to maintain certification.

(2) For agency homes providing care for infants up to 24 months of age with no special needs, the foster family unit must complete at least 10 hours of training annually. Agency home child care staff assigned to such homes must each complete 10 clock hours of training.

(3) For agency homes providing care for children two years of age and older with no special needs, each foster parent and agency home child care staff must complete at least 15 hours of training annually.

(4) For agency homes providing care for children with special needs, each foster parent and agency home child care staff must complete at least 20 hours of training annually.

(5) Annual training hour requirements are in addition to first aid and CPR initial training and training updates.

(h) 75% of the required annual training for child-placing staff, foster parents, and/or agency home child care staff must consist of course work from an accredited educational institution, workshops, seminars, other direct training provided by qualified agencies, organizations, and individuals, in-service training, or self-instruction program. To qualify, in-service training and self-instruction programs must include stated learning objectives, curriculum and learning activities, and an evaluation component. All training must be documented, including date, subject, number of hours, and training provider.

**§720.42. Placement for Substitute Care Policies.**

(a) If a child-placing agency provides foster care services, the agency must have foster care policies that include:

(1) written policies including specific criteria for accepting foster parent applicants and agency home child care staff;

(2) specific criteria for making decisions about the number, ages, and needs of children who may be placed with foster parents and in agency homes where child care staff are employed;

(3) written screening procedures for foster parents and/or agency home child care staff;

(4) a statement of the rights and responsibilities of the agency, foster parents, and foster families in regard to the relationship between the agency and the foster home;

(5) a statement that the agency will not discriminate on the basis of race, color, national origin, sex, age, disability, political belief, or religion.

(b) The agency must have a written pre-service training policy for foster parents and agency home child care staff. The policy must include the type and amount of pre-service training in relation to the ages and needs of the children who will be placed in the home.

(c) The agency must screen applicants, make specific placement decisions, and provide pre-service training according to the stated policies.

(d) The agency must have a policy that identifies children's rights in agency care. The policy must cover:

(1) contact between the child and the child's family;

(2) any limitations to children's contact with family;

(3) child's right to receive gifts, telephone calls, letters, and other communications;

(4) the right to confidentiality;

(5) the right to be free of coercion regarding participation in public events, media presentations, and fundraising events; and

(6) the right to be free from any harsh, cruel, or unusual discipline or punishment.

#### *§720.43. Substitute Care Intake.*

(a) Except in an emergency placement, intake information must be gathered, documented, reviewed, and the intake process and decision to place approved by professional level child-placing staff prior to placement. The written intake study must be completed within five working days of the placement decision.

(b) In an emergency placement, the intake study must be completed within 30 days of the placement, including approval by professional level child-placing staff.

(c) The child-placing agency must obtain all available information regarding the child being considered for substitute care placement including:

(1) health history, social history, educational history, genetic and family history, and other information required by the Texas Family Code, §16.032 and as described in §720.67 of this title (relating to Requirements: Health, Social Educational, and Genetic History Report);

(2) history of any previous placements, including dates and reasons for placement;

(3) the child's understanding of and response to consideration of placement; and

(4) the child's legal status.

(d) If a child shows symptoms of illness or abuse, he must be examined immediately by a licensed physician.

(e) A child must have a medical examination by a licensed health practitioner within 30 days prior to placement or within 30 days after placement. A child being transferred from a licensed agency who has had a medical examination within the past year is exempt. The signed and dated examination report must be in the child's record.

(f) Children three years old or older must have a dental examination by a licensed dentist or a dental hygienist working under the supervision of a licensed dentist within one year before placement or arrangements must be made for one within 60 days after placement. Documentation of the arrangement or of the dental exam must be in the child's record.

(g) Children must be tested for tuberculosis according to the recommendations of local public health authorities or the regional office of the Texas Department of Health in the county in which the child has been living.

(h) Unless the child-placing agency is the managing conservator at the time of placement, there must be a written agreement between the child-placing agency and the child's parents or managing conservator. A copy of the agreement must be in the child's record. The agreement must include:

(1) authorization for the child-placing agency to care for the child;

(2) a medical consent form signed by a person authorized to give consent by the Texas Family Code; and

(3) statement of the reason for placement and anticipated length of time in care.

(i) Agencies must inform parents and managing conservators in writing of:

(1) the agency's rules regarding visits, gifts, mail, and telephone calls;

(2) the type and frequency of reports the agency will make to parents and managing conservators;

(3) the agency's discipline policies;

(4) the agency's policy or program concerning religious training; and

(5) information concerning trips.

#### *§720.44. Substitute Care Placement.*

(a) When the child-placing agency places children into a regulated child care facility, the responsibility for the child's care becomes a joint responsibility between the agency and the regulated child care facility. The regulated child care facility must meet the appropriate minimum standards. The child-placing agency is not required to duplicate activities, such as service planning, being carried out by the regulated child care facility. In regard to time frames and any specifics of care, the minimum standards for the regulated child care facility apply.

(b) In a non-emergency placement, all information from the intake study relating to the child's needs and plans for care and management must be shared with the foster parents or staff responsible for the child's care prior to placement.

(c) In an emergency placement, the agency must provide all available intake study information relating to the child's needs and plans for care and management to foster parents or staff responsible for the child's care at or before the time of placement.

(d) In an emergency placement, the agency must provide all information from the intake study relating to the child's needs and plans for care and management to foster parents or staff responsible for the child's care within 30 days of placement.

(e) The agency must document the intake information shared with foster parents or staff responsible for the child's care, including dates, in the child's record.

(f) In a non-emergency placement, children over six months of age must visit at least once in the foster home or child care facility before placement. The visit must be documented in the child's record.

(g) If a child-placing agency uses the agency home of another child-placing agency, there must be a written agreement between the agencies that specifies the roles and responsibilities of each child-placing agency.

(h) The agency must document in the child's record that a child with special needs is placed in a foster home or child



care facility capable of meeting such needs or that the agency has in place other arrangements to ensure the needs are met.

#### §720.45. Initial Service Plan.

(a) Within 30 days after placement, the child-placing agency must develop an initial service plan for the child. For children placed in emergency shelters, the agency must develop, review, and update the discharge plan as required by emergency shelter standards. The initial plan of service must be developed prior to discharge from the emergency shelter.

(b) The agency must make diligent efforts to involve the following persons in the service planning process: the child, as appropriate; the parents or managing conservator; and the foster parents or child care facility. The agency must document in the child's record persons participating in the plan development.

(c) The service plan must identify and include:

(1) the child's needs, in addition to basic needs related to day-to-day care and development:

(A) areas of special needs that must be considered include medical, dental, developmental, educational, social, and emotional needs;

(B) for children 16 years of age and older, the plan must include preparation for adult living;

(2) specific strategies to meet the child's needs, including instructions to foster parents or staff responsible for the care of the children. Instructions must include specific information about:

(A) supervision;

(B) discipline and behavior management; and

(C) trips and visits away from the home;

(3) expected outcomes of placement for the child including the permanency plan for the child and estimated length of time in care.

(d) Child-placing agency staff must have face-to-face contact with the child at least quarterly. Contacts must be documented in the child's record.

(e) The child-placing agency must obtain professional consultation and treatment for children with developmental disabilities and/or problems of adjustment in the social, home, and/or school environ-

ment. Any record of specialized testing or treatment must be documented in the child's record.

#### §720.46. Service Plan Review.

(a) The service plan must be reviewed at least every three months until a permanent placement is made.

(b) When the permanency plan for a child consists of placement for basic foster care and the permanent placement is made, the service plan must be reviewed at least annually. Service plans for permanent placements in habilitative and primary medical needs foster care must be reviewed at least every six months; in therapeutic foster care, at least every three months.

(c) Regardless of the date of the last regular review, the service plan must be reviewed whenever a placement is disrupted or a child's and/or family's needs change significantly. A significant change is one that has an impact on any one of the service plan categories.

(d) The child's parents or managing conservator must be notified of a service plan review in advance. Documentation of the notice must be included in the child's record.

(e) The agency must make diligent efforts to involve the following persons in the service plan review: a representative of the child-placing agency, the foster parents or child care facility representative, the child, and the child's parents or managing conservator. Participation must be documented in the child's record.

(f) The service plan review must include:

(1) an evaluation of progress towards meeting identified needs;

(2) any new needs identified since the plan was developed or last reviewed and strategies to meet these needs, including instructions to foster parents or staff responsible for the child's care; and

(3) any changes to the expected outcomes of placement, the permanent placement plan, and the estimated length of time in care.

#### §720.47. Subsequent Placement.

(a) Non-emergency subsequent placements must meet the following requirements.

(1) Professional level child-placing staff must approve the planned move before a child is moved from one placement to another.

(2) The agency must arrange for at least one pre-placement visit in the child care facility or foster home before moving a

child over six months of age. This must be documented in the child's record.

(3) Child-placing agency staff must discuss, with the child, the circumstances that make the move necessary in a manner appropriate to the child's age and ability to respond orally and behaviorally to such a discussion. The discussion must take place prior to the move and must be documented in the child's record.

(4) The child's understanding of and response to the move must be documented in the child's record.

(5) The child's plan of service must be reviewed and updated prior to the move.

(6) Social, medical, psychological, and school history as it relates to the child's needs and plans for care and management must be shared with the foster parents or child care facility staff prior to placement. The information provided must be documented in the child's record.

(b) Emergency subsequent placements must meet the following requirements.

(1) Child-placing agency staff must discuss with the child the circumstances that make the move necessary before or at the time of the move. The discussion must be documented in the child's record.

(2) The child's understanding of and response to the move must be documented in the child's record.

(3) The child's plan of service must be reviewed and updated within 10 working days of an emergency move to a foster home or child care facility other than an emergency shelter. For children placed in emergency shelters, the agency must develop, review, and update the discharge plan as required by emergency shelter standards and review and update the child's plan of service prior to discharge from the emergency shelter.

(4) Social, medical, psychological, and school history as it relates to the child's needs and plans for care and management must be shared with the foster parents or child care facility staff prior to or at the time of placement. The information provided must be documented in the child's record.

(5) Professional level child-placing staff must approve the move within 10 working days of placement.

#### §720.48. Discharge.

(a) The child-placing agency must make diligent efforts to involve the following persons in planning the discharge of a child:

- (1) the child;
- (2) the child's parents or managing conservator;
- (3) child-placing agency staff; and
- (4) foster parents or child care facility staff.

(b) At discharge, the agency must include the following in a child's record:

- (1) a discharge summary showing services provided during care, the growth and accomplishments, assessment of needs which remain to be met, and recommendations about the services needed to meet these needs;
- (2) date of discharge, reason for discharge, and the name and relationship of the person(s) or agency to whom the child was discharged; and
- (3) aftercare recommendations.

**§720.49. Agency Foster Family Care Study.**

(a) The foster home study process for all family applicants must include at least the following documented contacts:

- (1) at least one individual interview with each foster parent;
- (2) at least one additional interview with the foster parents either jointly or as a family group;
- (3) at least one interview with each child and any other person living full or part-time with the family;
- (4) at least one visit to the foster home when all members of the household are present; and
- (5) at least one contact, by telephone, in person, or by letter, with each adult child of the foster family no longer living in the home.

(b) The child-placing agency must conduct a foster home study for all family applicants being considered for verification as an agency foster family home or agency foster group home. The child-placing agency must obtain all available information about the foster home applicants regarding:

- (1) motivation for providing foster care;
- (2) health status (physical, mental, and emotional) of all persons living in the home in relation to the family's ability to provide foster care;
- (3) quality of marital and family relationships in relation to the family's ability to provide foster care;
- (4) foster parents' feelings about their childhood and parents, including any

history of abuse and/or neglect and their resolution of such experience;

- (5) values, feelings, and practices in regard to child discipline and care;
- (6) sensitivity to and feelings about children who may have been subjected to abuse, neglect, separation from, and loss of their biological family;
- (7) sensitivity to and feelings about birth families of children in substitute care;
- (8) attitude of the extended family regarding foster care;
- (9) sensitivity to and feelings about different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide foster care for and assist in maintaining the cultural/ethnic identity of children from different backgrounds;
- (10) expectations of and plans for foster children; and
- (11) behavior or background that the foster family cannot accept.

(c) Staff responsible for the foster home study must evaluate information obtained during the study process and make specific recommendations about the family's capacity to work with children. This must include, but is not limited to, such characteristics as age, sex, special needs, and number of children.

(d) Prior to approving an agency home or agency foster group home for placement the child-placing agency must obtain the following:

- (1) documentation that all members of the household and any employees of the foster family have been tested for tuberculosis according to the recommendations of the Texas Department of Health or local public health authorities;
- (2) an approved fire inspection report, or if fire inspections are not available, the Texas Department of Protective and Regulatory Services (PRS's) fire safety checklist;
- (3) an approved health inspection report, or if health inspections are not available, PRS's health inspection checklist; and
- (4) the floor plan sketch of the home showing room dimensions and purposes of rooms.

**§720.50. Foster Home Verification.**

(a) Before verifying an agency home, the agency must perform an inspection and document that the home meets appropriate minimum standards. Verification must include that either no firearms are or will be present in the home or that all appropriate precautions are taken.

(b) Before issuing an agency home verification, the child-placing agency must document that professional level child-placing staff has approved the home for placement including the number, age, and sex of the children for whom the home is approved.

(c) An agency must not place a child into a home until the home has been studied and verified as an agency home. The child-placing agency must not place more children in an agency home than the number for which the home is approved.

(d) An agency home verification form must be given to each approved agency home after the foster home study and after any change that affects the conditions of the verification certificate.

(e) The child-placing agency must make a written agreement with the foster parents at the time the agency home is verified. Both the child-placing agency and the foster parents must have a copy of the agreement and a copy must be filed in the foster home record. This agreement must specify:

- (1) the financial agreement between the child-placing agency and the foster home;
- (2) that the foster home must not accept a non-relative child for 24-hour care from any source other than through the child-placing agency;
- (3) the child-placing agency's right to remove the child at the child-placing agency's discretion;
- (4) that the child may be discharged from the home only with the consent of the child-placing agency;
- (5) that visiting by the child's parents or relatives must be arranged through the child-placing agency;
- (6) the child-placing agency's responsibility for regular supervision of the foster home;
- (7) the agency's policies in regard to child care, discipline, and supervision of children and children's visits or trips away from the foster home; and
- (8) the agency's policies in regard to reports to the agency from the foster parents regarding foster children and other events or occurrences impacting the provision of foster care.

(7) the agency's policies in regard to child care, discipline, and supervision of children and children's visits or trips away from the foster home; and

(8) the agency's policies in regard to reports to the agency from the foster parents regarding foster children and other events or occurrences impacting the provision of foster care.

**§720.51. Foster Home Management.**

(a) The child-placing agency must evaluate all minimum standards for each agency home at least every two years and whenever a change is made that affects the conditions of the verification certificate. The re-evaluation study must document

how appropriate minimum standards are met.

(b) Supervisory visits must be made at least quarterly to each agency home in which children are placed. These visits must be documented in the foster home record. Documentation must include notes on standards evaluated for compliance, any non-compliance found, and plans for correction. The child-placing agency must follow-up on any noncompliance and document that corrections have been made. Supervisory visits are not required for homes in which no children are being cared for. Such homes must be re-evaluated before additional placements are made.

(c) All verifications and revocations must be reported to the Texas Department of Protective and Regulatory Services (PRS's) licensing division on the forms supplied.

#### *§720.52. Adoption Policies.*

(a) Agencies making adoptive placements must have adoption policies.

(b) Adoption policies must include:

(1) adoptive parent/family qualifications and screening and selection criteria and procedures;

(2) adoptive parent/family training policy and program;

(3) a statement of the rights and responsibilities of the agency and adoptive parents in regard to the agency-adoptive family relationship prior to consummation of the adoption; and

(4) a statement that the child-placing agency will not discriminate on the basis of race, color, national origin, sex, age, disability, political belief, or religion.

(c) Agencies making adoptive placements must specify in their service provision policy the degree to which birth parents are involved in planning for and placing their child.

(d) Agencies making adoptive placements must include counseling services and post adoption services in their service provision policies.

#### *§720.53. Adoption Service Plan.*

(a) A service plan must be developed for each child or sibling group (if siblings will be placed for adoption into the same home). For children with a foster care service plan prior to preparation for adoption, the adoption service plan may be a continuation of the foster care service plan.

(b) The adoption service plan must consider the needs of the birth family (unless parental rights have been terminated) and the prospective or identified adoptive family as well as the child or sibling group.

(c) The adoption service plan must address the needs relating to the adoption process for the birth family, the adoptive family, and the child, or sibling group.

(d) The adoption service plan must include specific strategies to meet the needs identified and include an estimate of the time required to consummate the adoption.

(e) The adoption service plan must be reviewed and updated as needed at least every three months until the adoption is consummated.

*§720.54. Birth Parent Preparation.* This section is not applicable to birth parents whose parental rights have been terminated.

(1) Agency staff must have at least two face-to-face contacts with both birth parents prior to placement or must document in the adoption record diligent efforts to accomplish this and the reasons why the contacts could not be made.

(2) During the first contact, the child-placing agency must provide written information to the birth parents regarding:

(A) alternatives and options to adoption for the birth parent and child;

(B) the services the child-placing agency provides, including counseling and post adoption services;

(C) adoption registries;

(D) legal rights and responsibilities of the birth parents in regard to:

(i) relinquishment of parental rights;

(ii) waivers of interest;

(iii) affidavit of status;

(iv) termination of parental rights; and

(v) designating the father of a child as "unknown"; and

(E) any assistance available through the agency to meet housing, medical and prenatal care, and other needs.

(3) Birth parents must not be pressured to make a decision about placing their child.

#### *§720.55. Adoptive Child Preparation.*

(a) For children six months of age and older, agency staff must make a minimum of three face-to-face contacts with the child being prepared for adoption. For infants ages 0 to six months, one face-to-face

contact is required. Contacts must be documented in the adoption record.

(b) The agency must obtain professional assessments of the physical, mental, and emotional status of a child being considered for adoption along with a developmental assessment. These assessments must be current at the time of placement, within 30 days for children ages 0 to 18 months, within three months for children ages 18 months to five years, and within six months for children ages five years and older. The child-placing agency must provide any recommended testing for the child being considered for adoption. The assessments and results must be documented in the adoption record.

(c) The agency must provide counseling to children two years of age and older being considered for adoption. Counseling must include exploration of the child's understanding of what is taking place and the child's feelings about adoption and separation and loss issues related to the birth family.

(d) If a child shows symptoms of illness or abuse, he must be examined immediately by a licensed physician.

#### *§720.56. Adoptive Applicant Preparation.*

(a) The adoptive preparation process must include at least the following documented contacts:

(1) at least one individual interview with each applicant;

(2) at least one additional interview with the adoptive applicants, either jointly or as a family group;

(3) at least one interview with each child and any other person living full or part-time with the family;

(4) at least one visit to the home when all members of the household are present; and

(5) at least one contact, by telephone, in person, or by letter, with each adult child of the adoptive applicants no longer living in the home.

(b) During the first visit, the child-placing agency must provide written information to adoptive applicants regarding:

(1) the services the child-placing agency provides, including counseling and post adoptive services;

(2) fee policies and payment procedures;

(3) child-placing agency requirements and procedures;

(4) legal requirements for adoption including the right to have independent legal counsel for legal consummation; and

(5) adoption registries.

**§720.57. Required Information.**

(a) The child-placing agency must obtain all available information regarding the child being considered for adoption including:

(1) health history, social history, educational history, genetic and family history, and other information required by the Texas Family Code, §16.032 and §720.67 of this title (relating to Requirements: Health, Social, Educational, and Genetic History Report);

(2) history of any previous placements, including dates and reasons for placement;

(3) child's understanding of adoptive placement; and

(4) child's legal status.

(b) The agency must obtain from birth parents information about their expectations for adoptive placement, if placement is chosen, and the degree and type of involvement, if any, they desire with the adoptive family.

(c) The child-placing agency must obtain all available information about the adoptive applicants regarding:

(1) motivation for adoption;

(2) health status (physical, mental, and emotional) of all persons living in the home in relation to the family's ability to provide an adoptive home;

(3) quality of marital and family relationships in relation to the family's ability to provide an adoptive home;

(4) applicants' feelings about their childhood and parents, including any history of abuse and/or neglect and their resolution of such experience;

(5) values, feelings, and practices in regard to child discipline and care;

(6) sensitivity to and feelings about children who may have been subjected to abuse, neglect, separation from, and loss of their biological family if the applicants are considering options in addition to adoption of a newborn;

(7) sensitivity to and feelings about birth families of children placed for adoption and expectations about any ongoing relationship with the birth family;

(8) attitude of the extended family regarding adoption;

(9) sensitivity to and feelings about different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide an adoptive home and maintain the cultural and ethnic identity of a child from a different background;

(10) expectations of and plans for adoptive children;

(11) behavior, background, special needs status, or other characteristics of a potential adoptive child that the family cannot accept; and

(12) financial status and ability to support a child, including employment history and insurance coverage.

(d) Before placing a child(ren) in an adoptive home, the agency must document the number, age, and sex of the child(ren) for whom the home is approved.

**§720.58. Pre-Placement Requirements.**

(a) The child-placing agency must maintain regular, on-going contact with birth parents prior to placement unless parental rights have been terminated. During this contact, the child-placing agency staff must discuss with birth parents:

(1) preparation for childbirth, when applicable;

(2) relinquishment or waiver of parental rights;

(3) termination of parental rights; and

(4) counseling in regard to separation, loss, and grief issues.

(b) If applicable, the child-placing agency must maintain regular, on-going contact with the child being considered for adoptive placement. Child-placing agency staff must:

(1) continue preparation for adoption; and

(2) update adoptive preparation information.

(c) The child-placing agency must maintain regular, on-going contact with the adoptive applicants prior to placement. During this contact, the child-placing agency staff must provide education and training in regard to:

(1) bonding with adoptive children;

(2) parenting issues and concerns; and

(3) special needs children, if appropriate.

(d) If a child has not been placed with the adoptive applicants within one year from the time the adoptive home study is completed, the adoptive home study must be brought up-to-date before a placement is made. The written update must include:

(1) documentation of at least one additional visit to the home when all household members are present; and

(2) review and any required updating of each category of information in the adoptive home study.

**§720.59. Adoptive Placement Requirements.**

(a) An agency may not accept relinquishment of parental rights from a birth mother prior to 48 hours after birth.

(b) Except in the case of a newborn, a child must have at least one visit with the adoptive family prior to placement.

(c) Before placing the child into a home, the child-placing agency must have a written agreement with the adoptive parent(s). A signed copy of this agreement must be given to the adoptive parent(s) and a copy must be placed in the case record. The agreement must specify the following:

(1) that the adoptive parent(s) and the child-placing agency agree to complete the adoption at a specified time;

(2) that the adoptive parent(s) agree to participate in supervision by the child-placing agency during the time prior to the completion of the adoption;

(3) that the adoptive parent(s) must notify the child-placing agency before removing the child from Texas prior to the completion of the adoption;

(4) that the adoptive parent(s) and the child-placing agency agree that the child can be removed and returned to the child-placing agency at the discretion of either the adoptive parents or the child-placing agency before the adoption is completed; and

(5) any fees and schedule of payment.

(d) Written consent for medical care of the child must be given to the adoptive parent(s) at the time of the child's placement in the home. A copy of the signed medical consent form must be filed in the child's record or in the adoptive home record.

(e) Before placing a child into a home, the child-placing agency must discuss with the adoptive parent(s) information about the child and his or her birth parents. Written information must also be given to the adoptive parent(s) prior to or at the time of placement and must include all available information on the child and his family (excluding identifying information if appropriate).

(f) Before placing a child into a home, the child-placing agency must discuss basic care and safety issues with the adoptive parents and ensure that the home provides an environment safe for the child or children to be placed. This must include firearm safety issues, water safety, and basic home health and fire safety issues.

(g) By the time of placement the adoptive parents must be given the following:

- (1) written authorization to care for the child(ren); and
- (2) written information if the child is not completely free for adoption at the time of placement.

**§720.60. Pre-Adoption Consummation Activities.**

(a) During the supervisory period the child-placing agency must:

- (1) offer to the adoptive family counseling services which may be provided through referrals outside the child-placing agency;
- (2) ensure that children's needs are met in the adoptive placement; and
- (3) maintain responsibility for the child until the court has entered the adoption decree.

(b) Post-placement supervision must include the following.

(1) For children under the age of two, with the exception of children with special needs, the child-placing agency must have a minimum of five supervisory contacts with the adoptive parents within the first six months of placement. Two contacts must be face-to-face, with the entire family. At least one of these contacts must be in the adoptive home. Contacts must be documented.

(2) For children with special needs and children ages two years or older, the child-placing agency must have monthly face-to-face contacts with the adoptive family during the first six months. Two of these contacts must be in the adoptive home. Contacts must be documented.

(3) After the first six months of placement, the child-placing agency must have at least quarterly face-to-face contacts in the adoptive home until the adoption decree is entered.

(4) The adoptive placement must be re-evaluated if it has not been completed within one year.

(c) The child-placing agency must document any changes in the adoptive family in health, financial condition, or composition during the post placement period which may affect the child.

(d) The child-placing agency must remove the child from the adoptive home if the placement is unsatisfactory.

(e) The child-placing agency must make every effort to see that the adoption is consummated as stipulated within the written agreement.

(f) If a child comes back into child-placing agency care, the circumstances necessitating this and the child's needs must be documented in the child's record.

**§720.61. Post-Adoption Services.**

(a) The child-placing agency must offer counseling services to the adoptive family, the birth parents, and the adoptive child. These services may be provided through referrals outside the child-placing agency.

(b) The agency must make diligent efforts to inform birth parents, in writing, about developing genetic conditions, and terminal illness or death of their child when this information comes to the attention of the child-placing agency.

(c) The agency must make diligent efforts to inform adoptive parents or the adult adoptee, in writing, about developing genetic conditions, terminal illness, or death of a birth parent when this information comes to the attention of the child-placing agency.

(d) Upon request, the child-placing agency must provide the adoptive child a de-identified copy of his record. If the child is less than 18 years of age, the request for the information must come from or include the written consent of the child's adoptive parents or managing conservator.

**§720.62. Subsequent Adoptions.** Before another placement is made into an adoptive home, the adoptive home study must be brought up-to-date. The adoptive home study for a subsequent placement must be in writing and must include:

(1) at least one individual interview with each applicant;

(2) two additional interviews with the adoptive applicants, either jointly or as a family group, excluding initial orientation groups;

(3) interview with each child and any other person living full or part-time with the family;

(4) at least one visit to the home when all members of the household are present;

(5) observation of the adjustment of the children in the family and how the children feel about the addition of another child; and

(6) updates on all areas addressed in the original adoptive home study.

**§720.63. Legal Basis for Operation of a Child-Placing Agency.** The governing body of the child-placing agency is the legal entity with ultimate authority and responsi-

bility for the agency's overall operation. All governing bodies are one of the following types.

(1) A sole proprietorship is personal ownership with the legal right and responsibility to possess, operate, sell, and otherwise deal with the agency and may include an agency owned in common by husband and wife.

(2) A partnership is a combination by contract of two or more people who use their money, labor, and skill to carry on a continuing business, dividing the profits and sharing the losses in an agreed manner. It includes general and limited partnerships.

(3) A corporation is an intangible entity created by individuals to operate for profit but to limit individual liability. It is organized according to the Texas Business Corporation Act or similar act of another state as evidenced by its Articles of Incorporation.

(4) A nonprofit corporation is equivalent of "not for profit corporation." None of the income is distributed to members, directors, or officers. It is organized under the Texas Non-Profit Corporation Act or similar act of another state.

(5) A nonprofit corporation with religious affiliation is an entity with nonprofit corporation status operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Those whose relation with a religious organization is only for business, such as those who only lease space, are not included.

(6) An association is a combination of individuals and interests of some kind without IRS tax-exempt status. It is not organized under the Texas Business Corporation Act.

(7) A nonprofit association is a combination of individuals and interests of some kind, synonymous with "society," with operations devoted to charitable, benevolent, religious, patriotic, or educational purposes. It is not organized under the Texas Business Corporation Act.

(8) A nonprofit association with religious affiliation is a combination of individuals and interests of some kind, synonymous with "society," with operations devoted to religious purposes. It is not organized under the Texas Business Corporation Act and is operated by, responsible to, or associated with an organization of individuals devoted to religious purposes. Those whose relationship with a religious organization is only for business, such as those who only lease space, are not included.

**§720.64. Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services.**

(a) Accounting records must be kept on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP).

(b) All account balances and other data must be supported by formal accounting records and other records that will support their accuracy.

(c) A chart of accounts must be developed and maintained in sufficient detail to segregate the accounts related to adoption services.

(d) Accounts related to adoption activities must be easily distinguishable from other operations of the agency. If fund accounting is used, a separate fund must be established.

(e) Timesheets must be kept for personnel who work only part-time on adoption activities and their salaries and benefits allocated accordingly.

(f) Indirect cost rates for allocating overhead must be developed and consistently applied.

(g) Appropriate audit trail must be maintained to facilitate the annual financial audit and monitoring activities performed by the Texas Department of Protective and Regulatory Services.

(h) Financial statements must be presented in accordance with GAAP.

(i) The annual financial audit report must contain unconsolidated financial statements for adoption activities. If the agency has other operations, these financial reports may be included as audited supplemental information or a separate audit report may be prepared.

*§720.65. Adoption: Allowable Expenditures on Behalf of Birth Parents.*

(a) If any cost appears to be greater than the ordinary or usual costs in the community, the child-placing agency must show that the expenditure was fit and appropriate. The agency must demonstrate that all expenses are necessary, that the birth parent(s) do not have resources to meet these needs. An agency may meet expenses after the birth of the child only for the period of time that the birth mother is incapacitated due to childbirth. Agencies must obtain an individual variance to meet any expenses for the birth parent beyond six weeks postpartum.

(b) The agency may pay the following:

(1) reasonable costs for legal services related to the adoption;

(2) reasonable costs for medical services related to pregnancy, birth, and postnatal care for the birth mother and medical care for the child;

(3) reasonable costs for emergency health related services for the birth mother needed to protect the health and well-being of the fetus;

(4) reasonable costs for housing, including utilities and basic telephone service. This may include making house payments on a home purchased by the birth mother prior to the pregnancy, if the client is unable to make these payments, until the birth mother is able to resume the responsibility. If the birth mother is unable to do so, the agency may make back payments to cover the cost of essential utilities in order to prevent shut-off of services;

(5) reasonable costs for necessary transportation. This includes car payments, car insurance, and basic car maintenance for the birth mother, if the car was purchased prior to the pregnancy and the birth mother is unable to make the payments because of the pregnancy. The agency may pay for gas related to necessary travel (including work, school, medical appointments) but not vacations or excursions;

(6) reasonable costs for the purchase of food, necessary household supplies, and personal hygiene/grooming products;

(7) reasonable costs for clothing for the birth mother;

(8) reasonable payments on furniture, appliances, and employment related goods (such as tools) for the birth mother if the goods were purchased prior to the pregnancy and the birth mother is unable to make the payments because of the pregnancy;

(9) reasonable educational expenses for the birth mother during the pregnancy. This includes vocational counseling, training, testing, and related costs. Payment of educational expenses incurred prior to the pregnancy or following delivery is prohibited;

(10) reasonable costs for necessary mental health services for the birth mother during the pregnancy.

*§720.66. Serious Incident Reporting Requirements.* The child-placing agency must report the following types of serious incidents to the Texas Department of Protective and Regulatory Services (PRS's) licensing division and the child's parents or managing conservator by the next workday:

(1) any incident where there are indications that a child in care may have been abused or neglected as defined by the Family Code;

(2) abusive activity among children in care including:

(A) non-consensual sexual activity between children of any age;

(B) consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in size or developmental level of the children;

(C) child to child behavior that results in observable physical injury and causes material impairment;

(3) abusive treatment by caregiver including non-accidental caregiver action which if chronic or intensified, could cause substantial harm to a child, such as a slap to the face, sexual verbalizations; exposing the anus, breast, or any part of the genitals; inappropriate kissing; provision of sexually oriented material to a child other than that used for appropriate sex education and counseling; touching a child in inappropriate ways; and providing drugs or alcohol to a child;

(4) incidents that result in critical injury or permanent disability of a child. A "critical injury" is defined as any life-threatening injury or one that results in hospital intensive care or the need for life-resuscitation methods. It includes any injury that is labeled as "critical" by appropriate medical personnel;

(5) a suicide attempt meaning any attempt by a child to take his own life using means or methods capable of causing serious injury or means or methods that the child believes capable of causing serious injury.

*§720.67. Requirements: Health, Social, Educational, and Genetic History Report.* The child-placing agency must compile a report including the following information in addition to other information specified in minimum standards for child-placing agencies for children being considered for adoptive placement (other than with relatives). The same information must be compiled for children being considered for substitute or foster care placement. If the agency can document that there is little or no probability that a child being placed for substitute care will later be considered for possible adoption, paragraphs (5)(H) and (5)(I) of this section may be omitted:

(1) any history of physical, sexual, or emotional abuse;

(2) health history, including:

(A) current health status;

(B) birth history;

- (C) neonatal history;
- (D) other medical, psychological, psychiatric history including any medication history;
- (E) dental history;
- (F) immunization record; and
- (G) available results of any medical, psychological, psychiatric, and dental examinations;
- (3) social history, including information about past and existing relations among the child and the child's siblings, birth parents, extended family members, and other persons who have had physical possession of or legal access to the child;
- (4) educational history, including:
  - (A) enrollment and performance in educational institutions;
  - (B) results of educational testing and standardized tests; and
  - (C) special educational needs, if any;
  - (5) genetic history, including the following information about the child's birth parents, maternal and paternal grandparents, other children born to either of the child's birth parents, and extended family members:
    - (A) health and medical history, including any genetic diseases and disorders;
    - (B) current health status;
    - (C) cause of and age at death, if deceased;
    - (D) height, weight, eye, and hair color;
    - (E) nationality and ethnic backgrounds;
    - (F) general levels of educational and professional achievements;
    - (G) religious backgrounds;
    - (H) results of any psychological, psychiatric, or social evaluations, in-

cluding the date of any such evaluation, any diagnosis, and a summary of any findings;

(I) any criminal conviction record relating to a misdemeanor or felony classified as an offense against the person or family, a misdemeanor or felony classified as public indecency, or a felony violation of a statute intended to control the possession or distribution of a substance included in the Texas Controlled Substances Act; and

(J) any information necessary to determine whether the child is entitled to or otherwise eligible for state or federal financial, medical, or other assistance.

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 February 19, 1993.

TRD-9319301

Nancy Murphy  
Agency Liaison, Policy and Document Support  
Texas Department of Human Services Texas Department of Protective and Regulatory Services

Proposed date of adoption: September 1, 1993

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

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• 40 TAC §§720.25-720.60

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Protective and Regulatory Services (PRS) proposes the repeal of §§720.25-720.60, and new §§720.24-720.67, concerning the minimum standards for child-placing agencies. The purpose of the repeals and new sections is to provide basic protection to children placed in substitute or adoptive care, their biological families, and adoptive families.

Jerry Abel, chief fiscal officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Abel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that better planned and stable foster care, substitute care, and adoptions will directly benefit the children and families involved. There will be no effect on small businesses. There will be an anticipated economic cost of \$100 per

staff each year from 1994-1998 for the child-placing agency and \$50 each year from 1994-1998 for each foster parent. These costs are primarily associated with training.

Questions about the content of the proposal may be directed to Joanna E. Taylor at (512) 450-3259 in PRS's Licensing Division. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-025, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 60 days of publication in the *Texas Register*. PRS will hold seven public hearings to accept comments on the proposal. The hearings will be held from noon until 2 p.m. on the following dates at the following locations: March 10, 1993, The Ruble Center, 419 East Magnolia, San Antonio; March 18, 1993, John H. Winters Human Services Center, public hearing room, 701 West 51st, Austin; March 19, 1993, DHS regional Office, 1477 East 40th, Houston; March 26, 1993, DHS/PRS office, 2501 Maple Street, McAllen; March 30, 1993, DHS/PRS office, 2621 Avenue "E" East, Arlington; March 31, 1993, Broadway Church of Christ, 1924 Broadway, Room 138, Lubbock; and April 1, 1993, El Paso Rehabilitation Center, 1101 Schuster, El Paso.

The repeals are proposed under Texas Civil Statutes, Article 4413 (503) historical note (Vernon Supplement 1993) (House Bill 7, Article 1, §106, 72nd Legislature), which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services (TDHS) to the Texas Department of Protective and Regulatory Services; and under the Human Resources Code, Title 2, Chapter 42, which provides the department with the authority to administer 24-hour care licensing programs.

§720.25. *Legal Basis for Operation.*

§720.26. *Governing Body Responsibilities.*

§720.27. *Fiscal Accountability.*

§720.28. *Reports and Records.*

§720.29. *Personnel Policies.*

§720.30. *Personnel Qualifications and Responsibilities.*

§720.31. *Training.*

§720.32. *Staff Records.*

§720.33. *Admission Policies.*

§720.34. *Services to Biological Parents.*

§720.35. *Intake for Substitute Care.*

§720.36. *Placement into Substitute Care.*

§720.37. *Plan of Service.*

§720.38. *Subsequent Placement.*

§720.39. *Foster Family Care.*

§720.40. *Children's Rights.*

§720.41. *Medical and Dental Care.*

§720.42. *Discharge.*

§720.43. *Foster Home Study.*

§720.44. *Adoptive Services.*

§720.45. *Adoptive Readiness Review.*

§720.46. *Adoptive Home Study.*

§720.47. *Adoptive Placement.*

§720.48. *Post Placement Supervision.*

§720.49. *Subsequent Adoptive Placements.*

§720.50. *Definitions.*

§720.51. *Placement in Emergency Shelter Type Care.*

§720.52. *General Policy.*

§720.53. *Reports and Records.*

§720.54. *Training.*

§720.55. *Admission Policies.*

§720.56. *Intake for Emergency Shelter Type Care.*

§720.57. *Foster Family Care.*

§720.58. *Children's Rights.*

§720.59. *Medical and Dental Care.*

§720.60. *Discharge.*

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 February 19, 1993.

TRD-9319300

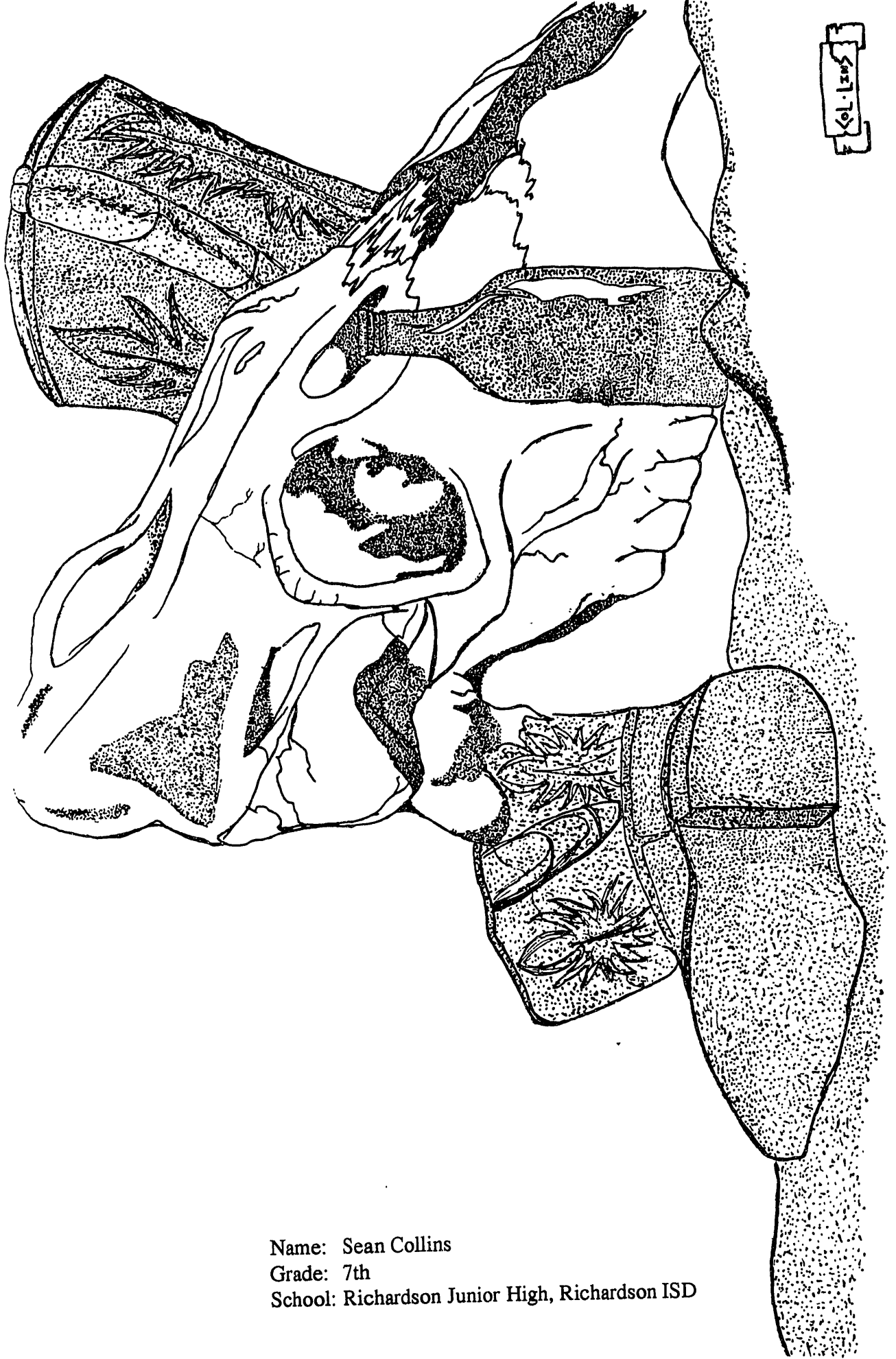
Nancy Murphy  
Agency Liaison, Policy and  
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Texas Department of  
Protective and  
Regulatory Services

Proposed date of adoption: September 1, 1993

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Name: Sean Collins  
Grade: 7th  
School: Richardson Junior High, Richardson ISD

Kate  
Harris



Name: Kate Harris  
Grade: 7th  
School: Richardson Junior High, Richardson ISD



# Adopted Sections

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 13. CULTURAL RESOURCES

### Part I. Texas State Library and Archives Commission

#### Chapter 3. State Publications Depository Program

##### • 13 TAC §§3.1-3.10

The Texas State Library and Archives Commission adopts the repeal of §§3.1-3.10, concerning State Publications Depository Program, without changes to the proposed text as published in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8069).

These repeals will be replaced by revised rules which will define more specifically how agencies should comply with the depository law. In addition, the number of publications required to be deposited will be reduced to better meet the needs of the program.

These repeals will be replaced by revised rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Government Code, Chapter 441, 102, which provides the Texas State Library and Archives Commission with authority to establish rules for distribution of state publications to depository libraries.

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 February 16, 1993.

TRD-9319272

Raymond Hitt  
Assistant State Librarian  
Texas State Library and  
Archives Commission

Effective date: March 12, 1993

Proposal publication date: December 11, 1992

For further information, please call: (512) 463-5440

##### • 13 TAC §§3.1-3.10

The Texas State Library and Archives Commission adopts new §§3.1-3.10, concerning State Publications Depository Program. Sec-

tion 3.2 and §3.4 are adopted with changes to the proposed text as published in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8069).

Sections 3.1, 3.3, 3.5-3.10 are adopted without changes and will not be republished.

The following changes were adopted: §3.2(2) the number of copies to be deposited for publications produced in quantities of less than 300 was increased from three to four copies; and §3.4(9) the subsection that listed computer disks and tapes was dropped from the section.

The sections simplify and clarify requirements for state agencies to deposit their publications with the Texas State Library. The sections define more specifically how agencies should comply with the state publications depository law. They also reduce the number of publications to be deposited. Costs to print publications will decrease while public access to government information in the publications will be maintained at the current level.

State agencies will send copies of their publications to the Texas State Library; the Library will classify, index, catalog, list in a monthly checklist, and send them to selected depository libraries in the State.

Lamar University commented that computer disks and tapes should be included in the program. The State Securities Board commented that strategic plans should not be treated as state plans and sent in depository quantity. The Legislative Reference Library commented that the number of copies to be deposited when fewer than 300 copies are printed should be increased from three to four.

Lamar University, State Securities Board, Legislative Reference Library, commented against adoption of these rules.

Computer disks and tapes were removed from the exemptions table. Strategic plans are state plans and should be deposited in standard depository quantity due to their value as public information. The number of copies to be deposited when fewer than 300 are printed was increased from three to four.

The new sections are adopted under the Government Code, Chapter 441, 102, which provides the Texas State Library and Archives Commission with authority to establish rules for distribution of state publications to depository libraries.

*§3.2. Standard Deposit Requirements.* State agencies are required to deposit copies of all publications that have not

been exempted from the program. The standard number of copies to be deposited is based on the number of copies produced.

(1) If 300 or more copies are produced, 55 copies must be deposited with the State Publications Depository Program.

(2) If fewer than 300 copies are produced, four copies must be deposited with the program.

*§3.4. Standard Exemptions.* The state librarian has exempted certain kinds of publications from deposit requirements. A state agency is not required to deposit any copies of the publications or other information materials listed as follows:

- (1) agendas;
- (2) advertisements;
- (3) alumni materials;
- (4) announcements;
- (5) artwork;
- (6) audiovisual materials;
- (7) calendars;
- (8) charts;
- (9) contracts;
- (10) correspondence;
- (11) course schedules;
- (12) curriculum catalogs (departmental only);
- (13) drafts of plans, reports;
- (14) fiction;
- (15) forms;
- (16) fund raising materials;
- (17) grant proposals, bids;
- (18) hearings (transcripts of);
- (19) job announcements;
- (20) literary criticisms;
- (21) memorabilia;
- (22) memoranda;
- (23) news or press releases;
- (24) newsletters (meant only for employee, faculty, or student use);
- (25) notices of sale;

- (26) daily or weekly periodicals (which are summarized in monthly or quarterly publications);
- (27) personnel manuals;
- (28) photographs;
- (29) poetry;
- (30) policy handbooks (student and faculty);
- (31) programs (announcements of);
- (32) recruitment materials;
- (33) reprints (reissued without change);
- (34) stationery;
- (35) student publications (those produced by students);
- (36) telephone directories (meant only for employee, faculty, or student use); and
- (37) volunteer newsletters.

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 February 16, 1993.

TRD-9319273

Raymond Hitt  
Assistant State Librarian  
Texas State Library and  
Archives Commission

Effective date: December 11, 1992

Proposal publication date: March 12, 1993

For further information, please call: (512) 463-5440

## Chapter 6. State Records

### Standards and Procedures for Management of Electronic Records

#### • 13 TAC §§6.91-6.99

The Texas State Board of Library and Archives Commission adopts new §§6.91-6.99, concerning standards and procedures for electronic records of state agencies and local governments. Sections 6.91, 6.92, 6.95, 6.96, and 6.98 are adopted with changes to the proposed text as published in the September 4, 1992 issue of the *Texas Register* (17 TexReg 6084). Sections 6.93, 6.94, 6.97, and 6.99 are adopted without changes and will not be republished.

The adoption of the new sections is justified by the need to protect the integrity and longevity of public records that are being stored in electronic form by state agencies and local governments. Section 6.91 is changed to add definitions for IEC and ISO, acronyms for organizations publishing international standards referenced for the storage of optical

disks. The wording of §6.92(a) is changed to clarify that these are minimum standards and to draw attention to the requirements for short-term electronic records found in the Local Government Code, Chapter 205. The records management officer is added to §6.92(d) as a key participant in the management of local government records, of which electronic records are a part, and the wording of §6.92(d)(1) is changed to clarify that the administration of a program for electronic records management is what is required. Section 6.95(a) is rewritten to verify that the security requirements for electronic records apply to both office and storage areas. Rewording of §6.95(c) makes the specified controls applicable to all types of rewritable electronic media for permanent records. The pretesting, storing, and recopying requirements in §6.96(b)(1), (b)(2), and (c) are updated to reflect current, acceptable practices for electronic media. Section 6.98(c) is reworded to clarify that the recommendations in the referenced AIIM technical report must be implemented.

The sections will function by establishing the basic requirements for the maintenance, use, retention, and storage of all medium-term, long-term, permanent, and archival electronic records of state agencies and local governments.

Comments were received from 10 state agencies, seven local governments, and two private organizations. Two commenters requested that the standards and procedures for electronic records be published as recommended guidelines rather than administrative rules. One commenter recommended that the definition of electronic media include audiotape and videotape. One commenter suggested the addition of two definitions: ISO and IEC. One commenter objected to the definition of medium-term records including records with a retention of 10 years. One commenter recommended the use of minimum requirements instead of "basic requirements in §6.92(a) and the addition of a reference in this section to statutory requirements for short-term electronic records. Two commenters recommended that the records management officer be named in §6.92(d) as having responsibility in local governments for managing electronic records. One commenter recommended clarification of the wording in §6.92(d)(1) by beginning this phrase with "administer a program." One commenter recommended that wording be added to §6.92(d)(6) to establish additional specific documentation requirements. One commenter requested that §6.93(a) be changed to state that disposition instructions must be incorporated into the system's design. One commenter requested that §6.95(a) be reworded to clarify that the security requirements apply to both office and storage areas. Two commenters suggested changes to the requirement for testing and verification of tapes in §6.96(b)(1). Two commenters objected that the storage requirements in §6.96(b)(2) were too stringent. One commenter recommended that the sampling requirements in §6.96(b)(3) only be applied to permanent records. Three commenters suggested the consideration of alternative options to the recopying of magnetic tapes

every three years, as stated in §6.98(c). One commenter recommended that the requirements in §6.98(f) apply to medium-term and long-term electronic records as well as permanent records. One commenter preferred that §6.98(g)(6) allow the use of a scanning density of 120 dots per inch with various grey levels as an alternative to the required minimum of 200 dots per inch. One commenter recommended §6.97(c) be expanded to also include permanent local records; two commenters objected to the requirement for alkaline paper in this section. One commenter suggested that §6.98(c) be changed to clarify that the expungement of information must be implemented according to the recommendations in the referenced technical report. One commenter suggested more specific wording for §6.99. One commenter recommended that §§6.97-6.99 apply to short-term records.

Commenting for the new sections were the Association of Records Managers and Administrators (Tejas Chapter, Amarillo), City of Dallas, City of Fort Worth, Harris County, Harris County Department of Education, and Texas Department of Criminal Justice. The new sections were recommended for approval by the Records Management and Preservation Advisory Committee at an open meeting held in Austin on February 11, 1993. Commenting against the new sections were the Texas Higher Education Coordinating Board and Texas Municipal League.

The agency agreed with many of the comments and has made the previously mentioned changes to comply with these comments. The agency disagreed, however, with several comments because they were judged to be incompatible with established national standards or Texas law, or because their adoption would endanger the integrity or longevity of electronic records.

The new sections §§6.91-6.99 are adopted under the Government Code, §441.32(b)(1) and §441.37(5), which provide the Texas State Library and Archives Commission with the authority to manage all state records with the cooperation of the heads of the various departments and institutions in charge of the records and to issue rules, standards, and procedures for the efficient management of state records.

**§6.91. Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. For local governments, terms not defined in these rules shall have the meanings defined in the Local Government Code, Title 6, Subtitle C, Chapter 201. For state agencies, terms not defined in these rules shall have the meanings defined in the Government Code, §§441.31-441.39 and §§441.51-441.62.

AIIM—The Association for Information and Image Management.

ANSI—The American National Standards Institute.

Archival record—A record of a state agency scheduled to be reviewed by or that has been approved by an archives for permanent preservation.

## Database

(A) collection of digitally stored data records;

(B) collection of data elements within records within files that have relationships with other records within other files.

**Database Management System (DBMS)**—Set of programs designed to organize, store, and retrieve machine-readable information from a computer-maintained database or data bank.

**Data file**—Related numeric, textual, sound, or graphic information that is organized in a strictly prescribed form and format.

**Electronic media**—All media capable of being read by a computer including computer hard disks, magnetic tapes, optical disks, or similar machine-readable media.

**Electronic record**—Any information that is recorded in a form for computer processing and that satisfies the definition of a state record in the Government Code, §441.31(5), or the definition of local government record data in the Local Government Code, §205.1.

**Electronic records system**—Any information system that produces, manipulates, and stores state or local government records by using a computer.

**IEC**—International Electrotechnical Commission.

**ISO**—International Organization for Standardization.

**Long-term record**—A record for which the retention period on a records retention schedule is 100 years or more but less than permanent.

**Medium-term record**—A record for which the retention period on a records retention schedule is 10 years or more but less than 100 years.

**Records administrator**—The person appointed by the head of each state agency to act as the agency's representative in all issues of records management policy, responsibility, and statutory compliance.

**Records custodian**—The appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

**Records management officer**—Each elected county officer or the person designated by the governing body of each local government pursuant to the Local Government Code, §203.25.

**Short-term record**—A record for which the retention period on a records retention schedule is less than 10 years.

**Permanent record**—A record for which the retention period on a records retention schedule is permanent.

**Text documents**—Narrative or tabular documents, such as letters, memorandums,

and reports, in loosely prescribed form and format.

## §6.92. General.

(a) These rules establish the minimum requirements for the maintenance, use, retention, and storage of all medium-term, long-term, and permanent electronic records of state agencies and local governments, and archival electronic records of state agencies. These rules do not apply to short-term electronic records, but the short-term electronic records of local governments are subject to the applicable provisions of the Local Government Code, Chapter 205.

(b) Unless otherwise noted, these requirements apply to all electronic records storage systems, whether on microcomputers, minicomputers, or main-frame computers, regardless of storage media.

(c) An electronic storage authorization request certifying that these rules will be followed must be submitted to and approved by the director and librarian for all existing electronic storage of medium-term, long-term, and permanent state or local government records and state archival records, and before any new electronic storage of medium-term, long-term, and permanent state or local government records and state archival records. The authorization request must be submitted in a form and manner to be determined by the director and librarian and must be signed by the agency head or designated records administrator (for state agencies), or the records management officer (for local governments).

(d) The agency head or designated records administrator (for state agencies), and the governing body or records management officer in cooperation with records custodians (for local governments) must:

(1) administer a program for the management of records created, received, maintained, used, or stored on electronic media;

(2) integrate the management of electronic records with other records and information resources management programs of the agency;

(3) incorporate electronic records management objectives, responsibilities, and authorities in pertinent agency directives;

(4) establish procedures for addressing records management requirements, including recordkeeping requirements and disposition;

(5) ensure that training is provided for users of electronic records systems in the operation, care, and handling of the equipment, software, and media used in the system;

(6) ensure the development and maintenance of up-to-date documentation about all electronic records systems that is adequate to specify all technical characteristics necessary for reading or processing the records and the timely, authorized disposition of records; and

(7) specify the location and media on which electronic records are maintained to meet retention requirements and maintain inventories of electronic records systems to facilitate disposition.

(e) with the exception of subsections (c) and (f) of this section, which are effective immediately, state agencies and local governments must be in compliance with the Standards and Procedures for Electronic Records on or before January 2, 1995.

(f) Any electronic recordkeeping system not meeting the provisions of these rules may be utilized for medium-term, long-term, or permanent state or local government records and state archival records provided the source document, if any, or a paper copy is maintained, or the record is microfilmed in accordance with the specifications in *American National Standard for Imaging Media (Film) - Silver-Gelatin Type - Specifications for Stability* (ANSI IT9.1-1989 or latest revision) for state records or in accordance with the provisions of Local Government Code, Chapter 204, and the rules adopted under it for local government records.

## §6.95. Security of Electronic Records.

(a) State agencies and local governments must implement and maintain an electronic records security program for office and storage areas that:

(1) ensures that only authorized personnel have access to electronic records;

(2) provides for backup and recovery of records to protect against information loss;

(3) ensures that personnel are trained to safeguard confidential electronic records;

(4) minimizes the risk of unauthorized alteration or erasure of electronic records; and

(5) documents that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

(b) A duplicate copy of essential records and any software or documentation required to retrieve and read the records must be maintained in a storage area located in a separate building from the building where the records that have been copied are maintained.

(c) For all permanent records stored on rewritable electronic media, the system must ensure that read/write privileges are controlled and that an audit trail of rewrites is maintained.

#### §6.96. Maintenance of Electronic Records Storage Media.

(a) State agencies and local governments must ensure that the accuracy, completeness, and accessibility of information are not lost prior to its authorized destruction date because of changing technology or media deterioration, by converting electronic storage media and taking other action as required to provide compatibility with current hardware and software. The migration strategy for upgrading equipment as technology evolves must be documented and include:

(1) periodically recopying to the same electronic media as required, and/or transferring of data from an obsolete technology to a supportable technology; and

(2) providing backward system compatibility to the data in the old system, and/or converting data to media that the system upgrade and/or replacement can support.

(b) Paragraphs (1)-(3) of this section outline the maintenance of backup electronic media stored offsite.

(1) Magnetic computer tapes must be tested and verified no more than six months prior to using them to store electronic records. Pretesting of tapes is not required if an automated system is used that monitors read/write errors and there is a procedure in place for correcting errors.

(2) The storage areas for electronic media must be maintained within the following temperatures and relative humidities:

(A) for magnetic media-65 degrees Fahrenheit to 75 degrees Fahrenheit, and 30% to 50% relative humidity;

(B) for optical disks-storage environmental conditions as specified in *Information technology-130 mm optical disk cartridge, write once, for information interchange* (ISO/IEC 9171-1, 1990 or latest revision).

(3) A random sample of all magnetic computer tapes must be read annually to identify any loss of data and to discover and correct the causes of data loss. At least a 10% sample or a sample size of 50 magnetic tapes, whichever is less, must be read. Tapes with unrecoverable errors must be replaced and, when possible, lost data must be restored. All other tapes which

might have been affected by the same cause (i. e. poor quality tape, high usage, poor environment, improper handling) must be read and corrected.

(c) State agencies and local governments must recopy data maintained on electronic media according to the following schedule.

(1) Data maintained on magnetic tape must be recopied onto new or used tape a minimum of once every three years.

(2) An alternative option for recopying magnetic tape is for the data to be recopied onto new tape a minimum of once every 10 years, provided the tape is re-wound under controlled tension every three and one-half years. The requirement for re-winding does not apply to 3480-type tape cartridges.

(3) Data maintained on optical disks must be recopied a minimum of once every 10 years.

(d) Floppy disks (diskettes) or any type of flexible disk system may not be used for the exclusive storage of medium-term, long-term, or permanent records and state archival records.

(e) External labels, or an eye-readable index relating to unique identifiers, for electronic media used to process or store electronic records must include the following information:

(1) name or other identifier of the organizational unit responsible for the records;

(2) descriptive title of the contents;

(3) dates of creation and authorized disposition date;

(4) security classification;

(5) identification of the software (to include specific application if appropriate) and hardware used; and

(6) system title, including the version number of the application.

(f) Additionally, the following information must be maintained for electronic media used to store permanent electronic records:

(1) file title(s);

(2) dates of coverage;

(3) the recording density;

(4) type of internal labels;

(5) volume serial number, if applicable;

(6) the number of tracks;

(7) character code/software dependency;

(8) information about block size;

(9) sequence number, if the file is part of a multi-media set; and

(10) relative starting position of data, if applicable.

(g) The following standards must be met for electronic records stored as digital images on optical media.

(1) A non-proprietary image file header label must be used, or the system developer must provide a bridge to a non-proprietary image file header label, or the system developer must supply a detailed definition of image file header label structure.

(2) The system hardware and/or software must provide a quality assurance capability that verifies information that is written to the optical media.

(3) Periodic maintenance of optical data storage systems is required, including an annual recalibration of the optical drives.

(4) Scanner quality must be evaluated based on the standard procedures in *American National Standard for Information and Image Management-Recommended Practice for Quality Control of Image Scanners* (ANSI/AIIM MS44-1988 or latest revision).

(5) A visual quality control evaluation must be performed for each scanned image and related index data.

(6) A scanning density with a minimum of 200 dots per inch is required for recording documents that contain no type font smaller than six point.

(7) A scanning density with a minimum of 300 dots per inch is required for engineering drawings, maps, and other documents with background detail.

(8) The selected scanning density must be validated with tests on actual documents.

(9) The use of the Consultative Committee on International Telegraphy and Telephony (CCITT) Group 3 or Group 4 compression techniques is required for document images without continuous tonal qualities. If use of a proprietary compression technique is unavoidable, the vendor must provide a gateway to either Group 3 or Group 4 compression techniques.

(10) Optical drive systems must not be operated in environments with high levels of airborne particulates.

(11) All aspects of the design and use of the imaging system must be documented, including administrative procedures for digital imaging, retrieval, and storage; technical system specifications;

problems encountered; and measures taken to address them, including hardware and software modifications.

(h) Smoking, drinking, and eating must be prohibited in electronic media storage areas.

#### §6.98. Destruction of Electronic Records.

(a) Electronic records may be destroyed only in accordance with a records schedule approved by the director and librarian or designee or, in lieu of an approved records schedule, an approved records disposition authorization request.

(b) Each state agency and local government must ensure that:

(1) electronic records scheduled for destruction are disposed of in a manner that ensures protection of any confidential information; and

(2) magnetic storage media previously used for electronic records containing confidential information are not reused if the previously recorded information can be compromised by reuse in any way.

(c) The court ordered expungement of information recorded on an optical Write-Once-Read-Many (WORM) system must be implemented according to the recommendations provided in *Technical Report for Information and Image Management-The Expungement of Information Recorded on Optical Write-Once-Read-Many (WORM) Systems* (AIIIM TR28-1991 or latest revision).

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 February 19, 1993.

TRD-9319274

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Texas State Library and  
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Effective date: March 12, 1993

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For further information, please call: (512) 463-5440



## Chapter 7. Local Records

### Standards and Procedures for Management of Electronic Records

#### • 13 TAC §§7.71-7.79

The Texas State Library and Archives Commission adopts new §§7.71-7.79, concerning standards and procedures for electronic records of state agencies and local governments. Sections 7.71, 7.72, 7.75, 7.76, and 7.78 are adopted with changes to the pro-

posed text as published in the September 4, 1992, issue of the *Texas Register* (17 TexReg 6087). Sections 7.73, 7.74, 7.77, and 7.79, are adopted without changes and will not be republished.

The adoption of the new sections is justified by the need to protect the integrity and longevity of public records that are being stored in electronic form by state agencies and local governments. Section 7.71 is changed to add definitions for IEC and ISO, acronyms for organizations publishing international standards referenced for the storage of optical disks. The wording of §7.72(a) is changed to clarify that these are minimum standards and to draw attention to the requirements for short-term electronic records found in Local Government Code, Chapter 205. The records management officer is added to §7.72(d) as a key participant in the management of local government records, of which electronic records are a part, and the wording of §7.72(d) (1) is changed to clarify that the administration of a program for electronic records management is what is required. Section 7.75(a) is rewritten to verify that the security requirements for electronic records apply to both office and storage areas. Rewording of §7.75(c) makes the specified controls applicable to all types of rewritable electronic media for permanent records. The pretesting, storing, and recopying requirements in §7.76(b)(1), (b)(2), and (c) are updated to reflect current, acceptable practices for electronic media. Section 7.78(c) is reworded to clarify that the recommendations in the referenced AIIIM technical report must be implemented.

The sections will function by establishing the basic requirements for the maintenance, use, retention, and storage of all medium-term, long-term, permanent, and archival electronic records of state agencies and local governments.

Comments were received from 10 state agencies, seven local governments, and two private organizations. Two commenters requested that the standards and procedures for electronic records be published as recommended guidelines rather than administrative rules. One commenter recommended that the definition of electronic media include audiotape and videotape. One commenter suggested the addition of two definitions: ISO and IEC. One commenter objected to the definition of medium-term records including records with a retention of 10 years. One commenter recommended the use of "minimum" requirements instead of "basic" requirements in §7.72(a) and the addition of a reference in this section to statutory requirements for short-term electronic records. Two commenters recommended that the records management officer be named in §7.72(d) as having responsibility in local governments for managing electronic records. One commenter recommended clarification of the wording in §7.72(d)(1) by beginning this phrase with "administer a program." One commenter recommended that wording be added to §7.72(d)(6) to establish additional specific documentation requirements. One commenter requested that §7.73(a) be changed to state that disposition instructions must be incorporated into the system's design. One commenter requested

that §7.75(a) be reworded to clarify that the security requirements apply to both office and storage areas. Two commenters suggested changes to the requirement for testing and verification of tapes in §7.76(b)(1). Two commenters objected that the storage requirements in §7.76(b)(2) were too stringent. One commenter recommended that the sampling requirements in §7.76(b)(3) only be applied to permanent records. Three commenters suggested the consideration of alternative options to the recopying of magnetic tapes every three years, as stated in §7.76(c). One commenter recommended that the requirements in §7.76(f) apply to medium-term and long-term electronic records as well as permanent records. One commenter preferred that §7.76(g)(6) allow the use of a scanning density of 120 dots per inch with various grey levels as an alternative to the required minimum of 200 dots per inch. One commenter recommended §7.77(c) be expanded to also include permanent local records; two commenters objected to the requirement for alkaline paper in this section. One commenter suggested that §7.78(c) be changed to clarify that the expungement of information must be implemented according to the recommendations in the referenced technical report. One commenter suggested more specific wording for §7.79. One commenter recommended that §§7.77-7.79 apply to short-term records.

Commenting for the new sections were the Association of Records Managers and Administrators (Tejas Chapter, Amarillo), City of Dallas, City of Fort Worth, Harris County, Harris County Department of Education, and Texas Department of Criminal Justice. The new sections were recommended for approval by the Records Management and Preservation Advisory Committee at an open meeting held in Austin on February 11, 1993. Commenting against the new sections were the Texas Higher Education Coordinating Board and Texas Municipal League.

The agency agreed with many of the comments and has made the previously mentioned changes to comply with these comments. The agency disagreed, however, with several comments because they were judged to be incompatible with established national standards or Texas law or because their adoption would endanger the integrity or longevity of electronic records.

The new §§7.71-7.79 are adopted under the Local Government Code, §205.003(a), which provides the Texas State Library and Archives Commission with the authority to establish standards and procedures for the electronic storage of any local government records whose retention period is at least 10 years. These sections were approved by the Local Government Records Committee, as required by the Government Code, §441.165, at an open meeting held in Austin on January 22, 1993.

*§7.71. Definitions.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. For local governments, terms not defined in these rules shall have the meanings defined in the

Local Government Code, Title 6, Subtitle C, Chapter 201. For state agencies, terms not defined in these rules shall have the meanings defined in the Government Code, §§441.31-441.39 and §§441.51-441.62.

**AIIM**—The Association for Information and Image Management.

**ANSI**—The American National Standards Institute.

**Archival record**—A record of a state agency scheduled to be reviewed by or that has been approved by an archives for permanent preservation.

**Database**

(A) collection of digitally stored data records;

(B) collection of data elements within records within files that have relationships with other records within other files.

**Database Management System (DBMS)**—Set of programs designed to organize, store, and retrieve machine-readable information from a computer-maintained database or data bank.

**Data file**—Related numeric, textual, sound, or graphic information that is organized in a strictly prescribed form and format.

**Electronic media**—All media capable of being read by a computer including computer hard disks, magnetic tapes, optical disks, or similar machine-readable media.

**Electronic record**—Any information that is recorded in a form for computer processing and that satisfies the definition of a state record in the Government Code, §441.31(5), or the definition of local government record data in the Local Government Code, §205.1.

**Electronic records system**—Any information system that produces, manipulates, and stores state or local government records by using a computer.

**IEC**—International Electrotechnical Commission.

**ISO**—International Organization for Standardization.

**Long-term record**—A record for which the retention period on a records retention schedule is 100 years or more but less than permanent.

**Medium-term record**—A record for which the retention period on a records retention schedule is 10 years or more but less than 100 years.

**Records administrator**—The person appointed by the head of each state agency to act as the agency's representative in all issues of records management policy, responsibility, and statutory compliance.

**Records custodian**—The appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

**Records management officer**—Each elected county officer or the person designated by the governing body of each local government pursuant to the Local Government Code, §203.25.

**Short-term record**—A record for which the retention period on a records retention schedule is less than 10 years.

**Permanent record**—A record for which the retention period on a records retention schedule is permanent.

**Text documents**—Narrative or tabular documents, such as letters, memorandums, and reports, in loosely prescribed form and format.

#### §7.72. General.

(a) These rules establish the minimum requirements for the maintenance, use, retention, and storage of all medium-term, long-term, and permanent electronic records of state agencies and local governments, and archival electronic records of state agencies. These rules do not apply to short-term electronic records, but the short-term electronic records of local governments are subject to the applicable provisions of the Local Government Code, Chapter 205.

(b) Unless otherwise noted, these requirements apply to all electronic records storage systems, whether on microcomputers, minicomputers, or main-frame computers, regardless of storage media.

(c) An electronic storage authorization request certifying that these rules will be followed must be submitted to and approved by the director and librarian for all existing electronic storage of medium-term, long-term, and permanent state or local government records and state archival records, and before any new electronic storage of medium-term, long-term, and permanent state or local government records and state archival records. The authorization request must be submitted in a form and manner to be determined by the director and librarian and must be signed by the agency head or designated records administrator (for state agencies), or the records management officer (for local governments).

(d) The agency head or designated records administrator (for state agencies), and the governing body or records management officer in cooperation with records custodians (for local governments) must:

(1) administer a program for the management of records created, received, maintained, used, or stored on electronic media;

(2) integrate the management of electronic records with other records and information resources management programs of the agency;

(3) incorporate electronic records management objectives, responsibility,

and authorities in pertinent agency directives;

(4) establish procedures for addressing records management requirements, including recordkeeping requirements and disposition;

(5) ensure that training is provided for users of electronic records systems in the operation, care, and handling of the equipment, software, and media used in the system;

(6) ensure the development and maintenance of up-to-date documentation about all electronic records systems that is adequate to specify all technical characteristics necessary for reading or processing the records and the timely, authorized disposition of records; and

(7) specify the location and media on which electronic records are maintained to meet retention requirements and maintain inventories of electronic records systems to facilitate disposition.

(e) With the exception of subsections (c) and (f) of this section, which are effective immediately, state agencies and local governments must be in compliance with the Standards and Procedures for Electronic Records on or before January 2, 1995.

(f) Any electronic recordkeeping system not meeting the provisions of these rules may be utilized for medium-term, long-term, or permanent state or local government records and state archival records provided the source document, if any, or a paper copy is maintained, or the record is microfilmed in accordance with the specifications in *American National Standard for Imaging Media (Film) - Silver-Gelatin Type-Specifications for Stability* (ANSI IT9.1-1989 or latest revision) for state records or in accordance with the provisions of Local Government Code, Chapter 204, and the rules adopted under it for local government records.

#### §7.75. Security of Electronic Records.

(a) State agencies and local governments must implement and maintain an electronic records security program for office and storage areas that:

(1) ensures that only authorized personnel have access to electronic records;

(2) provides for backup and recovery of records to protect against information loss;

(3) ensures that personnel are trained to safeguard confidential electronic records;

(4) minimizes the risk of unauthorized alteration or erasure of electronic records; and



(5) documents that similar kinds of records generated and stored electronically are created by the same processes each time and have a standardized retrieval approach.

(b) A duplicate copy of essential records and any software or documentation required to retrieve and read the records must be maintained in a storage area located in a separate building from the building where the records that have been copied are maintained.

(c) For all permanent records stored on rewritable electronic media, the system must ensure that read/write privileges are controlled and that an audit trail of rewrites is maintained.

#### §7.76. Maintenance of Electronic Records Storage Media.

(a) State agencies and local governments must ensure that the accuracy, completeness, and accessibility of information are not lost prior to its authorized destruction date because of changing technology or media deterioration, by converting electronic storage media and taking other action as required to provide compatibility with current hardware and software. The migration strategy for upgrading equipment as technology evolves must be documented and include:

(1) periodically recopying to the same electronic media as required, and/or transferring of data from an obsolete technology to a supportable technology; and

(2) providing backward system compatibility to the data in the old system, and/or converting data to media that the system upgrade and/or replacement can support.

(b) Paragraphs (1)-(3) of this subsection outline the maintenance of backup electronic media stored offsite.

(1) Magnetic computer tapes must be tested and verified no more than six months prior to using them to store electronic records. Pretesting of tapes is not required if an automated system is used that monitors read/write errors and there is a procedure in place for correcting errors.

(2) The storage areas for electronic media must be maintained within the following temperatures and relative humidities:

(A) for magnetic media-65 degrees Fahrenheit to 75 degrees Fahrenheit, and 30% to 50% relative humidity;

(B) for optical disks-storage environmental conditions as specified in *Information technology-30 mm optical disk*

*cartridge, write once, for information interchange (ISO/IEC 9171-1, 1990 or latest revision).*

(3) A random sample of all magnetic computer tapes must be read annually to identify any loss of data and to discover and correct the causes of data loss. At least a 10% sample or a sample size of 50 magnetic tapes, whichever is less, must be read. Tapes with unrecoverable errors must be replaced and, when possible, lost data must be restored. All other tapes which might have been affected by the same cause (i.e. poor quality tape, high usage, poor environment, improper handling) must be read and corrected.

(c) State agencies and local governments must recopy data maintained on electronic media according to the following schedule.

(1) Data maintained on magnetic tape must be recopied onto new or used tape a minimum of once every three years.

(2) An alternative option for recopying magnetic tape is for the data to be recopied onto new tape a minimum of once every 10 years, provided the tape is rewound under controlled tension every three and one-half years. The requirement for rewinding does not apply to 3480-type tape cartridges.

(3) Data maintained on optical disks must be recopied a minimum of once every 10 years.

(d) Floppy disks (diskettes) or any type of flexible disk system may not be used for the exclusive storage of medium-term, long-term, or permanent records and state archival records.

(e) External labels, or an eye-readable index relating to unique identifiers, for electronic media used to process or store electronic records must include the following information:

(1) name or other identifier of the organizational unit responsible for the records;

(2) descriptive title of the contents;

(3) dates of creation and authorized disposition date;

(4) security classification;

(5) identification of the software (to include specific application if appropriate) and hardware used; and

(6) system title, including the version number of the application.

(f) Additionally, the following information must be maintained for electronic media used to store permanent electronic records:

(1) file title(s);

(2) dates of coverage;

(3) the recording density;

(4) type of internal labels;

(5) volume serial number, if applicable;

(6) the number of tracks;

(7) character code/software dependency;

(8) information about block size;

(9) sequence number, if the file is part of a multi-media set; and

(10) relative starting position of data, if applicable.

(g) The following standards must be met for electronic records stored as digital images on optical media.

(1) A non-proprietary image file header label must be used, or the system developer must provide a bridge to a non-proprietary image file header label, or the system developer must supply a detailed definition of image file header label structure.

(2) The system hardware and/or software must provide a quality assurance capability that verifies information that is written to the optical media.

(3) Periodic maintenance of optical data storage systems is required, including an annual recalibration of the optical drives.

(4) Scanner quality must be evaluated based on the standard procedures in *American National Standard for Information and Image management-Recommended Practice for Quality Control of Image Scanners (ANSI/AIIM MS44-1988 or latest revision)*.

(5) A visual quality control evaluation must be performed for each scanned image and related index data.

(6) A scanning density with a minimum of 200 dots per inch is required for recording documents that contain no type font smaller than six point.

(7) A scanning density with a minimum of 300 dots per inch is required for engineering drawings, maps, and other documents with background detail.

(8) The selected scanning density must be validated with tests on actual documents.

(9) The use of the Consultative Committee on International Telegraphy and Telephony (CCITT) Group 3 or Group 4 compression techniques is required for document images without continuous tonal

qualities. If use of a proprietary compression technique is unavoidable, the vendor must provide a gateway to either Group 3 or Group 4 compression techniques.

(10) Optical drive systems must not be operated in environments with high levels of airborne particulates.

(11) All aspects of the design and use of the imaging system must be documented, including administrative procedures for digital imaging, retrieval, and storage; technical system specifications; problems encountered; and measures taken to address them, including hardware and software modifications.

(h) Smoking, drinking, and eating must be prohibited in electronic media storage areas.

#### §7.78. Destruction of Electronic Records.

(a) Electronic records may be destroyed only in accordance with a records schedule approved by the director and librarian or designee or, in lieu of an approved records schedule, an approved records disposition authorization request.

(b) Each state agency and local government must ensure that:

(1) electronic records scheduled for destruction are disposed of in a manner that ensures protection of any confidential information; and

(2) magnetic storage media previously used for electronic records containing confidential information are not reused if the previously recorded information can be compromised by reuse in any way.

(c) The court ordered expungement of information recorded on an optical Write-Once-Read-Many (WORM) system must be implemented according to the recommendations provided in *Technical Report for Information and Image Management-The Expungement of Information Recorded on Optical Write-Once-Read-Many (WORM) Systems* (AIIIM TR28-1991 or latest revision).

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 February 19, 1993.

TRD-9319275

Raymond Hitt  
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Archives Commission

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Proposal publication date: September 4, 1992

For further information, please call: (512) 463-5440

## TITLE 22. EXAMINING BOARDS

### Part XXII. Texas State Board of Public Accountancy

#### Chapter 527. Quality Review

##### • 22 TAC §§527.3-527.7

The Texas State Board of Public Accountancy adopts amendments to §§527.3-527.7, concerning definitions. Section 527.4 and §527.6 are adopted with changes to the proposed text as published in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6533). Sections 527.3, 527.5, and 527.7 are adopted without changes and will not be republished.

The benefit anticipated as a result of enforcing the sections will be that the language in two rules is simplified, the consistency of quality reviews will be ensured, the reporting requirements for quality reviewers are consistent, and the underlying documents shall be protected.

The amendments delete the word "quality" from a rule; require practice units to enroll with sponsoring organizations and require new practice units to have quality reviews within 18 months after commencement of the practice unit; simplify a rule's language but don't change its meaning; clarify the requirements for reporting quality reviews; and reduce the length of time for retention of documents.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to quality review.

§527.4. *Quality Review Program.* The following operations of the program shall be conducted by the board.

(1) Applicability. Participation in the program is required of each practice unit/licensee licensed or registered with the board who performs accounting and/or auditing engagements, including, but not limited to, audits, reviews, compilations, forecasts, projections, or other special reports.

(2) Operation. The board shall effect the program by requiring that each practice unit/licensee licensed or registered with the board as of January 1, 1992, shall schedule a review to commence no later than December 31, 1994. Each practice unit shall enroll with one of the sponsoring organizations approved in accordance with paragraph (6) of this section. Each practice unit shall adopt the review date assigned by the appropriate sponsoring organization and shall notify the board of such date. It is the responsibility of the practice unit to antici-

pate its needs for review services in sufficient time to enable the reviewer to complete the review within six months after the end of the review date.

(3) Minimum standards. The board hereby adopts "Standards for Performing and Reporting on Quality Reviews" promulgated by the American Institute of Certified Public Accountants, Inc., as its minimum standards for review of practice units/licensees. This section shall not require any practice unit/licensee to become a member of any sponsoring organization.

(4) Oversight. The board shall appoint a Quality Review Oversight Board (QROB) whose function shall be the oversight and monitoring of sponsoring organizations for compliance and implementation of the minimum standards for performing and reporting on reviews. The QROB shall consist of three members, none of whom are current members of the board. QROB's membership shall consist of:

(A)-(B) (No change.)

(5) Compensation. Compensation of QROB members shall be set by the board. Oversight procedures to be followed by the QROB shall be provided for by rules promulgated by the board. Information concerning a specific firm obtained by the QROB during oversight activities shall be confidential, and the firm's identity shall not be reported to the board.

(6) Sponsoring organizations. Qualified sponsoring organizations shall be the Securities and Exchange Commission Practice Section (SECPS); Private Companies Practice Section (PCPS); American Institute of Certified Public Accountants Quality Review Program, state CPA Societies fully involved in the administration of the AICPA Quality Review Program, and such other entities which register with and are approved by the board on their adherence to the quality review minimum standards.

(7) Mergers, combinations, dissolutions, or separations.

(A) Mergers or combinations. In the event that two or more practice units are merged or sold and combined, the surviving practice unit shall retain the review year of the largest practice unit.

(B) Dissolutions or separations. In the event that a practice unit is divided, the new practice unit(s) shall retain the review year of the former practice unit. In the event that such period is less than 12 months, a review year shall be assigned so that the review occurs within 18 months of the commencement of the new practice unit(s).

(8) The board may accept an extension, not to exceed 180 days, as granted by the sponsoring organization for the conduct of a review, provided the board is notified by the practice unit/licensee within 20 days of the date of such an extension.

#### §527.6. Reporting to the Board.

(a) A practice unit which is a member of the American Institute of Certified Public Accountants Division for CPA Firms and which has a peer review performed under the auspices of the Private Companies Practice Section (PCPS) or the Securities and Exchange Commission Practice Section (SECPS) shall submit to the board a copy of the peer review report, letter of comments (LOC), letter of response (LOR), and acceptance letter.

(b) For the first quality review covering a review year ending after January 1, 1992, a practice unit shall submit to the board:

(1) a copy of the report, if such report is unqualified; or

(2) a copy of the report, the LOC, the LOR, and notice of acceptance from the sponsoring organization, if such report is modified (qualified in any respect or adverse). Information submitted in accordance with this subsection shall be held confidential pursuant to the Public Accountancy Act of 1991, §25.

(c) For a practice unit's second and subsequent quality review, including any quality review carried out on an accelerated basis as part of the corrective action taken as a result of the previous quality review, a practice unit shall submit to the board a copy of that quality review report, LOC, LOR, and notice of acceptance from the sponsoring organization.

(d) A Texas practice unit of a multiple office firm not subject to peer review or quality review tests and procedures shall submit an affidavit which includes affirmation, together with the date thereof, that a firm inspection of all Texas practice units was performed which was at least as extensive as a review required by the relevant review program and that the workpapers of such inspection were reviewed and accepted as part of the peer review or quality review procedures.

(e)-(f) (No change.)

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

Issued in Austin, Texas, on February 12, 1993.

TRD-9319147

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 10, 1993

Proposal publication date: September 22, 1992

For further information, please call: (512) 450-7066

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 289. Radiation Control

#### Texas Regulations for Control of Radiation

• 25 TAC §289.124

The Texas Department of Health (department) adopts an amendment to §289.124, with changes to the proposed text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7750) and with changes to the material the section adopts by reference.

The section adopts by reference Part 44 of the Texas Regulations for Control of Radiation (TRCR) titled, *Licensing of Radioactive Waste Processing and Storage Facilities*. The amendment to Part 44 adds limited exemptions from the section for nuclear pharmacy operations and clarifies that a person collecting waste from sites under the control of that person is not collecting waste from "other" persons. The amendment does not drop those exempted persons from regulatory review and oversight; the exempted persons are licensed under TRCR Part 41.

Several wording changes were made to Part 44 to further clarify the intent of the section. Since the exemption applies only to nuclear pharmacies, the word "products" was replaced with "radiopharmaceuticals" for further clarification. The word "compounded" was added to further clarify that this exemption applies to nuclear pharmacies and not drug manufacturers. Also, the phrase "...to background radiation levels" was added to make the exemption as clear as possible.

The following comments were received concerning the proposed amendment.

**Comment.** Two commentors expressed support of the proposed amendment.

**Response.** The department acknowledged their support.

**Comment.** A commentor stated that the proposed changes were an attempt to subvert the existing regulations which were formulated to ensure radioactive waste storage and processing facilities are sited in locations where geological and environmental conditions have been evaluated and found to be optimum. The commentor stated that no less than ten public hearings and extended comment periods were involved in the formulation of TRCR Part 44 and that the department is attempting to make changes in TRCR Part 44 without that same peer review and input.

**Response.** The department's response is that any revision to the TRCR must follow the Administrative Procedures and Texas Register Act

(APTRA) before it can be enacted as rule. The development of TRCR Part 44 and the current revision have both followed APTRA, and provisions for public review and comment have been made. The department made no change to the section as a result of the comment.

**Comment.** A commentor opposed to the proposed amendment stated that the purpose of Part 44 was to ensure that proper management of radioactive waste storage and processing was performed and the proposed exemption will not provide for this. Further, the only person who will be regulated by TRCR Part 44 as proposed will be one or two companies who might handle less than 10% of all the radioactive waste in the state of Texas. The other 90% will "slip through the crack." This commentor also stated that the department has consistently formulated exemptions to the section in order to take the cost of radioactive waste disposal off the medical and educational community, as in TRCR Part 21.

Another commentor in opposition to the proposed section stated that the proposed amendment was due to the imminent closure of existing radioactive waste burial sites, the high cost of disposal, and the lack of available radioactive waste storage capacity. The commentor notes that on November 24, 1992, the Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA) signed an agreement assuring continuing access to the Barnwell radioactive waste disposal site for Texas-generated waste through June 30, 1994, and suggests that, when a Texas site is opened, the TLLRWDA charges will be significantly higher than the present Barnwell charges. The commentor also noted that a company currently licensed by the department and owned by the commentor has adequate storage space at the present time.

**Response.** The department's response to those comments are as follows: TRCR Part 44 was established for commercial waste processors. The section states that Part 44 establishes "...the requirements for management of commercial radioactive waste processing and storage facilities, the procedures and criteria for the issuance of licenses to receive, possess, transport, store and process radioactive waste from other persons, and the terms and conditions upon which the department will issue such licenses." Non-commercial waste storage by a person as defined in TRCR Part 44 is not exempt from regulatory oversight.

The purpose of the proposed section is to clarify that a person collecting waste from sites under the control of that person is not collecting waste from "other" persons. The section does not drop such persons from regulatory oversight. Such a person is regulated under TRCR Part 41 and any application for waste storage will be carefully reviewed to ensure that any such operation commits to procedures and safeguards which are adequate to protect public health and safety and the environment.

Also, the department is currently developing a regulatory guide for submission of waste storage applications which address many of the same technical criteria as in TRCR Part 44.

In addition, the requirements in TRCR Part 21 do not redefine the definition of "radioactive material." The section states that certain ra-

radioactive materials, under certain conditions, may be disposed of without regard to their radioactivity. The department made no changes to the section as a result of the comments.

**Comment.** Many of one commentator's statements were in regard to a specific application submitted to the department and not on the proposed section itself and some comments were speculation on current or future costs of waste disposal.

**Response.** The department did not respond to these statements, as they did not concern the proposed section.

**Comment.** A commentator noted that allowing an entity to be licensed for a facility for storage of radioactive wastes may allow it to store nonhazardous radioactive waste, but will not provide the additional permits needed from the Texas Water Commission for collection and storage of dry, solid wastes, special infectious wastes and hazardous chemical wastes.

**Response.** The department's response is that if mixed wastes are to be stored, other required permits will have to be obtained by an applicant, whether commercial or non-commercial. The department made no change to the section as a result of the comment.

Representatives from the Mallinckrodt Medical, Inc. in Houston, and from the University of Texas System offered comments in support of the proposed amendment. Representatives from the Nuclear Sources and Services, Inc. /Monitoring Services in Friendswood, and from the Nuclear Sources and Services, Inc. in Houston, presented comments and concerns in opposition to the proposed amendment as discussed in the summary of comments.

The amendment is adopted under the Chapter 401 of the Health and Safety Code, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

#### §§289.124. Adoption by Reference.

(a) The Texas Department of Health adopts by reference Part 44, Licensing of Radioactive Waste Processing and Storage Facilities of the Department's document titled *Texas Regulations for Control of Radiation*, as amended in April 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754 and is available for public inspection during regular working hours.

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 February 19, 1993.

TRD-9319364

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: April 1, 1993

Proposal publication date: November 3, 1992

For further information, please call: (512) 834-6688

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## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 7. Corporate and Financial Regulation

#### Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.18

The State Board of Insurance of the Texas Department of Insurance adopts the repeal of §7.18, concerning salvage and subrogation, without changes to the proposed text as published in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9086).

Section 7.18 concerns the treatment of salvage and subrogation in the annual statement. The treatment of salvage and subrogation is currently addressed in §7.62. Notification appears elsewhere in this issue of the *Texas Register* of the adoption of new §7.62.

The repeal of this section is necessary to eliminate unnecessary provisions and allow the board to simultaneously adopt new §7.62 concerning the filing requirements for annual and quarterly statements and other reporting forms. The section was adopted to be effective in 1983 and to be consistent with the National Association of Insurance Commissioners' instructions to the annual statement regarding the treatment of salvage and subrogation. In June, 1992 the NAIC changed the annual statement instructions and those changes are incorporated in §7.62.

A commentator suggested repeal or revision of the section to allow property and casualty insurance companies the option of netting anticipated salvage and subrogation against loss reserves as allowed by the NAIC. The commentator pointed out the discrepancy between subsection (a) which requires salvage and subrogation to be recognized only when reduced to cash or a qualified admitted asset and subsection (b) which states that the section conforms to the NAIC's instructions on the annual statement blank. In addition, repeal or revision of the section was recommended since a position by Texas contrary to the NAIC would support federal legislators' contentions that federal regulation of the insurance industry is desirable, and the commentator believes the NAIC position is correct and failure to be consistent with the NAIC position would put Texas domiciled companies at a competitive disadvantage. The agency agrees that the section should be repealed.

USAA Property and Casualty Insurance commented in favor of the repeal.

The repeal is adopted under the Insurance Code, Articles 1.11, 21.43, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.11, authorizes the Board to change the form of the statement blanks and other reporting forms as shall seem to it best adapted to elicit a true exhibit of the financial condition and the methods of transacting the business of insurers and other regulated entities. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.04 authorizes the State Board of Insurance to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The repeal affects the filing of the annual statement and other reporting forms to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

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 February 19, 1993.

TRD-9319305

Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Effective date: March 12, 1993

Proposal publication date: December 25, 1992

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

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#### • 28 TAC §7.62

The State Board of Insurance of the Texas Department of Insurance adopts the repeal of §7.62, concerning annual statement blanks, instructions, and other forms, 1983, without changes to the proposed text as published in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9087).

Section 7.62 concerns the annual statement blanks, instructions, and other forms for calendar year 1983, concerning corporate and financial regulation. The repeal of §7.62 is simultaneous with the adoption of new §7.62 concerning the annual statement blanks for 1992 and quarterly statements for 1993, and other reporting forms. Notification appears elsewhere in this issue of the *Texas Register* of the adoption of new §7.62, which replaces repealed §7.62.

The repeal of this section is necessary to eliminate unnecessary provisions and to enable the board simultaneously to adopt new §7.62, which replaces the repealed section with other provisions concerning the filing re-

quirements for annual and quarterly statements and other reporting forms for calendar year 1992 and 1993.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Insurance Code, Articles 1.11, 1.10, 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 22.18, 23.02, 23.26, 21.21, 21.43, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The referenced articles of the Insurance Code authorize the State Board of Insurance to promulgate rules and regulations necessary to accomplish the purposes of those articles and to protect the public interest concerning the regulation of insurance. The Insurance Code, Article 1.11, authorizes the Board to change the form of the statement blanks and other reporting forms as shall seem to it best adapted to elicit a true exhibit of the financial condition and the methods of transacting the business of insurers and/or other regulated entities and requires certain insurers and/or other regulated entities to make filings with the National Association of Insurance Commissioners. Article 1.10, §9 requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 22.18, 23.02, and 23.26 require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rule-making authority of the Board relating to those insurers and other regulated entities. Article 21.21 prohibits any person engaged in the business of insurance from filing with any public official any false statement of financial condition of an insurer with intent to deceive and requires that all statements made by person in the business of insurance be truthful and not misleading. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.04(b) authorizes the Board to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The repeal affects the filing of the annual statement and other reporting forms for calendar year 1993 to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

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 February 19, 1993.

TRD-9319304

Linda K. von Quintue-Dom  
Chief Clerk  
Texas Department of  
Insurance

Effective date: March 12, 1993

Proposal publication date: December 25, 1992

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

The State Board of Insurance of the Texas Department of Insurance adopts new §7.62, concerning requirements for filing the 1992 annual and 1993 quarterly statements, other reporting forms and diskettes, with changes to the proposed text published in the December 25, 1992, issue of the *Texas Register* (17 TexReg 9087).

The new section concerns the annual and quarterly statement blanks, other reporting forms, diskettes and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities, and the requirement to file such completed statement blanks and other reporting forms, including diskettes. These statement blanks, other reporting forms and diskettes are required for reporting, in 1993, the financial condition and business operations and activities conducted during the 1992 and 1993 calendar years. The adoption of new §7.62 is simultaneous with the repeal of existing §7.62, concerning the 1983 annual statement filings. Notice of the repeal appears elsewhere in this issue of the *Texas Register*. The adoption includes a change to the last sentence of subsection (a) to correct a typographical error. Changes were made to paragraphs (1)(A)-(E), (2)(A)-(B), (2)(D)-(G), (3)(A), and (3)(C) of subsection (c) to clarify the dates by which certain reports are to be filed by stipulated premium companies. Changes were made to subsections (c)-(g) and (k) to clarify that the Insurance Code and existing departmental rules take precedence whenever there is a conflict with the NAIC manuals or instructions. Changes were made to subsection (d) to be consistent with the NAIC treatment of salvage and subrogation in the annual statement and not require insurers to file a different annual statement for the State of Texas. Along with the changes made to the section as published, the Board announced its intention to promulgate rules to provide guidelines for anticipated salvage and subrogation by insurers.

The new section requires insurers and certain other entities regulated by the Texas Department of Insurance to file annual statements for 1992 and quarterly statements during 1993 which report the financial condition and business operations and activities of the insurers on specified blanks, reporting forms and diskettes within certain time periods. The section also requires insurers and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the National Association of Insurance Commissioners. The new section allows anticipation of salvage and subrogation recoveries by insurers. The Board's intention is to promulgate rules to provide guidelines for such anticipation as soon as practically possible.

A commentator suggested that the reference to subsection (e) in the last sentence of subsection (a) be changed to subsection (c) since the filing requirements commence with (c) rather than (e). The agency agrees with the comment and has made the suggested change.

A commentator supported the language which permits companies to choose the size annual statement which is filed. It was felt that uniformity among the states of annual statement requirements would not only be economically beneficial to companies, but also reduce errors in filing and reporting requirements. The agency has maintained the language which allows companies to choose the size annual statement which it files.

A commentator pointed out that stipulated premium companies have a filing deadline of April 1 of each year rather than March 1 as set forth in various subparagraphs of subsection (c). The agency concurs and has included a reference to stipulated premium companies and the date of April 1, 1993, in subsections (c)(1)(A)-(D), (c)(2)(A)-(B), (c)(2)(D)-(G), (c)(3)(A), and (c)(3)(C). The date of May 1, 1993, was added for stipulated premium companies for subsection (c)(1)(E).

A commentator suggested changing the language in subsection (c) and the other subsections where similar language is used regarding the Insurance Code and department's rules taking precedence over discrepancies with the NAIC manuals since there are discrepancies between the NAIC manuals and the Insurance Code as well as existing rules of the department. The agency concurs with the commentator and has changed the language regarding conflict between the NAIC manuals and the Insurance Code and existing departmental rules to the suggested language.

Commentors recommended that subsection (d) be changed to allow anticipation of salvage and subrogation recoveries and that the treatment of salvage and subrogation should be consistent with the NAIC instructions for the annual statement and the federal tax law. It was felt by commentors that it is not appropriate or cost effective to require insurers to compute a separate annual statement just for the State of Texas. One commentator contends that the amounts will be disclosed in the Notes to financial Statements on page 18 of the Annual Statement and the NAIC has promulgated further disclosure of these items in Schedule P for future Annual Statements. Another commentator believed that anticipation of salvage and subrogation is a preferable method of accounting because it provides a better estimation of an insurer's unpaid claims, which in turn provides a better indication of an insurer's financial condition and operating performance during any given year. The agency concurs and has made the recommended change by deleting the language that required a different treatment and reporting of salvage and subrogation in the annual statement for the State of Texas.

United Services Life Companies-For. Texas Association of Life Insurance Officials-Neither for nor against. National Association of Independent Insurers, American Insurance Association, and Texas Farmers Insurance Company-Against.

The new section is adopted under the Insurance Code, Articles 1.11, 1.10, 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 22.18, 23.02, 23.26, 21.21, 21.43, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.11, authorizes the Board to change the form of the statement blanks and other reporting forms as shall seem to it best adapted to elicit a true exhibit of the financial condition and the methods of transacting the business of insurers and/or other regulated entities and requires certain insurers and/or other regulated entities to make filings with the National Association of Insurance Commissioners. Article 1.10, §9, requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 22.18, 23.02, and 23.26 require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rulemaking authority of the Board relating to those insurers and other regulated entities. Article 21.21 prohibits any person engaged in the business of insurance from filing with any public official any false statement of financial condition of an insurer with intent to deceive and requires that all statements made by persons in the business of insurance be truthful and not misleading. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.04(b) authorizes the Board to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The new section affects the filing of the annual statement, other reporting forms, and diskettes to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

*§7.62. Requirements for filing the 1992 Annual and 1993 Quarterly Statements, Other Reporting Forms, and Diskettes.*

(a) Scope. This section provides insurers and other regulated entities with the filing requirements for the 1992 annual statement, 1993 quarterly statements, other reporting forms, and diskettes necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life, life and accident, life and health, accident and health insurers; life, accident and health

insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; risk retention groups; joint underwriting associations; title insurers; fraternal benefit societies; local mutual aid associations; statewide mutual assessment companies; mutual burial associations; exempt associations; farm mutual insurers; health maintenance organizations; and nonprofit legal services corporations. The Texas Department of Insurance adopts by reference the 1992 annual and 1993 quarterly statement blanks, instruction manuals, and other reporting forms specified in this section. The annual and quarterly statement blanks and other reporting forms are available from the Texas Department of Insurance, Financial Analysis, Mail Code 303-1A, P.O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the Texas Department of Insurance and the National Association of Insurance Commissioners (NAIC), using the appropriate annual and quarterly statement blanks, other reporting forms and machine-readable diskettes and following the applicable instructions as outlined in subsections (c)-(1) of this section.

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

(1) Board—The State Board of Insurance of the State of Texas.

(2) Department—The Texas Department of Insurance.

(3) Commissioner—The Commissioner of Insurance of the Texas Department of Insurance, appointed under the Insurance Code, Article 1.09.

(4) Texas edition—Blanks and forms promulgated by the State Board of Insurance of the Texas Department of Insurance.

(5) NAIC—The National Association of Insurance Commissioners.

(6) Association edition—Blanks and forms promulgated by the National Association of Insurance Commissioners.

(7) Insurer—A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance.

(c) Filing requirements for life, accident, and health insurers. Each life, life and accident, life and health, accident, and health insurance company, stipulated premium insurance company, and group hospi-

tal services corporation shall file the following blanks, forms, and diskettes for the 1992 calendar year and the first three quarters of the 1993 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(G); (2)(A)-(C); and (3)(A)-(D) of this subsection shall be completed in accordance with the current NAIC Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies, and the current NAIC Annual Statement Instructions, Life Accident and Health. The diskettes identified in paragraphs (3)(C) and (D) of this subsection shall be completed in accordance with the current NAIC Annual Statement Diskette Filing Specifications-Life/Health. Since Texas domestic companies have historically not been required to establish a Mandatory Securities Valuation Reserve (MSVR), they are not required at the present time to establish an Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR) unless the company is licensed in a state that requires an AVR or IMR, in which case the reserve must be calculated in accordance with the instructions established by the NAIC. In the event of a conflict between the Insurance Code or any current existing departmental rule, form or instruction and the listed manuals for statements, forms, and filing requirements as contained in this subsection, then and in that event, the Insurance Code or the department's promulgated rule, form or instruction shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any departmentally promulgated rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC include the following:

(A) Annual Statement (association edition, Form 1, Form 1A, or Form 11), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S) (required of companies maintaining separate accounts), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(C) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(D) Schedule DS (association edition) (required of companies that have included equity in the undistributed income of consolidated subsidiaries in its net gain/(loss) from operations), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(E) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before April 1, 1993 (stipulated premium insurance companies, May 1, 1993);

(F) Life, Health, and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), 8 1/2-inch by 14-inch size, to be filed on or before June 30, 1993; and

(G) Life and Accident and Health Quarterly Statement (association edition), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993. However, a Texas stipulated premium company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its Certificate of Authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(B) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(C) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before June 30, 1993;

(D) Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business), 8 1/2-inch by 14-inch size, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(E) Supplemental and Balance Sheet Data (TEXSPEC19), to be filed in duplicate on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(F) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993); and

(G) Analysis of Surplus, for life, accident, and health insurers, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993).

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993);

(B) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), nine-inch by 14-inch size, to be filed on or before May 1, 1993;

(C) machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1993 (stipulated premium insurance companies, April 1, 1993), (not required of companies filing annual statement Form 1A or Form 11); and

(D) machine-readable diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1993 (not required of companies filing annual statement Form 1A or Form 11). However, a Texas stipulated premium company, unless

specifically requested to do so by the department, is not required to file diskettes with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its Certificate of Authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(d) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty or county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed on a Form 2 for the 1991 calendar year, and joint underwriting association shall file the following blanks, forms, and diskettes for the 1992 calendar year and the first three quarters of the 1993 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(F); (2)(A)-(C); and (3)(A)-(D) of this subsection shall be completed in accordance with the current NAIC Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies, and the current NAIC Annual Statement Instructions, Property and Casualty. No loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed; provided, however, any company that claimed loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, as of December 31, 1991, shall be allowed to claim such reserve discounts at the applicable percentage. The applicable percentage for claiming such loss reserve discounts shall be 100% for 1992, 75% for 1993, 50% for 1994, 25% for 1995, 0% for 1996, and subsequent years. In no event shall the dollar amount of discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, claimed as of December 31, 1991, and subject to the applicable percentage, be increased as of December 31, 1992 and thereafter. The commissioner shall have the authority to determine the appropriateness of, and may disapprove, discounts taken as respects fixed and determinable payments such as those emanating from workers' compensa-

tion tabular indemnity reserves and long-term disability claims. The diskettes identified in paragraphs (3)(C) and (D) of this subsection shall be completed in accordance with the current NAIC Annual Statement Diskette Filing Specifications-Property/Casualty. In the event of a conflict between the Insurance Code or any current existing departmental rule, form or instruction and the listed manuals for statements, forms, and filing requirements as contained in this subsection, then and in that event, the Insurance Code or the department's promulgated rule, form or instruction shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any departmentally promulgated rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 2), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(B) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(C) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(D) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(E) Insurance Expense Exhibit (association edition), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before April 1, 1993; and

(F) Fire and Casualty Quarterly Statement (association edition), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock compa-

nies which have 100 or more stockholders), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(B) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(C) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before June 30, 1993;

(D) Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business), 8 1/2-inch by 14-inch size, to be filed on or before March 1, 1993;

(E) Texas Supplemental State Page (14TS), either 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed in duplicate on or before March 1, 1993;

(F) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1993;

(G) Analysis of Surplus, for property and casualty insurers (required of all licensed companies, except Texas domestic county mutual companies), to be filed on or before March 1, 1993; and

(H) Supplement for County Mutuals (attach to page 16 of the annual statement as required by subsection (e)(1)(A) of this section, required of Texas domestic county mutual companies), to be filed on or before March 1, 1993.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1993;

(B) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), nine-inch by 14-inch size, to be filed on or before May 1, 1993;

(C) machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1993; and

(D) machine-readable diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1993.

(e) Requirements for fraternal benefit societies. Each fraternal benefit society shall file the following blanks, forms, and diskettes for the 1992 calendar year and the first three quarters of the 1993 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(D); (2)(A)-(C); and (3)(A) and (B) of this subsection shall be completed in accordance with the current NAIC Accounting Practices and Procedures Manual for Life, Accident and Health Insurance Companies, and the current NAIC Annual Statement Instructions, Fraternal. The diskettes identified in paragraph (3)(B) of this subsection shall be completed in accordance with the current NAIC Annual Statement Diskette Filing Specifications-Fraternal. In the event of a conflict between the Insurance Code or any current existing departmental rule, form or instruction and the listed manuals for statements, forms, and filing requirements as contained in this subsection, then and in that event, the Insurance Code or the department's promulgated rule, form or instruction shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any departmentally promulgated rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 4), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S) (required of companies maintaining separate accounts), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(C) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993; and

(D) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12-inch by



19-inch size or nine-inch by 14-inch size, to be filed on or before April 1, 1993.

(2) Reports to be filed only with the department:

(A) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993;

(B) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before June 30, 1993;

(C) Fraternal Quarterly Statement (association edition), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993;

(D) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1993; and

(E) Analysis of Surplus, for fraternal benefit societies, to be filed on or before March 1, 1993.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1993; and

(B) Machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1993.

(f) Requirements for title insurers. Each title insurance company shall file the following blanks and forms for the 1992 calendar year and the first three quarters of the 1993 calendar year. The reports and forms identified in paragraphs (1), (3), and (2)(A)-(B) of this subsection shall be completed in accordance with the Title Insurance Accounting Principles Supplement section of the current NAIC Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies, and the current NAIC Annual Statement Instructions, Title. In the event of a conflict between the Insurance Code or any current existing departmental rule, form or instruction and the listed manuals for statements,

forms, and filing requirements as contained in this subsection, then and in that event, the Insurance Code or the department's promulgated rule, form or instruction shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any departmentally promulgated rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC: Annual Statement (association edition, Form 9), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before March 1, 1993.

(2) Reports to be filed only with the department:

(A) Schedule DM (association edition) (shows statement value and fair market value of all bonds and preferred stock owned), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before each March 1, 1993;

(B) Title Quarterly Statement (association edition), either the 12-inch by 19-inch size or nine-inch by 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993;

(C) Texas Supplemental State Page (42TS), to be filed in duplicate on or before March 1, 1993;

(D) Texas Overhead Assessment Form (required of Texas domestic Companies only), to be filed on or before March 1, 1993; and

(E) Analysis of Surplus, for title insurers, to be filed on or before March 1, 1993.

(3) Reports to be filed only with the NAIC: Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1993.

(g) Requirements for health maintenance organizations. Each health maintenance organization shall file the following blanks and forms for the 1992 calendar year and the first three quarters of the 1993 calendar year only with the department. The forms or reports identified in paragraphs (1) and (2) of this subsection shall be completed in accordance with the current NAIC Accounting Practices and Procedures Manual for Health Maintenance Organizations, and the current NAIC Annual Statements Instructions, Health Maintenance Organizations. In the event of a conflict between the

Insurance Code or any current existing departmental rule, form or instruction and the listed manuals for statements, forms, and filing requirements as contained in this subsection, then and in that event, the Insurance Code or the department's promulgated rule, form, or instruction shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any departmentally promulgated rule or the Insurance Code.

(1) Annual Statement (association edition, HMO), 8 1/2-inch by 14-inch size, to be filed on or before March 1, 1993;

(2) HMO Quarterly Statement (association edition), 8 1/2-inch by 14-inch size, to be filed on or before May 15, August 15 and November 15, 1993;

(3) HMO Supplement, 8 1/2-inch by 14-inch size, to be filed on or before March 1, 1993;

(4) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1993; and

(5) Exhibit Z, 8 1/2-inch by 14-inch size, to be filed on or before May 15, August 15, and November 15, 1993.

(h) Requirements for farm mutual insurers not subject to the provisions of subsection (d) of this section. Each farm mutual insurance company shall file the following completed blanks and forms for the 1992 calendar year with the department only:

(1) Annual statement (Texas edition, tan), 8 1/2-inch by 14-inch size, to be filed on or before March 1, 1993; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1993.

(i) Requirements for mutual assessment companies, mutual aid and mutual burial associations, and exempt companies. Each statewide mutual assessment company, local mutual aid association, local mutual burial association, and exempt company shall file the following completed blanks and forms for the 1992 calendar year only with the department:

(1) Annual Statement (Texas edition, orange), 8 1/2-inch by 14-inch size, to be filed on or before April 1, provided, however, exempt companies are not required to complete lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4, 5, 6, 7, and 19. All other pages are required;

(2) Texas Overhead Assessment Form, to be filed on or before April 1, 1993;

(3) Release of Contribution Form, to be filed on or before April 1, 1993;

(4) Reserve Valuation (3 1/2% Chamberlain Reserve Table), to be filed on or before April 1, 1993; and

(5) Inventory of Insurance in Force by Age of Issue, to be filed on or before April 1, 1993.

(j) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation shall file the following completed blanks and forms for the 1992 calendar year only with the department;

(1) Annual Statement (Texas edition, green), 8 1/2-inch by 14-inch size, to be filed on or before March 1, 1993; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1993.

(k) Requirements for Mexican casualty companies. Each Mexican casualty company shall file the following blanks and forms for the 1992 calendar year only with the department. The form identified in paragraph (1) of this subsection shall be completed in accordance with the current NAIC Accounting Practices and Procedures Manual for Fire and Casualty Insurance Companies, and the current NAIC Annual Statement Instructions, Property and Casualty. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in U. S. dollars. In the event of a conflict between the Insurance Code or any current existing departmental rule, form or instruction and the listed manuals for statements, forms, and filing requirements as contained in this subsection, then and in that event, the Insurance Code or the department's promulgated rule, form or instruction shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any departmentally promulgated rule or the Insurance Code.

(1) Annual Statement (association edition, Form 2), 12-inch by 19-inch size, provided, however, only pages 1-4, 14, and 16 are required to be completed, to be filed on or before March 1, 1993;

(2) Texas Supplemental State Page (14TS), 12-inch by 19-inch size, to be filed in duplicate on or before March 1, 1993;

(3) a copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 1993;

(4) a copy of the official documents issued by the COMISION NACIONAL BANCARIA Y DE

SEGUROS approving the current year's annual statement, to be filed on or before March 1, 1993; and

(5) A copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 1993.

(l) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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 February 19, 1993.

TRD-9319303

Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

Effective date: March 12, 1993

Proposal publication date: December 25, 1992

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part IX. Texas Water Commission

#### Chapter 331. Underground Injection Control

##### Subchapter I. Financial Responsibility

###### • 31 TAC §331.147

The Texas Water Commission (TWC) adopts new §331.147, concerning underground injection control. Section 331.147 is adopted with changes to the proposed text as published in the November 13, 1992, issue of the *Texas Register* (17 TexReg 7984).

The new section is adopted in order to incorporate rules promulgated by the Environmental Protection Agency pursuant to its authority under the federal Solid Waste Disposal Act; as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 United States Code, §§6901 et seq, as amended. This new section is adopted to provide both consistency with existing Texas Administrative Code (TAC) regulations and clarification of the TWC's regulatory intent.

A new §331.147 is adopted as an appendix to the new §§331.141-331.146. The new §331.147 delineates the acceptable wording for trust agreements, guarantee bonds, performance bonds, irrevocable standby letters of credit, letters from the chief financial officer, and plugging and abandonment guarantees.

One comment received pointed out that the format of the new §331.147 had been incorrectly printed in the November 13, 1992, *Texas Register*. This problem has been corrected.

Another commenter noted that in Section 20 of Exhibit A, there is a citation which is confusing, based on the proper format for this section. This citation has been corrected. In fact, there were many citations similarly incorrect due to formatting mistakes. All of these have been corrected.

The new section is adopted under the Texas Water Code, §5.103 and §5. 105, which provides the TWC with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission. In addition, the Texas Water Code, §27.19, authorizes the TWC to adopt rules and procedures reasonably required for the performance of its powers and duties under Chapter 27. The TWC is designated the state agency which manages injection wells which are not within the jurisdiction of the Railroad Commission. As such, TWC is required to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare, the operation of existing industries and the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy.

#### §331.147. Wording of the Instruments.

##### (a) Trust Agreement.

(1) A trust agreement for a trust fund, as specified in §331.144(1) of this title (relating to Financial Assurance for Plugging and Abandonment), must be worded as follows, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted.

#### TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the Texas Water Commission, "TWC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an injection well shall provide assurance that funds will be available when needed for plugging and abandonment of the injection well,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers; has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

**Section 1. Definitions.** As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "underground injection well" or any other facility or activity that is subject to regulation under the Underground Injection Control Program.

**Section 2. Identification of Facilities and Cost Estimates.** This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current plugging and abandonment cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement].

**Section 3. Establishment of Fund.** The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TWC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TWC.

**Section 4. Payment for Plugging and Abandonment.** The Trustee shall make payments from the Fund as the Executive Director shall direct, in writing, to provide for the payment of the costs of plugging and abandonment of the injection wells covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Executive Director from the Fund for

plugging and abandonment expenditures in such amounts as the Executive Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Executive Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

**Section 5. Payments Comprising the Fund.** Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

**Section 6. Trustee Management.** The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the In-

vestment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

**Section 8. Express Powers of Trustee.** Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the

compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

**Section 10. Annual Valuation.** The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate Executive Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Executive Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee Compensation.** The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

**Section 13. Successor Trustee.** The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Executive Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.** All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Executive Director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TWC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TWC, except as provided for herein.

**Section 15. Notice of Nonpayment.** The Trustee shall notify the Grantor and the appropriate Executive Director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

**Section 16. Amendment of Agreement.** This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate Executive Director, or by the Trustee and the appropriate Executive Director if the Grantor ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Executive Director, or by the Trustee and the Executive Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**Section 18. Immunity and Indemnification.** The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Executive Director issued in accordance with this Agreement. The Trustee shall be indemnified

and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 19. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the State of [insert name of State].

**Section 20. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 31 Texas Administrative Code §331.147(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]

By [Title]

Attest:

[Title]

[Seal] [Signature of Trustee]

By

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §331.144(1) of this title (relating to Financial Assurance for Plugging and Abandonment). State requirements may differ on the proper content of this acknowledgment.

State

of \_\_\_\_\_

County

of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corpora-

tion], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order. [signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in §331.144(2) of this title (relating to Financial Assurance for Plugging and Abandonment) must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**FINANCIAL GUARANTEE BOND**

Dated \_\_\_\_\_ bond executed: \_\_\_\_\_  
Effective \_\_\_\_\_ date: \_\_\_\_\_

Principal: [legal name and business address of owner or operator].

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"].

State of incorporation: \_\_\_\_\_

Surety(ies): [name(s) and business address(es)].

EPA Identification Number, name, address, and plugging and abandonment amount(s) for each facility guaranteed by this bond [indicate plugging and abandonment amounts separately]: \_\_\_\_\_

Total penal sum of bond: \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Water Commission (hereinafter called TWC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if

no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Underground Injection Control Regulation (UIC), to have a permit or comply with requirements to operate under rule in order to own or operate each injection well identified above, and

Whereas said Principal is required to provide financial assurance for plugging and abandonment as a condition of the permit or provisions to operate under rule, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used provide such financial assurance;

Now, therefore, the condition of the obligation are such that if the Principal shall faithfully, before the beginning of plugging and abandonment of each injection well identified above, fund the standby trust fund in the amount(s) identified above for the injection well,

Or if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin plugging and abandonment is issued by an Executive Director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Subchapter I of 31 Texas Administrative Code Chapter 331, as applicable, and obtain the Executive Director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the Executive Director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an Executive Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the injection well(s) into the standby trust funds as directed by the Executive Director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the

Executive Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Executive Director(s), as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Executive Director(s) of the Region(s) in which the bonded facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new plugging and abandonment amount, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written permission of the Executive Director(s).

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The person whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 31 Texas Administrative Code §331.147(b) as such regulations were constituted on the date this bond was executed.

Principal  
[Signature(s)]  
[Name(s)]  
[Title(s)]  
[Corporate seal]  
Corporate Surety(ies)  
[Name and address]  
State of incorporation: \_\_\_\_\_  
Liability limit:  
\$ \_\_\_\_\_

[Signature(s)]  
[Name(s) and title(s)]  
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium:  
\$ \_\_\_\_\_.

(c) A surety bond guaranteeing performance of plugging and abandonment, as specified in §331. 144(3) of this title (relating to Financial Assurance for Plugging and Abandonment), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**PERFORMANCE BOND**

Date bond executed:  
\_\_\_\_\_.

Effective date:  
\_\_\_\_\_.

Principal: [legal name and business address of owner or operator].

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation?"].

State of incorporation:  
\_\_\_\_\_.

Surety(ies): [name(s) and business address(es)]  
\_\_\_\_\_  
\_\_\_\_\_.

EPA Identification Number, name, address, and plugging and abandonment amounts(s) for each injection well guaranteed by this bond [indicate plugging and abandonment amounts for each well]:  
\_\_\_\_\_  
\_\_\_\_\_.

Total penal sum of bond:  
\$ \_\_\_\_\_.

Surety's bond number:  
\_\_\_\_\_.

**Know All Persons By These Presents.**

That We, the Principal and Surety(ies) hereto are firmly bound to the Texas Water Commission [hereinafter called TWC], in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Underground Injection Con-

trol Regulations, as amended, to have a permit or comply with provisions to operate under rule for each injection well identified above, and

Whereas said Principal is required to provide financial assurance for plugging and abandonment as a condition of the permit or approval to operate under rule, and

Whereas said Principal shall establish a standby trust fund as required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform plugging and abandonment, whenever required to do so, of each injection well for which this bond guarantees plugging and abandonment, in accordance with the plugging and abandonment plan and other requirements of the permit or provisions for operating under rule and other requirements of the permit or provisions for operating under rule as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in Subchapter I of 31 Texas Administrative Code Chapter 331, and obtain the Executive Director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the Executive Director(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an Executive Director that the Principal has been found in violation of the plugging and abandonment requirements of Subchapter I of 31 Texas Administrative Code Chapter 331, for an injection well which this bond guarantees performances of plugging and abandonment, the Surety(ies) shall either perform plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements or provisions for operating under rule and other requirements or place the amount for plugging and abandonment into a standby trust fund as directed by the Executive Director.

Upon notification by an Executive Director that the Principal has failed to provide alternate financial assurance as

specified in Subchapter I of 31 Texas Administrative Code Chapter 331, and obtain written approval of such assurance from the Executive Director(s) during the 90 days following receipt by both the Principal and the Executive Director(s) of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the injection well(s) into the standby trust fund as directed by the Executive Director.

The surety(ies) hereby waive(s) notification of amendments to plugging and abandonment plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the owner and operator and to the Executive Director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Executive Director, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Executive Director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new plugging and abandonment amount, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written permission of the Executive Director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording on this surety bond is identical to the wording specified in 31

Texas Administrative Code §331.147(c) as such regulation was constituted on the date this bond was executed.

Principal.

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

[Corporate Surety(ies)]

[Name and address]

State of incorporation:

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[name(s) and title(s)]

Corporate seal:

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

(d) A letter of credit, as specified in §331.144(4) of this title (relating to Financial Assurance for Plugging and Abandonment), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**IRREVOCABLE  
STANDBY LETTER OF CREDIT**

Executive Director

Texas Water Commission

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars \$ \_\_\_\_\_ available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit No. \_\_\_\_\_, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Safe Drinking Water Act."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and

[owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 31 Texas Administrative Code §331.147(d) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in §331.144(5) of this title, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**CERTIFICATE OF INSURANCE  
FOR PLUGGING AND ABANDONMENT**

Name and Address of Insurer (herein called the "insurer"):

Name and Address of Insurer (herein called the "insurer"):

Injection Wells covered: [list for each well: The EPA Identification Number, name, address, and the amount of insurance for plugging and abandonment (these amounts for all injection wells covered must total the face amount shown below).]

Face Amount:  
Policy Number:  
Effective Date:

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for plugging and abandonment for the injection wells identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 31 Texas Administrative Code §331.144(5), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Executive Director of the Texas Water Commission ("TWC"), the Insurer agrees to furnish to the Executive Director(s) a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 31 Texas Administrative Code §331.147(e) as such regulations were constituted on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing] [Title of person signing]

[Signature of witness or notary:]

[Date]

(f) A letter from the chief financial officer, as specified in §331.144(6) of this title (relating to Financial Assurance for Plugging and Abandonment), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**LETTER FROM CHIEF  
FINANCIAL OFFICER**

[Address to Executive Director]

I am the chief financial officer of [name and address of firm.] This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Subchapter I of 31 Texas Administrative Code Chapter 331.

[Fill out the following four paragraphs regarding injection wells and associated cost estimates. If your firm has no injection wells that belong in a particular paragraph, write "None" in the space indicated. For each injection well, include its EPA Identification Number, name, address, and current plugging and abandonment cost estimate.]

1. This firm is the owner or operator of the following injection wells for which financial assurance for plugging and abandonment is demonstrated through the financial test specified in Subchapter I of 31 Texas Administrative Code Chapter 331. The current plugging and abandonment cost estimate covered by the test is shown for each injection well: \_\_\_\_\_.

2. This firm guarantees, through the corporate guarantee specified in Subchapter I of 31 Texas Administrative Code Chapter 331, the plugging and abandonment of the following injection wells owned or operated by subsidiaries of this firm. The current cost estimate for plugging and abandonment so guaranteed is shown for each injection well: \_\_\_\_\_.

3. In States where TWC is not administering the financial requirements of Subchapter I of 31 Texas Administrative Code Chapter 331, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the plugging and abandonment of the following injection wells through the use of a test equivalent or substantially equivalent to the financial test specified in Subchapter I of 31 Texas Administrative Code Chapter 331. The current plugging and abandonment cost estimate covered by such a test is shown for each injection well: \_\_\_\_\_.

4. This firm is the owner or operator of the following injection wells for which financial assurance for plugging and abandonment is not demonstrated either to TWC or a State through the financial test or any other financial assurance mechanism specified in Subchapter I of 31 Texas Administrative Code Chapter 331 or equivalent or substantially equivalent State mechanisms.

The current plugging and abandonment cost estimate not covered by such financial assurance is shown for each injection well: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (6)(A)(i) of §331.144 of this title (relating to Financial Assurance for Plugging and Abandonment) are used.]

Fill in Alternative II if the criteria of paragraph (6) (A)(ii) of §331.144 of this title (relating to Financial Assurance for Plugging and Abandonment) are used.]

#### ALTERNATIVE I

1. (a) Current plugging and abandonment cost \$ \_\_\_\_\_

(b) Sum of the company's financial responsibilities under 31 Texas Administrative Code Chapter 335, Subchapters E and F, currently met using the financial test or corporate guarantee \$ \_\_\_\_\_

(c) Total of lines a and b \$ \_\_\_\_\_

\*2. Total liabilities [if any portion of the plugging and abandonment cost is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$ \_\_\_\_\_

\*3. Tangible net worth \$ \_\_\_\_\_

\*4. Net Worth \$ \_\_\_\_\_

\*5. Current assets \$ \_\_\_\_\_

\*6. Current liabilities \$ \_\_\_\_\_

\*7. Net working capital [line 5 minus line 6] \$ \_\_\_\_\_

\*8. The sum of net income plus depreciation, depletion and amortization \$ \_\_\_\_\_

\*9. Total assets in U. S. (required only if less than 90% of firm's assets are located in U.S.) \$ \_\_\_\_\_

10. Is line 3 at least \$10 million? yes/no

11. Is line 3 at least 6 times line 1(c)? yes/no

12. Is line 7 at least 6 times line 1(c)? yes/no

\*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14. yes/no

14. Is line 9 at least 6 times line 1(c)? yes/no

15. Is line 2 divided by line 4 less than 2.0? yes/no

16. Is line 8 divided by line 2 greater than 0.1? yes/no

17. Is line 5 divided by line 6 greater than 1.5? yes/no

#### ALTERNATIVE II

1. (A) Current plugging and abandonment cost \$ \_\_\_\_\_

(b) Sum of the company's financial responsibilities under 31 Texas Ad-

ministrative Code Chapter 335, Subchapters E and F, currently met using the financial test or corporate guarantee (c) Total of lines a and b \$ \_\_\_\_\_

2. Current bond rating of most recent issuance of this firm and name of rating service \$ \_\_\_\_\_

3. Date of issuance of bond \$ \_\_\_\_\_

4. Date of maturity of bond \$ \_\_\_\_\_

\*5. Tangible net worth [if any portion of the plugging and abandonment cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ \_\_\_\_\_

\*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.) \$ \_\_\_\_\_

7. Is line 5 at least \$10 million? yes/no

8. Is line 5 at least 6 times line 1(c)? yes/no

\*9. Are at least 90% of the firm's assets located in the U.S.? If not, complete line 10 yes/no

10. Is line 6 at least 6 times line 1(c)? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 31 Texas Administrative Code §331.146(f) as such regulations were constituted on the date shown immediately below. [Signature] [Name] [Title] [Date]

(g) A corporate guarantee as specified in §331.144(6) of this title (relating to Financial Assurance for Plugging and Abandonment) must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the bracketed material deleted.

#### GUARANTEE FOR PLUGGING AND ABANDONMENT

Guarantee made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by [name of guaranteeing entity], a business corporation organized under the laws of the State of \_\_\_\_\_, herein referred to as guarantor, to the Texas Water Commission (TWC), obligee, on behalf of our subsidiary [owner or operator] of [business address]. Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 31 Texas Administrative Code §331.147(g).



2. [Owner or operator] owns or operates the following Class I hazardous waste injection well covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Plugging and abandonment plan" as used below refers to the plans maintained as required by Subchapter I of 31 Texas Administrative Code Chapter 331 for the plugging and abandonment of injection wells as identified above.

4. For value received from [owner or operator], guarantor guarantees to TWC that in the event that [owner or operator] fails to perform ["plugging and abandonment"] of the above facility(ies) in accordance with the plugging and abandonment plan and other requirements when required to do so, the guarantor will do so or fund a trust fund as specified in 31 Texas Administrative Code §331.144 in the name of [owner or operator] in the amount of the adjusted plugging and abandonment cost estimates prepared as specified in 31 Texas Administrative Code §331.143.

5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor will send within 90 days, by certified mail, notice to the Executive Director(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in 31 Texas Administrative Code §331.144 in the name of [owner or operator]. Within 30 days after sending such notice, the guarantor will establish such financial assurance if [owner or operator] has not done so.

6. The guarantor agrees to notify the Executive Director, by certified mail, of a voluntary or involuntary case under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement.

7. Guarantor agrees that within 30 days after being notified by the Executive Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of plugging and abandonment, he will establish alternate financial assurance, as specified in 31 Texas Administrative Code §331.144, in the name of [owner or operator] if [owner or operator] has not done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the plugging and abandonment plan, the exten-

sion or reduction of the time of performance of plugging and abandonment or any other modification or alteration of an obligation of [owner or operator] pursuant to 31 Texas Administrative Code Chapter 331.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of 31 Texas Administrative Code Chapter 331 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the Executive Director in which the facility(ies) is (are) located and to [owner or operator], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TWC and [owner or operator] as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance and obtain written approval of such assurance from the Executive Director within 90 days after a notice of cancellation by the guarantor is received by both the Executive Director and [owner or operator], guarantor will provide alternate financial assurance as specified in 31 Texas Administrative Code §331.144 in the name of the [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Water Commission or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the plugging and abandonment plan.

I hereby certify that the wording of this guarantee is identical to the wording specified in 31 Texas Administrative Code §331.147(g).

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature for guarantor]

[Type name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

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 February 22, 1993.

TRD-9319331

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: March 15, 1993

Proposal publication date: November 13, 1992

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

## TITLE 34. PUBLIC FINANCE

### Part IV. Employees Retirement System of Texas

#### Chapter 83. Texas Public School District Insurance Plan

##### • 34 TAC §§83.1-83.11

The Employees Retirement System of Texas adopts new §§83.1-83.11, concerning the Texas Public School District Insurance Plan, without changes to the proposed text as published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7523).

As a result of House Bill 2885, 72nd Legislature, public school districts are required to make group health insurance available to their employees. The districts may make such coverage available and certify to the ERS that such coverage is comparable to that provided to state employees under the Texas Employees Uniform Group Insurance Program, or they may participate in a state-wide insurance program administered by the ERS.

These rules will establish a separate group health insurance program for employees of public school districts.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Insurance Code, §4A, Article 3. 50-2, which provides the Employees Retirement System of Texas with the authority to adopt rules that provide standards for determining eligibility for participation in the program.

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

Issued in Austin, Texas, on February 18, 1993.

TRD-9319259

Charles D. Travis  
Executive Director  
Employees Retirement  
System of Texas

Effective date: October 23, 1992

Proposal publication date: March 12, 1993

For further information, please call: (512) 867-3336

**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

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

**Chapter 1. Organization and Administration**

**Personnel and Employment Policies**

**• 37 TAC §1.40**

The Texas Department of Public Safety adopts new §1.40, concerning reasonable accommodations under the Americans with Disabilities Act, without changes to the proposed text as published in the January 12, 1993, issue of the *Texas Register* (18 TexReg 195).

The adoption of this section is necessary to ensure the department is in compliance with the Americans with Disabilities Act regarding employment by providing reasonable accommodations.

The department adopts this section to state its policy and commitment to provide reasonable accommodation under the Americans with Disabilities Act, Title 1, concerning employment practices.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, §411.6(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

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 February 16, 1993.

TRD-9319281 James R. Wilson  
Director  
Texas Department of  
Public Safety

Effective date: March 12, 1993

Proposal publication date: January 12, 1993

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



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 79. Legal Services**

**Subchapter S. Contracting Ethics**

The Texas Department of Human Services (DHS) adopts amendments to §79.1801 and §79.1802, adopts the repeal of §§79.1803-79.1807, and adopts new §§79.1803-79.1806 concerning contracting ethics, without changes to the proposed text as published in the January 5, 1993, issue of the *Texas Register* (18 TexReg 114).

The justification for the amendments, repeals, and new sections is to update DHS's contracting ethics rules by simplifying the wording and by deleting references to statutory restrictions and notice requirements that no longer exist. The rules are amended to limit their application to situations other than enrollment contracts.

The amendments, repeals, and new sections will function by making DHS's contracting ethics rules current and easier to comprehend.

No comments were received regarding adoption of the amendments, repeals, and new sections.

**• 40 TAC §79.1801, §79.1802**

The amendments are adopted under the Human Resources Code, Title 2, §21.0031, which restricts Board membership and employment, and §22.002, which provides the department with the authority to administer federal welfare 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 February 18, 1993.

TRD-9319201 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: April 1, 1993

Proposal publication date: January 5, 1993

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



**• 40 TAC §§79.1803-79.1807**

The repeals are adopted under the Human Resources Code, Title 2, §21.0031, which restricts Board membership and employment, and §22.002, which provides the department with the authority to administer federal welfare 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 February 18, 1993.

TRD-9319200 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: April 1, 1993

Proposal publication date: January 5, 1993

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



**• 40 TAC §§79.1803-79.1806**

The new sections are adopted under the Human Resources Code, Title 2, §21.0031, which restricts Board membership and employment, and §22.002, which provides the department with the authority to administer federal welfare 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 February 18, 1993.

TRD-9319199 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: April 1, 1993

Proposal publication date: January 5, 1993

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



**Part VI. Texas Commission for the Deaf and Hearing Impaired**

**Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification**

**Subchapter E. Fees**

**• 40 TAC §183.573**

The Texas Commission for the Deaf and Hearing Impaired adopts the amendment of §183.573, concerning the Board for Evaluation of Interpreters and Interpreter Certification, without changes to the proposed text as published in the December 8, 1992, issue of the *Texas Register* (17 TexReg 8518). The TCDHI Commissioners have established April 1, 1993, as the effective date of the adopted subsection.

The adoption of this rule change, relating to fees, will provide updated procedures and clarification in the operation of the Board for Evaluation of Interpreters.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, §81.6(b)(3) and §81.7, which provides the Texas Commission for the Deaf and Hearing Impaired with the authority to adopt such rules and amendments.

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 February 18, 1993.

TRD-9319280      Ralph H. White  
Interim Executive Director  
Texas Commission for the  
Deaf and Hearing  
Impaired

Effective date: April 1, 1993

Proposal publication date: December 8, 1992

For further information, please call: (512) 444-3323

◆      ◆      ◆

The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at 9 a.m. February 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin has

adopted a filing by the Texas Department of Insurance for revised bond forms for the Reinsurance Intermediary Bond and the Corporate Agents Bond. The Texas Department of Insurance's filing (Reference Number A-0198-71) was published in the January 15, 1993 issue of the *Texas Register* (18 TexReg 296).

Title 28 TAC §19.1403, subsection (1) requires a Reinsurance Intermediary Bond to be executed by the reinsurance intermediary as principal and as surety, a surety company authorized to do the business of insurance in this state, or a surplus lines insurer eligible in this state. The bond form has been amended to include as surety a surplus lines insurer eligible in this state. Also the counter signature block on the bond has been revised from "Texas Local Recording Agent" to "Licensed Agent" to allow surplus lines agents to countersign the bond.

The corporate insurance agents bond is being revised to include requirements under Title 28 TAC §11.404, subsection (b)(2) regarding the licensing requirements of HMO corporate agents to purchase a bond in lieu of an errors and omissions policy or depositing \$25,000 with the State Treasurer.

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code Articles 5.13, 5.15, and 5.97.

The full text of the filing for the revised bond forms for the Reinsurance Intermediary Bond and the Corporate Insurance Agents Bond as adopted by the State Board of Insurance is filed with the Chief Clerk under Reference Number A-0198-71 and is incorporated by reference by Board Order Number 60189.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on February 19, 1993.

TRD-9319307      Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Effective date: March 13, 1993

Proposal publication date: January 15, 1993

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

◆      ◆      ◆

## Texas Department of Insurance Exempt Filing

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

*(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.)*

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin. )

The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at 9 a.m. February 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin adopted a filing by the Texas Department of Public Safety for a Special Rangers Bond form which was filed in the Chief Clerk's Office on January 6, 1993. The Special Rangers Bond is a requirement of the Government Code, Article 411.023, and is conditioned on the principal performing all the duties of a Special Ranger. The penalty amount of the bond is \$2,500. The Texas Department of Public Safety's filing (Reference Number A-0193-72) was published in the January 15, 1993, issue of the *Texas Register* (18 TexReg 296).

The State Board has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15, and 5.97.

The full text of the filing for a Special Rangers Bond Form as adopted by the State Board of Insurance is filed with the Chief Clerk under Reference Number A0193-72 and is incorporated by reference by Board Order Number 60188

This notification is made pursuant to the Texas Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on February 19, 1993.

TRD-9319306      Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Effective date: March 13, 1993

Proposal publication date: January 15, 1993

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

◆      ◆      ◆

The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at 9 a.m. February 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin has adopted a filing by the Texas Department of Insurance for revised bond forms for the Re-

insurance Intermediary Bond and the Corporate Agents Bond. The Texas Department of Insurance's filing (Reference Number A-0198-71) was published in the January 15, 1993 issue of the *Texas Register* (18 TexReg 296).

Title 28 TAC §19.1403, subsection (1) requires a Reinsurance Intermediary Bond to be executed by the reinsurance intermediary as principal and as surety, a surety company authorized to do the business of insurance in this state, or a surplus lines insurer eligible in this state. The bond form has been amended to include as surety a surplus lines insurer eligible in this state. Also the counter signature block on the bond has been revised from "Texas Local Recording Agent" to "Licensed Agent" to allow surplus lines agents to countersign the bond.

The corporate insurance agents bond is being revised to include requirements under Title 28 TAC §11.404, subsection (b)(2) regarding the licensing requirements of HMO corporate agents to purchase a bond in lieu of an errors and omissions policy or depositing \$25,000 with the State Treasurer.

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code Articles 5.13, 5.15, and 5.97.

The full text of the filing for the revised bond forms for the Reinsurance Intermediary Bond and the Corporate Insurance Agents Bond as adopted by the State Board of Insurance is filed with the Chief Clerk under Reference Number A-0198-71 and is incorporated by reference by Board Order Number 60189.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on February 19, 1993.

TRD-9319307      Linda K. von Quintus-Dorn  
                                 Chief Clerk  
                                 Texas Department of  
                                 Insurance

Effective date: March 13, 1993

Proposal publication date: January 15, 1993

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



# Open Meetings

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

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

**Posting of open meeting notices.** All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain 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 Appraiser Licensing and Certification Board

Friday, February 26, 1993, 9 a.m. The Texas Appraiser Licensing and Certification Board will meet at the TREC Headquarter, Conference Room 235, (Second Floor), 1101 Camino La Costa, Austin. According to the agenda summary, the board will call the meeting to order; discuss election of officers; minutes; staff reports; operating budget and appropriation requests for Fiscal Year 1994-1995; education committee, course approval, examinations; special projects committee, board travel policy, women and minorities; possibly act to adopt proposed amendments to 22 TAC §§153.17(g), 153.17(h), 153.19, and new §153.20 and §153.9; meet in executive session on commissioner's job performance pursuant to Texas Civil Statutes, Article 6252-17, 2(g); possibly act on concerning commissioner's job performance; interpretation of board policies and procedures; applications of Douglas S. Meade and Maria M. Rodriguez; comments from visitors; selection of meeting dates; and adjourn. For ADA assistance, call Nancy Guevremont, (512) 465-3923 at least two days prior to meeting.

Contact: Renil C. Liner, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: February 18, 1993, 10:35 a.m.

TRD-9319207



## Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Friday, March 5, 1993, 9 a.m. The Pricing Subcommittee of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the General Services Commission, Central Services Building, #402, 1711 San Jacinto Street, Austin. According to the agenda summary, the subcommittee will call the meeting to order; introduction of subcommittee members and guests; discuss acceptance of minutes from November 30, 1992 meeting; discuss and make recommendation for action on new services; renewal services; new products; product changes and revisions; and adjourn.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2604.

Filed: February 23, 1993, 8:19 a.m.

TRD-9319397



## Texas State Board of Examiners of Professional Counselors

Saturday, February 27, 1993, 10 a.m. The Texas State Board of Examiners of Professional Counselors will meet at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the board will hear announcements; discuss approval of the minutes of January 16, 1993 meeting; discuss and possibly act on report on annual meeting of the American Association of State Counseling Boards (AASCB);

meet in in executive session concerning pending litigation relating to Gerald Caldwell and the Texas Psychological Association; legislative update regarding possible legislation relating to LPCs and action concerning possible legislation or the legislative process; committee reports concerning personnel and administration (annual report, financial report through January 31, 1993); discuss applications, licensing and renewals (applications of Hilda Glazer-Waldman, David Dudley Hogan, Allen Frederic Parrish and others, and status of renewals); testing and continuing education (report by Jim Zukowski concerning testing and the AASCB, approval for Jim Zukowski, Eileen Hartman and Kathy Craft to attend testing workshop sponsored by CLEAR and NOCA); complaints (concerning Gerald Caldwell), and rules and specialities (amendments to board rules); election of officers; hear persons who wish to appear before the board; and schedule of future meetings.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: February 19, 1993, 3:53 p.m.

TRD-9319294

Friday, February 26, 1993, 11 a.m. The Applications, Licensing and Renewals Committee of the Texas State Board of Examiners of Professional Counselors will hold an emergency meeting at the Exchange Building, Room N218, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on application of Hilda Glazer-Waldman, David Dudley Hogan, Allen Frederic

Parrish and others; and hear a report on status of renewals. The emergency status is necessary due to unforeseeable circumstances.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** February 19, 1993, 3:52 p.m.

TRD-9319292

**Friday, February 26, 1993, 2 p.m.** The Complaints Committee of the Texas State Board of Examiners of Professional Counselors will hold an emergency meeting at the Exchange Building, Room N218, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on complaints concerning Gerald Caldwell; and action on pending complaints. The emergency status is necessary due to unforeseeable circumstances.

**Contact:** Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** February 19, 1993, 3:53 p.m.

TRD-9319293

## Texas Education Agency

**Thursday-Friday, February 25-26, 1993, 1:30 p.m. and 9 a.m. respectively.** The Committee on Student Learning of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the complete emergency revised agenda, the committee will act on recommendations for revisions in the State Student Assessment Program; and a report on activities regarding the Technical Advisory Committee on Developmentally Appropriate Instruction. The emergency status is necessary as TEC §21.551, requires the Committee on Student Learning to report recent recommendations and revisions to the student assessment program to the Legislative Education Board at its meeting in March; however, the committee's March meeting is scheduled after that of the LEB.

**Contact:** Marvin Veselka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9533.

**Filed:** February 19, 1993, 3:40 p.m.

TRD-9319290

**Tuesday-Wednesday, March 2-3, 1993, 9 a.m. respectively.** The Commission on Braille Textbook Production of the Texas

Education Agency will meet in the Conference Room, Visual Aid Volunteers, 617 State Street, Garland. According to the agenda summary, on Tuesday, the commission will call the meeting to order; hear welcoming remarks; announcements; discuss chairman's preview; reactions to the findings and recommendations of the commission; discuss recent meeting of Publishers at American Printing House for the Blind; perspectives on copyright issues; tour of visual aid volunteers; public comment; and wrap-up; on Wednesday, the commission will call the meeting to order; discuss status of braille production for proclamation 68; graphics and the nomad; strategy for input to the development of electronic media systems; public comment; and wrap-up.

**Contact:** Charles Mayo, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9606.

**Filed:** February 18, 1993, 3:08 p.m.

TRD-9319235

## Texas Employment Commission

**Tuesday, February 23, 1993, 8:30 a.m. (Rescheduled from February 16, 1993, 8:30 a.m.).** The Texas Employment Commission held an emergency meeting at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission considered and acted on tax liability cases and higher level appeals in unemployment compensation cases on Commission Docket 7. The emergency status was necessary due to unforeseen availability of quorum with attendant opportunity to meet Federal time lapse requirements.

**Contact:** C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

**Filed:** February 19, 1993, 4:08 p.m.

TRD-9319299

**Tuesday, March 2, 1993, 8:30 a.m.** The Texas Employment Commission will meet at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will consider approval of prior meeting notes; meet in executive session to discuss relocation of agency headquarters; actions, if any, resulting from executive session; consideration of proposed or pending legislation and possible action with respect thereto; hear staff reports; discuss internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 9; and set date of next meeting.

**Contact:** C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

**Filed:** February 22, 1993, 4:09 p.m.

TRD-9319392

## Office of the Governor, Criminal Justice Division

**Friday, March 12, 1993, 10 a.m.** The Victims of Crime Act (VOCA) Technical Assistance Workshop of the Criminal Justice Division of the Office of the Governor will meet at the Permian Basin Regional Planning Commission, 2910 La Force Boulevard, Midland. According to the agenda summary, the division will call the meeting to order; make introductions; give an overview of the Victims of Crime Act of 1984 (VOCA); review and discuss grant application forms and instructions; questions and answers; and adjourn.

**Contact:** Percy Symonette, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

**Filed:** February 22, 1993, 8:45 a.m.

TRD-9319320

**Monday, March 15, 1993, 1 p.m.** The Victims of Crime Act (VOCA) Technical Assistance Workshop of the Criminal Justice Division of the Office of the Governor will meet at the Capital Area Planning Commission, 2520 South IH-35, Suite 100, Austin. According to the agenda summary, the division will call the meeting to order; make introductions; give an overview of the Victims of Crime Act of 1984 (VOCA); review and discuss grant application forms and instructions; questions and answers; and adjourn.

**Contact:** Percy Symonette, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

**Filed:** February 22, 1993, 8:45 a.m.

TRD-9319321

**Tuesday, March 16, 1993, 1 p.m.** The Victims of Crime Act (VOCA) Technical Assistance Workshop of the Criminal Justice Division of the Office of the Governor will meet at the Houston-Galveston Area Council, 3555 Timmons Lane, Second Floor Conference Room A, Houston. According to the agenda summary, the division will call the meeting to order; make introductions; give an overview of the Victims of Crime Act of 1984 (VOCA); review and discuss grant application forms and instructions; questions and answers; and adjourn.

**Contact:** Percy Symonette, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

**Filed:** February 22, 1993, 8:46 a.m.

TRD-9319322

Wednesday, March 17, 1993, 9 a.m. The Victims of Crime Act (VOCA) Technical Assistance Workshop of the Criminal Justice Division of the Office of the Governor will meet at 616 Six Flags Drive, Arlington. According to the agenda summary, the division will call the meeting to order; make introductions; give an overview of the Victims of Crime Act of 1984 (VOCA); review and discuss grant application forms and instructions; questions and answers; and adjourn.

Contact: Percy Symonette, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

Filed: February 22, 1993, 8:46 a.m.

TRD-9319323

Friday, March 19, 1993, 1 p.m. The Victims of Crime Act (VOCA) Technical Assistance Workshop of the Criminal Justice Division of the Office of the Governor will meet at the Coastal Bend Council of Governments, 2910 Leopard Street, Corpus Christi. According to the agenda summary, the division will call the meeting to order; make introductions; give an overview of the Victims of Crime Act of 1984 (VOCA); review and discuss grant application forms and instructions; questions and answers; and adjourn.

Contact: Percy Symonette, P.O. Box 12428, Austin, Texas 78701, (512) 463-1919.

Filed: February 22, 1993, 8:46 a.m.

TRD-9319324

## Health and Human Services Commission

Friday, February 26, 1993, 9:30 a.m. The Hospital Payment Advisory Subcommittee of the Health and Human Services Commission will meet at 1100 West 49th Street, Sixth Floor, Tower Building, Room T607, Austin. According to the complete agenda, the subcommittee will discuss opening comments; medicaid director's comments; approval of minutes; reimbursement for disproportionate share hospitals; next meeting date; and adjourn.

Contact: Geri Willems, P.O. Box 13247, Austin, Texas 78711, (512) 502-3256.

Filed: February 18, 1993, 2:49 p.m.

TRD-9319227

Friday, February 26, 1993, 1:30 p.m. The Medical Care Advisory Executive Committee of the Health and Human Services Commission will meet at 1100 West 49th Street, Sixth Floor, Tower Building, Room T607, Austin. According to the complete agenda, the committee will discuss opening comments; reimbursement for disproportionate share hospitals; and adjourn.

Contact: Geri Willems, P.O. Box 13247, Austin, Texas 78711, (512) 502-3256.

Filed: February 18, 1993, 2:49 p.m.

TRD-9319228

## Texas Department of Health

Monday, March 1, 1993, 10 a.m. The Texas State Board of Examiners of Marriage and Family Therapists of the Texas Department of Health will meet in Room S-402, The Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the board will discuss approval of the minutes of the January 27, 1993, board meeting; and discuss and possibly act on presentation of Carol Kelleher's request for waiver; executive director's report (fiscal note/budget, complaint update, and examination update); discuss supervision requirements and tracking system; other matters requiring board attention or action; and setting of board meeting calendar.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D.D., (512) 458-7708 at least two days prior to the meeting.

Filed: February 19, 1993, 3:54 p.m.

TRD-9319297

Monday, March 1, 1993, 10 a.m. The Midwifery Board of the Texas Department of Health will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the complete agenda, the board will discuss approval of the minutes of October 16, 1992, meeting and review unofficial minutes of January 29, 1993, meeting; and discuss and possibly act on final adoption of the midwifery education rules for publication in the *Texas Register*; ethics regarding midwifery; proposed new midwifery legislation; and future meeting dates.

Contact: Joey Alexander, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D.D., (512) 458-7708 at least two days prior to the meeting.

Filed: February 19, 1993, 3:53 p.m.

TRD-9319296

Friday, March 5, 1993, 10 a.m. The Poison Control Coordinating Committee of the Texas Department of Health will meet in Room S-220, The Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the board will discuss approval of minutes of December 11, 1992, meeting; and discuss and possibly act on election of officers; Emergency Operation

Center operations and poison cases; discussion on what is a poison system; local funding; and other items.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550. For ADA assistance, call Richard Buder, (512) 458-7488 or T.D.D., (512) 458-7708 at least two days prior to the meeting.

Filed: February 19, 1993, 3:53 p.m.

TRD-9319295

Friday, March 5, 1993, 10 a.m. The Advisory Committee on Nursing Facility Affairs of the Texas Department of Health will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the complete agenda, the committee will hear the bureau chief's update; discuss and possibly act on status of proposed revisions to nursing facility licensure rules; requirement coordination subcommittee; report on medication aide students and medication errors; fair hearing for nurse aides rule change; other items of interest; next meeting and agenda items.

Contact: Janice Caldwell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7709. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D.D., (512) 458-7708 at least two days prior to the meeting.

Filed: February 19, 1993, 3:54 p.m.

TRD-9319298

## Texas Department of Insurance

Friday, February 26, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the commissioner of insurance or employees; meet in executive (Article 6252-17, §2(g)); consider whether a meeting or hearing will be granted regarding a petition filed by the staff of the Department of Insurance proposing a revision of the workers' compensation insurance classification system, the uniform experience rating plan, and the retrospective rating plan; and consider proposed revisions to workers' compensation classification relativities previously fixed by the board under Articles 5.60(a) and 5.76-2, §4.05(f).

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: February 18, 1993, 4:23 p.m.

TRD-9319240

**Tuesday, March 2, 1993, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Allstate Insurance Company, Allstate Indemnity Company and Allstate County Mutual Insurance Company of Northbrook, Illinois which holds certificates of authority.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** February 22, 1993, 3:52 p.m.

TRD-9319390

**Wednesday, March 3, 1993, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether a cease and desist order should be issued against Maksin Management Corporation; and to consider whether the application of Maksin Management Corporation for a certificate of authority to act as a third party administrator should be issued.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** February 22, 1993, 3:52 p.m.

TRD-9319389

**Wednesday, March 3, 1993, 9 a.m.** The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the agenda summary, the board will discuss personnel; litigation; commissioner's order; solvency; budget; staff reports; excess of loss policies; consider filings by Hartford Fire Insurance Company, etal and Continental Casualty Company; consider cessation of acceptance of small premium policies by Truck Insurance Exchange, Midcontinent Casualty Company, and Mid-Century Insurance Company; consider petition filed on behalf of Texas Podiatric Medical Association regarding preferred provider plans; consider adoption of the following: 28 TAC §15.101, relating to plan of operation of Surplus Lines Stamping Office; §7.51, relating to amended instructions for 1991 tax returns; and §1.413, relating to maintenance tax assessment and surcharge; consider proposed 28 TAC §5.501, relating to motor vehicle damage claims coverage, settlement, and disclosure; consider filing by Mortgage Guaranty Insurance Corporation for subrogation endorsement and adoption of the endorsement as mandatory to all

inforce master policies and new loan certificates issued thereunder; and legislative updates.

**Contact:** Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** February 18, 1993, 3:53 p.m.

TRD-9319238

**Wednesday, March 3, 1993, 1:30 p.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Javier Marin Ramirez, Brownsville, for a Group I, Legal Reserve Life Insurance Agent's license.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** February 22, 1993, 3:52 p.m.

TRD-9319388

**Thursday, March 4, 1993, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether a cease and desist order should be issued against Markel Service, Inc.; and to consider whether the application of Markel Service, Inc. for a certificate of authority to act as a third party administrator should be denied.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** February 22, 1993, 3:52 p.m.

TRD-9319387

**Thursday, March 4, 1993, 1:30 p.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Lynn Sharon Jones of Austin who holds a Group I, Legal Reserve Life Insurance Agent's license.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** February 22, 1993, 3:52 p.m.

TRD-9319386

**Friday, March 5, 1993, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to

consider whether a cease and desist order should be issued against Insurance Technical Services, Inc.; and to consider whether the application of Insurance Technical Services, Inc. for a certificate of authority to act as a third party administrator should be denied.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** February 22, 1993, 3:52 p.m.

TRD-9319385

**Friday, March 5, 1993, 1:30 p.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the approval of amendment to the Articles of Agreement of provident Lloyd's, Austin, changing the attorney-in-fact and substituting underwriters.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** February 22, 1993, 3:51 p.m.

TRD-9319384

**Monday, March 8, 1993, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether a cease and desist order should be issued against Spradley and Coker, Inc.; and to consider whether the application of Spradley and Coker, Inc. for a certificate of authority to act as a third party administrator should be denied.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** February 22, 1993, 3:51 p.m.

TRD-9319383

## ◆ ◆ ◆ Board of Vocational Nurse Examiners

**Monday-Tuesday, March 8-9, 1993, 8 a.m.** The Board of Vocational Nurse Examiners will meet at the Ramada Inn Airport, Frontier Room, 5600 North IH-35, Austin. According to the agenda summary, the board will call the meeting to order; introduction of new staff; discuss approval of minutes; education report (program matters, program actions, meetings; conferences; seminars attended, CE presentations, 1992 NC. EX-PN summary for Texas, recommendations for 1992-1993 school year, report from coordinating board); discuss unfinished business (NEAC, proposed rule



changes regarding CAT, budget update, Sunset review, TPAPN update; quarterly report on key performance targets); hear executive director's report; discuss new business (Rule change 239.33, discuss CE rule changes, area III meeting, NCSBN meeting in Orlando, Florida); and on Tuesday, discuss any unfinished business; administrative hearings; agreed orders/voluntary surrenders; and adjourn.

Contact: Marjorie A. Bronk, 9101 Burnet Road, #105, Austin, Texas 78758, (512) 835-2071.

Filed: February 9, 1993, 11:39 a.m.

TRD-9319267

## Texas Board of Pardons and Paroles

**Monday-Friday, March 1-5, 1993, 1:30 p.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2503 Lake Road, Suite 2, Huntsville. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: February 19, 1993, 12:12 p.m.

TRD-9319269

**Wednesday-Thursday, March 3-4, 1993, 10 a.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: February 19, 1993, 12:12 p.m.

TRD-9319268

**Wednesday-Thursday, March 3-4, 1993, 1 p.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will

meet at 1212 North Velasco, Suite 201, Angleton. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: February 19, 1993, 12:12 p.m.

TRD-9319271

**Thursday-Friday, March 4-5, 1993, 12:30 p.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at Route 5, Box 258-A, Gatesville. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: February 19, 1993, 12:12 p.m.

TRD-9319270

## Public Utility Commission of Texas

**Monday, March 1, 1993, 9 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10757-application of Southwestern Bell Telephone Company to add an optional feature for Plexar-I, alternate answering-outside service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 19, 1993, 3:02 p.m.

TRD-9319287

**Monday, March 8, 1993, 10 a.m.** The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number

11768-petition of AT&T Communications of the Southwest, Inc., for waiver of requirements of Substantive Rule 23.11(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 18, 1993, 3:04 p.m.

TRD-9319233

**Tuesday, March 16, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11035-application of Texas-New Mexico Power Company for approval of House Bill 11 adjustment factors.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 19, 1993, 3:03 p.m.

TRD-9319288

**Friday, March 26, 1993, 9 a.m. (Rescheduled from February 26, 1993, 9 a.m.)** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11623-application of Houston Lighting and Power Company to change economy sales pricing methodology from Gensom-D to Energy Management and Control System (EMACS).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 19, 1993, 3:02 p.m.

TRD-9319286

**Friday, May 14, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11656-applications of GTE Southwest, Inc. and Contel of Texas, Inc. to introduce signaling system 7 out of band signaling as a new nonchargeable option with switched access feature group D and 800 access service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 18, 1993, 3:04 p.m.

TRD-9319231

**Monday, May 17, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division

will hold a hearing on the merits in Docket Number 10760-complaint of Laila M. Asmar against Marvin Myers and M. Myers properties.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** February 18, 1993, 3:04 p.m.

TRD-9319232

## Railroad Commission of Texas

**Monday, March 1, 1993, 9:30 a.m.** The Railroad Commission of Texas will meet in the First Floor, Conference Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the division director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

**Contact:** Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

**Filed:** February 19, 1993, 10:08 a.m.

TRD-9319249

The commission will consider and act on the automatic data processing division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

**Contact:** Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

**Filed:** February 19, 1993, 10:09 a.m.

TRD-9319250

The commission will consider and act on the administrative services division director's report on division administrative, budget, procedures, and personnel matters.

**Contact:** Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

**Filed:** February 19, 1993, 10:09 a.m.

TRD-9319251

The commission will consider and act on the Office of the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants; consider election of a chairman; discuss the implementation of individual operating budgets for each individual commissioner's office; a proposed training agreement for the Gas Utilities Section of the Legal Division; meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation;

and consider a contract for public information services.

**Contact:** Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

**Filed:** February 19, 1993, 10:09 a.m.

TRD-9319252

The commission will consider and act on the investigation division director's report on division administration, investigations, budget, and personnel matters.

**Contact:** Marcelo R. Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

**Filed:** February 19, 1993, 10:09 a.m.

TRD-9319253

The commission will consider determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

**Contact:** Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

**Filed:** February 19, 1993, 10:10 a.m.

TRD-9319254

The commission will consider and act on the personnel division director's report on division administration, budget, procedures, and personnel matters; meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

**Contact:** Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

**Filed:** February 19, 1993, 10:10 a.m.

TRD-9319255

The commission will consider and act on the office of information services director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

**Filed:** February 19, 1993, 10:10 a.m.

TRD-9319256

The commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda; may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received; and meet in executive session as authorized by the Open Meetings Act.

**Contact:** Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

**Filed:** February 19, 1993, 10:10 a.m.

TRD-9319257

## Texas Real Estate Commission

**Saturday, February 27, 1993, 9 a.m.** The Texas Real Estate Inspector Committee of the Texas Real Estate Commission will meet at TREC Headquarters, Room 235, Second Floor, 1101 Camino La Costa, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of the minutes of January 16, 1993 meeting; reports from TREC staff; hear subcommittee reports; consider standard report form or outline; discuss 22 TAC §535.222, concerning standards of practice; consider hearing process and proposed order in the matter of Jerry Lee Cole; possible recommendations to the Texas Real Estate Commission to implement Texas Civil Statutes, Article 6573a, §23; set date and place for next meeting; and adjourn.

**Contact:** Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

**Filed:** February 19, 1993, 9:15 a.m.

TRD-9319245

**Saturday, February 27, 1993, 1 p.m.** The Examination and Education Subcommittee of the Texas Real Estate Inspector Committee of the Texas Real Estate Commission will meet at TREC Headquarters, Room 235, Second Floor, 1101 Camino La Costa, Austin. According to the complete agenda, the committee will call the meeting to order; possible executive session to discuss examination materials pursuant to Attorney General Opinion H-484; discussion and possible recommendations concerning examinations; discuss education requirements or monitoring of courses; and adjourn.

**Contact:** Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

**Filed:** February 19, 1993, 9:15 a.m.

TRD-9319244

**Monday, March 1, 1993, 9:30 a.m.** The Ad Hoc Committee of the Texas Real Estate Commission will meet at TREC Headquarters, Room 235, Second Floor, 1101 Camino La Costa, Austin. According to the complete agenda, the committee will discuss the development of contract forms with representatives of the Texas Real Estate Broker-Lawyer Committee.

**Contact:** Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

**Filed:** February 19, 1993, 9:15 a.m.

TRD-9319246

## School Land Board

Tuesday, March 2, 1993, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, Room 831, 1700 North Congress Avenue, Austin. According to the complete agenda, the board will discuss approval of previous board meeting minutes; pooling applications, Wildcat Field, Kenedy County; Wildcat Field, Austin County; Giddings (Austin Chalk 3), Burselson County; applications to lease highway rights of way for oil and gas, Lee County and Rains County; coastal public lands-commercial lease amendments, Nueces County, and Western Part of Queen Isabella Causeway, Laguna Madre, Cameron County; commercial lease assignment, Clear Lake, Galveston County; easement applications, Laguna Madre, Cameron County; Galveston Bay, Chambers County; meet in executive session to discuss highway right-of-way sale, Harris County; consideration of highway right-of-way sale, Harris County; and discuss pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: February 22, 1993, 4:24 p.m.

TRD-9319396

## Office of the Secretary of State

Friday, March 5, 1993, 10 a.m. The Elections Advisory Committee of the Office of the Secretary of State will meet at the Capitol Extension, Room E1.016, Austin. According to the complete agenda, the committee will make welcoming remarks; take roll call and introduction of members; appointment of elections advisory committee chair and vice-chair; introductory remarks; overview of the Office of the Secretary of State election night returns system; overview of process/introduction of key personnel, programming, features of the system, data entry procedures; charges for election night returns services; observer's report from November, 1992 presidential election; designation of one or more of elections advisory committee members to be present on election night; and make closing remarks.

Contact: Kim Sutton, P.O. Box 12060, Austin, Texas 78711, (512) 463-5650.

Filed: February 22, 1993, 3:36 p.m.

TRD-9319382

## Committee of the Whole Senate on Redistricting, Ethics and Elections

Tuesday, March 2, 1993, 1 p.m. The Subcommittee on Senate Bills 255, 379, SJR 11, and SCR 28 of the Committee of the Whole Senate on Redistricting, Ethics and Elections will meet at the William P. Clements Building, Committee Room Two, 300 West 15th Street, Austin. According to the agenda summary, the subcommittee will consider legislation relating to single member districts for district courts in eight counties, and legislation relating to the appointment of and confirmation elections for appellate justices and judges and certain district court judges; and consider the following legislation: Senate Bill 255 by Patterson, Senate Bill 379 by Ellis, SJR 11 by Patterson, and SCR 28 by Carriker and Ellis.

Contact: Kim Herry, 415 William P. Clements Building, Austin, Texas 78701, (512) 463-0067.

Filed: February 22, 1993, 4:04 p.m.

TRD-9319391

## Teacher Retirement System of Texas

Friday, March 5, 1993, 10 a.m. The Retirees Advisory Committee of the Teacher Retirement System of Texas will meet at 1000 Red River, Fifth Floor, Board Room, Austin. According to the complete agenda, the committee will take roll call; make introduction of visitors; discuss approval of minutes of October 23, 1992; legislative update; perspective on National Health Care Reform; TRS-care open enrollment process update; TRS coordinated care hospital network update; TRS-care fund status update; staff recommendations regarding 1993-1994 participant contribution levels and plan design changes; public comment; consider staff recommendations regarding 1993-1994 participant contribution levels and plan design changes; administrative remarks; and adjourn.

Contact: Stanford Blake, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6394.

Filed: February 23, 1993, 9:56 a.m.

TRD-9319399

## Texas Southern University

Monday, February 22, 1993, 7:30 a.m. The Special Meeting of the Board of Regents of the Texas Southern University met at the Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete

agenda, the board will consider personnel matter.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: February 18, 1993, 2:49 p.m.

TRD-9319230

Thursday, February 25, 1993, 2 p.m. The Finance Committee of the Texas Southern University met at the Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the board considered matters relating to financial reporting systems and budgets; fiscal reports from the administration; investments; and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: February 22, 1993, 9:25 a.m.

TRD-9319326

## The Texas State University System

Wednesday, February 24, 1993, 9 a.m. The Board of Regents of the Texas State University System met in the Bonnell Room, Capitol Marriott Hotel, 701 East 11th Street, Austin. According to the complete agenda, the board reviewed a report presented by the System Review Committee. (Where appropriate and permitted by law, executive sessions may be held for the above listed subject).

Contact: Lamar Urbanovsky, Box 3810, Austin, Texas 78701, (512) 463-1808.

Filed: February 18, 1993, 2:41 p.m.

TRD-9319221

Tuesday-Wednesday, March 2-3, 1993, 4 p.m. and 7:30 a.m. respectively. The Board of Regents of the Texas State University System will meet in the Court Room, Criminal Justice Center, Sam Houston State University, Huntsville. According to the agenda summary, the board will review matters of the board and the four universities in the system including all matters reviewed by the building committee, curriculum committee, and the finance committee as submitted to the full board for review and approval; discuss personnel actions including new employees, promotions, resignations, terminations, salary-supplements, and special appointment of any system employee including the presidents and chancellor; litigation; budgetary changes at each university and the system office; contract approvals at each university and the system office; acceptance of gifts; admission requirements and fees; room

rates; and land leases, purchases and sales. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, Box 3810, Austin, Texas 78701, (512) 463-1808.

Filed: February 18, 1993, 2:42 p.m.

TRD-9319222

Wednesday, March 3, 1993, 9:30 a.m. The Building Committee of the Texas State University System will meet in the Court Room, Criminal Justice Center, Sam Houston State University, Huntsville. According to the complete agenda, the committee will review construction projects and documents for the four universities in the system including contract award for the Fire Sprinkler System-Women's High Rise Residence Hall-Phase I at Angelo State University; contract award for the Art Lab Building at Sam Houston State University; preliminary plans for the Child Development Center and select a consultant for ADA at Southwest Texas State University; and contract award for the Fine Arts, Outdoor Theater Expansion and Ceramic Laboratory projects at Sul Ross State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, Box 3810, Austin, Texas 78701, (512) 463-1808.

Filed: February 18, 1993, 2:42 p.m.

TRD-9319223

Wednesday, March 3, 1993, 10 a.m. The Curriculum Committee of the Texas State University System will meet in the Court Room, Criminal Justice Center, Sam Houston State University, Huntsville. According to the complete agenda, the committee will review matters of the board and the four universities in the system including all matters of curriculum, including Twelfth Class Day Reports; and substantive and non-substantive program changes, new degree programs, additions, deletions and retention of courses, admission standards, and out-of-state and out-of-country studies. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, Box 3810, Austin, Texas 78701, (512) 463-1808.

Filed: February 18, 1993, 2:43 p.m.

TRD-9319224

Wednesday, March 3, 1993, 10:30 a.m. The Finance Committee of the Texas State University System will meet in the Court Room, Criminal Justice Center, Sam Houston State University, Huntsville. According to the complete agenda, the committee will review financial matters of the system office and the four universities in the system including internal audit reports from Angelo

State University, Sam Houston State University, Southwest Texas State University, and Sul Ross State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, Box 3810, Austin, Texas 78701, (512) 463-1808.

Filed: February 18, 1993, 2:43 p.m.

TRD-9319225

Wednesday, March 3, 1993, 11 a.m. The Governmental Relations Committee of the Texas State University System will meet in the Court Room, Criminal Justice Center, Sam Houston State University, Huntsville. According to the complete agenda, the committee will review the legislative items for the biennium and other governmental activities. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, Box 3810, Austin, Texas 78701, (512) 463-1808.

Filed: February 18, 1993, 2:43 p.m.

TRD-9319226

## University of North Texas/Texas College of Osteopathic Medicine

Thursday, February 25, 1993, 1:30 p.m. The Role and Scope Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met at 201 Administration Building, University of North Texas, Denton. According to the complete agenda, the committee discussed UNT: routine academic reports; University of North Texas Police Academy; sexual harassment policy; consensual relationships policy; athletic update; and student complaint; discussed TCOM: appointments to the TCOM advisory council; award of honorary degree; revision of faculty bylaws, authority of TCOM Police Department, UNT and TCOM: award of honorary degree.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 22, 1993, 10:41 a.m.

TRD-9319357

Thursday, February 25, 1993, 2:30 p.m. The Budget and Finance Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met in the Board Room, Administration Building, University of North Texas, Denton. According to the complete agenda, the committee discussed UNT: fee waiver for part-time employees; gift report; report on interest earnings; and internal audit update;

discussed TCOM: authority to sign checks, vouchers, and other documents for Texas College of Osteopathic Medicine; parking fees for 1992-1993; gift report; report on interest earnings; and internal audit update.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 22, 1993, 10:42 a.m.

TRD-9319359

Thursday, February 25, 1993, 4 p.m. The Facilities Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met in the Conference Room, Administration Building, University of North Texas, Denton. According to the complete agenda, the committee discussed UNT: install fire sprinkler system-Kerr Hall; upgrade classrooms; missile base property; project status report; and use of building at TWU; and discussed TCOM: project status report.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 22, 1993, 10:42 a.m.

TRD-9319360

Thursday, February 25, 1993, 4 p.m. The Advancement Committee, Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine met in the Board Room, Administration Building, University of North Texas, Denton. According to the complete agenda, the committee discussed UNT: gift report; personnel; planning; Nasher dinner wrap up; evening at the Meyerson; and athletic marketing; and discussed TCOM: TCOM goals for institutional advancement.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 22, 1993, 10:41 a.m.

TRD-9319356

Friday, February 26, 1993, 8 a.m. The Board of Regents of the University of North Texas/Texas College of Osteopathic Medicine will meet in the Diamond Eagle Suite, University Union, University of North Texas, Denton. According to the complete agenda, the committee will discuss UNT: approval of minutes; meet in executive session (UNT/TCOM: legislative update; financial projections; powers and duties of the Board of Regents; UNT: campus reserve officers; faculty/staff concerns; dean search; advancement issues; lawsuits update; missile base property; tenure appeal; basketball coach's contract; sexual harassment and consensual relationships policy; TCOM: affiliations; malpractice lawsuits); routine academic reports; UNT policy academy; sexual harassment policy; consensual relationships policy; and athletic update; discuss TCOM: appointments to advisory council; award of honorary degree; revision

of faculty bylaws; and authority of TCOM police department; and discuss UNT/TCOM: award of honorary degree.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: February 22, 1993, 10:42 a.m.

TRD-9319358

## The University of Texas at Austin

Monday, February 22, 1993, 3:30 p.m. The Council for Intercollegiate Athletics for Women of the University of Texas at Austin met at the Ex-Students' Association, Moffett Library, 21st and San Jacinto Streets, University of Texas, Austin. According to the agenda summary, the council called the meeting to order; discussed approval of minutes of previous meeting; old business; new business; announcements/information reports; and adjourned.

Contact: Jody Conradt, UT Austin, 33800 BEL 718, Austin, Texas 78712, (512) 471-7693.

Filed: February 18, 1993, 3:57 p.m.

TRD-9319239

## Texas Water Commission

Thursday, February 25, 1993, 6 p.m. The Sayle Creek Sediment Remediation Committee of the Texas Water Commission met at the Fire Sub-station, Corner of Ross and Pritchard Road, Commerce. According to the agenda summary, the committee discussed appropriate responses to the contamination in Sayle Creek.

Contact: Barbara Ferguson, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2463.

Filed: February 18, 1993, 10:17 a.m.

TRD-9319206

Wednesday, March 3, 1993, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters on the contested agenda: enforcement actions; examiner's proposal for decisions; emergency order; issuance of agreed order; rules Chapter 334, Subchapter H and Subchapter K; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: February 19, 1993, 4:47 p.m.

TRD-9319317

Wednesday, March 3, 1993, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters on the contested agenda: new permits; amendments to permits; permit renewals; district matters; rate matters; water right matters; solid waste management plan; request to enter into a contract with a hazardous waste management firm; examiner's memorandum; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: February 19, 1993, 4:46 p.m.

TRD-9319316

Tuesday, March 9, 1993, 1:30 p.m. The Texas Groundwater Protection Committee of the Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the committee will meet to discuss and take action on the following: subcommittee reports presented from Agricultural Chemicals, Ground Water Classification, and Data Management Subcommittee; presentation from United States Environmental Protection Agency; discuss Biennial Legislative report; status update on Clean Water Council, TWC Office of Water Resource Management Restructuring, and Registration of the pesticide Amber.

Contact: Mary Ambrose, 1700 North Congress Avenue, Austin, Texas 78711-3087, (512) 463-8069.

Filed: February 22, 1993, 9:42 a.m.

TRD-9319328

Friday, March 12, 1993, 9:30 a.m. The Task Force 21 IHW Permits Section of the Texas Water Commission will meet at the Reagan Building, 105 West 15th Street, Room 107, Austin. According to the complete agenda, the Task Force 21 will discuss the following issues: update on Draft Spill Rules; upcoming rulemaking; RCRA reauthorization; update on Solid Waste Strategic Plan; revised compliance plan application; and updates on agency activities.

Contact: Kari Bourland-Chesnut, 1700 North Congress Avenue, Austin, Texas 78711-3087, (512) 371-6319.

Filed: February 22, 1993, 9:43 a.m.

TRD-9319330

Wednesday, April 7, 1993, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will hold an agenda hearing on Montclair Parc, Inc.'s Application Number 5443 for a permit to impound a total of 28.30 acre-feet of water per annum from Little Bear Creek, tributary of Bear Creek, tributary of West Fork Trinity River, tributary of Trinity River, Trinity River Basin, in an existing exempt reservoir and three proposed dams and resulting reservoirs. These reservoirs will be used to control stormwater runoff and the water impounded will be used for recreational purposes in Montclair Parc Development in the City of Colleyville, approximately 14.4 miles northeast of Fort Worth in Tarrant County, Texas.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8195.

Filed: February 19, 1993, 4:45 p.m.

TRD-9319313

Wednesday, April 7, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Trinity Courthouse-District Courtroom, Groveton. According to the agenda summary, the commission will consider an application for an amendment to Permit Number 12324-001 to change from a permit authorizing disposal by evaporation to a discharge permit and to increase the volume of treated domestic wastewater effluent.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 19, 1993, 2:25 p.m.

TRD-9319282

Thursday, April 8, 1993, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Erath County Courthouse Courtroom Second Floor, On The Square, Stephenville. According to the agenda summary, the examiners will discuss application to authorize disposal of wastes and wastewater from a dairy (Proposed Permit Number 03460) by Phil Bradbury before a hearing examiner of the Texas Water Commission.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 18, 1993, 2:03 p.m.

TRD-9319216

Thursday, April 8, 1993, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the County Commissioner's Courtroom, New Administration Building, Second Floor, 301 North Thompson, Conroe. According to the

agenda summary, the examiners will discuss application to authorize a discharge of treated domestic wastewater effluent by Tejas Financial Corporation (proposed permit Number 13626-01) before a Hearings Examiner of the Texas Water Commission.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 19, 1993, 4:44 p.m.

TRD-9319310

Thursday, April 8, 1993, 11 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the County Commissioner's Courtroom, New Administration Building, Second Floor, Conroe. According to the agenda summary, the commission will consider an application for renewal of Permit Number 13465-01 which authorizes a discharge of treated domestic wastewater effluent by DBC Utilities, Inc.

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

Filed: February 22, 1993, 2:25 p.m.

TRD-9319370

Thursday, April 8, 1993, 1 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Erath County Courthouse, Courtroom Second Floor, On The Square, Stephenville. According to the agenda summary, the examiners will discuss application to authorize disposal of wastes and wastewater from a dairy, proposed permit Number 03648 by J. M. Slegers doing business as Aspen Dairy before a hearings examiner of the Texas Water Commission.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 18, 1993, 2:02 p.m.

TRD-9319215

Thursday, April 8, 1993, 2 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the County Commissioner's Courtroom, New Administration Building, Second Floor, 301 North Thompson Street, Conroe. According to the agenda summary, the commission will consider an application to authorize a discharge of treated wastewater effluent by The Woodlands Corporation (Proposed Permit Number 13614-01).

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 22, 1993, 2:24 p.m.

TRD-9319369

Wednesday, April 14, 1993, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118, Austin. According to the agenda summary, the commission will hold an agenda hearing on

Palo Pinto Municipal Water District Number One's application Number 5447 for a permit under §11.121 of the Texas Water Code, which will not include a priority appropriation of water. The applicant is requesting authorization to construct and maintain a dam creating a reservoir on an unnamed tributary of the Brazos River, Brazos River Basin, approximately 7.4 miles south of Mineral Wells, Texas in Palo Pinto County, for in-place recreational use. Applicant is also requesting authorization to impound in the reservoir, water currently authorized to be diverted in applicant's Certificate of Adjudication Number 12-4031, and to impound, on a non-priority basis, inflows from the watershed of the proposed reservoir. Applicant is requesting authorization to divert all of the water impounded in the proposed reservoir, provided that the annual diversions do not exceed the annual sum authorized under Certificate Number 12-4031.

Contact: Terry Salde, P.O. Box 13087, Austin, Texas 78701, (512) 475-4586.

Filed: February 19, 1993, 4:45 p.m.

TRD-9319311

Thursday, April 15, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 211, Austin. According to the agenda summary, the examiners will hold a hearing on Holiday Oaks Water Company's water rate increase effective December 1, 1992 for its service area located in Harris County, Texas. Docket Number 9805-G.

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

Filed: February 19, 1993, 4:45 p.m.

TRD-9319312

Wednesday, May 5, 1993, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118, Austin. According to the agenda summary, the commission will hold an agenda hearing on Timarron Land Corporation's Application Number 5445 for a permit to build three dams and reservoirs and divert water for the initial filling of the three reservoirs, to be located on two unnamed creeks, tributaries of Big Bear Creek, tributary of West Fork Trinity River, tributary of Trinity River, Trinity River Basin. A total of 234.8 acre-feet of water will be used for the initial fill and they will then be maintained at normal maximum operating levels by a groundwater well system. The dams and reservoirs will be used for aesthetic/recreational purposes in the Timarron Development in Southlake, Texas, located approximately 16.2 miles northeast of Fort Worth, Tarrant County, Texas.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8195.

Filed: February 19, 1993, 4:46 p.m.

TRD-9319314

Wednesday, May 12, 1993, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118, Austin. According to the agenda summary, the commission will hold an agenda hearing on the City of Dallas, Parks and Recreation Department's Application Number 5448 for a permit to build a proposed dam (Tenison Golf Course Check Dam) and maintain the resulting 157 acre-feet of water impounded by the dam in a reservoir on White Rock Creek, tributary of the Trinity River, Trinity River Basin. The dam and reservoir will be used for erosion control purposes and for in-place recreational (aesthetic) purposes within Tenison Park, located in Tarrant County, Texas. The proposed dam is a component of the City of Dallas' erosion control plan for White Rock Creek within Tenison Park.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8195.

Filed: February 19, 1993, 4:46 p.m.

TRD-9319315

## Texas Workers' Compensation Research Center

Friday, March 5, 1993, 9:30 a.m. The Board of Directors of the Texas Workers' Compensation Research Center will meet at the Texas Department of Human Services, 701 West 51st Street, Room 560W, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of the minutes of February 10, 1993 meeting; make announcements; presentation by Texas A&M Public Policy Research Institute; presentation by UT Center for the Study of Human Resources; hear research progress report: delivery of benefits-timeliness and benefit increase and disability duration, insurance deductibles, resource database; research agenda discussion-system cost drivers-state comparative study, in-house database; confirm meeting of March 26, 1993; and adjourn. Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 346-6197 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Annette Gula, 3636 Executive Center Drive, Suite G-22, Austin, Texas 78731, (512) 346-6197.

Filed: February 22, 1993, 11:17 a.m.

TRD-9319363

## Regional Meetings

### Meetings Filed February 18, 1993

The Alamo Area Council of Governments Area Judges met at 118 Broadway, Suite 420, San Antonio, February 23, 1993, at 11:45 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9319234.

The Ark-Tex Council of Governments Executive Committee met at the Two Senoritas, Mt. Pleasant, February 25, 1993, at 5:30 p.m. Information may be obtained from Susan J. Rice, P.O. Box 5307, Texarkana, Texas 75505-5307, (903) 832-8636. TRD-9319217.

The Austin-Travis County Mental Health and Mental Retardation Center Planning and Operations Committee met at 1430 Collier Street, Board Room, Austin, February 23, 1993, at 7:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9319229.

The Brazos Valley Quality Work Force Planning Committee met at 715 University Drive, College Station, February 23, 1993, at 11:30 a.m. Information may be obtained from Patty Groff, 301 Post Office Street, Bryan, Texas 77801, (409) 823-4988. TRD-9319209.

The Central Texas Council of Governments Executive Committee met at 302 East Central, Belton, February 25, 1993, at 12:45 p.m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9319210.

The Coastal Bend Council of Governments Executive Board will meet at the Corpus Christi Airport Holiday Inn, Naples Room, 5549 Leopard Street, Corpus Christi, February 26, 1993, at noon. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9319218.

The Coastal Bend Council of Governments Membership will meet at the Corpus Christi Airport Holiday Inn, Palermo Room, 5549 Leopard Street, Corpus Christi, February 26, 1993, at 2 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9319219.

The Coryell City Water Supply District Board of Directors held an emergency meeting at the Office in Coryell City, FM 929, February 18, 1993, at 7 p.m. The emergency meeting was necessary because the business needed to be taken care of that week. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville,

Texas 76528, (817) 865-6089. TRD-9319213.

The Education Service Center Region XV Board of Directors met at the ESC Region XV, 612 South Irene Street, Conference Room Number One, San Angelo, February 25, 1993, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9319212.

The Mental Health and Mental Retardation Authority of Brazos Valley Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, February 25, 1993, at 1 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77803, (409) 822-6467. TRD-9319241.

The Pecan Valley Mental Health Mental Retardation Region Board of Trustees met at the Pecan Valley MHMR Region Clinical Office, 104 Charles Street, Granbury, February 24, 1993, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9319220.

The West Central Texas Council of Governments Executive Committee met at 1025 E North 10th Street, Abilene, February 24, 1993, at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 E North 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9319208.

### Meetings Filed February 19, 1993

The Andrews Center Board of Trustees met at 2323 West Front Street, Board Room, Tyler, February 25, 1993, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9319278.

The Angelina and Neches River Authority Pineywoods Solid Waste Agency Board of Directors met at Jasper Municipal Building (City Hall), DETCOG Upstairs Conference Room, 274 East Lamar Street, Jasper, February 23, 1993, at 10 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 79502-0387, (409) 632-7795, FAX (409) 632-2564. TRD-9319248.

The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, February 25, 1993, at 7 a.m. Information may be obtained from Sharon Taylor, P. O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9319285.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors met at 1124A Regal Row, Austin, February

23, 1993, at 5:30 p.m. Information may be obtained from William Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD-9319283.

The Capital Area Rural Transportation System (CARTS) CARTS Board of Directors met at 5111 East First Street, Austin, February 25, 1993, at 9:30 a.m. Information may be obtained from Edna M. Burroughs, 5111 East First Street, Austin, Texas 78702, (512) 478-7433. TRD-9319277.

The Dallas Area Rapid Transit Administrative Committee met at the DART Headquarters, 1401 Pacific Avenue, Conference Room B, Dallas, Texas 75202, February 23, 1993, at 11 a.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9319263.

The Dallas Area Rapid Transit Finance and Audit Committee met at the DART Headquarters, 1401 Pacific Avenue, Conference Room C, Dallas, Texas 75202, February 23, 1993, at 1 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9319262.

The Dallas Area Rapid Transit Board of Director's met at DART Headquarters, 1401 Pacific Avenue, DART Board Room, Dallas, Texas 75202, February 23, 1993, at 4 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9319264.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, February 24, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9319291.

The Lower Rio Grande Valley Development Council Board of Directors met at Harlingen Chambers of Commerce, 311 East Tyler, Harlingen, February 25, 1993, 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9319243.

The Mason County Appraisal District met at 208 Fort McKavitt, Mason, February 24, 1993, 5:30 p.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9319284.

The North Central Texas Council of Governments Executive Board met at Centerpoint Two, Second Floor, 616 Six Flags Drive, Arlington, February 25, 1993, 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888. TRD-9319242.

The Sharon Water Supply Corporation Board of Directors, met at the Office of Sharon Water Supply, Route 5 Box 25-C-10, Winnsboro, February 22, 1993, 7 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 25-C-10, Winnsboro, Texas 75494, (903) 342-3525. TRD-9319247.

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**Meetings Filed February 22,  
1993**

The Deep East Texas Council of Governments Executive Committee met at the Crockett Inn, 1600 East Loop 304, South, Crockett, February 25, 1993, at 10:30 a.m. Information may be obtained from Joan Draper, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9319327.

The Johnson County Rural Water Supply Corporation met at the JCRWSC Office, Highway 171 South, Cleburne, February 25, 1993, at 7 p.m. Information may be obtained from Charlene SoRelle, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9319365.

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, February 25, 1993, at 7 p.m. Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9319367.

The Lamb County Appraisal District Agricultural Advisory Board will meet at 331

LFD Drive, Littlefield, March 18, 1993, at 7 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474. TRD-9319368.

The Middle Rio Grande Development Council Board of Directors held an emergency revised agenda at the VFW Hall, 2432 Main Street, Eagle Pass, February 24, 1993, at 10 a.m. The emergency status was necessary due to board to include agenda items that needed to be acted on before the end of the month. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9319394.

The Middle Rio Grande Development Foundation, Inc. Board of Directors held an emergency meeting at the VFW Hall, 2432 Main Street, Eagle Pass, February 24, 1993, at 2 p.m. The emergency meeting was necessary due to board to take action on agenda items before the end of the month. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9319393.

The Permian Basin Regional Planning Commission Private Industry Council will meet at the University of Texas Permian Basin, Center for Energy and Economic Diversification, Midland, February 27, 1993, at 4 p.m. Information may be obtained from Tammy Smith, P.O. Box 60660, Midland, Texas 79711-0660, (915) 563-1061. TRD-9319395.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee will meet in the Basement Conference Room, City Hall, San Antonio, February 26, 1993, at 1:30 p.m. Information may be obtained from Charlotte Roszelle, 434 South Main Street, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9319381.

The Tarrant Appraisal District Board of Directors will meet at 2329 Gravel Road, Fort Worth, February 26, 1993, at 9 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TRD-9319362.

The Wise County Appraisal District Appraisal Review Board will meet at 206 South State Street, Decatur, March 2, 1993, at 9 a.m. Information may be obtained from LaReesea Pittman, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9319366.

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**Meetings Filed February 23,  
1993**

The Brazos Valley Development Council Regional Advisory Committee on Aging will meet at the Council Offices, 3006 East 29th Street, Suite Two, Bryan, March 2, 1993, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9319398.



# 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.

## 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, Articles 1.04, 1.05, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05.).

<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)	02/22/93-02/28/93	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	03/01/93-03/31/93	10.00%	10.00%

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on February 16, 1993.

TRD-9319193 Al Endsley  
Consumer Credit Commissioner

Filed: February 18, 1993

## Texas Education Agency

### Invitation for Private Consultants

Under provisions of Texas Civil Statutes, Article 6252-11c, the Texas Education Agency hereby files a statement in the *Texas Register* inviting private consultants to offer services relating to "Determining Student Results to Meet Real World Needs."

The services will consist, in general, of planning and conducting meetings of a State Panel on Student Skills and Knowledge, providing expertise on videos and print materials on Student Results, training discussion leaders to guide Public Awareness and Response Sessions, reviewing Student Results, and analyzing responses.

Consultants who wish to make an offer should contact Cynthia Y. Levinson at (512) 463-9533 for additional information. The closing date for receipt of offers of consultant services is March 12, 1993.

The agency will award the contract based on the quality of the submission, the offeror's relevant experience, competence, and ability to perform the duties, and the proposed fee as it relates to the quality of the services offered.

Issued in Austin, Texas, on February 17, 1993.

TRD-9319332

Lionel R. Mero  
Commissioner of Education  
Texas Education Agency

Filed: February 22, 1993

## General Land Office

### Correction of Error

The General Land Office adopted new 31 TAC §§15.1-15.10, concerning identification of critical dune areas, dune preservation, and the preservation and enhancement of public beach access. The rules appeared in the February 2, 1993, *Texas Register* (18 TexReg 661).

In §15.1(9) on page 689, the agency submission omitted the word "and" after the semicolon on the last line. The ending of the sentence should read as follows. "...beach/dune system; and".

In §15.2 in the definition of "Effect or effects" on page 690, the agency's submission reads "...dune protection line which are caused by *the* action and occur...." The word "the" should be replaced with "an" and should read as follows. "...dune protection line which are caused by *an* action and occur...."

In §15.2 on page 693, the definition reads "Master planned development-A document containing maps, drawings, narrative, tables, and other forms of communication that provides information about the proposed use of specific land and/or water that include, but is not limited to, as appropriate, descriptions of land and/or water uses, land and/or water use intensities, building and/or site improvement locations and sizes, relationships between buildings and improvements, vehicular and pedestrian access and



tion in their possession at this facility until entrance exposure limits for x-ray diagnostic procedures have been reduced to within regulatory limits. The bureau determined that the continued use of radiation sources at this facility constitutes an immediate threat to public health and safety. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct this violation and the methods to prevent its recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on February 17, 1993.

TRD-9319138      Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: February 17, 1993

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**Notice of Intent to Revoke a Certificate  
of Registration**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code, §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: H. Mark Trammell, D.D.S., Tyler, R18296.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid and the items in the complaints are corrected within 30 days of the date of complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid or if the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on February 17, 1993.

TRD-9319139      Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: February 17, 1993

**Notice of Radioactive Material License  
Amendment**

Notice is hereby given by the Texas Department of Health that it has granted amendment number 58 to Radioactive Material License Number L01654, issued to Gulf Nuclear, Inc. for their facility located at 2717 West 81st Street in Odessa (mailing address: Gulf Nuclear, Inc., C/O R/A Services, Inc., P. O. Box 13327, Odessa, Texas 79768).

The amendment to the license removes John Ames from the license as the Assistant Radiation Safety Officer at the request of Mr. Ames.

The Division of Licensing, Registration and Standards has determined that the licensee has met the standard(s) appropriate to this amendment: the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the *Texas Regulations for Control of Radiation* (TRCR) in such a manner as to minimize danger to public health and safety or property; the licensee's equipment, facilities and procedures are adequate to minimize danger to public health and safety or property; there is reasonable assurance that the radioactive waste facility is sited, designed, operated and will be decommissioned and closed in accordance with the requirements of Part 44 of the TRCR; the issuance of the license amendment will not be inimical to the health and safety of the public or the environment; and the licensee satisfies any applicable special requirements of the TRCR.

This notice affords the opportunity for a public hearing upon written request within thirty days of the date of publication of this notice by a person affected as required by the Health and Safety Code, §401.116, and as set out in TRCR 13.6. A person affected is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 8407 Wall Street, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. For further information, please call (512) 834-6688.

Issued in Austin, Texas, on February 18, 1993.

TRD-9319211      Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: February 17, 1993

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Notice is hereby given by the Texas Department of Health that it has granted amendment Number 6 to Radioactive Material License Number L03879, issued to R/A Services, Inc. (mailing address: R/A Services, Inc., P.O. Box 13327, Odessa, Texas 79768).

This amendment removes John Ames from the license as the Assistant Radiation Safety Officer at the request of Mr. Ames.

The Division of Licensing, Registration and Standards has determined that the licensee has met the standard(s) appropriate to this amendment: the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the *Texas Regulations for Control of Radiation (TRCR)* in such a manner as to minimize danger to public health and safety or property; the licensee's equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; the issuance of the license amendment will not be inimical to the health and safety of the public; and the licensee satisfies any applicable special requirements of the TRCR.

This notice affords the opportunity for a public hearing upon written request within thirty days of the date of publication of this notice by a person affected as required by the Health and Safety Code, §401.116, as amended, and as set out in TRCR 13.6. A person affected is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 8407 Wall Street, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. For further information, please call (512) 834-6688.

Issued in Austin, Texas, on February 19, 1993.

TRD-9319319      Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: February 22, 1993

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## Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Cease and Desist Order issued January 27, 1993, to Esta Lubs, D.C. doing business as Montgomery County Chiropractic Center, 3708 West Davis Street, Suite I, Conroe, Texas 77304, holder of Certificate of Registration Number R15958.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on February 17, 1993.

TRD-9319134      Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: February 17, 1993

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## Texas Higher Education Coordinating Board

### Notice of Meeting

The Youth Opportunities Unlimited (YOU) Directors Meeting of the Texas Higher Education Coordinating Board will meet on Friday, February 26, 1993, from 8 a.m. to 5 p.m. The location of the meeting will be at the Chevy Chase Office Complex, Building 5, Suite 5.139, 5.209, and 5.211. This meeting is held to advise state-level staff on program problems, deficiencies and Youth Opportunities Unlimited program enhancements that enable Service Delivery Areas (SDA's) to better meet JTPA program requirements quarterly and also to provide technical assistance and conduct training for the universities and SDA's

Issued in Austin, Texas, on February 17, 1993.

TRD-9319261      Sharon Jahsman  
Administrative Secretary  
Texas Higher Education Coordinating Board

Filed: February 19, 1993

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## Texas Department of Housing and Community Affairs

### Request for Housing and Assistance Fund Proposals

The Texas Department of Housing and Community Affairs (TDHCA) is pleased to announce that it will make \$2.5 million available for housing assistance loans.

The funds will be made available for projects in Standard Metropolitan Statistical Areas (SMSA's) of 600,000 thousand and over as listed below:

<u>SMSA</u>	<u>Population</u>
Dallas/Fort Worth	3,765,463
Houston	3,602,958
San Antonio	1,298,117
Austin	749,612

Projects will serve low and very low income individuals not to exceed 80% of the area median income. Eligible projects are limited to acquisition/rehabilitation of multi-family rental units in the areas listed above. Applicants should submit their project proposals postmarked by March 19, 1993. Funds will be limited to \$1,000,000 per applicant.

Eligible applicants for rental housing projects can only be one of the following: Non-Profit Corporations or For Profit Corporations.

TDHCA will seek to select a diverse group of projects that will serve major metro populations in need of housing for person and families of low and moderate income. Applicants who have not received previous TDHCA funding will be given priority consideration.

These funds are being made available on an expedited basis to provide housing where critical needs exist for the greatest numbers of low and very low income people.

TDHCA reserves the right to accept or reject any or all proposals submitted. The State is under no obligation to execute a contract on the basis of the RFP and intends this material only as a means of identifying the various contractor alternative. TDHCA intends to use responses as a basis for further negotiation of specific program details with potential contractors.

All interested persons are encouraged to participate in this program. Questions or requests for an application may be directed to Scott McGuire, Acting Deputy for Housing Finance and Development or Judith Rhedin, Director of Housing Trust Fund TDHCA, P.O. Box 13941, Austin, Texas 78711, (512) 475-2124 or (512) 475-1458.

Issued in Austin, Texas, on February 19, 1993.

TRD-9319258      Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: February 19, 1993

### Texas Department of Human Services Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for Targeted Case Management Services for Infants and Toddlers with Developmental Disabilities. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on March 11, 1993 at 9 a.m. in Room 460W (4W) of the John

H. Winters Center (701 West 51st Street, Austin, Fourth Floor, West Tower). Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after February 24, 1993, by contacting Terry Beattie, MC W-516, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4124.

Issued in Austin, Texas, on February 18, 1993.

TRD-9319188      Nancy Murphy  
Agency Liaison, Policy Development  
Services  
Texas Department of Human Services

Filed: February 18, 1993

### Panhandle Regional Planning Commission

#### Consultant Proposal Request

This request by the Panhandle Regional Planning Commission (PRPC) for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. Specifically, the PRPC is seeking consultant assistance to provide legal advice in identifying and developing an administrative structure that will facilitate the operation of a multi-jurisdictional solid waste management system. The administrative structure will initially serve a three-county area of the Panhandle but will be designed such that it can be expanded to include other jurisdictions in the future.

**Background.** The PRPC, as part of their regional solid waste management plan implementation activities, will be assisting the local governments of the Panhandle in designing and consummating legal arrangements to facilitate the operation of multi-jurisdictional solid waste management activities (e.g., collection, transportation, transfer, disposal, or any combination thereof). The regional plan has identified six subregions of the Panhandle and recommends that the local governments within each subregion work together in an attempt to identify, where appropriate, areas where part(s) of the solid waste management system or all of the solid waste management system can be shared to result in lower solid waste management costs for all the jurisdictions which could be involved.

The county and municipal governments of Panhandle Subregion 2 (including the Counties of Hansford, Hemphill, Lipscomb, and Ochiltree and all incorporated communities therein) have decided to investigate the creation of a legal body(ies) or arrangement(s) which could facilitate the operation of a multi-jurisdictional solid waste system(s). These entities will require a legal consultant which can advise them on the various administrative arrangements which could be considered and then assist them in determining which arrangement would best meet their particular needs and concerns. Should the entities corporately

decide to enter in such an arrangement(s), legal services will be required to develop the necessary documents to consummate that agreement(s).

**Contact Person.** Individuals or firms interested in submitting a proposal may obtain a proposal package by writing John Kiehl at the PRPC offices, P.O. Box 9257, Amarillo, Texas 79105 or by phoning Mr. Kiehl at (806) 372-3381. Proposals are due at the PRPC offices by 5 p.m. on Friday, March 19, 1993. Late proposals will not be accepted.

**Contract Award Procedures.** The consultant or firm selected to assist in this endeavor will be recommended by the members of the Subregion 2 Solid Waste Task Force. Final approval of consultant selection will be given by the Executive Board of the Panhandle Regional Planning Commission. The members of the Subregion 2 Solid Waste Task Force have stated that it is their desire to work with a consultant or firm that has a demonstrated background and expertise in governmental law as it relates to the development of multi-jurisdictional arrangements and has a practical working knowledge of the current and anticipated regulations governing the management of solid waste.

The Panhandle Regional Planning Commission in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 United States Code 2000d-2000d4, will affirmatively ensure that no firm or individual will be discriminated against on the grounds of their race, color, sex, age, national origin, or disability in regard to participation in this proposal process nor in the consideration of the eventual award of this project.

Issued in Amarillo, Texas, on February 18, 1993.

TRD-9319325      John T. Kiehl  
Assistant to the Executive Director  
Panhandle Regional Planning Commission

Filed: February 22, 1993

## Texas Board of Licensure for Professional Medical Physicists

### Request for Proposals for Examination of Medical Physicists

The Texas Board of Licensure for Professional Medical Physicists reissues the invitation for proposals in response to the request for proposal entitled "Medical Physicists Licensing Examinations Development, Generation, Scoring" from entities experienced in examination administration to develop, validate, generate and score one or more of the specialty examinations for professional medical physicists. The specialty examinations cover the knowledge requirements for diagnostic radiological physics, therapeutic radiological physics, nuclear medicine physics, and medical health physics.

The written examinations to be developed will consist of a minimum of 300 multiple-choice items to be answered on electronic scannable answer sheets and scored in a mutually agreeable period of time. Approximately 50 candidates are expected to take the examinations scheduled twice a year in Austin, or any other mutually agreeable test site. The contractor will be developing, generating and scoring examinations beginning in 1994 with the option of being considered for each calendar year thereafter.

Selection of the contractor will be based on the contractor's demonstration of competence in examination development, validation, generation, and score reporting. Examination administration will be done through the utilization of personnel of the department under the direction of the department's psychometrician. Proposals shall indicate total examination costs as well as a breakdown to reflect actual costs per examinee.

Entities interested in submitting a proposal shall contact Dr. Jim Zukowski, Assistant Director, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6628 or (512) 834-6677 (FAX) for information regarding the full proposal. Proposals will not be considered from bidders failing to obtain this information.

A bidders conference will be held on March 16, 1993, at 1:30 p.m. in Room S-400, 8407 Wall Street, Austin, to provide further information and specification prior to acceptance of any written proposals. Proposals may be delivered by mail to the address listed in the preceding paragraph or in person to Room S-420, Texas Department of Health Annex, 8407 Wall Street, Austin, Texas 78758. Proposals are due in this office no later than March 31, 1993.

Issued in Austin, Texas, on February 17, 1993.

TRD-9319136      Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: February 17, 1993

## State Securities Board Correction of Error

The State Securities Board proposed an amendment to 7 TAC §123.3, concerning conditional exemption for money market funds to take into account current rules of the Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD) as they relate to the Securities Commissioner's designation of open-end investment companies as "money market funds" for purposes of reduced registration fees, and new §124.4, concerning guidelines for registration of periodic payment plans. The rules appeared in the February 9, 1993, *Texas Register* (18 TexReg 793)

In §123.3(b)(6)(A) the word "Portfolio" should not be capitalized.

In §123.3(c) the agency is changing the reference to "a Form proposed for adoption in §133.26" to read as follows. "... The request shall be made in writing on Form §133.26 [in such form and contents as...]"

In §123.3(g) the reference to "a Form proposed for adoption in §133.27..." should read "...on Form §133.27...."

In §124.1(b)(2)(A) the colon in the second line following the word "liquidated" should be eliminated.

## Teacher Retirement System of Texas Report of Balance Sheet, Actuarial Valuation, and Unfunded Liabilities

Section 4, Chapter 929 (Senate Bill 1105), Acts of the 71st Texas Legislature, Regular Session, 1989, requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than March 1 of each year. The report must contain the balance sheet of the retirement system as of August 31 of the preceding fiscal year and actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following report as required by statute.

### Summary of Actuarial Report Requested by State Auditor.

The State Auditor's office has requested that we summarize the results of the actuarial valuation of the Teacher Retirement System of Texas as of August 31, 1992. The actuarial valuation report reveals that the Teacher Retirement System of Texas is an actuarially sound system based on the current actuarial assumptions and that the present actuarial value of assets (\$31.2 billion) plus the contributions required by the law in the future will be sufficient to meet the payments to the present active and retired members of their beneficiaries.

The actuarial assumptions and methods used in the valuation are those adopted by the Board based on the 1990 Experience Study:

1. Mortality for the retired members is based on the 1983 Group Annuity Mortality Table for males with a two-year setback in age and the 1983 Group Annuity Mortality Table for females with a one-year setback in age. An extensive study of actual mortality experience of retired members under the System indicates that these mortality tables are appropriate.
2. Mortality for active members is based on a table constructed from the actual experience of the Teacher Retirement System of Texas.
3. Disability, retirement, and withdrawal rates are based on actual experience of the Teacher Retirement System of

Texas. Retirement and withdrawal rates take a select and ultimate form.

4. An investment return assumption of 8%, compounded annually, is used with regard to computations for retired persons and for active members. An interest rate of 8.38%, compounded annually, is used with regard to the 1975 Legislative increase for retired members; a rate of 9.56%, compounded annually, is used with regard to the 1977 Legislative increase; a rate of 10.30%, compounded annually, is used with regard to the 1979 Legislative increase; a rate of 14.32%, compounded annually, is used with regard to that portion of the two 1981 Legislative increases which was not funded by reserves released from the Retired Reserve Account.

5. The salary scale for projecting future salaries is based on the actual 1985-1990 experience of the Teacher Retirement System of Texas and consists of a step-rate/promotional salary scale table plus a general salary increase assumption of 5-3/4%.

6. The actuarial value of assets is determined under a market over book adjusted asset valuation method which recognizes unrealized appreciation in equity market values over a five-year rolling period.

7. Funding of the unfunded actuarial accrued liability is based on the excess of assumed future State contributions over the amount of such contributions required to fund the normal cost of benefits provided by the System. Basing the normal cost for the System on a study of all new entrants hired in the period from 1985 through 1990, the normal cost is 12.46% of payroll (6.40% by members plus 6.6% by the State), which is 1.25% of payroll less than the total contributions being paid by the members and by the State. It is assumed that the excess amount of 1.25% of payroll contributed by the State will be utilized to fund the unfunded actuarial accrued liability of \$3.441 billion (as shown on the actuarial balance sheet) over a period of 28.8 years in the future, assuming that payroll grows at an aggregate compound rate of 6% per year. All funding calculations assume that the State contribution rate will remain at 7.31%.

Based on the above assumptions and the actuarial results shown in the report, it is our opinion that the Teacher Retirement System of Texas is actuarially sound and if the payroll in the future increases at the rate of 6%, compounded annually, the unfunded actuarial accrued liability of \$3,441 billion will be amortized over a period 28.8 years in the future.

**Actuarial Balance Sheet Showing Present and Prior Year  
 Assets and Liabilities After Actuarial Adjustments to  
 Retired Reserve Account**

**ACTUARIAL ASSETS**

	August 31,	
	1992	1991
	(1)	(2)
<b>I. Present Assets At Actuarial Value:</b>		
1. Retired reserved account (actuarially determined)	\$ 11,695,096,324	\$ 10,929,565,625
2. 1975 benefit increase reserve subaccount	(4,115,600)	1,467,998
3. 1977 benefit increase reserve subaccount	64,257,384	65,786,360
4. 1979 benefit increase reserve subaccount	49,281,341	49,779,119
5. 1981 benefit increase reserve subaccount	175,046,397	173,583,122
6. Member savings account	7,505,149,619	6,818,836,902
7. State contribution account	6,662,978,603	5,976,263,580
8. Expense accounts and miscellaneous	59,225,391	50,711,335
9. Total present assets	<u>\$ 28,206,919,959</u>	<u>\$ 24,065,994,041</u>
10. Adjustment to book value due to actuarial asset valuation method	4,994,305,249	4,793,545,670
11. Total actuarial value of present assets	<u>\$ 31,201,225,208</u>	<u>\$ 28,859,539,711</u>
<b>II. Prospective Assets:</b>		
12. Present value of future contributions by present members	\$ 9,492,420,806	\$ 8,928,835,454
13. Present value of future normal costs contributed by the State	8,988,135,950	8,299,167,336
14. Unfunded actuarial accrued liability	3,441,424,033	3,429,188,337
15. Total prospective assets	<u>\$ 21,921,980,789</u>	<u>\$ 20,655,191,127</u>
16. TOTAL ACTUARIAL ASSETS	<u>\$ 53,123,205,997</u>	<u>\$ 49,514,730,838</u>



Actuarial Balance Sheet Showing Present and Prior Year  
 Assets and Liabilities After Actuarial Adjustments to  
 Retired Reserve Account  
 (Continued)

ACTUARIAL LIABILITIES

	August 31,	
	1992	1991
	(1)	(2)
<b>III. Present Value Of Benefits Presently Being Paid:</b>		
17. Benefits other than Legislative increases for retired members		
a. Service retirement benefits	\$ 10,928,906,584	\$ 10,200,376,816
b. Disability retirement benefits	418,774,044	394,556,136
c. Death benefits	275,706,804	258,936,744
d. Present survivor benefits	71,708,892	75,695,929
e. Total basic reserves	<u>\$ 11,695,096,324</u>	<u>\$ 10,929,565,625</u>
18. Benefits provided retired members by 1975 Legislative increase		
a. Service retirement benefits	\$ 23,653,728	\$ 26,885,232
b. Disability retirement benefits	541,824	589,368
c. Death benefits	1,487,580	1,535,532
d. Total 1975 increase reserves	<u>\$ 25,683,132</u>	<u>\$ 29,010,132</u>
19. Benefits provided retired members by 1977 Legislative increase		
a. Service retirement benefits	\$ 32,063,652	\$ 35,450,304
b. Disability retirement benefits	1,017,648	1,089,216
c. Death benefits	1,729,308	1,779,816
d. Total 1977 increase reserves	<u>\$ 34,810,608</u>	<u>\$ 38,319,336</u>
20. Benefits provided retired members by 1979 Legislative increase		
a. Service retirement benefits	\$ 21,684,588	\$ 24,476,160
b. Disability retirement benefits	510,804	558,098
c. Death benefits	1,277,040	1,314,696
d. Total 1979 increase reserves	<u>\$ 23,472,432</u>	<u>\$ 26,348,954</u>
21. Benefits provided retired members by 1981 Legislative increases		
a. Service retirement benefits	\$ 105,430,440	\$ 113,584,104
b. Disability retirement benefits	2,800,368	3,000,996
c. Death benefits	3,580,776	3,658,404
d. Total 1981 increase reserves	<u>\$ 111,811,584</u>	<u>\$ 120,243,504</u>
22. Total present value of benefits presently being paid	<u>\$ 11,890,874,080</u>	<u>\$ 11,143,487,549</u>

Actuarial Balance Sheet Showing Present and Prior Year  
Assets and Liabilities After Actuarial Adjustments to  
Retired Reserve Account

(Continued)

	August 31,	
	1992	1991
	(1)	(2)
<b>IV. <u>Present Value Of Benefits Payable In The Future</u></b>		
<b><u>To Present Active Members:</u></b>		
23. Service retirement benefits	\$ 36,959,095,853	\$ 34,356,237,377
24. Disability retirement benefits		
a. Disability prior to vesting	3,212,245	3,035,340
b. Disability after vesting	1,247,243,813	1,163,646,921
c. Total disability benefits	\$ 1,250,456,058	\$ 1,166,682,261
25. Refunds of contributions on withdrawal	1,710,737,137	1,601,638,756
26. Death and survivor benefits		
a. Two times pay	201,947,628	192,105,490
b. Refund of contributions	3,726,112	3,462,057
c. Five year annuity	121,189,183	114,023,577
d. Life annuity	398,706,712	374,932,576
e. Survivor benefit	19,876,009	26,978,575
f. Total death benefits	\$ 745,445,655	\$ 711,502,275
27. Total active member liabilities	\$ 40,665,734,692	\$ 37,836,058,669
<b>V. <u>Present Value Of Benefits Payable In The Future</u></b>		
<b><u>To Present Inactive Members:</u></b>		
28. Terminated vested participants		
a. Retirement benefits	\$ 52,132,153	\$ 40,036,328
b. Death benefits	1,533,564	913,576
c. Total term vest benefits	\$ 53,665,717	\$ 40,949,904
29. Refunds of contributions to terminated non-vested members	8,189,033	7,578,761
30. Future survivor benefits payable on behalf of present annuitants	434,047,565	416,463,486
31. Total inactive liabilities	\$ 495,902,315	\$ 464,992,151
<b>VI. <u>Other Liabilities And Reserves:</u></b>		
32. Reserve for expenses, benefits, and accounts payable	\$ 70,694,910	\$ 70,192,469
33. TOTAL ACTUARIAL LIABILITIES	\$ 53,123,205,997	\$ 49,514,730,838

Issued in Austin, Texas, on February 18, 1993.

TRD-9319279

Wayne Blevins  
Executive Director  
Teacher Retirement System of Texas

Filed: February 19, 1993

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**Texas Department of Transportation  
Contract Award Notice**

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Transportation publishes this notice of a consultant contract award. The consultant proposal request originally appeared in the August 4, 1992, issue of the *Texas Register* (17 TexReg 5477). The consultant will prepare a business plan that will be used to guide the preparation of a multi-modal state transportation plan (STP), required by Texas Civil Statutes, Article 6663(f)(1) and (2). A similar plan is also required by the recent enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), codified as Title 23, United States Code, §135. The STP must meet the requirements of both laws as a minimum.

The contractor selected to perform this service is Dye Management Group, Inc., 411 108th Avenue, North East, Bellevue, Washington 98004. The total value of the contract is \$50,000. The contract began on January 29, 1993, and will terminate on April 15, 1993. A final report will be due on or before April 15, 1993.

Issued in Austin, Texas, on February 18, 1993.

TRD-9319276

Diane L. Norham  
Legal Administrative Assistant  
Texas Department of Transportation

Filed: February 19, 1993

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**Texas Water Commission  
Enforcement Orders**

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Dallas Fort Worth International Airport, Facility ID Number 10457, on February 12, 1993, assessing \$2,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margaret Ligarde, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2047.

Issued in Austin, Texas, on February 19, 1993.

TRD-9319308

Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: February 19, 1993

◆ ◆ ◆  
Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil

penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Budget Rent-A-Car, Facility ID Numbers 31044, 31046, 47588, on February 12, 1993, assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margaret Ligarde, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2047.

Issued in Austin, Texas, on February 19, 1993.

TRD-9319309

Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: February 19, 1993

◆ ◆ ◆  
**Notice of Availability and Request for  
Comments**

July 1990 Galveston Bay Oil Spill: Availability and Request for Comments on an Amendment to the Draft Damage Assessment Plan.

AGENCY: Texas Water Commission (TWC).

ACTION: Notice of availability of an amendment to the Draft Damage Assessment Plan and 30-day period for public comment.

SUMMARY: On April 3, 1992, TWC provided notice that the draft document entitled, "The Galveston Bay Oil Spill July 28, 1990, Assessment Plan for the Measurement of Natural Resource Damages," was available for public review and comment until June 3, 1992.

Through today's notice, TWC is announcing an amendment to the plan which provides for the assessment of damages for the lost use of access to surface waters closed as a result of the oil spill, and provision of a 30-day period for public comment on the amendment.

DATES: Comments in writing concerning the valuation of lost surface water access must be received on or before April 2, 1993.

ADDRESSES: Requests for a copy of the lost use valuation component of the Damage Assessment Plan should be sent to Richard Seiler of the Texas Water Commission, Damage Assessment and Restoration Program, P.O. Box 13087, Austin, Texas 78711-3087.

Written comments on the valuation methodology should be sent to Richard Seiler of the Texas Water Commission.

SUPPLEMENTARY INFORMATION: On July 28, 1990, at approximately 2:30 p.m., the outbound tanker M/V Shinoussa, after passing the M/T Hellespont Faith in the Houston Ship Channel in Galveston Bay, collided with inbound petroleum barges being pushed by the tug Chandy N. The collision occurred south of Red Fish Island off of Eagle Point, about 15 miles north of Galveston. As a result of the collision, approximately 700,000 gallons of a petroleum product known as catfeed oil were discharged into Galveston Bay from two barges.

The incident is subject to the authority of the Federal Water Pollution Control Act, 33 United States Code, §1321 et seq (FWPCA). NOAA, the Department of the

Interior (DOI), TWC, the Texas Parks and Wildlife Department, and the Texas General Land Office are trustees for natural resources pursuant to the FWPCA, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Oil Pollution Act of 1990, Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 Code of Federal Regulations, Parts 300.72-300.74, and, in the case of the federal trustees, Executive Order 12580.

The state and federal trustee agencies (the cotrustees) are proceeding with an assessment of the natural resource damages resulting from this oil spill. The cotrustees previously provided notice of and received comment on a Draft Damage Assessment Plan. That Plan proposes to utilize the Type A procedure for assessing damages to natural resources resulting from the oil spill in Galveston Bay on July 28, 1990. Subsequent to the announcement of that Plan, the cotrustees have determined to seek compensation for an additional element of natural resource damages, the lost use of access to surface waters closed as a result of the oil spill. This category of damages is not assessed by the Type A model identified in the DOI natural resource damage assessment regulations, 43 Code of Federal Regulations, Parts 11.40 and 11.41, and being used to determine damages for injuries to biological resources resulting from the oil spill. The methodology described in the plan amendment announced here represents a parallel Type B assessment as authorized in the regulations at 43 Code of Federal Regulations, Part 11.15.

During the additional comment period, TWC is only accepting comments on the new section of the Draft Damage Assessment Plan. For further information, please call: (512) 908-2523.

Issued in Austin, Texas, on February 22, 1993.

TRD-9319329      Mary Ruth Holder  
Legal Division Director  
Texas Water Commission

Filed: February 22, 1993

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**Texas Water Development Board**  
**Applications Received**

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board.

City of Kaufman, 209 South Washington Street, Kaufman, Texas 75142, received November 2, 1992, application for financial assistance in the amount of \$5,600,000 from the State Water Pollution Control Revolving Fund.

Evergreen Underground Water Conservation District, P.O. Box 155, Jourdanton, Texas 78026, received January 28, 1993, application for financial assistance in the amount of \$500,000 from the Agricultural Water Conservation Fund.

Mustang Water Supply Corporation, 105 East Elm Street, Aubrey, Texas 75227, received January 12, 1993, application for financial assistance in the amount of \$1,145,000 from the Water Supply Account of the Texas Water Development Fund.

City of Alvarado, P.O. Drawer L, Alvarado, Texas 76009, received December 22, 1992, application for financial assistance in the amount of \$1,240,000 from the State Water Pollution Control Revolving Fund.

County of Dimmit, Dimmit County Courthouse, 103 North Fifth Street, Carrizo Springs, Texas 78834, received January 12, 1993, application for financial assistance in the amount not to exceed \$24,750 from the Research and Planning Fund.

City of Edinburg, P.O. Box 1079, Edinburg, Texas 78540, received January 29, 1993, application for financial assistance in the amount not to exceed \$36,000 from the Research and Planning Fund.

City of Hillsboro, P.O. Box 568, Hillsboro, Texas 76645, received January 22, 1993, application for financial assistance in the amount of \$250,000 from the Water Quality Enhancement Account of the Texas Water Development Fund.

City of El Paso-El Paso County Water Control and Improvement District-Westway, El Paso Water Utilities, P.O. Box 511, El Paso, Texas 79961-0001, received January 14, 1993, application for an increase in financial assistance in the amount of \$356,107 from the Economically Distressed Areas Account.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. 13231, Austin, Texas 78711.

Issued in Austin, Texas, on February 17, 1993.

TRD-9319166      Craig D. Pedersen  
Executive Director  
Texas Water Development Board

Filed: February 17, 1993

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# 1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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